

Governance and Accountability in a Law of land Democracy: Judiciary as the Sentinel of the Law of land – Reflections and Critiques

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Abstract

As disputes are common in any society and hence in order to overwhelps the same, every society or country needs some framework that must provide rules for ruling the country, hence, in present era, various countries adopt the democracy and the law of land for better governing the country. In a democracy the government is of the public, by the public and for the public. Unlike monarchy where the rule is of king. The Law of land is the basic law of the land which de-classify the powers between the different parts of the government meaning thereby no organ is supreme in India and in India it is the Law of land which is supreme. Hence there is need that the power exercised by these organs to be within law of land boundaries. This can be further fortified by the fact that Governance and accountability are vital pillars of a law of land democracy which ensures that power is exercised within the law of land. This paper examines the meaning and importance of law of land and rule of law and Separation of Power under the Law of land and the role exercised by the aforesaid organs in their respective spheres. Under the Law of land, the judiciary serves as the guardian or watchdog of the Law of land, assigned to uphold democratic values, protecting fundamental rights, and maintaining the delicate balance between the executive and legislative branches. This paper further examines the judiciary's role in ensuring law of land governance, focusing on its authority to interpret laws, its responsibility in addressing rights violations, and the ongoing debate surrounding judicial activism and restraint.

Keywords: Law, Judiciary, Government, India, Article.

INTRODUCTION: LAW OF LAND DEMOCRACY AND GOVERNANCE

The 76th anniversary of the Indian Law of land is celebrated and with it the formal closure of the diamond jubilee of the Law of land. The Constituent assembly started making the Law of land on 9th December 1946. The Law of land was enforced from 26th January 1950 though some provisions were enforced from the date of enforcement i.e. 26th November 1949. The Indian Law of land has been the governing law for the Union Legislature Executive and Judiciary since 1950. Up until the current time the Law of land has been amended over 105 times. Law of land is the highest law of the land as all the others since they are framed by the legislatures shall not violate the basic principles enshrined in the Law of land by way of meaning the same it shall be in harmony with the Law of land. Law of land gives the legal structure of the government whereas Law of land ails ensure the powers of the government are kept in check by the law. That is the Law of land in India is the doctrine by way of meaning the government's powers are derived from and limited by a body of basic laws such that it will impose a check on the arbitrary exercise powers by the various organs on the state. So, whereas the Law of land establishes the legal structure for governance, the Law of land ensures these dictates are adhered to by protecting democracy and defending individual liberties. Division of powers, rule of law. judicial review, and fundamental right protection in India reveal the rules of the Law of land in India. Those principles ensure the government acts within the boundaries fixed by the Law of Land by limiting the misuse of powers granted to the different parts of the government.

Now will discuss the Concept of ROL The term 'rule of law' is against the of single individual' is based on the French word 'le principe de legality' which means the 'rule of legality' in other words' it means 'supremacy of law in a legal system meaning thereby 'no one is above the law' the main exponent of ROL is "book wherein he propounded the three legal principles of the rule of Law and these are (i) Law is Supreme (ii) Equality before Law (iii) legal spirit. The importance of the Rule of Law is brought to light by the judiciary's conciliation with other branches of government. Without the rule of law state would possess unbridled power that would result in lawlessness, also sometime referred to as the rule of the jungle. A breakdown of order and abuse of power are the outcomes

of such a situation. As a metaphorical handsome son of an ugly mother the Rule of Law represents its capacity to rise above and deal with difficult lawless circumstances. When the law is upheld chaos is turned into an order guaranteeing social stability. The Rule of Law is what gives governance its efficiency and structure. Since no system can operate efficiently without it the Rule of Law is crucial to sound governance.

Literature Review

According to Dicey, in his *Introduction to the Study of the Law of the Constitution*, emphasized the central importance of the rule of law in democratic governance, which naturally includes judicial oversight. The judiciary is often described as the 'sentinel of the constitution' or the 'guardian of the rule of law.' In constitutional democracies, the judiciary plays an important role in ensuring that government actions conform to constitutional principles, thereby upholding accountability and safeguarding individual rights.

In *Taking Rights Seriously*, **Ronald Dworkin**¹ emphasizes that in democratic theory, the legal system is often viewed as a sentinel or guardian. This role involves judicial activism—interpreting vague laws, invalidating unconstitutional statutes, and at times guiding government actions.²

Research Methodology

This research adopts a doctrinal and descriptive approach, focusing on the analysis and evaluation of existing laws, judicial decisions, and academic literature. The doctrinal analysis emphasizes statutes, constitutional provisions, and judicial interpretations. The analytical component evaluates how effectively judicial institutions contribute to governance and accountability. A comparative approach may also be included, offering insights from other legal systems where relevant **Like in the United States, United Kingdom, or South Africa, comparative examples help contextualize the judiciary's role in governance.**

Our Law of Land serves as the framework that allocates powers and responsibilities among the different branches of government. It follows the principle of *tries political*, or

¹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 110 (10th ed. 1959).

² Ronald Dworkin, *Taking Rights Seriously* 82 (Harvard Univ. Press 1977).

the decentralization of power across three key organs.³ In India, where both Union and State governments exist, the Constitution clearly delineates their respective powers. This division is detailed in Schedule Biomatters listed under the Union List fall under the exclusive domain of the central government; those in the State List are governed by state legislatures; and in the Concurrent List, both can legislate, though central law prevails in case of conflict.

Disputes often arise between different levels of government. To resolve such conflicts, a neutral authority is needed to determine whether laws fall within the appropriate jurisdiction. This function is assigned to the Supreme Court and High Courts, making the judiciary the final interpreter of the Constitution in India. Therefore, judicial independence is essential in a constitutional democracy, ensuring adherence to the Rule of Law and the doctrine of Separation of Powers.

Article 50 of the Constitution emphasizes the separation of the judiciary from the executive, reinforcing this independence. The purpose behind constitutionally establishing separate powers for the legislature, executive, and judiciary is to prevent the concentration of power and to uphold democratic principles. India is governed by the Rule of Law—not the rule of any single organ of the government.

The supremacy and integrity of the Law of the Land are protected when all three branches operate within their assigned domains without encroaching on one another's functions. This balance is reflected in Articles 121, 122, 211, 212, 136, and 174(2), which uphold the autonomy of each branch and provide safeguards against overreach.

National progress depends on harmony among these three organs. As Alexander Hamilton aptly said, "Laws are a dead letter without the courts to expound and define their true meaning and operation." Thus, an independent judiciary must have the power of judicial review over legislative and executive actions."^{**}

Let me know if you'd like a shorter summary or to prepare this for academic or presentation use.

Role of Parliament in a Law-of-the-Land-Based Democracy

³ 7 *Constituent Assembly Debates* 953 (1948–49) (statement of Dr. B.R. Ambedkar).

Parliament, as the legislative body, is tasked with ensuring that governance aligns with constitutional mandates. It not only enacts laws but also exercises oversight to ensure that government actions comply with constitutional values. In this capacity, Parliament acts as a guardian of the "law of the land" and a representative of the people's will in a democracy.

LEGAL ANALYSIS

Judicial intervention becomes critical when governance strays from constitutional ideals. Indian courts have developed doctrines such as the Basic Structure Doctrine and Constitutional Morality to uphold the supremacy of the Constitution.

Judicial Review

The judiciary's power of review—enshrined in Articles 32 and 226—allows the Supreme Court and High Courts to examine laws and administrative actions. Dr. B.R. Ambedkar referred to Article 32 as the "heart and soul" of the Constitution, underscoring its importance.

Fundamental Rights and Personal Liberty

- *Kharak Singh v. State of U.P.* invalidated surveillance that infringed on liberty.⁴
- In *Iqram v. State of Uttar Pradesh*, the Court ordered the release of a man imprisoned for 18 years for minor theft, emphasizing that liberty is "precious and inalienable."⁵

Judicial Overreach vs. Constitutional Boundaries

However, instances like the *Salwa Judum*, *BCCI*, and *Black Money* judgments have raised concerns of judicial overreach.

In *Dr. Subhash Kashinath Mahajan v. State of Maharashtra*⁶, the Court diluted protections under the SC/ST Atrocities Act. Parliament swiftly passed Section 18A to override the judgment, showcasing its corrective role in preserving legislative intent.

⁴ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

⁵ *Iqram v. State of Uttar Pradesh*, 2023 SCC Online SC 152.

⁶ *Dr. Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454.

Judiciary vs. Parliament: A Constitutional Tug-of-War?

Although no branch of government is inherently supreme, conflicts do arise. The principle remains that only the Constitution is supreme, and every organ must act within its bounds.

Examples of judicial restraint include:

- *Supriyo v. Union of India*: Refusal to create a right to marry through judicial intervention.⁷
- Declined to interfere in matters purely political in nature.

Reflections: The Judiciary's Contributions to Law of land at Governance

The judiciary's contributions to accountability and governance are demonstrated by significant rulings that have influenced the law of land al environment. The judiciary has upheld the rule of law, strengthened citizen's fundamental rights and made sure that government actions stay within the bounds of the law of land through its decisions. The right to life under Article 21 has been expanded to include the right to a clean environment health and education for example thanks in large part to the Indian judiciary's interpretation of law of land al provisions. These rulings are prime examples of how the judiciary amends the Law of Land to meet modern needs while upholding its fundamental principles. In addition, the judiciary has served as a check on legislative and executive decisions overturning laws and regulations that go against fundamental law of land values. Such actions highlight how the judiciary upholds democratic accountability and law of land morality.

Critiques: Judicial Activism and Overreach

Notwithstanding its benefits the judiciary growing role has come under fire for instances of abuse. Judicial activism has occasionally been seen as infringing on the authority of the legislature or executive branch even though it is frequently required to fill in governance gaps. Opponents contend that this jeopardizes judiciary independence and

⁷ *Supriyo v. Union of India*, 2023 SCC OnLine SC 1391.

threatens to politicize it. Concerns have also been expressed regarding the judiciary own lack of accountability procedures. While judicial independence is crucial maintaining public trust requires striking a balance between it and accountability and transparency. Accountability can be increased without sacrificing independence through procedures like judicial performance reviews, more openness in judicial nominations and adherence to a code of conduct. In important rulings like *K. Veeraswami v. Union of India* (1991)⁸ which established standards for judicial investigations and prosecutions. Nonetheless maintaining accountability occasionally runs the risk of undermining judicial independence. The Supreme Court, for example declared the National Judicial Appointments Commission (NJAC)⁹ which was implemented in 2014 to replace the collegium system to be unlawful due to its potential to undermine judicial independence. For a just legal system independence and accountability must continue to be balanced. Justice. Lalit emphasized how the *Kesavananda Bharati*¹⁰ (1973) ruling influenced jurisprudence on judiciary independence in a talk on judicial independence as a basic law of land feature. This rule determines that certain aspects of the law of land are so essential to democracy and personal growth that they cannot be altered. The judicial branches' impartiality is crucial for justice while upholding accountability as highlighted by Justice Lalit observations. Mutual respect and judicial restraint are essential components of a cohesive system. Respect for these bodies must endure even as courts examine the actions of other laws of land a body and overturn capricious measures. As well-educated and sophisticated people, judges use measured language and spark discussions to advance the law. While addressing violations of judicial propriety the Supreme Court must strike a balance in its interventions to maintain the independence of the High Court. This strategy promotes respect for one another among state organs and fortifies the rule of law.

CONCLUSION AND RECOMMENDATIONS

⁸ *Union of India v. K. Veeraswami*, (1991) 3 SCC 655.

⁹ *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 SCC 1.

¹⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

the judiciary is a cornerstone of any democracy governed by the "**law of the land.**" Its role in enforcing rights, checking executive overreach, and preserving constitutional values is irreplaceable. However, to sustain this role, the judiciary must evolve with changing societal and institutional demands.

While **judicial activism** can be an important means to uphold justice, it must be tempered with **restraint** to avoid encroaching upon the domains of the legislature and executive. Likewise, the call for **judicial accountability** must not compromise the judiciary's **independence**, which is fundamental to its integrity.¹¹

Recommendations

- Merit-Based and Transparent Appointments
- Efficient Case Management and Technological Upgrades
- Capacity Building and Judicial Education
- Strengthening Ethical Oversight
- Balanced Judicial Activism

¹¹ Justice U.U. Lalit, *Judicial Independence as a Basic Feature of the Constitution*, Address at the Indian Law Institute (New Delhi, Sept. 2022).

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