

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 3**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Evolution of Rule of Law in India

---

SANGEETHA LAKSHMI V<sup>1</sup> AND SALINI C<sup>2</sup>

## ABSTRACT

*The relation between the State and its citizen is the binding feature that makes men morally abiding when the sovereign, through the instrument of law, imposes restriction upon his rights and freedom. It is the obligation of the State to protect its citizen's life, liberty and property in return for the latter's subjugation to the rules and policies framed by the former. India, a country with defined constitutional principles stipulates the rights of its citizens under the Part – III of the Constitution. These rights are available to the people along with certain reasonable restrictions, which are again stipulated by the State itself. The mutual obligation between men and his State gives rises to the constant evolution of the ever-expanding concept of the Rule of Law.*

*The rights availed by the people under the constitution is given wider interpretations at par with the social transformations taking place with changing times. It is an undeniable fact that rights and liberties advance with the advancement of the State's political policies. The Rights are expanded and become more inclusive and contemporary over time. This is achieved either by way of precedential outcomes or through constitutional amendments. In recent developments, there have been several conflicting situations between the people and the State. The State and Judicial interventions upon people's rights and liberties have sometimes not gone down well with the people's sentiments. It was clearly witnessed in the "Sabarimala" case or the "Contempt of Court" case, wherein public outcry was seen against the Judicial and Political intervention upon the Rule of Law. The author aims to study on up to what extent such interventions are permissible under the law established; and how people's non-abidance of these newly laid restrictions against their rights pave way for the new generation's wider prospect of Rule of Law*

**Keywords:** Rule of law, gender justice, judicial supremacy, law and customs.

## I. INTRODUCTION

The relation between man and his society is determined by the laws framed by the governing to rule over the governed. Men subjugate themselves to rules and laws of the society, and voluntarily accept to curtailment of their rights and freedom, so that they are accepted to be

---

<sup>1</sup> Author is a Professor of law at School of Law, Vels Institute of Science Technology & Advanced Studies, India.

<sup>2</sup> Author is a Professor of law at School of Law, Vels Institute of Science Technology & Advanced Studies, India.

part of the society. This obsession of men for being accepted in his society has at times paved way for overt political domination and sometimes, tyranny too. At the same time, if there are no such restrictions upon an individual's rights and freedoms, the society would become unruly and anarchical. A balancing act between the both is when neither the Society complains about their rights and freedom getting curtailed unreasonably, nor the State has any issue with regard to maintaining of law and order of the society without having to lay down any restrictions. But, such a neutral condition is very difficult to achieve, keeping in mind the variedness of the society and the lack of resources on the part of the State to satisfy all the community needs.

A balanced social welfare State is achievable, only when the Rule of Law and Constitutional supremacy prevails over the ruled and the ruling in an omnipotent manner. The laws of the State should be one that is aiming towards being fair, just and equitable to all – the rich, the poor, the communal and the socialists. The author has aimed to analyse the scale of evolution in the governance and its resultant effect upon classes of society that are either dissatisfied or feeling deprived of their rights and freedom.

The study on the modern perspective of Rule of Law, wherein people are now more aware of their rights, are seeking for more freedom and liberty, is to understand how judicial interpretations have widened the ambit of certain civil, political and economic rights. The author has based her study upon case analysis method, to find the reason for an increasing trend of conflict between the State and its subjects.

## **II. CUSTOMARY PRACTISES AND RULE OF LAW**

For years together, India has rooted its laws to the divine concept of "Dharma". What is just and what is not is prescribed based on the abstract virtues of "Karma" and "Moksha". Religious laws have been in the forefront with regard to matters dealing with a person's private life and property. And, customary practices have long been transformed into established laws of the nation.

The country steered forth the complexities of diversities by adopting principles such as Socialism and Secularism<sup>3</sup>. We, as a nation have proven to ourselves as an equitable State, where only equals are treated equally; where minorities are treated with sensitivity and privilege; and where the castes discrimination is slowly diminishing amidst the rise of socialism and equality. It was in this last decade that we witnessed major constitutional transformations that were backed by political influences.

---

<sup>3</sup> Preamble of Constitution

In the year 2017, “Triple talaq”<sup>4</sup> was struck down by terming the religious practice as one that is unconstitutional and discriminatory against women. An age old religious practice that was derogatory in nature was weighed against human rights and found to be against principles of equality and the basic tenets of the Quran too. Nevertheless, the judgement did call for nationwide protests from some section of the society that felt that the judiciary and the Government are interfering into the religious and customary practices and subjugating them to arbitrariness. In the same year, another landmark judgement ruled that seeking votes in the name of religion is an unacceptable election practice and hence, unconstitutional<sup>5</sup>.

Similarly, in the year 2018, the Apex Court had held that excluding women from Sabarimala temple entry amounted to violation of Article 25(1) of the constitution, and hence unconstitutional<sup>6</sup>. All the above cases clearly indicate that religion or religious practices should give way for secularist goals and civil rights such as equality. This caters majority benefits for a large number of vulnerable sections of the society rather than preserving the customary practices that were revered by a comparatively lesser number of people. The landmark judgements were welcomed by a vast number of the common population, who demonstrate the neutral behavioural patterns of the new generation Indians.

### **III. GENDER JUSTICE AND RULE OF LAW**

In the beginning of this decade, the nation witnessed a massive civil unrest in India because of the brutal crime of rape committed against a woman in the National Capital. This steered the people’s movement for securing women safety and deterrent punishments for the wrong doers. The Supreme Court also took cognizance of alarming cases of acid attack on women<sup>7</sup> and imposed strict regulations on Acid sales restriction. The Parliament also had brought about amendments in the Indian Penal Code<sup>8</sup> and the Code of Civil Procedure to regularise and record the sale of Acid in India. The laws also paved way for special prosecution of Acid attack convicts and compensations to the victims too. The above cases exhibited the change of laws and making of new laws as a result of public outcry.

In 2014, the nation had started to recognise the “third gender” as a legal identification of transgender<sup>9</sup>. Although, such recognition was against certain customary norms, the courts have carried out the decision to preserve the right to dignity of one’s perception of his/her gender,

---

<sup>4</sup> Shayara Bano V. UOI 2017 (9) SCC 1

<sup>5</sup> Abhiram Singh V. C.D. Commachen (Dead) by lrs & ors 2017 SCC Online SC 9.

<sup>6</sup> Indian Young Lawyer’s Association v. State of Kerala 2018 SCC Online SC 1690

<sup>7</sup> Laxmi v. UOI WP CrI. No. 129 of 2006

<sup>8</sup> Ss.326 A and B

<sup>9</sup> National Legal Services Authority v. UOI AIR 2014 SC 1863

without the necessity to subjugation to medical tests or biological alterations.

#### **IV. THE PRIVACY OF RELATIONSHIPS AND RULE OF LAW**

The societal liberation and urbanisation paved way for more and more number of “live-in relationships” in India. When people started living together outside the institution of marriage, their rights and obligations became a matter of doubt. The spouses and issues born out of such relationships had a legal gap with regard to their status. It was in 2013, that the Indian Courts provided the necessary protection for people who are in “relationships in the nature of marriage”<sup>10</sup>. The judgement is rather futuristic one, considering the sentiments and sacraments attached to marriages in India.

Another forward thinking decision was made by decriminalising the gay sex in India, which was until that time considered as an unnatural offence. The LGBT community was overlooked as a negligible minority and their acts based on their sexual orientations were considered to be a crime until then. The Court ruled that the State has no right to interfere with the private lives and sexual orientation of individuals<sup>11</sup>.

In the same year, the Apex Court had struck down “Adultery” from the category of crimes citing the reason that it discriminated against men and objectified women as being a slave to her husband<sup>12</sup>. This decision proved that overlooking upon moral values cannot become a criminal offence. This judgement did not go down too well with morality checkers, but at the same time objectification of women was a black mark that had to be erased by such bold rulings.

#### **V. CONCLUSION**

Thus, the above cases have at one point raised severe criticism and public outcry, and have raised massive socio-legal evolution at the other point. The conflict between evolution of Rule of Law, individual’s rights and customary practises has gone to the next level of power-play and politics.

Political influences and interventions have led to so many changes – some positive, and certain others not so. The author has come to the conclusion the socio-legal evolution, although faces public wrath initially, will come in terms with the future generations perception of law and an orderly society.

---

<sup>10</sup> Indra Sarma v. V K V Sarma 2013 (14) scale 448

<sup>11</sup> Navtej Singh Johar v. UOI Writ Petition No. 76 of 2016

<sup>12</sup> Joseph Shine v. UOI 2018 SC 1676

**VI. BIBLIOGRAPHY**

1. DD Basu, Shorter Constitution of India, 15<sup>th</sup> edition, Volume 1, LexisNexis Publication
2. M.P.Singhs, Constitution of India with 101<sup>st</sup> amendment, 5<sup>th</sup> edition, Delhi law House Publication.
3. Oliver Mendelsohn, Law and Social Transformation in India, 1<sup>st</sup> edition , Oxford university Press
4. John finnis, Natural Law & Natural Rights, 2<sup>nd</sup> Edition, Oxford University Press.
5. Harish narasappa, Rule of Law in India a quest for reason, 1<sup>st</sup> edition, Oxford University Press.
6. www. Indiakanoon.com.

\*\*\*\*\*