

Rule of Law and its Application in the Indian Polity

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ABSTRACT: Rule of Law in simple words refers to the supremacy of law of the land over any other thing or person. There has been no concrete definition of rule of law but one of the most known definition was given was A.V. Dicey who based his definition on three pillars namely, Supremacy of Law, Equality before Law and Predominance of Legal Spirit. India adopted the Rule of law from the common law system of justice which had its roots to the British Jurisprudence. The judiciary in India has played a leading role in giving a proper shape to the Rule of Law in India. Through its various judgments the court has taken a positive approach and by taking a dynamic view of the provisions of the constitution, it has ensured that the Rule of Law is enforced in its true spirit.

The very idea of Rule of Law is enshrined in the constitution of India. It can be inferred from the preamble and the very fact that it declares India as a sovereign state. Over many years, courts have taken help of Judicial activism to increase the scope of the rule of law through various provisions in the constitution.

Even after so many efforts of the framers of the constitution and the judiciary, the implementation of the Rule of Law is not full proof in India. Things like outdated legislature and overburdened courts are some of the problems which hamper the smooth enforcement of the same. Therefore, the concerned authorities like the parliament, the judiciary, the law commission and various other authorities need to take the required steps to ensure smooth implementation of the Rule of Law to ensure it is enforced in its true sense.

I. INTRODUCTION

“When the Rule of Law disappears, we are ruled by the whims of men”- Tiffany Madison

Rule of Law in simple words refers to the supremacy of law of the land over any other elected representative or authority in a country. It has been derived from a French phrase ‘la principe de legalite’ which refers to a government guided by law and not men. The phrase has been interpreted by different people in different ways, in different countries. Attempts have been made by a number of major philosophers to give a substantive definition, Aristotle being one of them. He tried to explain the theory by equating it to the rule of reason and other rules of law related to natural justice.

One of the most known and accepted theory was propounded by A.V. Dicey. The theory became famous through his book titled ‘The Law of the Constitution’. He had a theory that ‘government should be based on principles of law and not men’ and proved this by explaining its three main pillars¹. These are:

- **Supremacy of Law**

It means the dominance and absolute power of law in the country. Law rules all the people including those framing and administering law. Dicey believed that wherever there is a scope of discretion, there will be

¹ Hariharan, Rule of Law in India, Academike, November 16 2014, <https://www.lawctopus.com/academike/rule-of-law-in-india/>

arbitrariness. Hence, held that the law established in the court of law has to be enforced in the land and no person can take law in his or her own hands.

- **Equality Before Law**

This means that the law should be administered in a just and fair manner. Every person, whatever his position or rank maybe, should to subjected to the same law and procedure as everyone else in the court of justice. In his word he said, “every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.”²

- **Predominance of Legal Spirit**

Dicey believed that just forming the above two principles would not be enough and there has to be an enforcing authority to keep and maintain the law. He thought courts to be this authority. He propounded an impartial and independent judiciary which would be a very important aspect for implementation of Rule of Law.

II. RULE OF LAW IN INDIA

India adopted the Rule of law from the common law system of justice which had its roots to the British Jurisprudence. The constitution of India shows this intention, a country governed by Rule of Law. It declares the constitution to be supreme law of the land from which the executive and the administration derives its power. The concept of Rule of Law can't be executed in its spirit and letter until unless all the instrumentalities of the state are bound by the duty to execute there function in a just and fair manner³.

- **Rule of Law And Indian Judiciary**

The Indian judiciary has played a primary role in giving proper shape to the rule of law in India. By adopting a positive approach and taking a dynamic view of the provisions of the constitution, it has made sure that the rule of law doesn't remain on paper and is incorporated in its spirit to.

The courts in India especially the Supreme Court has strengthened this rule through its various judgments, primary case being, *ADM Jabalpur v. Shivkanth Shukla*⁴, in which the issue in front of the court was ‘whether there was any Rule of Law in India apart from article 21?’. This was with reference to suspension of the rights of the citizens under Articles 14,19 and 21⁵ of the Indian Constitution, during the proclamation of emergency. The 5 judges bench by the majority of 4:1, answered the issue in negative. However, Justice H.R. Khanna did

² Alok Kumar Yadav, Rule of Law, International Journal of Law and Legal Jurisprudence Studies, http://ijlljs.in/wp-content/uploads/2017/08/Rule_of_Law.pdf

³ Kudrat, Rule of Law in Inida, Academike , January 5 2015, https://www.lawctopus.com/academike/rule-of-law-in-india-2/#_ednref23

⁴ AIR 1976 SC 1207

⁵ Article 14,19 and 21 of the Indian Constitution

not agree with the majority judgment and while giving his dissenting judgment observed that:

Even in absence of Article 21 in the Constitution, the state has got no power to deprive a person of his life and liberty without the authority of law. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning...Rule of Law is now the accepted norm of all civilized societies⁶.

The first case which started the debates on the Rule of Law was *Shankari Prasad v. Union of India*⁷, in which the question of ‘whether the fundamental rights can be amended?’ arose. The question was not decided with full satisfaction and the same came up in a number of cases. This issue was finally settled in the case *Kesavananda Bharti v. State of Kerala*⁸, in which the honourable court declared the Rule of Law as the basic structure of the constitution. The court also held that the parliament could amend any article in the constitution except the basic structure. There was a limitation put on the powers to amend under Article 368, imposed by the rule of law. The court reiterated the same in the case of *Indira Nehru Gandhi v. Raj Narayan*⁹.

In the case of *Chief settlement Commr; Punjab v. Om Prakash*¹⁰, the supreme court held that one of the most prominent feature of the Rule of Law prevalent in India, is the authority given to the courts to determine the legal standard of the decision taken by the administrative. Any administrative or executive action which fails to meet the given standard will be set aside by the court.

The Supreme Court observed in *Som Raj v. State of Haryana*¹¹, that the primary postulate of Rule of Law upon which the whole constitutional edifice is dependant is the absence of arbitrary power. Discretion being exercised without any rule is a concept which is antithesis of the concept.

Another aspect of the Rule of Law is the independence of Judiciary and the power of judicial review. The court in the case of *Union of India v. Raghbir Singh*¹², held that that the lives of the people and the State functions are governed by the decisions taken by the superior courts. Judicial Review plays a significant role in maintaining law and order in the working of the government. Hence, any provision that intends to curtail this power of the court would be held to be against the principle of Rule of Law. The case of *S.P. Sampath Kumar v. Union of India*¹³, the court gave a similar judgment declaring Judicial Review as a part of the basic structure of the constitution.

⁶ AIR 1976 SC 1207, para 154

⁷ AIR 1951 SC 455

⁸ AIR 1973 SC 1461

⁹ AIR 1975 SCC (2) 159

¹⁰ 1969 AIR 33, 1968 SCR (3) 655

¹¹ AIR 1990 SCR (1) 535

¹² AIR 1989 SCR (3) 316

¹³ AIR 1987 SCR (3) 233

Although, a complete end to unfair practices and arbitrary decisions is not possible in this administrative time but the court through its various judgements over the period of time have developed the principle of Rule of Law, which gives the power of judicial review to see that the executive or the administrative work within the authority given to them and that they don't do anything ultra vires. The public can approach the supreme court or the high court in case of violation of any fundamental right. The court has the right to quash any decision of the administrative or the executive if it against the law of the land as there is nothing above the law. This shows how the Law has been made supreme in the country and the courts have been given the duty to protect it.

- **Rule of Law And Indian Constitution**

In India, the rule of Law can be traces back to the Upanishads. The principle is still prevalent in India as it has been enshrined by the drafters in the constitution itself. The fact that the constitution declares the Indian state as a sovereign, reinstates the idea of Rule of Law. The preamble given in in the beginning of constitution gives the basic ideas and principles which should be enshrined in the constitution and which are important for the citizens and their interests. The ideals of the constitution- equality, liberty and fraternity have been enshrined in the preamble. Constitution is the supreme law of the land and anything contrary to it will be declared invalid by the court¹⁴.

After being ruled by the British for over 150 years the framers of the constitution didn't want to take any risk against being under the rule of a dictator so they made sure that the Rule of Law is deeply embedded in the constitution making it the Supreme Law of the country. The Indian government is divided into 3 parts i.e. Legislature, Administrative and Judiciary. The power and scope of each organ has clearly been written down¹⁵. This creates a Separation of powers between the three organs in which one organ should not interfering with the working of the other organ. This arrangement helps in the proper implementation of the Rule of Law. In the case, *P. Sambhamurthy v. State of Andhra Pradesh*¹⁶, the honorable Supreme Court declared a provision which gave power to the executive to interfere with the working of a tribunal as unconstitutional as it was held to be violative of the Rule of Law.

The framers of the constitution have given due recognition to all principles laid down Dicey while explaining the theory of rule of law. The constitution through its part III i.e. the fundamental rights fulfills all the requirements by Dicey for a country to be governed by the Rule of Law. The principle of equality before the law and equal protection by law as explained by Dicey has been embedded in the constitution of India under Article 14. The basic right of life and personal liberty has been embedded in article 21 of the constitution.

¹⁴ Chitra Singh, Rule of Law under the Indian Constitution, <http://ijldai.thelawbrigade.com/wp-content/uploads/2016/01/Chitra.pdf>

¹⁵ Chavi Aggarwal, Rule of Law- A reflection upon we the people and beyond, Legal Service India, <http://www.legalserviceindia.com/article/1459-Rule-of-law.html>

¹⁶ 1987 AIR 663, 1987 SCR (1) 879

Article 19 provides for the freedom of speech and expression to the citizens of India. The principle that no person can be convicted for any offence except for the law present in the country at the time of commission of the offence has also been enshrined in the constitution. The principle of double jeopardy and self-incrimination has also been properly placed in the constitution. Article 14, 19 and 21 are so basic and are an important part of the constitution that they are often called the Golden Triangle Articles.

*In Secretary, State of Karnataka and Ors. v. Umadevi and Ors*¹⁷ a Constitution Bench of this Court has laid down the law in the following terms: “Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.”¹⁸

The constitution also gives the power of Judicial review to maintain the independence of the judiciary through article 32 and 226 which gives this power to Supreme Court and High Courts respectively. In *Union of India v. President, Madras Bar Association*¹⁹, the Supreme Court held that Rule of Law has many aspects, one of them is that in case of a dispute between the citizens, it should be decided by a judge who is impartial and independent, similarly while deciding the legality of the action taken by the executive, the judge should be free from any influence from the executive in any way.

Justice R.S. Pathak of the Hon’ble Supreme Court has observed that “It must be not be forgotten that our entire constitutional system is based on the rule of law, and in any system designed in this way, it is not possible to conceive of legitimate power which is arbitrary in nature and works beyond the boundary of reason.”²⁰

Over many years, courts have taken help of Judicial activism to increase the scope of the rule of law. For instance, courts have started insisting on ‘fairness’ to create a rule of law society. In the case of *Sheela Barse v. State of Maharashtra*²¹, the supreme court emphasised on protection of prisoners especially females in police custody and in prisons, and drafted a code of guidelines for the same. The supreme court in *Veena Sethi v. State of Bihar*²², held that the rule of law is not only for the people who have the means to fight for their rights. The court extended the rule to the poor of the country and expanded the Locus Standi principle to help the poor.

¹⁷ AIR 2006 SC 1806

¹⁸ AIR 2006 SC 1806 para 34

¹⁹ Writ Petition no. 1072 of 2013

²⁰ Concept of Rule of Law, LawTeacher, <https://www.lawteacher.net/free-law-essays/constitutional-law/introduction-concept-of-rule-law-essays.php#ftn14>

²¹ JT 1988 (3) 15

²² AIR 1983 SC 339, 1983 CriLJ 675, 1982 (1) SCALE 793, (1982) 2 SCC 583, 1982 (14) UJ 543 SC

III. CONCLUSION

Despite the fact that the rule of law, was primarily taken from British jurisprudence, it is deeply embedded in the polity of India is quite clear. The framers of the constitution gave cognizance to the rule and made sure that it is properly placed in the system of the country. This was done by the virtue of part III, which is the Fundamental Rights of the people. The judiciary has done its part by reinforcing all the mechanisms laid down in the constitution to ensure justice is delivered to the people.

But the implementation of the same in India has not been full proof. Problems like outdated legislature and overburdened courts are some of the problems which hamper the smooth enforcement of the rule of law. There have been instances where the judicial system has been impaired by corruption, to tackle this it is necessary to protect the judiciary from the influence from the executive and administrative. There is also a need to take the required actions to ensure a speedy justice delivery system to implement the Rule of Law in its true spirit. Similarly, the parliament should make sure they do not pass any law which is violative of any right of the citizens or of the constitution. The executive should ensure that it does not enforce any such law in the country. There are bodies like the Law Commission of India which are thieving towards creating a society where there are no barriers towards the smooth working of the Rule of Law.

No matter what the situation is, the constitution should be considered as the supreme law of the land. If any organ of the government tries to do something which is outside the authority given to it by the constitution, the said act should be declared unlawful and hence, void ab initio. If each and every organ of the government does its share of work, there would be no barriers for unqualified implementation of the Rule of Law in India.