
VIRTUAL PLATFORMS AND REAL HARMS: A JURISPRUDENTIAL ANALYSIS OF VIRTUAL SEXUAL OFFENCES IN THE AGE OF METAVERSE

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ABSTRACT

This research is an exploratory study of the criminalisation of sexual offences within the metaverse, a rapidly evolving concept that extends beyond traditional virtual worlds. As digital environments become increasingly immersive, the need for legal recognition of offences committed within them becomes pertinent. Metaverse is often dismissed as a mere "fake world," allowing it to evade significant legal scrutiny. The growth of immersive metaverses like Second Life, Roblox, and Meta's Horizon has also increased the instances and reports of virtual sexual offences. The actions of avatars in the metaverse can have substantial real-world consequences, necessitating a reevaluation of current legal frameworks to address these digital delinquencies effectively. This research underscores the need to recognise and apply criminal law within virtual worlds while advocating for expanding the interpretation of traditional elements of crime, including virtual sexual offences.

Keywords: Virtual Sexual Offences, Metaverse, Avatar, Haptic devices, Mens Rea, Actus Reus, Bharatiya Nyaya Sanhita, 2023

Introduction

“Even in a society of saints, there would be sinners. Acts that offend the collective conscience will always exist.” - Emile Durkheim

In a society, crime is considered as the conduct that violates the established norms of the society. Crimes are indeed an inevitable feature of society. As society progresses socially, politically, economically, and technologically, there is a simultaneous evolution of the nature of criminal behaviour as well. Some crimes, like murder, theft, and physical and sexual violence, are the traditional examples of crimes that perhaps existed from the earliest human societies. As society grew, many other forms of crime evolved.

In contemporary times, the rise of the internet and digital platforms, the development of artificial intelligence, and the metaverse have transformed the nature of human interaction and conduct and have also given rise to non-conventional and complex legal wrongs and crimes, which go beyond the parameters of traditional criminal jurisprudence.

In traditional crimes, for example, the understanding offence against the body is premised on the fulfilment of actus reus, which essentially means the actual physical act that leads to the commission of harm to the body and physical integrity of another. However, in the metaverse, the users can experience violation of their physical integrity in a virtual manner, which may include harassment and sexual assaults without actual physical contact.

The “virtual world” and the “metaverse”, initially popularised in cyberpunk literature, are no more a futurist's fantasy as they have transcended their fictional origins to become tangible realities of the digital age.

The term metaverse was first introduced by Neal Stephenson's 1992 novel *Snow Crash*, wherein it refers to an interconnected universe in a 3D virtual environments where users interact through digital avatars. Once a speculative concept of science fiction, it is now materialising into a multi-platform, immersive digital reality enabled by advancements in VR, AR, blockchain, and AI technologies¹. While platforms like Roblox, Fortnite, and Horizon Worlds have laid the groundwork, recent developments have blurred the lines between physical

¹ Ben Chester Cheong, Avatars in the Metaverse: Potential Legal Issues and Remedies, 3 Int'l Cybersecurity L. Rev. 467 (2022).

and virtual experiences. Facebook rebranding itself to 'Meta' marked a pivotal shift in its ambition to create a unified, immersive digital world where users can work, play, socialise, and shop through avatars in 3D virtual environments.² The concept of metaverse has evolved beyond its foundational principles of virtual reality, platforms like Horizon Worlds, Rec Room, and Roblox, illustrate virtual environments that embody the characteristics of a metaverse, by their immersivity, interactivity, persistivity, social engagement and creative opportunities. Though the ambition of the metaverse is to create a seamless integration of cross-platform avatars, digital assets, and economies, this ideal remains largely unachieved at present.

The celebratory discourse surrounding the Metaverse and the rapid advancement of immersive technologies took a shocking turn on New Year's Eve of 2024. A *Daily Mail* reported that the British Police is investigating a case involving the virtual gang rape of a 16-year-old girl in Meta's Horizon Worlds³. The *New York Post* reported it as "Police investigating first case of girl's virtual gang rape in metaverse"⁴ The *Indian Express* also echoed this with the headline: "First case of virtual gang rape reported in Metaverse, investigation underway."

However, it is not the first instance or usage of the conceptual idea of 'virtual rape'. As early as 1993, Julian Dibbell described a similar scenario in LambdaMOO, where a user named Mr. Bungle used a "voodoo doll" script to force avatars into simulated sexual acts without consent.⁵ While both scenarios fall under the conceptual umbrella of "virtual rape" due to the absence of consent in sexual interaction, the degree of impact on the victims differs significantly. The LambdaMOO case occurred in a purely textual environment, whereas contemporary incidents often involve immersive technologies such as haptic feedback that intensify the psychological and sensory experience for the victim.

² Niket Mehta & Naval Joshi, Metaverse is Emerging!, 2 Brazilian J. Sci. 9 (2023).

³ Rebecca Camber, "Police launch investigation of its kind into 'virtual rape' in metaverse", *Daily Mail Online*, Jan. 1, 2024, updated Jan. 2, 2024, available at: <https://www.dailymail.co.uk/news/article-12917329/Police-launch-investigation-kind-virtual-rape-metaverse.html> (last visited Jun. 13, 2025).

⁴ Snezana Farberov, "Police Investigating First Case of Girl's Virtual Gang Rape in Metaverse", *New York Post (US News)*, Jan. 2, 2024, updated Jan. 2, 2024, 11:04 a.m. ET, available at: <https://nypost.com/2024/01/02/news/police-investigating-first-case-of-virtual-rape-in-metaverse/> (last visited Jun. 13, 2025).

⁵ Julian Dibbell, A Rape in Cyberspace; or, How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society, in *Flame Wars: The Discourse of Cyberculture* 237 (Mark Dery ed., Duke Univ. Press 1994), <https://doi.org/10.1215/9780822396765-012> (last visited Apr. 24, 2025).

These crimes have gone under the radar of legal scrutiny only because they occurred in the virtual world and not in the real world; however, the acts of avatars in the virtual world also have real consequences. While the metaverse offers novel modes of expression and engagement, it also hosts rising incidents of harassment, avatar sexualisation, and unregulated conduct, especially within Meta's VR platforms such as VRChat.⁶ However, the metaverse remains unregulated and is within the blindspots of the law, which scholars describe as a "magic circle", which Fairfield describes as a "metaphorical barrier that supposedly excludes real-world law from virtual worlds."⁷

From a technical standpoint, virtual worlds and the metaverse are neurotechnology-infused with high-risk artificial intelligence.⁸ The consequences of the criminal acts of the avatar are reflected through realism by manipulating the brain through emotional immersion with the use of Extended Reality(XR) and haptic devices. The nuances made in the traditional criminal jurisprudence to incorporate the changes in technological advancements are proof of the flexibility of the law for potential harm.

To limit the scope of this research, it is necessary to understand the idea of the metaverse and why it differs from the definition of traditional virtual worlds despite having the same foundation of Extended Reality(XR). For instance, games such as Horizon Worlds, Rec Room, and Roblox are all virtual worlds but are also considered the metaverse. This is because of their additional immersive, persistent, social, and creative experiences⁹. Although the real vision of the metaverse is to have a cross-platform avatar, digital assets, and economies, it is yet to be achieved. Hence, for this research, the platforms that would be focused on would be the current and anticipated developments in the virtual realm within the metaverse, which would be referred to as the metaverse in general.

This paper will first explain the technical terms and the integration of the metaverse, the sexual interaction within the metaverse and the inverse of law in cyberspace. Then, the author

⁶ Centre for Countering Digital Hate, *Exposing the Harms in Facebook's Metaverse* (2022), <https://counterhate.com/research/metaverse> (last visited June 13, 2025).

⁷ Joshua Fairfield, *The Magic Circle*, 14 Vand. J. Ent. & Tech. L. 545 (2012).

⁸ M.I. González-Tapia, *Virtual Emotions and Criminal Law*, 14 Front. Psychol. 1260425 (2023), <https://doi.org/10.3389/fpsyg.2023.1260425>; <https://pubmed.ncbi.nlm.nih.gov/38022971/> (last visited Apr. 15, 2025).

⁹ Andreas Ritterbusch & Fabian Teichmann, *Avatare im Metaversum – Potenzielle Rechtsfragen und Lösungsansätze*, 3 Int'l Cybersecurity L. Rev. 467 (2023), <https://doi.org/10.1365/s43439-022-00056-9> (last visited June 12, 2025).

would proceed to the need for criminalisation of virtual sexual offences, and lastly, the author would like to analyse the application of actus reus and Mens Rea of sexual offences to their virtual counterpart.

1. Metaverse and Virtual Worlds

The world we live in today is not limited to one's physical existence alone; it also encompasses virtual existence, i.e., the virtual world. A person lives offline and online (as an avatar). How is it that only the acts of the person in the physical environment are regulated and held liable for, while the actions of his virtual twin (avatar) evade any legal responsibility of a criminal nature? To understand the scope of this study, it is essential to comprehend the definitions of virtual space and the metaverse. Metaverse can be said to be a virtual world with improved immersive technology, forming an Extended Reality (XR) to socialise, play, and work.. A. El Saddik defines the metaverse as “the universe of persistent Digital Twins (DT), where a DT is a virtual representation of any living and non-living entities.”

Metaverse is a special type of virtual space setup. A feature of decentralisation and interpretability applies. Metaverse is derived from the combination of the word "meta" and "universe," collectively referring to a transcendent, decentralised digital realm that exists beyond the confines of the physical world, in which users represented by avatars socially and economically interact with each other mirroring the real world interactions.¹⁰

1.1 Virtual Space, Virtual worlds and everything in between

Virtual reality (VR) is a simulation that provides the immersive utility of technology through sensory equipment and auxiliary devices such as gloves, electrodes, and other similar devices. It is an alternative to the actual physical world, wherein technologies like alternative reality (AR), and Mixed Reality can be used to create virtual space. One of the most widely cited definitions of a virtual world is offered by Mark W. Bell¹¹, who describes it as “a synchronous, persistent network of people, represented as avatars, facilitated by networked computers.”

¹⁰ Georg David Ritterbusch & Malte Rolf Teichmann, *Defining the Metaverse: A Systematic Literature Review*, 11 IEEE Access 12368 (2023), <https://doi.org/10.1109/ACCESS.2023.3241271> (last visited June 13, 2025).

¹¹ Mark W. Bell, *Toward a Definition of 'Virtual Worlds'*, 1 J. Virtual Worlds Res. no. 1 (2008), <https://journals.tdl.org/jvwr/index.php/jvwr/article/view/283> (last visited June 12, 2025).

Virtual worlds, predating the metaverse, have existed since the late 20th century, initially manifested as text-based mediums like Multi-User Dungeons, exemplified by Dungeons and Dragons, or Multi-User Shared Hallucinations, utilised as collaborative platforms for educators and experimental endeavours.

A virtual world (VW) is “an electronic environment that visually mimics complex physical spaces, where people can interact with each other, with virtual objects, and where .” Animated characters represent people. Virtual worlds are typically characterised as immersive, three-dimensional environments integrated with audio, persistent in nature, and capable of supporting real-time remote interaction among large numbers of users.

1.2. Indistinguishable pigeonholes of virtual worlds and Metaverse – Proto Metaverse

While the exact lines of difference between virtual worlds and metaverse are far from being realised to their full potential, they are elements of metaverse in the traditional setup of virtual worlds that add to the threat of the effects on its users. Metaverse allows for persistent identity and persona beyond closed environments; the most evident example of developing a metaverse is the meta-horizon. Innovation in technology and embracing it in the gaming space has led to the creation of the metaverse. The elements of first immersive realism incorporate sight, sound, and touch with the help of haptic devices or forced feedback, gestures, and expressions. The second element is ubiquity which refers to the widespread availability and accessibility of virtual worlds, along with the manifestation of user personas and presence. The third is the ability of distinct systems or platforms to exchange information or interact with each other seamlessly and, when possible, transparently called interoperability¹².

The metaverse is also called “mirror worlds” that duplicate real-life environments (Atske, 2022), and as far as this research is concerned, it will focus on the virtual worlds that put the players in an immersive environment to draw parallels from the sexual offences committed in these platforms with the traditional sexual offences. To identify the platforms that are considered metaverse for this study, the author refers to the Weinberger and Gross Metaverse maturity model, which provides the idea of virtual worlds considered metaverse for this study. Since this research focuses on grievous offences such as rape, sexual assault, and virtual

¹² G.D. Ritterbusch and M.R. Teichmann, “Defining the Metaverse: A Systematic Literature Review”, 11 *IEEE Access* 12368 (2023), available at <https://ieeexplore.ieee.org/document/10072620> (last visited Apr. 24, 2025).

groping, the level of immersive realism that the author would consider would be the virtual worlds that go beyond basic VR and motion tracking (Level 3). The author would be including those platforms whose immersivity incorporates high-end VR and haptic feedback (Level 4) or even complete sensory immersion (Level 5), creating experiences nearly indistinguishable from reality.¹³ Such platforms must also demonstrate persistent virtual environments, real-time global interaction, scalability beyond 1,000 users, and strong interoperability with other virtual worlds.

Another important aspect of the proto-metaverse and the future of the metaverse in general is the haptics. Haptics can be defined as "the science of simulating sensory perceptions like pressure, texture, temperature, vibration and movements like poking, squeezing, sticking, [and] heaving."¹⁴ Haptic devices enable users to feel physical sensations and movements linked to their avatars, such as teledildonics, simulators, and fleshlights. Incorporating haptic devices into avatars allows avatars to act more like digital twins, creating a photorealistic avatar with haptic interference and narrowing down the difference between sexual experiences in the metaverse and the physical world. These devices physically connect the user to the virtual world through a sensation. Llewellyn Joseph Gibbons states that if an avatar is assaulted virtually, the user behind the "assault avatar" would feel the blow.¹⁵

2. Sexual Interactions in Metaverse

From the above discussion, it becomes clear that the metaverse is an alternative reality where people experience multiple types of content, ranging from games to commerce to relationships. While the idea of the metaverse is in itself not problematic, the immersivity elevates the risks of the consequences of the misuse. It raises concerns about the evolving nature of crime, from theft of virtual property to extortion, from virtual adultery to divorce and murder, from wrongful gain to the looting of virtual gold, from online money laundering to drug exchange, from terrorist activities to attacks on avatars, and child pornography to virtual rape.

¹³ *A Metaverse Maturity Model*, 22(H2) Glob. J. Computer Sci. & Tech. 39 (2023).

¹⁴ Grigore C. Burdea & Philippe Coiffet, *Virtual Reality Technology* (2d ed. 2003), <https://dl.acm.org/doi/10.5555/1101674.1101675> (last visited May 25, 2025).

¹⁵ Llewellyn Joseph Gibbons, *Law and the Emotive Avatar*, 11 Vand. J. Ent. & Tech. L. 899 (2009), <https://scholarship.law.vanderbilt.edu/jetlaw/vol11/iss4/6/> (last visited June 13, 2025).

Every stage in the evolution of cyberspace introduced new opportunities for sexual expression. Au observed that sexuality within advanced 3D virtual platforms like *Second Life* represents a significant evolution in nature compared to earlier iterations of cyber-sexuality.¹⁶ While sexual interactions in the virtual worlds seem to have their benefits, however, on the flip side, they also lead to virtual infidelity, sexual practices considered illegal or transgressive, and virtual paedophilia.

It can be inferred from empirical research titled “*Sexuality in the 3D Internet and its relationship to real-life sexuality*”¹⁷ that virtual sexual interactions in the metaverses can vary from common behaviors in real life, such as erotic kissing, oral sex, and heterosexual intercourse or less common, experimental, or transgressive behaviors—including homosexual sex, group sex, BDSM, gender-swapped sex (using avatars of another gender), and virtual prostitution. The study found that while 70–97% of participants participated in the former, 25–50% of participants participated in the latter. Another notable finding was the high number of sexual partners reported by participants; that is, over half had six or more partners in just six months to two years in their *Second Life*.

It is important to note that it's only the virtual sexual offences that are problematic, virtual sexual interactions and the sale of haptic devices per se are not problematic, in fact studies have shown virtual sexual experience provides a safe environment for sexual expression.¹⁸

2.1 Types of sexual interaction

In this discussion, the author deals with present sexual interactions and possible interactions in the more immersive metaverse.

While Lucy Sparrow Suggested the reference of virtual harassment as 'unwanted digitally-enacted sexual interaction' (UDES), this would lead to a trivialisation of the issue and entirely separating it from the traditional approach of sexual harassment one makes the error of not acknowledging the importance of effect on the victim, the psychological mindset of the accused

¹⁶ Wagner James Au, *The Making of Second Life: Notes from the New World* 128–30 (HarperCollins 2008).

¹⁷ Richard L. Gilbert, Monique A. Gonzalez & Nora A. Murphy, *Sexuality in the 3D Internet and Its Relationship to Real-Life Sexuality*, 2 Psychol. & Sexuality 107 (2011), <https://doi.org/10.1080/19419899.2010.536987> (last visited June 13, 2025).

¹⁸ Nicola Döring et al., *Sexual Interaction in Digital Contexts and Its Implications for Sexual Health: A Conceptual Analysis*, 12 Front. Psychol. 769732 (2021), <https://doi.org/10.3389/fpsyg.2021.769732> (last visited May 25, 2025).

or the space theory cyber crimes make it easier to commit. If the Mens Rea of the culprit and the psychological impact of the act are the same on the victim, why should there be a difference in the treatment of the offence?

The author identifies the following forms of sexual activity within the metaverse:

1. Virtual Prostitution
2. Virtual Relationships & Role-play
3. Adult Clubs and Social Spaces
4. Therapeutic and Experimental Uses
5. Virtual harassment/ stalking
6. Sextortion/ cyber threatening
7. Virtual rape
8. Virtual groping
9. Age playing
10. Virtual trafficking
11. Hacking one's avatar to get involved in sexual activity

While multiple virtual sexual interactions take place within the virtual worlds of the metaverse, only the latter ones from (5) – (11) amount to being considered as offences under the normative ambit of crime. However, in this study, the author would like to focus on only those sexual offences within immersive experience with haptic devices that in ordinary criminal jurisprudence sense would involve physical attributes; hence, limiting the scope of the research to non-consensual sexual offences like virtual groping, virtual rape, and virtual stalking involving following the avatar of the player in the metaverse.

2.2 Sexual Offence in Virtual Reality

Numerous scholars have suggested terms for non-consensual sexual VR activities – e.g., Lucy Sparrow came up with "UDESİ" (Unwanted Digitally-Enacted Sexual Interaction), and Rigotti & McGlynn just came up with "meta-rape" to underscore the strong, body-based harm. Yet each of the terms has limitations. Sparrow herself said UDESİ is a neutral descriptive term,

but as one commentator remarks, it "may fail to do justice to the seriousness" of the offending acts by failing to place them clearly on a par with run-of-the-mill sexual assault. While Meta-analysis emphasises pain and intensity in comparison, creating a new word trivialises the legal status. In contrast, the term "virtual sexual offence" clearly adjoins itself to its physical criminal categories (i.e. sexual assault, rape) but also recognises the virtual means.

There are multiple pieces of literature provided on what term to be used for referencing virtual sexual offences, from meta rape to unwanted virtual sexual interaction sexual or avatar sex crimes.

Sexual offences or unwanted sexual interactions are not a new phenomenon; instances of virtual sexual interactions have always existed, even before the development of virtual worlds. The world's first virtual rape occurred in a text-based virtual world called LambdaMOO, Dibbell's article described an incident in which one character (Mr Bungle) used a "voodoo doll" program¹⁹ to take control of avatars and engage in non-consensual sexual interactions. This paper, however, explains the virtual sexual offences within the metaverse, which is immersive and utilises haptic technology to mirror physical sensations as well.

The incidents of sexual offences in the proto-metaverse range from age play in Wonderland of Second Life in 2007, as highlighted by journalist Jason Farrell²⁰, wherein a paedophile-themed environment where adult avatars engaged in role-playing involving child-like avatars dressed in sexualised clothing, to virtual assault and rape the child avatar. The next notable instance of sexual offence was that of the virtual groping of Jordan Belamire in 2016 while playing QuiVr²¹, followed by the 2019 Roblox gang rape of a minor²² and the most recent gang rape of 16 years of age in Britain.²³

¹⁹ Julian Dibbell, *A Rape in Cyberspace; or, How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society*, in *Flame Wars: The Discourse of Cyberculture* 237 (Mark Dery ed., Duke Univ. Press 1994), <https://doi.org/10.1215/9780822396765-012> (last visited May 25, 2025).

²⁰ Jason Farrell, *Age Play in Wonderland: Paedophile-Themed Role-Playing in Second Life* (2007) (unattributed journalist report), as reported in Nancy Jo Sales, *A Girl Was Allegedly Raped in the Metaverse...*, *The Guardian* (Jan. 5, 2024), <https://www.theguardian.com/technology/2024/jan/05/a-girl-was-allegedly-raped-in-the-metaverse> (last visited June 13, 2025).

²¹ Jordan Belamire, *This Woman Was Sexually Assaulted in a Video Game*, *Teen Vogue* (Oct. 27, 2016), <https://www.teenvogue.com/story/woman-sexually-assaulted-in-virtual-reality> (last visited June 13, 2025).

²² Roblox 'Gang Rape' Shocks Mother, *BBC News* (July 3, 2018), <https://www.bbc.com/news/technology-44682354> (last visited June 13, 2025).

²³ Theo Farrant, *British Police Launch First Investigation into Virtual Rape in Metaverse*, *Euronews* (Jan. 4, 2024, updated Jan. 5, 2024), <https://www.euronews.com/next/2024/01/04/british-police-launch-first-investigation-into-virtual-rape-in-metaverse> (last visited June 13, 2025).

Each of the victims in the cases expressed the feeling of “shock”, “freezing”, and “actual physical touch” while being plugged into their haptic devices. The response of the victims varies, from “STOP!” to parents of the minor victims pushing for “zero tolerance” for such online behaviour. It becomes clear that the victims are physiologically impacted by the crimes in the metaverse.

Avatar embodiment and sensory realism amplify the psychological impact of virtual sexual misconduct, triggering emotional distress comparable to real-life sexual violations.²⁴

These instances raise multiple questions before the traditional framework of law.

2.3. Challenges to the Traditional Legal Framework

Virtual sexual offences, like the above-stated examples, normatively have the same effect as physical rape; it is important to first identify and recognise the differences and the challenges it poses.

1. Whether the victim consents by logging into the game.
2. Whether virtual rape could be within the normative framework of law
3. Whether the police have the right to investigate a virtual rape
4. Whether the digital trails of the acts of the avatar can be detected and identified

3. Criminalisation of Sexual Offences Within the Metaverse

While recognising the definition of virtual sexual offence as a virtual version of sexual offences in the physical world, the author intends to draw a normative justification for its criminalisation; criminal laws have evolved throughout the history of humanity from traditional criminal laws to more technology-based criminal laws. Laws have also been formulated as a precaution before the actual violation. Criminalisation is a stretch from reality; it is also important to set boundaries in the virtual world. The "magic circle" and the fantasy

²⁴ O. Radutniy, *Virtual Criminal Encroachments on Sexual Freedom or Inviolability in the Space of the Metaverse*, Info. & L. (2024), <https://discovery.researcher.life/article/virtual-criminal-encroachments-on-sexual-freedom-or-inviolability-in-the-space-of-the-metaverse/df30cc5c76de3db28b815c4a04d07bd4> (last visited Apr. 11, 2025).

element in virtual element are turning more real with the physiological impact and the violation of the concept of consent.

Ideally, the need for criminalisation occurs when the legal problem falls beyond the scope of the existing legal framework. The instances of virtual sexual offences that took place in 2007 the wonderland case, the The Jordan Belamire Case (2016) the most recent cases of Nina Patel and British case of 16 year old being gang raped in 2024 indicates the need to study and scrutinise the existing criminal law and its applicability in the metaverse.

Analysing each of the reported sexual offences cases, one can conclude that the victims experienced “shocking”. “frozon to react”, “real”, “scary” and “virtually raped”. From these experiences, we can infer the psychological impact it would have on the victims.

3.1 Psychological impact

Multiple studies have shown the effect and influence of television on viewers; the metaverse is instead a transformative technology capable of modifying what people think reality is. Avatar embodiment and sensory realism amplify the psychological impact of virtual sexual misconduct, triggering emotional distress comparable to real-life sexual violations. Not all avatars are equally empathetic or emotive; however, users are deeply rooted in their avatars in their social setting and individual identity, and individuals are affected by the interactions of their avatars in the virtual world. Victims of virtual sexual assault, like Jordan Belamire, expressed the feeling 'frozen,' panicked, and violated.²⁵

Here, an avatar can be viewed as much more than a digital proxy; they act as an agent of the user, and with haptic devices, a person is physically, emotionally and psychologically attached to their avatar. This degree of embodiment makes it appropriate to extend criminal law to crimes committed by and directed against avatars, especially in instances of virtual sexual offences. ²⁶Using Professor Margaret Jane Radin's theory of personal property as an analogy would not be out of place. This theory suggests that some types of property (e.g., wedding rings or ancestral dwellings) deserve higher legal protection because they share an

²⁵ Jordan Belamire, *My First Virtual Reality Groping*, Athena Talks, Medium (2016), available at <https://medium.com/athena-talks/my-first-virtual-reality-sexual-assault-2330410b62ee> (last visited May 25, 2025).

²⁶ Frans E. Marx, *Iniuria in Cyberspace*, 31 Obiter 1 (2010), available at <https://doi.org/10.17159/obiter.v31i1.12382> (last visited May 25, 2025).

intimate relationship with personal identity. Avatars in the metaverse can also be seen as personal extensions of self and so merit increased normative and legal attention.²⁷

3.2 Harm Theory of criminalisation

*“No society can survive if its members are free to prey upon each other”*²⁸

The criminalisation of an act is a result of wanting to control the amount of harm inflicted on society. Historically, law recognises hard harms as offences, as those that are tangible, physically inflicted pain/harm, hence form the oldest for of ‘recognised crime’ include crimes against property or violent human tendency like murder.²⁹ Apart from Hard harms, there are certain sets of other offences that the laws consider, called soft crimes.

3.3. Soft harms

Soft harms are complex types of harm that cannot be limited to a tangible or a physical context, and focus on a certain type of injury; soft crimes can be recognised due to the following

- a) morality
- b) affectivity
- c) a systemic concern with the safety of individuals or the integrity of property.

3.3.1. Morality

Social psychologist Jonathan Haidt states that immorality comes through different flavours, including loyalty to authority, fairness, harm, disgust, freedom, and sacredness.³⁰ Morality opens a wide range of subjectivity to an already confusing domain; however, if one were to

²⁷ Margaret Jane Radin, *Property and Personhood*, 34 Stan. L. Rev. 957 (1982), available at <https://doi.org/10.2307/1228541> (last visited May 25, 2025).

²⁸ Susan W. Brenner, *Toward a Criminal Law for Cyberspace: Distributed Security*, 10 B.U. J. Sci. & Tech. L. 1 (2004), available at https://ecommons.udayton.edu/law_fac_pub/99/ (last visited May 25, 2025).

²⁹ William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 Mich. L. Rev. 505 (2001), available at <https://doi.org/10.2307/1290411> (last visited May 25, 2025).

³⁰ Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (Penguin Books, London, 2013), available at <https://www.penguinrandomhouse.com/books/73535/the-righteous-mind-by-jonathan-haidt/> (last visited May 25, 2025).

look through the lens of a liberal view, we can argue that legal moralism only criminalises those immoral activities that harm others seriously, thus warranting criminalisation.³¹

Building on Rawls's reflective equilibrium method,³² which promotes coherence between our particular moral judgments and more general theoretical principles, Norman Daniels³³ suggests that moral justification demands a dynamic reconciliation among three components: considered moral judgments, general moral principles, and applicable background theories. This approach enforces a rational and developing moral perspective as opposed to blind commitment to custom.

With this context, we can reconsider the classical criminal law definition of rape, which tends to be rooted in the physical contact requirement. In the context of interactive virtual worlds, this is ever more dubious. Haptic technologies now permit users to experience touch digitally, removing the distinctions between virtual and physical interactions. Therefore, virtual sexual harassment/unwanted groping ought to be considered a sexual offence when (a) consent is not obtained, and (b) the victim feels physical sensations through haptic technology. Reflective equilibrium thereby offers a normative means of justifying revising criminal law to accommodate digital embodiment and technological reality.

3.3.2 Affectivity

The criminalisation of Non-physical harm is one of the outcomes recognised after identifying "soft harm" as a type of harm. As mentioned earlier, soft harms are also criminalised, and these types of offences do not require the physical element. The evolution of the legal recognition of the offence of stalking in the US is one such example where, despite a lack of any physical harm, the legislation was forced to recognition it as an offence due to the growing number of cases and complaints.

By way of introducing stalking as a crime. It expanded the criminalisation of harassment and focused on a "credible threat" made through willful and repeated harassment or following,

³¹ John Danaher, *The Law and Ethics of Virtual Sexual Assault* (2017), available at https://www.academia.edu/34899581/The_Law_and_Ethics_of_Virtual_Sexual_Assault (last visited May 25, 2025).

³² John Rawls, *A Theory of Justice* 20–21 (Harv. Univ. Press, Cambridge, Mass., 1971).

³³ Norman Daniels, *Wide Reflective Equilibrium and Theory Acceptance in Ethics*, 76 J. Philos. 256, 258–59 (1979)

thereby characterising stalking as an incoherent crime, with two actus rea to satisfy.

This shows that emotional harm can no longer be regarded as secondary or anticipatory but as the primary and punishable harm, establishing it as a valid actus reus. This represents a compromise: while they criminalise the infliction of affective harm, they do not predicate the imposition of criminal liability purely on self-diagnosed psychic injury.

4. Actus Reus and Mens Rea of Rape

Since the need for the criminalisation and the justification for criminalisation of virtual sexual offences is discussed in the former part of this paper, in this part, the author would like to explain the applicability of the current laws to virtual sexual offences within the metaverse. Crime can be said to be a combination of Mens Rea and actus reus³⁴ Hence, it becomes impudent to explain the applicability of current laws by addressing the elements of actus reus and Mens Rea within the legal framework.

Criminal laws are often an outcome of the physical experiences that men and women have encountered throughout history. Consequently, many, if not all, elements of criminal law focus on the physical aspects of crime.³⁵ Therefore, criminal law has a physical attribute that aims to protect or avoid. However, the physical world is no longer the only space available. People exist simultaneously physically and virtually; it would be only fair that the law recognises the experience of virtual worlds as well.

Traditionally an offence of rape requires force from the accused and lack of consent from the victim. Blackstone defines rape as “carnal knowledge of a woman forcibly and against her will.”³⁶

4.1 Historical Legal Perspective of the essential components of rape

The criminality of rape essentially is determined traditionally by the non consent and force with the former given more importance than the latter, despite the disagreement on which should be considered above the other, most commentators agree that requiring both force and

³⁴ K.D. Gaur, *Textbook on Indian Penal Code* 27–28 (6th ed., Universal Law Publ’g, New Delhi, 2016).

³⁵ Johannes Keiler, *Actus Reus and Mens Rea: The Elements of Crime and the Framework of Criminal Liability*, in *Comparative Concepts of Criminal Law* 107–20 (Johannes Keiler & David Roef eds., 3d ed., Intersentia, Cambridge/Antwerp/Chicago, 2019).

³⁶ William Blackstone, *Commentaries on the Laws of England*, vol. 4, at 210 (Clarendon Press, Oxford 1769).

non consent to be “arbitrary,”³⁷ “indefensible,”³⁸ and “redundant”,³⁹ and makes the criminal law “underinclusive in . . . protecting [women] against harm.”⁴⁰

Many commentators believe that the focus on men's rea in the case of rape only came in later, as historically, men's rea would prove actus rea. However, it is necessary to appreciate the difference, especially in the case of a virtual sexual offence, as the idea of criminality evolves from unwanted sexual interaction; however, to prove it unwanted would be difficult in comparison to an instance of physical rape.

4.1.1 The Statutes and Indian Context

Traditionally majority of rape laws focus of forced intercourse involving penetration, and for sexual assault or sexual harassment includes use of force against the will and a physical act. Most jurisdictions do not give an explicit mention to mens rea in their statutes in case of sexual offences.⁴¹ However, there are multiple exceptions in the US (Arizona,⁴² Colorado⁴³, Hawaii⁴⁴, Indiana⁴⁵, Montana⁴⁶) jurisdictions where the assailant should have knowledge of a lack of

³⁷ Donald A. Dripps, *Beyond Rape: An Essay on the Difference Between the Presence of Force and the Absence of Consent*, 92 Colum. L. Rev. 1780, 1780–1809 (1992), available at <https://www.jstor.org/stable/1123000> (last visited May 27, 2025).

³⁸ Robin West, *A Comment on Consent, Sex, and Rape*, 2 Legal Theory 233, 233–44 (1996), available at <https://www.cambridge.org/core/journals/legal-theory/article/comment-on-consent-sex-and-rape/4ED31E6DFE8FEDD2C210BF36E14E9A21> (last visited May 27, 2025).

³⁹ American Law Institute, *Model Penal Code and Commentaries (Official Draft and Revised Comments)*, Part II: § 213.1 at 280, 303 (1980), available at: <https://www.ali.org/publications/show/model-penal-code/> (last visited May 27, 2025).

⁴⁰ Joan McGregor, *Why When She Says No She Doesn't Mean Maybe and Doesn't Mean Yes: A Critical Reconstruction of Consent, Sex, and the Law*, 2 Legal Theory 175, 175–208 (1996), available at <https://doi.org/10.1017/S1352325200000483> (last visited May 27, 2025).

⁴¹ Kit Kinports, *Rape and Force: The Forgotten Mens Rea*, 4(2) Buff. Crim. L. Rev. 755, 755–99 (2001), available at <https://doi.org/10.1525/nclr.2001.4.2.755> (last visited May 27, 2025).

⁴² See *Ariz. Rev. Stat. § 13-1406* (2023), available at <https://www.azleg.gov/ars/13/01406.htm> (last visited May 27, 2025) (“A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.”).

⁴³ See *Colo. Rev. Stat. § 18-3-402* (2023), available at <https://law.justia.com/codes/colorado/2023/title-18/article-3/part-4/section-18-3-402/> (last visited May 27, 2025). Colorado law defines sexual assault as knowingly inflicting sexual intrusion or penetration on a victim under a range of circumstances including incapacity or force.

⁴⁴ See *Haw. Rev. Stat. § 707-730* (2023), available at https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0707/HRS_0707-0730.htm (last visited May 27, 2025). In Hawaii, a person commits first-degree sexual assault if they knowingly subject another to sexual penetration through “strong compulsion.”

⁴⁵ See *Ind. Code § 35-42-4-1* (2023), available at <https://iga.in.gov/laws/2023/ic/titles/35#35-42-4-1> (last visited May 27, 2025) (“a person who knowingly or intentionally has sexual intercourse with another person” or causes them to submit to other sexual conduct).

⁴⁶ See *Mont. Code Ann. § 45-5-503* (2023), available at https://leg.mt.gov/bills/mca/title_0450/chapter_0050/part_0050/section_0030/0450-0050-0050-0030.html (last visited May 27, 2025). In Montana, the law criminalizes sexual intercourse without consent and includes special provisions relating to incapacity and spousal age exemptions.

consent.⁴⁷

In the Indian context, the sections indicating sexual offences and sexual assault are laid in Chapter V of the BNS. The offences we have highlighted under this paper are virtual groping, virtual rape, and virtual stalking involving following the avatar of the player, apart from the element of “physical”, the BNS uses words like “force⁴⁸”, “inserts/penetrates,” “against her will”, “without her consent”.⁴⁹ Therefore to apply BNS to virtual sexual offences, first we need expand the interpretation of the actus and Mens Rea.

4.2. Mens Rea in case of rape

The need to analyse mens rea and its applicability to virtual worlds is important in order to establish criminal liability (identify whether the act of sexual offence was deliberate, negligent, reckless, or even unknowing due to interface misunderstanding or software glitches), if mens rea is not considered, there is a risk of criminalising consensual behaviour in online worlds. The most important reason for studying mens rea in the virtual worlds of the metaverse is not to determine what amounts to "non-consensual."

4.2.1. Consent

“Stop! I cried. I must have laughed from the embarrassment and the ridiculousness of the situation. Women, after all, are supposed to be cool and take any form of sexual harassment with a laugh. But I still told him to stop.”

This was Belamire’s reaction when a player named ‘BigBro442’ was virtually groping her. She did not plug herself into any sexual virtual space; she was only playing a game of an archer shooting down the walking dead.

It is rape in a game, could it be considered rape because not a sweat of the assailant will

⁴⁷ Ariz. Rev. Stat. § 13-1406 (2023), available at <https://www.azleg.gov/ars/13/01406.htm> (last visited May 27, 2025).

⁴⁸ See Bharatiya Nyaya Sanhita, 2023, §§ 74–76, which criminalize assault or use of criminal force against a woman with intent to outrage her modesty.

⁴⁹ See Bharatiya Nyaya Sanhita, 2023, § 63, defining rape to include penetration and insertion under coercive circumstances such as "against her will" or "without her consent."

own the body, or "Just turn your computer off"⁵⁰ or "Get off the internet".⁵¹

The evolution of the concept of consent has shifted from an explicit depiction of lack of consent to a display of affirmative consent. In a controversial case in the *Director of Public Prosecutions v. Morgan*⁵², it was held that the accused could not be convicted if he had assumed the girl's consent. Initially, the lack of consent of women was proven by her physical resistance.⁵³

In games like *Hitman*, *Assassin's Creed* or *Grand Theft Auto*, there are acts of extreme violence and even murder taking place within the game; however, since the game is about winning through killing the opposite player, here it falls within the "game plane." Fairfield argues that determining whether it should be considered an offence or not should not be on the basis of "real" and "fake" worlds, but on understanding whether the action falls beyond the scope of consent of the game. Consent can only be considered implied if the act is an expected extension of the game itself. It is essential to understand what is expected behaviour with the rules of the game and how it goes beyond the protection of "consent to the game." Fairfield⁵⁴ gives two examples that we can use for understanding this -;

1. Rules of the game- a footballer an offside football tackle is against the rules, but it is within the scope of the expected behaviour in the game. As such, injury resulting from a tackle that is only improper because it is offside is not actionable.
2. Consent to only expected behaviour- biting off a person's ear in a boxing match, the boxers only consent to what is naturally expected, like punches, hits, etc. Hence, biting would be an illegal act with legal consequences.

⁵⁰ Reddit user, 'Just Turn Your Computer off' or 'Get off the Internet' as a Response to Someone Being Cyberbullied Is a Good and Logical Advice, Reddit, https://www.reddit.com/r/TrueUnpopularOpinion/comments/just_turn_your_computer_off_or_get_off_the/ (last visited May 28, 2025).

⁵¹ Regina Lynn, *Virtual Rape Is Traumatic, but Is It a Crime?*, WIRED (May 2007), <https://www.wired.com/2007/05/virtual-rape-is-traumatic-but-is-it-a-crime/> (last visited May 28, 2025).

⁵² *Director of Public Prosecutions v. Morgan*, [1976] A.C. 182 (H.L.) (appeal taken from Eng. C.A.).

⁵³ Victor Tadros, *No Consent: A Historical Critique of the Actus Reus of Rape*, 3 *Edin. L. Rev.* 317, 317–45 (1999), <https://doi.org/10.3366/elr.1999.3.3.317> (last visited May 28, 2025).

⁵⁴ Joshua A.T. Fairfield, *The Magic Circle*, 14 *Vand. J. Ent. & Tech. L.* 545 (2012), available at https://works.bepress.com/joshua_fairfield/18/ (last visited May 28, 2025).

4.2.2. Force

In the physical world, force or threat could be proved in multiple ways by the assailant's power to overpower the victim despite resistance. To understand this, let us take the example of an Ohio case.⁵⁵ Wherein the accused appealed to the court, stating that the prosecution failed to prove that he had a culpable mental state. He rejected the appeal, stating that he used force to threaten her to submit. The court noted that he "wrapped his arms around [the victim], pinning her body underneath him," and despite her attempts to free herself, she was out power him due to age, power, size, and weight.

4.3. Actus Rea in Virtual Sexual Offences

In traditional forms of sexual offence, the question of actus rea is quite evident, but when it comes to virtual sexual offence, it becomes tricky due to the lack of physical elements. It is interesting to note that the New Jersey Supreme Court ⁵⁶ held that the statutory requirement of "physical force or coercion" could be satisfied by proof of "nonconsensual penetration Impact of criminality involving no more force than necessary to accomplish that result."

Lawrence Lessig⁵⁷ uses the example of Jake Baker ⁵⁸to state how people act in cyberspace differs from their acts in the physical space due to the laws of the physical space not being applicable in the digital world. He further draws an analogy similar to how people have to abide by different sets of laws when they move from one jurisdiction to another. Still, the difference here is that by existing in cyberspace, one removes oneself from the extent of the nation's physical laws. He rightly points out that, in both these cases, it is a form of escape from criminality because of its impact on the people.

The issue with the criminalisation of virtual sexual offences lies in the traditional legal requirement of "physical touch or contact" for recognising offences such as sexual assault and "penetration" in cases of rape. Even if these acts are acknowledged on the basis of "psychological trauma," as many scholars have proposed, a critical question remains: can

⁵⁵ State in the Interest of M.T.S., 609 A.2d 1266 (N.J. 1992).

⁵⁶ State v. Smith, 609 A.2d 1266, 1267 (N.J. 1992).

⁵⁷ Lessig, Lawrence, *Code and Other Laws of Cyberspace* (Nachdr. ed., 2000).

⁵⁸ In United States v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997), the defendant, a university student, was prosecuted under 18 U.S.C. § 875(c) for publishing a graphic fictional story describing the rape and murder of a named classmate.

virtual manifestations of sexual misconduct be prosecuted under the same legal provisions that govern their physical counterparts?

4.3.1 Manipulated Physical Sensations

The advancement of immersive technologies with haptic devices such as gloves, bodysuits, and VR controllers enables users to feel virtual interactions through sensory feedback like vibrations, pressure, and temperature, thereby manipulating the body into experiencing simulated physical contact.⁵⁹ It can be said that haptic technology manipulates the user into experiencing sensations that mimic real-life contact.

Immersive technologies have advanced to a neurotechnological level by engaging in human sensory-cognitive processes, producing experiences neurologically comparable to real-world interactions. González-Tapia presents neuroscientific evidence suggesting that users internalise virtual violations as genuine, causing trauma akin to physical abuse.⁶⁰ Analysing Meta's hardware from Quest 3 and Touch Plus controllers, we can conclude that while using haptic devices, users experience simulated touch through vibration, pressure, and motion as emotionally and psychologically impactful as in real life⁶¹. Ergo, we can say that the blurring of virtual and physical reality intensifies the perceived realism of sexual assaults, amplifying harm.

The provisions of law need to be interpreted to hold manipulated physical sensations equally liable as physical contact in the real world, since haptic-enabled immersive technology can simulate bodily violations and induce psychological trauma, as discussed earlier.

4.3.2. Biological elements in the definitions of rape

The concept of rape has undergone a profound evolution over time, transitioning from a narrow definition centered on penile-vaginal penetration to encompassing a broader array of scenarios. While the components of all the other sexual offences would be satisfied by

⁵⁹ Madeline Carter, *Exploring the Legal Implications of Haptic Technology in the Metaverse*, 9 J. Emerging Tech. L. 112, 112–127 (2023), available at <https://www.jetl.org/articles/haptic-metaverse-law> (last visited June 13, 2025).

⁶⁰ M.I. González-Tapia, *Virtual Emotions and Criminal Law*, Front. Psychol. (2023), available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2023.1260425/full> (last visited June 10, 2025).

⁶¹ Meta Platforms Inc., *Meta Quest Touch Plus Controller* (Meta 2025), available at <https://www.meta.com/quest/accessories/quest-touch-plus-controller/> (last visited June 4, 2025).

extending the scope to soft harms, virtual rape still stands out as a sore thumb without fulfilling the biological component in its definition (penetration). There is a need to shift the focus of rape from a biological to a sexual-autonomy-based approach.

Sections 63 to 73 of the Bharatiya Nyaya Sanhita (BNS) addresses the sexual offences and including rape, gang rape and some particular sexual intercourse (by man in authority by husband during separation) and section 74 to 79 deals with of Criminal Force And Assault including outraging the modesty of a women including offences like, sexual harassment, Voyeurism and Stalking.

Hepatic devices can transmit even a sexual experience hence making the effect felt on the victim similar to that of an actual rape. If someone hacks into this teledildonics or is deceived into having forced intercourse without consent, would that not lead to rape? Feminist theory suggests that consent should be kept at the core of the definition; the focus shifts from the physicality of the act to the understanding and perception of coercion and unwillingness by the victim or women in general.⁶²

In the case of *New Jersey v. Maxwell*⁶³, an accused posing as a doctor persuaded a child to engage in self-penetration on video. The court upheld that verbal coercion, even when the offender did not physically perform the act, constituted first-degree aggravated sexual assault. This case sets a clear precedent for how virtual coercion, resulting in sexual acts mediated by avatars or instruction, could be legally treated as rape or sexual assault.

5. Interpreting Existing Indian Laws

The current doctrinal framework of sexual offences cannot be applied to the virtual worlds as it is; however, expanding the scope by interpretation and inclusion could provide a reasonable remedy by shifting the focus from material intrusion to violations of autonomy and emotional integrity. While the courts sometimes do not focus on the physical contact in cases of sexual assault, it is still unclear how non-physical sexual offences are to be considered under the current legislative framework. Virtual sexual offences like virtual groping, avatar stalking,

⁶² Lorraine Code, *What Can She Know? Feminist Theory and the Construction of Knowledge* (Cornell Univ. Press 2009), <https://doi.org/10.7591/9781501702105> (last visited May 28, 2025).

⁶³ *New Jersey v. Maxwell*, 825 A.2d 1224, 1226 (N.J. Super. Ct. App. Div. 2001).

and haptic-enabled sexual penetration pose significant psychological harms that necessitate a broader legal response.

One of most straightforward approach in apply provision of rape to virtual rape is by the interpretive expansion of Section 63 of the BNS, which criminalises insertion of objects or manipulation with sexual intent. This provision, particularly clauses 63(b) and 63(c), can be meaningfully extended to include digitally simulated penetration facilitated by haptic devices, where the manipulation of the victim's virtual body results in real psychological and physical responses. The absence of tangible bodily contact should not preclude criminal liability where consent is absent and harm is evident.

Sections 74 and 75 of the BNS, relating to sexual assault and harassment, must also be interpreted purposively. Courts should recognise avatar-based contact, sensory intrusion, and manipulative sexual simulations as violations of personal autonomy, especially where technologies make such violations felt as real bodily intrusion.

This interpretive shift finds judicial endorsement in *Sakshi v. Union of India*.⁶⁴, where the Supreme Court, while criticising the differentiation of sexual penetrative offences from other sexual assaults, held that the victim's trauma has to be taken into consideration.

Further support is drawn from the 172nd Law Commission Report, which recommended the merger of rape and sexual assault into a single, gender-neutral offence, termed sexual assault. It proposed that any act of non-consensual penetration, regardless of the method, should attract the same legal consequences.⁶⁵. This proposal aligns with the growing recognition that sexual harm is defined by its impact, not its mechanics.

Nevertheless, even under Grade II offences of non-contact sexual assault, categorising these as mere "sexual harassment" (non-contact offences) under Grade III dilutes the seriousness of the violation. It overlooks the technological realism afforded by haptics. Such misclassification undermines both the victim's dignity and the law's deterrent effect.

⁶⁴ *Sakshi v. Union of India*, (2004) 5 S.C.C. 518 (India) (holding that acts such as oral sex or object penetration, though not falling under the definition of rape under § 375 IPC at the time, are equally traumatic and should not be treated as lesser offences).

⁶⁵ Law Commission of India, *172nd Report on Review of Rape Laws* (2000), available at <http://lawcommissionofindia.nic.in/rapelaws.htm> (last visited May 28, 2025).

In conclusion, Indian Law must evolve to:

- Recognise virtual sexual violations as legally cognisable offences.
- Adopt the 172nd Law Commission's recommendation to replace the fragmented sexual offence structure with a unified offence of sexual assault.
- Interpret Sections 63, 74, and 75 BNS in line to protect sexual autonomy and psychological integrity, not mere physical modesty.
- Create specific statutory guidance for haptic-enabled offences in virtual spaces.

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