

# KnowLaw Journal

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## Rule of Law in India and the Western World.

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### Abstract

The article revolves around the Rule of law which is crucial part of the society and it refers to the principle of legality which is present in all of the democracies of the world. In this article, we have compared the rule's execution in India with the western world. Though the term is very common place in legal parlance, its meaning is not so obvious to the general public and the article attempts to take into account their views through various cases and analyse whether this is practically applicable or not.

### Introduction

Incidents of the second world war have made an indispensable review on the governance and the legal order, the gross humanity all over the world at that time are still alive in our memories, due to which “*rule of law*” has become a crucial part of the state.

Rule of law is derived from the French phrase ‘*la Principe de legalize*’ which means the principle of legality, that is, the government is based on principles of law and not of men. Rule of Law is a mechanism that defines the *supremacy of law*. It comprises *Conventional Rules* and *procedural modalities* by which the society is governed.<sup>3</sup> The most significant need for Rule of Law is derived from the principle that, people in authority should exercise their power within the purview of law by keeping aside their ideology unlike the rule of the Monarch.

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<sup>3</sup> Meaning of rule of law, available at <http://www.legalserviceindia.com/legal/article-719-rule-of-law.html#:~:text=Meaning%20of%20Rule%20of%20Law&text=The%20concept%20of%20rule%20of%20law%20further%20requires%20that%20no,or%20ruler%20but%20by%20law>. (last visited October 28, 2020).

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The Rule of Law and democratic freedom are enjoyed by the people living in India, which while the largest is still an immature democracy.<sup>4</sup> More than 70 years of democracy has, however, failed to enrich the life of masses in India because of the incessant spread of corruption unlike in the mature democracies (United States of America) where people enjoy liberty as well as a resourceful life.

So, we are going to examine about Rule of law in India in comparison with the western world.

## What is Rule of Law?

Rule of law is that concept which proscribes that State is ruled not by the ruler but by the law i.e. *The king is not the law but the law is king.*<sup>5</sup>

According to *Dicey*, there are “*three pillars*” on which a government should run, on doctrines of law and not of men, a competent government should fulfil these and they are as follows:

1. Supremacy of Law
2. Equality before Law
3. Pre-Dominance of Legal Spirit<sup>6</sup>

## Supremacy of Law

This means law rules over a community, including the individual administering the law.<sup>7</sup> *Dicey* elaborated, the law presupposes the absence of a broad flexible authority in the rules, such that they cannot implement their laws and most rulers *govern* according to solidified laws those

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<sup>4</sup> Rule of law, available at <https://plato.stanford.edu/entries/rule-of-law/#:~:text=The%20Rule%20of%20Law%20comprises,norms%20that%20govern%20a%20society>. (Last visited October 28, 2020).

<sup>5</sup> Paine on the idea that the law is king, available at [Paine on the idea that the law is king \(1776\) | Online Library of Liberty \(libertyfund.org\)](#).

<sup>6</sup> Rule of Law and its Application in the Indian Polity, available at [Rule of Law and its Application in the Indian Polity - International Journal of Law Management & Humanities \(ijlmh.com\)](#).

<sup>7</sup> What is rule of law, available at <http://www.legalserviceindia.com/legal/article-719-rule-of-law.html#:~:text=Meaning%20of%20Rule%20of%20Law&text=The%20concept%20of%20rule%20of%20law%20further%20requires%20that%20no,or%20ruler%20but%20by%20law>. (Last visited October 29, 2020)

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which ought not to be easily changeable. *Supremacy of law* is the fundamental criterion in the western democratic order. The rule of law guarantees that citizens have a secure realm of autonomy and have resolved expectations by having their rights and duties pre-established and enforced by law. It is essential to the supremacy of law that law can be carried *out in national courts*, as a matter of both principle and practice.<sup>8</sup>

## **Equality before law**

It deals with the impartiality of the law. It means people should not be distinguished based on their economic background; official or unofficial, majority or minority, no one can be degraded or upgraded by anyone, all must be seen as equal before the law. According to Dicey, equality before the law does not emphasize absolute equality of man which is a *physical impossibility*.<sup>9</sup> This means that the likes should be treated alike without any discrimination. It must be noted that class legislation is forbidden but what is allowed is a reasonable classification. This implies that if two distinct individuals or classes are treated distinctively, then such a distinction is regarded as *intelligible differentia*. According to AV Dicey, the notion of rule of law of which “equality before the law” is an ingredient supports that there must be the absence of *arbitrary powers* and no person should be imprisoned except for an offense which is in breach of law.<sup>10</sup>

## **Pre-Dominance of a legal spirit**

Dicey believed that there must be an enforcement authority and they should be found in courts.<sup>11</sup> The enforcers which is the judiciary must comprise of *two values* which are as follows:

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<sup>8</sup> What is rule of law, available at <https://www.lawctopus.com/academike/rule-of-law-in-india/> (last visited October 29,2020)

<sup>9</sup> Understanding ‘equality’ under the Constitution of India, available at [Understanding 'equality' under the Constitution of India | B&B Associates LLP \(bnblegal.com\)](https://www.bnblegal.com/understanding-equality-under-the-constitution-of-india/).

<sup>10</sup> Rule of law, available at <https://bnblegal.com/article/arbitration-procedure-and-rules/> (last visited Octobe30, 202020)

<sup>11</sup> Id.

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*Impartial and free from an external force.* That's why the judiciary became an important element of the rule of law.<sup>12</sup> Dicey says that Britain had a judicial-based constitution with the significance that the judgments given by judges directly resulted in the principles of the constitution about the right of a private person.<sup>13</sup> This shows that Dicey believed that the common law affords greater protection to the citizens than a written constitution.<sup>14</sup> Customs and traditions change because of the dynamic world, of which the judiciary has to keep in mind while giving any judgment.

## Definitions

Aristotle- *“Law should be the final sovereign and personal rule, whether it be exercised by a single person or a body of persons, should be sovereign in only those matters which law is unable, owing to the difficulty of framing general rules for all contingencies.”*

Sir Edward Coke- *“The king ought to be under no man, but under God and the law.”*

Plato- *“Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if the law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.”*

## Evolution of Rule of Law

Rule of law is a *classic Greek* thought quoting passages from *Plato* and *Aristotle*. The Roman contribution to the Rule of Law is both negative and positive but the former more than the latter. The heritage of rule of law begins with *Aristotle* and proceeds with medieval theorists like *Sir John Fortescue* and then goes on to *John Locke*, in the early modern period it is seen

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<sup>12</sup> Rule of law, available at <https://www.lawctopus.com/academike/rule-of-law-in-india/> (last visited October 31 2020)

<sup>13</sup> Id.

<sup>14</sup> Rule of law, available at [https://www.lawteacher.net/modules/public-law/the-rule-of-law/lecture.php#:~:text=The%20rule%20of%20law'%20is,is%20to%20constrain%20government%20action.&text=At%20the%20other%20extreme%2C%20the,\(content%2Drich%20view\)](https://www.lawteacher.net/modules/public-law/the-rule-of-law/lecture.php#:~:text=The%20rule%20of%20law'%20is,is%20to%20constrain%20government%20action.&text=At%20the%20other%20extreme%2C%20the,(content%2Drich%20view).). (Last visited November 1, 2020)

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in the works of James Harrington and *Niccolò Machiavelli* and during the European Enlightenment in the writings of Montesquieu.<sup>15</sup> Rule of law is a very old concept it was introduced by a judge in the court of Henry III without stating the term Rule of Law in his argument he states- “the king himself ought to be subject of God and the law because the law makes him king.”<sup>16</sup>

The originator of the term Rule of Law is Edward Coke according to him the *King must under God and law and thus vindicated by the supremacy of law over the pretensions of the executions.*<sup>17</sup>

## **India**

Rule of law in India is traced back to the Upanishad, it says that the *law is the king of kings.*<sup>18</sup> It is more robust and supreme than the king and there is nothing greater than law, by its powers the vulnerable should prevail over the privileged and justice shall triumph. But the credit for the advancement of the Rule of Law goes to AV Dicey as his concept is considered to be more appropriate.

Montesquieu’s work on the Rule of Law is best known for his assertion on the Separation of Powers, especially that of the separation of judicial powers from the executive and legislative authority. The judiciary has to be able to do its work as a representative of law without being negligent of fresh decisions made giving due consideration to legislatures and policymakers.

## **Comparative Research on India and the Western World**

In this comparative study we have asked our subjects four questions which are as follows;

1. According to you what is the Rule of Law?

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<sup>15</sup> Evolution of law, available at [http://www.legalserviceindia.com/legal/article-85-development-of-the-rule-of-law.html#:~:text=The%20Rule%20of%20Law%20was,the%20maxims%20of%20Divine%20Concept.&text=The%20Rule%20of%20Law%20doctrine,Law%20of%20Constitution%20\(1885\)](http://www.legalserviceindia.com/legal/article-85-development-of-the-rule-of-law.html#:~:text=The%20Rule%20of%20Law%20was,the%20maxims%20of%20Divine%20Concept.&text=The%20Rule%20of%20Law%20doctrine,Law%20of%20Constitution%20(1885).). (Last visited November 1, 2020)

<sup>16</sup> Supra note 5.

<sup>17</sup> Supra note 13.

<sup>18</sup> Id.

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2. In schools do they teach about the importance of law?
3. Do you think that it is practically applicable in your country?
4. Which country has an efficient application of the Rule of Law (comparison of India and the west)?

## **Comparative Research on Indians and Non-Residential Indians**

### **Non-Residential Indians**

#### **Subject 1**

1. What according to you is meant by Rule of Law?

Answer – I do not know. (After this question I told my subject about the concept of the Rule of Law after that I asked her the subsequent questions.)

2. Do they teach about the importance of Law in schools abroad?

Answer – Generally, yes. The concept is taught in schools.

3. Do you think that Rule of Law is practically applicable in your country?

Answer – Yes, Rule of Law is applicable in my country.

4. Which country has an efficient application of the Rule of Law (comparison of India and the West)?

Answer – Western Countries

#### **Subject 2**

1. What according to you is meant by Rule of Law?

Answer - Rule of Law is not known by the said title but the subject's idea is that citizens do have to follow common laws set up by the government. As per the knowledge of the subject for its fellow citizens, they knew about the basic idea of election only.

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2. Do they teach about the importance of Law in schools abroad?

Answer - The concept of Rule of Law is not taught in schools. (*Subject came to know about it when one of its colleagues told the subject about it.*)

3. Do you think that Rule of Law is practically applicable in your country?

Answer – Yes, Rule of Law is applicable in my country.

4. Which country has an efficient application of the Rule of Law (comparison of India and the West)?

Answer – Western Countries. (*According to the subject they are more liberal than India based on the contemporary laws prevailing in India.*)

## Subject 3

1. What according to you is meant by Rule of Law?

Answer – I am unaware. (*After this question I told my subject about the concept of the Rule of Law after that I asked her the subsequent questions.*)

2. Do they teach about the importance of Law in schools abroad?

Answer – Not in general terms, students are not taught about law.

3. Do you think that Rule of Law is practically applicable in your country?

Answer – Yes, it is practically applicable as the government is very much concerned about the rights of their people and they run campaigns about the rights.

4. Which country has an efficient application of the Rule of Law (comparison of India and the West)?

Answer – Western Countries.

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## **Residential Indians**

### **Subject 1**

1. What according to you is meant by Rule of Law?

Answer – It acts as your defence.

2. Do they teach about the importance of Law in schools abroad?

Answer – 30% of the students, in general, are aware of rule of law.

3. Do you think that Rule of Law is practically applicable in your country?

Answer – Not applicable in India.

4. Which country has an efficient application of the Rule of Law (comparison of India and the West)?

Answer – Western Countries.

### **Subject 2**

1. What according to you is meant by Rule of Law?

Answer – I do not know much about it.

2. Do they teach about the importance of Law in schools abroad?

Answer – In schools, they did not teach about the general concept of law unless one chose to go to a particular field which is related to that.

3. Do you think that Rule of Law is practically applicable in your country?

Answer – Not applicable in India.

4. Which country has an efficient application of the Rule of Law (comparison of India and the West)?



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Answer – Western Countries.

## Subject 3

1. What according to you is meant by Rule of Law?

Answer – It is the concept according to which law functions.

2. Do they teach about the importance of Law in schools abroad?

Answer – Only in Social Science and some schools have quiz clubs in which they ask about it, but not generally.

3. Do you think that Rule of Law is practically applicable in your country?

Answer – Not applicable in India. For lack of equality in India, especially the upper section of the society, they do not have the fear of law.

4. Which country has an efficient application of the Rule of Law (comparison of India and the West)?

Answer – Western Countries.

## Conclusion (According to the Questionnaire)

From this research on Indians and Non- Residential Indians we conclude that:

- As we asked them the first question, “What do they understand by this term rule of Law?” Out of three two non-residential Indians were unaware of this term, the remaining one person knew its meaning but not in its entirety. Out of three, one Indian was not aware of the concept of rule of law and the remaining knew it’s meaning partially right but they were not entirely right either. When we told them about this concept of Rule of Law, they told us they were familiar with this concept but they were not familiar with the term (Rule of Law).

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**Comparison-** Both (resident and non-resident) don't know about this term but they were aware of its literal meaning.

- Then we move to the second question that is in schools, "Do they teach about the importance of law?" In non-residential Indians out of three, only one person said that law is being taught in schools in its general terms but the remaining two stated that it is not being taught to students at all. As for Indians, it is not taught in schools generally unless and until the student chooses a particular topic related to the law like social science.

**Comparison-** In this case situation is equivalent in both India and the Western world, with this we conclude that the general public is not aware of the law.

- Then we headed to the third question that is, "Do you think that it is practically applicable in your country?" All three non-residential Indians gave the same answer that it is practically applicable in their respective countries. Regarding this question, they gave various examples such as strict rules of traffic being followed in the subject's country, less discrimination. The Indians' answers were as follows; all the three subjects stated that it is not practically applicable in India, they gave certain examples, such as, law works differently for different individuals my subject elaborated this example in terms of equality.

**Comparison-** Rule of Law is more practically applicable in the western world than in India. Ignorance of the law by the people is a major reason behind the lack of practical applicability of rule of law in India.

- Last we landed on our conclusive question that is, "Which country has the efficient application of Rule of Law (comparison of India and western countries)?" Here, all the subjects gave identical answers, that is, the efficient application of Rule of Law is in the western world.

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Comparison- Although India is the largest democracy in the world, the main problem we are facing today is corruption which leads to ignorance of the law.

## Conclusions

Despite constitutional safeguards, there are many cases of abuse such as, social tensions, including violence, custodial deaths, rape, torture, kidnapping, crime, and discrimination against women. The Indian State per se is not accountable for conspiracies against humanity and the infringement of human rights rather the instrumentalities of the state abuse the authority awarded to them. Discrimination is one of the basic pillars of why rule of law is not prevailing in India, despite *Article 14* and *Article 15* of the constitution of India which calls for equality and forbidding any form of discrimination. Generally, women are at risk in India; *custodial rapes* (Maya Tyagi in Uttar Pradesh, 1980)<sup>19</sup> are very common in India and the conviction rate is very low, in the north-east and Kashmir *rapes* are committed by the *armed forces*. Although, we have *Article 22* of the Constitution of India which provides for the protection against arbitrary arrest and detention, it doesn't come to the aid of these victims.

Let's have a look at the condition of western countries, recently the case of George Floyd gave us insight into the functioning of the Rule of Law in the United States of America (western world), where people came together to fight against the custodial violence and discrimination based on race. There are many provisions related to discrimination such as Civil Rights act of 1964 against racial discrimination (USA), Alaska's Anti-Discrimination Act of 1945(USA), Equal Pay Act of 1963(USA), Race relation Act 1965(United Kingdom), Race Relations Act 1968 and Race Relations Act 1976 amended by the Race Relations Amendment Act 2000(United Kingdom). Although, there are many statutory provisions in these countries, there is partial applicability on the ground level, as we look upon the case of George Floyd, after which many cases came up, many protestors were shot dead by a fellow civilian in Kenosha. A 17-year-old boy was arrested during the protest when he killed two protestors.

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<sup>19</sup> Sheo Kumar Gupta and others v.Statee of U.P. AIR 1988 HC 183

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*Kiren Rijju*, one of the ministers of India, recommended a proposal to supplement the Indian Penal Code with two new provisions to deal with hatred on the grounds of religion, *race*, residence, or language.

*Finally*, we conclude that Rule of Law is *partially* followed in our subject countries but the citizens have more faith in its prevalence in the western countries because there law agencies take immediate action against the one who has committed something illegal, for example, in the USA they immediately took action against the police officer in the case of George Floyd unlike in India where cases of conviction of custodial deaths and custodial rapes are still pending before the courts of India since time immemorial.

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