



## EXPLORING THE RULE OF LAW: MEANING, FAILURES, AND VIOLATIONS IN MODERN SOCIETY

**AUTHOR** – NAVYA ARORA, STUDENT AT BENNETT UNIVERSITY (TIMES OF INDIA GROUP)

**BEST CITATION** – NAVYA ARORA, EXPLORING THE RULE OF LAW: MEANING, FAILURES, AND VIOLATIONS IN MODERN SOCIETY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (4) OF 2024, PG. 480-487, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

Rule of Law remains as a foundation of current democratic societies, acting as a wall against oppression and guaranteeing that the power of the government is practiced inside the limits of laid out legal standards. This essay embraces an exhaustive exploration of Rule of Law, as a concept, tracing back to its history and elucidating its fundamental principles. While Rule of law is praised for its job in maintaining equality, fairness, and the safeguarding of individual rights, this paper also dives into the hazier side of its narrative.

Through an assessment of real-time instances, the essay inspects occasions where Rule of Law has wavered, uncovering system failures, infringement of rights, and misuse of power. From the disintegration of legal independence to the selective application of regulations, from the prevalence of exemption for the powerful individuals, to the disintegration of civil liberties under the cover of public safety, the essay talks about the intricacies and difficulties inherent in keeping up Rule of Law in continuance.

Additionally, this essay highlights the importance of tending to the shortcomings and weaknesses of Rule of Law. It calls for deliberate endeavours to reinforce legal institutions, improve holding accountability, and build protections against abuses of power. This paper also includes within it the way forward, which would be possible by facing the failures and violations of Rule of law head-on. Societies can yearn towards a more just and impartial society, whose primary focus is to maintain the dignity and rights of all individuals.

### INTRODUCTION

#### What is Rule of Law?

The concept of the rule of law underscores the idea that everyone, including government officials, citizens, and institutions, must abide by and be subject to the law. It promotes fairness, accountability, and predictability in the legal system, ensuring that justice is administered impartially and consistently. This principle is essential for upholding individual rights, preventing abuse of power, and maintaining social order.

The Rule of Law is not simply a set of rules or legal statutes; it represents a principle of

ethical governance within a state. It aims to strike a balance between rights and authorities, among individuals and between individuals and the state, in any open and civil community. This balance is achieved through legislation based on principles of freedom, justice, equality, and accountability, imbuing law with moral dimensions. Therefore, the Rule of Law serves as a mechanism to reconcile societal needs with individual rights and responsibilities.

The idea of the rule of law originated with Edward Coke, he was serving as Chief Justice during the reign of James I and was credited as the originator of this concept. He famously

asserted the principle that even the King should be subject to God and the Law, successfully establishing the supremacy of the law. This landmark stance marked a pivotal moment in the development of the rule of law. This was further elaborated by AV Dicey, a British jurist. It was also deliberated upon by ancient Greek philosophers like Plato and Aristotle.

In simple terms, the rule of law means that everyone is treated equally under the law, the judiciary operates independently, people enjoy freedom, and there is no room for arbitrary actions. The term "rule of law" comes from the French phrase "la principle de legalite," which emphasises that the government should be guided by laws rather than the whims of individuals.

Moreover, The Rule of Law extends beyond government; it encompasses citizens' obligation to adhere to legal norms, even amidst disagreement. It mandates acceptance of legal rulings when interests collide and ensures equal treatment under the law for all individuals, without exceptions.

Accessibility to the law holds paramount importance in two facets. Firstly, laws should be easily accessible and understandable to the public, enabling individuals to grasp their rights, obligations, and utilise them to guide their actions and resolve disputes. Secondly, legal institutions and procedures must be accessible to ordinary citizens to defend their rights, resolve conflicts, and safeguard against abuses of power, both public and private. Upholding these principles relies on an independent judiciary, government officials' accountability, transparent public affairs, and the integrity of legal processes.

### **BASIC PRINCIPLES OF RULE OF LAW**

A few of fundamental tenets of the rule of law are as follows:

1. Equality before the law: Regardless of status or position, everyone has a right

to equal treatment under the law.

2. Legal Certainty: To guarantee predictability and comprehension among individuals, laws ought to be comprehensible, unambiguous, and uniformly enforced.
3. Accountability: Subject to legal scrutiny and repercussions, government officials and institutions are expected to take responsibility for their decisions and acts.
4. Fairness and Justice: To protect justice for all, judicial procedures and rulings must be unbiased, fair, and grounded in accepted legal principles.
5. Access to Justice: Everyone should be able to use the legal system's procedures and safeguards to defend their rights and settle conflicts in a fair and unbiased manner.
6. Transparency: To maintain accountability and public confidence in the legal system, government activities and court cases should be accessible and available for public review.
7. Independence of the Judiciary: To maintain the rule of law and provide unbiased resolution of legal issues, the judiciary must be independent and free from improper influence.
8. Respect for Human Rights: All people's liberties and dignity should be recognised and preserved, and the rule of law should defend and preserve fundamental human rights.

These tenets form the basis of the rule of law and are essential to maintaining stability, justice, and social conformity to the law.

### **Modern Concept of Rule of Law**

The concept of the Rule of Law is widely understood today and outlines an agenda for

the government. The Delhi Declaration, published in 1959, and the Lagos Declaration, published in 1961, were the means by which the International Commission of Jurists expressed this idea. This idea holds that the Rule of Law implies that the goal of government in a free society is to create circumstances that preserve each person's dignity. It includes recognising certain civil, political, social, economic, educational, and cultural circumstances that are essential for the full development of a person's individuality as well as making sure that the government operates in a way that protects human dignity. The goal of the modern understanding of the rule of law is to empower the government to successfully protect individual liberty.

The case of *Veena Sethi v. State of Bihar* underscored the need to guarantee that the rule of law encompasses the marginalised and destitute sectors of the population.

#### **VIOLATION OF RULE OF LAW IN INDIA**

The concept of Rule of Law suggests that everybody, regardless of anything, is equivalent under the steady gaze of the law. In a free and majority rule India, all residents from a cart puller to the Head of the state are to be passed judgment on similarly, before the law, when and if they disregard it by carrying out a wrongdoing. Each infringement of a regulation or commitment of a criminal offence has a particular way of establishing the guilt, along with citing punishment. "Rule of Law" guarantees that equality is kept up with, by penalising every criminal the same way, no matter what his/her status or foundation.

There, unfortunately, are instances of violation of the "Rule of Law" in abundance in India. It is the sad reality that in our nation, if a person has power or "contacts" with influential individuals, it is not difficult to pull off even gross infringement of regulations and rules.

#### **Violation of rule of law and Human Rights**

The violation of the Rule of Law occurs when officials apply norms that do not align with the standards that have been publicly communicated to citizens, or when officials act based on their own discretion instead of predetermined norms.

Violation of the concept of Rule of Law can also be termed as violating human rights of individuals. The aim of this concept is to protect the rights and dignity of every human being and holding the state accountable, whenever need be. And this means that if the rule of law is not followed, it can turn into a violation of Human Rights.

Violation of the rule of law in relation to human rights happens when governments or individuals intentionally ignore legal principles and standards that are specifically established to safeguard the rights and liberties of individuals. These manifestations might take on different forms, including unjustified detentions, suppression of information, prejudice, and limited availability of legal remedies. Undermining the rule of law has a detrimental effect on society, as it weakens the social structure and diminishes trust in institutions, ultimately resulting in systematic unfairness and inequality. Preserving the rule of law is crucial for protecting human rights and guaranteeing equitable treatment for all individuals within the legal system.

#### **Reasons for Failure of Rule of Law, why violation takes place**

When there is violation of Rule of Law, it automatically means that there is a failure in this entire system, due to which there has been a violation of rule of law. There are many reasons as to what may lead to the failure of Rule of Law. Hence, it is also important to identify the areas that are leading to the failure of Rule of Law.

Failures of Rule of Law usually happen when legitimate standards and procedures are not

maintained, prompting inequality, injustice, and an absence of accountability. A few failures include:

1. **Selective Enforcement:** When regulations are applied conflictingly or specifically, it weakens the standard of fairness under the watchful eye of the law and disintegrates public confidence in the general set of laws.
2. **Arbitrary Decisions:** Choices made by specialists without adherence to laid out legitimate methods or without appropriate explanation can prompt unjustifiable results and sabotage the authenticity of legal foundations.
3. **Corruption:** Corruption inside legitimate and legal frameworks can bring about one-sided decisions, mishandling of justice, and the disintegration of public trust in law and order.
4. **Disparity Under the Law:** When certain people or communities get special treatment or face discrimination inside the legal systems in view of elements like riches, societal position, or political associations, it undermines the standard of fairness under the watchful eye of the law.
5. **Weak law enforcement:** Regulations that are not successfully upheld or carried out, neglect to give sufficient assurance to people and can prompt exemption for the individuals who disregard the law.
6. **Lack of access to justice:** Obstructions like significant expenses, procedural intricacies, and deficient legal aid can keep people from getting to the equity framework,

bringing about refusal of their privileges and propagating disparity.

Tending to these disappointments requires reinforcing legitimate structures, advancing straightforwardness and accountability, battling corruption, guaranteeing equal access to justice, and cultivating a culture of regard for Rule of Law in all parts of society.

### **ANALYSIS OF VIOLATION OF RULE OF LAW IN INDIA AND USA**

#### **A few instances of violation of Rule of Law in India**

They are mentioned below:

1. **Saradha scam-** A group of companies called the Saradha Group was involved in a Ponzi scheme that ripped off thousands of clients, mostly in West Bengal. It was said that political leaders, including members of the ruling Trinamool Congress party, were very close to the group. Politicians were said to have put pressure on investigators to stop their work and kept powerful people from being charged.
2. **Anti-Sikh Riots (1984):** After the death of Prime Minister Indira Gandhi by her Sikh bodyguards, these Anti-Sikh mobs ejected in Delhi and different parts of India, bringing about the passings of thousands of Sikhs. Numerous culprits of the brutality were never dealt with, demonstrating a Failure of Rule of Law.
3. **2002 Gujarat Uproars:** Following the Godhra train burning instance, public mobs broke out in Gujarat, resulting in the death of thousands of people, mainly Muslims. There were charges of state complicity and lacking response by the authorities in preventing and tending to the brutality.

4. Nirbhaya Case (2012): The ruthless assault and murder of a young lady in Delhi featured failures in guaranteeing the wellbeing and security of women. It also highlighted the deficiencies in the legal system. This was followed by delays in the legal procedures and providing justice to the victim and her family.
5. Custodial Deaths and Torment: Cases of people dying while being in police custody because of torture or abuse highlight failures in guaranteeing the responsibility of police and legal authorities, along with safeguarding the fundamental rights of prisoners.
6. Killing of Writers and Activists: The designated killings of columnists, activists, and informants in India raise worries about the wellbeing of people who are practicing their right to freedom of speech and the failure of legal systems to guarantee the security of such people and hold culprits responsible.
7. Judicial misconduct- A few examples of judicial misconduct would include sexual misconduct with staff/fellow workers/attorneys/parties, using judicial powers and position to pursue a personal agenda, etc.
1. Watergate Scandal (1972-1974): This included the Nixon organisation's attempt to conceal its contribution in the break-in at the Democratic National Committee (DNC) headquarters. This led to President Nixon's resignation and mainly stressed on the misuse of power by the executive branch.
2. Guantanamo Bay Detention Camp (2002-present): The unjustified detainment of people without trial at Guantanamo Bay, the Guantanamo Bay Detention Camp became a point of focus for debates about the balance between national security and rights of the civilians, the treatment of prisoners of war, and violation of the rule of law in terms of counterterrorism.
3. Racial Profiling and Police Brutality: Various instances of unarmed Black people being killed by cops, for example, the passings of Trayvon Martin, Tamir Rice, and George Floyd, and many more, have started cross country fights and riots about racism, police ruthlessness, and the presence of inequality in the society.
4. The Enron Scandal (2001): This basically involved and highlighted corruption and fraud and the fact that accountability is extremely low, perhaps making this one of the biggest corporate bankruptcies in American history. It uncovered failures in corporate governance and administrative supervising.

These cases highlight the significance of maintaining Rule of Law, guaranteeing responsibility for basic rights infringement, and reinforcing proper systems to safeguard the privileges and opportunities of all people in India.

#### **A few instances of violation of Rule of Law in the US**

A few instances of infringement or failures of Rule of Law in the USA include:

These cases outline examples where Rule of Law has been tested or disregarded, frequently involving public scrutiny, need for reforms, and increase in accountability measures to resolve hidden issues and maintain the standards of justice and

responsibility.

### **Movements and Campaigns as responses to violation of Rule of Law**

Movements and campaigns responding to instances of violation/failure of Rule of Law that mainly focus on bringing issues to light, pushing for accountability, and encouraging reforms. A few models include:

1. **#BlackLivesMatter:** A movement that aimed at spreading awareness and fighting against racial discrimination and police accountability, especially as a retaliation to police brutality faced by the Black Community, in specific.
2. **#MeTooMovement:** It was a movement against sexual harassment and assault at workplace. The goal was to increase awareness about the predominance of such issues and hold culprits responsible for their actions.
3. **#JusticeForBreonnaTaylor:** A campaign, which was aimed at getting justice for Breonna Taylor, a black woman, who was shot and killed at her own house by police officers, during a botched raid, in Louisville, Kentucky.
4. **"For once, don't do it" by Nike:** This initiative was taken by the renowned brand Nike, as a support for the Black Community. It was a play on its legendary slogan "Just do it", to "For once, don't do it". This exactly meant-

"For once, Don't Do It. Don't pretend there's not a problem in America. Don't turn your back on racism. Don't accept innocent lives being taken from us. Don't make any more excuses. Don't think this doesn't affect you. Don't sit back and be silent. Don't think you can't be part of the change. Let's all be part of the change."

These initiatives and a lot more such

campaigns frequently use social media, protests, support, and legal action to push for change and maintain the standards of Rule of Law. These missions and developments utilise different procedures, including public education, court proceedings, and grassroots organising, to tackle violation of Rule of Law, encourage accountability, and achieve positive change in the public arena.

### **RELEVANT CASE LAWS OF RULE OF LAW**

Some of the relevant case laws regarding the concept of rule of law are mentioned below:

1. **Keshavananda Bharti vs. Union of India:**

This case established that Parliament is prohibited from altering the fundamental structure of our constitution.

2. **Indira Gandhi vs. Raj Narain:**

In this case, the principle of the rule of law was enshrined in the core framework of the constitution, rendering it unalterable.

3. **Maneka Gandhi vs. Union of India:**

The Supreme Court noted that Article 14 addresses arbitrariness in state actions, guaranteeing fairness and equality in treatment. The rule of law, an essential element of the Indian constitution, precludes arbitrariness.

4. **ADM Jabalpur vs. Shivakant Shukla:**

A challenge was raised against detention orders during the emergency, citing the suspension of Articles 14 and 21. This was viewed as a breach of the principles of the rule of law, which forms the foundation of our constitution's structure.

5. **DC Wadhwa vs. State of Bihar:**

The Supreme Court criticised a state government for excessively resorting to ordinance-making powers as a substitute for legislation by the legislature, underscoring the significance of the rule of law.

6. Som Raj vs. State of Haryana:

The Supreme Court emphasised the absence of arbitrariness as a fundamental tenet of the rule of law, upon which the entire constitutional framework rests.

7. Sheela Barse vs. State of Maharashtra:

The court stressed the importance of fairness to women in police custody and devised guidelines for the protection of prisoners, particularly women.

8. Yusuf Khan vs. Manohar Joshi:

The Supreme Court affirmed the state's obligation to uphold and safeguard laws and the constitution, prohibiting any violent acts that may undermine the rule of law.

9. State of Madhya Pradesh vs. Ramashankar Raghuvanshi:

The court ensured fairness in public employment, asserting that reliance on police reports is unwarranted in a democratic republic.

### CONCLUSION AND WAY FORWARD

In conclusion, the concept of the rule of law serves as the foundation of just and equitable societies, providing a framework for governance that ensures accountability, fairness, and the protection of individual rights. Its principles permeate every aspect of legal and political systems, guiding the application of laws and the administration of justice.

However, despite its vital importance, the rule of law faces persistent challenges in various parts of the world. Issues such as corruption, discrimination, and limited access to justice pose significant threats to its principles, undermining its effectiveness and eroding trust in institutions.

Addressing these challenges requires ongoing efforts to strengthen legal institutions, enhance transparency, and promote accountability. It also necessitates a commitment to upholding the rule of law as a

fundamental value of democratic societies.

As we strive to navigate the complexities of the modern world, reaffirming our dedication to the rule of law is essential. By embracing its principles and working collectively to overcome obstacles, we can build societies where justice, fairness, and the rule of law prevail, ensuring the rights and dignity of all individuals are respected and protected.

Regarding the forward-looking aspect of this essay, the focal point lies on Lord Bingham and his eight guiding principles.

Lord Bingham, the former Chief Justice of England and Wales, in 2010, delineated eight fundamental principles essential for defining the rule of law:

1. **Accessibility and Clarity:** He stressed the necessity for the law to be accessible, intelligible, clear, and predictable to ensure individuals comprehend their rights and obligations.
2. **Legal Resolution:** Lord Bingham argued for legal disputes to be settled through the application of the law rather than arbitrary discretion.
3. **Equality:** He advocated for the equal application of laws to all individuals, with exceptions only for objective differences and justifiable differentiation.
4. **Human Rights Protection:** Lord Bingham emphasised the importance of the law providing adequate protection for human rights, ensuring the safeguarding of fundamental rights.
5. **Access to Justice:** He highlighted the need for mechanisms to resolve civil disputes efficiently and affordably when parties cannot reach a resolution on their own.

6.  Reasonable Exercise of Power: Lord Bingham emphasised that ministers and public officers must exercise their powers reasonably, in good faith, and within the limits  prescribed by law.
7. Fair Adjudication: He underscored the importance of fair adjudicative procedures provided by the state to  ensure legal proceedings are conducted impartially and justly.
8. Compliance with International Law: Lord Bingham asserted that the state must fulfil its obligations under international law, recognising the  significance of international legal norms in shaping domestic legal systems.

Through these principles, Lord Bingham's framework offers a comprehensive guide for promoting justice, fairness, and accountability within society.

#### REFERENCES

**United Nations Rule of Law** - Offers resources on international rule of law standards and indicators.

- Website: <https://www.un.org/ruleoflaw/>

**Stanford Encyclopedia of Philosophy** - Contains detailed entries on philosophical figures like Plato and Aristotle and concepts such as justice and rule of law.

- Website: <https://plato.stanford.edu/>

**Internet Archive** - Repository for foundational legal texts, such as Dicey's "Introduction to the Study of the Law of the Constitution."

- Website: <https://archive.org/>

**MIT Classics Archive** - Contains works by classical philosophers, including Plato's

*Republic* and Aristotle's *Nicomachean Ethics*.

- Website: <http://classics.mit.edu/>

**Indian Kanoon** - Provides access to Indian case laws like *Keshavananda Bharti v. Union of India* and *Veena Sethi v. State of Bihar*.

- Website: <https://indiankanoon.org/>

**Oxford Scholarship Online** - Hosts summaries and analyses of legal texts like Lord Bingham's "The Rule of Law."

- Website: <https://academic.oup.com/>

**Harvard Law Review** - Often references significant U.S. cases, movements, and rule of law discussions, such as the *Watergate Scandal*.

- Website: <https://harvardlawreview.org/>

**Legal Information Institute (Cornell Law School)** - Provides information on U.S. legal cases and doctrines.

- Website: <https://www.law.cornell.edu/>

**The National Archives (UK)** - Source for historical records and government documents related to British legal history.

- Website: <https://www.nationalarchives.gov.uk/>

**Human Rights Watch** - Publishes reports on human rights violations, relevant for case studies on rule of law and social movements like #BlackLivesMatter.

- Website: <https://www.hrw.org/>