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# The Rule of Law and the Contribution of Judiciary

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## ABSTRACT

*I Quote: I feel that our constitutional republic's crown gem is an independent judiciary. The rule of law imposes on courts, the authority to deal with all other branches of government, including the legislature. This paper examines a variety of possible answers to the questions and considers the possibility that the supremacy of courts in a constitution could reflect a form of judicial supremacy that is remarkably similar to the uncontrolled rule of men, which is the goal of the rule of law. It is especially important for courts to recognize that their power is limited and that they should not be governed by any overall political agenda other than that of ensuring that constitutional restraints on government are upheld to prevent such a possibility.*

*The phrase "Rule of Law," which is believed to have originated from Latin Phrase **La Legalite**, signifies that government is built on rules of law and not on men. Democracy means a rule of law, rather than a rule of force and supremacy of the law, where no one, no matter who is the highest individual, is above the law., The word originated in Britain, but it gained prominence in ancient India in the form of the 'Dharma,' which was doing what one was supposed to do. This dharma was gradually replaced by religious texts and the priests., With the arrival of the Britishers and the codification of laws, religious scriptures lost their importance and were replaced by written laws, and the concept of the Rule of Law was formalized. The Rule of Law is a potent countermeasure to executive lawlessness and is woven into our Constitution like a golden thread. This doctrine is founded on the principle that anyone who has power is subject to limitations on the exercise of that power, which establishes unalterable supremacy of law. Dicey, a British jurist, believes that this doctrine rests on three pillars, namely supremacy of law, equality of law, and predominance of legal spirit. The dynamic nature of this doctrine gives it far-reaching protection from arbitrary and calculated actions of the executive, as was demonstrated in **Indira Gandhi v. Raj Narain (1975) 2 S.C.C. 159** which upheld the **39th Constitutional Amendment that added paragraphs 4 and 5 to Article 329.***

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## **I. INTRODUCTION**

Rule of law and judicial supremacy are two important topics that this article talks about when it comes to the issue of governments and laws that are made. Rule of law and judicial supremacy is something that is found in countries like the United States where the law is important in how a person conducts themselves so they live a law-abiding life.

The Constitution is something that the law was made up of and it covers the laws in the United States. A judge is a person who is able to give life or death to someone in American courts. The judge can decide when someone is guilty or not guilty because we have a court system where the law is looked at and applied to this situation.

Although there are over 20 federal agencies and at least a dozen state and local agencies that are involved in providing legal services, the judiciary is viewed as the final arbiter of justice. In theory, you could argue that everyone has access to a judge should he violate the law on his own (but he won't if you have one or her). The law exists and serves as the foundation of society. Thus, access to the same and a system to apply the law is paramount to society.

When there is a difference of opinion regarding a legal issue, the Supreme Court could be involved. The court acts upon the law. When there is a disagreement as to whether or not a precedent exists due to a legal issue, the court or judge is faced with two choices, rule or reinterpret the law or reinterpret the case. The judicial system has become more litigious these days and it's no secret that it has been criticized in the past for being too easy on individuals.

Regardless of the fact that the judiciary does a good job, what can a business owner do to make sure that it is a safe avenue for people to utilize? You can build an atmosphere of collaboration that encourages legal professionals. It becomes harder to be a judge when everyone is on the same side, regardless of their intentions. Even more problematic for lawyers is creating a situation where lawyers are concerned and scared to do their job. In a healthy and functioning legal system, it is critical.

## **II. RULE OF LAW IN INDIAN CONSTITUTION**

The rule of constitutional law includes that every individual can expect his or her rights to be protected by the state. In India, there exists a set of laws that have been set up to enforce these rights. This law includes the Indian penal code, the constitution of India, the penal code for Scheduled Castes and Scheduled Tribes, and others. However, the way that the implementation of these laws has been in place needs to be improved. For example, the Indian Constitution is supposed to be implemented by the judiciary. However, in recent times, the judiciary has not

always been able to enforce its laws. This is something that is required to be resolved in a way that all can be protected, including the rights granted to each individual and the basic needs of every citizen of India.

**Keshavananda Bharti v. the State of Kerala (1973) 4 S.C.C. 225**, which was decided by a wafer-thin majority of 7:6, gave the country a new look at Constitutional law. The principal idea of this doctrine is that the constitution's main substance is immovable from amendment by the Legislative or Executive organ of government (if delegated legislation is involved). The Rule of Law has been recognized as a part of the unchangeable basic structure of the Constitution several times. The position of the Rule of Law is further enhanced by holding it to be a part of the **Right to Equality guaranteed under Article 14 of the Indian Constitution** and the violation of its rule amounts to negating equality. This clearly shows the importance and superiority of the Rule of Law in the country. This concept was already widely accepted before the concept of basic structure was established. In **S.G. Jaisinghani v. Union of India A.I.R. 1967 S.C. 1427**, a five-judge bench declared that "in a system governed by Rule of Law, discretion should be clearly defined within clearly defined boundaries. If a decision is taken without a principle or a rule, it is unpredictable and such a decision is the antithesis of a decision taken under the rule of law." The Government has been tasked with protecting, preserving, and upholding the Rule of Law in society. "The core feature of our constitutional system is the concept of rule of law, which means in the present context, the power of law courts to assess all administrative action by the standard of legality. The Judiciary must charge with the responsibility of reading the Constitution's provisions, and along with this comes the responsibility of maintaining the Rule of Law in all its decisions and decisions.

In **P. Sambamurthy v. State of Andhra Pradesh A.I.R. 1987 S.C. 362**, the Apex Court also held that "it is the fundamental principle of the rule of law that the exercise of power by the executive or any other authority must not only be governed by the Constitution but must also be in compliance with the law."

The Indian judiciary has played a vital role in shaping and guiding the rule of law in India. By bringing all positive approaches and impulsively interpreting the Constitution, the courts have made sure that the rule of law and respect for citizens' and rights are not just about paper, but the spirit as well.

In this case, it was stated that the Rule of Law is the antithesis of arbitrariness and is accepted by all civilized societies; it is also referred to as the freedom of an individual. In **Bachhan**

**Singh V. State of Punjab**, it was held that the rule of law is based on two fundamental principles.

- 1) The power of law-making should be held by the democratically elected legislature, and
- 2) legislative power should be limited, even in the hands of a democratically elected legislature.

**Shankari Prasad v. Union of India** was the first case that gave rise to the rule of law debate. The question of the amenability of fundamental rights emerged. The issue was finally settled in the **Keasvananda Bharati vs. the State of Kerela** case by the majority, but in **Golak Nath's case**, the Hon'ble Supreme Court held that the rule of law is the "basic structure" of the constitution, but that the Parliament has the power to amend the constitution, but the amendment powers are not unlimited and do not include the power to alter or abolish the constitution's basic feature or framework.

Rule of law imposes implied limitations on the power of amendment under **Art. 369**, which Parliament has the power to amend every article of the Constitution within them. Despite his agreement with the majority decision, **Justice H R Khanna** played a vital role in preserving the Rule of Law in India. The Judiciary in India is independent, and it is empowered to exercise judicial review. In **Union of India v. Raghubir Singh**, the Supreme Court held that there is no question that a considerable amount of the principles that govern the lives of the people and regulate the State flow from the decisions of the Superior Courts. Judicial review is an effective mechanism for securing checks and balances in the system. Judicial review is an effective mechanism for ensuring checks and balances in the system, and any provision that limits the right to judicial review is completely against the rule of law.

### **III. RULE OF LAW AND THE CONTRIBUTION OF JUDICIARY AS A POLITICAL CONCEPT**

Rule of law can define a region. It can be the one defining component that brings stability, a common understanding of how to be treated that is uniform for everyone. This is something that can be built over the years when one country takes up the role as a regional power as opposed to another.

The United States of America and the European Union share similar concepts on rule of law, for example. It is a concept that governs the region. However, it has been a part of US Political discourse throughout the years. One of the most popular phrases that defined rule of law at the time is that law is applied equally under a blind eye and to those without ties.

The US was born in a republic, but it is not a true “rule of law” system. In a real country based on the principles of liberty and justice for all, the government is limited by the rule of law, the Constitution, and the US Bill of Rights. Our Constitution is the rule of law, and our Bill of Rights declares exactly what our government can and cannot do.

At least we have those things in our political system, although they have been under attack over the years by the Supreme Court. But it’s hard to deny the rule of law is an essential part of a fair political system. Otherwise, there would be anarchy. To be a republic, you need the rule of law.

When we look at our political system today, it’s a shame to say it’s falling apart. Instead of respecting the law, the government has broken it and has ruled so many illegal things unconstitutional, that no one knows what they should be. But, the rule of law is the best that could even possibly work. If we ever find a way to restore and respect the rule of law, to reinstitute a balanced democratic system of government, we will never have to say, “That’s what we inherited, and that’s the way it needs to stay?”

Law has evolved throughout history as states developed their governments, but today it exists in a unique way that gives rise to various other concepts, including the "rule of law." The concept of rule of law, as developed by American philosopher John Rawls, refers primarily to how laws are produced and interpreted.

Rawls argues that the basic structure of society (or state) should be set up by making people's most basic interests their primary concern, and then placing limits on power, in a two-step process.

In the first step, the basic structures of society are established with no restrictions on state power.

But in the second step, citizens decide the specific regulations and laws to apply to them during the public policy.

The concept of rule of law in modern societies is a product of the Enlightenment and has had considerable influence on jurisprudence, particularly international law (Rawls 1977).

In general, the Enlightenment is associated with **the ideals of freedom, equality, and natural rights**. Among its advocates were **Francis Hutcheson, Thomas Jefferson, Alexis de Tocqueville, Immanuel Kant, John Locke, Montesquieu, and Adam Smith**. This concept has even found a place in modern feminism and has been called **post structural jurisprudence (Wendling 2001)**.

Rawls' version of the "rule of law" has been criticized by theorists because of the underlying assumptions of its structure.

A judicial review as it is called can be performed any time an agency commits an error without justification. An error is the action of an agency committing an act that breaks the law. Judicial review is when an organization breaks the law and it cannot just turn a blind eye to it.

Some examples of this could be the overpricing of their products, selling a product that is not within the law, or even something minor such as their company failing to adhere to some regulation. The rule of law ensures that every person is treated fairly and that laws and regulations are upheld. This is a crucial part of the judicial system as it ensures that there is a fair process for all parties to follow. For an organization to commit an act and not have justification for it is clearly unethical and is not only a breach of the law but is also a breach of the legal system.

When conducting a review people will usually come after the organization to show that they are not at fault, but this puts them in a rather negative light by saying that they broke the law in the first instance. If organizations are to avoid receiving a judicial review, then the need to do things within the law must be considered. The best way to avoid this happening to you and your business is by not being unethical or breaking the law.

#### **IV. DOES THE GOVERNMENT PROPOSAL UNDERMINE THE CONCEPT OF RULE OF LAW?**

Recently, the government has announced it will not pursue the case against a man who claimed that he had suffered child sexual abuse, under the new laws. This proposal, if approved, would undermine one of the most basic tenets of our legal system. It is a very bad policy and will be detrimental to law reform.

The first aim of our legal system is to maintain the rights of all citizens. Any law that is not compatible with that goal is incompatible with liberal democracy. Thus, if our new legislation undermined the ability of a citizen to challenge the action of his or her government in court, it would compromise the rule of law.

It is not hard to imagine why the government might make such a radical change to how it deals with the crime of child molestation. The government wants the public to believe that cases against child molesters are difficult. However, that is not how the justice system typically sees cases of child molestation to be resolved. It does not require hard evidence, but a fair investigation based on an assessment of the relative strength of the evidence. In such cases, a

trial can only take place if the prosecution and defence can both agree to a trial—the state can only bring a case against a person it knows to be guilty.

Under our current law, everyone accused of child molestation has a right to a speedy and fair trial. The new proposals would mean that a defendant has a right to have a new trial if a judge thought.

This could be either a bad thing or maybe good because more transparency is the best solution to these accusations. From the government, we are getting a lot of “fake” news coming out and it’s getting a little hard to separate truth from fiction. We always try to dig deeper into the issue to be able to gain enough information on the subject, not just the news that other people have presented to us. These proposals sound very similar to the last ones as it allows citizens to check whether the police officials are doing their job properly or not.

Being able to access the information in real-time will allow us the chance to be able to check whether our public servants are doing their duty or not and not letting corruption take root. Let’s be realistic, who wants to get on the bad side of public officials?

When we can know that the government is taking a step in the right direction, we will be happy and not feel that we are losing power and having nothing to do but complain.

## **V. COULD PARLIAMENT LEGISLATE CONTRARY TO THE RULE OF LAW?**

After more than a year of waiting and debating on whether or not MPs are violating the rules of the House, the government introduced new measures to curb the issue.

This is in response to the revelation of a group of lawmakers having a private meeting inside The Commons to seek advice on how to remove a Member of Parliament from the National Assembly. The meeting was conducted in July this year in an unauthorized and unescorted manner.

The government hopes the new measures will bring back the confidence and trust of the public and eliminate the impression of unruly parliamentary conduct.

It was, as it turns out, not the first-time members of the legislature violated the rules on the floor of the House. It was just the first time the government reacted in response. As a measure, it is commendable that the parliament has reacted against what seems like a clear violation of the rules. The House even had to be adjourned due to a lack of members because too many MPs have called in sick. MPs now seem to have a lot of free time to do fun things; all that they need to do is just sit around and wait for the next day to come and attend the next day’s sitting.



## **VI. HOW MIGHT THE JUDICIARY RESPOND TO THE LEGISLATION CONTRARY TO THE RULE OF LAW?**

When a new administration was elected, a few key items were a top priority of a potential President. One may be “What are we going to do with our judicial system?”. The current President campaigned on the fact that he wanted to build a fair and humane justice system. Some of the issues that have arisen in court over the past year include racial profiling, police brutality, and mass incarceration, in part, due to the War on Drugs which was started in the 1980s. The war on drugs has led to the prison industrial complex and has been one of the driving forces for the mass incarceration of African Americans.

If you look at the United States, many prisoners who have become disenfranchised because of the racial profiling, racial justice, or other issues of criminal justice reform may also have not paid dues on time, even for some who may still be waiting on sentencing for a previous offense. As the President stated, we have to make a “big change” in how the system works in America. One of his stated plans is to allow people convicted of property crimes, nonviolent crimes, get a judge to reduce or commute the sentence. It is crucial to have the judiciary respond to new legislation by making changes to the current system. The current system of punishment doesn't have the best results in rehabilitation and crime prevention. We live in an increasingly mobile society and a lot of people are using new and cheaper products that have been made available recently to make their lives more.

Recent decisions handed down by the Supreme Court make it clear to businesses that there may be a change in the way they run their day-to-day operations.

This will create a new dimension where the businesses must ensure that they have sufficient staff, resources, and adequate security necessary for the smooth transition and implementation of changes. In a lot of instances, it could take quite some time, so the judiciary will most likely be waiting to see how the new legislation unfolds before passing a final ruling.

## **VII. CONCLUSION**

The Apex Court in Union of **India v. President**, Madras Bar Association said "Rule of Law has many aspects, the most important of which is that disputes of citizens will be heard by independent and impartial judges and that disputes over the legality of government acts will be heard by independent judges of the executive." This provides further insight into the role of the judiciary in preserving the Rule of Law in the country. It is well-established that the concept of Rule of Law in India has become more diverse and broader because of the existence and use

of the tools and provisions mentioned above, and it has been granted the same constitutional status as the ideals of liberty, equality, fidelity, etc. Rule of law is not just an important issue in India but has equal import in countries around the world. The historic Magna Carta of 1215, which embodies this concept by declaring individual dignity and the right to lawful judgment as to the law of the land, is a great example of this. The doctrine of Rule of Law is a living institution, and its expanding dimensions have made it a dynamic and living necessity of advancing societies. Without this doctrine, society will fall apart and the law will cease to be law, thereby transforming it into a crucial element of the law that unites people and is the heart of a republic. Only the Judiciary can defend such a crucial doctrine, and justice can only be served when the judiciary effectively fulfils its job as the protector of the Rule of Law. We do have juries and we will have juries for a long time.

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