

LEGALFOXES LAW TIMES

CONCEPTUALISING RAPE AS A HEINOUS CRIME: A LEGAL & CRIMINOLOGICAL ANALYSIS

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ABSTRACT

The most heinous crime against women in the field, rape, is India's fastest rising crime. Although there have been numerous studies on the subject of rape, the current study is focused on an analysis and observation of Indian society through cases of rape in the last decade, especially after the 2012 'Nirbhaya' Rape case. The main goal of this research is to examine criminal behaviour and the motivation for committing crimes using criminological theories. It also made several recommendations for reducing rape in order to eliminate violence from society.

INTRODUCTION

*“On some positions, cowardice asks the question “Is it safe?”
Expediency asks the question “Is it polite?”*

And vanity comes along and asks the question "Is it popular?"

But conscience asks the question "Is it right?"

And there comes a time when one must take a position

That is neither safe, nor politic, nor popular,

But he must do it because conscience tells him it is right".

Dr Martin Luther King, Jr.'s¹ quote above prompts us to consider what matters most to us, personally and collectively. Not only in India, but around the world, women are vulnerable to all types of violence, including sexual harassment, domestic violence, and sexual exploitation in jails.²

Rape is a form of sexual assault in which a woman is victimised by a man and is the most common infringement of a woman's bodily integrity as well as human culture. Ironically, while theories, rules, and perceptions about rape are evolving, the truth of rape and people's mindsets have remained constant over time.³

Even if a woman has never been assaulted, she will experience the fear and pain of being raped at some stage in her life.⁴ India claims to be the world's largest democracy, but it fails to protect half of its population, as evidenced by the large number of rape cases reported in the country.

ISSUES TO PONDER UPON

According to statistics, the NCRB recorded 24, 206 cases in 2011, rising 58.4% from 1990. These are the cases that were reported, but it is estimated that 99 percent of rape cases in India go unreported.⁵

Rape may be the result of patriarchal power, which is well-known in India.⁶ The trends of offenders committing crimes can be traced through thorough criminological research and

¹Martin Luther King Jr., *Speeches and sounds*,
http://www.aavw.org/special_features/speeches_speech_king04.html.

² Merry, Sally Engle, *Gender Violence A Cultural Perspective*, WILEY-BLACKWELL (2009).

³ Smith, Merrill D. *Encyclopaedia of Rape*, GREENWOOD PRESS-US (2004).

⁴ UNIFEM, *Not a Minute More-Ending Violence Against Women*, UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (2003).

⁵ National Crime Records Bureau, <https://ncrb.gov.in/en>.

observations in this patriarchal, stereotypical culture. We will fight and come up with successful steps to combat horrific crimes like rape in the country if we can carefully analyse what offenders are thinking.

As a result, I prefer to research the following research questions in order to better understand victim and criminal behaviour.

1. What factors influence a criminal's decision to commit rape or other sexual offences?
2. Is there any way for a victim's behaviour to prompt a suspect to commit a crime such as rape?
3. What types of punishments are offered to offenders in order to encourage them to change their ways?

I want to understand the criminal, the criminal's climate, and particularly the criminal's mentality in order to figure out why a crime was committed. The emphasis, however, is on the cases that will have criminal conceptual perspectives. This research will focus on legal, empirical, and moral perspectives. The vulnerability of women is in question; therefore, I believe this subject is very relevant in the field of criminology, sociology as well as psychology.



ANALYSING & DEFINING RAPE

The United Nations defines violence against women as “*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*”.⁷ Rape is defined as a crime committed by one person forcibly forcing others to have sex. The definition of rape varies depending on time and place, but it is commonly defined as a crime committed by one person forcibly forcing others to have sex.⁸

The word rape comes from the Latin word ‘*rapare*’, which means “to seize.” Rape is described as “*a sexual assault involving sexual intercourse perpetrated by one or more people against*

⁶ Ray, Bharati, *Women of India: Colonial and Post-colonial Periods*, SAGE (2005).

⁷ (General Assembly Resolution 48/104)

⁸ Supra Note 3.

another without their consent."Men, especially in patriarchal societies, who are motivated by a combination of power and anger, demonstrate their masculinity by committing sexual violence against women.⁹

The Secretary-General of the United Nations stated emphatically that ending violence against women remains the greatest task of our time.

Margot Wolstrom, a former Special Representative of the United Nations Secretary-General for Sexual Violence in Conflict, shared her deep concern about this universality by stating that *'while bullets, bombs and blades make the headlines, women's bodies remain invisible battlefields. She points that when rape is accepted as cultural then the violent act is made inevitable.'*¹⁰

CAUSES AND CONSEQUENCES

Rape victims are affected in ways that no one can comprehend. Victims and their families suffer greatly in a stereotypical and patriarchal society like India to the point of self-destruction. The victim's family embraced their daughter's harsh and terrifying life and did not report the incident to the authorities or the media.¹¹In India, women are stigmatised to the point that concerns about provoking men, her character, and the blame game pop up all over the place.

In India, women are given the title of Goddess, but there are still questions like why does rape happen? What motivates anyone to rape? What factors play a role in this?

Factors leading to rape:

(a) Social factors:

Women's lives are the most difficult in patriarchal societies. She has been treated as if she were a separate person, and this patriarchal mentality contributes to the high rate of female-on-female violence. *"The deepening of sex ratio imbalances can be largely attributed to a marked*

⁹Goonesekere, Savitri, *Violence, Law and Women's Rights in South Asia*, SAGE PUBLICATIONS-INDIA (2004).

¹⁰ (UN News Centre, 25 March 2010).

¹¹ Karmen, Andrew *Crime Victims: An Introduction to Victimology*, WADSWORTH CENGAGE LEARNING (7th ed.) (2010).

preference for a son in tandem with a rapid decline in fertility, as infant daughters may be subjected to maltreatment, neglect and abandonment, and new technologies allow sex selective biases against females."¹²

(b) Cultural factors

In India, gender inequality is a source of power disparities, with women's power often being much less than men. This may be one of the reasons why men in the country are more likely to sexually assault women and rape is widespread. *"Men are in charge of the sexuality of women and their sense of honour depends on this control being socially accepted as legitimate"*.¹³ Such a scenario may lead to crimes like rape in India.

(c) Institutional factors:

The requirement of filing a lawsuit to prove that a rape happened, the poor conviction rate, the shameful prosecution, and the victim's stigma are all hallmarks of Indian processes and structures. In India, criminals used these reasons to fuel rape cases. Increased sexual assaults such as rape may be due to a lack of understanding and curiosity about sexual activity.

(d) Environmental factors

This is one of the primary causes of rising crime rates in society. Separation from home, a loss of identification, and the potential anonymity of migrants may all be factors in the rising incidence of rape. Children have been subjected to a variety of violent behaviours, criminal ideology, pornographic films, and assaults as a result of technology. This has an impact on children and even adults who engage in these practises, raising the risk of rape in the world.

¹² Grace Segran, Gender discrimination in India: a reality check, KNOWLEDGE (Dec 13, 2010), <http://knowledge.insead.edu/leadership-management/women-in-business/gender-discrimination-in-india-a-reality-check-723>.

¹³Luthar, K.V. and Luthar, K. H., *Using Hofstede's cultural dimensions to explain sexually harassing behaviours in an international context*, INT. J. OF HUMAN RESOURCE MANAGEMENT, (2002)13(2), 268–284.

(e) Individual factors

Rape perpetrators can suffer emotional distress or personality changes as a result of their behaviour. Sex addicts, for example, are addicted to sexual thoughts and are unable to suppress their satisfaction, leading to rape and other habits.

Need to control / repress the victim; show masculinity; strict retaliation against women; destroy the image of women or family members; compensate for their potential inadequacy, etc. *“Rape can also be committed out of sadism or need for power and control in a manner that is intentional, premeditated and coercive”.*

TABULAR CASE ANALYSIS

Sr. no.	Case name	Year	Place	Age of Victim	Total offenders	Age of offender/s	Victim dead/alive	Name of offenders	Occupation of offenders	Alcohol (yes/no)	Criminological Insights
1	Thangjam Manorma Devi case	2004	Manipur	32	17	b/w (30-50)	Dead	-	Personnel of parliamentary force Assam Rifles.	No	This case presents the example of how power can lead even soldiers to commit crime like rape on an innocent. The patriarchy was at the extent that the victim died.
2	Sonisorini case	2011	Chhattisgarh	35	1	-	Alive	Ankit Garg	Dist. Police superintendent	No	A police superintendent barely missing any amenity of day to day tortures a woman to the greatest extent, indicates

											how a man can go to fulfil his desires.
3	Nirbhaya Case	2012	Delhi	23	5	33, 33, 27, 33, 11	Dead	Mukesh Singh Vinay Sharma Pawan Gupta Akshay Thakur Mohd. Afroz	Bus cleaner Gym instructor Fruit seller (Divorced) Juvenile	No	The most brutal case in India's history, ended a girl's life in a very tender age. The criminals were from lower strata of society and their desires took the form of rape.
4	Dr Priyanka Reddy Case	2019	Hyderabad	27	4	-	Dead	Mohd. Areef Jollu Naveen ChennaKeshavullu Jollu Shiva	Driver Cleaner Cleaner Driver	Yes	This case indicates that alcohol can instigate criminal's desires which can be as heinous as rape.
5	Ajmer Rape Case	1992	Rajasthan	Up to 15	18	-	Alive	Farooq Chistee Nafis Chistee	President and vice president of All India Youth Congress	No	The offenders belonged to the highest position doesn't mean that they can do whatever they want. More than 30 girls were raped in this case.
6	Mumbai Rape case	2013	Mumbai	22	5	19, 21, 28, 26, 21	Alive	Mohd. Hafis Salim Ansari Vijay Jadhav Sirju Ashfaq Shaikh	Gambler Labourer Theif Drug dealer Juvenile	No	The offenders were already criminals and they must have thought one more crime in the list doesn't make any difference.
7	Ranaghat Rape Case	2015	West Bengal	71	6	b/w (25-30)	Alive	Salim Sheikh Gopal Sarkar Nazrul	Illegal Bangladeshis, usually involved in robberies	Not Known	Maybe all the criminals must have had the intentions of disrupting law

								Islam Milan Sarkar Ohidul Islam Khaledar Rahman		w n	and order in an alien country. Eventually, life of an innocent was claimed.
8	Delta Meghwal Rape Case	2016	Rajasthan	17	3	-	Dead	Vijendra Singh Ishwar Chandra Priya Shukla	PE teacher Principal Wardon	N o	Offenders being teachers of the victim overpowered her by committing rape.
9	Kathua Rape Case	2018	Jammu & Kashmir	8	8	-	Dead	Sanjhi Ram Deepak Khajuria Tilak Raj Arvind Dutta Parvesh Kumar Vishal Juvenile	Temple's priest Police officer Head constable Sub- inspector Police officer Son of sanjhi Nephew of sanjhi	N o	Temple's priest has been given the highest position in our society; lack of proper laws must have bolstered those upper-class people to rape a Dalit minor.
10	Unnao Rape Case	2017	Uttar Pradesh	17	1	-	Dead	Kuldeep Singh Sengar	MLA BJP	N o t k n o w n	Again, a high- profile criminal who can easily save himself from improper laws, killed victim's father and has committed rape on victim many at times.
11	Hathras gang Rape case	2020	Uttar Pradesh	19	4	20, 35, 23, 26	Dead	Sandip Thakur Ramu Thakur Lavkush Thakur Ravi Thakur	Upper date businessmen and landlords	N o t k n o w n	high-profile convicts who can easily get away with breaking the law, murdered the victim.

DESCRIPTIVE CASE ANALYSIS

The following sections will use psychological theory to establish a theoretical foundation for criminal behaviour research. I used a number of hypotheses due to the problem's multidimensionality and complexity.

I. Erik Erikson Identity Theory

The psychosocial theory of Erik Erikson provides details about defendants, especially minors in gang rape cases. Erikson was the first to propose an eight-stage model for human growth. Each stage depicts an individual who is involved in a dispute, referred to as a crisis, which they must successfully resolve before moving on to the next stage.¹⁴The term crisis “*in a developmental sense to connote not a threat of catastrophe, but a turning point, a crucial period of increased vulnerability and heightened potential*”.¹⁵

The sixth minor accused in the Nirbhaya case, the fifth minor accused in the Mumbai rape case, and two minors in the Katua rape case are all minors, according to age parameters (According to age standards) Eric Erickson's development model has it at the fifth level. The adolescent period lasts from 12 to 18 years and is marked by confusion and identity crisis.¹⁶This stage of adolescence sees physical maturity and a desire for independence. At the same time, they are unsure of their own identity and often seek answers to questions such as Who am I? They still have sexual emotions and don't know how to cope with them.

The accused adolescent, who is 17 this year, is attempting to flee the burnt-out home (for example, in the Nirbhaya rape case). The sex and gender problem has yet to be addressed due to the country's economic and demographic condition. He may have committed this heinous act as a result of his unresolved crisis and quest for identity. It's possible that this is his first experience with women, and his curiosity and lust have heightened his barbarism.

¹⁴Sokol, Justin T. (2009), “*Identity Development Throughout the Lifetime: An Examination of Eriksonian Theory*,”*GRADUATE JOURNAL OF COUNSELLING PSYCHOLOGY*, 1(2).

¹⁵Erikson, E. H. (1968), *Identity, youth, and crisis*. NEW YORK: NORTON.

¹⁶Elkind, D (1970), *Erik Erikson's Eight Ages of Man*.NEW YORK TIMES.

There is no specific information on the other defendants, but they could be subjected to sexual deprivation and unexplained circumstances in an urban environment.

II. Rational Choice Theory (RCT)

The rational choice theory is another theory that can justify the suspects' behaviour in the incident (RCT). RCT was developed in the area of economics, but it is now widely used in other fields.¹⁷The theory is concerned with the impact of rewards and constraints on actions.¹⁸

Beccaria extends this principle to the world of criminology,¹⁹ demonstrating that offenders carefully consider the costs and benefits of committing a crime before deciding whether or not to surrender.

In the case at hand, the defendant must evaluate the risks associated with entertainment practises and determine that they are not only low, but also risk-free. This is because the conviction rate for rape in India is extremely poor, there are few cases reported, and the social stigma associated with rape prevents victims from reporting such crimes. In these situations, frequent leniency and continued light sentences can improve the perpetrators' courage.

III. Social Disorganization Theory

Social Disorganization Theory (SDT) developed by Shaw and McKay (1942) offers yet another perspective to analyse these cases. The theory argues that *“crime and deviance reflect conditions that disrupt the integrity of local communities and weaken the regulatory power of social*

¹⁷ Lindauer, L. *“Rational Choice Theory, Grounded Theory, and Their Applicability to Terrorism”*, THE HEINZ JOURNAL, 9(2), (2009).

¹⁸ Gul, S.K, *“An Evaluation of the Rational Choice Theory in Criminology”*, GIRNE AMERICAN UNIVERSITY JOURNAL OF SOCIAL AND APPLIED SCIENCE, 4(8) (2009).

¹⁹ Hayward, K., *‘Situational Crime Prevention and Its Discontents: Rational Choice Theory versus the “Culture of Now”*, SOCIAL POLICY AND ADMINISTRATION, 41(3), 232–50 (2007).

norms".²⁰Some of the reasons for illegal activity include migration, alienation from relatives, and marital problems.²¹

Three of the accused in the Nirbhaya case were residents of neighbouring states who had come to New Delhi for work, while the accused in the Ranaghat Rape case were already criminals, as was the case in the Mumbai Rape Case. It also shows that all but one of them is working apart from their spouse. Due to a lack of family life, protection, and privacy, social control loosened, encouraging the accused to commit such a heinous act.

IV. Strain Theory

General strain theory has developed into a social psychological theory of crime. It was proposed that strain theory *"could be used to understand the way individuals cope with negative reactions by indulging in criminal acts"*.²²When people are unable to accomplish their goals by legal means, the theory suggests that they will resort to illegal means.

The defendant in this case is from a poor socioeconomic background, and the job he does barely allows him to eat twice a day. To satisfy their desires, they engage in a variety of unethical behaviours. They're probably going to play with the wine they bought with that money. They can become more addicted to rape in order to fulfil their physical needs and demonstrate masculinity.

LOOPHOLES IN RECENT JUDGEMENTS AND INFORMATION FROM STAKEHOLDERS

"Rape is a non-bailable offense in the Indian penal code," Anuja Trehan Kapur, a New Delhi-based criminal psychologist and advocate. *"But people do get bail because of a lack of evidence [in many cases]. The accused are often sheltered by police, or politicians, or even lawyers,"* Kapur added.

²⁰ Baron, L. and Straus, M., *"Four Theories of Rape: A Macro sociological Analysis"* SOCIAL PROBLEMS, 34, 467-489(1987).

²¹Blau, J.R. and Blau, P.M *"The cost of inequality: metropolitan structure and violent crime."*AMERICAN SOCIOLOGICAL REVIEW, 47, 114-28 (1982),.

²² Agnew, R., and White, R.H. *"An Empirical Test of General Strain Theory"*CRIMINOLOGY 30,475-99 (1992).

"We have a patriarchal society in India, which gives more importance to men. Women are usually considered second-class citizens," Dr. Shruti Kapoor, a feminist activist and founder of the Sayfty Trust organization, emphasized.

"Children internalize this at a very young age. A girl's wishes and her opinions are not considered as important as that of a boy's. The female child learns to be subservient from the beginning," Kapoor added.

Experts point out that the majority of abuse against girls and women occurs in their immediate surroundings. According to 2017 data from the National Crime Records Bureau, 93 percent of all rapes in India are committed by people who are known to the victim. Family members, colleagues, neighbours, employers, and even online friends may be among them.

"Most of these boys believe that girls in Western clothes are immoral, and that they can be harassed because they are asking for it," said Pravin Katke and Rahul Kusrkar from the organization.

Katke and Kusrkar are concerned about the recurring rape cases — not just in India, but all over the world. *"We believe that men and boys are not naturally violent; patriarchal norms make them insensitive. Therefore, not every man is a part of the problem, but every man can be a part of the solution,"* they said.

"People often say a tough law can bring about change. But what is a tough law? Law needs to be effective and the investigating agency and prosecution more proficient and efficient. That is a dire need," Seema Misra, a lawyer who works on women's rights issues.²³

RECOMMENDATIONS

The principle of suggests that a *"control system may not be able to optimally respond when the variety in the stimuli is greater than the variety in the system's internal set of*

²³What is behind India's rape problem? MADE FOR MINDS, <https://www.dw.com/en/what-is-behind-indias-rape-problem/a-51739350>.

responses".²⁴ A multi-dimensional strategy for mitigating the issue of rape must be proposed in India based on this theory and keeping in mind the dynamic nature of the problem.²⁵

1. Social & Cultural:

On a larger scale, a movement to forcefully address India's patriarchal traditions and cultural stereotypes in favour of patriarchy must be launched. The triggers and catalysts of India's gender inequality must be addressed by the entire society.

2. Institutional:

➤ Policing:

There must be increase the number of rape convictions. As soon as possible, make sure the report is reported. Police officers must be educated and qualified in forensic and questioning methods in response to these incidents. Encourage police officers to uphold principles such as honour and dignity.

➤ Legal sanctions and deterrents:

Anti-rape legislation must be updated and revitalised to meet international requirements. Improve the consistency of inquiries, as well as investigative techniques and procedures, taking into account the victims' psychological distress. Review the penalty for violators. Increase the number of victim monitoring services and support programmes in place to ensure that current laws are followed.

²⁴Gray, P. H. *The effects of knowledge management systems on emergent teams: towards a research model*. THE JOURNAL OF STRATEGIC INFORMATION SYSTEMS, 9(2), 175-191 (2000).

²⁵Boparai, G.S., Nandram, S., Pula, S., Sampath, V., Sharma, R., and Singh, J. *Rising incidence of rape and sex-related crimes against women in India*, FOUNDATION FOR CRITICAL CHOICES FOR INDIA. January. 36 p(2012).

➤ **Victim Support:**

Provide victims with legal and therapeutic support, such as personal counselling, care, and defence services delivered by highly qualified social workers. Measures to keep the perpetrator and his family from feeling humiliated. Create victim assistance centres and other support organisations to assist victims.

Medical personnel must receive specialised training in rape cases and will be trained on a regular basis. A medical plan that addresses the victims' and their families' immediate and long-term needs. The physical evaluation should be as responsive to the victim's physical and mental state as possible.

3. Education and Awareness building:

Introduce a sex education course in schools that is not politicised. At the grassroots stage, include schools and universities in running awareness programmes, victim assistance initiatives, sensitization campaigns, seminars, and other activities. Organize sex education seminars for teachers and parents. Organize human rights and legal rights training sessions for local women leaders and assist them in continuing to organise such workshops at the grassroots.

Investment in appropriate training for all professionals who deal with injuries, victims, or aggressors that could impact junior, intermediate, or third-level professionals. This may be linked to how people respond when sexual harassment is disclosed. Methods for supplying young people with preventive advice. Conduct instruction on how to keep track of a victim's history of sexual harassment and trauma, as well as how to react to disclosures.

4. Environmental factors:

Begin implementing the neighbourhood watch strategy. Start policing in your neighbourhood. The "Beat Officer" Initiative has designated this person to assist in the beginning of Community Policing. The duty officer will become a valuable member of the local network, helping to restore community relations and social power. Public and community leaders, as well as law enforcement officials, have begun to receive instruction.

Community policing can be a useful method, and women's active engagement can help community efforts have a greater effect. To lower the threshold for reporting crimes, community-based clinically trained therapy and support centres should be created. Pilot projects with the above components and involvement from various stakeholders should be launched in selected communities.

CONCLUSION

Despite the fact that rape is considered a horrific and criminal act, the number and severity of such crimes is on the rise. This form of crime is on the rise regardless of whether one lives in a wealthy or frugal setting, is educated or uneducated, or lives in an open or closed society. The topic of rape is examined from the viewpoints of community, culture, structure & environment in this article. This article contains studied on sex crimes against women, which has provided contributions to both theory and practise. This multidimensional study of rape incidents will provide many benefits.

While there are differing viewpoints in the field of rape and related crimes, these studies are dispersed, and it is important to combine them in order to research the causes and consequences in greater depth. The aim of this research is to not only bring together different points of view, but also to develop a new lens of inquiry and a multidimensional explanation for rape as a crime against women.