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## Digital Rape in India: A Doctrinal and Empirical Studies (with special reference to Jhansi district of Uttar Pradesh)

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### Abstract-

In recent years, India has witnessed an alarming rise in heinous offences including target of persons under 18 years of age, adolescent girls and elderly women in relation to digital rape. Despite the existence of stringent laws, these atrocious and heinous offences continue unabated. This raises questions on the meaning of digital rape as to –

- whether it refers to sexual violence through electronic means or whether it is equivalently referred to as cybercrime; or
- it includes blackmailing victims for unethical sexual acts and using mobile Involves sexual harassment via phone/multimedia content etc?

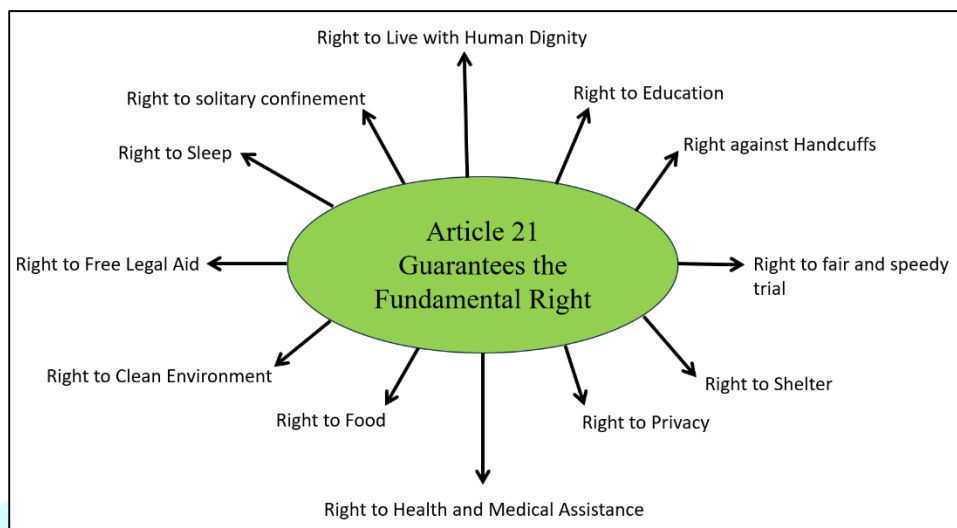
This word itself is subject to interpretation. some intellectuals link it to online sexual exploitation of women through electronic devices, while others link it to current scenarios that raise intense discussion.

The objective of this study is to throw light on the concept of digital rape in the modern era and its relationship with sexual exploitation through online resources, cybercrime and electronic gadgets. By examining the diverse perspectives of scholars and intellectuals, this study will explore the various interpretations of the term and highlight the complexities surrounding its definition. It is necessary to understand that the situation is quite different from popular beliefs, as digital rape may not necessarily be linked to online resources or Cybercrime.

The objective of this research is to challenge existing misconceptions in the context of India's evolving digital landscape and provide a comprehensive understanding of digital rape in the country. By analysing the specifics of these cases, this study seeks to contribute to a comprehensive doctrinal study on enhancing the legal framework to combat digital rape and protect vulnerable persons.

- Key Words- Digital Rape, Cybercrime, Sexual Violence, Online Abuse, India

**Introduction:** - Article 21 of the Indian Constitution contains a universal principle of law that <sup>1</sup>no person can be deprived of life and personal liberty except according to the procedure established by law. <sup>2</sup>Here the right to live is not restricted to mere animal existence but this article guarantees the right to a dignified life. Certain rights are included in the ambit of article 21, one of which includes the right to live life with human dignity.



In other words, any kind of cruel, inhuman or degrading treatment or punishment violates Article 21 which is prohibited as per the Indian constitution. In the country of India, many cases related to heinous crimes like digital rape against children (boys and girls whose age is less than 18 years), adolescent girls, women and old women are continuously coming to the fore, which seems impossible to control completely. Despite many strict laws, such serious and heinous crimes are not taking the name of stopping, where the modern era is going completely towards digitization, the question arises that what is the meaning of digital rape? Whether it is sexual violence against a person by electronic means which is called cybercrime in law and computerized language or blackmailing by making MMS through mobile phone with the intention of having illicit sex with the victim or this meta is related to sexually exploiting another person through proprietary gadgets? Many intellectuals speculate that the word “digital” attached to the word rape refers to sexual violence against a woman through online use of electronic devices, while many scholars relate it to the current cases and say that these cases have become serious topics of vigorous discussion, so it can be inferred that rape committed in the modern digitalized era is called digital rape. While the situation is completely different from the above statements, it is seen in online electronic resources. There is absolutely nothing to do with cybercrime.

**Research Methodology-** Doctrinal and Empirical Methodology

<sup>1</sup> Indian Constitution, Article 21

<sup>2</sup> Dr. J.N. Pandey (Indian Constitution), article 21, Page No. 293

## Literature Review-

The researcher has specifically reviewed the provisions and cases of several National and International laws related to criminal law. During the study, the researcher reviewed Indian penal code, 1860, Pocs0 Act, 2012, juvenile justice (care and protection of children) Act, 2015, Indian Constitution and other procedural laws. Along with this, the researcher also conducted an empirical study of Jhansi district of Bundelkhand Region of Uttar Pradesh regarding digital rape.

The following research articles were also reviewed by researcher on Digital Rape: -

1-ARTICLE ON “DIGITAL RAPE” BY DHIRAJ KUMAR SHARMA

2- “A SCENARIO OF DIGITAL RAPE IN INDIA” (BY LOKENDRA YADAV)

## Literal Meaning of Digital Rape

Digital rape is made up of a combination of two words: - Digit + Rape = Digital rape. In English vocabulary where the word digit means “number”, while it has an additional meaning finger, thumb, toe i.e., these body parts. Also addressed with digit and the Hindi word for rape is “Balatkar”.

Meaning: - Such sexual penetration, which is caused by finger, thumb or toe by a person to another person.<sup>3</sup>

Rape is done without consent or against the will, is called digital rape. "Digital rape" is gender neutral and applies to all types of victims as well as perpetrators.

Rape victims are divided into two categories: -

1- Adults

2- Minors

(1) Adult: - Persons who are 18 years of age or more come under the definition of adult. Here person means a natural person, for an example, a man or a woman.

(2) Minor / Child: - According to the POCSO Act 2012, a person below the age of 18 years comes under the definition of the word minor, who is referred to as a child in the POCSO Act.

(3) According to the Juvenile Justice (Care and Protection of Children) Act, 2015: - According to this act, any person below the age of 18 years is a child.

(4) According to section 10 of the Indian Penal Code 1860: - In section 10 the words ‘man’ or ‘woman’ were defined, the word ‘man’ represents all the male human beings & ‘woman’ represents all female human beings.

<sup>4</sup>According to section 82 of the Indian Penal Code 1860 “The act of a child under the age of seven years is not an offence.”

<sup>3</sup>According to the definition of sexual penetration provided in section 35A of the Crimes Act1958

<sup>4</sup> Indian penal code, 1860, section 82

The presumption of law is that a child is considered to be “Doli incapax” (incapable of committing an offence), i.e., he is not endowed with any conscience to distinguish between right and wrong, thus, the question of criminal intent does not arise. Acts done by children above the age of 7 years and below the age of 12 years shall be protected as per section 83 of the Indian Penal Code 1860. If it is prima facie shown that the intention of the offence at the time it was committed, he was immature in understanding the nature and its consequences.

According to section 375 of the Indian Penal Code, 1860 there are two types of criminals who commit the crime come under it: - 1 - Minor digital rapist 2 Adult digital rapist.

1 – Minor digital rapist: – Under the minor or minor digital rapist, criminal persons below the age of 18 years, who commit digital crimes, are termed as child criminals in the law.

2- Adult digital rapist: – Under adult digital rapist comes any person of any age above 18 years, who commits this crime.

### **Definition-**

According to the definition of Sexual penetration provided in section 35A of the Crimes Act 1958, a person (A) digitally penetrates another person (B) if:

A introduces their finger/s, thumbs or toes (to any extent) into the vagina of B.

A introduces their finger/s, thumbs or toes (to any extent) into the anus of B.

**Definition of digital rape-** Under section 375 of the Indian Penal Code 1860, the word digital rape has not been written explicitly, but looking at the nature of the actions by which this crime is constituted, it can be said that it is digital rape.

**Omission of the word digital rape in the existing laws: -** The word digital rape has neither been written explicitly anywhere in the Indian Penal Code 1860 nor in the POCSO Act, 2012. If seen, this is a huge shortcoming of both the methods, which should be removed by the legislature without any delay.

Section 375 provides for the definition of rape in which the law constituted after the Nirbhaya rape case in the year 2012 Justice J. S. Verma Based on the report of the (Chief Justice) Committee, several guidelines were issued and suggestions were made to toughen the punishment, due to which the Criminal Law Amendment Act, 2013 was passed in the year 2013 and the Indian Penal Code of 1860 was amended. The entire definition itself was revised, after which the crime of rape was classified into four categories, out of which digital rape has been described under section 375 (b).

According to section 375 (b) “If a man penetrates into the private part (vagina, urethra, anus) of a woman any object or any other part of the body which is not the genital (penis) of the man, to any extent or from the victim himself or any other makes a person do it, it is said that he commits digital rape.”

The Criminal Law Amendment Act 2013 is also commonly known as the "Nirbhaya Act".

According to the Protection of Children from Sexual Offences Act 2012 (POCSO): - Section 3 of Chapter 2 of the POCSO Act 2012, which deals with sexual offenses against children, has defined "penetrative sexual assault" in which Indian Penal Code 1860 Similar to section 375 of IPC, penetrative sexual assault in the offence of rape has been categorized into four categories. According to which a person commits penetrative sexual assault if he inserts any object or any part of the body, not being penis, into the vagina, urethra or anus of a child to any extent or makes the child do so with him or any other person, he is said to commit digital rape.

In simple words, "The clear difference between rape and digital rape is of genital (reproductive organ)."

**Objectives:** - The following are the main objectives of the presented research paper: -

- 1 - To explain the meaning and definition of digital rape.,
- 2 -To make the society and the general public aware of this other form of rape because most of the people with this word are unaware, simply because in the past it was not considered a series of rape but molestation.
- 3 – Giving information as well as interpretation of currently enforceable methods for the protection of children from digital rape Doing.

**Historical background: -**

After the cruelty and barbarity of Nirbhaya gang rape on 16 December 2012, the term digital rape came into existence and it was defined and punished as an offense of rape in sections 375 and 376 by the Criminal Law Amendment Act 2013. Earlier this such incidents were not punished as the crime of rape, but as molestation under section 354 "Assault on a woman with intent to outrage her modesty". Such incidents of molestation, which is called "Molestation" in English, under section 354 "Assault or use of Criminal force on a woman with intent to outrage her modesty." The use of criminal force was made punishable and such actions were considered to be against the dignity of women. For which the provision of punishment before the Criminal Law (Amendment) Act 2013 was decided on the basis of the gravity of the crime, according to which "A criminal shall be punished with simple or rigorous imprisonment for a term which shall not be less than two years, or with fine, or with both, but the punishment has now been increased by penal law (Amendment) Act of 2013. The punishment will not be less than one year but can extended to five years and a fine will also be imposed.

**The Famous Akbar Ali Case: -** The term digital rape came into existence after the Nirbhaya case and as well as in famous Akbar Ali case, in this case 65-year-old Akbar Ali has been convicted in the digital rape case in the district court of Gautam Buddha Nagar, Uttar Pradesh. In this case, Akbar Ali was sentenced to life imprisonment, in addition to this, a fine of rupees 50000 was also imposed on him. This is the first such case in India as well as in the state of Uttar Pradesh in which the accused has been sentenced to life imprisonment.

**Important cases of digital rape before the year 2013: -**It was not that there were no incidents of digital rape before the Nirbhaya case. Many such cases are seen when incidents of digital rape have taken place, but then it was considered only as a crime of defamation and no action was taken under section 376. This was the biggest reason that even the most heinous criminals used to get away with the charge of rape very easily and such

criminals were punished with very short -term imprisonment which was up to two years, but after the Nirbhaya case Through the Criminal Law Amendment Act 2013, the term of this punishment was increased and the term of imprisonment was increased to a maximum of five years and it was only after this amendment that digital rape was kept in the category of rape.

**1 - Digital Rape of Two-Year-Old Girl By Father In Mumbai:** - This was a case where the father himself shamed the dignity of father-daughter relationship. It was alleged that he used to penetrate the private part of his 2-year-old daughter with his fingers. Due to which bleeding started from the girl's genitals and in that condition the girl was taken to the hospital, then on examination by the doctor it was found that the private part of the girl was badly mutilated but there was no evidence of sexual abuse or rape against her. could get due to which on the charge of rape could not be proved and he was punished only for assault or use of criminal force with intent to outrage the modesty of a woman under section 354.

**2 - 60-year-old woman was digitally raped** by an auto rickshaw driver Another case related to digital rape came to light in Delhi, in which a 60-year-old woman was digitally raped. This woman was going to her relative's place for a wedding ceremony. Meanwhile, the auto rickshaw driver had inserted an iron rod in the private part of the woman. Once again, the criminal was arrested but not charged under section 376 of the Indian Penal Code, 1860.

**3 - Digital Rape of A 3-Year-Old Girl In Greater Noida Play School** - A case of digital rape with a 3-year-old innocent girl came to light in a play school in Greater Noida West. The girl's father is an officer. An FIR was registered by the guardians, but the girl, being very scared and fearful, was unable to name the culprit, due to which the culprit could not be traced.

**4- 81-Year-Old Painter Digitally Raped A 17-Year-Old Minor For 10 Years** - 81-year-old painter has been arrested by the Noida Police for raping a 17-year-old girl. The name of the painter is said to be Morris Rider who was originally from Prayagraj. The victim alleges that Morris Ryder digitally raped the girl for 17 consecutive years starting when she was 7 years old.

### **Penal Legislation-**

(1)- If the charge of digital rape is proved on the culprit of digital rape, then he is punished with imprisonment of minimum 7 years under Section 3 of the Pocso Act 2012 and the facts of the case and the brutality and heinousness of the crime the maximum punishment for life imprisonment can also be given on the basis of.

(2)- If serious sexual assault has taken place on the aggrieved party, then under Section 5 of this Act, there is a provision of minimum 10 years imprisonment for the accused and maximum life imprisonment can also be given.

(3)- Even under Section 7 of the POCSO Act, touching the personal or private parts of a child is considered under the offense of sexual assault. There is a provision of minimum one year punishment.

The way people of perverted mentality are trying new ways of committing crimes against women and children, it was showing a clear deficiency in the penal law of the British period. Both the above important cases were such serious cases of digital rape that the harshest action should have been taken against the accused. But due to lack of proper provision in the law, before the Nirbhaya case, there was no law in the country of India specifically related to the protection of children from sexual offences. They are protected under major sections of IPC, 1860, Sections 354, 359, 360, 361, 362, 363, 366A, 366B, 372, 373, 375, 376, 377 (Chapter 16 Offences against the body) It was done, but the protection that was given here was available only to women, because the people of the society believed that such sexual crimes usually never happen against men or children, but the research data from 2007 to 2010 shows the situation. They were saying something different. This incredible figure was 53% of the cases that happened to such men in their childhood. The first-hand reports of such incidents are far away, even they could not tell their parents or even their well-wishers. Because of all these difficult situations and also the need of the hour, the way people of perverted mentality are trying new ways of committing crimes against women and children, that the need for amendment in this legislation was felt and in 2013, children were sexually assaulted. In order to provide protection from violent crimes, many laws were created by the legislature, as well as amendments were made in procedural laws as well as criminal laws.

**Conclusion and Suggestion** - It is amply clear that in most of the cases digital rape relationships are perpetrated by relatives or persons who are in social and personal contact with the victim in one way or the other. The behaviour of the criminal is friendly with the family members of the victim or say these are the persons on whom the family members trust blindly and the accused takes advantage of the same trust and seeks opportunity and commits those heinous acts. Here the question arises that why do these criminals choose their relatives for this shameful act? The answer is clearly for sexual desire or for the attainment of sexual pleasure. Is forcibly raping someone the only way to achieve sexual pleasure? The answer to which is in the negative side, such criminals are mentally ill.

**Suggestions: -**

Such persons need proper treatment and improvement in relation to removal of mental disorder by psychiatrist along with harsh punishment. No person is a criminal by birth, his circumstances, family environment and their culture are responsible. Are Our country India being world famous for yoga practice, improvement is possible in such uncivilized and cruel criminals through yoga. Students should be given information regarding sex education in educational institutions. So, we need to compulsory embed sex education in the curriculum of elementary level education in India. For this, there is a need for the Parliament to provide sex education and punishment in relation to it under the POCSO Act. Child helpline number 1098 should be publicized in the society through social media and this number should be clearly marked in the premises, sex education should be propagated through films and electronic resources.

At the same time, the circulation of pornography on social media should be completely banned by the government. Along with its practice, harsh punishment and heavy fine should also be imposed on the accused person. It should be our duty that the dissemination of any kind of obscene material on social media should be completely banned so that India can make its own identity as a rape-free nation.

<b>Data Analysis</b>		
<b>Year (2020-2023)</b>		
<b>District – Jhansi (Uttar Pradesh)</b>		
<b>Total Police Station – 26 (Included Navabad Mahila Police Station)</b>		
<b>Total Circle – 6</b>		
<b>S.N.</b>	<b>Report Received from Mentioned Police Station</b>	<b>Circle</b>
1.	Mauranipur	Tahrauli (4 Police Station) [Tahrauli, Uldan, Sakrar, Baruasagar]
2.	Todi Fatehpur	Garautha (4 Police Station)
3.	Lahchura	Sadar (Gazetted Officer)
4.	Chirgaon	CO City (Jhansi)
5.	Moth	CO Moth (5 Police Station)
6.	Katera	CO Mauranipur (5 Police Station)
7.	Shahjahanpur	
8.	Poonch	
9.	Samthar	
10.	Sipri Bazar	
11.	Kotwali	
12.	Sadar Bazar	
13.	Navabad	
14.	Mahila Thana (Navabad)	
15.	Tahrauli	
16.	Sakrar	
17.	Uldan	
18.	Baruasagar	
19.	Garautha	
20.	Kakarwai	
21.	Erich	
22.	Gursarai	
23.	Babina	
24.	Badagaon	
25.	Raksha	
26.	Prem Nagar	
Resultant- FIR- No FIR (ZERO) Data Contained- Zero (NIL) Data Analysis- zero		



**Conclusion-** The data was collected by the researcher on incidents related to digital rape in Jhansi district of Uttar Pradesh, India. The data of the reports registered in relation to digital rape was sought by the researcher through the public information office of total 26 police station and 6 circles of Jhansi district of Uttar Pradesh.

The statics regarding incident reports proved to be surprising as from the year 2020 to 2023 not a single report has been registered on digital rape.

The number of figures may be zero but the fact these figures are zero does not mean that such heinous crimes are not happening in the society. While the reality is that the people of the society and the family members of the victim do not think it appropriate to complain about such crimes, they do not want to make their children and themselves public condemnation and insulted in the society.

The family members do not come forward to report such incidents to save the future of the children, even if the victim continues to suffer the suffocation of the heinous and brutal crime for the rest of his life.

Because as much study has been done by researcher about the related crime, such crimes are committed only by the acquaintances or family members of the victim. Therefore, the number of statistics regarding this crime was previously assumed to be zero.

Family members do not come forward to make such reports to protect the future of their children, even if the victim continues to suffer whole life with the pain of that heinous offence.

Another reason for the data being zero has also come to the researcher's notice, such as despite the Indian penal code, 1860 being a major law, the word "digital rape" has not been written clearly anywhere. Only its method has been written in section 375(2). Similarly, this lacuna has been seen under the POCSO act also. This term needs to be clearly written in section 3 as well as in the definition clause so that accurate data can be known regarding the crime concerned.

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