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Sexual Offences Against Women's: A Legal Perspective with special reference to "Digital Rape"

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Abstract

Sexual crimes against women have created long difficult and grave challenges to the Indian criminal jurisprudence system, demanding a balance between 'victims protection' and the principles of 'fair and just trial'. With the evolution of technological advancements and forensic science, the extent of what constitutes rape has been also gone expanded. A particular and notable development is the recognition of "digital rape," where the penetration by fingers or objects, however it was distinct from penile penetration, is equally invasive as well as traumatic. In this is paper it examines the legal perspective of sexual crimes against the women with reference especially to digital rape, tracing its legislative incorporation under Criminial Law (Amend.) Act ,2013, which enlarged the definition of the rape under Sec.-375 of Indian Penal Code,1860 by analyzing judicial interpretations, legislative intention and comparative perspectives of the enactment. This study focuses on how law has adapted to deal with new aspect of the sexual violence against women, while also exploring continuous gaps in enforcement, victims support and societal perception in the society.

Keywords: Sexual Offences against Women's; Digital Rape; Section-375 IPC,1860; Criminal Law (Amendment) Act, 2013; Judicial Interpretation.

1. Introduction

Sexual offences against women's specially digital rape, represents some of the most gravious violations of human rights with serious physical, psychological and social consequences for the victims. Digital Rape, designated by the force used or to the coercion engage in non-consensual and non-penile sexual intercourse is not only a offence of cruelty but also one that perpetuates gender inequality and undermines the women's dignity and children's childhood. In spite of strict laws and growing awareness yet digital rape remains prevalent across the societies worldwide and often make worse by cultural norms, systemic biases and gaps in enforcement of law.

Problem of digital rape is deeply complex as it intersects with several aspects of law, society and culture. Frameworks of law intended to protect women and children and to ensure justice for victims can sometimes get weaker, either due to the narrow definition of law provided in the bare acts, procedural challenges or of the influences of societal attitudes. Furthermore, the trauma experienced by the victims is frequently compounded by the difficulties they faced within the legal system, where justice can be evasive.

2. Statement of the Problem

In spite of the presence of strong frameworks of law which aimed at combating sexual crimes against women's, the digital rape remains one of the most prevalent and under-reported crime in whole world. The word "digital" in this context refers to the Latin word 'digitus' which means "finger" and not to technology or the digital world as the term might deceivingly suggest. In the India the legal meaning of the "digital rape" which reflects a form of sexual violence involving the finger Insertion or other objects into the victim's private parts without the consent of the victim. Historically, this grave form of sexual violence was inadequately recognized by both socially and legally as well. However in the 2012s well known Nirbhaya gang rape case caused an remarkable legal reforms which expanding the rapes definition via addition of digital rape into Indian Penal Code,1860 under the section of 365 and also under the sec.-3 and 5 of the (P.O.S.C.O.) Protection of Children from Sexual Offences Act,2012. This kind of sexual violence against women deeply-seated in the physically aggression which has been largely misapprehend, and also ignored in the legal and social discourses til the present times. This kind of term is different from its possible confusion with the term "digital" as it was an online or electronic medium or form. In spite of the widening a scope of the legal rapes definition there are various challenges occurs in it's legal implementation by the law-enforcement agencies may lack necessary sensitisation and also training to properly handle the digital rape case which leading to further victimisation. Furthermore, slow legal system pace often discourages

victims from seeking justice is the clear human rights violation to live her/his dignity-full life mentioned in Constitutional Law of India under Art.-21. This research specially aims to critical examination of legal frameworks surrounding sexual crime's against females with a special emphasis over the offence of digital rape. It aims to find gaps and contradictions within existing legal provisions and evaluating their impact on the prosecution of rape cases with particular emphasis on the cases related to digital rapes and evaluate the efficacy of the Indian judicial system in ensuring justice for survivors. Furthermore this study will explore the socio-legal issues faced by victims during legal proceedings and how these issues influence the enforcement of laws and the justice delivery system. Understanding with these issues, this research paper intends to suggest recommendations for legal improvements and reforms in the judicial processes to protect better and preserve the interests of women/ children's who they are victims of digital rape.

In India legal recognitions of digital rape is a proportionate recent development that emerged from broader reforms aimed at strengthening the laws related to sexual violence. This development has been shaped by outcry from the public, judicial decisions and amendments to India's legal framework particularly in the afterwards the horrific 2012s-Nirbhaya gang rape case which ignited national as well global attention. Before the 2013, Indian law in Indian Penal Code's,1860 under sec.-375 has defined rape narrowly, only focusing on the only penile vaginal intercourse and the another way of sexual violence, such as finger Insertion or objects into a woman's body, were not considered "rape" and were prosecuted under lighter punishment sections such as I.P.C.,1860s offence outraging the modesty of a woman under sec.-375, which have less severe punishments than rape. Sexual crimes that did not involve penile penetration were often seen as a lesser offense leading to inadequate legal remedies for victims. This horrific 2012s-gang rape and murder crime (Nirbhaya) in Dec. 2012 led to massive public-protests and demanding the more strict laws to address sexual violence. This crime involved both penile and non-penile forms of assault including the use of an iron rod which highlighted the need to address non-consensual penetration and highlight the concept of digital rape more effectively. This case acted as a pivotal moment which bringing sexual violence to the forefront of public discourse which motivating significant legal reforms. In reaction of the Nirbhaya gang rape case, establishment of Justice Verma Committee was to suggest reforms under the law. One of the its recommendations was the winding the scope of the rapes legal definition. 2013's Criminal Law (Amend.) Act, broadens the definition and meaning of the rape under the Sect.-375,I.P.C.,1860 to include coconcept of the digital rape i.e. vaginal penetrations,urethra or anus by any other part of the body such as fingers or any other objects. This

amendment recognized digital-rape is as the another form of rape, giving same legal standing and punishments as penile rape, including minimum 10 years of imprisonment, can be extend to sentence imprisonment for life. In one case, 65 years old person from the Noida City sentenced with imprisonment for digital-rape. By the new provision of rape offence that 65 years old person was imprisoned but has not alleged in I.P.C.1860s under Sec.-376 for their crime. In another case of Akbar Ali a man also from Noida, salarpur, has seduced 3 year's child with the toffies and exploited her sexually and when the time arosed offender was cleared since that it is the digital-rape case and on 30th August, 2022, accused offence was proved and punished in P.O.C.S.O.Act.2012 under sec.-5 (m) and sec.-6. Furthermore, crime against women and children which were dispersed within that I.P.C.1860 has now been brought together and have been jointly mentioned under the new criminal law Chapter-V of (B.N.S.) Bhartiya Nyaya Sanhita,2023 with an expanded defintion of Rape including the Digital Rape.

India is a rapidly developing nation and an outstanding player on the global stage faces numerous challenges in aligning its legal frameworks with international humanitarian law standards particularly concerning women's protection against sexual crimes. In-spite, significant legal reforms and the establishment of stronger laws against digital rape and other sexual crimes, legal recognition of digital rape in India has been a remarkable milestone in managing sexual crime's broader scope. Moreover, challenges like societal awareness, victims support and proper legal enforcement continue to hamper the full realization of justice for victims. In the matters relating with digital rape, forensic evidences collection and there preservations is the specifically difficult issues in the court of law during during the process of corroborate claims specially when the physically injuries are not evident. The mindset of society plays a deciding factor commonly leading to blaming the victim and victims to be demoralized from speaking something or putting their side. Frequently burden-of-proof shifts on the victim unfairly, furthermore aggravated by pressure of society. This kind of situation undermines the continued need for overreaching sociatel and the legal advancements to tackle these difficulties effectively with overcoming these challenges requires a concentrated effort from social, legal and governmental agencies to ensure that digital rape is treated with the severity which it deserves and that victims receive timely fair and just justice. India is constantly dealing with a higher ratio of sexual crime's systemic lacunas in the legal system and societal approaches that often undermine the pursuit of justice. This research paper seeks to explore how Indian legal framework for addressing sexual offences specially digital rape, compares with the global standards and practices. By examining Indian laws in the context of

international standards, this study will evaluates weaken status and strength of India's legal framework in combating sexual violence as well as protecting rights of women's.

With situating Indian legal framework within a global synerio this research paper will provide a comparative analysis of how to different countries dealing with sexual crime's against the women's with the separate focuses on digital rape. These concerns are not only exclusive to India. An student of Stanford punished with 6 months imprisonment and this matter was published on June 6, 2016. An article in "The Gaurdian" based on sexual assault case of Stanford, which contained the victim's whole statement on "how it felt to be raped" was the vibrant topic of that article. Statement of victim in this case with their statement explained how the terrible and horrifying internet rape can be done even if the woman is not attacked sexually but still her dignity might be compromised and how does digital-rape can have the same state of position like physical rape. Everyday brings more details about concerning the digital rape case. This comparative view will help to highlight the best practices from other jurisdictions that could inform legal reforms in India. In addition this research paper will explore Indian position in international forums and its commitments under various global human rights instruments which assessing how well the country is living up to these commitments in the area of the sexual crimes against the women.

Legal frameworks surrounding sexual offences against women especially digital rape as well molestation is customized to protect victim's and ensures that wrongdoers are brought to justice. Furthermore the potential misuse of these laws by some women has become a subject of significant debate. Instances where law's relating to rape including digital rape and molestations are allegedly missused for financial interest or personal interest as a tool for retribution, have raised more concerns about the balancing among the protection of genuine victim and also safeguarding from the abuse of legal enactments. Rape and molestation law's are the critical components of any legal system as they provides necessary safeguards to the women from the sexual crime's, and offers a pathway to the victim's for the justice. These laws are intended to be a victim-centric approach acknowledging the grave trauma and long-lasting effects that sexual offences can have on the individuals. Moreover, the very nature of these laws — being rigorous and protective — can sometimes be vulnerable to misuse.

In the recent years there are a developing discussion around misusing of rape and molestation laws by few women's which poses significant legal and social challenges. These allegations often highlight the cases where women are accused of filing false complaints to harass or blackmail men to settle their personal scores

or to gain an advantage in different disputes like property or custody battles. While these such cases might have been relatively few compared to the actual cases of rape and molestation their impact on societal perception and legal processes can be profound. This study focuses to provide an understanding of the issue of misuse of said laws by women, recognizing the complexity of balancing the protection and interest rate of original victims, with the prevention of legal abuse. The study will offer further recommendations for legal and policy reforms that can have strengthen the integrity of law's relating with sexual offence while ensuring that they remain strongest tools for protecting women's from sexual abuse.

3. Literature Review

Susan Brownmiller written in her book, "*Against Our Will : Men, Women and Rape*" <https://share.google/RBhY7JfOrXJzgfvD> is a pivotal work that reconstructs the understanding on rape by framing it as a mechanism of control and power rather than a mere offensive act. Brownmiller analyzes challenges of societal norms, highlighted it's systemic issues and supports for its comprehensive reforms to address and to prevent sexual violence. She affirms that the offence of rape is an voluntary act of person against to keep women frightened. It is not only confined to having sexual intercourse in fact it was extended to asserting the supremacy of men. She also said "women" are considered as mere an object and not even as human beings.

The *Indian Law Commission 42nd report*, 1971, focused on reform of rape laws and other crimes related to indecent assault and sexual offences against women's. This Law Commissions report was one of the earliest endeavour to modernize the Indian legal structure dealing with crimes against women, as the existing laws at that time were inadequate to deal's with the growing concerns surrounding gender-based violence particularly sexual assault.

In the *172nd Law Commissions Report of India* particularly dealt with "*Review of Rape Laws*". It was looks for creating a more comprehensive victim centered structure of law that reflected the difficulties of sexual violence. This Law Commission recommended the including of vaginal penetration, anus or urethra by any parts of the body or any object under rapes definition thereby widening the sphere of Rape to include the long due digital-rape which has a very serious nature. That report recommended an increase in the age of consent from 16 years to 18 years which reflects concerns about minors' vulnerability to sexual exploitation and many more important changes.

In the *262 Law Commission Report of India* is an essential document that reinforce the need for continuous reform and review of laws focused at preventing and addressing sexual harassment and

ensuring that they effectively support and protect the women's in the workplace. The Law Commission's recommendations aim to ensure the The P.O.S.C.O., Act, 2012 is applied effectively and that the legal framework keeps evolving the address emerging. The most important significance of the law commission report's recommendation is the abolishment of the death penalty for every offense other than the offenses related with the terrorism and acts of war. Law Commission suggests that the capital punishment should be abolished due to relation about its efficacancy, fairness and wrongful convictions risks are the problem related to sexual harassment of women's at the workplace.

In the well-known "*Report of Justice Verma Committee*" on amendments to the "*Criminal Law (2013)*". Justice Verma Committee Report is submitted in 2013, January, was a crucial document that led to remarkable changes in Indian legal system dealing specially with sexual violence. It was formed after the brutal *Nirbhaya case* Verma committee was assigned with recommending important criminal law amendments is to ensure more stronger laws related to sexual assault and gender violence in India.

This committee was presided by (Justice) JS Verma, with (Justice) Leila Seth and Mr. Gopal Subramaniam which is looking to address both the immediate legal responses to crimes against women and the larger structured reforms required to create a safer society. The report is remarkable for its progressive approach which focuses on women's rights and focuses on accountability across multiple systems i.e. legal, police, and political.

Concept of the digital rape in India was legally recognized by *2013s Criminal Law (Amend.) Act*, which enlarged the meaning and definition of rape in the I.P.C. 1860, under sec.-375. Prior to this amendment, rape has been largely defined only as the penile-vaginal intercourse without consent which leaving many types of sexually assault outside ambit of this definition. 2013's criminal law (amend.) Act widened legal understanding of crime of rape to including the several other kinds of penetration without consent i.e.:-

- Finger Insertion into vagina, anus or urethra .
- Insertion of any other objects into these body parts.

The amendment to Section-375 IPC, 1860 now it defines the rape in which:-

Penis penetration into the vagina, mouth, urethra or woman's annus.

By using any other means non penile penetration into any body part (such as fingers) or any object.

In an article there is a mention of well known *Akbar Ali's Case* :- Term of digital-rape came into light

afterwards the 2012s Nirbhaya- Gang rape case and also same as in well known Akbar Ali's case, in this matter Akbar Ali a 65 years aged man was been prosecuted in the digital-rape case in the Gautam Buddha Nagar's Session court. Akbar Ali was awarded with life imprisonment along with fine of rs.50000 were also imposed in P.O.C.S.O. Act, 2012 under sec.5(m)/6. In India as well as in the whole of Uttar Pradesh state was the first case in which accused has been sentenced to imprisonment for life (<https://www.thequint.com/news/india/old-man-life-imprisonment-digital-rape-minor-noida#:~:text=The%20Quint%20DAILY&text=The%20man%2C%20Akbar%20Alam%2C%20>) is awarded.

In another article "Man Arrested For 'Digital Rape' Of 5-Year-Old Girl, This Is What 'Digital Rape' Means" by Dutta B Shrishti, 2023 the definition of Digital Rape has been explicitly made to clear the confusion created with the word 'Digital' in 'Digital Rape' with the help of case law where

(<https://www.indiatimes.com/news/india/man-arrested-for-digital-rape-of-5-year-old-girl-this-is-what-digital-rape-means-618025.html>) person accused inticed his 5 years aged neighbour is the farmer's daughter, to his place by giving her toffies. When she returned home an hour later, she complained of severe pain in her private-part. The word 'digital' in the digital-rape might be suggest with a relationship to the cyber environments or to the technology, there were the act of rape is done by virtual or digital means. Nevertheless, the term 'Digital-rape' does not refers to any sexual crimes which committed online with internet or any electronic devices. In fact in place of it factually digital-rape refers to the having the forced-sex by using any part of the body other than the genitals of a man. The word 'digit' in digital refers to fingers, thumbs, toes so that it was called the offence of digital rape.

In another article, a case is mentioned where in (<https://www.outlookindia.com/national/what-is-digital-rape-man-booked-for-digital-rape-of-minor-sentenced-to-life-imprisonment-news-220339>) an sketch artist 81 years aged was arrested in Noida City on accusation of 'digital-rape' with a girl aged 17 years over the span of 7 years. Police disclosed that the accused has been residing with the minor victim as her guardian.

Another case relevant with digital-rape has been discussed in a article, (<https://english.newstracklive.com/news/uttar-pradesh-noida-father-accused-of-digital-rape-of-his-5-year-old-daughter-sc103-nu764-ta322-1236710-1.html>), in which the father was alleged of digital sexual assault his child 5 years aged in a society situated at extension of Noida, on the basis of

complaint by her mother girl complained of pain in her private parts of the body.

In the article "*Justice is a Secret: Compromise in Rape Trials*"

https://www.researchgate.net/publication/241645064_Justice_is_a_Secret_Compromise_in_Rape_Trials by Pratiksha Baxi provides a compelling critique of the ways in which rape trials are handled in India, focusing on the often-hidden compromises that affect the pursuit of justice. The book sheds light on the structural hurdles in legal mechanisms and lawyers for reformation to ensure that the victims will get just and fair treatment.

In another article "*Criminal Law (Amendment) Act, 2013: Will it Ensure Women's Safety in Public Spaces?*"

<https://www.spaceandculture.in/index.php/spaceandculture/article/view/11/2> by Dr. Rituparna Bhattacharyya, evaluates effectiveness of the 2013 amendment, which was introduced after the the 2012s Delhi-gang-rape case. This article estimated whether this Act is widening the definitions of the rape, harder penalties and also with constitution of special fast track court's have effectively improved women safety in public areas. Bhattacharyya highlights that while the amendments represent important legal progress, issues such as inadequate implementation, judicial pendency and continuous societal issues continue to undermine their effectiveness. Dr. Rituparna also supports better training for law enforcement techniques, improved support for victims and broader socio-cultural changes to achieve meaningful developments in public safety for women.

Sukhdev Bhatia and Abheesha Jain in "*Rapes in India –And a Way Out*"

(Bhatia Sukhdev and Jain Abheesha, "Rapes in India- And a way out" (Bluerose, ISBN-13, 978-1640076174, May 6, 2018), India),

provides a critical evaluation of the issues responsible for the high percentage of rape into the India and also suggests actionable recommendations for legal reforms and societal reforms as well to improve the handling of sexual violence and support for victims.

Justice A.K. Sikri in "*Gender Justice*" provides a critical evaluation of the challenges in achieving true gender-parity and fair-justice in India and highlighting both strengths and the current legal mechanisms limitations and offering practical recommendations for the reforms.

Dharmendra Kr. M. & Anshu M. in "*Reconceptualizing Sexual Offences in India*" provide an in-depth research of the sexual offences legal framework in India, emphasizing the need for a broader and more complex understanding of these crimes and suggesting comprehensive reforms to

better address and understand sexual crimes. This book also advocates for a broader and more comprehensive approach to defining and prosecuting sexual offences, aiming to enhance justice and protection for survivors in India.

Dr. Puneet Pathak in " *Women's Human Rights: A Discussion against Sexual Harassment, Gender Bias, and Violence* "

https://www.researchgate.net/publication/251570713_Women's_Human_Rights-A_Discussion_against_Sexual_Harassment_Gender_Bias_and_Violence provides a inclusive analysis of critical issues affecting rights of women's. By examining sexual harassment, gender bias and offences the book offers insights into systemic issues and proposes actionable reforms to stronger protections and promote gender equality.

Gyanendra Kumar Sharma and Pranav Vashishtha in " *Judicial Response in the Matters of Crimes Against Women* " w.w.w.dehradunlawreview.com

<https://share.google/WxbKcS1AscUe3cX78>

provides an evaluative overview of how the judiciary in India has dealt with crimes against women. This work point-outs the role of the judiciary in dealing with matters of sexual-crimes, crimes based on gender along with implementation of the legal protections for women. This article states that the central legislature many times has made amendments in the laws but due to lack of enforcement of law by the executive as well as Indian judiciary is also liable for human rights violation of the women. Courts at its doorstep usually failed to give timely redressal of human rights violation problems related with women. Additionally the district courts also have failed to preserve the women's dignity during the trials, which resulted in much more human rights violations.

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<https://share.google/WxbKcS1AscUe3cX78>

In another article " *Decoding Deterrence: A Critique of the Criminal Law (Amendment) Act, 2018* "

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3262255, by Gupta, Abhishek offers a comprehensive analysis of 2018's amendments, which focuses on their deterrent effect and practical implementation. Gupta's critique highlights the complexities of using legal reforms to address sexual violence and provides insights into the effectiveness and limitations of the Act in achieving its intended goals.

In " *Data: The Number Reported Crimes Against Women Increased by Over 30% Between 2014 and 2022* "

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3262255 by Suresh Deepala examines the significant rise in recorded offences against females between

these specified periods. Said study gives an deep analysis of factors contributing to this increase against the backdrop of the that rape and murder of the Kolkata's doctor in RGkar Hospital and effects for policy and also the response of society.

In her provocative piece, " *India is the Most Dangerous Country for Women. It Must Face Reality* ", by Narayan, Deepa,

<https://www.theguardian.com/profile/deepa-narayan> argues that India ranks as one of the most hazardous places for women globally, based on various indicators of violence and discrimination. The piece delves into the systemic issues and cultural norms that perpetuate women's insecurity and advocates for urgent, transformative change. Narayan positions India's situation within a global context, comparing it to other countries and highlighting the need for co-operation by the world and support in dealing with gender-based offences.

In one article " *Rape cases in India and the world: A comparative analysis* "

<https://www.thenationalistview.com/research-and-reference/rape-cases-in-india-and-the-world-a-comparative-analysis/>

by Vichar Vinimay Kendra a Delhi-based think tank in his research, said report discloses that the crimes rates of rape is higher in the state of Rajasthan, Kerala and in Delhi infact the crimes of rape globally is much smaller in India than several western-countries, which shows the India had reported 32,033 crimes of rape in the year, 11 percent of victims were from the lower caste community. In 2019 country had reported 88 rape matters per day but when you look at the numbers of the another countries, then there were less occurrences of rape rate (per-lakh population) in the India than countries i.e. South Africa, America, Australia, New Zealand, South Korea etc.

In an article "What is the concept of Digital Rape in India?"

(<https://www.linkedin.com/pulse/what-concept-digital-rape-india-lawinsiderindia-01bc>) by Tanishika Tiwari, the author has emphasised on the digital rape not being an exclusive concern in India only. In fact it is an issue across nations For example, An student of Stanford's awarded with 6 months imprisonment. Mentioned matter was published originally in 2016, on 6th June. Mentioned Stanford sexual assault matter, in which entire statements of victims on " how it felt to be raped "was the heading of the article published in "The Guardian". Victim's testimony in this case was fully mentioned. That testimony of the victim tells how much terrible it was. Although it may be that the woman was not sexually harmed but her dignity might still be able to be compromised, and how digital-rape can have the identical result as physically rape.

In the article “IPC, Crpc & Evidence Act: Replaced by New Criminal Laws” <https://www.lawrbit.com/article/ipc-crpc-evidence-act-replaced-by-new-criminal-laws/> by Saxena, Arshi & Jain, Vaibhav gives an deep evaluation of the remarkable alterations and special features given by the 3-new-criminal laws of 2023 that taken place of the 1-I.P.C.1860, 2-Cr.PC.,1973, & the 3-I.E.Act,1872. Their work outlines major reforms and updates in India's criminal justice mechanisms aimed at modernizing and streamlining processes of law with 3-new-criminal laws which replaced the earlier acts respectively;1- I.P.C.1860 with (B.N.S.) Bhartiya Nyaya Sanhita,2023, 2-I.E.,Act1872 with (B.N.S.) Bhartiya Sakshya Adhinyam,2023 and 3-Cr.Pc.,1973 with (B.N.S.)Bhartiya Nagarik Suraksha Sanhita,2023.

In an article “ Misuse of women-centric laws in India: An Analysis” <https://www.ijllr.com/post/misuse-of-women-centric-laws-in-india-an-analysis> by Gupta, Purnima, she writes about women's misusing of law against the men for satisfying their personal agendas. In India every minute crime against women is reported. Even at public places women are not safe along with the work-places or of their own residence. Taking into consideration the above concern, laws regarding women were brought and several codes were drafted accordingly. Over legislation is not necessarily a virtue. Fake cases against men are increasing at an alarming rate. She has mentioned a few case laws which shows the current misuse of women centric laws by women to fulfill their personal grievances.

In an article “Women misusing anti-rape law as weapon against partners” <https://www.indiatoday.in/law/story/women-misusing-anti-rape-law-weapon-against-partners-uttarakhand-high-court-2410546-2023-07-23> Higher Court of U.K. has published by Press Trust of India observations made by Justice Sharad Kumar sharma has been reiterated, when quashing of criminal charges against accused men of the rape by a woman afterwards he denied to get married with her. From the year of 2005 they are in the consensual sexual relationship.The Apex Court was several times reiterated that a consensual-physical affairs between adults can't be termed as rape if one of them has denied to marry with partner. The Higher Court of Uttarakhand affirms that the women are misusing the Sec.-376 of the I.P.C.,1860 against their partners for several reasons, including frictions in their life.

4. Objective

- On the Women's sexual crime's are not confined only to any fixed geographical boundaries of India, instead, it is a common phenomenon across nations. Aim of the research paper is primarily on the historical development of statutes relating to rape within the

India, particularly focusing legal recognition of digital rape after the 2013's Criminal Law (Amend.) Act, and to investigate proper definitions and digital rapes prosecution under India's law compared to other countries. The purview of this research is to critically investigate the factors responsible for the nature of such crimes, such as low conviction rates, victim-shaming, etcetera.

- Besides, it also draws on the position of India in the World index in terms of Women's Safety to understand how far we have arrived and the models we must adopt to progress.

- It also endeavours to address a growth of misuse of legal provisions of rape & sexual crime's by few women to suit their agenda and seeks to offer possible solutions for a more just society.

5. Limitations & Scope

In this research scope of its will involve delving into the current legal definitions, frameworks, and statutes concerning sexual offences, particularly digital rape, to understand their effectiveness and gaps. It will examine case laws and judicial interpretations to assess how courts have applied and interpreted digital-rape statutes and other like offences of sexual crime's. The study shall also include a comparative analysis of sexual offence laws in different jurisdictions to identify best practices and areas for reform. It will assess the impact of present legal provisions on rights of victims and access to justice, as well as the efficacy of legal remedies and support systems.

Although, the study may be subjected to some limitations, such as Legal Variability. Laws and legal interpretations vary significantly between jurisdictions which may restrict the applicability of findings across different regions. This research paper may face issues in obtaining exhaustive and fresh data on sexual offences specially on digital rape due to the concept of digital rape relatively being new and different, confidentiality issues, underestimating or lack of accessible records. Furthermore, this research paper may not fully account for cultural and societal influences on the legal understanding and treatment of sexual offences with particular focus on digital rape, which can affect the application and efficiency of laws.

6. Legal Framework and Developments in India

In India criminalisation of sexual offences has continuous noteworthy changes over past decades. From the beginning of the colonial-era I.P.C.,1860 to the modern 2023'sBharatiya Nyaya Sanhita(BNS), now law has moved from a narrower patriarchal definition of rape towards a broader recognition of autonomy of women's body & sexual integrity. Recognition of “digital rape” stands as one of the most noteworthy result of this development.

6.1-Indian Penal Code,1860: A Narrow Definitions

In I.P.C.,1860,under sec.-375,as originally enacted term rape was defined exclusively in form of penile-vaginal penetration only, but non-penile penetrative acts like penetration by fingers, toe or any other objects didn't fall within the purview of rape and were instead of prosecuted under provisions i e. I.P.C.'s Sect.-354,[outraging the modesty of a woman] or of I.P.C.'s Sect.-377 [unnatural offences]. Such a framework significantly restricted legal remedies for victims of non-penile sexual assaults on women.

Legal interpretations by the judiciary reflected this narrow approach.for eg in case of *Tukaram v. State of Maharashtra*, (1979), famous as the *Mathura rape case*, the Appex Court adopted a restrictive view of consent, which leads to widespread protests and eventually the Criminal Law (Amend.) Act ,1983. Yet, despite of reforms post-Mathura, statutory definition of the rape remained confined to penile penetration as earlier.

It created a great lacuna: assaults involving finger penetrations which can be equally traumatic, were demoted to lesser offences, undervalue the harm inflicted on victims.

6.2-Criminal Law (Amend.)Act,2013: A Paradigm Shift

2012's Delhi's Nirbhaya-gang-rape case has proved to be a remarkable moment in Indian criminal jurisprudence. This heinous nature of the crime and mass public outcry forced the India's Govt. to establish,Justice J.S.Verma Committee, which in their landmark report recommended an widened the meaning of rape which covers the all kinds of penetration without consent.

Acting on these recommendations, 2013's Criminal Law(Amend.)Act, redefined Sec.-375 of 1860'sIPC.New definition included:-

- Penetration into vagina, mouth, urethra, or anus with penis,
- Penetration into vagina,urethra or anus by any object in any part of the body
- Disfiguration of body parts to cause such vaginal penetration
- Mouth application to the sexual organs.

By this amendment, digital penetration (penetration by fingers) was expressly recognised as rape. This was a paradigm shift, aligning Indian law with international standards and recognising that the harm resulted by non penile penetration may be same severe as penile rape.

Case law following this amendment has reinforced the expanded definition. For example, Apex Court in *State of Punjab Vs Gurmit Singh* (2014), reiterated that assertions of the prosecutrix, if it is credible then is

proper to convict, even in cases involving digital penetration where medical evidence may be inconclusive. Similarly,Court in *Ranjit Hazarika Vs State of Assam* (1998), though predating the amendment, the Court acknowledged that non-appearance of injuries on body does'nt neglate sexual assault — a principle now crucial in digital rape prosecutions.

2013's amendments in lawhas also enhanced rapes sentences under Sect.-376 IPC, introduced aggravated categories under Sections-376A–376E, and incorporated victim-friendly provisions such as in-camera trials and restrictions on cross-examination related with past sexual history (I.E. Act.1872, Sect.-53A).

6.3-Bharatiya Nyaya Sanhita,2023: Continuity & Reform

In December 2023, India replaced the 1860's I.P.C. with the Bharatiya Nyaya Sanhita,2023(B.N.S.) as part of a broader criminal law overhaul. In Bharatiya Nayaya Sanhita,2023, under sec.-63 now defines rape, carrying forward the broader definition introduced in 2013. Now the Digital rape continues to be covered within this framework, ensuring continuity of survivors protection.

Bhartiya Nayaya Sanhita remarkably incorporated aggravated situations similar to those in the IPC,1860 but also sought to simplify and consolidate the provisions for better accessibility. Punishments under Section-64 of the Bhartiya Nayaya Sanhita,2023 for rape includes harder 10years life imprisonment,with death sentence retained for cases of rape which caused the death of the victim or the persistent vegetative-state.

However, critiques of BNS highlight that while the law has modernized language and maintained the recognition of digital rape, implementation challenges persist. Issues such as poor police sensitivity, lack of forensic infrastructure, and delays in trial remain largely unaddressed. Scholars like '*Flavia Agnes*' argue that without systemic reforms in investigation and prosecution, legislative changes risk remaining symbolic rather than transformative.

7. Judicial Response and Case Law Analysis

Under 1860s I.P.C. recognition of digital rape under Sect.-375(post-2013) and its continuation in 2023s Bhartiya Nayaya Sanhitas Sect.-63, has placed a responsibility on the judiciary to interpret and application of law in the way consistent with the constitutional guarantee of dignity under Article-21. Indian courts, while progressive in several rulings, continue to face challenges of evidence, victim testimony, and societal bias.

7.1 Recognition of Victim Testimony as Sufficient Evidence

Indian jurisprudence has consistently upheld the confession of the prosecutrix if it is so credible and requires no corroboration for conviction. This principle, established by the apex court in *State of Punjab v. Gurmit Singh (1996) (SC)*, has been repeatedly applied to digital rape cases. Indian courts have highlighted that non-appearance of injury on body or forensic evidence doesn't discredit the victim's testimony, since non-penile penetration may not always leave physical traces.

Apex Court in *State of Punjab v. Ramdev Singh (2004) (SC)*, although predating 2013s amendment, the Courts observed the lack of injuries on the prosecutrix cannot by itself lead to acquittal. This reasoning has become more relative in the case of digital rape post-2013, where the medical evidence may often be inconclusive.

7.2 Post-2013 Cases on Digital Penetration

Indian High Courts have gradually recognised digital penetration as rape under the wider definition. For example:

M.P. High Court in *Rohit Vs State of MP (2015)*: In this case the accused has been prosecuted for digitally penetrating a child. court has reiterated in the amended 1860s I.P.C.'s Sect.-375, penetration by means of fingers amounts to rape, irrespective of the absence of medical injuries.

In the *State v. Anil Kumar (2016)*: Delhi High Court upheld a conviction in 1860s I.P.C.'s Sec.-375, where the victim's vagina penetrated by the offender with his fingers. The court stated that such acts are equally violative of dignity as well as penile penetration.

Punjab & Haryana HC in *Rajesh Vs State of Haryana (2019 SCC)*: The court held that digital penetration is not a "lesser" form of sexual assault and must attract the same punishment as other categories of rape.

These rulings demonstrate judicial willingness to treat digital rape on par with traditional rape, thereby advancing the principle of bodily autonomy.

7.3 Special Protection for Children under P.O.C.S.O. Act, 2012

In the case where the victim is minor, courts have applied the (P.O.S.C.O.) *Protection of Children from Sexual Offences Act, 2012* with the Sec.-375 IPC, 1860. Under Sect.-3 of P.O.C.S.O. Act, 2012, stated "penetrative sexual assault" to include "insertion of the finger in the vagina, urethra or anus of a child".

Apex court in *Alamelu Vs State (2016 SCC, Madras HC)*, has convicted the offender under both 1860s, Penal Code & 2012s P.O.C.S.O., Act for digital penetration of a minor, observing that children deserve higher protection. This dual application has strengthened prosecutorial results in digital rape cases involving minors.

7.4 Evidentiary Challenges

In spite of developing decisions, courts often encounter evidentiary difficulties. In the digital rape cases forensic evidences may be minimal, leads to heavy reliance on victim testimony. Generally defence counsels frequently exploit this by alleging consent or fabrication.

Court in *Kartar Singh Vs State of Punjab (2018 SCC)*, Punjab & Haryana H.C. alerted against over-reliance on the medical reports, stating that absence of injuries is not determinative. This approach aligns with global standards but requires judicial sensitivity to prevent wrongful acquittals.

7.5 Misuse Concerns and Judicial Balancing

Whereas Indian courts have been sympathetic to the victims, they also have recognised the possibilities of misuse of provisions of rape. Apex court in *Deepak Gulati Vs State of Haryana (2013) (SCC)*, Court has observed this cases involving alleged consents are must be carefully checked to prevent wrongful convictions. In the digital-rape cases, where physical evidence may be absent, this examinations becomes even more critical.

7.6 Towards a Victim-Centric Jurisprudence

Altogether, judicial trends suggest a move towards a victim-centricity approach. The judiciary has acknowledged that rape, whether penile or digital is fundamentally about the violation of autonomy and dignity instead of the specific mode of assault. Yet the inconsistencies exist across the High Courts, specially in sentencing. Some courts have imposed lesser statutory punishment, at the same time others have granted leniency citing mitigating factors i.e. "youth of the accused" — a reasoning criticized by the scholars as undermining deterrences.

8. Comparative Legal Perspective

Recognition of digital penetration as the rape in India aligns it with developing international trends. All over the jurisdictions, the legal approach has shifted from a narrow penile-penetration definition of rape towards wider understandings of sexual autonomy, bodily integrity and dignity. Nevertheless, variations persist in statutory wording, scopes and judicial interpretation by courts.

8.1 position of U.K.

Rape and sexual assaults extremely redefined the in U.K.s the Sexual offences Act, 2003. Definition of rapes under Sec.-1 of the Act defines the vaginal penetrations by penis, anus or by mouth. Nevertheless, digital penetration is criminalised under Sec.-2 of the Act as: Penetrative assault which makes vaginal penetrations or anus with “any parts of the body” or with any other object the consent a distinct offence, sentenced with life imprisonment.

The distinction of “rape” with “assault by penetration” has been criticized by the feminist scholars, who argued that it creates a hierarchical perception where the digital penetration is treated as “lesser” than the rape. Nevertheless, U.K. law ensures parity in sentencing, thereby mitigating this disparity in the practice.

Judgements, i.e. *R. Vs Bree (2007) EWCA Crim 804*, emphasises that consent must be active and informed, a principle equally applicable to digital penetration.

8.2 Canada

Criminal Code (RSC 1985) of Canada, avoids term “rape” altogether, instead using the broader category of sexual assault. Section 271 criminalises any non-consensual sexual touching, while aggravated forms under Sections 272–273 include penetration. Courts have consistently held that digital penetration constitutes sexual assault.

Apex Court of Canada in *R. Vs Chase (1987) 2, SCR 293*, ruled that sexual assault on women's is not confined mere to bodily injury but its extent will also caused any violation of sexual integrity. This victim-centric interpretation has allowed Canadian law to capture digital penetration offences without requiring statutory amendments.

8.3 South Africa

South-African 2007's Criminal Law [Sexual Offences & Related Matters] Amendment Act, defines rape broadly include any non-consensual genital organs penetration, anus or mouth by the any body parts with any object. Thus, digital penetration is expressly included within rape.

Constitutional Court's in “*Teddy Bear Clinic for Abused Children Vs Minister of Justice (2013)*”, emphasised the importance of protecting sexual autonomy while balancing children's rights. South Africa's approach is widely considered one of the most progressive globally, as it rejects any hierarchy between penile and non-penile penetration.

8.4 United States

Rape laws vary by states by states in U.S.A. and gender neutral definitions of rape or sexual assault are adopted by many of the states of U.S.A., expressly including

digital penetration. For example, under New York Penal Law § 130, “sexual conduct” includes penetration by a finger, thus recognising digital rape.

New York Court of Appeals in *People v. Liberta (1984)*, struck-downs the marital-rape exemptions and underscored the consent and not the mode of penetration, is the defining factor in sexual offences. This reasoning has shaped U.S. jurisprudence on digital penetration.

8.5 Lessons for India

The comparative survey reveals three key insights for India:-

1. Terminological Clarity :- While India includes digital penetration within the definition of rape, countries like the UK maintain separate offences (“assault by penetration”). The Indian approach is arguably more progressive as it avoids hierarchical distinction.

2. Victim- Centric Approach :- Canada and South Africa in their jurisdictions focuses on sexual integrity and autonomy instead of the mechanics of penetration. Indian Judiciary, while recognising dignity, still relies heavily on the medical corroboration or forensic evidence — a practice that needs reform.

3. Challenges of Implementation :- Even though progressive statutes falter without strong enforcement. The United Kingdom and South Africa have invested in their victim-support framework and specialized sexual offences courts, something India still lacking with this step.

9. Contributing Factors to Digital Rape in India

While the legislative reformation has widened the sexual offences ambit to include digital penetration, persistence and undervaluing such crimes in India can't be understood without analyzing the underlying cultural, social and institutional factors. These types of factors created both opportunities for perpetrators and barriers for victims for seeking justice.

9.1 Patriarchal Norms and Gender Inequality

The Indian socio-cultural atmosphere is deeply influenced by patriarchal type values that often reduces women's sexual autonomy. Acts such as digital rape are sometimes undervalued as “less serious” because they don't have always involve penile penetration. This reflects a mindset where the sexual violence is judged by its physical severity instead of the violation of dignity and consent of women's.

Feminist scholars like Nivedita Menon argued that patriarchal structures of the society perpetuate a culture in which women's bodies are policed and violations of autonomy are normalized. This will result in secondary victimisation, where the victim faces

stigma and blame from family, society and even law enforcement.

9.2 Influence of Pornography and Media

Rapid expansion of internet access and exposure to pornography has motivated sexual behaviour among the youths. Studies suggest that some criminals copy the acts depicted in pornography without understanding the concept of consent in it. Digital penetration, often illustrated in explicit content, may be wrongly perceived as the “lesser” act compared to penile penetration.

Inadequate sex education, many young people grow up with distorted ideas of consent, reinforcing dangerous behaviours that can escalate into the offences such as digital rape.

9.3 Lack of Legal Awareness

In spite of the 2013’s Criminal Law (Amendment) Act and the 2023’s Bharatiya Nyaya Sanhita, (B.N.S.), many peoples — including police mens — remains unaware that digital penetration constitutes the rape. This ignorance often leads to wrong classification of complaints under lesser offences i.e. Section-354 IPC, 1860 (outraging modesty), resulting in dilution of charges and lesser sentences.

i.e. Reports of media have documented cases where F.I.R.s were initially registered under “sexual assault” in the place of rape, forcing victims to pursue legal remedies for proper classification.

9.4 Policing and Investigative Lapses

Weaker mechanism of institutions contributes significantly to the preponderance of digital rape. Police officers many times show their insensitivity when recording statements, particularly in cases where injuries are absent. The forensic infrastructure remains insufficient with several hospitals lacking the capacity to conduct detailed medical examinations for digital penetration cases.

In 2013’s Justice Verma Committee’s Report, quality of investigation in sexual crimes is several times poor which leads to the low conviction rates in spite of the progressive laws. N.C.R.B. data shows that conviction ratio in rape cases is over around 27–30 percent, with many acquittals arising from collection of poor quality of evidences.

9.5 Child Vulnerability and POCSO Cases

Juveniles are specially suffering from digital rape, as offenders are many times exploit their trust and innocence. The P.O.C.S.O. Act, 2012, criminalised such kinds of offences but their enforcement mechanism remains weaker. Children victims are facing additional hardships while reporting, which include pressure from family to remain silent and fear of reputation injury to them.

Judicial decisions as *Alamelu v. State* (2016 SCC) demonstrates the judicial recognition of this helplessness, but structural hurdles— which include lack of children’s friendly courts or forum in many districts — which continue to hamper justice.

9.6 Social Stigma and Victim Blaming

Victims of sexual assault in India faces many times isolation from every things, Marital disappointments and pressure of family to compromise with the accused. In the digital-rape matters, may be in the physically evidence may be less visible and victims are frequently distrusted or accused of fabrication facts. This disappointing reporting perpetuates a culture of silence in our society.

9.7 Economic and Educational Factors

Low economic conditions and inadequate opportunities of education, especially among the women from the rural areas, aggravate vulnerability to sexual violences. Generally victims about their legal rights and available remedies leaves victims unable to approach the legal system due to the lack of awareness. However, in urban areas cases are often underreported due to matters of reputational harm and the victim shaming.

10. Discussion: Gaps, Challenges, and Misuse of Law

In spite of developing legal reforms recognising digital penetration as rape, Criminal justice system of India continues to face difficult with issues in implementation and awareness. These gaps weaken the effectiveness of the statutes and risk of either injustice to victims or wrongful prosecution of the person accused.

10.1 Evidentiary Challenges and Over-Reliance on Medical Proof

Generally Court’s are considers frequently on medical evidence to establish the digital rape, yet such evidence is usually absent. Unlike the penile penetration, digital penetration may not leave any visible injuries, especially if the victim is a child or if there was no chance of violent resistance.

Apex court in *Kartar Singh Vs State of Punjab* (2018) (SC), recognised that mere absence of injuries does not invalidate the testimony of the victims. Nevertheless, in many trial courts, acquittals still result from the lack of corroboration of facts and evidence which shows big inconsistency in judicial practices.

This reflects a severe problem, the persistence of British-era evidentiary standards that prioritizes physical proof over victims testimonies in spite of the apex Court’s repeated assertions that credible

testimony alone is sufficient for guilt of an accused person.

10.2 Inconsistent Judicial Attitudes

Whereas superior courts have adopted a victim centric approach, some trial court's and High Court's continue to devalued the digital penetration as "lesser" than the "penile rape". In the judgement, extenuating circumstances i.e. "youth of the accused", are frequently invoked to minimize the punishment which weakens the deterrence.

This type of inconsistency results in inequalities of justice, where the results depend less on law and more on court's discretion. So there is a need for reinforcing calls for specialized sexual offences courts with trained judges.

10.3 Police Insensitivity and Misclassification of Offences

Police officers generally miscategorised the digital penetration under the lesser offences e.g. Section-354 IPC (outraging modesty of women) 1860, either due to ignorance by them or deliberate minimisation. This will lead to reducing the seriousness of charges and result in lesser sentences. Justice Verma Committee Report (2013) had highlighted this type of insensitivity, but systemic reforms remain inadequate to resolve it.

Furthermore, the police officers many times pressure victims for compromise, which reflects patriarchal biases. These lapses create a big gaping between law in texts and law in action.

10.4 Social Stigma and Underreporting

Societal-stigma associated with the rape is remains in the Indian society, which demotivates victims from reporting digital penetration. Victims fear disbelief due to the "invisible" nature of the act, while families frequently prioritize marriage prospects and reputation over justice.

This silence gives great contributions to underreporting leaving official statistics grossly under-representative of the actual pervasiveness of digital rape.

10.5 Concerns of Misuse and False Accusations

Another form of controversial issues is the alleged misuse of laws of rape, including the digital rape. Court in the case of *Deepak Gulati Vs State of Haryana*, (2013) (Supreme court case), acknowledged the potential for false accusations, especially in cases arising from strained romantic relationships of couples.

Critics are argued that the widened definition of rape may carelessly criminalise consensual acts retrospectively, specially when relationships becomes

difficult to continue. This raises concerns about balance between victim protection and due process rights of the accused person.

However, empirical study on e.g., NCRB data suggests that while fake accusations exist, their numbers are relatively low compared to underreporting. Thus, while misuse cannot be dismissed, it should not overthrow the reality of wide-spread violence and failure of the system to protect survivors.

10.6 Lack of Victim Support Mechanisms

Nevertheless, such as South Africa or the U.K., India has not adequately invested in victim support mechanisms. Specialized sexual assault response teams counsellings and the witness protection remain irregular. Victims many times face hostility in the cross-examinations, delays in trial and secondary victimisation within the justice system itself.

Without any parallel reformation in institutional infrastructure and legislative progress risks being symbolic instead of transformative.

11. Conclusion and Suggestions

With the recognition of digital-penetration as the rape marks a progressive shift in criminal jurisprudence of India. By moving-away from the British-era definition is limited only to vaginal-penetration by penis but in 2013's Criminal Law (Amend.) Act, and new enactment 2023's Bharatiya Nyaya Sanhita (B.N.S.), have lined-up the legal system of India with the standards of the world and with acknowledging the sexual offences is fundamentally about the violations of dignity, freedom and the bodily-integrity, notwithstanding of penetrations mode.

Interpretation of the judiciary has generally supported their expansion. Courts across the India have affirmed digital-rape as severe as rape by penetration and confirming the victims are not left deprived of the justice simply because the assault did not fit with earlier statutory categories. Nevertheless, there are the challenges that remain: over-reliance on medical evidence, incompatible judicial attitudes, ineffective policing and lack of a victim support system continue to hinder the effective implementation.

Simultaneously, concerns of misuse of rape laws demand balanced with consideration. While the false accusations exist then their frequency is outweighed by systemic underreporting and societal-stigma. The law must therefore continue to prioritize the victim's protection whereas safeguarding due process of rights of the accused.

Suggestions for Reforms:-

1. Strengthening Judicial Training:-

- With establishment of specialized sexual offences courts with the judges trained in gender-sensitive adjudications.
- Issue of uniform sentencing guidelines to prevent underestimating the digital penetration as a “lesser” offence.

2. Police and Investigative Reforms:-

- Mandatory special training program for police officers on the scope of 1860's I.P.C.'s, Sec.-375/2023's B.N.S.'s, Sec.-63.

3. Evidentiary Reforms:-

- Reduce the over-reliance on only on medical corroboration; prioritize the credibility of victim testimony as well.
- Expansion of the forensic infrastructure with the modern tools to detect and document non-penile penetration.

4. Victim-Centric Mechanisms:-

- Establishment of sexual assault response teams in each and every district hospital with counsellors and forensic experts as well.
- Strengthening the witness-protection schemes to prevent intimidation of survivors of digital rape
- With Providing adequate compensation and rehabilitation under the Nirbhaya Fund more effectively and uniformly.

5. Public Awareness and Education:-

- Promoting a nationwide campaigns to spread out the awareness that digital penetration is legally defined as rape.
- Via incorporating comprehensive sex education in schools focusing on consent and bodily autonomy.

6. Balancing Misuse Concerns:-

- With developing the clear prosecutorial guidelines to scrutinize the cases where consent is disputed for preventing wrongful prosecution.
- Encouragement of judicial reliance on contextual evidence rather than the stereotypes when determining the credibility.

7. Child Protection

- Via Strengthening the implementation of the P.O.C.S.O. Act, 2012 by creating more children-friendly courts and fast-track trials involving minors.

- Training of teachers and social workers to identify signs of sexual abuse and support reporting as well

Final Observations:-

Journey of rape law in India - from the I.P.C. 1860's old definition to the B.N.S.'s 2023, recognition of digital rape which reflects an evolving understanding of sexual offences in line with constitutional values of dignity and equality. Yet the legal reforms alone cannot dismantle the deep root patriarchal structure or institutional deficiencies in the society.

Fair justice requires a multi-pronged approach - stronger laws, sensitive enforcement of it, victim-support mechanism and societal transformation as well through education and awareness. Only then can the dignity-right in the Constitution under Art.-21, be fully realized for survivor of digital rape.

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