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## FROM KINGS TO COURT: THE EVOLUTION OF LEADERSHIP AUTHORITY IN LEGAL INSTITUTIONS IN INDIA

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### ABSTRACT

This change in leadership in the legal institutions of India has been a major departure of the customized, sovereign leadership approach to the formalized, constitutional form of governing the land. This change follows the transition between the ancient and medieval systems; where the rulers had centralized judicial, executive, and legislative authority, to the modern system which has institutionalized powers based on rules. In ancient times, the kings acted as the final judges of justice based on religious beliefs, traditions, and ethical principles and not a set of laws.

The establishment of colonialism especially the British colonialism was a turning point. Institutional legal authority was founded with the introduction of codified laws, formal courts and a hierarchical judiciary. The leadership became moving slowly out of the personal realm and into the office under the law processes with a focus on consistency, impartiality, and professionalism.

The Constitution of India, which came after the independence, went ahead to redefine legal leadership, by defining the judiciary as a co-equal and independent arm of government. The exercise of power is currently performed by the constitutional mandates, judicial review, and the rule of law. There is distribution of power among the judges, tribunals and quasi-judicial bodies whereby the democratic values and accountability is reflected.

<sup>1</sup> Upendra Baxi, *The Indian Supreme Court and Politics*, 8 E.P.W. 641 (1973), <https://www.epw.in>

<sup>2</sup> M.P. Jain, *Legal and Constitutional History of India* (6th ed. 2016).

Although this development has enhanced institutional integrity, issues like judicial activism, accountability, and people trust have remained. On the whole, this change can be seen as a reflection of the wider socio-political change in India and is still undergoing adjustments to the needs of the modern world.

**Keywords:** Legal Authority, Judicial Evolution, Constitutional Governance, Rule of Law, Institutional Leadership

### 1.1. Introduction

The concept of leadership power in the legal institutions in India has had a radical and incremental change throughout its history. This development is indicative of the general socio-political, cultural, and constitutional trends that have influenced the delivery of justice within the nation. The distribution of justice within the Indian civilization in the early stages of the civilization was mainly controlled by the ruler especially in the ancient and medieval periods. The king was considered to be the supreme authority, not only politically, but also judicially. His functions were not merely confined to the sphere of the government, but he acted as a legislator, a judiciary, and an executor at the same time.<sup>1</sup> This was a concentration of power which implied that the legal authority was highly personal and directly related to the nature, wisdom, and morality of the ruler.<sup>2</sup>

During these times justice was not founded on a homogenous legal framework or system. Rather, it was much influenced by religious scriptures including the Dharmashastras, the local customs<sup>3</sup>, traditions and the existing moral norms. The concept of law was also connected with dharm (dharma) which stressed on righteousness, duty and ethical behavior.<sup>4</sup> The king was often assisted by advisory bodies such as ministers and scholars although it was mostly consultative. Differentiating between the various

<sup>3</sup> Robert Lingat, *The Classical Law of India* 3–10 (J. Duncan M. Derrett trans., Univ. of Calcutta 1973).

<sup>4</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford Univ. Press 2003).



forms of governance was minimal and there were no or very primitive institutional structures that were used to administer justice. As such, leadership authority on legal issues was mostly a subjective aspect that differed among rulers and was not usually consistent and predictable.

The coming of the colonial government in India especially the British government was a turning point of legal authority development.<sup>5</sup> A systematic and formalized system of law brought about by the British changed the existing system greatly. It was during this time that codified laws that sought to introduce uniformity and clarity in the law-making process were introduced like the Indian Penal Code and the Civil Procedure Code.<sup>6</sup> The institutionalization of legal authority was slow and was achieved by the creation of courts which had hierarchies, standard procedures and professional legal workers.

This new order saw leadership in the legal institutions change whereby the leadership was no longer in the hands of an individual ruler but in the hands of one or other office and position in an organized judiciary.<sup>7</sup> Power ceased to be based on divine decree and individual judgment but on rules of law, statutes and procedure. This revolution preconditioned the creation of a modern legal system that is more concerned with objectivity, consistency and following the existing legal principles.<sup>8</sup> It should be noted though that colonial legal institutions were also influenced by the interests of the ruling power where administrative efficiency and control were often put on the first page and indigenous conceptions of justice were occasionally sidelined.

The greatest change in the character of the law authority came after India got its independence in 1947. With the introduction of the Constitution of India<sup>9</sup>, there came a new dawn which essentially redefined the organization and operation of the institutions of law. The Constitution introduced a democratic system founded on the principles of justice, liberty, equality and fraternity, and acknowledged the judiciary system as the independent and equal branch of the government. This was a definite departure of the previous concentration of power and brought back the doctrine of separation of powers<sup>10</sup> and checks and balances of the legislature, executive and the judiciary.

In this constitutional structure, the leadership in the legal institutions was institutionalized as opposed to individualistic leadership. The judges are empowered and authorized under the Constitution, in addition to precedents and set legal principles. The judiciary has the authority of judicial review<sup>11</sup> which allows the judiciary to read in the Constitution and protect the basic rights.<sup>12</sup> Transparency coupled with accountability systems and the rule of law have gained prominence in the execution of legal authority.

Such transformation represents a transition of individualistic and somewhat random leadership approach to a system of legality, rationality and democratic principles. Meanwhile, modern legal institutions have been encumbered by the emergence of various challenges, such as the problem of judicial

<sup>5</sup> Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge Univ. Press 2010).

<sup>6</sup> Indian Penal Code, 1860; Code of Civil Procedure, 1908 (India); see also Law Commission of India, *History of Codification in India*, <https://lawcommissionofindia.nic.in>

<sup>7</sup> Marc Galanter & Jayanth K. Krishnan, "Bread for the Poor": Access to Justice and the Rights of the Needy in India, 55 *Hastings L.J.* 789 (2004), <https://repository.uchastings.edu>

<sup>8</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed. 1959).

<sup>9</sup> India Const.

<sup>10</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

<sup>11</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 (India).

<sup>12</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).



overreach<sup>13</sup>, slow justice administration<sup>14</sup>, and the issue of accountability.<sup>15</sup> In this context, the current work attempts to review the historical development of the leadership power within the legal institutions in India and critically evaluate it according to the implications of the same to the operation and efficiency of the contemporary judicial system.

### 1.2. Statement of the Problem

Although the legal leadership has greatly changed with the monarchical leadership to the constitutional form of governance, the issue of accountability, transparency, and efficiency of the present-day legal institutions continue to and still exist. The balance between judicial independence and accountability, increment of judicial activism and issues of delays and accessibility begs the question of the efficacy of the existing leadership structure. The study responds to the necessity to learn about the fact that the development of legal authority has accomplished its intended purpose or it has some structural and functional loopholes.

### 1.3. Research Objectives

- To analyse how leadership authority at Indian legal institutions has evolved since ancient times up to the modern world.
- To analyse the role of constitutional governance on the organization and performance of legal leadership in India.
- To examine the leadership effectiveness and issues in the modern judicial systems.

### 1.4. Research Questions

- What has been the transformation of leadership power in the Indian legal

institutions and policies as monarchical to constitutionalism?

- In what ways the Constitution of India transformed the nature of legal leadership and authority?
- Which are the major problems before the contemporary legal institutions in the exercise of power?

### 1.5. Research Hypothesis

The hypothesis of the study is that the development of the leadership power in the legal institutions of India to be decentralized and constitutional instead of the centralized and monarch based has increased the legitimacy and accountability of justice delivery in the country; though enduring structural inefficiency and new challenges has curtailed its complete realization.

### 1.6. Research Methodology

The study takes an approach of doctrinal research that emphasizes on interpretation of the current legal principles, laws, constitutive provisions, as well as the court rulings. It uses secondary materials, including case laws, legal commentaries, books, and academic articles to study how leadership authority has developed in the legal institutions in India. This approach allows making a systematic and critical review of legal frameworks without employing empirical or field-based studies.

### HISTORICAL EVOLUTION OF LEGAL LEADERSHIP IN INDIA

Understanding the nature and development of leadership authority within India's legal institutions requires a close examination of its historical foundations.<sup>16</sup> To see the essence of the leadership power in the Indian legal institutions and its evolution,

<sup>13</sup> Divisional Manager, Aravali Golf Club v. Chander Haas, (2008) 1 SCC 683 (India).

<sup>14</sup> Hussainara Khatoon v. State of Bihar, (1979) 3 SCC 532 (India).

<sup>15</sup> Supreme Court Advocates-on-Record Ass'n v. Union of India, (2015) 5 SCC 1 (India).

<sup>16</sup> Marc Galanter, The Displacement of Traditional Law in Modern India, 24 J. Soc. Issues 65 (1968), <https://heinonline.org>



it is necessary to take a closer look at its historical basis. The history of administration of justice in India has never remained the same; it has undergone several stages based on the political orders, religious agenda and foreign influence.<sup>17</sup> This idea of leading the legal system has changed gradually yet significantly since the centralized authority of the ancient monarchs to the institutionalization of the law systems that were meted during the colonial period. This chapter follows this development, which saw the end of individualized and usually arbitrary authority and the development of a rule-based and structured legal system.

### 2.1. The Leadership Authority in Ancient India.

#### King as a Supreme Judicial Authority.

The king of ancient India was considered to be the source of justice and the image of law as in India. Administration of justice was closely connected with the role of the king and the ruler performed judicial functions alongside the legislative and executive responsibilities. The royal court was the supreme courts of dispute resolution and the king was regarded to have the final say and the word of law.<sup>18</sup>

The Arthashastra of Kautilya and the Manusmriti are texts that state that the king was obliged to administer justice and ensure societal harmony. It was the role of the king to be the protector of dharma to be just and safeguard the rights of the subjects. Though he frequently consulted counsel, in secretary ministers and educated Brahmins, the supreme power was vested in himself. This accumulated power implied that justice was individualized and subject to the wisdom and virtue of the ruler.<sup>19</sup>

#### The place of Dharma and Religious Texts.

In ancient India, the dharma concept became the basis of the legal power. The ancient Indian law was not founded on codified laws as the contemporary legal systems are founded but it was founded on religious and moral principles.<sup>20</sup> Dharmashastras, Smritis, and other sacred books provided an answer to how to conduct themselves, handle disputes and punishment. The law was not considered to be an independent or a secular institution but an extension of moral and religious obligation. This did not make the power of the king absolute but, rather, limited it by the need to follow dharma. Decisions were supposed to be made in line with the ethical standards, societal traditions and customs. This order provided some kind of moral responsibility but was not homogenous because the meanings of dharma might depend on regions and communities.<sup>21</sup>

#### Advisory Councils and Local Justice Systems.

In spite of the fact that the king was the supreme power, the justice administration was not fully centralized. The village councils (panchayats) and assemblies (sabhas) were local institutions that were also important in resolving disputes.<sup>22</sup> These institutions served as grassroots organizations, which solved small-scale conflicts and ensured social concordance in societies. Learned scholars with ministers formed advisory councils to help the king with complex matters related to the law. They were supposed to read religious books and give guidance which would give credibility to the rulings. Nevertheless, they were not independent bodies and were under the super powerful of the monarchy.

<sup>17</sup> Upendra Baxi, *The Indian Supreme Court and Politics*, 8 *Econ. & Pol. Wkly.* 641 (1973), <https://www.epw.in>

<sup>18</sup> Pratiksha Baxi, *Justice Is a Secret: Compromise in Rape Trials in India*, 4 *Theory & Event* 1 (2000), <https://muse.jhu.edu> (discussing early forms of adjudicatory authority)

<sup>19</sup> Indrani Chatterjee, *Law and the Colonial State in India, 1772–1857*, 12 *Law & Hist. Rev.* 221 (1994), <https://www.jstor.org>

<sup>20</sup> Donald R. Davis Jr., *Law and “Law Books” in the Hindu Tradition*, 9 *German L.J.* 309 (2008),

<https://www.cambridge.org>

<sup>21</sup> Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, 4 *J. Comp. L.* 1 (2009), <https://heinonline.org>

<sup>22</sup> Government of India, Ministry of Panchayati Raj, *History of Panchayati Raj*, <https://panchayat.gov.in>



This two-headed constitutionality of authority and the decentralist of dispute resolution resulted in accessibility and the lack of uniformity in the application of the law.<sup>23</sup> The lack of a common law code resulted in the fact that justice was subject to an unequal treatment depending on local practices and whims of the officials.

## 2.2. Indian Law in Medieval India.

### Sultanate and Mughal Judicial Systems.

Eastern traditions of law were brought into India during the medieval period with the founding of the Islamic rule. The Islamic law (Sharia) played a role in the administration of justice during the rule of the Delhi Sultanate and the Mughal Empire, in addition to the already existing customary practices.<sup>24</sup>

Sultan or Emperor was the ultimate power, but in most cases the judicial roles were given to administrators like the Qazi<sup>25</sup>, who presided over cases according to Islamic jurisprudence. The centralization of the legal authority was also ensured by the fact that the ruler was left with the ability to listen to appeals and intervene in the issues of justice.

The Mughal government, especially under the reign of kings such as Akbar tried to reconcile religious law and the ideals of equity and governance. The policy of Sulh-i-Kul (universal tolerance) by Akbar was a good example of trying to include different legal norms in the empire.<sup>26</sup>

### Character of Authority and Justice Dissemination.

The medieval period had a legal authority that was typified by a combination of religious teachings, royal prerogative and custom.<sup>27</sup> Although the Islamic law was structured, it was usually modified to fit local circumstances. Other non-Muslims were normally under their own laws in issues touching on marriage and inheritance.

The system was also quite reliant on the authority of the ruler though the judicial officers were there. The fact that there was no distinct separation amongst the various arms of government implied that the position of leadership in the law remained personalized and hierarchical. Though certain procedural aspects were added, the system did not have the institutional separation and consistency of the contemporary legal systems.

## 2.3. Colonial Transformation of the Legislation Power.

### Introduction of Codified Laws

The era of introduction of the British colonial rule began the milestone of the history of legal leadership evolution in India.<sup>28</sup> British code of laws also brought with it a system of codified laws that aimed at standardizing and rationalizing the delivery of justice. *Indian Penal Code, 1860; the Code of Civil Procedure, 1908; and the Code of Criminal Procedure* formed the basis of a common law.<sup>29</sup>

Codification minimized use of personal discretion and religious texts and gave way to written statutes which were applicable across territories. This change was the

<sup>23</sup> Marc Galanter, Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law, 19 J. Legal Pluralism 1 (1981), <https://heinonline.org>

<sup>24</sup> Tahir Mahmood, Islamic Law in India and Pakistan, 1 J. Islamic Stud. 1 (1990), <https://academic.oup.com>

<sup>25</sup> M. Athar Ali, The Mughal Nobility Under Aurangzeb, 6 Indian Econ. & Soc. Hist. Rev. 239 (1969), <https://journals.sagepub.com>

<sup>26</sup> Audrey Truschke, Akbar's Policy of Sulh-i Kul, 3 Religions 1 (2012), <https://www.mdpi.com>

<sup>27</sup> Nandini Chatterjee, Religious Change and Judicial Practice in Early Modern India, 23 Mod. Asian Stud. 567 (1989), <https://www.jstor.org>

<sup>28</sup> Elizabeth Kolsky, Codification and the Rule of Law in Colonial India, 30 Law & Hist. Rev. 709 (2012), <https://www.cambridge.org>

<sup>29</sup> Indian Penal Code, 1860; Code of Civil Procedure, 1908; Code of Criminal Procedure, 1973 (India); see also Law Commission of India, <https://lawcommissionofindia.nic.in>



steppingstone to judicial predictability, legal certainty and objectivity in judicial decisions.

### Establishment of Formal Courts

In the process of establishing the formal courts, it is important to note that their goal is to ensure equality for all individuals and foster harmonious coexistence among people of various races, genders, and other demographic factors. In creating the formal courts, it can be stated that it is aimed at equality of everyone and coexistence of all people of different races, sexes, and other demographical characteristics.

The British have created the hierarchical system of the courts with the Supreme Courts in presidency towns and then the High Courts through the *Indian High Courts Act, 1861*.<sup>30</sup> A trained judge would work in these institutions and the institutions followed the set procedures and rules of evidence.

The development of institutional legal authority was the formation of formal courts. The legal system did not have people who held leadership positions but offices as determined by law. The judges relied on the statutes to grant them power and they were supposed to be unbiased and independent.<sup>31</sup>

### Personal to Institutional Authority Shift

The shift in the law authority that had hitherto been a personalized authority to an institutional one was one of the greatest contributions of the colonial period. The rule of law,<sup>32</sup> equality before the law and procedural fairness were the new principles of the legal system.<sup>33</sup> Power was used by instituted powers and not personal choice.

This evolution was the foundation of the modern leadership in matters of law with a focus on professionalism, responsibility, and professionalism towards the legal standards. It, however, also brought about some level of inflexibility since the system emphasized standardization at the expense of situational flexibility.

### Criticism of Colonial Law System.

The colonial legal system has suffered a lot of criticism although it has contributed. It was mainly aimed to advance administrative and economic interests of the British Empire at the cost of native legal traditions. Introducing foreign laws and procedures at times estranged the local people and weakened the traditions.

The colonial mentality is evident in judicial ruling of this time. For instance, in *Emperor v. Burah, (1878)*<sup>34</sup>, the Privy Council endorsed the legislative authority of the colonial rulers, which strengthened centralized authority. Similarly, *Queen v. Burah*<sup>35</sup> emphasized how the powers of the law were influenced by the imperial concerns instead of local requirements.

Additionally, justice was not universal because the legal system was cumbersome, prohibitive and inaccessible by the masses.<sup>36</sup> These restrictions highlight the dual character of the colonial legal reforms, on the one hand, they provided the modern rules on law, on the other hand, they reinforced the inequalities and exclusions.

The historical development of legal leadership in India shows that the way to the centralized and personalized

<sup>30</sup> Indian High Courts Act, 1861, 24 & 25 Vict. c. 104 (U.K.); see also Supreme Court of India, *History*, <https://main.sci.gov.in>

<sup>31</sup> Nick Robinson, *Structure Matters: The Impact of Court Structure on the Indian Judiciary*, 61 Am. J. Comp. L. 173 (2013), <https://academic.oup.com>.

<sup>32</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (online ed.), <https://oll.libertyfund.org>.

<sup>33</sup> AUpendra Baxi, *The Rule of Law in India*, 6 Sur Int'l J. Hum. Rts. 7 (2007), <https://sur.conectas.org>.

<sup>34</sup> *Emperor v. Burah*, (1878) 5 I.A. 178 (P.C.).

<sup>35</sup> *Queen v. Burah*, (1878) 3 App. Cas. 889 (P.C.).

<sup>36</sup> Marc Galanter, *Why the "Haves" Come Out Ahead*, 9 Law & Soc'y Rev. 95 (1974), <https://heinonline.org>.



authority and the way to the structured and institutionalized governance was gradually changing the roles in the legal leadership.<sup>37</sup> Law in ancient and medieval times was tightly connected with the ruler based on religious and moral values without consistency and autonomy. The colonization period brought forth powerful reforms such as codification, formal courts, and uniformity of the procedure, which altered the essence of the legal leadership.

This was, however, not without its drawbacks, because social justice was often subordinated to administrative rule by colonial legal institutions. However, what was established in this era had a significant influence in defining the contemporary legal system.<sup>38</sup> This historical course throws light upon dynamism of the legal power in India and preconditions the comprehension of its further transformation within the constitutional framework of post-independence.

#### CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK OF LEGAL LEADERSHIP IN INDIA

The second turning point in the development of legal leadership was the achievement of independence in 1947 in India. Although the colonial system of law had brought about institutionalized structures and constitutional laws, they had no democratic legitimacy, but were also subservient to the imperial regime. The introduction of the Constitution of India in 1950 essentially changed the nature, origin, and extent of the legal authority. The leadership of institutions of law was no longer based on a monarchy or colonial rule but a sovereign constitutional system that represented the will within the people.

The chapter explores the constitutional and institutional background of the legal leadership in India. It examines the organizational, exercising and sanctioning of authority as stipulated by the Constitution and how the judiciary has become one of the core pillars of protecting democratic values, basic rights, and rule of law.

#### 3.1. Legal Authority on Constitutional Basis.

The central feature of the Indian legal system is the doctrine of the constitutional supremacy.<sup>39</sup> The Constitution is the highest law on the land and all the institutions, including the legislature, executive, and judiciary, owe their powers to it. The Constitution creates a limited government, which is subject to legal norms unlike the pre-constitutional systems where power was concentrated either by individuals or the exterior sovereigns.

The principle was strongly reinforced in the case, *Kesavananda Bharati v. State of Kerala (1973)*<sup>40</sup> where the Supreme Court decided that the Constitution has had a basic structure that cannot even be amended through constitutional amendments. This historic decision reasserted the notion that the law does not have absolute power but, in a way, it is bound by inherent constitutional restrictions. It also defined the judiciary as the ultimate interpreter and the watchdog of the Constitution.

#### Separation of Powers

The Constitution reflects the principle of the separation of powers, which assigns different roles to legislature, executive, and judicial branches of power. The Indian model does not adhere to a strict separation though it has a mechanism of checks and balances that makes sure that power does not accumulate in any one branch.<sup>41</sup>

<sup>37</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (online archive), <https://archive.org>.

<sup>38</sup> Supreme Court of India, *Evolution of Indian Judiciary*, <https://main.sci.gov.in>.

<sup>39</sup> Upendra Baxi, *The Basic Structure Doctrine*, 1 *Indian J. Const. L.* 1 (2007), available at <https://www.ijcl.org>.

<sup>40</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>41</sup> M.P. Singh, *Separation of Powers and the Indian Constitution*, 10 *J. Indian L. Inst.* 123 (1968), available at <https://www.jstor.org>.



The legal leadership and more specifically in the judiciary is not under the influence of politics. The judiciary is tasked with the responsibility of interpreting legislations, adjudicating, and accrediting legislative and executive measures to the constitutional requirements.<sup>42</sup> This organization system facilitates accountability and increases the rule of law.

The significance of this balance was pointed out in *Indira Nehru Gandhi v. Raj Narain (1975)*<sup>43</sup>, in this case the Supreme Court struck down a constitutional amendment whose intent was to bar judicial review of election disputes. The Court reinstated that the free and fair elections and judicial review are the fundamental elements of the constitutional framework.

### 3.2. Judicial Independence.

#### Protections against judicial independence.

The judicial independence is a principle of the constitutional democracy of India and an effective attribute of law leaders. The Constitution includes a number of protections to make sure that judges are free to carry out their functions without being afraid or favoured.<sup>44</sup>

These are security of tenure, fixed service conditions as well as protection against arbitrary removal.<sup>45</sup> Supreme Court and High Courts judges can only be displaced after a very strict procedure of impeachment by the Parliament due to their misbehaviour or incapacity. Their salaries and allowances are also fixed on the Consolidated Fund and are not subject to executive control.

In the case of *S.P. Gupta v. Union of India (1981)*<sup>46</sup>, also known as the *First Judges Case*, the independence of the judiciary was emphasized. Despite the fact that initially, the case provided the executive with the first-mover advantage in appointing judges, it raised a more general point of view on the necessity to ensure judicial independence. This matter was reconsidered subsequently in *Supreme Court Advocates-on-Record Association v. Union of India (1993) (Second Judges Case)*<sup>47</sup>, through which the Supreme Court came up with the collegium system, placing the judiciary in the first position in terms of appointing and transferring of judges. This was further explained in the *Third Judges Case*<sup>48</sup> (1998) which strengthened the judicial authority over the composition of the judiciary itself.

#### Role of Higher Judiciary

The High Courts and Supreme Court are taking the centre stage in offering legal leadership in the constitutional system of India. The Supreme Court which is the highest court in the land enjoys original, appellate, and advisory jurisdiction and its rulings are binding to all the courts in the country.

High Courts enjoy area of jurisdiction in their states of origin, and are significant constitutional courts. They have the authority to grant writs regarding the implementation of basic rights and to control the inferior courts.

The active participation of the court in the right protection can be observed in the case of *Maneka Gandhi v. Union of India (1978)*<sup>49</sup>, the Supreme Court extended the provisions of Article 21 to imply that a right is to fair and just procedure. This ruling

<sup>42</sup> Id

<sup>43</sup> *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

<sup>44</sup> Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 8 Wash. U. Global Stud. L. Rev. 1 (2009), available at <https://openscholarship.wustl.edu>.

<sup>45</sup> Id

<sup>46</sup> *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.

<sup>47</sup> *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (1993) 4 SCC 441.

<sup>48</sup> *In re Special Reference No. 1 of 1998*, (1998) 7 SCC 739.

<sup>49</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.



was a move towards more activist and rights-based judiciary.

### 3.3. Review of Courts and Growth of Powers.

One of the most important powers that lay in the hands of the judiciary is that of judicial review because it is through the judiciary that legislative and executive acts can be reviewed in terms of their constitutionality. This authority secures that anything that the state does is in line with the constitution and does not infringe on the basic rights.

*L. Chandra Kumar v. Union of India (1997)*<sup>50</sup>, was a solid affirmation of the *Doctrine of Judicial Review*. In this case Supreme Court decided that the judicial review is included in the basic structure of the Constitution and that it cannot be removed even by a constitutional amendment.

The judicial review has developed over the years to cover most aspects of the world, such as environment protection, governance, and social justice.<sup>51</sup> Public Interest Litigation (PIL) has further empowered the judicial power because it has facilitated access to justice among the marginalized groups.<sup>52</sup>

In *Vishaka v. State of Rajasthan (1997)*<sup>53</sup> the Supreme Court provided a set of guidelines which would guard against the sexual harassment in the work place and how judicial leadership may provide solutions to legislative loopholes and promote social justice.

### 3.4. The Modern Legal System Leadership in Institution.

#### The Role of Judges as Constitutional Leaders.

In the modern-day legal system, the judges are not just an adjudicator but a constitutional leader who influences the meaning and use of a law. They shape the policy of the people, defend their rights, and stand by the democratic principles in their decision.<sup>54</sup> Judicial leadership is especially observed in the constitutional interpretation where courts have to weigh conflicting interests and give a binding word. The role of judiciary in making sure that there is the rule of law and accountability makes it another important institution in Indian structure of governance.<sup>55</sup>

#### Quasi-Judicial Bodies and Tribunals.

Besides the conventional courts, the legal system of India has a large number of tribunals and quasi-judicial bodies which have a special jurisdiction. These are the institutions established to offer effective and professional settlement of disputes in fields like taxation, administrative law and environmental control.<sup>56</sup>

In *Union of India v. R. Gandhi (2010)*<sup>57</sup>, the constitutional validity of tribunals was discussed with the Supreme Court highlighting the importance of having judicial independence and having tribunal members with the right qualifications and independent judgement.

<sup>50</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>51</sup> S.P. Sathe, *Judicial Activism in India*, 6 J. Indian Sch. Pol. Econ. 23 (2004), available at SSRN: <https://ssrn.com>.

<sup>52</sup> Surya Deva, *Public Interest Litigation in India: A Critical Review*, 28 Civ. Just. Q. 19 (2009), available at SSRN.

<sup>53</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>54</sup> Aharon Barak, *The Role of a Supreme Court in a Democracy*, 33 Hastings Int'l & Comp. L. Rev. 1 (2010),

[https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol33/iss1/2](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol33/iss1/2).

<sup>55</sup> Upendra Baxi, *The Supreme Court Under Trial: Undertrials and the Supreme Court*, 1 Supreme Ct. Cases (J) 35 (1980), <https://www.jstor.org/stable/4395059>.

<sup>56</sup> Law Commission of India, *Report No. 272: Assessment of Statutory Frameworks of Tribunals in India* (2017), <https://lawcommissionofindia.nic.in/reports/Report272.pdf>.

<sup>57</sup> *Union of India v. R. Gandhi*, (2010) 11 SCC 1.



Although tribunals make accessibility and efficiency better, there have been concerns on their autonomy and the degree of executive control.<sup>58</sup> These problems show that there are still tensions between institutional innovation and constitutional values.

### 3.5. Judicial Activism vs Judicial Restraint

Growth of the judicial power has also resulted in the argument of judicial activism and judicial restraint.<sup>59</sup> Judicial activism can be described as an active approach of courts to social problems and enforcement of rights, which in many cases does not exist in the legislative acts. Judicial restraint, however, focuses more on granted legislative and executive discretion and restrains judiciary action.

The Indian judicial system has been activist oriented and especially on the PILs. In *Minerva Mills v. Union of India (1980)*<sup>60</sup>, the Supreme Court, invalidated the clauses aiming to restrict the judicial review, and reinstated the equilibrium between the basic rights and the principles of direction.

Nevertheless, over activism has not gone without criticism with the fear of it breeding judicial overreach and weakening democratic procedures. The difficulty is to create a balance whereby the judiciary does not interfere with the roles of other branches that enforces the rights.<sup>61</sup>

Indian legal leadership under the constitutional and institutional structure of legal leadership is a huge break with the previous regimes of legal leadership. The modern legal system is based on the principles of constitutional supremacy, separation of powers and judicial independence with its focus on accountability, fairness and the rule of law.

The judiciary has become a leading institution, which has taken the leadership role by means of judicial review, interpretation of constitution, and protection of basic rights. High profile decisions have widened the jurisdiction of the law and this has seen the judiciary becoming a player in the governance process.

Meanwhile, the growth of judicial power has brought significant concerns regarding the boundaries of power and the necessity to balance. The interactions of activism and restraint, autonomy and responsibility remain a force that influences the development of legal leadership in India.

This chapter shows that the Constitution has provided a strong platform to the rule of law but its efficiency lies in the perpetual obligation of institutions to promote the democratic ideology and the principles of the Constitution.

### CONTEMPORARY CHALLENGES, ANALYSIS AND REFORMS IN LEGAL LEADERSHIP IN INDIA

The legal leadership in India, changes in the power of the monarch over time to the constitutional and institutional institution is a great milestone to the development of the democratic government. Nevertheless, the fact of constituting constitutional principles and courts is not enough to ensure their efficient operations. In modern India, the leadership of the law sector is in a complicated socio-political context where there has been a growing call of accountability, efficiency, and accessibility. As much as the judiciary has become a strong body in guarding of rights and rule of law, it is also experiencing structural, institutional and functional issues.

<sup>58</sup> Law Commission of India, *Report No. 272: Assessment of Statutory Frameworks of Tribunals in India* (2017), available at <https://lawcommissionofindia.nic.in>

<sup>59</sup> Aharon Barak, *Judicial Discretion*, 14 Harv. L. Rev. 45 (1989) (adapted discussion in Indian context).

<sup>60</sup> *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

<sup>61</sup> Aharon Barak, *Judicial Discretion*, 14 Harv. L. Rev. 45 (1989) (adapted discussion in Indian context)



This chapter is a critical assessment of the current situation of the legal leadership in India in terms of its effectiveness, observation of major challenges, and recommendations. It also evaluates the achievement of the role of change of legal authority by answering the research questions presented in this research.

#### 4.1. History of Development of the Law Making Power.

The history of legal leadership in India displays a gradual change in the personalized authority to the institutional governance. The old and medieval law systems were based on religion and custom, and law was concentrated in the rulers, making it predominant and central.<sup>62</sup> Codification and institutionalization of the law, which were brought by the colonial period, formed the foundation of a modern legal system.<sup>63</sup> The Constitution of India that formed after independence redefined the legal authority through providing a framework on the basis of democratic legitimacy, rule of law, and judicial independence.<sup>64</sup>

This is the transformation that has greatly increased the legitimacy of legal institutions. Power is no longer arbitrary but it is implemented in a specified constitutional framework. The judiciary with its authority of judicial review and interpretation of the constitution has become a key player in ensuring the equilibrium of power and guardian of the basic rights.<sup>65</sup>

But this development has also given rise to the increase in the power of the judiciary which has attracted concerns on the boundaries. The magnitude

of the courts in policy issues and governance has faded the barriers between various government arms.<sup>66</sup> Although such intervention is frequently appropriate regarding the idea of justice, it also shows the importance of well-established institutional roles. The effectiveness of current leadership in law enforcement is assessed by examining the performance metrics and the quality of the services delivered by the law enforcement agency.<sup>67</sup>

#### 4.2. Effectiveness of Leadership in law enforcement

The effectiveness of the current legal leadership is measured by looking at the performance of the law enforcement agency in terms of performance and services of the law enforcement agency.

The legal system that exists in modern India reflects a number of strengths that highlight the power of institutional leadership. The judiciary has been central in ensuring the protection of constitutional values especially by its broad definition of basic rights.

In *Maneka Gandhi v. Union of India (1978)*<sup>68</sup>, the Supreme Court expanded the Article 21, to say that a fair, just, and reasonable procedure was a right belonging to the right to life and personal liberty. This ruling was a move towards more rights orientation and the positioning of the judiciary as a guarantor of individual liberties was solidified.

Just as is the case with *Justice K.S. Puttaswamy v. Union of India (2017)*<sup>69</sup>, the right to privacy is considered by the Supreme Court as a fundamental right and this fact proves the dynamism and changing

<sup>62</sup> M.P. Singh, *Separation of Powers and the Indian Constitution*, 10 J. Indian L. Inst. 123 (1968), available at <https://www.jstor.org>.

<sup>63</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (context adapted through online summaries), available at <https://www.legalserviceindia.com>.

<sup>64</sup> India Const. pmb.; see also Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (referenced via online academic summaries), available at <https://constitutionofindia.net>.

<sup>65</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>66</sup> Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India*, SSRN (2017), <https://ssrn.com>.

<sup>67</sup> National Judicial Data Grid, *Case Pendency Statistics*, <https://njdg.ecourts.gov.in>.

<sup>68</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>69</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.



of the constitutional interpretation. These rulings underscore the fact that the judiciary is able to respond to the new demands imposed by the society and strengthen its leadership position in the court.

Introduction of Public Interest Litigation (PIL)<sup>70</sup> has also aided the increased access to justice, in that individuals and organizations approach courts on behalf of marginalized groups. The judiciary has also been able to handle the challenges of environmental protection, violation of human rights, and failures of governance through this mechanism.

Although these are the successes of the legal leadership, systemic inefficiencies and institutional constraints tend to mar these successes and which need to be critically looked at.

#### 4.3. Significant Problems of the Contemporary Legal Institutions.

##### Judicial Delays and Backlog

The issue of delays and backlog of cases is one of the most burning issues in the Indian judiciary. There are still millions of cases within the court in different stages of the judicial system, making the provision of justice to be very slow.<sup>71</sup> This negates the fact that justice delayed is justice denied and cuts across the populace in their trust to the law institutions.

This problem has been recognized by the Supreme Court through a number of cases one of which is *Hussainara Khatoon v. State of Bihar (1979)*<sup>72</sup>. It was highlighted in in which it pointed out that the right to a speedy trial was a fundamental element of Article 21. With this kind of recognition, the problem remains

as the judges lack adequate infrastructure, there are not enough judges, and the process is complicated.<sup>73</sup>

##### Accountability and Transparency Problems.

Although judicial independence is a must, it should be surrounded with accountability and transparency. The collegium system of judicial appointment has been criticized as lacking transparency and being opaque.<sup>74</sup> In *Supreme Court Advocates-on-Record Association v. Union of India (2015) (NJAC Case)*<sup>75</sup>, the Supreme Court ruled that, the National Judicial Appointments Commission was unconstitutional and reinstated that judges were the paramount appointors. Nonetheless, the judgment also recognised the necessity of increased transparency of the collegium system. Lack of an effective and responsible system of judicial appointment and discipline creates the issue of institutional credibility and social trust.

##### The Activism and Theoretical Overreach of the Courts.

The increasing judiciary has brought out the issue of judicial overreach. Judicial activism has played a leading role in the promotion of social justice, but the unchecked interference in the policy affairs may interfere with the power balance.<sup>76</sup>

*Divisional Manager Aravali Golf Club v. Chandar Haas (2008)*<sup>77</sup>, the Supreme Court warned that judges should avoid engaging in overreach, as they should not penetrate the space of the executive or the legislature. The ruling emphasized that institutional lines should be upheld in order to uphold democratic governance.

<sup>70</sup> Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India*, SSRN (2017), <https://ssrn.com>.

<sup>71</sup> National Judicial Data Grid, *Case Pendency Statistics*, <https://njdg.ecourts.gov.in>.

<sup>72</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

<sup>73</sup> Law Commission of India, *Report No. 245: Arrears and Backlog* (2014), <https://lawcommissionofindia.nic.in>.

<sup>74</sup> Vidhi Centre for Legal Policy, *Reforming the Collegium System* (2016), <https://vidhilegalpolicy.in>.

<sup>75</sup> *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 SCC 1.

<sup>76</sup> Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India*, SSRN (2017), <https://ssrn.com>.

<sup>77</sup> *Divisional Manager, Aravali Golf Club v. Chandar Haas*, (2008) 1 SCC 683.



It is hard, but one has to find a balance between active judiciary intervention and observing the separation of powers.

#### **Availability and Accessibility of Justice.**

The issue of access to justice is also a major concern and especially to disadvantaged and marginalized populations. Procedures in courts are usually cumbersome, long and costly such that common citizens cannot easily get redress.<sup>78</sup>

Even though other reforms like legal aid and PIL have enhanced accessibility, loopholes in these reforms still exist in their execution. People of rural areas, especially, have a problem of access to courts and legal services. These problems are also intensified by the digital divide, in particular, with the growing dependence on technology in the legal process.<sup>79</sup>

#### **4.4. Suggested Reforms**

##### **Institutional Reforms**

The current issues that the leadership of the law encounters need to be tackled by instituting wholesale changes in the institution. The solution can be in adding additional judges, enhancing the infrastructure and using technology-based solutions to minimize delays and increase efficiency. Online case management and e-courts are also a good move towards modernization. Their effectiveness is however dependent on good implementation and availability.

##### **Enhancing Accountability mechanisms.**

There is the need to improve transparency and accountability in the judiciary without interfering with its independence. Public trust can be enhanced by reforms in the collegium system such as increased disclosure of the selection criteria and decisions. Additional measures that increase accountability can include putting up independent oversight mechanisms and enhancing internal disciplinary procedures.

<sup>78</sup> UNDP India, *Access to Justice Report* (2018), <https://www.undp.org/india>.

#### **The Independence Responsibility Balance.**

To be a successful legal leader, it is important to maintain the balance between judicial independence and accountability. The judiciary should also be responsible in the exercise of its powers and its actions should not be swayed by outside forces, but must be controlled by the constitution.

Meanwhile, such other arms of the government are not supposed to interfere with judicial independence or otherwise. To achieve some institutional harmony, a mutual respect and constitutional values approach are necessary.

#### **FINDINGS**

The current research has established that the historical development of legal leadership in India has been central in enhancing the legitimacy and functional efficacy of the legal institutions. The slow process of changing the system based in the monarchical government where one person was the sole ruler and could command the whole country to a constitutional system has essentially changed the form of the law in this nation. This change has seen the system being founded on the values of the rule of law, institutional accountability and democratic governance. The power is no longer subject to arbitrariness or personality but is to be exercised in a systematic and well-established context that promotes fairness and constancy as well as adherence to the constitutional values.

Simultaneously, the research acknowledges that such change, though important, has its drawbacks as well. A number of endemic issues that hinder full accomplishment of the goals informing this evolution still persist. Some of the most salient ones include the problem of delays in the judiciary which erodes the right to access justice promptly and lack of transparency in some of the processes of the institutions especially in the process of filling judicial positions. Also, the issue of judicial overreach has been debated over the issue of judicial involvement in

<sup>79</sup> E-Committee, Supreme Court of India, *National Policy and Action Plan for Implementation of ICT in Judiciary*, <https://ecourts.gov.in>.



what is traditionally within the role of the legislature and the executive. These issues point that although the framework of legal leadership has come of age, its application needs to be constantly reviewed, reformed and changed to suit the changing demands of the society.

In answering the research questions, the study has clearly shown how the legal authority in India has seen changes of a significant shift towards centralized and personal systems of governance to the decentralized and institutionalized systems. Constitution of India has played major role in this process since it is the guiding document that restructures leadership in terms of law since it is a document that emphasizes new values like judicial independence, separation of powers and supremacy of law. Nevertheless, in spite of these developments, modern challenges still prevail in the general effectiveness and efficiency of the law institutions. This highlights why specific reforms necessary to promote transparency, enhance efficiency, and advance the ideals of justice and accountability to their practical expressions are needed.

### CONCLUSION

The change in the leadership power across the legal institutions in India is an important shift in the centralized and ruler-based control to the structured constitutional framework founded on democratic values. This paper has shown that despite the fact that ancient and medieval systems were based on personalized authority that were driven by religion and custom, the colonial era was marked with codification and institutionalization, which formed the basis of legal governance in modern times. The new constitutional system that followed independence also shifted the leadership of the law through entrenching the supremacy of the Constitution, independence and the rule of law as the major principles of legal leadership.

The results of this study indicate that this change has made the legitimacy, accountability, and effectiveness of the law institutions in India very high. The judiciary

has been a major institution towards the safeguard of basic rights and constitutional balance. Nevertheless, the paper also indicates that the problem of judicial procrastination, absence of transparency, questions of accessibility, and fears of judicial overreaching remain as one of the factors that undermine the effectiveness of the system and the confidence of the people in it.

Thus, the development of the legal power has been effective and progressive, but it is necessary to carry on the constant reforms and institutional reinforcement to guarantee that the principles of justice, equity and responsibility are entirely achieved in modern India.

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