
RULE OF LAW: A COMPARATIVE ANALYSIS BETWEEN INDIA AND CANADA

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ABSTRACT

This article offers a comparative analysis of the rule of law in India and Canada, focusing on its historical roots, constitutional basis, and practical implementation. Both nations, influenced by British legal traditions, have adapted the principle to suit their unique political, cultural, and societal contexts. In India, the rule of law is firmly embedded in the 1950 Constitution, reinforced by fundamental rights, judicial review, and an active judiciary. Public Interest Litigation has become a key instrument for addressing social justice issues and holding the state accountable. Landmark judgments such as *Kesavananda Bharati v. State of Kerala* and *Maneka Gandhi v. Union of India* reflect the courts' proactive approach in safeguarding rights and preventing arbitrary state action.

In Canada, the rule of law functions within a federal constitutional monarchy, strengthened by the Constitution Act, 1867, and the Canadian Charter of Rights and Freedoms (1982). The Charter provides a structured framework for balancing individual rights with governmental objectives, notably through the *Oakes Test*. Landmark cases such as *Roncarelli v. Duplessis* and *Canada (AG) v. Vavilov* demonstrate judicial dedication to constitutional supremacy, proportionality, and equality before the law, while maintaining respect for parliamentary sovereignty.

The comparison highlights significant differences: India's judiciary often adopts an interventionist role, influencing policy to address rights violations, whereas Canada's approach is more restrained, combining judicial oversight with parliamentary checks and independent accountability bodies. Despite procedural differences, both countries place judicial independence, constitutional supremacy, and equality before the law at the heart of governance, demonstrating the adaptability of the rule of law in protecting democratic values across diverse societies.

KEYWORDS: Rule of Law, Judicial Review, Constitutional Supremacy, India, Canada

1. INTRODUCTION

Law is a tool of social control.¹ It can be used to serve conflicting ends. The law could be an instrument of justice, but it may also enable imperialism or the plunder of natural resources. The rule of law is essential, but it is not enough to achieve justice.² Applying the rule of law is one of the basic principles concerned with justice, equality, and accountability in democratic governance. India and Canada, as countries inspired by British traditions, adopt this idea in diverse ways that reflect their unique historical and sociopolitical settings. Its legal system was a postcolonial institution of war for independence, and the 1950 Constitution of India incorporated social justice and judicial activism.³ On the other hand, Canada matured in a strong federal context, which was fortified by the 1982 Canadian Charter of Rights and Freedoms, which promoted constitutional federalism as well as the protection of individual rights.⁴

2. UNDERSTANDING THE RULE OF LAW

In an era where justice and equality are at the forefront of global conversations, understanding the rule of law is more crucial than ever.⁵ The rule of law has a meaning that goes beyond observance of the law; for it includes accepting obligations, enjoyment of rights, and guarantees of fundamental freedoms. It is where the law is treated to be supreme, where ‘it is not merely about having general rules in place, but also about ensuring that these rules are administered impartially.’⁶ This means that the law should be fair and impartial and give each individual a just chance to present their case and have a right to be heard.

In *Jeremy Waldron’s* words, “The Rule of law is seen as a fragile yet crucial idea.”⁷ It is often brought up when the government acts unfairly, breaks laws, or bypasses proper procedures, like putting people in jail without a justified cause, which can be seen as an abuse of the rule of law. That means this is a very delicate but imperative principle that provides maintenance

¹ Roscoe Pound, *Social Control through Law* (Transaction Publishers, New Jersey 2002).

² Ranbir Singh, ‘The March of Law in India: The Long Road from Oppression to Justice’ (2017) 59(3) *Journal of the Indian Law Institute* 288.

³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

⁴ Peter W Hogg, *Constitutional Law of Canada* (Thomson Reuters Canada 2019).

⁵ ‘Community Organisation Management’ (CSR Education)

<https://csr.education/community-organisation-management/> accessed 17 November 2024.

⁶ Waldron J, ‘The Concept and the Rule of Law’ (2008) 43 *Georgia Law Review* 1

⁷ Jeremy Waldron, ‘The Concept and the Rule of Law,’ *Georgia Law Review*, Vol. 43, No. 1, Fall 2008, 5.

of justice, equality, and order in society. The significance of the Rule of Law lies in its declaration regarding one law for all kinds of living things, irrespective of status or power. It gives fair play, creates protection for rights, and offers social stability. It is, however, weak in that it is highly dependent on sound institutions, honest leadership, and public trust for its performance. Should governments abuse the powers reposed in them, should institutions become corrupt, or the people lose faith in justice, the Rule of Law may rapidly collapse. In short, although it is necessary for a just and orderly society, it requires constant effort and vigilance to maintain.

For instance, some leaders have sought to influence or subvert judicial systems to serve political or personal purposes.⁸ In such instances as those in which political pressure is brought against the judiciary and judges who are ruled against by judgments made by the judiciary are sacked, the Rule of Law suffers, and inequality and mistrust in justice are perpetrated. On the other hand, among robust democracies, the Rule of Law is such that the mighty positions (be it a president or a big businessman) could be called to account in conducting their respective affairs. The most critical role that an independent judiciary portrays may be adequately expressed through examples of high-profile cases (*Roncarelli v. Duplessis, 1959*)⁹ where the court ruled against Quebec's Premier Duplessis for arbitrary actions undermining the rule of law, reinforcing judicial independence where courts order against Government leaders.

According to *Dworkin*, the concept serves as a foundation for subsequent thought and argument. Everyone agrees on its importance, even if they disagree on how to apply or interpret it. This creates a foundational idea that establishes a necessary minimum standard without which discussion of laws and rights cannot proceed meaningfully. In a nutshell, it serves as the foundation for all subsequent areas of legal and ethical inquiry. The concept of universal equality before the law, which has been adopted by nearly all modern legal systems, is a core tenet of the Rule of Law on a global scale.¹⁰ For example, during the Civil Rights Movement in the United States, legal equality served as a foundation for challenging segregation and other forms of discrimination. Courts and lawmakers debated over how best to apply this principle and ultimately came to one of the most significant rulings in American history, *Brown v. Board of Education*.¹¹ which prohibited racial segregation in public schools.

⁸ Peter W. Hogg, *Constitutional Law of Canada* (Carswell 2016) 23–45.

⁹ *Roncarelli v Duplessis* [1959] SCR 121 (Canada).

¹⁰ Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), 70.

¹¹ *Brown v. Board of Education of Topeka*, 347 US 483 (1954).

J. Anthony Kennedy said that the term “rule of law is used very often but hardly ever defined. The definition of the rule of law itself has puzzled jurists, judges, and intellectuals.¹² Tom Bingham’s book “The Rule of Law” concedes that the term is subjective and vague.¹³ The rule of Law was not to be defined but to be interpreted and implemented. The rule of law has been misunderstood by the incorrect ideological use and its application in too many spheres of life. The term has many meanings and takes on different meanings from culture to culture and social context.¹⁴

Therefore, the Rule of Law is a principle that governs a nation not by persons but by laws. This principle is fundamentally important for maintaining order and protecting the rights of the individual. According to Hwang, “the procedural notion of the Rule of Law emphasizes that laws are applied fairly and without discrimination through public institutions and processes.” She argued that the Rule of law was not only by the existence of general rules but by their neutral application and protection of persons against the arbitrary exercise of power.¹⁵

3. HISTORICAL EVOLUTION OF THE RULE OF LAW

The term ‘Rule of Law’ is borrowed from the French expression ‘la Principe de legalité,’ which translates into the ‘principle of lawfulness.’¹⁶ The theory of the rule of law has its early origins in the Ancient Romans, as the first republic began to take shape. It has since been embraced many times over by medieval thinkers in Europe via the social contract theory of Hobbes, Locke, and Rousseau.¹⁷

Throughout the centuries, the Rule of Law has undergone development, based on profound roots in ancient civilizations and philosophical thinking. The emphasis placed by Plato and Aristotle on the supremacy of laws instead of rule by the arbitrary authority of individuals in ancient Greece suggests an understanding of the supremacy of laws within a successful state, thus emphasizing that such laws should be for the common good and avoid the abuse of power.¹⁸ It was upon this foundation that the Roman philosopher Cicero later insisted that laws must benefit the entire community. However, during the reign of Emperor Justinian I,

¹² Anthony Kennedy, 'The Rule of Law' (Speech, American Bar Association Annual Meeting, 2006).

¹³ Tom Bingham, *The Rule of Law* (Allen Lane 2010).

¹⁴ Sahildeep Singh, 'A Comparative Analysis of Rule of Law in U.K. and India' (2023) *Int'l JL Mgmt & Human* 847.

¹⁵ Hwang KT, 'The Procedural Aspect of the Rule of Law: India as a Case Study for Distinguishing Concept from Conception' (2015) *CMC Senior Theses*, Paper 1171

¹⁶ Jean-Jacques Rousseau, *The Social Contract* (1762), Book I, Chapter 6.

¹⁷ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn, Macmillan 1915) 202–205.

¹⁸ Plato, *The Republic* (trans. Benjamin Jowett, Dover Publications 2000) Book 1.

while Roman law was codified in the Corpus Juris Civilis, it also endorsed the ruler's supremacy over the law, undermining the Rule of Law.¹⁹

During the Middle Ages, there was much development in the Rule of Law, partly due to power struggles between monarchs and the church, which shaped governance. The signature of the Magna Carta in 1215 established crucial bounds placed upon the sovereignty of the king and incorporated principles, such as immunity against arbitrary detention and the right to a fair trial.²⁰ During the Renaissance, intellectuals like Thomas Aquinas stated that laws should be rational and for the common good.²¹ It falls upon the rulers, who in turn must follow the laws they make. Despite this, the doctrine of the Divine Right of kings was unable to stifle the strong notion that rulers had to be under the law.²²

The Enlightenment era furthered the Rule of Law by several important thinkers espousing the cause of separation of powers and protection of individual rights, founding the modern constitutional democracies.²³ Philosophers such as Sir Edward Coke and A.V Dicey elaborated on the doctrine. Coke claimed that the king was not outside the law, whereas Dicey identified three fundamental principles: the rule of regular law, equality before the law, and the jurisdiction of courts to protect the rights of the individual. All these defined the spirit of British constitutionalism and governance.²⁴

In the new world order, particularly in the post-Cold War scenario, the Rule of Law became an international slogan that was put together with governance, economic growth, and democracy. International institutions began to launch their efforts at legal reforms in countries in transition and postcolonial nations in pursuit of these ideals. Such advancement marks the way development of the Rule of Law works from a conceptual idea to an indispensable part of constitutional democracies characterized by justice, equality, and checks on arbitrary power.²⁵

3.1 IN INDIA

¹⁹ H.L.A. Hart, *The Concept of Law* (3rd ed., Oxford University Press 2012)

²⁰ Magna Carta 1215, *The Magna Carta* (ed. G. O. Sayles, Cambridge University Press 1973).

²¹ Thomas Aquinas, *Summa Theologica* (trans. Fathers of the English Dominican Province, 2nd ed, Christian Classics 1981) II-II, Q. 90, Art. 2.

²² John Locke, *Two Treatises of Government* (ed. Peter Laslett, Cambridge University Press 1988) Book II, Ch. 2.

²³ Charles de Montesquieu, *The Spirit of the Laws* (1748).

²⁴ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan 1885).

²⁵ Riya Rathore, 'Approach to Rule of Law with Adherence to UK Law' (2021) 4 Int'l J L Mgmt & Human 397-412.

The history of the growth of the Rule of Law from Britain to India illustrates how ideas embedded within British legal traditions have been borrowed and adapted to the Indian environment created by colonial rule and the independence movement.

British colonial regimes had “rule by law” as a form of exercise in power, enacting laws to their respective economic advantage and quelling dissent. The twinned system favored the British over the native Indians. Notorious cases such as *Raja Nand Kumar’s trial in 1775*²⁶, epitomized the misuse of judicial systems to exercise imperial authority.²⁷ Its beginning in India, however, was highly unequal as rulers often preferred colonial interests rather than justice to Indians. Yet even though uneven British legal principles paved the way for modern Indian law systems.²⁸ For example, institutions such as the Supreme Court of Calcutta (1774), established by the Britishers, and later High Courts followed the principles of due process and legal certainty.

The Indian intellectuals and leaders, therefore, borrowed the Rule of Law to fulfill their dream of a sovereign nation. The demand for legal equality and rights protection gradually influenced the struggle for independence. In 1946, after attaining independence, the Indian Republic adopted a written constitution that incorporated the Rule of Law as its principle.²⁹ The Indian Constitution was adopted in 1950 and fully enshrines equality before the law,³⁰ along with many other basic rights such as due process, freedom of speech, and protection from arbitrary state action.³¹

In free India, the judiciary proved conspicuous in keeping the rule of law alive. It could do so by giving landmark judgments like *Kesavananda Bharati v. State of Kerala (1973)*³². A landmark judgment defying the “basic structure doctrine” it created prevents the Parliament from amending the Constitution in ways that would destroy those very foundations on which the Constitution predicates; this includes the rule of law. Judicial activism and public interest litigations have increased access to justice, so the Rule of Law has become an active tool in the protection of citizens’ rights rather than an empty theory.³³

²⁶ G. D. Khosla, *The Trial of Raja Nand Kumar* (The Indian Historical Review 1948): A focused account of the trial, discussing its political and judicial significance.

²⁷ Ranbir Singh, 'The March of Law in India-The Long Road from Oppression to Justice' (2017) 59(3) Journal of the Indian Law Institute 288.

²⁸ John F. Richards, *The Mughal Empire and British India* (OUP 1993).

²⁹ *Constitution of India* (1949) Part III, Articles 12-35 (Fundamental Rights).

³⁰ *Constitution of India* 1950, art 14.

³¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

³² *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

³³ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999).

Therefore, the Rule of Law in India may be regarded as a living legacy of British judicial traditions, adapted to Indian democratic and constitutional requirements that are liable to be modified according to changing social needs.

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³⁸ *Constitution of India* 1950, art 14.

³⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

⁴⁰ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

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The rule of law developed in Canada since the time of this state is characterized by legal and cultural problems connected with its being a federated state and bonding to common law in England. Thus, the historical basis of the common law system, its principles along with judicial independence and legislative responsibility, were defined during the colonial relationship between Great Britain and Canada.⁴² This principle instituted the three core principles of judicial independence, rule of law, and equality before the law – those elements form the essence of the Canadian legal culture. The ideology of A.V. Dicey on the role of law has been so influential in the formative years of the theory of the Canadian constitution that no citizen, government official not excepted, is above the law.⁴³ All these principles have significantly influenced Canada's dedication to a fair society and equality, justice, and accountability as integral democratic values.

The British North America Act, now known as the Constitution Act of 1867, marked a great turning point in the historical narrative of Canada. It laid the foundations for the federal governmental framework, outlining the division of powers between federal and provincial governments, but also instituting a framework of cooperation and balance so that one tier of government would not be able to solely dictate. It provided a framework in which diversity – be it cultural, economic, or regional – flourished within a unified nation.⁴⁴ The Constitution Act of 1867 is both the beginning of Canadian federalism and one of the most important milestone documents for judicial interpretation of the rule of law in a heterogeneous, multi-jurisdiction nation.⁴⁵ The Act further recognized the principle of equality, an idea that

⁴¹ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999).

⁴² Jack Watson, 'You Don't Know What You've Got 'Til It's Gone: The Rule of Law in Canada - Part I' (2015) 52 *Alta L Rev* 689.

⁴³ Janine L'Espérance and Richard Devlin, *Canada and the Rule of Law: 150 Years After Confederation* (International Commission of Jurists Canada, 2017).

⁴⁴ Jack Watson, 'You Don't Know What You've Got 'Til It's Gone: The Rule of Law in Canada - Part I' (2015) 52 *Alta L Rev* 689.

⁴⁵ *Constitution Act, 1867* (UK) 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

was further entrenched in 1982 by the enforcement of the Canadian Charter of Rights and Freedoms.⁴⁶ This statute not only conserved the theme of federalism but also impacted the course of Canadian constitutionalism, providing for the ongoing evolution of the rule of law in a pluralist society.⁴⁷

The Canadian Charter of Rights and Freedoms, established in 1982, changed the state-citizen dynamic by protecting rights through law.⁴⁸ This charter contained a notwithstanding clause that allowed governments to override specific rights of the Charter and maintain a balance between individual freedoms and democratic power.⁴⁹ The Charter further refined the judicial review procedure; the judiciary now had the right to scrutinize legislation as well as government practices and actions regarding fundamental rights. This has strengthened the rule of law and developed a Canadian identity that is grounded in justice, equality, and human dignity.⁵⁰ Such ideas inspired by the Charter have influenced many legal, political, and social developments.⁵¹

One of the most classic Canadian Supreme Court judgments that acted in favor of upholding the rule of law is *Roncarelli v. Duplessis* in 1959⁵². Quebec Premier Maurice Duplessis suspended Paul-Émile Roncarelli's liquor license as a punishment for his support of the Jehovah's Witnesses. The court gave its judgment in favor of Roncarelli, bringing to the fore that public officials should operate within the law and not for motives of personal or political reasons. This judgment has emerged as one of the cornerstones of Canadian constitutional law, underlining individual rights.

In the end, the history of Canada's rule of law shows how the country has worked to keep its old legal traditions while also adapting to the needs of a modern and diverse society. Canada's system, shaped by British legal ideas, the federal structure, and the major changes brought by the Charter, is built to protect people's rights, keep governments accountable, and ensure courts can act independently. Over time, it has shown that the rule of law is not just a rule written in the constitution but a living idea that helps keep fairness, equality, and unity strong in a country made up of many different people and cultures.

⁴⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982.

⁴⁷ Michael Asimow and Iain G. McDonald, *Canadian Constitutional Law: A Critical Introduction* (2nd edn, LexisNexis 2015) 90–95.

⁴⁸ Michael Asimow and Iain G. McDonald, *Canadian Constitutional Law: A Critical Introduction* (2nd edn, LexisNexis 2015) 160–170.

⁴⁹ *Canadian Charter of Rights and Freedoms*, s 33.

⁵⁰ Michael J. Trebilcock, *The Rule of Law in Canada* (University of Toronto Press 2015) 12–15.

⁵¹ *L'Espérance and Devlin* (n 1)

⁵² *Roncarelli v Duplessis* [1959] SCJ No 4.

4. CONSTITUTIONAL FRAMEWORK

4.1 INDIA

The rule of law principle is fundamental to India's democratic structure, directly impacting the country's governance and legal structure. It primarily happens through the judiciary, legislative oversight, and administrative accountability as a vital component, instilled within the Constitution of India.

4.1.1 RULE OF LAW AND FUNDAMENTAL RIGHTS

The Indian Constitution embodies a group of Fundamental Rights that form the base of the rule of principle as a defense against 'arbitrary interference by the authority with the individual.' These rights include:

Article 14 refers to the principle of equality concerning the right to equality. This article states that every citizen is equal before the law and equal protection under the law. It offers a need for the government and other institutions not to discriminate against some people for reasons of religion, race, caste, sex, or place of birth.⁵³

Those sections comprise freedom rights through Articles 19 to 22, guaranteeing the liberties of speech, expression, and association while protecting an individual from unlawful arrest mentioned in Article 22.⁵⁴

Individuals possess the entitlement to constitutional remedies as stipulated in Article 32, enabling them to promptly petition the Supreme Court for redress in cases of violations of their fundamental rights.⁵⁵

It is at the same time an instrument of struggle against governmental dominance and violation of civil society standards as well as a tool for empowerment of a "progressive" state. The intervention in the affairs of civil society complicates administration, politics, and constitutional development as the process involves disempowering and then re-empowering the Indian state. The Constitution introduces "cognitive dissonance" into social psychology, indicating a schizophrenic evolution.⁵⁶

⁵³ *Constitution of India* (1950), Art 14: "Equality before law" and "Equal protection of the law."

⁵⁴ *Constitution of India* (1950), Arts 19–22: "Protection of certain rights regarding freedom of speech, etc." and "Protection against arrest and detention in certain cases."

⁵⁵ *Constitution of India* (1950), Art 32: "Remedies for enforcement of rights conferred by this Part."

⁵⁶ Upendra Baxi, 'The Rule of Law in India' (2007) 4 SUR - Int'l J on Hum Rts 7.

Thus, the constitution writers designed the articles with the intention that the law's superiority would dominate the wants of an individual or any other organization. For example, in the case of *Maneka Gandhi vs. Union of India* (1978),⁵⁷ the Supreme Court expanded the interpretation of Article 21- right to personal liberty- by observing that any legislation on liberties needed to be "just, fair and reasonable." Such landmark verdicts picture how the court ensures the state's actions follow the rule of law.

4.1.2 ADMINISTRATIVE ACCOUNTABILITY AND RULE OF LAW

Administrative activities in India also come to court for verification as to whether they comply with the constitutional requirements or not. In many cases, the judiciary had to intervene to prevent arbitrariness and ensure accountability. Illustrative examples are:

In *DK Basu v. State of West Bengal*, 1997, the court clarified custodial violence and set arrest and detention criteria for people. The Judgment reinforced the fact that administrative and police actions must satisfy basic rights while not compromising accountability in law enforcement.⁵⁸

In *Olga Tellis v. Bombay Municipal Corporation* (1985), the court held that dwellers of slums cannot be dislodged without some notice and thereby related the right to livelihood with the right to life under Article 21.⁵⁹

In *EP Royappa v. State of Tamil Nadu* (1974)⁶⁰ The concept of "arbitrariness" was declared the antithesis of equality under Article 14, assuring justice in judgments given by administrations.

In *Prakash Singh v. Union of India* (2006)⁶¹ The case even led to major changes within the police force aimed at eliminating political interference and increasing accountability. The Court made it mandatory to have state security commissions and systems for equitable transfers and assignments of posts, emphasizing the autonomy and responsibility of law enforcement agencies.

The reinforcing mechanism of administrative accountability is by entities such as the Central Vigilance Commission and the Comptroller and Auditor General, aimed at effecting the rule

⁵⁷ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

⁵⁸ *DK Basu v. State of West Bengal* (1997) 1 SCC 416.

⁵⁹ *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

⁶⁰ *EP Royappa v. State of Tamil Nadu* (1974) 4 SCC 3.

⁶¹ *Prakash Singh v. Union of India* (2006) 8 SCC 1.

of law through examination of governmental activities and inquiry into cases of impropriety.⁶²

These are examples of how the judiciary in India performs an important function in ensuring the rule of law through scrutiny of administrative action, protection of individual rights, and ensuring that authorities of government operate within constitutional bounds. The system is ensuring that authorities of government operate within constitutional bounds. The system is reinforced by entities like CVC and CAG that scrutinize governmental functioning and correct anomalies.

4.1.3 JUDICIAL REVIEW AND SUPREMACY OF THE CONSTITUTION

Judicial review is a process whereby the judiciary scrutinizes legislation and administrative actions for constitutionality. This procedure ensures that no law or executive order violates constitutional principles since it presupposes entrenching the Constitution as the supreme law of the country. Throughout history, the judiciary has consistently acted as a guardian of the rule of law.

In *Kesavananda Bharati v. State of Kerala (1973)*⁶³ the Supreme Court established the “basic structure doctrine,” claiming that Parliament cannot alter fundamental principles bestowed upon the Constitution, such as the rule of law. The decision further highlighted how the judiciary could check the excesses of the legislative branch of government.

In *Minerva Mills v. Union of India (1980)*⁶⁴ An important constitutional amendment that constricted judicial review was declared void by the Supreme Court: this was justified because “the rule of law” constitutes an integral part of the very core structure of the Constitution. Such an opinion made it evident that judicial review was the most vital check in averting the concentration of arbitrary power and protecting the supremacy of the Constitution. The court thus urged by denying changes meant to desist the judges, advocated democratic values and accountability under the umbrella of the rule of law, and established a balance of the three arms of the legislative, executive, and judiciary.

This is, in many ways, the watershed decision of Indian legal history: *Indira Nehru Gandhi v. Raj Narain* in 1975⁶⁵, when the court set aside the holding of Prime Minister Indira Gandhi’s

⁶² Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999) 246–250.

⁶³ *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461.

⁶⁴ *Minerva Mills v. Union of India* AIR 1980 SC 1789.

⁶⁵ *Indira Nehru Gandhi v. Raj Narain* AIR 1975 SC 2299.

election on grounds of electoral malfeasance and asserted that no person, high or low, is above the law. The decision effectively upheld democratic accountability and reaffirmed man as equal before the law. In so affirming judicial independence over a sitting Prime Minister, it set a significant precedent under the rule of law, the bedrock of India's constitutional democracy.

4.2 IN CANADA

4.2.1 RULE OF LAW AND CANADIAN CHARTER OF RIGHTS

The Charter enumerates a wide spectrum of rights and freedoms meant to embrace essential elements among them: the freedom of expression, the principle of equality, legal entitlements, and, not to mention, democratic rights. The rights at issue are essentially based on the same principle; they cannot be overridden except where a justifiable limitation can be shown to exist within the terms of Section 1 of the Charter. Section 1 allows for limitations that are “reasonable” and “demonstrably” justified in a “free and democratic society” to balance individual rights with state interests.⁶⁶ For example, in *R v. Oakes*, *supra*⁶⁷ The Supreme Court of Canada established a standard “Oakes Test”- to determine when a statute violating Charter rights might be justified under Section 1. The two basic elements of the Oakes Test are:

- The goal of the statute must be important enough to justify the violation of a Charter right.
- The strategies therefore used in achieving the objective should be proportionate, and the violations should be at their minimum.

This evaluation would then assess whether governmental action is both necessary and equitable, thus demonstrating the Charter's role in establishing the rule of law.⁶⁸

The rule of law requires that persons and institutions observe the law as well as operate under its protection. The Charter equips citizens with a legal instrument to challenge government actions and laws contrary to their rights. Judicial enforcement of the Charter is a crucial tool against abuses of power.⁶⁹ In the case of *Vriend v. Alberta* (1998)⁷⁰ the Supreme Court of Canada annulled Alberta's omission of sexual orientation from its human rights legislation as

⁶⁶ *Canadian Charter of Rights and Freedoms* (1982), Part I of the *Constitution Act*, 1982.

⁶⁷ *R v Oakes* [1986] 1 SCR 103.

⁶⁸ Sharpe and Roach, *The Charter of Rights and Freedoms* (6th ed, Irwin Law 2021) 55–60.

⁶⁹ Peter W. Hogg, *Constitutional Law of Canada* (5th ed, Thomson Reuters 2017) 1014–1017.

⁷⁰ *Vriend v Alberta* [1998] 1 SCR 493.

grounds for discrimination. It decided that this case drives home to the courts the responsibility to ensure that legislative loopholes do not translate into systemic discrimination and therefore, reinforce the safeguarding rights of minorities secured in the Charter.

Sections 7 to 14 of the Charter emphasize legal rights and the fair administration of criminal justice. The rights include the right to life, liberty, and security of the person in Section 7; and rights against unreasonable detention, search, or seizure in Section 8 as well as the right to just trial in Section 11.⁷¹ For example, in the case of *R v. Morgentaler (1988)*⁷², it was decided by the Supreme Court that abortion regulations enacted in Canada infringed upon women's Section 7 rights, as they placed extreme barriers to access. The Court emphasized that any regulations overstepping human autonomy and security must provide fundamental justice. This judgment showcases a clear example of the Charter safeguarding individuals against government action that would violate their rights. Another case of *R v. Grant (2009)*⁷³, examined the acceptability of evidence gained in violation of Charter rights. In this respect, the Court established a framework for determining whether evidence ought to be excluded according to section 24(2) of the Charter, focusing on the severity of the infringement, its effects on the accused, and the societal interest in resolving the issue based on its merits. This framework supports accountability within law enforcement and the procedural truth of the matter.⁷⁴

Section 15 of the Charter makes an assurance of equal treatment before and within the legal framework, forbidding the kinds of discrimination based on race, gender, age, or disability. This provision has been instrumental in furthering social justice and ending formal inequalities.⁷⁵ In the case of *Andrews v. Law Society of British Columbia, 1989*⁷⁶, the Supreme Court interpreted Section 15 as prohibiting legislation that results in discriminatory outcomes, regardless of whether such bias is unintentional. This case established a framework for substantive equality by emphasizing the necessity of confronting structural and systematic barriers. *Eldridge v. British Columbia (1997)*⁷⁷ upheld the Canadian Charter of Rights and Freedoms, stating that governments must ensure equal access to services for marginalized groups.

⁷¹ *Canadian Charter of Rights and Freedoms* (1982), ss 7–14.

⁷² *R v Morgentaler* [1988] 1 SCR 30.

⁷³ *R v Grant* [2009] 2 SCR 353.

⁷⁴ Peter W. Hogg, *Constitutional Law of Canada* (5th ed, Thomson Reuters 2017) 1235–1245.

⁷⁵ *Canadian Charter of Rights and Freedoms* (1982), s 15.

⁷⁶ *Andrews v Law Society of British Columbia* [1989] 1 SCR 143.

⁷⁷ *Eldridge v British Columbia (AG)* [1997] 3 SCR 624.

Sections 2 and 3 of the Charter guarantee people the right to freedom of expression, association, and democratic participation, which includes the right to vote. These provisions thus set up safeguards whereby the government cannot stifle dissent or restrict democratic participation without justifiable cause. In *Ford v. Quebec (1988)*⁷⁸ involved the Quebec statute that makes business signs in French only and, thus multilingual signs are outlawed. The Supreme Court of Canada held that the act contravened free expression under Section 2(b) of the Charter. The Court, however still allowed the statute to remain in law temporarily under Section 33-the notwithstanding clause. This decision may be the classic example of the precarious balance between personal rights and parliamentary sovereignty.⁷⁹

Section 34 of the Constitution Act, 1982, recognizes and affirms existing Indigenous rights. Judicial interpretation has been pivotal in defining the scope of these rights and their coexistence with Canadian Law.⁸⁰ In *R v. Sparrow (1997)*⁸¹ the Court established that any infringement of Indigenous rights under Section 35 must meet a test of justification, including consultation and minimal impairment. *Delgamuukw v. British Columbia (1997)*⁸² affirmed Indigenous title, emphasizing its collective nature and constitutional protection. Hogg highlights these cases as milestones in advancing Indigenous self-governance, reinforcing the rule of law as inclusive of Indigenous legal traditions.⁸³

4.2.2. THE RULE OF LAW AS A NORMATIVE PRINCIPLE

The rule of law is a part of the rules of both descriptive and normative types for Canada's constitutional structure. Peter Hogg explains this double role:

- Descriptive Role⁸⁴

The rule law maintains society order by forcing all activities, public or private, to follow established legal norms. This includes:

- o Predictability: Individuals and institutions can expect legal effects when laws are applied consistently.
- o Stability: Legal frameworks ensure continuity, reduce disturbance to governance, and civil society.

⁷⁸ *Ford v Quebec (AG)* [1988] 2 SCR 712.

⁷⁹ *Canadian Charter of Rights and Freedoms* (1982), ss 2, 3, and 33.

⁸⁰ *Constitution Act, 1982* (Canada), s 35, *Canadian Charter of Rights and Freedoms*.

⁸¹ *R v Sparrow* [1990] 1 SCR 1075.

⁸² *Delgamuukw v British Columbia* [1997] 3 SCR 1010.

⁸³ Peter W. Hogg, *Constitutional Law of Canada* (5th edn, Thomson Reuters 2017) 951–963.

⁸⁴ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn, Macmillan 1915) 202–205.

The rule of law is a general value that flows from justice, equality, and accountability. It means more than obeying the law in force.

- Normative Role⁸⁵

Government accountability and applications across its activities as vested in the courts, as it was tested in *Roncarelli v Duplessis* (1959)⁸⁶. Here, the Supreme Court ruled that a public official's arbitrary revocation of a liquor license violated the rule of law.

- Protection Against Tyranny: This idea protects against an arbitrary or abusive power exercise by ensuring that no one is above the rule of law.
- Upholding Justice and Fairness: The judiciary uses rule of law as a normative criterion for conflict resolution, weighing individual rights against social objectives.

4.2.3 ADMINISTRATIVE ACCOUNTABILITY AND RULE OF LAW

The relationship between the rule of law and Indigenous government is mostly a focus on constitutional acknowledgment of Indigenous rights and reconciliation problems. Section 35 of the Constitution Act 1982 recognizes and affirms existing Aboriginal and treaty rights. Judicial interpretation has been crucial in determining the scope of such rights and ensuring their consistency with Canadian Law.⁸⁷

In *R v. Sparrow* (1990), the Court established that any infringement of Aboriginal rights under Section 35 must be justified, which involves consultation and minimum impairment.⁸⁸

In *Delgamuukw v. British Columbia* (1997)⁸⁹ This historic decision entrenched Indigenous title, focusing on its communal character and protection at the constitutional level.

Hogg cites such cases as significant steps in the progress of Indigenous self-government, thereby establishing the rule of law to be inclusive of Indigenous legal systems.⁹⁰

4.2.4 JUDICIAL REVIEW AND SUPREMACY OF THE CONSTITUTION

⁸⁵ Peter W. Hogg, *Constitutional Law of Canada* (5th edn, Thomson Reuters 2017) 15–25.

⁸⁶ *Roncarelli v Duplessis* [1959] SCJ No 4.

⁸⁷ *Constitution Act, 1982* (Canada), s 35.

⁸⁸ *R v Sparrow* [1990] 1 SCR 1075

⁸⁹ *Delgamuukw v British Columbia* [1997] 3 SCR 1010.

⁹⁰ Peter W. Hogg, *Constitutional Law of Canada* (5th edn, Thomson Reuters 2017) 951–963,

Judicial review is an indispensable tool of administrative accountability. It allows the judiciary to check administrative decisions in areas of legality, constitutionality, and statutory compliance. In addition, judicial review supports the rule of law because arbitrary or whimsical judgments are prevented, and individual rights are protected.⁹¹

Judicial review ensures that administrative actions adhere to both the rights of individuals and the overarching legal structure. It is a key tool to keep government in check. Judicial review is a check on the abuse of power by the courts through interpretation and declaratory judgment against a law passed in violation of the rule of law.

- Judicial review stresses the requirement that the decision-maker operate within the bounds of his statutory or constitutional powers. Activity outside those restraints, called "ultra vires," is considered not allowed.
- Reasonableness: Administrative actions need to be reasonable, justifiable, and proportionate to the ends they are aimed to achieve, as would be required by the principles established in decisions such as *Canada (Minister of Citizenship and Immigration) v Vavilov* (2019). In that decision, the Supreme Court of Canada pointed out that decisions must be principled and justified.
- Correctness: Judicial bodies employ this criterion to guarantee that administrative interpretations align with the broader legal framework.⁹²

A case of *Roncarelli v. Duplessis* (1959)⁹³, established that no official, at whatever level, can act arbitrarily or beyond his jurisdiction.

In *Dunsmuir v. New Brunswick* (2008),⁹⁴ the review requirements were thus made simple as "reasonableness" and "correctness" to make it clear how court review should evaluate administrative judgments.

Canada (AG) v Bedford (2013), the Court declared prostitution-related sections of the Criminal Code unconstitutional, ruling that they infringed Section 7 of the Charter's rights to life, liberty, and security.⁹⁵

Judicial independence is therefore critical in ensuring that constitutional review is non-partisan. Courts must be free of political and governmental intervention to function

⁹¹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

⁹² S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002).

⁹³ *Roncarelli v Duplessis* [1959] SCJ No 4.

⁹⁴ *Dunsmuir v New Brunswick* (2008) 1 SCR 190.

⁹⁵ *Canada (AG) v Bedford* (2013) 3 SCR 1101.

effectively. Hogg argues that, with independence, judges are able to enforce constitutional values without fear of repercussions in the process, thus retaining public trust in the judiciary.⁹⁶

5. MODERN DAY RULE OF LAW

According to the World Justice Project, 'the rule of law is a strong and durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just law, open government, and accessible and impartial justice.'⁹⁷

Both in India and in Canada, the rule of law emphasizes constitutional supremacy, separation of powers, and legal equality. While Canada's legal framework is based upon constitutional monarchy and federalism, India's system draws inspiration from its democratic republic structure and socio-cultural diversity. At the same time, both nations have extraordinarily strong legal systems that defend rights and hold governments accountable.⁹⁸

The rule of law as implemented in India and Canada is unique to their respective constitutional systems that balance the power of government, individual rights, and the monitoring role of the judiciary. Although the two countries consider the idea central to their democracies, they mold it according to their specific historical, cultural, and legal contexts.⁹⁹

India's law based is upon its written constitution which permits the constitutional philosophy of equality, justice, and fundamental rights. It is very strongly rooted in the constitutional supremacy that the Indian Constitution, 1950, has envisaged to follow as brought out in Part III of its Fundamental Rights. The judiciary plays a significant role in enforcing these ideals through judicial review and the theory of separation of powers.¹⁰⁰

The rule of law in Canada is based on the Constitution Act of 1867. It is enforced by the Canadian Charter of Rights and Freedoms (1982), which emphasizes constitutional

⁹⁶ Peter Hogg, *Constitutional Law of Canada* (5th edn, Thomson Reuters 2017); S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002); A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

⁹⁷ World Justice Project, 'What is the Rule of Law?' (World Justice Project, 2024) <https://www.worldjusticeproject.org/what-rule-law> Accessed [12th November 2024].

⁹⁸ Peter Hogg, *Constitutional Law of Canada* (5th ed, Thomson Reuters 2017); Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966); S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002).

⁹⁹ S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002); Michael J. Trebilcock, *The Rule of Law and the Rule of Lawyers: The Legal Framework of a Modern Society* (University of Toronto Press 2015).

¹⁰⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966); M.P. Jain, *Indian Constitutional Law* (7th ed, LexisNexis 2014); Subhash C. Kashyap, *Our Constitution: An Introduction to India's Constitution and Constitutional Law* (National Book Trust 2013); S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002).

supremacy, judicial independence, and equality before the law. The judiciary is proactive in the interpretation of the Charter to protect individual rights and to limit the government's reach.¹⁰¹

Examples such as *Anuradha Bhasin*¹⁰² in India would reflect the process of hard conflict between security concerns and individual rights, especially in sensitive areas. The case of *R v Oakes*¹⁰³, 1986, in Canada, and *Vavilov* is well-thought-out, reasonable, and systematic for limiting rights under the Charter Section 1.¹⁰⁴

Therefore, in today's world, one significant difference between India and Canada is how the rule of law works in diverse societies. In India, it is often challenged by issues like poverty, inequality, many languages, and different religions. This means courts often have to deal with cases about discrimination and find a fair balance between the rights of communities and the rights of individuals. In Canada, the rule of law works within a bilingual legal system—English common law and Quebec's civil law—and also respects Indigenous laws and traditions, which are protected in the Constitution. This creates a system where different legal traditions exist side by side within the same country.

Another difference is how active the courts are. In India, the courts often take a stronger role in shaping policies, especially through Public Interest Litigations, stepping in when the government does not act to protect rights. In Canada, the courts are usually more careful, using clear legal tests like the *Oakes* Test to make sure rights are protected without taking over the work of lawmakers.

Both countries believe in keeping governments accountable, but they do it in diverse ways. India often depends on the courts to step in after problems occur, while Canada uses a mix of court action, strong parliamentary checks, and independent watchdog bodies to stop problems before they happen.

6. CONCLUSION

¹⁰¹ Richard S. Kay, *The Canadian Constitution* (Oxford University Press 2005); John E. Farago, *The Role of the Judiciary in Canadian Constitutional Law* (McGill-Queen's University Press 2008).

¹⁰² *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

¹⁰³ *R v Oakes* (1986) 1 SCR 103

¹⁰⁴ Michael J. Trebilcock, *The Rule of Law and the Rule of Lawyers: The Legal Framework of a Modern Society* (University of Toronto Press 2015).

The comparative examination of the rule of law in India and Canada indicates both countries' common commitment to upholding constitutional concepts such as equality, justice and accountability. While based in their own historical and cultural settings, the rule of law serves as the foundation of both nations' democratic institutions, guaranteeing that no individual or organization is above the law.

Both countries develop the rule of law in terms of the changing judicial interpretation and community needs in India and Canada. Recent judgments reflect both countries' commitment to protecting constitutional principles while addressing contemporary issues. An active judiciary and widespread use of PILs become a characteristic feature of India, which attaches significant importance to social justice, whereas in Canada, the sophisticated strategy towards administrative responsibility and proportionality will ensure a fair implementation of the rule of law. Both of these models identify the importance of judicial independence, openness, and flexibility in guaranteeing democratic rule.

In India, the court actively interprets the Constitution to promote social justice, frequently through Public Interest Litigation (PILs). Landmark cases such as *Kesavananda Bharati v State of Kerala (1973)* and *Maneka Gandhi v Union of India (1978)* demonstrate the judiciary's dedication to upholding basic rights and enforcing accountability. However, issues persist, such as balancing individual rights with national security, as illustrated in *Anuradha Bhasin v Union of India (2020)*.

This in return assures Canada's rule of law that is based on concepts of federalism and constitutional monarchy. Judicial independence assures the interpretation of Charter to be impartial, and this is evident in key cases like *R v Oakes (1986)* and *Canada (AG) v Vavilov (2019)*. Such instances allow a systematic approach towards balancing individual rights with governmental authority without being irrational and unjust.

Despite these differences in frameworks, India, and Canada both center judicial independence at the heart of the rule of law. In fact, the Indian aggressive judicial approach goes well with its socioeconomic problems, while the Canadian cautious and principled jurisprudence matches the federal environment. These sets together demonstrate the adaptability of the rule of law for critical preservation of democracy, justice, and equality.