

A STUDY ON THE ECONOMICS OF RAPE AND SUGGESTED IMPROVEMENTS

Written by Trilok Choudhary

3rd Year BBA LLB Student, Gujarat National Law University, Gandhinagar, India

ABSTRACT

The economics approach to law (hereinafter referred to as Law and Economics) is a stream of legal science that utilizes economic analysis in answering three major questions: (i) the definition of law; (ii) the origin of the law and the way in which the law came into force; and (iii) criteria for good law (Mercurio and Medema, 2006, 5). The Law and Economics approach is based on the basic assumption that humans are rational beings and always try to maximize the benefits (or utility) they can receive by considering the scarcity of the resources they have (Posner, 2011, 3). Thus, every human being is assumed to take into account the elements of gain and loss in every action. The calculation of profits and losses does not mean that every human being consciously performs a complex and deep calculation for each of his actions, but it can also be calculated subconsciously (Becker, 1990, 7). Furthermore, it does not imply that every human being must receive all available facts before making a decision (Posner, 2011, 4). The Law and Economics method focuses on the repercussions that will result from the aforementioned human nature and how it will affect the law, rather than on the degree of human cognition (Posner, 2011, 3). In this article, I take a Legal and Economic approach to evaluate the crime of rape, including the character of rape perpetrators, variables that impact rape, and policies that might be implemented to prevent or lower rape crime rates. In passing, I demonstrate that the attire worn by women plays a minor role in the crime of rape using a Legal and Economic method. People are even more removed from the primary issues that need to be addressed as a result of the argument.

LITERATURE REVIEW

Violence against women has been acknowledged as a severe societal issue that has received a lot of attention on a global scale. Because of the social and economic consequences of violence against women, this is the case. Economic costs include the cost of items and services required to cure and prevent violence, while social costs include the psychological consequences of such violence (Kazi, A. 2012). Between 2008 and 2012, the rate of total cognizable crimes against women in India increased steadily, making crimes against women a prominent issue. The percentage of "total cognizable offences against women" was 17.0 percent in 2008, but it rose to 41.7 percent in 2012. Despite these heinous dimensions, the data given do not accurately depict the reality (Gupta, A. 2014). In moral terms, according to (Krishnaraj, M. 2007), violence is both obvious and unseen, or disguised, and it is always a coercive weapon to defend or enforce cultural norms of honour. Domestic abuse and sexual assault against women are currently the most serious issues confronting Indian culture (Bhattacharyya, R. 2015). Gender-based violence, particularly serious crimes such as rape, is a complex issue. To remedy this, several other concurrent concerns that operate as contributory variables and hence play an equally vital role must be addressed (Himabindu, B. L., Arora, R., & Prashanth, N. S. 2014). Although severe rules and heavy penalties are required to dissuade anyone from committing rape, possibly the most brutal crime against women, the ultimate solution to this problem involves far more than legislation. The term of rape was reframed in the "Criminal Law (Amendment) Act, 2013" after the "Nirbhaya" rape case on December 16, 2012. The crime of "rape or, more generally, sexual assault" is redefined in the "Criminal Law (Amendment) Act, 2013" under IPC section 375, and the punishment for such a crime is outlined under IPC section 376. Unfortunately, the issue did not improve significantly. The "Nirbhaya" rape case, without a question, was a watershed moment in India's discussion of crimes against women (Verma, A., Qureshi, H., & Kim, J. Y. 2017). Unfortunately, this is not India's first or only significant example of gender-based violence. Rape or sexual assault has long been associated with the cultural baggage of socially determined gender standards and how sexuality should be expressed or repressed in specific circumstances (Lodhia, S. 2015). As previously said, rape and sexual assault have strong socio-cultural roots that will influence how social institutions, such as police stations, courtrooms, and prisons, and their workers respond to these crimes, even the most horrific of them (Taslitz, A. E. 1999). The "Nirbhaya" incident prompted

improvements to India's criminal justice system, and it served as an example of "how severe occurrences may assist push systemic change in a major democracy that is still growing economically" (Kadyan, S. & Unnithan, N. P. 2017). Sexual victimisation in public settings, in addition to rape, is a common form of violence against women. A paper also urged the government to post visible signs in public spaces stating a "Zero-Tolerance Policy on Sexual Harassment" at bus stops, on buses, the metro, and along roadsides; print media should also produce poster campaigns about the punishment of such offences, citing the relevant IPC section. Previously, statistical analyses of Indian crime statistics focused mostly on rates of crimes against women and/or any specific type of crime against women. According to (Driver, E. D. 1961), caste is a significant factor of crimes against women. In reality, the author discovered that victims and perpetrators were from the same caste in 84 percent of cases. Intriguingly (Nayar, B. R. 1975) discovered that "police strength" was linked to reduced crime rates. However, because the study was based on just 18 observations and the potential of reverse causality, this conclusion should be regarded with care. Given the increased awareness and devastating effects of this activity, it was stated in another study that marital rape is a flagrant violation of fundamental human rights that should be controlled by adopting an economically efficient regulation that protects the victim's rights and interests. (Cheta Sheth & Bedanta Chakraborty 2016).

OBJECTIVES OF THE STUDY

The study's main goal is two-fold. The first step is to look at the present rape laws from an economic standpoint to see if the remedies given are efficient for victims. Furthermore, the study would focus on either proposing an alternative or conjunctive remedy to the existing statute in order to provide an efficient remedy to the victim as well as to the state.

HYPOTHESIS

H0 - That longer time taken by victim to report the crime make the proving process difficult

H1 – That increasing sanctions will not result in less rapes unless accompanied by improved probability to detect rapes

H2 – That societal bias has negative impact on justice enforcement in rape cases

THE NATURE OF CRIMINALS IN LEGAL AND ECONOMIC APPROACHES

The compliance of every person to the applicable legislation is not regarded to occur automatically in the Law and Economics approach. Knowing a law and following it are two different things. In fact, both public and private resources are employed to deter lawbreaking and to punish those who transgress the law (Becker, 1968, 169). Humans, as previously established, are logical beings, not noble-hearted angels who will not commit crimes merely because they are aware of the law. As a result, every criminal will strive to get the most out of his crime. He will also consider the losses he may suffer as a result of the crime, such as the cost of committing the crime and the expenses of punishments imposed on him if he is detected and found guilty. If the advantages he obtains surpass the losses he would suffer, it may be argued that the perpetrators of the crime will most likely perpetrate the crime. (Winter, 2008, 8). This is true for all crimes, including rape. The incentives for each crime, however, are obviously different. Because the incentives and drawbacks of each offender are different, the approach to a crime of murder will be different from a crime of corruption. As a result, in order to combat a specific form of crime, further research into the elements that impact perpetrator behaviour patterns and the sorts of incentives that can effectively combat or reduce bad conduct is required (Winter, 2008, 8).

FACTORS INFLUENCING THE CRIME OF RAPE

We must first discover the formula for estimating the advantages gained by rape perpetrators before we can determine the elements that affect the crime of rape. To put it another way, the formula is as follows:

$$PqQ - C(Q)$$

Where

PQ = value of rape benefits per unit of rape;

C = cost of carrying out rape; and

Q = unit of quantity for acts of rape (or number of rape)

The perpetrators of rape will always have the opportunity to perpetrate the crime as long as the ultimate consequence is favourable. The only method to avoid this is to raise C to the point where the final result is negative. The basic purpose of rational public policy is to make crime unprofitable for criminals (Becker, 1968, 183).

Components of PQ in Rape

Sexual pleasure is, of course, the most important component of PQ in rape. Masturbation and consensual sexual intercourse whether with an official partner or not, are two common ways to acquire sexual fulfilment in practise. Why do criminals prefer to rape instead? There are two possibilities. First, it is reasonable to infer that the advantages of sexual pleasure acquired from rape are greater than those obtained from other methods of sexual fulfilment, such as the added gratification obtained by humiliating the victim in order to demonstrate masculine domination and masculinity (Bachman, Ward and Paternoster, 1992, p. 344). In other words, rape is motivated more by gender bias (Rothschild, 1993, 232). Second, rape can be considered as a substitute product of consensual sexual relations. If the number of consensual sexual relations decreases, the number of rapes is assumed to increase and vice versa (Posner, 1994, 384). The second argument also implies that a rapist chooses to rape because the cost of receiving sexual satisfaction via rape is less than the cost of obtaining sexual fulfilment through mutual consent. Thus, the final score for rape will be greater than for consensual sexual relations, even if the PQ values are equivalent, for both rape and consensual sexual intercourse. In this case, I prefer the second explanation. In my opinion, the cost component or C—as discussed further below—plays more of a role in a rapist's decision than analysing the PQ value which cannot be compared with certainty with the value of the benefits of consensual sexual intercourse. Focusing on component C will also make policy formulation easier since increasing the cost of an activity is much easier than increasing the benefits of a substitute activity (with the aim of incentivizing people to prefer that substitute activity).

Cost Components in rape

The following is a simple description of the function that describes the components of C:

$$C = f(k, DH, \dots)$$

K = the situation and condition of the location of the rape

H = the amount of criminal sanctions to be imposed on the perpetrators of rape; and

D = probability of imposing criminal sanctions on perpetrators of rape.

The lower the costs of committing rape, the more favourable the scenario and conditions of the rape site are, and the lower the consequences (including the likelihood of imposing such sanctions on the offender). Furthermore, the larger the value acquired by rape perpetrators and the stronger the incentives for rape perpetrators to carry out their crimes, the better. I kept open the possibility for other components in a rape cost function, but the two factors mentioned in the rape cost component above have the highest priority according to me and the discussion below will explain why I give priority to these 2 components.

Situation and Condition of Rape Location

The situation and condition of the location of the rape in principle is positively correlated with the theory that the crime occurred because of the opportunity to commit the crime. There are three factors at play: (i) the perpetrator intends to commit the crime; (ii) suitable targets; and (iii) the absence of care for the victim (Maume, 1989, 515). In that case, the daily activities of the perpetrators and victims become the dominant factor. One study showed that rape was generally more common in women who worked outside the home compared to those who only stayed at home (Maume, 1989, 516). Of course, this cannot be used as a justification for formulating a policy to lay off all women in order to gain a sense of security. On the contrary, the research showed that circumstances play a very important role in rape cases. Without the right circumstances and conditions, rape rarely or will not occur. The more areas with poor security conditions, the easier it is for rape to occur and it can be assumed that the number of rapes will increase in such conditions. Here's an example of a simple case. There are no cases of rape committed in open spaces with people passing by during the day. Unless the perpetrator has a mental illness, no rape offender will be stupid enough to do that because the costs of rape will be enormous.

Sanctions and the probability of Imposing Sanctions

There is no doubt that the amount of criminal sanctions in a case will affect the calculation of every criminal, including the perpetrators of rape. However, the component of criminal sanctions cannot and will never be separated from the probability component of the sanction being imposed on the perpetrator. No matter how severe the criminal sanction is—as long as the probability of imposing it is small, the perpetrator of the crime will “discount” the cost of the sanction. Many things can affect the probability component of being sanctioned in a rape case. Initially, it must be understood that rape is a crime that is easy to accuse, difficult to prove, and even more difficult to defend (Hibey, 1973, 309). The implication of that statement is that there is a lot of hesitation involved in examining rape cases. This makes it difficult for judges to make the right decision.

Difficulties in Finding Evidence and Negative Incentive for Victims

As discussed above, rape will not be carried out in a place that is easily visible to many people. The cost factor associated with the situation and conditions of the location of the rape necessitates that the perpetrator of the rape will choose the location with the best possibility to carry out the rape safely for himself. In other words, the location chosen by the rapist generally makes it difficult to find witnesses. Rape in practice is also a case that is difficult to prove physically, especially because rape can be carried out without the element of physical violence which leaves certain marks on the victim's body. Thus, in the absence of witnesses, proving a rape case may end in a mere conflict between what the defendant said and what the victim said (Ayres and Baker, 2005, 599). Many studies show that rape has profound implications for the physical and psychological condition of the victim. How many of the victims dare to report the bad events that have happened to them? Data from the United States for the years 1992 to 2000 show that there are an average of 131,950 cases of rape per year. Of that number, it is estimated that only 36% reported their cases to the police (Murdock, 2007, 1,177). Worse still, the criminal process itself is not necessarily friendly to women in cases of rape. As will be discussed further, many studies show that the treatment of rape victims is often different from that of other criminal cases. For example, the tendency to blame victims and the attitude of law enforcers who generally do not pay attention to the criminal investigation and prosecution process or even do not carry out the process at all (Askin, 2011,. 8). Several studies have also shown that the trial process for examining rape cases can be a nightmare for victims, especially

in the process of examining witnesses. In many cases, the defendant's attorney would simply transfer the burden of proof on the victim and it results in imposing an additional layer of psychological burden on the victim (Conley and O'Barr, 2005, 37). With such conditions, it can be concluded that the cost to resolve a rape case is very high due to the low incentive for victims to seek justice (bad treatment at all levels of seeking justice). Indirectly, this condition also reduces the probability of imposing sanctions on the perpetrators.

Severe sanctions do not immediately increase the probability of imposing sanctions

The fact that rape is a case that is difficult to prove also provides a negative incentive for judges to impose severe sanctions on perpetrators given the possibility that the perpetrator is innocent always exists. Who can guarantee that the perpetrator actually raped and the victim was actually raped when the evidence for this is so minimal? It is possible that what happened was a case of false accusations of rape and to some extent, it would affect the perspective of law enforcement in dealing with rape cases (Bryden and Lengnick, 1997, 1.296—1.297). A well-known principle is that it is better to bear the costs of releasing a criminal than to punish an innocent person (Robertson and Vignaux, 1995, 78). Thus, in such cases, there will always be a trade-off or trade-off between our desire to punish the perpetrators of the rape as harshly as possible and avoiding sanctioning people who are found to be innocent. In terms of hard-to-achieve evidence, if we assume the judge is a risk averse party or has a tendency to be careful about risk, the heavier the threat of criminal sanctions for rape, the more hesitant the judge will be to impose the sanctions. Judges will be worried about sanctioning the wrong person. As a result, it is even less likely that the perpetrators of rape will be given really severe punishments. It can be seen that intensifying sanctions without improving the process of proving the crime of rape may even have bad implications and harm the victim, even though initially it was expected to provide negative incentives to the perpetrators to reduce their actions.

Bias among Law Enforcers and Society

Rape cases can rarely be separated from the stigma or assumption that rape occurs as a result of the woman's own fault, for example, inappropriate attitudes, clothes worn, and body language (Askin, 2011,. 8). This stigmatization is one of the main factors that reduce the cost of rape because it creates bias among law enforcers in carrying out their duties in rape cases. Indirectly, it contributes to their performance being worse than they should be (Weisburd and Levin, 1994, .31). This can be simply analogized with the case when we have a friend who

happens to be very careless and he comes asking for help to find his lost wallet in the park because he put it somewhere. The question is whether we will immediately help the friend or spend some time lecturing him first. Even if we finally want to help him, are we going to do it with pleasure and focus or are we going to do it while grumbling and assuming that the wallet is definitely lost because of his carelessness? In the approach of Law and Economics, in particular the behavioural law approach in economics, which borrows elements from psychology, the bias in rape cases can be explained as a combination of hindsight bias and outcome bias. Hindsight bias is a bias in the form of people's tendency to think that an event will be easier to happen in the future and more predictable the cause after the event has occurred (Farnsworth, 2007, 218)¹². Outcome bias is a bias in the form of people's tendency to blame an action or decision that leads to failure even though when viewed more deeply, the failure does not necessarily occur because of actions/decisions that have been taken previously (Farnsworth, 2007, 220)¹³. The implications of these two biases are very deep in the case of rape and provide justification for the reasons why people tend to blame the victim in rape cases, even though the rape did not occur because of the victim's wrong actions/decisions. An example of bias that often occurs is the assumption that the clothes worn by women and their attitudes cause rape to occur. If nothing happened, people generally would not care about the clothes a woman wears or her attitude in public spaces. However, after a rape occurs, that view often changes for no apparent reason; as if women's clothing and attitudes caused the rape to occur. In fact, if we compare it with the data obtained from the various studies above and the cost component of rape that I have discussed, clothing is a small factor in calculating the cost component of rape. Without the right situation and conditions and the small possibility of imposing sanctions, the element of clothing will not have much effect. To be able to justify that women's clothing has a big influence in rape cases, more in-depth research should be carried out on how many women are raped in scantily clad conditions compared to those who dress modestly. I am sure that such research would not be complete without considering the situation and conditions of the location of the rape and the activities of the victim concerned.

Conclusion regarding the cost component of rape

From the discussion above, it can be concluded that many factors can cause a low probability of imposing criminal sanctions on perpetrators of rape. The less details given or the longer the time taken by victim to report, the more difficult the proving process will be. Increasing

sanctions will not be of much benefit, unless improvements can be made to the process of examining rape cases that can increase the certainty of imposing sanctions on the real perpetrators. In addition, bias is also very dangerous for justice enforcement in rape cases because it negatively affects the performance of law enforcement. All of these things lead to lower costs of committing rape in general and indirectly provide an incentive for the perpetrators of rape to commit their crimes. Ironically, bias at the community level actually helped to reduce the cost of rape.

CONCLUSION AND RECOMMENDATIONS

Through a Law and Economics approach, I have tried to show that the perpetrator of rape as a rational human being will only commit his crime if the value of the benefits he gets from rape exceeds the costs he has to bear. I also argue that rape is a type of crime with a fairly low cost of execution for the perpetrators due to various factors, such as the existence of a conducive situation and conditions, difficulties in proving, and the existence of bias among law enforcement and society towards rape victims. The most effective solution to prevent or reduce rape is to increase the costs of committing the crime of rape in such a way that the value of the benefits received or will be negative. This means that in policy formulation, appropriate incentives must be taken to reduce the benefits of rape and increase the costs of rape.

Taking into account the discussion above, here are some recommendations that I can convey as material for further discussion:

- As a first step, which is actually not too difficult to do, it is necessary to provide education to law enforcement and the general public regarding the components that have the most influence on the crime of rape. In addition, it is also necessary to provide an explanation regarding the mistakes and bad consequences of bias that often occurs among law enforcement agencies and society against rape.
- Providing appropriate incentives to victims to report cases they experience as soon as possible, among others absolute protection should be provided to the victim's identity from the public sphere, for example by guaranteeing a closed trial to the public. Second, handling rape cases in a friendlier manner to victims, for example, as much as possible female victims should be handled by female officials with the assumption that it is

easier for victims to share their problems with other women compared to men, which might affect the mental attitude of victims who have recently experienced bad events with men.

- Reform of the process of proving rape cases in court, particularly through the use of more sophisticated technology, such as DNA testing. This can help with the shortage of evidence and to increase caution in examining victims as witnesses in order to prevent re-victimization or blaming the victim again.
- Expanding the definition of rape to include all forms of forced sexual intercourse against women regardless of the relationship of marriage (e.g. marital rape).
- The sanctions or punishment against rape should only be intensified after the reform of the evidentiary process has been achieved. Therefore, the imposition of sanctions can be focused and that judges are not negatively incentivized to think that the person could be wrongly sentenced.
- It is also necessary to consider other sanctions in the form of public announcement (e.g. through newspapers) regarding the names of those convicted of rape. Not only that, accused should be obligated to register and report regularly for a certain period of time to the local police station where they live if they finished serving their sentence (with a threat of criminal action if they fail to do so in timely manner). In this way, ex-rapists can be more easily monitored and it can prove as an additional costs of rape. Such sanctions can also be withdrawn in the event that something goes wrong.
- Security infrastructure should be enhanced in locations that are thought to be conducive to rape.

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