

Strict Laws or Better Implementation

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Leo Tolstoy, in 'War and Peace' wrote, "Writing laws is easy, but governing is difficult."

Undoubtedly, strict laws and their efficient implementation are two sides of the same coin because both of them are equally essential for maintenance of peace and security in any nation. Having stringent laws but an inefficient system for their enforcement is as useless as having a key without its lock. Similarly, if a government has a well-structured policy for implementing laws but doesn't have any suitable laws to implement, the policy is purposeless.

Talking about India, the problem is not with the laws but with their enforcement. In 2018, only 17% of the population facing legal problems had access to justice.¹ This doesn't mean that the laws of our country aren't suitable for the population. There are some matters on which the laws in India are very strict but the lacuna lays at the most substantial step, that is, their implementation. The most evident example of poor implementation is the ongoing Nirbhaya Rape Case. Six accused, who brutally raped a 23-year old girl, assaulted her with a rod and assaulted a boy and threw them on the roadside to die, were held guilty. One of them died in the police custody. One of them was a juvenile and was released after living for three years in a juvenile home, but right after this case, the Parliament brought a great amendment for the laws to be even stricter. The Juvenile Justice Amendment 2015 now allows the trial of an accused as an adult if he is at least sixteen years old. There were a number of major amendments by the Criminal Law (Amendment) Act, 2013. It recognizes many new acts as offences under Indian Penal Code, 1860, like acid attacks, attempt to administer acid, stalking, voyeurism etc. The provisions under Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, were made more victim-friendly. The other five convicts were charged under ten Sections of Indian Penal Code 1960 and were sentenced to death. All of this clearly shows that the laws in India are strong enough to punish the wrong-doers for the inhumane acts they do. It also shows that the Parliament doesn't want to leave any stone unturned to make the laws even stricter for such devastating acts. But it is so disheartening to realize that seven years have passed and the remaining three convicts are still not given the decided punishment. Death can be the maximum penalty for an offence and it has actually been decided by the Indian Judiciary for the three convicts of this case but nothing can be done about that punishment if there is no enforcement.

¹ World Justice Project 2018 General Population Poll survey module on legal needs and access to justice.

It is extremely daunting to know that only 230 out of every 1000 sexual assaults are reported to the police. That means about 3 out of 4 remain unreported.² What is the reason behind not reporting the offences? Is it lack of strict laws? NO. Nobody gave this reason for not reporting. As per a report, out of those who didn't report the sexual assault, 13% of them gave the reason that they believed that the police wouldn't do anything to help them.³ What kind of a system have we built? The system which is supposed to help people, make sure that they feel safe, has become the reason why people are not ready to speak up. The victims gave many other reasons but this was the only one directly related to the inefficiency in the implementation.

There are several other areas in which India, despite having great laws, lacks effective system of enforcement. Let us talk about some of them.

Gender equality in Indian laws and Indian Constitution is one of the core principles. Right to equality is the Fundamental Right of every person, irrespective of his/her gender. It is shocking that despite being such a fundamental concept in our country, India has slipped to 112th position in terms of gender equality.⁴

There are a number of laws in India which deal with the environment, like Forest Conservation Act, 1980, Environment Protection Act, 1986, etc. Despite having specialized courts for dealing with this, they face an implementation crisis. In spite of having great focus on environmental laws, India ranked 177th out of 180 countries in the 2018 Global Environment Performance Index rankings for Yale University. More than two-thirds of the States/Union Territories didn't even bother to comply with the orders of the Supreme Court, nor did they comply with the directions issued by the Ministry of Environment, Forests and Climate Change. Sunita Narain, Director General of the New Delhi-based non-profit Centre for Science and Environment, said, "We are perfect in the policy department but implementation is a problem."⁵

There can be innumerable such examples but what we shall focus on are the causes of such an inefficacious system and the solutions to make it effective because it is high time and changes need to be made in the system. The biggest and the most contributing factor to this inefficiency is corruption, especially because of the people in power. 43% Members of Parliament of 2019 have declared criminal charges against them, out of which, nearly 29% of the crimes are rape, murder, attempt to murder or crime against women.⁶ Such people in power misuse their authority to exploit the victim and make the implementation of laws difficult. The recent example of such a situation is the Unnao Rape Case in which a minor was gang-raped in 2017 in Unnao, Uttar Pradesh. On December 16, 2019, Kuldeep Singh Senger, an expelled former Bharatiya Janta Party leader was convicted for

² <https://www.rainn.org/statistics/criminal-justice-system>

³ <https://www.rainn.org/statistics/criminal-justice-system>

⁴ World Economic Forum – Gender Gap Index 2019

⁵ <https://www.indiatoday.in/magazine/up-front/story/20171204-delhi-smog-pollution-clear-air-sunita-narain-interview-1093063-2017-11-25>

⁶ [business-standard.com/article/pti-stories/43-newly-elected-lok-sabha-mps-have-criminal-record-adr-119052600341_1.html](https://www.business-standard.com/article/pti-stories/43-newly-elected-lok-sabha-mps-have-criminal-record-adr-119052600341_1.html)

the rape. It took two long years for his conviction. Local police officers blocked the victim's efforts to file an FIR immediately. This is not the only proof of the inadequacy in our system. The police finally arrested Sengar when the victim attempted to set herself afire to demand registering the case. In the meanwhile, the victim's father died in judicial custody. The victim was seriously injured and two of her relatives had died in a truck collision. It was also revealed that the family was threatened and they had also written to the then Chief Justice of India for help. The court said that the victim was threatened that if she takes Sengar's name, her family wouldn't be spared and as soon as the incident was reported, the cycle of incidents began against the victim and her relatives. This, very unambiguously, shows the corrupt system of our country. Not only in offences against women but in very common cases too, we see that the misuse of power by the people who rule usually leads to non-enforcement of laws against their will, causing non-deliverance of justice. There are many other factors responsible for poor enforcement like lack of public awareness, poor conviction rate, pendency of cases in the judiciary etc. but why is corruption and misuse of power the biggest of all the factors? It is because the people in power are supposed to handle the nation, protect its people, maintain the law and order in the society but when such people do not perform their part and act in an opposite manner instead, they become the biggest threat to the nation.

Another aspect to be observed is the consequence of all this. Recently, a veterinarian was gang-raped and murdered in Hyderabad. The 4 accused were killed in a police encounter. They were not declared guilty by any court. They may have been guilty, they may have been innocent. Regardless of this, the nationwide celebrations were observed. People were celebrating the encounter, cutting cakes and dancing with joy. Why? Have they forgotten the difference between an accused and a guilty? It clearly shows that people feel that if the case would have gone the other way, justice would may or may not have been delivered. This shows the agitation among the people due to the non-implementation of laws.

It is a very peculiar situation in our country. Despite having good laws, there cannot be seen an effective use of that. Why? The answer is poor implementation.

The next big question – what happens as a result of such a fallacy in the system of a country? People lose faith. People start believing that no matter how much they try, nothing is going to help them. They start taking law in their own hands. They protest. And for a country like ours, it is a shame that we cannot have a well-organized, planned system of enforcement. Everyone needs to work together for this. All the organs of the government, the forces, the media, the public, everyone has to do their own part with full dedication. In India, the laws are strict, all we need is better implementation or may be strict laws FOR better implementation.