

**LONGEST WRITTEN COSTITUTION; WORTH IT?****AUTHOR** – KASHISH KHANNA, STUDENT AT IILM UNIVERSITY, GURUGRAM, HARYANA**BEST CITATION** – KASHISH KHANNA, LONGEST WRITTEN COSTITUTION; WORTH IT?, *ILE WEEKLY REVIEW (ILE WR)*, 1 (5) OF 2023, PG. 6-10, APIS – 3920 – 0037 | ISBN – 978-81-964391-3-2.**I. ABSTRACT**

India has the longest written constitution in the whole world. The standard of law in India has suffered from a lack of adherence to the constitutional framework. Such occurrences have been frequent, which is blamed on the strict approach that limits tenacity for fair treatment. "The Hathras Gangrape Case" is a fairly recent incident that supports the idea. The fact that infractions are becoming more serious with time demonstrates how powerless and careless the government is when it comes to upholding legality. The judiciary ultimately had to step in as a saviour, as was recently reported by the High Court of UP taking Suo moto notice of the Hathras case. Not just in the state of UP, but in other states as well, the situation of law and order is deteriorating. Sushant Singh Rajput's case is well known to us all. Following extensive government support, a number of Bollywood celebrities are now emerging as drug dealers. The judiciary is shown dexterity in locating drug traffickers and directing pertinent investigations. The destruction of Kangna's studio by the Brihanmumbai Municipal Corporation is the best example of how the constitutional system has failed due to a dishonest state administration.⁸Making long claims is not enough, has not yet been realized by the Indian government. Bringing these claims in force is important.

Keywords: Constitutional, Hathras case, Infractions, Judiciary, Government, legality, powerless.

⁸ Hashmita Arora, Failure of constitutional machinery in the state: A Critique, IP Leaders, <https://blog.ipleaders.in/failure-constitutional-machinery-states-role-state-government-critique/> Last Accessed on 16th July 2023- 10:30 AM.

II. INTRODUCTION

No legislation on crucial socioeconomic concerns were lacking in the nation, but the absence of efficient execution made them useless, former Indian Chief Justice T S Thakur remarked in New Delhi, in an interview with India Today. During a seminar on the "Right to Work and Living Wage," he noted that the pace at which the constitutional guarantees must be upheld is "slow."⁹

We may better understand poor implementation of laws by using the example of the rising number of rape cases in India. Even with such strong regulations against the crime of rape, the number of incidents keeps rising. Numerous reforms were put into effect in response to the Nirbhaya rape case, making rape penalty more severe, but has the situation improved? No! Instead, things got worse. Approximately 24,923 rape incidents were registered across India in 2012, and that figure rose to about 39,000 in 2016, according to the National Crime Records Bureau's (NCRB) 2013 annual report. In addition to passing legislation, the administration has taken several other actions, such as abolishing the khap panchayat, which had a highly extreme view of women and the law.¹⁰

Despite the fact that the Khap Panchayat system has been deemed unlawful by the Supreme Court of India, it is still used in the majority of underdeveloped rural regions. The efficiency of a legislation in resolving social issues is evaluated by how well it is put into practise. The issue is not just with laws pertaining to women, but also with laws governing labour and the environment, as evidenced by the daily abuse of workers and the rise in environmental problems, even though these issues are covered by strict laws.

However, the biggest issue is still with the poor application of the laws, which has led to many issues in our society. In essence, laws are carried out in accordance with the guidelines established by the government. Therefore, it may be claimed that government regulations are just as significant as legislation passed by parliament. But what if these regulations are insufficient to uphold the law in society? That is among the main causes of laws being applied incorrectly. In order to maintain consistency between the legislative purpose of Parliament and the government's execution of the laws it passes and the many laws that are now in effect in our nation, a thorough rulemaking procedure is required. In his novel War and Peace, Leo Tolstoy also said that "writing laws is easy, but governing is difficult." Therefore, it is now necessary to manage the laws effectively because there are already several rules that need to be put into effect in order to improve society and instill fear of punishment in the hearts of criminals.¹¹

III. HATHRAS GANGRAPE CASE¹²

Three of the four defendants in the gang-rape and murder case involving the Hathras in September 2020 were cleared on Thursday by a district court in Uttar Pradesh. An enormous public outrage resulted from the alleged gang rape and murder of a 19-year-old Dalit girl. The Central Bureau of Investigation (CBI) filed allegations of rape in its chargesheet, however none of the suspects were found guilty of these crimes.

The UP court also cleared three of the other four defendants in the case, but found the main defendant guilty of culpable homicide that did not amount to murder in accordance with section 304 of the Indian Penal Code. Sandeep, the primary defendant, was also found guilty of

⁹ Lack of implementation makes laws ineffective, India Today, <https://www.indiatoday.in/pti-feed/story/lack-of-implementation-makes-laws-ineffective-ex-cji-1294728-2018-07-24> Last Accessed on 16th July 2023- 11:00 AM.

¹⁰Implementation of Laws in India, Daily Guardian, <https://thedailyguardian.com/good-laws-bad-implementation-biggest-problem-in-india/>, Last Accessed on 20th July 2023- 12:45 PM.

¹¹Supra Note 3.

¹² 2020 SCC SC 874

violations of the SC/ST Act. He was given a life sentence in jail.¹³

Such cases would not have happened if people would have feared the implementation of law (punishment) as a consequence of their actions.

IV. THE ANALYSIS OF OBJECTIVES OF MAKERS OF THE INDIAN CONSTITUTION

The objectives were:

- a) The Objective Resolution, which described the constitutional structure, was offered by Jawaharlal Nehru in 1946. The decision was made on January 22, 1947. It had an impact on the Indian Constitution, and the Preamble of that document has a modified version of it. The following essential ideas were stressed by the objective resolution:
- b) the resolve of the Constituent Assembly to acknowledge India as an independent, sovereign, and republic;
- c) the aim of converting all pre-independence Indian provinces into post-independence Indian states; and the formation of an Indian constitution.
- d) to achieve unification with the authority that will differ from that given to such nations;
- e) bestowing residual powers and autonomy on such states, as the Indian Constitution does;
- f) For the Indian population to serve as the centre of gravity for sovereignty and independence
- g) to maintain morality before the law, social justice, economic, and political equality of opportunity, as well as the freedoms of expression, association, joining with others for a shared goal, and action.
- h) to provide minorities, indigenous communities, impoverished areas, and other oppressed and backward places with appropriate safeguards.
- i) to maintain the Indian Republic's territorial integrity and its authority over land,

water, and the air in conformity with international law and justice

j) to promote peace and prosperity across borders.¹⁴

The aim of discussing the objectives was to examine that how successful has the government been to be able to fulfill them.

The judiciary has broadened its purview to include tasks once carried out by the legislative and executive branches of government. It is a reality that the judicial branch now has the appointment power at all levels of the judiciary, giving the executive authorities almost no voice in the matter. According to Articles 124 and 217 of the Constitution, the President must confer with the Chief Justice of India before appointing judges to the Supreme Court and High Courts. According to the First Judges ruling by a Seven Judge Bench in the case of S.P. Gupta vs. Union of India and others published in (1981) Supp SCC 87, the Executive authorities have the upper hand and consultation does not imply agreement. Later, the Supreme Court Advocates On Record Association v. Union of India decision, reported in (1993) 4 SCC 441, was overruled by a nine-judge panel, who reinstated the judiciary's authority to choose judges. The Supreme Court's Nine-Judge Bench tightened the screws in favour of the judiciary in the Third Judges Case, Presidential Reference, which was reported in (1998) 7 SCC 739. The Fourth Judges Case, Supreme Court Advocates-on-Record-Association and another vs. Union of India, was recently decided by Five Judges, and it invalidates the constitutional amendment passed by both houses of Parliament almost unanimously and ratified by the necessary number of votes. Thus, it may be argued that it is improper for the judiciary to disregard the judgement of the legislature that was duly elected by the Indian people. The average

¹³ Hathras Gangrape Story Case, India Today, <https://www.indiatoday.in/law/story/hathras-gangrape-murder-case-court-drops-rape-charges-2341765-2023-03-02>, Last Accessed on 25th July 2023.

¹⁴ Preamble of The Indian Constitution, Studyiq, <https://www.studyiq.com/articles/preamble-of-indian-constitution/>, Last Accessed on 26th July 2023- 10:00 AM.

person now has more trust in the judiciary, nevertheless.¹⁵

The BBC's offices in New Delhi and Mumbai have been the target of three days of searches by the Indian income tax department, which claims to be conducting a "survey" as part of a larger probe into claims of tax cheating. The BBC issued a brief statement in which it stated that it was "fully cooperating" with police during the raid and expressed the hope that everything would be "resolved as soon as possible." On Wednesday, it encouraged the majority of its workers to work remotely and instructed them to "answer questions comprehensively" from any authority. According to an NDTV article, it also said that they might "refrain from answering questions on personal income if asked," but that they "should answer other salary-related queries." The raids occur a few weeks after a documentary critical of Indian Prime Minister Narendra Modi's handling of the 2002 religious' riots in Gujarat, where he was Chief Minister at the time and which left over 1,000 people dead, most of them Muslims, was shown by a British broadcaster. A top government advisor named Kanchan Gupta claimed to have found "no connection" between the BBC documentary and the income tax inquiry. The Indian government earlier referred to the film as "hostile propaganda" and "anti-India garbage" and forbade Indians from posting about it on any social media sites.¹⁶

By the arguments given above loopholes can be clearly seen in the working of the Indian government in implementing the laws.

V. LOW INVOLVEMENT OF DPSPs IN GOVERNING THE NATION

a) The DPSP are not legally enforceable by the courts for violations because they are non-justiciable in nature.

b) Constitutional Conflict: The DPSP causes conflicts between the federal government and the states, the president, the chief minister, and the governor.

c) Conflict with basic rights: The fundamental rights can be implemented by amending them.

d) A statute cannot be declared unconstitutional by a court for breaking the DPSP.¹⁷

India has the best constitutional provisions but it has not been successful in utilizing them.

VI. BURDEN ON JUDICIARY

The Chief Justice of India (CJI) released data to illustrate the rise in the load on the judiciary, noting that while the sanctioned strength of judicial officials has only grown by 16% over the course of six years, the comparable rise in pendency in district courts is 54.64%.

The Chief Justice of India N V Ramana on Saturday emphasised the need to increase the sanctioned strength of judges and fill existing vacancies to address the issue of pendency, stating that "non-performance by the various wings of the executive" and "legislature not realising its full potential" are the "two major reasons" for the docket explosion in the nation.¹⁸

India features common law judgement requirements as well as evidence and procedural rules similar to the civil legal system. When combined, both elements place a hefty load on judges.¹⁹

VII. CONCLUSION

The actual value of the Indian Constitution can only be realized when it is implemented the way it has been framed by our constitution makers. To make this possible some measures shall be

¹⁵ Have we achieved the objectives of the constitution, India Legal Live, <https://www.indialeallive.com/did-you-know-facts-about-news/perspective-news/have-we-achieved-the-objectives-of-the-constitution/>, Last Accessed on 27th July 2023- 10:30 AM.

¹⁶ BBC Raid, Time, <https://time.com/6255425/india-raid-bbc-modi-documentary/> Last Accessed on 27th July 2023- 11:00 AM.

¹⁷ DPSPs, Forum Ias, <https://blog.forumias.com/directive-principles-of-statepolicy/#:~:text=No%20Legal%20Force%3A%20The%20DPSP,President%20Chief%20Minister%20,> Last Accessed on 28th July 2023- 10:00 AM.

¹⁸ Burden on Courts, Indian Express, <https://indianexpress.com/article/india/india-chief-justice-of-india-n-v-ramana-burden-on-courts-executive-7894766/>, Last Accessed on 28th July 2023. 3:00 PM.

¹⁹ Judiciary in India, Legal Services India, <https://www.legalserviceindia.com/articles/jd.html>, Last Accessed on 28th July 2023- 4:00 PM.



applied. The state should make an effort to deal with the offenders in a neutral manner. Only in the absence of prejudice and preconception brought about by any parties with vested interests is this conceivable. It is clear that the political system as a whole is reluctant to take this difficulty into account. The slack attitude of succeeding administrations reveals their hypocrisy. Thus, it is clear that all governments are content with the current situation in which the security forces are employed for self-defense. Politically, any state of disarray is undesirable. Second, society has to take some concrete steps to address the threat of state-sponsored atrocity and obliteration. Thirdly, there can be no edification in the current situation unless high-ranking politicians are held responsible for their wrongdoings.²⁰



²⁰ Supra Note 1.