

Strict Laws or Better Implementation of Laws

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I. INTRODUCTION

On the horrifying night of 12 December 2012 in Delhi when six men brutally raped a twenty-three-year-old girl in a moving bus (Hereinafter as Nirbhaya incident).¹ The entire nation came together and demanded the most severe punishment for the perpetrators.² This demand was deeper and unanimous for the juvenile who was said to be the most brutal with the victim.³ The demand was there to treat him as an adult.⁴ Inspired by the aforementioned event and owing to public recalcitrance, stringent laws were introduced in the country for rape in the form of Juvenile Justice (Care and Protection of Children) (amendment) Act, 2015⁵ and anti-rape laws.⁶ Recently, the nation was shocked again when in Hyderabad a girl was not only raped but was also burnt alive by the accused.⁷ A few days after this incident a rape victim burnt alive by the accused in Uttar Pradesh.⁸ These incidents raise the question on Indian law System and encounter of the accused in the Hyderabad incident by the police declared an appropriate action by the people.⁹

¹ Correspondent, *India victim in 2012 Delhi gang rape named by mother*, BBC NEWS (December 16, 2015), <https://www.bbc.com/news/world-asia-35115974>; Jason Burke, *Delhi rape: how India's other half lives*, THE GUARDIAN (September 10, 2013), <https://www.theguardian.com/world/2013/sep/10/delhi-gang-rape-india-women>; Jason Burke, *Delhi bus gang rape: 'What is going wrong with our society?'* THE GUARDIAN (December 19, 2012), <https://www.theguardian.com/world/2012/dec/19/delhi-bus-gang-rape>.

² Padmapriya Govindarajan, *Nearly 5 Years on: Lessons From India's Infamous 'Nirbhaya' Gang Rape Case*, THE DIPLOMAT (May 16, 2017), <https://thediplomat.com/2017/05/nearly-5-years-on-lessons-from-indias-infamous-nirbhaya-gang-rape-case/>; Correspondent, *Shock and outrage over India Delhi bus gang rape*, BBC NEWS, (December 1, 2012), <https://www.bbc.com/news/world-asia-india-20765320>.

³ V.N. Sreeja, *Delhi Gang-Rape: Minor Was Allegedly The Most Brutal Among Accused; Will India Amend Juvenile Justice Act?*, INTERNATIONAL BUSINESS TIMES (March 1, 2013), <https://www.ibtimes.com/delhi-gang-rape-minor-was-allegedly-most-brutal-among-accused-will-india-amend-juvenile-justice-act>; Correspondent, *Most brutal rapist of Nirbhaya let loose*, THE PIONEER (December 21, 2015), <https://www.dailypioneer.com/2015/page1/most-brutal-rapist-of-nirbhaya-let-loose.html>; Correspondent, *Delhi gangrape: Minor accused's family, villagers to boycott him*, NEWS18 (July 11, 2013), <https://www.news18.com/news/india/delhi-gangrape-minor-accuseds-family-villagers-to-boycott-him-622852.html>.

⁴ Subramanian Swamy v. Raju through Member Juvenile Justice Board, (2014) AIR SC 1649.

⁵ Deepshikha Ghosh, *16-Year-Olds to be Tried as Adults in Extreme Crimes, Says Lok Sabha*, NDTV (May 7, 2015), <https://www.ndtv.com/india-news/changes-to-juvenile-justice-act-spurred-by-gang-rape-outrage-passed-in-lok-sabha-761221>.

⁶ Correspondent, *New anti-rape law comes into force*, THE TIMES OF INDIA (April 3, 2013), <https://timesofindia.indiatimes.com/india/New-anti-rape-law-comes-into-force/articleshow/19359543.cms>; Correspondent, *Explaining India's new anti-rape laws*, BBC NEWS (March 28, 2013), <https://www.bbc.com/news/world-asia-india-21950197>.

⁷ Jeffrey Gettleman and Hari Kumar, *After Horrific Rape in India, Police Kill 4 Suspects*, N.Y. TIMES (December 6, 2019), <https://www.nytimes.com/2019/12/06/world/asia/india-rape-murder-police.html>.

⁸ Correspondent, *India rape victim dies after being set alight on her way to court*, THE GUARDIAN (December 7, 2019), <https://www.theguardian.com/world/2019/dec/07/india-victim-dies-after-being-set-alight-on-her-way-to-court>.

⁹ Correspondent, *Hyderabad case: Police kill suspects in rape and murder of Indian vet*, BBC NEWS (6 December, 2019), <https://www.bbc.com/news/world-asia-india-50682262>; Geeta Pandey, *Hyderabad case: Why Indians are celebrating the killings*, BBC NEWS (December 6, 2019), <https://www.bbc.com/news/world-asia-india-50683615>.

There is always a demand of strict laws against such cruel and barbarous crime but how far these demands are valid, is it the leniency of the laws that are leading the occurrence of such heinous crime in the society or lack of implementation of the laws? Amidst all protest and demand, this question need to be answered and the author seeks to find the same.

II. THE ANSWER

Recently, India was named as the most dangerous country for women in terms of their safety, even countries like Afghanistan, Syria, Pakistan, and Somalia were ranked below, this depicts the current picture of India.¹⁰ There is a strong voice to make strict laws to ensure the safety of women, while an underline voice emphasizes more on to the implementation of the laws, which indeed is a better option.

After the 2012, 'Nirbhaya case,' anti-rape bill was passed in which punishment was made stricter for a rape convict with punishment extending to death penalty.¹¹ Despite this strictness rape cases increased in the country. In 2012, the total reported cases of rape were 24, 923.¹² While in 2015 the total reported cases were 34,000.¹³ This is asserting the fact that strict laws do not deter the criminals.

Indian laws are always found as strong and proper laws on papers. It is the lack of implementation of laws that lead the chaos. According to the World Justice Data, India fares well on openness of government and democratic controls with the rank of 32.¹⁴ But, the procedural effect of the same laws is very poor, with India standing on 67th in the categories of the absence of corruption¹⁵, while 98th in the category of maintaining order and security.¹⁶ India has several special laws for women despite this not least nearly 600 million women worried about their basic safety.¹⁷ This is showing the weak implementation of laws not the absence of the laws. Are strict laws

¹⁰Belinda Goldsmith & Meka Beresford, Reuters, *India most dangerous country for women with sexual violence rife - global poll*, REUTERS (June 26, 2018), <https://in.reuters.com/article/women-dangerous-poll/india-most-dangerous-country-for-women-with-sexual-violence-rife-global-poll-idINKBN1JM076>.

¹¹ Correspondent, *New anti-rape law comes into force*, THE TIMES OF INDIA (April 3, 2013), <https://timesofindia.indiatimes.com/india/New-anti-rape-law-comes-into-force/articleshow/19359543.cms>; Correspondent, *Explaining India's new anti-rape laws*, BBC NEWS (March 28, 2013), <https://www.bbc.com/news/world-asia-india-21950197>.

¹²National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India, *Crime in India 2012 Statistics*, p. 385, <http://ncrb.gov.in/StatPublications/CII/CII2012/Statistics2012.pdf>.

¹³ Correspondent, *India: More than 34,000 cases of rape reported in 2015*, AL JAZEERA (September 1, 2016), <https://www.aljazeera.com/news/2016/08/india-34000-cases-rape-reported-2015-160831140518208.html>; Correspondent, *13,766 cases of child rapes reported in 2014*, India Today (August 8, 2015), <https://www.indiatoday.in/mail-today/story/child-rapes-shoot-up-in-three-years-287094-2015-08-08>.

¹⁴World Justice Project, *World Justice Project Rule of Law Index*, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf, p. 38.

¹⁵World Justice Project, *World Justice Project Rule of Law Index*, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf, p. 37.

¹⁶World Justice Project, *World Justice Project Rule of Law Index*, <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>, p. 41.

¹⁷ Devesh Kapur, Milan Vaishnav, *Strengthening India's rule of law*, LIVEMINT (June 9, 2014), <https://www.livemint.com/Opinion/N3pY337INutBRtXQs7GO3O/Strengthening-Indias-rule-of-law.html>.

are effective? Certainly not and to illustrate this a global picture is need to be taken.

Some countries like China, Saudi Arabia, and France have very strict laws against rape. In China, Punishment for a rape convict is the death penalty, in some cases, even castration is allowed.¹⁸ Despite this strict law, It was reported that 40 percent of married women or women in the relationship have faced sexual violence at least once.¹⁹ While 47 percent of men who commit sexual assault accepted that they are not deter by such laws.²⁰ 72.4 percent of these accused have not experienced any legal consequences²¹, while only one out of 10 rape cases in China are reported.²² This data is showing the importance of better implementation of the laws than strict laws. In France, there is no death penalty for the rape convict but the imprisonment system is much strict with punishment extended up to 30 years of imprisonment.²³ But, here also more than one in ten women are rape victim²⁴ while only one out of ten cases of sexual assault get reported.²⁵ Saudi Arabia has one of the most rigorous punishments for the rape convict with the convict would be beheaded publicly.²⁶ Nevertheless, the country has been declared as the 5th dangerous country for women.²⁷ In 2007, South Africa passed a much strict law to stop the rape case²⁸ despite this, the country stands at first in terms of the most incidents of rape cases.²⁹

Indian never had weak law it is the lack of implementation which is causing damage. To illustrate it, let's consider the laws of tax evasion. India having a parallel economy of black money with a hefty amount has been deposited

¹⁸Correspondent, *This Is What They Do To Rapists In Different Countries Around The World*, SCOOPWHOO (May 22, 2015), <https://www.scoopwhoop.com/inothernews/punishing-rape-globally/>.

¹⁹R. De Silva de Alwis & J. Klugman, *Freedom from violence and the law: a global perspective in light of the Chinese domestic violence law*, 37(1) UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 1-52 (2015).

²⁰E.Fulu, X. Warner, S. Miedema, R. Jewkes, T.Roselli, & J. Lang, *Why do some men use violence against women and how can we prevent it. Quantitative Findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific, Bangkok, United Nations*, https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBAP-Gender-2013-P4P-VAW-Report.pdf.

²¹E. Fulu, X. Warner, S. Miedema, R. Jewkes, T.Roselli, & J. Lang, *Why do some men use violence against women and how can we prevent it. Quantitative Findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific, Bangkok, United Nations*, https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBAP-Gender-2013-P4P-VAW-Report.pdf.

²² Correspondent, *Rape in China*, US-China Today (July 5 2007), https://web.archive.org/web/20131016100422/http://www.uschina.usc.edu/w_usci/showarticle.aspx?articleID=13037&AspxAutoDetectCookieSupport=1; Ashley Money, *I was Raped in China (An American's Perspective)*, Yahoo Voice (18 July 2013), <https://web.archive.org/web/20140109232053/http://voices.yahoo.com/i-was-raped-china-americans-perspective-12231018.html?cat=72>.

²³Correspondent, *This Is What They Do To Rapists In Different Countries Around The World*, SCOOPWHOO (May 22, 2015), <https://www.scoopwhoop.com/inothernews/punishing-rape-globally/>.

²⁴ Correspondent, *More than 1 in 10 French women raped, study reports*, THE GUARDIAN (February 24, 2018), <https://www.theguardian.com/world/2018/feb/24/more-than-1-in-10-french-women-raped-study-reports>.

²⁵Pierre Longerey, *New Study Looks at Rapes in Paris — And Says Nine Out of Ten Go Unreported*, VICE NEWS (January 24, 2016), https://www.vice.com/en_us/article/ywj59w/new-study-looks-at-rapes-in-paris-and-says-nine-out-of-ten-go-unreported.

²⁶Correspondent, *This Is What They Do To Rapists In Different Countries Around The World*, SCOOPWHOO (May 22, 2015), <https://www.scoopwhoop.com/inothernews/punishing-rape-globally/>.

²⁷Belinda Goldsmith & Meka Beresford, Reuters, *India most dangerous country for women with sexual violence rife - global poll*, REUTERS (June 26, 2018), <https://in.reuters.com/article/women-dangerous-poll/india-most-dangerous-country-for-women-with-sexual-violence-rife-global-poll-idINKBN1JM076>.

²⁸The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

²⁹World Population Review, *Rape Statistics By Country 2019*, <http://worldpopulationreview.com/countries/rape-statistics-by-country>.

outside from India.³⁰ India's law for tax invaders is strict enough with punishment of a hefty penalty or imprisonment up to seven years.³¹ Now compare this with the US where tax laws are less strict than India with fined not more than \$ 100,000 or imprisonment up to five years.³² Nevertheless, tax invasion cases are much less there.³³ The reason is simply the lack of implementation of the laws. In February 2014, CAG reported that the tax department has a woeful administration in prosecution matters with lots of delays ranging from 5 years to even 48 years. There is hardly any case of prosecution of any tax invaders. While in the US this is very common. This woeful administration cause tax evasion, not the laws.³⁴

India being a democratic country³⁵ cannot allow punishment such as genital mutilation or death by pelting stones or shot dead publicly. As these acts are against the Indian constitution in the light of Article 21³⁶, 20³⁷, 22³⁸. Justice in Indian context since ancient has experienced in three major guises -Moral Justice, Social Justice and Legal justice which is still continuing and such strict laws cannot be justified in the light of these.³⁹ Also, India being the party of international treaties such as the International Covenant on Civil and Political Rights, 1966⁴⁰, Declaration of Human Rights, 1948⁴¹ is determined to protect the rights of even an accused.

From the Psychological view, strict laws such as beheaded publicly or pelting stones on the convict not make any positive impact. In fact, these executions by the state encourage people to commit crime as this is call brutalization effect.⁴² Further, it also has reported that strict laws don't deter criminals.⁴³ It also reported by criminologists that

³⁰Correspondent, *Black money stashed outside India is estimated at \$216-490 bn, say studies*, BUSINESS STANDARD (June 24, 2019), https://www.business-standard.com/article/economy-policy/black-money-stashed-outside-india-is-estimated-at-216-490-bn-say-studies-119062401479_1.html.

³¹Income-tax Act, 1961, Chapter XXII.

³²U.S.Code 26 § 7201.

³³ Rene Chun, *Why Americans Don't Cheat on Their Taxes*, THE ATLANTIC (April, 2019), <https://www.theatlantic.com/magazine/archive/2019/04/why-americans-dont-cheat-on-their-taxes/583222/>.

³⁴ Ajay Mankotia, *Nobody has been jailed in India for tax evasion*, THE ECONOMIC TIMES (November 19, 2015), <https://economictimes.indiatimes.com/news/economy/policy/nobody-has-been-jailed-in-india-for-tax-evasion/articleshow/49841252.cms?from=mdr>.

³⁵INDIA CONST. Preamble- WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens.

³⁶INDIA CONST. art. 20.

³⁷INDIA CONST. art. 21.

³⁸INDIA CONST. art. 22.

³⁹Dr. D.P.Verma & Dr. Ramesh Chandra Chhajta, *Human Rights of Arrested Person in Ancient India: An Appraisal*, 19(12) IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 85-91(2014).

⁴⁰International Covenant on Civil and Political Rights, 1966, art. 9.

⁴¹Declaration of Human Rights, 1948, art. 11

⁴²D.R.King, *The Brutalization Effect: Execution Publicity and the Incidence of Homicide in South Carolina*, 57(2) SOCIAL FORCES 683-687 (1978).

⁴³J. MITCHELL MILLER, 21ST CENTURY CRIMINOLOGY: A REFERENCE HANDBOOK (ed. 1, SAGE Publications 2009); R. DURRANT, AN INTRODUCTION TO CRIMINAL, pg. 284(Routledge 2014); Daneil Nagin, *Imprisonment and Reoffending*, 38 CRIME AND JUSTICE, 115-204(2009). Valerie Wright, *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/publications/deterrence-in-criminal-justice-evaluating-certainty-vs-severity-of-punishment/>.

strict laws about any crime made the false appearance of such crime due to high priority given by the investigators.⁴⁴

The punishment is given to have a deterrence effect on the criminals but this not works alone other aspects such as Immediacy and consistency of punishment also need to be presented.⁴⁵ Which lacks in India due to ill implementation of the laws. Example of this is delay in the Nirabhaya case as even after the strict law of anti-rape laws execution of punishment is yet to be done.⁴⁶ This reduces the deterrence effect of the laws as immediate benefit accuse gets by such act dominate over the consequences of such act which many times delays for years, lack of consistency with several times cases not even reported, give accuse a thought of escape and result in the commission of the crime.⁴⁷

Instead of making new strict laws, India needs to emphasize more on its implementation process. India has several outdated laws based on colonial-era. Such as Section 377 which decriminalized recently in India.⁴⁸ Britishers criminalized it in 1842 and included in the IPC but they themselves decriminalized it in 1885 itself⁴⁹ while we took centuries for the same. Laws such as sedition and others which were intentionally passed to oppress the voice of Indian leaders are still a valid law.⁵⁰ Fifth law commission of India in 1958 itself recommended the re-evaluation of these colonial eras based laws.⁵¹ Therefore, we need to review the laws with the inclusion of aspects such as the sunset clause.⁵²

⁴⁴ ANTHONY WALSH & CRAIG HEMMENS, *INTRODUCTION TO CRIMINOLOGY: A TEXT/ READER* (ed. 2nd , Sage Publications 2011) .

⁴⁵ Adria J. Trotman & Faye S. Taxman, *Implementation of a Contingency Management-Based Intervention in a Community Supervision Setting: Clinical Issues and Recommendations*, NCBI (January 8, 2012) , <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3253349/>. J.N. Meindl & L.B. Casey, *Increasing the suppressive effect of delayed punishers: A review of basic and applied literature*, 27(3) BEHAVIORAL INTERVENTIONS 129–150(2012).

⁴⁶ Correspondent, *Supreme Court rejects plea to review death penalty in Nirbhaya gang-rape and murder case*, THE ECONOMIC TIMES (December 18, 2019), <https://economictimes.indiatimes.com/news/politics-and-nation/nirbhaya-gang-rape-and-murder-case-supreme-court-judgement/articleshow/72864047.cms>; Dev Goswami, *Nirbhaya rape-murder convicts to be hanged soon? Whispers grow louder*, INDIA TODAY(December 12, 2019), <https://www.indiatoday.in/india/story/nirbhaya-gang-rape-murder-convicts-hanging-death-penalty-speculation-1627714-2019-12-12>.

⁴⁷ Valerie Wright, *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/publications/deterrence-in-criminal-justice-evaluating-certainty-vs-severity-of-punishment/>.

⁴⁸ Michael Safi, *Campaigners celebrate as India decriminalises homosexuality*, THE GUARDIAN (September 6, 2018), <https://www.theguardian.com/world/2018/sep/06/indian-supreme-court-decriminalises-homosexuality>; Correspondent, *India court legalises gay sex in landmark ruling*, BBC NEWS (September 6, 2018), <https://www.bbc.com/news/world-asia-india-45429664>; Correspondent, *Section 377: Here is everything you need to know*, THE ECONOMIC TIMES (September 7, 2018) <https://economictimes.indiatimes.com/news/politics-and-nation/sc-delivers-historic-verdict-heres-everything-you-need-to-know-about-section-377/articleshow/65698429.cms>.

⁴⁹ Sonakshi Awasthi, *These five Indian laws owe their origin to British, but are still in practice*, THE INDIAN EXPRESS (August 11, 2018), <https://indianexpress.com/article/research/these-five-indian-laws-owe-their-origin-to-british-but-are-still-in-practice-4789251/>.

⁵⁰ Sonakshi Awasthi, *These five Indian laws owe their origin to British, but are still in practice*, THE INDIAN EXPRESS (August 11, 2018), <https://indianexpress.com/article/research/these-five-indian-laws-owe-their-origin-to-british-but-are-still-in-practice-4789251/>.

⁵¹ Law Commission of India, *Fifth Report on British Statute Applicable in India*, <http://lawcommissionofindia.nic.in/1-50/Report5.pdf>.

⁵² Surya Prakash B.S, *Making laws with sunset clauses*, LIVEMINT (January 3, 2018), <https://www.livemint.com/Opinion/svjUfdqWwbbVzRjFNkUK/Making-laws-with-sunset-clauses.html>.

India's rule of law supply chain from legislators who draft laws to the court that enforce them is also problematic.⁵³ The situation becomes worse with the fact that approx one-third of the national legislators are under the criminal charge with the lawmakers themselves being the foremost lawbreakers has an insidious effect on the rule of law.⁵⁴

For better implementation of the laws, recommendations of committees need to be considered which clearly lacks in India. As data shows, Law Commission of India has given 262 recommendations up to now while only 92 recommendations have been implemented.⁵⁵ Other committees' suggestions also not usually implemented. The focus should be more on filling the vacancy in the judiciary than making laws as with pending of more than 3.3 cr cases⁵⁶ it is almost impossible to provide speedy trial and this results in a delay of justice and give punishment to the accused which again reduces the impact of law.

III. CONCLUSION

With 67 rape cases reported every day.⁵⁷ There is a dire need to consider this problem but in a better and proper way. The above discussion gives the reason that why emphasis should be more on better implementation of laws than making new strict laws.

⁵³ Devesh Kapur, Milan Vaishnav, *Strengthening India's rule of law*, LIVEMINT (June 9, 2014), <https://www.livemint.com/Opinion/N3pY337lNutBRtXQs7GO3O/Strengthening-Indias-rule-of-law.html>

⁵⁴ Correspondent, *1580 MPs, MLAs are facing criminal charges*, INDIA TODAY (September 25, 2018), <https://www.indiatoday.in/india/story/supreme-court-verdict-crime-cases-against-mps-mlas-1348555-2018-09-25>.

⁵⁵ Law Commission of India, *Status of law commission report*,

http://legallaffairs.gov.in/sites/default/files/status%20of%20law%20commission%20report_0.pdf.

⁵⁶ Correspondent, *3.3 crore cases pending in Indian courts, pendency figure at its highest: CJI Dipak Misra*, BUSINESS TODAY (June 28, 2018), <https://www.businesstoday.in/current/economy-politics/3-3-crore-cases-pending-indian-courts-pendency-figure-highest-cji-dipak-misra/story/279664.html>; Correspondent, *Out of 43 lakh cases pending in High Courts, over 8 lakh a decade old*, THE ECONOMIC TIMES (June 27, 2019), <https://economictimes.indiatimes.com/news/politics-and-nation/out-of-43-lakh-cases-pending-in-high-courts-over-8-lakh-a-decade-old/articleshow/69974916.cms>.

⁵⁷ Dipu Rai, *Sexual violence pandemic in India: Rape cases doubled in last 17 years*, INDIA TODAY (December 13, 2019), <https://www.indiatoday.in/diu/story/sexual-violence-pandemic-india-rape-cases-doubled-seventeen-years-1628143-2019-12-13>.