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# **NAVIGATING THE RULE OF LAW: ASSESSING ITS CURRENT STATUS IN THE INDEPENDENT INDIAN JUDICIARY**

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## **ABSTRACT**

The Indian judicial system is the foundation of the biggest democracy in the world and it is the court system that makes a significant contribution to the rule of law. One of the main principles that have a democratic society as their main focus is rule of law. The same is applied in the Constitution of India that ensures a powerful justice system. The rule of law is interpreted by the judiciary as the watchdog of the Constitution, which ensures that the rule of law is applied to ensure the government does not act in a whimsical manner. The Indian judiciary does not rely on the executive and legislative branches of the government. This independence is entrenched in the Constitution of India that has granted the judiciary the mandate of checking the judiciary. Using the judicial review, the judiciary is able to strike down the laws or the executions of the government which violate the provisions of the constitution. The Indian courts are firm believers of the rule of law and this is shown by its activism in the field of public interest litigation (PIL). The cases that the Court has addressed by means of PIL have covered not only the environmental protection but also LGBTQ communities and other vulnerable members of the society, which illustrates that the Court is actually a fighter of justice and equality. The judiciary has led in making historic judgments in recent times such as decriminalization of homosexuality and gender equality. The Indian courts have however not been spared in their share of adversities like the huge number of cases pending, and the justice lag.

This paper will concentrate on the way the rule of law has developed and become a part of judiciary and constitution. The objective of the research is to establish how legal education and training can be improved to provide the suitable skills and knowledge required by judges and other legal practitioners to promote the rule of law. The paper also covers the strategies that can be used to facilitate the smooth operations in the court and to reduce the number of cases that are pending in the court thus making justice accessible in a timely and efficient manner.

**Keywords:** Indian judiciary, rule of law, Constitution, Supreme Court, judicial review, public interest litigation, legal precedent, judicial reform, judicial efficiency, democracy, independence, activism, landmark decisions.

## **STATEMENT OF PROBLEM**

Challenges are faced by the Indian judiciary and legal education and training is the need to effective upholding of the rule of law.

## **OBJECTIVES OF THE STUDY**

1. To find out how the rule of law has developed and become a part of judiciary and constitution.
2. To establish how legal education and training can be improved to provide the suitable skills and knowledge required by judges and other legal practitioners to promote the rule of the law.
3. To determine the strategies that can be used to facilitate the smooth operations in the court and to reduce the number of cases that are pending in the court thus making justice accessible in a timely and efficient manner.

## **RESEARCH QUESTIONS**

1. How has the rule of law developed and become a part of the judiciary and constitution?
2. How can legal education and training be improved to provide the suitable skills and knowledge required by judges and other legal practitioners to promote the rule of law?
3. What are the strategies that can be used to facilitate the smooth operations in the court and to reduce the number of cases that are pending in the court thus making justice accessible in a timely and efficient manner?

## **RESEARCH HYPOTHESIS**

Challenges are faced by the Indian judiciary, and legal education and training are required for effective upholding of the rule of law.

## **RESEARCH METHODOLOGY**

The researcher has adopted the doctrinal methodology which will mostly be in analytical nature.

## **CHAPTER 1 INTRODUCTION**

Rule of law is a legal concept that any person cannot be above the law and all people must be subjected to the same laws irrespective of their race, caste, religion and social status. It is premised on the concept that all people have the equality in front of law and that the law must be fairly and consistently applied in order to defend the rights of citizens. It also provides accountability of the government to the people. The Constitution and Indian judiciary have an important role in ensuring the rule of law.

The main aspects of the rule of law that an independent judiciary should have are:

- a) Independence- This implies that judges cannot be influenced or pressured by anyone to make their judgment because they are also independent of the government and other special interests.
- b) Partisomeness - Judges should not be partisan or prejudiced when making decisions over the cases.
- c) Accountability - The judges should be accountable of their activities and that is why, they should be checked by other judges and citizens.

The Indian Constitution indicates the rule of law in several manners:

- 1) The Constitution has created the principle of equality before the law. According to the Article 14 of the Constitution it is affirmed that " The state shall not deprive any person of equality before the law or of the equal protection of the laws within the territory of India.
- 2) The Constitution ensures the people enjoy a series of basic rights that involve the right to life and liberty, the right to the freedom of expression and speech and the right to equality. These rights are binding in the courts and the government is not able to infringe them.
- 3) There is an independent judiciary made by the Constitution. The law will be interpreted and enforced by the judiciary and able to declare the unconstitutional law. Judiciary should be

independent in order to ensure the rule of law.

The research problem is pertinent because the rule of law is among the most important concepts of a democratic and fair society and the role of Indian judiciary and Constitution in the rule of law is researched. The benefits of the study to the rule of law and the role of the Indian courts and Constitution in its upholding are as follows:

- Assists in knowing the rights and duties as citizens.
- Assists in detecting and confronting injustice.
- Assists in making the world a more fair and just society.
- Assists in making better educated citizens.
- Helps lawyers to defend their clients.
- Assists the civil servants to perform their tasks in a just and unbiased way.

This is the reason why the study of rule of law and the Indian judicial system and Constitution is of importance to every individual. In most cases, the Indian judicial system is reported to be good in terms of the rule of law. However, Indian judiciary faces several problems including backlog of numerous cases and procrastination in delivery of justice among others, which need to be addressed.

## **CHAPTER 2 EVOLUTION AND INTEGRATION OF RULE OF LAW IN JUDICIARY AND CONSTITUTION**

It is possible to trace the history and development of the rule of law in India to the ancient times and to split it into the following periods:

### **Ancient India**

The concept of rule of the law is as ancient as India. Many of the principles of the rule of law in the Arthashastra, a treatise on statecraft composed in the 4th century BCE, such as the law should apply itself to everyone and that the government should be accountable to the populace, can be found in the rule of law.

**Mughal Period**

The rule of law was further enhanced during the Mughal rule (1526-1858). The Mughals instituted a court and judicial system that was not under the control of the executive arm of the government. They also passed several laws that were meant to guard the rights of the individuals including the right to property and the right of freedom of religion.

**British Colonial Period**

The rule of law in India was greatly influenced by British colonial rule. Some of the legal reforms introduced by the British include the formation of a codified legal system and formation of an independent judiciary. The law was however used by the British to defend their colonialism.

**Post - Independence Period**

The Indian Constitution provided the rule of law in the year 1947 following the attainment of independence in the nation in 1947. The right to life and liberty, right to a freedom of speech and expression, and right to equality are some of the fundamental constitutional rights guaranteed to the people. The Constitution also provides an independent judiciary that guards these rights.

**The Indian Judiciary and Constitution incorporate the rule of law in various ways and they are:**

**1) The Preamble:**

The Indian Constitution Preamble promises to provide justice, liberty, equality, and fraternity, which means that the rule of law should become the cornerstone of the country.

**2) Equality before Law (Article 14):**

The Indian Constitution guarantees equality to all the citizens. All are equal before the law and all are entitled to equal protection of the law.

**3) Judicial Review:**

It was through such landmark cases as *Keshavnanda Bharti v. State of Kerala* (1973) The

Supreme Court formulated the doctrine of basic structure in the and the case stating that some aspects of the Constitution are not amendable. This supports the rule of law as it protects fundamental constitutional values.

#### **4) Broadening of the scope of Fundamental Rights:**

The Indian judicial system over many years has broadened the reach of fundamental rights (Articles 19, 21 etc.) to include a broad spectrum of personal freedoms, which supports the rule of law.

#### **5) Public Interest Litigation:**

Introduction of PIL has made access to justice democratic as citizens and non governmental organizations can directly address the courts to seek redressal over breach of public interest hence strengthening the rule of law.

#### **6) Separation of Powers:**

The Indian Constitution has separated the judiciary, legislature and executive branches and this provides these arms with a system of checks and balances that do not make any of them overpowering. This is in support of the rule of law whereby an institution cannot be questioned.

**All evolutions have been significant in a number of judicial decisions and some of them include:**

#### **Kesavananda Bharti v. State of Kerala<sup>1</sup>**

In this case, the Supreme Court established the doctrine of basic structure, in accordance with which the Indian Constitution has some important elements that cannot be altered. This doctrine has helped in ensuring that there is the rule of law in India.

#### **Maneka Gandhi v. Union of India<sup>2</sup>**

Here, the Supreme Court ruled that the right to privacy is a right of life and liberty afforded by Article 21 of the Indian Constitution. The right to freedom of speech and expression is one of

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<sup>1</sup> AIR 1973 SC 1461

<sup>2</sup> AIR 1978 SC 597

the numerous individual rights that have been safeguarded using this ruling.

### **Vishakha v. State of Rajasthan<sup>3</sup>**

This case provided a framework on how to prevent sexual harassment in the workplace, as a gap in the law, and as an illustration of judicial activism in the quest to achieve the rule of law.

### **Shayara Bano v. Union of India<sup>4</sup>**

Here, the Supreme Court overruled the practice of instant triple talaq, which is one of the Islamic divorces where a husband can divorce his wife by uttering talaq three times. The Court determined that instant triple talaq was unconstitutional since it was against the very essence of women of the Muslim faith to equality and non-discrimination. It was a significant milestone in the fight against women in India against which women had fought and which contributed towards the promotion of the rule of law by safeguarding the rights of a marginalized group.

### **Navtej Singh Johar v. Union of India<sup>5</sup>**

Sec 377 of the IPC- Criminalizing consensual homosexual sex was struck down in this case.

These are among the many judicial decisions which have played a big role in making the rule of law adoptable in the Indian courts and in the Constitution. Thus, the incorporation of the rule of law in the judicial system and the constitution of India is a dynamic process that occurs under the impact of historical facts, the constitution, and the judicial decision.

## **CHAPTER 3 ENHANCEMENT OF LEGAL EDUCATION AND TRAINING TO GUARANTEE RULE OF LAW**

It is solely on the rule of law that democracy can be maintained. It requires that all people including the government officials must be subject to the law as well as the law must be administered fairly and justly. An independent court system is a requirement to operate the rule of law since it is the organ that interprets the law and enforces it without fear and favour.

Training and legal education is important in ensuring that the skills and knowledge necessary

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3 (1997) 6 SCC 241

4 (2017) 9 SCC 1

5 AIR 2018 SC 4321

in ensuring the rule of law is available at the beck and call of the judges and other legal experts. The more the judiciary is trained and educated, the more chances of being an independent, effective and impartial one. Legal education and training can be enhanced in various ways such that it can be effective to uphold the rule of law. These include:

1. Curriculum improvement: The law education curriculum should be updated according to the contemporary trends in the law and practice along with the necessity to promote the rule of law.
2. Improvement of the instruction methods: The legal training should be delivered in the way that encourages to develop the critical thinking and other problem solving skills. This can be done through the use of case studies, simulation and any other interactive learning method.
3. Practical training: The legal training should provide the learner with an opportunity to learn practical application at the legal system. It could be accomplished through internships, externships and clinical programs.
4. Advancement of moral values: Education in law should impart to the student the importance of being moral and professionally accountable. This can be done through course work, workshops and through mentoring programs.

**The advantages of enhancing the legal education and training are:**

First, it will help in assuring the judges and other law industry professionals with knowledge and skills in the fair and impartial application of the law. This will help generate confidence between individuals in judiciary and the rule of law.

Second, increasing legal education and training will assist in making sure that the judges and other professionals in law are in the position to interpret and be able to use the law under a multiplicity of diverse contexts, such as international law, and human rights law. This is significant in the current globalized environment where judges and other legal practitioners are being more and more requested to address cross-border litigations and matters that are related to international law.

Third, legal education and training will be improved to make sure that judges and legal



professionals are not incapable of keeping pace with the recent alterations in the law. This is critical since the law keeps on changing and courts and other legal practitioners should be capable of keeping up with changes so as to exercise the law properly.

**Advantages to the system of Improving Legal Education and Training:**

- 1) It will generate more qualified judges and law practitioners with more chances of respecting the rule of law.
- 2) It will assist in minimizing corruption and maliciousness in the legal system.
- 3) It will lead to increased trust in the courts and the criminal justice system in general.
- 4) It will enhance the quality of legal services offered to people.
- 5) It will enhance access to justice among all persons.
- 6) It will foster social equity and equality.
- 7) It will enhance rule of law and democracy.

Therefore, legal training and education should be improved to make the rule of law effective. The judiciary that is well educated and trained is more prone to independence, impartiality and effectiveness.

**CHAPTER 4 MEASURES TO STREAMLINE THE COURT PROCESSES AND CUT THE BACKLOG OF CASES**

India contains huge backlog of court cases. By December 2022, the district and subordinate courts had more than 4.8 crore pending cases and the high courts and Supreme Court had more than 61 lakh pending cases. Such a case backlog slows administration of justice to litigants and reflects negatively on the judiciary. The backlog of cases in India can be attributed to a number of factors including:-

1. A shortage of judges
2. Huge and cumbersome court processes.

3. Infrastructure and resource deficiency.
4. Late services of summons and notices.
5. Lawyer and litigant adjournments.

### **Pertinence and Relevance of Competitiveness of Court Procedures:**

It is necessary to streamline court processes to reduce the number of cases pending judicial hearing and delivery of justice. The reasons why this is so important are the following:

- 1) To defend the rights of litigants: Litigants are entitled to the fair and timely trial. Litigants are denied the right to justice when the cases are delayed.
- 2) To promote the rule of law: The rule of law entails the fact that all people are to be ruled by the law, the government included. The rule of law is compromised whenever there is a delay of cases.
- 3) To ensure people have confidence in the judiciary: The people should have confidence that the judiciary is in a position to administer justice in an efficient manner. When the cases are procrastinated, then the confidence of the people in the judiciary is destroyed.

### **Strategies for Streamlining Court Processes:**

Some of the strategies that can be used to streamline court processes in India. These include:

- a) Adding judges:** This is among the most crucial measures that can be made to diminish the case backlog. There are several ways in which the number of judges can be increased to streamline the legal procedures. Such as i) Adding new judicial posts. This may include the establishment of new courts or the jurisdiction of the current courts. ii) Getting more qualified candidates to the judicial offices, through provision of scholarships to law students who may wish to venture into the judicial career, or by offering more training and development programs to the lawyers. iii) Incentives to retired judges to work on a part-time basis.
- b) Making courts streamline:** The government need not look far, but it should simplify court procedures in an effort to make them more efficient. This may involve a limit of adjournments to be made and simplifying the procedure of serving summons and notices.

**c) Infrastructure and resources investment:** The government ought to invest in the development of the infrastructure and resources of the courts. This may involve the construction of additional courtrooms, equipping judges with more technology, as well as, an increase in the number of support employees.

**d) Technological means of enhancing efficiency:** The courts can be enhanced in terms of efficiency through technology in a variety of ways. As an illustration, online case management helps to minimise the amount of paper work involved in court cases and make the tracking of the case by the judge or litigant convenient using video conferencing to hold remote hearings.

**e) The encouragement of Alternative dispute resolution (ADR) mechanisms:** ADR mechanisms can be employed to resolve a dispute outside of the courts like mediation and arbitration. This would be beneficial in clearing the backlog of cases in the courts and making justice more available to the people.

Therefore, the benefits of streamlining court processes to the Indian justice system will be many, which will include; backlog of cases will be reduced, efficiency will be improved, and more people will have confidence in the justice system.

## **CHAPTER 5 RECOMMENDATIONS AND CONCLUSION**

As the research has shown, it is evident that the rule of law is one of the essential principles of a just and fair society. It implies that all people are equal before the law, irrespective of their social status, political affiliation and wealth. It further safeguards the rights of the people and makes the government answerable to the people. The Indian Supreme Court has given several landmark rulings that have extended the area of fundamental rights and the assertiveness of the judiciary. Nevertheless, certain issues which require improvements include the overload of the cases, and inaccessibility of justice to the poor and marginalized.

Thus, there is the need of legal education and training to give judges and legal professionals necessary skills and knowledge to enforce the rule of law.

The following are a few proposals that could be adopted to enhance the situation of rule of law in the Indian Judiciary:

**(1) Technology:** Technologies can be employed to make the legal process more efficient and

transparent in various ways: i) Online case filing and online case tracking: Only to decongest the existing caseload and ensure that citizens have easier access to the courts. ii) Electronic Document Discovery: Electronic Document Discovery (EDD) software can assist lawyers to review a large amount of electronic documents as fast and effectively as possible. This may be necessary in such complicated cases where the evidence that is to be checked is a lot. iii) Funding legal technology: The governments and courts are expected to fund legal technology initiatives to make it more available and cheaper to lawyers and judges. This would contribute to the investment made in legal technology to be offset by law firms and legal departments. iv) Find new legal technology solutions: New legal technology solutions are required to find solutions to the unique issues afflicting the legal system in India. As an example, software that could assist lawyers in drafting and reviewing contracts using Indian languages is required.

**(2) Alternative Dispute Resolution (ADR):** It is necessary to increase the use of ADR mechanisms. The dispute can also be solved faster and more effectively in ADR mechanisms like mediation and arbitration compared to the traditional litigation. This will assist in alleviating the burden on the courts and bring more justice to the people. ADR may be obliged to be used in some type of cases before they are submitted to the court.

**(3) Judicial education:** The judges are supposed to offer the judicial system regular training on the current laws and development in the field. This will assist them in making better and fair decisions. Increasing judicial education can be achieved in a number of ways such as i) Develop a comprehensive judicial education plan which ought to be in a position to identify the particular training needs of the judges and come up with programs that can address the needs. ii) Introduce compulsory continuing legal education to the judges that will keep the judges continuously learning and abreast with the current laws and developments. iii) Promote participation in peer review program or informal mentorship program by judges, which could assist judges to gain skills and knowledge when they obtain feedback about other judges.

**(4) Public awareness:** The people should be sensitized on the rule of law and their rights under the law. This will make them claim their rights and keep the government responsible. A few methods of raising awareness among the people in order to simplify the legal processes: i) Government agencies and civil society organizations can initiate public education programs to create awareness on the rule of law and the legal process. ii) Legal literacy can be provided to educate the citizens on their rights and the law. These activities can be provided in schools,

community centers and other places of the population. iii) The legal information is to be provided in a manner that seems simple to the non-lawyers. This could be achieved through making simplified legal guides, websites and videos.

**(5) Development of the infrastructure of the courts:** A large proportion of the courts in India are in deplorable conditions such as the one in Tis Hazari Court, Allahabad High Court, Indian government has done some actions in providing solutions to the issue of poor infrastructure in these courts. Nonetheless, additional efforts are required to make sure that every court in India is equipped with tools and resources necessary to operate. The infrastructure of the courts would be made better to make them more accessible and efficient. It can make the judicial system more efficient, and legal processes can be simplified in many ways: i) The video conferencing equipment available in the courtrooms can ensure that people can attend the court without traveling a long way. ii) Creation of new courts and reconstruction of the old ones can contribute to the efficiency of the judicial system and make it more approachable to the population. iii) Proper staffing which entails the provision of the judges and other court clerks and other support staff.

**(6) Fewer appeals:** The right to appeal is a provision that is worth having, however, there are too many appeals in India, which may add to the backlog of cases. It may benefit to reduce the appeal of the judicial system by lessening the number of appeals. It may be augmented to make the legal procedures leaner in the following aspects: i) Provoke parties to enter into ADR mechanisms, including mediation and arbitration to have a dispute resolved before making an appeal. Indicatively, In Singapore, the mediation system, which is compulsory to some areas of cases, must be adhered to before such cases are taken to court. ii) Make appealing more costly. This would deter individuals from appealing in court unless they are sure they have a good case.

These are some of the recommendations on how to enhance the rule of law in the Indian judiciary. Therefore, with the adoption of some of these proposals, the Indian judiciary will be in a position to remain instrumental in entrenching the rule of law and safeguarding the rights of every Indian.

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