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Saloni Singh

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DIGITAL RAPE, POCSO & LOOPHOLES

Saloni Singh¹

WHAT IS DIGITAL RAPE OR ORAL RAPE?

Digital Rape is a term used to classify cases of rape. In the case of digital rape, the perpetrator used his finger or fingers to violate and force the sexual act upon the victim. In simple terms, a person is accused of Digital rape when the perpetrator used his/her finger or fingers to penetrate the vagina of the victim without her consent. Many people assume that the term 'digital rape' is related to defacing someone's identity on a digital platform, but the term means something else.

Sexual offenses like rape comprise an altogether different kind of wrongdoing which is the outcome of an unreasonable brain.² The individuals who perpetrate such crimes are normally feral people showing the tendency in committing rape.

'Digital rape' was considered molestation until December 2012 and did not fall under the ambit of rape. It was after the horrific Nirbhaya gang-rape incident in 2012 that new rape laws were passed in the parliament and the act was classified as a sexual offense.

DIFFERENT CASES OF DIGITAL RAPE IN INDIA

In Mumbai, a 2-year-old girl was digitally raped by her father.

A 2-year-old child was rushed to the hospital in Mumbai bleeding. Doctors discovered that her vagina was damaged during an examination, but there were no symptoms of sexual assault or rape. Her

¹ 4th Year, B.Com.LLB (Hons), University of Petroleum and Energy Studies.

² Adams-Clark, A.A. and Chrisler, J.C., 2018. What constitutes rape? The effect of marital status and type of sexual act on perceptions of rape scenarios. Violence against women, 24(16), pp.1867-1886.

father, however, was subsequently discovered to be invading the tiny child with his fingers. He was apprehended, however he was not prosecuted or punished under Section 376 of the Indian Penal Code, which deals with rape offences.

81 men arrested for 'digital rape' of minor for 17 years in Noida

The story of an 80-year-old artist turned teacher perpetrating seven years of 'digital rape' on a 17-year-old girl recently sparked outrage on the internet. Maurice Ryder, the individual in question, has been accused of engaging in numerous indecent behaviours with the victim.

The Noida police have filed a case under section 376 of the Indian Penal Code for rape, section 323 for inflicting harm wilfully, and section 506 for criminal intimidation after receiving the minor's allegation. According to the victim's account, the accused used to beat her for protesting his heinous deed. Such heinous acts highlight the importance of raising awareness about "digital rape" and the consequences that come with it.

In Delhi, a 60-year-old woman was digitally raped.

A 60-year-old lady was sexually raped by an auto-rickshaw driver in Delhi, who used an iron rod to penetrate the 60-year-old passenger who was visiting her relative's wedding. The driver was detained again; however, he was not found guilty under Section 376 of the IPC.

WHERE IS IT WRITTEN UNDER THE LAW?

Though digital rape is a gender-neutral term covering all kinds of victims and perpetrators, Indian laws identify only female victims and male perpetrators. Lawmakers have put rape victims into two categories. While the digital rapists of the majors will be tried under

Section 375, the digital rapists of the minors can be tried under both Section 375 as well as POSCO Act.³

Section 375 defines a digital rapist as anybody who *“inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her do so with him or any other person”*.

Meanwhile, Section 3 of the POCSO act defines a digital rapist as anyone who, *“inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child do so with him or any other person”*.

PUNISHMENT FOR RAPE

Section 349 (2) of the Criminal Code states:

A person rapes another person if-

- (a) the person has carnal knowledge with or of the other person without the other person's consent; or
- (b) the person penetrates the vulva, vagina, or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or
- (c) the person penetrates the mouth of the other person to any extent with the person's penis without the person's consent.

A child under the age of twelve years is not capable of giving consent.

In 70% of incidents of digital rape, the offender is someone close to the victim. However, only a small number of violations are reported.⁴ This is

³ Fransson, E., Martinsen, T.J. and Staksrud, E., 2019. Rape in the age of the Internet. Routledge Research in Gender and Society, pp.189-204.

⁴ Renu, R. and Chopra, G., 2019. Child sexual abuse in India and the Protection of Children from Sexual Offences (POCSO) Act 2012: A Research Review Integrated

due to the fact that most individuals are unaware of rape legislation and the term "digital rape." The criminal faces a minimum of five years in prison under the legislation. In certain situations, this sentence may last for ten years or possibly result in life imprisonment.

WHAT THE POLICE MUST PROVE?

For the Police to prove their case in Court, they must prove each of the following matters beyond a reasonable doubt.

1. The accused had sexual intercourse with another person.
2. The other person did not consent to the sexual intercourse.
3. The accused knew the other person did not consent to the sexual intercourse.
4. In some circumstances, sexual intercourse may involve circumstances of aggravation.

It will be necessary for the Police in every offense to prove that the accused was the person who committed the offense.⁵

POSSIBLE DEFENSES

Possible defenses to this offense include but are not limited to-

1. Duress
2. Necessity
3. Identification is not the accused

Journal of Social Sciences, 6(2), pp.49-56.

⁵ Anchan, V., Janardhana, N. and Kommu, J.V.S., 2021. POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India. Indian Journal of Psychological Medicine, 43(2), pp.158-162.

4. Honest and reasonable belief the complainant was consenting.
5. Consent by the complainant

LOOPHOLES IN SECTION 376 OF THE IPC

This emphasized the multiple gaps in Provision 376 of the IPC, which deals with rape offences, because crimes involving the breach of a female's dignity utilizing fingers, foreign objects, or any other part of the human body were not deemed a crime under any section. However, it's important to recognize that a male can violate a woman's or child's dignity in different ways. The definition of rape has to be changed by the Supreme Court.⁶ In 2013, the definition of rape was expanded to include all of the above circumstances and heinous crimes. Rape is now defined as the act of forcing fully accessing a woman's vagina, mouth, anus, or urethra with a penis, any foreign object, or any other part of the body, according to this revised definition.

CONCLUSION

In several instances, it has been said that the individual who insulted a woman's modesty or damaged the dignity of a kid was someone they knew personally 70% of the time. People close to the victim are usually the ones who conduct these crimes. Cousins, close friends, uncles (other relatives), neighbours, and even their father were named as suspects.⁷

The attacker was someone the victim knew through their social circle 29% of the time. Someone they knew from their social or professional circles. Alternatively, someone they're meeting for the first time on a

⁶ Moirangthem, S., Kumar, N.C. and Math, S.B., 2015. Child sexual abuse: Issues & concerns. *The Indian journal of medical research*, 142(1), p.1.

⁷ Ganesh, J.S., 2019. Issues and challenges in the Implementation of POCSO Act: A Review.

date. You must be perplexed to learn that just 1% of situations in which the attacker was a stranger were reported.

Criminals attempt to digitally rape women and children just because they are not abusing her body with their penis. The government is having difficulty dealing with these instances under India's rapist statute. However, the new adjustments were implemented quickly. It ensured that girls would be adequately protected from criminals' brutal crimes. This highlighted the multiple flaws in Provision 376 of the IPC, which deals with rape offences, because crimes involving a breach of a female's dignity utilizing fingers, foreign objects, or any other part of the human body were not deemed offences under any section.⁸ However, it's important to recognize that a male can violate a woman's or child's dignity in different ways. The definition of rape has to be changed by the Supreme Court. In 2013, the definition of rape was expanded to include all of the above circumstances and heinous crimes.

⁸ Seth, R. and Srivastava, R.N., 2017. Child Sexual Abuse: Management and prevention, and protection of children from Sexual Offences (POCSO) Act. *Indian pediatrics*, 54(11), pp. 949-953.