

RULE OF LAW: A LITERATURE REVIEW ON THEORETICAL CONCEPTS, CHALLENGES FROM MASS MEDIA TO INNOVATION

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ABSTRACT

This literature review paper rivets on the theoretical constructs and critical examination of the historical conception and understanding of the rule of law. For instance, Rule of law has been already established in various developed and developing countries but there are still difficulties in the implementation of new reforms. My aim is also to factually analyze and discuss *Lee Thesis* and Amartya Sen's proposal of freedom for development. This paper also uses Prisoners Dilemma Game to show the relationship between bilateral trade and presence or absence of rule of law" in any two countries. The study also intends to show how the availability of information increases an individual's capabilities which leads to the creation of a higher level of innovation prospects and overall economic development of an economy. Navigating the role of media in opinion formation the study further investigates the extent to which the rule of law is impacted by the media and journalism in particular.

Keywords: Rule of Law, Economic Growth, Bilateral Trade, Innovation, Freedom, Democracy, Lee Thesis, and Mass Media.

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INTRODUCTION

The world today is seeing some serious discussion about the conception of 'Rule of Law' which has become a highly debated topic in the political as well as an academic arena. The economic and political experts are giving significant credit to the Rule of Law for socio-economic prosperity. But there is still confusion about what precisely the rule of law is and how it is defined, and so it has varied explanations. For example, according to the UN organization, "the rule of law is a principle in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency".

The paper "The Rule of Law Reform and Development" (Trebilcock, Daniels, 2008) and another report by other researchers of the Hague Institute for the Internationalization categorized Rule of Law definitions as, "thick" and "thin" respectively. Thick definition considers the rule of law as the backbone of a fair and impartial society. In this context, the theory is inherently connected to democracy and liberty. Its disciple says a state can be considered to abide and functioned by rule of law only if the power of the state is limited and monitored closely and if essential liberties like free speech and fraternity, are vouched. On the other hand, the thin classifications of the rule of law are more conventional. The essential things in this concept are property rights and the effective supervision of impartiality and justice but not democracy and morality. Laws must provide stability (Economist, 2008).

There is a significant difference between thick and thin definitions- for economists supporting thick definitions believes in the protection of basic human rights and establishment of high functioning strong democracy whereas the thin definitions focus more on property rights and just administration but do not stress democracy as a form of government. The concept of thin definition rule of law seems to be robotic and exclusive and can be established even in non-democratic countries such as China- the country where violation of human rights is not infrequent and also abide by the concept of *Lee Thesis* which says- democracies are bad for economic growth. However, in opposition to *Lee Thesis*, Nobel Laureate Amartya Sen, in his book 'Development as Freedom', says, if you strengthen human rights and enhance people's

capabilities, give them freedom; they will help the country grow rich in various innovative ways (Sen, 1999). It is a question of choice for the countries as to which of the two definitions to follow, the one that expects growth at the expense of human rights or the one that strengthens economy and democracy at the same time. This remains to be answered by modern-day economists. In this review, I examine the literature concerning its history, the gaps between theory and facts, the forms of governments, and the role of unbiased and free media in economic development.

HISTORICAL REVIEW OF RULE OF LAW: CORRELATION BETWEEN LAW AND FINANCE

The history of rule of law can be followed back to seventeenth-century France where the formation of legal institutions was first started. During the old regime in France, the King who was above the law hence had questionable reliability for he could easily repudiate credits, and which made state financing unstable. Because the king's credibility depended on his ability to cultivate its financiers, therefore king made these financiers act as intercessors to contract loans that were needed to support the expansion of bureaucratic as well as military institutions. During the early eighteenth century, the general farms that collected taxes with time and experience gained administrative expertise and hence became more bureaucratic in working processes which led office bearers to turn into big corporations (Root, 1989). By the twentieth century, the laws in France grew stronger and legal institutions had proper administrative bodies. But by then economic experts and policymakers began to argue whether the common law or the civil law responsible for economic growth. Historically, it was suggested there is some positive correlation between common law and finance. But critics say, if we closely analyze the data from the twentieth century onwards, the correlation is not found. They reasoned; it is because these legal institutions existed even before the twentieth century. This argument can be broken down into three components. First, in their study (Rajan and Zingales (2003), found evidence that showed that in 1913, civil law countries of France got comparatively more established financial markets than countries that had common law. By 1913, the ten civil law countries of France had the average standard stock market to GDP proportion of 66 percent compared to five common law countries that had 53 percent. Second, experts claim that shareholder protection in Britain in the early twentieth century was at its low. Moreover, Britain was financially strong at that time and that cannot be because of laws but by alternative mechanisms, like mutual trust and financial

intermediaries. Third, the correlation between financial development and common law is developed over the 20th century. Zingales and Rajan found that by 1999, the average standard stock market for common law and French civil law countries was estimated to be 130 percent and 74 percent, respectively. They termed this “*the great reversal*” (Porta, Lopez-de-Silanes, Shleifer, 2008)

PRISONERS DILEMMA GAME: RULE OF LAW & BILATERAL TRADE

The absence of democracy and established Rule of law does not necessarily imply that economies will not grow. Few countries even with low levels of social stability and a high level of violation of human rights have seen substantial growth in past years. China is the prime example of this anti-thesis because the country has seen tremendous economic growth despite increasing human rights violations in the recent past. However, Amartya Sen strongly maintains that the rule of law and the development of an entities’ freedom ought not to be viewed as a way to achieve specified ends, but as ends in their own right. Through this standpoint, Sen efficiently pores the economic facet of development, asseverating that, “even if legal development and institutions were not to add a single iota to economic prosperity even then judicial and legal reform would be an indispensable part of the development process” (Santos,2006). Thus, negating the correlation between economic development and rule of law by considering very few exceptions such as china undermines the contribution of the World Bank's “rule of law projects” and Nobel Laureate Amartya Sen’s works in strengthening democracies and nations. Moreover, bilateral trade increases between countries that are socially just and have a well-established rule of law- that are they have transparency and accountability in trade processes. The importance of the rule of law in bilateral trade can be explained using the Prisoners Dilemma Game that I employ is shown below, where $\alpha > 1$ and $\alpha - \beta < 2$.

	Just	Unjust
Just	1,1	$-\beta, \alpha$
Unjust	$\alpha, -\beta$	0,0

Prisoners Dilemma Game

Each country can choose one of the two strategies: Just or Unjust. As is well known, Just behavior maximizes economic development for both the countries in bilateral trade. Whereas unjust countries that do not have a proper mechanism or set of rules will not be able to- first, define terms of trade and then will not be able to know what to trade or not. It will be a complete mess in trade between two unjust countries.

RULE OF LAW AND WORLD TODAY

The key notion of the rule of law is to make the country attractive for its citizens as well as for other nations. The primary goal is the peace and economic prosperity of nations across the world. There are few indicators defined by EIU which explain “the level of the rule of law” in a particular country. That is, whether the country has a poor level of rule of law or stronger levels. These indicators are- violent and heinous crime, orchestrated crime, the impartiality of the judicial system, implementation of contracts, pace of the judicial process, arrogation of intellectual property rights protection, and private property protection. To achieve such goals the World Bank runs 330 projects under the banner of “rule of law” to deal with judicial and legal reforms and its establishments in more than 100 countries. It has spent around \$3.8 billion between the years 1993 to 2006 (Santos, 2006). But these projects in the middle eastern could not succeed well for the fact that- in that same period these countries have seen huge political turmoil. In the early 2000s, the era of the Iraq war, high oil prices, large spending, uneven or almost negligible Foreign Direct Investments, and remittances destroyed the backbone of economic and political reforms in the region and the focus got to shift away from inclusive and constructive governance. The squares countries like Iraq, Lebanon, Egypt, Algeria, Tunisia, Morocco, etc. were full of young people shouting for justice, good governance, and jobs. In return, the governments were shifting their focus away from the issues that demanded good governance, transparency, and accountability (Belhaj, 2019).

The first decade of the 21st century has seen a significant rise in populism all over the world and major countries such as the USA, Italy, United Kingdom, India, Pakistan, and Turkey has seen leaders getting elected with a majority in general elections using inflammatory rhetoric such as Islamophobia, anti-immigration, and nationalism (Zain, 2020). However, the rise of economic nationalism in these countries has worsened the situation further (Zain, 2019) which has severely affected world trade. For example, India which was one of the speediest emerging economies of the whole world has seen huge uprising and protests against the government’s various policies. The country is going through a politically bad phase- the

public institutions are under fear or pressure of the government, the freedom of the press is at an all-time low (ranks 142 in RSF ranking of World Press Freedom Index 2020) and Judges of top courts held a press conference wherein they revealed some serious concerns relating to the independence of the judiciary by saying that the ruling government is not letting them work freely (The Hindu, 2018). In sum there is political instability in the country and the “rule of law” is under threat. In the same period, India has seen a considerable decline in its GDP growth rate. On June 1, 2020, Moody Investor Service has lowered the sovereign rating of India to ‘Baa3’ from ‘Baa2’. ‘Baa3’ is the lowest investment-grade placed above “junk status”. It is said that India’s future is full of challenges in the formation and execution of policies to extenuate the perils of a prolonged phase of low growth and degrading fiscal position (Indian Express, 2020).

Similarly, in America institutional racism has led to the oppression of people of color for a long time now. On 25 May 2020, a police officer killed an unarmed man named George Floyd in a broad daylight. The Minnesota Police Department charged the police officer Derek Chauvin with charges of second-degree murder (NYT, 2020). Since the day of his murder, there had been protests against the government all over the country- wherein protestors demanded human rights and justice for Black Americans, which they claim have been systematically denied to them. This incident has exposed the hypocrisy of America’s democracy which also happens to be the country that famously exports democracy to other countries and poses itself as a champion of human rights in war-torn Middle Eastern countries. It reflects that the racist roots of American policing persist and raise high skepticism on the “rule of law” which demands fair police and legal system. The World Bank needs to look in its backyard before launching future projects to developing countries in the name of strengthening rule of law so that the public institutions such as police departments of developing countries have some well-established model to look up to. The rule of law is now established almost in every country of the world but as per The United Nations Commission reports on the Legal Empowerment of the Poor (2008), there are still 4 billion people which are barred from rule of law- which clearly explains there is still a long road ahead. The reason for this underachievement has been incompetent and morally corrupted government who lacked inner will in adopting new reforms and strengthening law for they feared that their self can come under the radar. Already established rule of law most of the time became weak when a new government came in after general elections in few countries. So, several developing and developed countries after successfully debating and critically examining each

and every indicator of rule of law, legislating new laws, forming new policies could not see the considerable improvements owing to their inability to successfully implement these laws and policies. This incapability aroused due to a lack of proper information and data regarding the current situation prevailing in their societies.

FUTURE OF RULE OF LAW AND ROLE OF MEDIA

In order to see well established rule of law in their respective nations- developing nations of the world need to seriously consider the principles or set of rules put forth by Ibrahim Shihata- the general counsel and senior vice president who held office at WB (World Bank) from 1983 till 1998- who is distinguished as the most prominent draftsman of the “rule of law” laid down five elements in order to further strengthen institutions and increase their efficiency: 1) The set of rules at the disposal- that are already known, 2) these rules are already in action, 3) and their exist proper mechanisms to ensure efficient implementation of these rules and to move away from them as desirable as per existing procedures, 4) difficulties in the implementation of these rules could be adjudicated through an inclusive independent legal medium, and 5) amending the rules through various procedures such as legislations when they become inefficient or needs restructuring or when they no longer remain as effective as they used to be (Hadfield, Weingast, 2014).

The democracies are falling- succumbing to divisive politics, pluralism, and polarization and for the continuously fourteen years in the past, an eminent annual report on the health of global democracy warned of a decline in global democracy level (TWP, 2020) and at the same time, the world economic growth rate is also not in good shape (FT, 2020). Despite its centrality to multiple works of literature, the theory of the rule of law is deplorably under-theorized (McCubbins et al. 2010) and has not specified the role of media and journalism in establishing rule of law. Subscriber hungry media houses use various audience appealing techniques such as sensationalism, generalization, oversimplification, a dramatization of an incident, policy or data, etc. In doing so, they undermine the consent of their audience. Good laws are not reported, or the controversial ones are criticized openly. Sound court decisions are oversimplified or not given due praise. Army and police activities are sometimes overdramatized. Government information forms are overtaken by media houses and they speak on behalf of the government (Gordon, 1987). All these delusive techniques post a threat to the establishment of the rule of law and minify the faith and expectations of an individual on the rule of law. *Media can act both as both a ‘destroyer’ as well as*

'constructor' of rule of law. With the decline in the global democracy index, both the Developed and the Developing countries are seeing a sharp decline in Word Press Freedom Index too. Governments use the rule of law against critical media houses (Maravall, 2003) which poses a threat to independent journalism, and the availability of critical information and data decreases gradually. According to the 2020 Word Press Freedom Index annually given by Reporters without Borders, India ranks 142nd, whereas United States, Turkey, Israel, Brazil, and China ranks 45th, 154th, 88th, 107th, and 177th respectively out of total 180 countries (RSF, 2020). The situation is alarming since (Carey, 1999), writes, "Without journalism, there is no democracy, but without democracy, there is no journalism either". Post globalization and in the era of the internet with the establishment of big media houses, true media independence and freedom remain are still quite vulnerable whereas the role of media has increased significantly in maintaining peace by providing unbiased and true information. However, if the media is biased and does not act as the fourth pillar of democracy- the social order gets disrupted, the citizens do not get access to true information which acts as a hindrance and reduces their capabilities and their contribution to the development of the nation. This is where generally mass media and particularly journalism plays its role. There is a social contract between media and democracy that acts together in a way that enhances and strengthens their functioning and creates well-informed citizens. Media and Democracy together fulfill their part by giving the citizens the true and unbiased info they require in order to be fully enlightened and educated and self-governing as well, which increases the overall capability of the nation. On the other hand, for the government with free flow of true and unbiased information, it gets easier in decisions and policy-making for the common interest of its citizens and it also acts as a watchdog against power abuse in the political and social arena (Strömbäck, 2005). An informed citizen is a human resource that contributes significantly to the nation's economic development while even a highly skilled citizen who does not have access to proper information and data cannot come up with efficient innovations. In sum, innovation dies when information dries out. Therefore, a strong and independent media can have higher effects in maintaining social order and establishing the rule of law. The need of the hour is to increase the freedom of the press across the nations and United Nations should strictly penalize countries that rank low on freedom of press index and where media acts as a puppet of the government in spreading propaganda and praising them rather than doing constructive journalism. The future of rule law lies in the hands of mass media for it can act as both destroyer as well as the constructor of rule of law, therefore, for this reason, the media not only has to be free but also to be unbiased while reporting and

delivering information since media does not only reports news and publish editorials but also educates and shapes the perceptual experience of masses and thus have a responsibility towards their readers as well as society (EPW, 2020).

CONCLUSION

In this paper, we could successfully argue that there exists some significant degree of correlation between the rule of law and development. The historical definitions lacked depth but provided a basis for further improvement in defining the rule of law. Initially, the debate was over the relationship between finances and rules, regulations, and the justice system. Now, the nature of government also has impacted the development and growth. The countries with higher ranks in the Global Democracy Index have a higher level of GDP per capita for example Scandinavian nations, like Norway, Denmark, and Sweden. Experts such as Sen in 1999 in his book *Development as Freedom* and Rajan in 2003 have argued and rooted for a well-established rule of law for better economic prosperity and social welfare. However, the success of the rule of law projects in Middle Eastern countries remains to be seen. The question now World Bank faces is that- how to promote the “rule of law” in war-affected countries immediately after the war ends as those countries initially remain socio-politically unstable and in some cases are infant democracies. Also, I could relate mass media (*the fourth pillar of democracy*) to social justice, informed citizenry which also leads to a higher level of innovation and economic prosperity. The need of the hour is to have independent media, transparency, and accountability in governance, an independent judiciary, and higher level of education, unbiased and true information, freedom of the press, etc. for further strengthening the rule of law which can give us a substantial level of sustainable economic growth in future.

REFERENCES

1. Belhaj, F. (2019). Justice and the rule of law: The World Bank in need of reinventing itself. *The Middle East Journal*.
2. Carey, W. J. (1999). In Defense of Public Journalism. In T. L. Campbell, *The Idea of Public Journalism*. New York: Guilford Press.
3. Economist. (2008, March 13). Order in the jungle. *The Economist*.
4. EPW. (2020, June 20). Retrieved July 10, 2020, from Sensitivity, Not Sensationalism: <https://www.epw.in/journal/2020/25/editorials/sensitivity-not-sensationalism.html>
5. Express, I. (2020, June 1). Moody's downgrades India's rating maintains a negative outlook. New Delhi, New Delhi, India: Indian Express.
6. Hadfield, & Weingast. (2014). Micro foundations of the Rule of Law. *The Annual Review of Political Science*.
7. Maravall, J. M. (2003). Rule of Law as a Political Weapon. In J. M. Adam Przeworski, *Democracy and the Rule of Law* (p. 264). Cambridge University Press (9 Oct. 2003).
8. MJ Trebilcock, R. J. (2008). *Rule of Law Reform and Development*. Edward Elgar Publications.
9. Porta, Lopez-de-Silanes, & Shleifer*, A. (2008). The Economic Consequences of Legal Origins. *Journal of Economic Literature*.
10. Rajan, & Zingales. (2003). The great reversals: the politics of financial development in the twentieth century. *Journal of Financial Economics*.
11. Rodriguez, Weingast, & McCubbins. (2010). The Rule of Law Unplugged. *Emory Law Journal*.
12. Root, H. L. (1989). Tying the King's Hands. *Rationality and Society*.
13. RSF. (2020). *WORLD PRESS FREEDOM INDEX*. Retrieved JULY 07, 2020, from REPORTERS WITHOUT BORDERS: <https://rsf.org/en/ranking>

14. Santos, A. (2006). The World Bank's Uses of the "Rule of Law Promise in Economic Development. *Georgetown University Law Center*.
15. Sen, A. (1999). *Freedom as Development*. Oxford University Press.
16. Strömbäck, J. (2005). In Search of a Standard: four models of democracy and their normative implications for journalism. *Journalism Studies*.
17. Tharoor, I. (2020). *Democracy is in decline around the world — and Trump is part of the problem*. The Washing Post.
18. *The Hindu*. (2018, January 18). Retrieved JUNE 08, 2020, from Supreme Court crisis: All not okay, democracy at stake, say four senior-most judges: <https://www.thehindubusinessline.com/news/supreme-court-crisis-all-not-okay-democracy-at-stake-say-four-seniormost-judges/article10028921.ece>
19. Times, N. Y. (2020). *Protesters Hail Charges Against Police but Seek Broader Change*. New York: New York Times.
20. Wolf, M. (2020). *The world economy is now collapsing*. Financial Times.
21. Zain, A. (2019). RISE OF MODI'S TECH-POPULISM IN INDIA. *Moment Journal*, 10.
22. Zain, A. (2020). *THE HINDUTVA DOCTRINE AND BHARATIYA JANATA PARTY IN 2019 ELECTIONS IN INDIA: CRITICAL DISCOURSE ANALYSIS*. Ankara: Hacettepe University.