



Can sexual digital violence be sexual violence?

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Abstract

This article examines whether sexual digital violence should be legally recognized as sexual violence. After examining the most frequent different forms of sexual digital violence on the Internet and social platforms, it argues that sexual digital violence satisfies the core normative and legal elements of sexual violence: absence of consent, violation of sexual autonomy and sexualized harm. Moreover, this debate leads to analyse which is the legal interest protected when sexual digital violence becomes a crime: sexual freedom, sexual liberty or sexual autonomy. The article concludes that excluding digital sexual violence as a form of sexual violence reflects an outdated physicalist conception of harm and undermines both doctrinal coherence and substantive equality.

Key words

Sexual violence, digital violence, criminal law, sexual freedom, gender stereotypes.

Resumen

Este artículo examina si la violencia sexual digital debería ser reconocida jurídicamente como una forma de violencia sexual. Tras analizar las distintas manifestaciones más frecuentes de violencia sexual digital en Internet y en las plataformas sociales, sostiene que la violencia sexual digital reúne los elementos normativos y jurídicos esenciales de la violencia sexual: la ausencia de consentimiento, la vulneración de la autonomía sexual y la producción de un daño sexualizado. Asimismo, este debate conduce a analizar cuál es el bien jurídico protegido cuando la violencia sexual digital se tipifica como delito: la libertad sexual, la indemnidad sexual o la autonomía sexual. El artículo concluye que excluir la violencia sexual digital como una forma de violencia sexual refleja una concepción únicamente física y obsoleta del daño, además de socavar tanto la coherencia doctrinal como la igualdad sustantiva.

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Palabras clave

Violencia sexual, violencia digital, derecho penal, libertad sexual, estereotipos de género.

Table of contents

1. Introduction	4
2. Gender stereotypes around sexual violence in the digital context	6
3. Defining sexual digital violence in the law	7
4. Lack of physical force and contact	11
5. Consent in digital contexts.....	12
6. Individual perpetrator and individual victim.....	13
7. Sexual autonomy as legal interest.....	15
8. Conclusion.....	16
References.....	18

1. Introduction

Historically, legal definitions of sexual violence have emphasized physical contact, force, and bodily intrusion. The legal approach to sexual violence has changed the acts considered sexual, the legal interest protected and even its criminalisation. While many jurisdictions have moved toward consent-based models of sexual offences, the conceptual core of sexual violence law remains deeply tied to physical proximity.

The emergence of the Internet in the 1970s made it possible for a growing number of people to interact continuously and simultaneously. Furthermore, from 2004 onwards, these possibilities expanded with the emergence of Web 2.0 and the development of applications and social networks (for example, Facebook in 2005, YouTube in 2005, Twitter in 2006, WhatsApp in 2009, and TikTok in 2016, among others), which enabled the sharing of all kinds of information and content, but it especially provided a new way to communicate.

Everyday activities that once took place in the analogue world have shifted to the virtual one. The digital world has become as important as the offline world since individuals get informed, communicate to each other, work, spend their spare time on Internet and have a virtual identity. In many aspects of our lives, if you are not on Internet and social platforms you do not “exist” in our societies. The development of technologies is seen as predominantly beneficial but there are also potential negative effects of these technologies, as for example, gender-based violence (Hall *et al.* 2023). In this context, violent situations against women have also undergone a process of digitalization (Marcotte and Hille 2021, 319-320). People who interact within this new digital environment are not immune to the different forms of gender-based violence that occur in the offline world; on the contrary, thanks to anonymity, these forms of gender-based violence are repeated, reproduced, or new ones are created, all of which have their roots in gender inequality, stereotypes, and socially imposed gender roles.

This is an example of how gender-based violence is a dynamic phenomenon that adapts to different historical and cultural moments. Consequently, although the Internet can become a very powerful tool for promoting gender equality, it can also become an equally powerful tool for exercising gender-based violence (Killeen *et al.* 2022, Igareda 2026). This digital violence knows no bounds and as technology advances, new ways are found to intrude upon women’s autonomy and privacy (McGlynn 2024, 190).

Gendered relationships continue to be reproduced on the Internet, where structures of domination are perpetuated. As a result, different types of violence are exercised, first against women and subsequently against any person, regardless of sex, who does not conform to socially imposed heteronormative standards. This digital violence with gender roots is generally named as gender cyberviolence. There is a multiplicity of forms of gender cyberviolence, some of them based on images such as the colloquially termed “revenge pornography”, “upskirting”, “downblousing”, deepfake pornography, sexual spycamming, cyberflashing, online child sexual abuse, sex trafficking, commercial sex exploitation or online pornography, among others (Hall *et al.* 2023, 327). The list of forms of digital violence and the different terms they receive is endless and is continually changing and adapting to the new technological possibilities.

All these different forms of gender cyberviolence obviously do not involve the use of physical force; rather, in these cases the concept of violence goes beyond physical harm and includes situations in which the aggressor maintains a position of power over the victim and exercises this power from an authority (Igareda 2026,11). In considering gender cyberviolence a form of gender-based violence, emphasis is placed clearly on gendered power, control, and the intention to harm that are exerted and reproduced structurally and interpersonally (Hall *et al.* 2023, 329).

Moreover, the consequences of such gender cyberviolence are sometimes worse than those of physical gender-based violence, as they entail serious violations of the victims' fundamental rights (not only their physical and moral integrity). In some ways, gender-based cyberviolence is very similar to psychological gender-based violence, which, without physical contact, has devastating consequences for victims' lives. The consequences in the victims of gender cyberviolence may be psychological (anxiety, depression, hypervigilance states, and even suicidal thoughts), physical (eating and sleeping disorders, difficulties to concentrate, work and/or study), social (isolation from friends and family), and economic (professional negative consequences, workplace absenteeism) (Igareda 2025). These consequences impact on individual women but also on women as a group, who not only learn that the physical world is saturated with violence against women but also that the digital world is too (Hall *et al.* 2026, 90).

It is also worth noting the possible divergence between violence as legally recognized (generally by the criminal legislation) and violence as socially understood. From a criminal law perspective, violence refers to the exercise of physical force, while psychological violence refers to intimidation. However, socially speaking, behaviours that are not considered legally severe enough to qualify as violence are often still understood and experienced as forms of violence (Lloria 2020).

One form of gender-based violence is sexual violence, understood as any sexual act, attempt to obtain a sexual act, or behaviour directed against a person's sexuality without their freely given and informed consent. Even when sexual offences are defined in neutral legal terms (i.e., they can apply to any victim regardless of gender), sexual violence is widely recognized as a form of gender-based violence because, first of all, it is rooted in broader systems of inequality and power imbalance, especially those historically affecting women and girls. Secondly, it is considered a form of gender-based violence because of its disproportionate impact since women and girls are the majority of victims, while perpetrators are overwhelmingly men. Thirdly, the social and cultural norms about gender roles and sexuality contribute to the persistence of sexual violence. And finally, sexual violence is often used as a tool to assert power, control, or punishment.

The most severe forms of sexual violence have been considered crimes against sexual freedom or sexual autonomy, and they have been generally categorised as sexual abuse, sexual assault and rape. Sexual abuse was usually used as a broad term that refers to any unwanted sexual activity where someone is coerced, manipulated, or unable to give consent. Sexual assault usually referred to any non-consensual sexual contact or behaviour, typically involving physical contact. Rape is a specific and more narrowly defined form of sexual assault, involving non-consensual penetration (vaginal, anal, or oral).

Defining sexual conduct when talking about sexual violence is already a challenge. It is necessary to consider the objective cultural rules and the intention of the perpetrator, and still, not all sexual acts are relevant to the law, but only those acts that represent a severe violation of the sexual autonomy of the victim (Corrêa and Renzikowski 2021, 148). Therefore, a sexual conduct can be defined as a sexual behaviour according to the specific historical moment and culture, carried out by the actor in a conscious way to obtain sexual pleasure (Corrêa and Renzikowski 2021, 161). The offline sexual violence and the online sexual violence share the same objectives to obtain sexual pleasure and to control women's bodies and lives. Sexual cyberviolence has become so generalised and normalised nowadays that has made sexual violence a characteristic of the digital context.

This article addresses the central legal question that follows: can sexual digital violence be considered sexual violence by the law? If so, should be regulated only as a crime in the criminal legislation, together with the traditional categories of sexual offences? To answer these questions, this article adopts a combined methodological framework using the feminist jurisprudence and the sociology of law. The feminist jurisprudence enables a critical examination of the neutral construction of sexual offences and the gendered assumptions embedded in key legal concepts. Feminist jurisprudence is not just a perspective about women; it is a method of legal analysis that examines how law is shaped by—and can reproduce—power relations, particularly gendered ones (Bartlett 1990). The sociology of law situates these norms within their social context, allowing for an analysis of how legal definitions of sexual violence are interpreted, applied, and experienced in practice. The sociology of law studies not only what the law says but also how it functions in practice, something of utmost importance in a dynamic digital context (Díaz 1991, 60-70). The combination of both methodologies will lead us to the analysis of legal norms, case law, as well as the most important legal doctrine on sexual violence and digital sexual violence.

2. Gender stereotypes around sexual violence in the digital context

Legal scholarship on sexual violence has showed the impact of gender stereotypes on offline sexual violence (Cornell 1995; Acale 2019 among many others). These stereotypes do not only apply to the legal definitions of sexual violence, for example, those that focus its severity on sexual acts involving penetration and that have come to be considered phallogentric. They also apply to the concept of the “ideal victim” of sexual violence: a woman who has not consumed alcohol or drugs, who has not had prior sexual or romantic relationships with the aggressor, who has not exposed herself to risk, and who, once the sexual assault has occurred, reports it quickly and in a state of great distress. Victims of sexual violence that may deviate from this idealisation could be blamed for what happened. Likely, these gender stereotypes also shape an “ideal” perpetrator as someone unknown, old, definitively a male monster.

These gender stereotypes also reflect dominant ideas about male and female sexuality in our societies, portraying men as having a stronger sexual desire, with a more impulsive drive that is sometimes difficult to control—an idea that can end up justifying or excusing certain acts of sexual violence. In contrast, a stereotypical view of female sexuality prevails, depicting it as characterized by lower sexual desire and as more passive and dependent on male initiative (Lonsway and Fitzgerald 1994).

These gender stereotypes about sexual violence have an impact on the application and interpretation of the laws addressing these crimes: in most cases, the only evidence available is the victim's testimony, and it is often considered insufficient to rebut the presumption of innocence because her credibility is questioned. Women are suspected of filing false reports of sexual violence for ulterior motives—revenge, financial gain, and so on. Doubts about the credibility of their testimony are rooted in broader stereotypes portraying women as generally unreliable, fickle, or manipulative (Larrauri 2022, 152).

The impact of these gender stereotypes on sexual violence has been replicated and augmented in the digital context and have shaped the consequences of sexual digital violence (Killiean *et al.* 2022). Regarding the ideal victim, the lack of physical contact and the invisibility of the bodies in the sexual digital violence prevent from taking seriously the harm suffered by the victims of sexual digital violence. Moreover, the ideal victim is expected to be someone very young that deserves protection. In this sense, the younger the victim, the greater the blame placed on the perpetrator. It is common in our societies the moral panics around youth sexuality and the need to protect the innocence of children, being the ideal victim of digital sexual violence someone young and naïve requiring protection from sexual predators (Killiean *et al.* 2022, 877). This young ideal victim excludes the possibility of adult women as victims of sexual digital violence or the possibility to find young individuals as perpetrators.

These prejudices about the victim of sexual violence applied when other sources of disadvantage and oppression are invisible in the digital context. It has been demonstrated that individuals from ethnic minorities and members of the LGBTIQ+ community are more susceptible to digital sexual violence, although less likely to report (Henry and Powell 2018).

Thus, the “ideal victim” of sexual violence is assumed to have suffered “real” violence. As criticised largely by feminist scholars, sexual violence fits better in a definition of the “continuum” of gender-based violence (Kelly 1988). The same stereotype of the ideal victim of sexual violence suffering from physical violence also applies to victims of digital sexual violence. Consequently, some forms of sexual digital violence as for example cyberflashing have been normalised and framed as “routine and unavoidable”, or other forms as sexual deepfakes have been dismissed as causing insufficient harm to justify criminalisation (Killiean *et al.* 2020, 878).

It has also been demonstrated that victims who do not conform to the “ideal victim” prototype are often blamed for the sexual violence they had suffered. The same applies to victims of digital sexual violence when the digital attacks involve the use of images initially consented by the victims that they can find themselves framed as culpable or partially responsible when the sexualised image is later on shared without their consent. Therefore, on many occasions digital sexual violence is explained after the victim's behaviour or acts on Internet and social platforms (Igareda 2026).

3. Defining sexual digital violence in the law

Sexual digital violence refers to sexualized conduct facilitated by digital technologies that violates an individual's sexual autonomy or dignity. It may include a variety of forms: from non-consensual creation or dissemination of intimate images, sexualized

cyber harassment and threats, digital sexual coercion and extortion, forced exposure to sexual contents, or even, AI-generated sexual deepfakes. This list and it has explained with the names is not exhaustive, and the different forms of sexual digital violence are rapidly changing and increasing.

As noted before, the different forms of digital sexual violence receive very different names and they are not formally recognised within the law as sexual violence, but they still produce longer-term psychological and physical harms for the victims (McGlynn *et al.* 2020). Some countries have implemented laws to react in front of certain forms of gender cyberviolence but there is still a significant number of countries that do not have legislation in place for the prevention and prosecution for digital violence. Even when countries have specific laws, the transnational nature of these violences make prosecutions challenging (Hall *et al.* 2023, 333).

When these countries criminalize certain aspects of this sexual digital violence, they normally fall under different crimes and pieces of legislation, for example as non-consensual sharing of intimate images,² sextortion (sexual blackmail),³ deepfakes with sexual content,⁴ cybersexual harassment,⁵ cyberflashing⁶ among many other forms. In all these cases, those crimes do not represent a violation of sexual freedom or sexual autonomy and do not appear together with the traditional sexual offences, such as sexual assault, sexual abuse and rape.

Sometimes other forms of sexual digital violence may be considered an administrative or labour infringement. This fragmentation obscures the sexual nature of the harm they provoke, and it even prevents from recognising it as a form of violence (Henry and Powell 2016, 2018).

Those legal efforts to address these new forms of gender-based violence taking place on the digital context, including sexual ones, have mean first, trying to fit women's experiences into existing legal categories. But the criminal law has not been created, amended, or interpreted with women's experiences as one of the guiding principles, and women and girls find themselves with the burden of trying to name their harms and experiences within the existing legal categories (McGlynn 2024). Other times, they face terminology adopted to describe their experiences under problematic terms as "revenge porn" or the "cum tributes" where men ejaculate onto images of women and share them on the Internet (McGlynn 2024, 191), that not only hide the gender explanation and impact of those acts, but result even a form of revictimization.

Still, many legal frameworks always consider a crime when an illegal behaviour includes the use or the exercise of violence. In these cases, the interpretation of violence includes a notion of physical violence and some sort of physical contact from the perpetrator to the victim. For example, French criminal law traditionally linked violence to physical

² This is the case of article 197.7 of the Spanish Criminal Code; the English Criminal Justice and Courts Act 2015, Section 33; Article 226-2-1 of the French Criminal Code;

³ This if the case of Article 197.7 of the Spanish Criminal Code; StGB §253 of the German Criminal Code;

⁴ This is the case of Article 226-8-1 of the French Criminal Code; the English and Wales Online Safety Act 2023.

⁵ This is the case of Article 172 ter of the Spanish Criminal Code; StGB §238 of the German Criminal Code; article 222-33-2-2 of the French Criminal Code

⁶ This is the case of the English and Wales Online Safety Act 2023.

acts causing or attempting bodily harm. The French Criminal Code defines “violences” broadly, but case law has been historically focused on physical force and bodily contact or injury. German criminal law historically conceptualized violence as physical force used against a victim. For instance, in the crime of robbery (§249 StGB), violence requires physical force or threat of immediate bodily harm. Under English criminal law violence is generally interpreted as physical force applied to another person.

In the virtual context, this classical notion of violence does not work any longer, since the use or exercise of physical violence is unknown and irrelevant to the harm caused and the protection of the legal interest at stake, and moreover, it is impossible to have physical contact between the perpetrator and the victim. On top of that, when sexual violence is defined across criminal law systems, they normally require a sexual conduct, lack of consent, an attack to the sexual freedom or autonomy of the victim and a severe harm or risk of harm.

Lately, legal reforms have increasingly emphasized the elements of autonomy and consent rather than physical force when criminalising sexual violence (Burgin 2019). For example, in Sweden, the consent-based rape law (the *samtyckeslagen*) in 2018⁷ defined rape and sexual offences as sex without consent even if there is no physical force, violence or threats. Silence, passivity or an inability to resist are not considered consent. In Netherlands, the Sexual Crimes Act passed in 2024⁸ introduced consent as key element and the requirement to prove physical force, coercion or threat was removed. In Denmark, the amendment to the Danish Penal Code that entered into force the 1 January 2021⁹ made the lack of consent central to the definition of sexual crimes rather than just by violence, threat, or inability to resist. In Finland, the chapter 20 of the Criminal Code on sexual offences reformed in January 2023 changed the definition of rape to the voluntary participation and sexual self-determination, eliminating force as an essential element.¹⁰ In Spain, the Organic Law 10/2022, on integral guarantee of the sexual freedom deleted the distinction between sexual abuse and sexual assault, making consent the core criterion for sexual violence crimes. In France, the Law promulgated 6 November 2025¹¹ changed the criminal definition of rape and sexual assault to define these offences as any non-consensual sexual act, with consent explicitly defined as free, informed, specific, prior, and revocable, replacing the older focus on violence, coercion, threat or surprise. In all these cases, the legal reforms were done mostly following the obligations of these countries under the Council of Europe Convention on preventing and combating violence against women and domestic violence (known as “the Istanbul Convention”), adopted in 2011 and entered into force in 2014. The Istanbul Convention obliges the State parties to adopt the definition of sexual violence contained in its article 36 about Sexual violence, including rape.

Consequently, physical contact is not a necessary condition for sexual violence anymore. Courts and legislatures have recognized sexual violence in cases involving sexual threats

⁷ The Consent Law were two statutory amendments to the Swedish Penal Code (SFS 2018:601 and SFS 2018:618), which came into effect on 1 July 2018.

⁸ *Wet seksuele misdrijven* (Sexual Offences Act) was adopted as a comprehensive revision of Dutch sexual offences legislation and came into effect on 1 July 2024.

⁹ Amendment of *Straffeloven* § 216 and § 228.

¹⁰ *Laki rikoslain muuttamisesta* 723/2022.

¹¹ Law No. 2025-1057 of November 6, 2025, J. O. Nov. 7, 2025, Rape and Sexual Assault Law.

or sexual humiliation. However, some countries' laws still retain references to force or other factors as aggravating circumstances, even if consent is now the defining legal element. These legal changes do not mean that violence is legally irrelevant. Violence is still an aggravating factor in most legislations, while absence of consent itself is sufficient to constitute the crime of sexual violence.

Nevertheless, these legal changes have not fully facilitated the recognition of digital sexual violence as a form of sexual violence as traditionally defined in most criminal codes, and as mentioned before, they do not appear in the same chapter or aligned with sexual assault, sexual abuse or rape. Sexual digital violence fulfils the definition of sexual violence contained in article 36.1.b) of the Istanbul convention when says: "engaging in other non-consensual acts of a sexual nature with a person", and the inexistence of physical force or the lack of physical contact should not be an obstacle for its consideration as a form of sexual violence.

As the GREVIO General Recommendation No. 1 on the digital dimension of violence against women affirms, the digital dimension of violence against women encompasses a wide range of behaviour that falls under the definition of violence against women set out in Article 3a of the Istanbul Convention.

Certainly, there are some legal tools that explicitly recognised sexual digital violence as a form of sexual violence, even if these recognitions have not produced a coherent change in the traditional sexual offences. For instance, the Directive (EU) 2024/1385 on combating violence against women and domestic violence defines non-consensual sharing of intimate images in article 5.1.a); non-consensual creation and distribution of sexually explicit deepfakes in article 5.1.b); Cyber harassment and cyberstalking in articles 6–7; Online incitement to violence or hatred based on gender in article 8. Likely, the United Kingdom Online Safety Act 2023 and Sexual Offences Act 2003 classifies image-based sexual abuse explicitly linked to sexual offending. In France, the image-based sexual abuse in Article 226-2-1 of the French Criminal Code is part of sexual violence against dignity and sexual autonomy. In Spain the Organic Law 10/2022, of 6 September, on the Comprehensive Guarantee of Sexual Freedom, recognizes digital violence as sexual violence, although this does not affect how it is classified under the Criminal Code.

Yet, many scholars still think (among others: Muñoz Conde 1990, 267, Orts Berenguer 2008, 213, Morales Prats and García Alberó 2016, 1269-1299) that these forms of gender cyberviolence cannot be considered a form of sexual violence for several reasons. First, because these forms of gender cyberviolence lack physical contact. Secondly, because the legal doctrine generally maintains a very strict understanding of sexual relationships very much limited to heterosexual intercourse even though if nowadays Internet has opened the possibility to virtual sex and new forms of sexual and affective relations. Physical contact or the part of the body touched loses its previous importance when dealing with sexual offences (Acale 2019, 188). Thirdly, because there are many doubts about the possibility to prove the lack of consent in a digital context, and therefore, to fulfil the most prevalent definitions of sexual violence of the criminal codes. Fourth, because many forms of sexual cyberviolence take place anonymously or it is impossible to identify an individual perpetrator. This clashes with the traditional requirements of the criminal law that demand an individual perpetrator and individual victim to be

categorised as a sexual offence. And finally, there is a lack of consensus about a real harm to the legal interest protected in these crimes.

On top of that, in the scarce occasions that gender cyberviolence has been object to regulations, the role of the law addressing gender cyberviolence has been criticized by some legal scholars, since they think the law has over-regulated consensual digital sexual communications, particularly among young people, but it has not provided a response to the harm that is experienced by victims of non-consensual making and/or distribution of sexual images (Killeen *et al.* 2022, 873).

4. Lack of physical force and contact

As previously pointed out, a common legal objection to recognizing sexual digital violence as sexual violence is the absence of physical injury. This objection rests on a narrow, physicalist conception of harm. However, criminal law has long recognized psychological, emotional, and dignitary harms as legally cognizable. From a legal criminal perspective, violence is understood as the use of physical violence and psychological violence as the use of intimidation.

Empirical studies show that victims of the different forms of gender cyberviolence experience anxiety, depression, social withdrawal, reputational damage, economic loss and even in some severe cases suicidal thoughts (McGlynn *et al.* 2020; Igareda 2025, 2026 among others). These harms closely mirror those experienced by survivors of offline sexual violence and consequently, the distinction between “physical” and “digital” harm is therefore irrelevant.

The reluctance to classify sexual digital violence as sexual violence reflects what may be described as legal physicalism: the assumption that serious criminal harm must involve bodily interference. This view has roots in classical liberal philosophy, where harm is often equated with physical injury or constraint (Feinberg 1984). Contemporary legal philosophy challenges this assumption by understanding that harm is increasingly understood to include violations of autonomy, dignity, and agency (Raz 1988, MacKinnon 1993, Cornell 1995). The absence of physical contact does not diminish the moral gravity of the violation (Nussbaum 2010).

Despite the traditional legal scholars that demand a physical contact to admit sexual violence, following strictly the general principles of the criminal law as the principle of taxativity (principle of strict legality / specificity) or the principle of minimum intervention, some legislation and case law also challenge this restricted interpretation of sexual violence. It is gradually admitted the possibility to consider some forms of digital violence as sexual violence, even if this new legal approach does not have an explicit impact on the sexual offences contained in the Criminal Codes as exposed before. Examples of legislations recognising some forms of digital as sexual violence are the European Union Directive on combating violence against women and domestic violence, the Spanish Organic Law 10/2022 on the Comprehensive Guarantee of Sexual Freedom, or the Criminal Justice and Courts Act 2015 (England and Wales) among others. Examples of case law admitting some forms of digital violence as sexual violence are the Spanish Supreme Court STS 70/2020 that confirmed that non-consensual dissemination of intimate images is a violation of sexual freedom and dignity, not just privacy; or the

cases *Volodina v. Russia* (No. 41261/17, 2021) and *Buturugă v. Romania* (No. 56867/15, 2020) of the European Court of Human Rights.

5. Consent in digital contexts

Digital sexual violence presents significant challenges to traditional understandings of consent. Consent in cases of sexual violence in the offline world has been object of an intense debate in most legislation and jurisprudence. Some Western jurisdictions have maintained the “No Means No model” (Resistance-Based Model) where consent is assumed unless the person clearly refuses (verbally or physically). This is the case of Germany that reformed Section 177 of its Criminal Code through the 2016 Act to Improve Protection of Sexual Self-Determination, establishing that acting “against the recognizable will” of another person constitutes sexual assault; or Austria that amended its Criminal Code to punish sexual acts committed against a person’s expressed will.

Some other jurisdictions have opted for the “Yes Means Yes model” (Affirmative Consent Model) where consent must be actively communicated or could also be interpreted as positive from the behaviour and context of the relation. This is the case of Sweden that amended Chapter 6 of the Swedish Criminal Code in 2018, defining rape based on lack of voluntary participation; Greece that revised in 2019 Article 336 of its Penal Code to focus rape on absence of consent; Denmark that amended in 2020 the Criminal Code to require voluntary participation; Slovenia that amended Article 170 of its Criminal Code in 2021 to base rape on lack of consent; Spain that enacted Organic Law 10/2022 of 6 September defining sexual assault as any act without consent; and Belgium reformed its Criminal Code in 2022, explicitly defining consent as freely given and clarifying that silence does not constitute consent.

The debate around consent in sexual offences gets even worse in the digital context. One central problem is the assumption of consent since in digital environments, consent is often treated as implicit or permanent. For example, when someone shares intimate images or videos to someone, one may understand there is an implicit consent to save, share and send these materials to other people (McGlynn and Rackley 2017). However, consent must be specific and limited to each action.

A second problem could be that consent has been obtained under coercion. The communications through Internet and social platforms may be easily corrupted with manipulations or threats. Consequently, consent obtained through fear or coercion cannot be considered valid (Henry and Powell 2018, 196).

Thirdly, we may face power imbalances that further complicate consent in these cases. Relationships involving disparities in age, authority, or social and economic dependence can significantly constrain an individual’s capacity to refuse sexual requests. Here, even if consent seems to be freely given, underlying inequalities may render it compromised.

A fourth problem is the possibility to withdraw consent. In the offline context this is easily understood, but in the digital context it is very difficult, and sometimes impossible to withdraw that consent, because if the victim of sexual violence has shared intimate images or videos of herself, she or he has lost the property and the control of her own image (McGlynn and Rackley 2017, 540).

A fifth problem is that in some cases there has been a previous consent, for instance, to make public your own image on the digital context with your voluntary publication of your pictures or videos. But then those images are for example used to create deepfakes with sexual content that you obviously did not consent when you made your image public on Internet.

The anonymity of the digital world represents an additional problem to define consent. Anonymity has been traditionally understood as an advantage in the digital world but in the field of gender cyberviolence it has been proved to become a major risk, since it decreased the possibilities to identify the authors, it dismissed the accountability of their attacks, and therefore, it contributes to the normalization of non-consensual sexual practices online. Gender stereotypes also represent a challenge for the role played by consent in cases of sexual violence. Myths and stereotypes about women around sexual violence in general also apply in the digital context as explained before: women are blamed for their actions and the risks undertaken when interacting on Internet or social platforms. They are frequently questioned about the images or videos they publish on Internet, the sexualised images they share through digital channels and so (Henry and Powell 2018). As it happens in offline sexual violence, this put the focus on the victims rather than the perpetrators

Addressing all these challenges requires recognizing consent as explicit, freely given, informed, ongoing, and revocable across both online and offline contexts (McGlynn and Rackley 2017). Traditional definitions of sexual consent were fixed as a freely given verbal or nonverbal communication of a feeling of willingness to engage in sexual activity. This definition recognised both the internal (willingness) and external (communication) aspects of consent (Marcotte and Hill 2021). Wanting or not wanting to engage in sex can influence decisions about consenting or not consenting, but they are completely different categories that the Law should not care about (Maqueda 2024).

However, this clear distinction in offline context gets blurred in the online context where there could be a time difference between consent and wanting. Consent given at one time does not constitute consent for all time. But in the digital space it is essential to understand consent at a particular moment in the context of a digital infinity. One individual may have given consent to have sex with other, but this consent does not continue in time when a picture or a video of that sexual relationship has been shared on Internet. As Marcotte and Hill said, “[t]herefore, it is important to conceptualise and discuss consent as an ongoing negotiation in which partners are continuously checking in with each other (...) Sexual consent must be understood as an ongoing, iterative process beyond the consent given (or not) during the initial event” (2021, 328).

6. Individual perpetrator and individual victim

Digital sexual violence is a private and public problem at the same time. It is private since there are individual victims that suffer this sexual cyberviolence in their daily lives, but it is also public since sexual violence carries a stigma and a taboo in our societies, as everything related to sex and everyone’s sexuality.

As pointed before the legal approach to sexual violence has been traditionally from the criminal law. Criminal law addresses conflict between individuals when a crime has taken place, but sexual violence is a structural problem, nor only a conflict of one

individual against other. In this sense, consequences and harms produced by each form of sexual violence are not only individual, to just one person, but are collective at the same time, since sexual violence is sending a message to all women in society of what can happen to them if they trespass the gender norms. Similarly, digital sexual violence is an attack to the individual victim and a damage to all women participating in the digital world. Therefore, criminal legislation is not prepared nor designed to capture the gendered harms resulting from the sexual digital violence (Henry and Powell 2016, 403).

Neither civil or criminal laws adequately protect or provide a remedy for victims of sexual digital violence. First, the costs associated with civil litigation may be unaffordable for an average victim who may not have the financial means to bring civil action under existing laws. Secondly, because the existing criminal offences that are not specific to digital sexual violence do not capture these attacks or provide an effective deterrent against these behaviours. Finally, most existing civil or criminal laws are unable to stop the effects of the sexual violence once they have taken place on Internet or social platforms, because they rarely include the obligation to delete these violent contents from the virtual space (Henry and Powell 2016, 404).

If the legislation addresses specifically the sexual digital violence, it presents certain advantages. It sends a signal to the community that are not acceptable in our societies and deserve to be punished accordingly and the blame will move from the victim to the perpetrator or perpetrators (Henry and Powell 2016, 410).

The law must understand sexual digital violence not as an isolated event in the life of the victim. They are manifestations of a systematic pattern of discrimination anchored in the patriarchal society. Therefore, their effects cannot be changed by individuals, and it is necessary the intervention of the law to remove or change those structures that permit, reproduce and perpetuate the sexual digital violence in the virtual world.

Furthermore, the technological tools have changed the experience of sexual violence in something much more public (smartphones with cameras, the social platforms, the creation of contents, etc.). Internet has also contributed to the image of women as sexual objects reduced to bodies or part of bodies. This reinforces the collective and social dimension of the digital sexual violence and distances from the conception as an individual problem of the victim.

The digital sexual violence also presents some differences regarding the common perpetrator of sexual violence. Traditionally, sexual violence is understood as a crime where there is one victim and one perpetrator, and the criminal law intervenes as solving a conflict between two individuals. Lately, criminal law and criminology are paying certain attention to the specific characteristics of gang sexual assaults where more than one perpetrator may be involved (Barcons 2025). But digital sexual violence may introduce a new challenge, when perpetrators are an undetermined and anonymous number of individuals that sexually attack their victims on Internet (the so-called cybermobs), and there is not any possibility for the law to identify a clear and individual perpetrator of that form of digital sexual violence to ask for responsibilities.

Some authors as for example McGlynn (2024, 192) propose a completely different legal approach to all these forms of gender-based violence under a new criminal offence of "intimate intrusions". She follows Betsy Stanko (1985) initial proposal who argued that

the variety of ways in which women experience harm and abuse could be understood as intimate intrusions. Stanko identified the everyday experiences of harassment, violence and abuse that women endure as an invasion of the self and a violation of her sexual and physical autonomy (Stanko 1985, 9). Intimate intrusions could be “an umbrella term which describes and conceptualises the range of women’s experiences of harm and abuse. It seeks to provide terminology to describe the seemingly infinite variety of ways that abuse is perpetrated without the need to provide a distinct label for each and every different form of harm” (MacGlynn 2024, 195). That has been the example of some countries as for example Sweden, with a more general offence that will capture sexual intrusions. The aim of this offence is to protect “sexual integrity” and sexual self-determination. Bridget Harris and Laura Vitis have adopted this term to name the “online intrusions” and “digital intrusions”, referring to the changing online abuse and harassment women experience in the digital context (Harris and Vitis 2020, 330).

7. Sexual autonomy as legal interest

The legal interest at stake in the cases of sexual violence is not so clear as it may appear at first. Whether the legal interest is sexual freedom, sexual liberty or sexual autonomy has important consequences. Sexual liberty can be defined as the legally protected interest that guarantees an individual’s autonomous capacity to freely decide whether, when, how, and with whom to engage in sexual activity, based on valid consent. Sexual integrity generally refers to the legal protection of an individual’s bodily and psychological wholeness against unwanted sexual interference. It focuses on safeguarding the person from any form of sexual intrusion, whether physical or non-physical, that compromises their bodily autonomy or psychological stability. Meanwhile sexual autonomy is normally used to recognise the individual’s right to independently govern their sexual life according to personal choice, identity, and consent. It encompasses both the freedom to engage in sexual activity and the freedom to abstain, free from coercion, pressure, or exploitation.

The historical evolution of the legal interest protected under the crimes of sexual violence is important for this analysis. Most Western legal frameworks were initially protecting public morality, decency, family order, honesty or honour when criminalising some forms of sexual violence. Today, the prevailing view in most jurisdictions is that sexual offences protect sexual freedom or sexual autonomy. But still, we may find some interesting differences, in common law jurisdictions (e.g., United Kingdom, Canada, Australia, and some territories of the United States), where the protected legal interest is often articulated as sexual integrity, bodily integrity or personal autonomy.

The historical focus given to vaginal penetration—deeply related with the risk and social control of unwanted pregnancy—contributed to the consolidation of a distinctly phallogentric and androcentric model in the legal regulation of sexual offences. This framework, shaped by heteronormative assumptions and reproductive concerns, privileged this phallogentric understanding of sexual violence as the paradigmatic harm against sexual autonomy. This historical understanding makes still today very difficult the recognition of sexual digital violence as a form of sexual violence.

Although subsequent legislative reforms expanded this view including for example, anal and oral penetration, as well as penetration by other body parts or by objects

functionally equivalent to the penis, these legal changes have not modified the legal paradigm. Rather, the legal discourse has shifted from an exclusive focus on the penis to a broader but still genitalized conception of sexual harm. In doing so, the criminal law continues to structure offences against sexual autonomy around penetrative and genital contact, thereby establishing a hierarchy of sexual acts (Acale 2019).

But nowadays, autonomy-based theories of criminal law identify sexual self-determination as the core legal interest protected by the sexual violence crimes. The regulations on sexual violence that opted for the “Yes Means Yes model” (affirmative consent) were not dealing with sexuality but also with violence, understood as the attack to the decision making of the victim (Maqueda 2024, 292-300). The violence exists when there is not consent and it is not necessary to have threats, intimidation or any other element to attacks the sexual freedom of the victim (Pitch 2003, 209-215).

On this view, sexual violence is wrongful because it negates an individual’s capacity to make meaningful choices about sexual choices. Sexual autonomy will compromise in certain way sexual freedom and sexual autonomy. In this sense, in civil law legal systems (e.g., Germany, Spain, Italy) the legal interest is sexual freedom, although in some constitutional frameworks, sexual offences are grounded in broader values such as human dignity, personal integrity, physical and psychological integrity and equality. This is the approach for example of the German constitutional doctrine (Art. 1 GG on human dignity).

Sexual digital violence breaches the legal interest of sexual autonomy. By imposing sexual exposure or exploitation without consent, the perpetrator reduces the victim to an object of sexual use. The digital medium is morally irrelevant; what matters is the coercive denial of agency. Accordingly, autonomy-based legal philosophy strongly supports the inclusion of sexual digital violence within the legal category of sexual violence (Powell and Henry 2017, Igareda 2026). Therefore, some forms of sexual cyberviolence defined in the legislations without recognising them as forms of sexual violence represent good examples of how the legal interest protected should be also the sexual autonomy of the individuals.

8. Conclusion

This article has examined whether sexual digital violence can and should be recognized as sexual violence within contemporary legal frameworks. The analysis demonstrates that the traditional reluctance to classify digital sexual violence as real “sexual violence” rests on conceptual assumptions that are no longer sustainable. Historically, criminal law has tied sexual violence to physical force, bodily intrusion, and proximity. Yet, modern reforms, particularly those inspired by consent-based models have shifted the focus from physical violence to the protection of sexual autonomy. Once consent, rather than force, becomes the defining element of sexual violence, the absence of physical contact in digital contexts ceases to be a decisive objection.

Gender stereotypes further distort both legal interpretation and social perception. The “ideal victim” paradigm as someone young, naïve, physically attacked places digital victims less credible or less harmed. When victims previously consented to image creation, they are often blamed for subsequent non-consensual dissemination. Such narratives replicate long-standing myths about female sexuality and responsibility.

Recognizing sexual digital violence as sexual violence challenges these stereotypes by shifting the focus from victims' behaviour to perpetrators' violations of autonomy.

The different forms of sexual digital violence clearly violate sexual autonomy. The harm it produces is not insignificant or minor. Empirical research consistently shows severe psychological, social, professional, and even physical consequences for victims. The distinction between offline and online harm is therefore legally irrelevant. What is attacked in both contexts is the individual's capacity to decide freely about their sexual exposure, identity, and interactions. The digital medium alters the mechanism of harm, but not its nature.

The persistence of legal physicalism, the belief that serious criminal harm must involve bodily interference explains much of the resistance to recognizing sexual digital violence as sexual violence. However, contemporary criminal law already acknowledges psychological coercion, intimidation, and violations of dignity as legally cognizable harms. Autonomy-based theories of sexual offences reinforce this shift: sexual violence is wrongful because it negates meaningful sexual self-determination. By imposing unwanted sexual exposure or exploitation, it reduces the victim to an object of sexual use, thereby undermining agency and control.

Consent emerges as the central analytical category. Yet digital environments expose the fragility of traditional consent models. Consent online is often assumed to be implicit and permanent, assumptions that contradict established legal principles. Consent must be specific, informed, freely given, ongoing, and revocable. The temporal and technological dynamics of digital spaces where content can be endlessly reproduced and redistributed, intensify the consequences of non-consensual acts and complicate withdrawal. Nonetheless, these complexities do not justify excluding digital abuses from the scope of sexual violence; rather, they demand a more refined and context-sensitive understanding of consent.

Another major challenge concerns the structure of perpetration. Criminal law is traditionally oriented toward identifiable individual offenders and victims. Digital sexual violence, however, may involve anonymous perpetrators, transnational platforms, or cybermobs. The harm is both individual and collective: it targets specific victims while simultaneously reinforcing gender hierarchies and sending disciplinary messages to women and marginalized social groups. This structural dimension reveals the limitations of purely individualistic criminal frameworks and highlights the need for broader regulatory, preventive, and restorative approaches.

Finally, the analysis of the protected legal interest supports the inclusion of sexual digital violence as a form of sexual violence. If sexual offences protect sexual autonomy, integrity, and ultimately human dignity, then sexual digital violence falls clearly within that domain. The harm extends beyond individual choice to an attack on dignity itself and in the capacity for self-determination. Digital technologies magnify this violation by making sexual exploitation public, permanent, and globally accessible.

In conclusion, sexual digital violence should be recognized as a form of sexual violence together with other sexual offences included in the criminal codes because it fulfils the core normative criteria: non-consensual sexual conduct that violates autonomy and dignity. The absence of physical contact does not diminish its seriousness. Legal systems

must adapt doctrinal categories to contemporary realities, ensuring that the protection of sexual autonomy remains effective in both offline and digital worlds probably adopting new legal terms to group different crimes against sexual freedom, such as intimate intrusions. Only by doing so can the law respond adequately to the evolving forms of gender cyberviolence.

References

- Acale, M., 2019. *Violencia sexual de género contra las mujeres adultas: especial referencia a los delitos de agresión y abuso sexuales*. Madrid: Reus.
- Barcons, M., 2025. Agresiones sexuales cometidas en grupo con grabación y difusión en España: análisis jurisprudencial. *Derecho y género* [online], 2(2), 7–30. Available at: <https://doi.org/10.5565/rev/derechoygenero.41>
- Bartlett, K. T., 1990. Feminist legal methods. *Harvard Law Review* [online], 103(4), 829–888. Available at: <https://doi.org/10.2307/1341478>
- Burgin, R., 2019. Persistent narratives of force and resistance: affirmative consent as law reform. *British Journal of Criminology* [online], 59(2), 296–314. Available at: <https://doi.org/10.1093/bjc/azy043>
- Cornell, D., 1995. *The imaginary domain. Abortion, pornography and sexual harassment*, London/New York: Routledge.
- Corrêa Camargo, B., and Renzikowski, J., 2021. El concepto de “acto de naturaleza sexual” en el derecho penal. *InDret* [online], 1/2021, 145–165. Available at: <https://doi.org/10.31009/InDret.2021.i1.05>
- Díaz, E., 1991. *Sociología y filosofía del derecho*. Madrid: Taurus.
- Feinberg, J., 1984. *Harm to others*. Nueva York: Oxford University Press.
- Hall, M., Hearn, J., and Lewis, R., 2023. Image-based sexual abuse: Online gender-sexual violations. *Encyclopedia* [online], 3(1), 327–339. Available at: <https://doi.org/10.3390/encyclopedia3010020>
- Hall, M., Lewis, R., and Hearn, J., 2026. The bounded limitlessness of digital gender sexual violations: The implications for women and gender–sexual relations. *Violence Against Women* [online], 32(1), 88–109. Available at: <https://doi.org/10.1177/10778012241292293>
- Harris, B., and Vitis, L., 2020. Digital intrusions: technology, spatiality and violence against women. *Journal of Gender Based Violence* [online], 4(3), 325–341. Available at: <https://doi.org/10.1332/239868020X15986402363663>
- Henry, N., and Powell, A., 2016. Sexual violence in the digital age: the scope and limits of criminal law. *Social & Legal Studies* [online], 25(4), 397–418. Available at: <https://doi.org/10.1177/0964663915624273>.
- Henry, N., and Powell, A., 2018. Technology-facilitated sexual violence: A literature review of empirical research. *Trauma, Violence, & Abuse* [online], 19(2), 195–208. Available at: <https://doi.org/10.1177/1524838016650189>

- Igareda, N., 2025. Las experiencias de las víctimas de ciberviolencia de género y la respuesta del derecho. In: M. Á. Sánchez Huete, ed., *Conectadas y desiguales: la brecha de género en la era digital*. Madrid: Reus, 345-360.
- Igareda, N., 2026. *La ciberviolencia de género y el derecho*. A Coruña: Colex.
- Kelly, L., 1988. *Surviving sexual violence*. Cambridge/Oxford: Polity Press.
- Killeen, R., McAlinden, A. M., and Dowds, E., 2022. Sexual violence in the Digital Age: Replicating and Augmenting harm, victimhood and blame. *Social & Legal Studies* [online], 31(6), 871–892. Available at: <https://doi.org/10.1177/09646639221086592>
- Larrauri, E., 2022. Cinco reflexiones feministas en torno al proceso penal. *InDret* [online], 2/2022. Available at: <https://doi.org/10.31009/InDret.2022.i2.05>
- Lloria, P., 2020. *Violencia sobre la mujer en el siglo XXI. Violencia de control y nuevas tecnologías. Habitualidad, sexting y stalking*. Madrid: Iustel.
- Lonsway, K. A., and Fitzgerald, L. F., 1994. Rape myths: In review. *Psychology of Women Quarterly* [online], 18(2), 133–164. Available at: <https://doi.org/10.1111/j.1471-6402.1994.tb00448.x>
- MacKinnon, C. A., 1993. *Only words*. Cambridge, MA: Harvard University Press.
- Maqueda, M. L., 2024. Feminismo y derecho: las caras oscuras del consentimiento sexual de las mujeres. *IgualdadES* [online], 10, 289-317. Available at: <https://doi.org/10.18042/cepc/IgdES.10.10>
- Marcotte, A. S., and Hill, J. J., 2021. Sexual violence and consent in the digital age. In: A. Powell, A. Flynn and L. Sugiura, eds., *The Palgrave handbook of gendered violence and technology* [online]. Cham: Palgrave Macmillan. Available at: https://doi.org/10.1007/978-3-030-83734-1_16
- McGlynn, C., 2024. Towards a new criminal offence of intimate intrusions. *Feminist Legal Studies* [online], (2024)32, 189-212. Available at: <https://doi.org/10.1007/s10691-024-09547-y>
- McGlynn, C., and Rackley, E., 2017. Image-based sexual abuse. *Oxford Journal of Legal Studies* [online], 37(3), 534-561. Available at: <https://doi.org/10.1093/ojls/gqw033>
- McGlynn, C., et al., 2020. "It's torture for the soul": The harms of image-based sexual abuse. *Social & Legal Studies* [online], 30(4), 541-562. Available at: <https://doi.org/10.1177/0964663920947791>
- Morales Prats, F., and García Alberó, R., 2010. *Comentarios al Código Penal*. Madrid: Aranzadi.
- Muñoz Conde, F., 1990. Los delitos contra la libertad sexual (Título IX, Libro II del Código penal). *Estudios Penales y Criminológicos*, (13), 268-295.
- Nussbaum, M., 2010. Objectification and Internet misogyny. In: S. Levmore and M. C. Nussbaum, eds., *The offensive Internet: Speech, privacy and the reputation* [online]. Cambridge, UK: Harvard University Press, 68-90. Available at: <https://doi.org/10.2307/j.ctvjf9zc8.7>
- Orts Berenguer, E., 2008. *Derecho penal. Parte especial*. Madrid: Tirant lo Blanch.

- Pitch, T., 2003. *Un derecho para dos. La construcción jurídica de género, sexo y sexualidad*. Madrid: Trotta.
- Powell, A., and Henry, N., 2017. *Sexual violence in a digital age*. London: Palgrave Macmillan.
- Raz, J., 1988. *The morality of freedom* [online]. New York: Oxford Clarendon Press. Available at: <https://doi.org/10.1093/0198248075.001.0001>
- Stanko, E., 1985. *Intimate intrusions: Women's experience of male violence*. London: Routledge.