

# Need For Strict Laws with Better Implementation

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## ABSTRACT:

Highlighting the recent violence cases against women, the article aims to focus on the need of strict law with better implementation. It highlights the IMAGES (International Men and gender equality survey) 2011 report, Lon L. Fuller's morality principle, Law-makers corruption issues, consideration of clashing certain laws after a fixed period, misuse of laws by women, criminal mindset regarding victim and lastly, does implementation of law provides justice. It then aims to decipher and solve the problem by various legal methods, specifically focusing on fast-track courts. The article also aims to emphasize on amendment in legal system, as laws made in 18th century are not made keeping in mind the 21st century.

After the recent Hyderabad rape case, a ferocious outrage was observed across the country. Nationwide protest shuddered India. Yet, as soon as Citizenship amendment act was tabled, the focus shifted. Evident enough, no changes in the rape laws, or law for violence against women were seen. The protest smothered soon and new protest with different agenda started burning the nation. The protests held no credibility due to lack of results. As per Nirbhaya Victim mother's statement "only in 2-3 years, people forgot us. Nobody cared as to what and how the proceedings were taking place and we were standing in the court, alone". Currently, India is facing a phase of reforms. Be it protest for Nirbhaya rape outburst, demonetization, citizenship amendment act, or the coming future protests for Population control bill or introduction of new data privacy laws, it seems like protests are becoming a new trend for Indian youth. Are they benefitting? With no change or introduction of stricter law, the answer is substantially clear. No changes were seen resulting of any of the above protests and talking about Anti-rape laws introduced in 2013, strictness of rape case was a mandate, not because of public pressure, but because political pressure due to 2014 elections. Stricter laws are subject to election.

A nation with a populace soon crossing 150Cr. imprint inside no time, can a solitary law administer everyone? Will the intolerability of any wrongdoing be of same level? Will a solitary discipline be advocated to all? Obviously, we see a proviso. However, whether to severe the law of implement them in a better way? The answer is **strict law with better implementation**.

To comprehend the need of exacting law with better usage, we should comprehend its need. In India, Current state of India is exceptionally upsetting. To comprehend the abomination, we should observe the accompanying focuses featured by the **International Men and Gender Equality Survey (IMAGES), in 2011**.

- Since 1950, the number of missing girls in India has shot up to 70 million, which keeps on adding.
- The remaining faces significant violence. As per the report, the percentage of men thinking that women should not speak up and endure brutality to keep the family together, is shockingly 68 percent.

- Whereas number of men thinking beating a lady is their privilege and important to keep them “limits”, is 65 percent.
- Men accepting that they had committed violence/ assault on their mates – 35%.
- On an average, 24% men acknowledged that they have already committed an act of sexual violence against anyone in the society.
- Education is not the answer, as 92% of these people already had knowledge about rights of women and that it is a crime.

"Laws should be implemented strictly so as to instill fear in the minds of such criminals. There is a demand to give more tooth to laws and the Central government is considering it," the Union Minister of State for Defence said on December 8th, 2019. Yet, the reality, that number of bogus rape cases are more than number of genuine rape cases, can't be disregarded either. There is a genuine abuse of severe laws existing in India.

**The reason as to why too strict laws cannot be implemented, are very clear.** There needs to be **Assurance of Human rights** – Strict laws can be early hanging, non-allowance of review petition, non-allowance of appeal to higher court, etc. But all these contradict **Fuller's morality principle (1964)** and challenge the very Human rights<sup>1</sup>. "Classical positivism, of course, finds no place for it, but dynamic positivism has tremendous idealism, not by relying on natural law but on the basis of scientific understanding"<sup>2</sup> as correctly stated by **Justice Markandey Katju**. Currently speaking, we see as Citizenship bill was tabled, a violent protest-wave evoked. Also, we clearly cannot keep aside morality as Indian laws have to be based on them.

**Secondly, Law-makers themselves are facing criminal charges-** According to the Association for Democratic Reforms (ADR) reports in April, 2018, a nonprofit organization working for political and electoral reforms, "a total of 1,580 Members of Parliament (MPs) and Member of Legislative Assemblies (MLAs), or approximately 33 percent of the legislators in India's Parliament and state assemblies, have criminal cases pending against them. While some of their charges are minor, over 20 percent of the new MPs face serious charges such as attempted murder, assaulting public officials, and theft. Almost all parties in India, led by the ruling Bharatiya Janata Party (BJP) and the main opposition Congress, field tainted candidates, the report states". Out of a sum of 4,896 MPs and MLAs in the nation, the investigation dissected affirmations of 4,845 of them, including 768 of 776 oaths of MPs, and 4,077 of 4,120 MLAs.<sup>3</sup>

When the law-makers are guilty, we cannot expect them to make laws "self-incriminatory" to them.

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<sup>1</sup> 41 LON L. FULLER, THE MORALITY OF LAW, (1964).

<sup>2</sup> J. Markandey Katju, *The Hart-Fuller Debate by Justice Markandey Katju*, I EBC-India, PL WebJour (2001)

<sup>3</sup> Neeta Lal, *India's criminal politician*, THE DIPLOMAT, December 19, 2018. <https://thediplomat.com/2018/12/indias-criminal-politicians/>

**Tragically, India doesn't take into consideration certain clauses that require the termination of specific laws after a fixed timeframe.** Rather, its administrators, asked on by informed common society, regularly hurry to sanction new laws without revoking existing ones.

Since numerous laws at the focal level were inadequately drafted and are currently loaded with ambiguities, alterations, explanations and exclusions, they have definitely prompted clashing understandings, bringing forth interminable suit. With respect to state laws, which number in the a large number and straightforwardly influence the everyday existences of residents and functions of business, India still comes up short on a dependable stock.

**Thirdly, serious laws raise serious misuse.** Seema Misra, an attorney in New Delhi, says that bogus cases under promise of marriage are a "tremendous" issue, one that she finds upsetting. "There is a cutoff to how far ladies can depict themselves to play "victim card". Sooner or later we need to assume liability for our activities – 90% of the cases I have seen are bogus," she says.

For women's activist legal advisors like Misra, the subject is laden with issues. They understand that such cases mirror the top notch put on a lady's celibacy by an extremely patriarchal culture. No unmarried lady can be believed to be explicitly dynamic outside marriage, however contradict the maltreatment of pro-women laws. Imagine a situation where strict laws are implemented on an innocent. Such "black laws" will simply give rise to infringement of rights of an innocent man.

**Fourthly, Increase in violence, as people might kill the victim** – Another issue with seriously rebuffing the criminal is change in his criminal mindset. Previously, in the wake of rape, the guilty party may leave the unfortunate casualty alive. There is as yet an opportunity that the injured individual may be dealt with. Be that as it may, if murder and rape are dealt in a similar way, the guilty party would prefer to homicide the injured individual so as to shroud proof.

**Fifthly, does Implementation of laws, provides justice?** Justice delayed is justice not served. Nirbhaya incident, taking place in 2012, justice, as of 20/12/2019, has not yet been served. Whom to blame? Instead, one of the culprits also pleads for Juvenile Justice. This fact again can't be disregarded in numerous grievous cases. India, being a piece of United Nation settlement, has to follow Child protection. Child protection is the protection of children from violence, exploitation, abuse and neglect. **Article 19 of the UN Convention on the Rights of the Child** provides for the protection of children in and out of the home<sup>4</sup>. So, the heinousness of a crime does not define punishment, but age does. This has been a major debate point since ages.

**What can solve the problem? The sole solution is Fast track courts providing for stricter punishment and stricter administration-** Indeed, a constitutional way to address the situation, instead of an encounter. But, an

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<sup>4</sup> United Nations Convention of the Rights of the Child, art. 19, cl. 1, cl. 2.

approach of fast-track court requires resources and their proper utilization. Plus, a corruption-free mindset is required. Recently, a valid accusation sustained on the authority which granted bail to Unnao rape case accused. One of the accused being a relative of an MLA was bailed claiming his power. The accused attacked the victim again and this time, they burnt her, resulting to her death. Who shall be held guilty? The one already out on bail or the one who helped them get out on bail? There needs to be an **ombudsmen procedure** to be followed on such incidents, making system stricter.

To conclude, I would like to ask what to do? Make the law implementation strict or regulate its execution in a stricter way? The answer is, both. Laws made during the British era cannot and were not made keeping in mind the conditions of 21st century. They were simply a solution for 18th century. There is a serious need for a change in laws, and a need for new, stricter bodies for their implementation.