

## THE IMPACT OF RAPE AND SEXUAL VIOLENCE ON SURVIVORS' ECONOMIC WELLBEING: RAPE AS AN ECONOMIC CRIME

---

**Nissy Elizabeth James\***

### ABSTRACT

Rape and sexual violence, though seen as a moral and societal offence, is seldom recognized as an economical offence. Through a thorough analysis, one may be able to give an economical explanation as to why rape occurs. Similarly, the aftermath of rape and related legal proceedings too can be analysed economically. The researcher in this paper has focus on victimology and analysing the offence of rape and sexual violence from the victim's point of view with and economical explanation. The paper deals with the situation of victims after justice is served and compensation is granted. The paper deals with the need for having rehabilitation as a need for the complete compensation of the crime. It also talks about the economic analysis of compensatory schemes with a rehabilitative outlook. Finally, the researcher talks about some Schemes in the country and the flaws in it.

**Keywords:** Compensation, Economic outlook, Rape, Sexual violence, Victimology.

### INTRODUCTION

While criminal law is the backbone of a civilized society by maintaining law and order for the social welfare, economics deals with choices, resources and maximizing the utility in a society. Economic analysis being used to identify the most efficient penalty for crimes has started an increasing trend of economic analysis of law and legal problems. One must note that, a crime not only constitutes a wrong against the victim, but it also has significant expenses. When a crime is committed, society too suffers as a result of the loss of certain resources; for instance, if bodily injury is done, some costs for treatment are incurred; and when a man is slain, his family suffers as a result of the loss of his earnings. As a result, all crimes have an impact on society's finances at some point. Criminal law seeks to benefit society by reducing the frequency of crimes, whereas economics seeks to maximise social utility. This paper attempts

---

\*BA LLB, SECOND YEAR, CMR UNIVERSITY SCHOOL OF LEGAL STUDIES, BANGALORE.

to do an economic study of criminal law, with a focus on rape, sexual violence and their survivors.

## BACKGROUND

### WHY HAVE AN ECONOMIC ANALYSIS?

A perfect compensation is a quantity of money that makes the victim unconcerned about the difference between an injury with compensation and an injury without compensation. According to economic efficiency, there is no way to make a change that benefits someone without injuring someone else, but if those who benefit from it compensate those who lose, resulting in no one being worse off as a result of it, the change is efficient. This is known as the "Pareto Efficiency".<sup>1</sup> Economic efficiency is beneficial for assessing and establishing norms and institutions, according to the economic approach to rape and sexual violence legislation, to maximize social welfare. This kind of economic analysis happens in 2 senses:

- To assess the efficacy of contemporary institutions in a positive sense.
- To suggest more efficient institutional structures on the normative side.<sup>2</sup>

As previously noted, economic efficiency is helpful for planning compensation, among other things. However, under criminal law, simple restitution cannot be used to right a crime. However, penalties can be devised in such a way that economic efficiency is achieved. To study the costs of crime and criminal laws, the theory of transaction is employed. Transaction cost means the cost incurred economic trade in the market, in this case, the maintenance and protection of the rights. This in the legal scenario is seen in the purpose of criminal law, which is to defend and safeguard the liberties and rights of civilians, therefore the costs paid by the state for the upkeep of police, jails, and compensations, among other things, are all factored into the transaction cost. Coase, a British economist, also devised the Coase Theorem, which asserts that the legal system's goal should be to create a pattern of rights that maximises economic efficiency.<sup>3</sup>

<sup>1</sup> BRITANNICA, <https://www.britannica.com/topic/Pareto-optimality> (last visited June 20, 2022, 08:45 PM).

<sup>2</sup> Manika Kamthan, Rape And Compensation: An Economic Analysis Of The Criminal Law On Rape In India 7 Nalsar Law Review 38, 39 (2013), <http://www.commonlii.org/in/journals/NALSARLawRw/2013/4.pdf>

<sup>3</sup> Warren J. Samuels, The Coase Theorem and the Study of Law and Economics, 14 Natural Resources Journal 1, 14-19 (1974), <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=3328&context=nrj>

## **ECONOMICS OF RAPE AND SEXUAL VIOLENCE: AN ANALYSIS**

An essential component of economic research with respect to rape and sexual violence is attempting to construct a legal system that allows rational persons to operate in an efficient manner. In the situation of criminal law, an efficient conclusion would imply that both parties are motivated to act in a way that minimises society costs. For example, in the context of rape, the legal system should be such that women feel so protected that they do not spend extra money on their protection when travelling, such as private taxis. They should feel just as comfortable using public transportation, which is less expensive and more efficient. In the case of rapists, the law should be extremely tough so that they do not dare to rape. An economical answer can be given to the question of why rapes and sexual abuse happens. A person commits a crime when the value of the crime or the benefit derived from it is greater than the cost of his punishment.<sup>4</sup> Due to the lawlessness in India, raping does not cost anything. If detected, it can be costly; but, due to the startlingly low percentage of conviction in rape cases, the value of the pleasure gained through rape far outweighs the cost to the rapist. As a result, the only ray of hope for decreasing rapes is an effective punishment.

### **WHY MEASURE THE ECONOMIC COSTS OF VIOLENCE AGAINST WOMEN?**

Of the several approaches to understandings the social issue of violence against women, measuring the economic consequences of violence against women is one approach that may be used for better understanding and raising awareness of how broad the repercussions of violence are across society. Measuring the costs of violence against women reveals how violence drains resources from a variety of sectors, which is seen in poor countries, where it is critical not to divert precious resources away from the development of healthy and sustainable communities. Economic and social progress are hampered by violence against women. Reduced rates of violence are an important component of social policy in order to make development resources go further. It uses economic terms to construct the social debate on public service supply. While it is possible to argue that violence against women should be stopped because it is morally wrong, it may also be shown to be economically harmful. Finally, it encourages social policies aimed at lowering violent crime rates and social acceptability. Policymakers may monitor how shifting financing priorities impact results by evaluating the economic costs and effects of violence. Measuring the costs of violence reveals that preventing violence against women is

---

<sup>4</sup> DAVID D, FRIEDMAN, LAW'S ORDER: WHAT ECONOMICS HAS TO DO WITH LAW AND WHY IT MATTERS 223 (Princeton University Press 2001).

not just the morally correct thing to do, but also the financially wise thing to do. Knowing how much violence costs helps policymakers to assess the efficacy of initiatives aimed at decreasing violence and its destructive repercussions. This method of economically assessed policy making can also be employed in businesses which may have lost time and productivity due to sexual abuse in the work place to increase the lost. Analysing expenses allows researchers to look at successful early diagnosis, intervention, treatment, and public education campaigns. Awareness of the costs of violence against women to society enhances the case for government, social organisations, and companies intervening in private activities. It is hoped that bringing attention to the high cost of violence would stimulate anti-violence measures. When the rate of violence falls, resources become available for constructive economic growth.

### **TYPES OF ECONOMIC COSTS OF VIOLENCE AGAINST WOMEN**

The costs of violence against women have observable results that has a price, either direct or indirect, and are felt across society. All costs that can be incurred, in either the short or long term, can be classified into 4 categories:

1. **Direct tangible costs:** Actual expenses paid, reflecting real money spent, calculated by multiplying the unit cost of the products and services used by the total cost of the goods and services consumed, are referred to as direct tangible costs. For example, the taxi fee to a hospital is a direct tangible cost.
2. **Indirect tangible costs:** Indirect tangible costs have a monetary value in the economy, but they are quantified as a loss of potential in the economy. Reduced productivity, for example, can result in fewer earnings and profits. These indirect costs are likewise quantifiable; however, they are based on calculating potential costs rather than actual spending.
3. **Direct intangible costs:** Direct intangible costs are incurred as a result of the violent act but do not have a monetary value. Although there is considerable controversy about whether or not it is fair to include these expenses when calculating the economic consequences of violence against women, these costs can be approximated using quality or worth of life measurements. Pain and suffering, as well as the emotional loss of a loved one due to a violent death, are examples.

4. **Indirect intangible costs:** Indirect intangible costs are those that arise as a result of the violence but do not have a monetary worth. The harmful psychological consequences on children who watch violence, for example, are difficult to quantify.

## COMPENSATION AND THE ECONOMIC LIVES OF VICTIMS/SURVIVORS

### THE LEGAL APPROACH

To punish offenders, the state uses legislation like the Indian Penal Code, 1860(IPC) and the Code of Criminal Procedure, 1973(CrPC). The victim who suffers a loss as a result of the crime, on the other hand, has little to no voice in the prosecution, as the victims are at the mercy of investigators and public prosecutors. Hence, the concept of Victimology, which centers around the compensation, rehabilitation and justice to the victim, is employed to make compensatory law easier. Often criminal law and related trials only focus on the deterrence of the crime through the punishment and compensation but not on the rehabilitation of the victims. The rehabilitation of victims is to be seen as a constitutional right along with getting compensated. The deterrent and retributive outlooks to justice should now shift towards a victim centric compensatory model which also involves rehabilitation. Section 357A of the CrPC, which was added in 2009, requires the State to formulate a Victim Compensation Scheme and compensation to the victim shall be paid based on the facts and circumstances of the case. This broadened the regime of victim compensation since before the amendment the State had no duty in compensating the victim but it was the duty of the accused to do so after the trial. This scheme was more economical than the existing law because it was made retrospective. For crimes committed before the scheme was implemented, victims could still claim compensation.<sup>5</sup> The amount of compensation was also to be established based on factors such as the seriousness of the offence, the degree of the victim's mental and bodily harm/injury, damage/losses sustained by the victims, and the accused's financial capacity to pay, etc.<sup>6</sup>

Earlier the justification for compensation were the following reasons;

1. Victims' restitution
2. Symbolic social acknowledgement for the victim's suffering,

---

<sup>5</sup> Serina Mondal v. State of W.B., 2018 SCC OnLine Cal 4238.

<sup>6</sup> Karan v. State NCT of Delhi, 2020 SCC OnLine Del 775.

3. deterrent as well as reformative effects on the perpetrator,

With the shift to a victim rehabilitative outlook compensation can be inclusive of,

1. Depending on the victim's requirements, give financial help as well as,
2. support services such as housing, counselling, medical aid, legal aid, education, and vocational training.

In cases of rape and sexual offences against women, the Supreme Court in the case of Delhi Domestic Working Women's Forum Vs. Union of India<sup>7</sup> and others asked the National Commission for Women to draft a Scheme for Rehabilitation of Victims of Rape, which was later implemented in 2005. The scheme specifies the structure, functions, and the economically analysed financial allocation of the authorities established under it. It compensates rape victims regardless of whether or not the criminal has been brought to justice. It includes provisions for legal assistance and other steps to assist such victims. The Nirbhaya Fund was established after the Criminal Legislation (Amendment) Act, 2013, was implemented to rectify inadequacies in the law dealing to sexual offences against women and children. However, it was revealed last year that just 36% of the Nirbhaya Fund had been used in the previous seven years, which says eloquently about India's bureaucracy's enforcement background. Furthermore, 99 percent of minor rape victims of sexual assault received no remuneration.

In Nipun Saxena v. Union of India<sup>8</sup>, the Supreme Court decided that the National Legal Services Authority (NALSA) should form a committee to formulate Model Rules for Victim Compensation for Sexual Offences and Acid Attacks. The Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes — 2018 was then finalised by the Committee. A victim of gang rape would receive a minimum of Rs 5 lakhs and a maximum of Rs 10 lakhs under the plan. Similarly, the victim of rape or unnatural sexual assault would receive a minimum of Rs 4 lakhs and a maximum of Rs 7 lakhs in compensation. In the instance of facial deformity, victims of acid assaults would be compensated with a minimum of Rs 7 lakhs and a maximum of Rs 8 lakhs. The court subsequently declared the programme to be valid across India. The ideas of victimology have analysed the compensation for victims but the aspects of rehabilitation and restoration of economic status of the victims and survivors is still in its infancy. The Court further ordered that compensation for victims be granted by the

---

<sup>7</sup> Delhi Domestic Working Women's Forum Vs. Union of India and others, 1995 SCC (1) 14.

<sup>8</sup> Nipun Saxena v. Union of India, 2018 SCC OnLine SC 2439.

Court if the criminal is convicted, and by the Criminal Injuries Compensation Board whether or not the offender is convicted.

### **CATEGORIES WHERE COSTS ARE INCURRED**

Despite being given compensation, the rehabilitation of rape and sexual violence survivors must be economically analysed and appropriate laws should be made. Some other aspects where the persons may incur additional costs are as follows:

- **Healthcare**

Refusal of medical care to survivors/victims of sexual violence and acid attack amounts to an offence under Section 166B of the IPC<sup>9</sup> read with Section 357C of the CrPC<sup>10</sup>. Survivors of rape can incur additional costs such as labour costs in case of pregnancy due to rape, bodily injury due to violence, HIV/AIDS due to unprotected rape etc. Most of the income of the family gets spent on medical needs of these victims. In addition to compensating victims, Section 357A tries to provide their urgent requirements for first aid or medical assistance, as well as any other temporary relief that may be necessary. Under the Delhi Victim Compensation Scheme, the criteria for rehabilitative compensation specified says that the expenditure incurred on medical treatment, mental health, funeral, travelling etc., whether the victim is pregnant or contracted STD/HIV or disabled as a result of the offence etc need to be considered. The Odisha Victim Compensation Scheme claims to provide support services for medical aid along with other requirements. It is the responsibility of the DLSA/SLSA to provide immediate relief for especially those requiring medical help. The compensation granted is different for different states and the upper limit is set but the amount must be set taking into account the costs of living, medical conditions, mental health etc. In the case of *Khem Chand & Others Vs State*, the Delhi State Legal Services Authority also advised that doctors and medical workers who examine and treat victims of rape and sexual offences to guarantee a compassionate approach in dealing with them and to educate them with the reporting requirements of medical and clinical assessment for trial reasons." All hospitals, public or private, whether run by the Central Government, the State Government, local bodies, or any other person, must provide free first-aid or medical

---

<sup>9</sup> Indian Penal Code, § 166B, No. 45, Acts of Parliament, 1860 (India).

<sup>10</sup> Code of Criminal Procedure, § 357C, No. 2, Acts of Parliament, 1974 (India).

treatment to victims of any offence covered by sections 326A, 376, 376A, 376B, 376C, 376D, or 376E of the Indian Penal Code, 45 of 1860, must report such incidents to the police.

- **Education**

Reports suggest that many rape and sexual violence survivors often drop out of educational institutions, missing out on their education. Due to many societal factors, they also incur a lot of additional expenses. The Revised Scheme For Relief And Rehabilitation Of Victims Of Rape orders the District Board to provide support to younger victims of rape and sexual violence for education and costs that may be incurred in connection with education of the survivors is to be kept in mind to determine the compensation. The Victim compensation Scheme of Delhi also considered the loss of educational opportunity for compensation determination. According to the Punjab Victim Compensation Scheme as well as the POCSO Act, the amount of compensation awarded to a minor survivor may be withdrawn for the medical or educational needs of the child. The State makes it a responsibility of the District Board to arrange for the affected women's education or vocational/professional training, under existing schemes/programs if she needs such assistance for rehabilitation after assessing her economical standing. The State also appoints a Counsellor for children who ensure that the further studies of the child are not disrupted. Such initiatives and provisions allow the survivors a new opportunity to begin their life after a trauma.

- **Employment**

The Supreme Court stated that a Criminal Injuries Compensation Board was necessary in light of the Directive principles enshrined in Article 38(1) of the Constitution because, in addition to mental anguish, rape victims frequently suffer significant financial losses and, in some cases, are too traumatised to continue working. When a woman becomes pregnant as a result of rape, the Board must take into account her pain, suffering, and shock, as well as her lost income and delivery costs.<sup>11</sup> The Delhi Victims Compensation Scheme also takes into consideration the loss of employment to

---

<sup>11</sup> NCWAPPS, [http://ncwapps.nic.in/PDFFiles/Scheme\\_Rape\\_Victim.pdf](http://ncwapps.nic.in/PDFFiles/Scheme_Rape_Victim.pdf) (last visited July. 21, 2022, 07:57 PM).

determine the compensation to be awarded. Many women who lose or resign from their jobs may be given a second chance through self-employment opportunities, vocational training and /or professional training to make up for the lost wages.

## **CONCLUSION**

### **A REALITY OF COMPENSATION AND REHABILITATION**

Almost all the states have come up with their own victim compensation schemes since the 2008 amendment but there is no uniform criterion followed by these State Victim Compensation Schemes. Another issue with most of these victim compensation systems is that there is no authority or agency to oversee them and keep track of the effect and outcomes of the schemes that have been implemented. It should be assured that the government and policy implementers are held accountable if the plan fails to achieve its intended goal. In response to this disparity in compensation, the Centre established the Central Victim Compensation Fund Scheme, using funds provided by the Nirbhaya Fund. All State Victim Compensation Schemes were required to pay a minimum of Rs. 3 lakhs for rape under this Central programme. Despite the 2015 standards, several states have yet to make the necessary changes to their victim compensation programmes. Hence, we can conclude that, with proper implementation, the compensatory laws having an economical base for rehabilitation is a great step to improving the status of rape and sexual violence survivors.