

Rule of law and its relevance

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Introduction

In the words of the UN Vienna Declaration of 1993 "human rights are universal, indivisible, interdependent and interrelated and therefore should be protected and promoted in a fair and equitable manner by something as fundamental and all-pervasive as the rule of law." The latest [encounter](#) of the gangster Vikas Dubey has sparked the debate regarding rule of law and has also raised questions on the exercise of violence by the institutions of the state. Criticisms have been coming from across the nation especially from the opposition that such an act is against the fundamentals of law, that is, against the rule of law. In the present day context where incidences like encounters and mob lynching have started to become obvious for people it gets necessary to indicate what importance the rule of law has in such situations and hence the main focus of this article is dedicated towards what

does rule of law exactly means and how it has developed through time to meet with the present scenario.

Rule of Law: Meaning

As the term itself connotes, 'Rule of Law' means rule of law and not of men.

The expression "Rule of Law" is derived from the French phrase 'le principe de legalite' meaning the principle of legality.

Defining rule of law Prof Wade expressed- "The rule of law requires that the government should be subject to the law rather than the law subject to the government"

According to Black's law dictionary, Rule of Law may be specifically defined as supremacy of law where decision is made by applying known principles or laws, where there is no intervention of discretion in application of such principles or laws.

Rule of law has been defined by many scholars as the symbol of ultimate authority, which no man can override. As stated by Lord Denning in case **Gouriet V. Union of post office workers** Every person in land, no matter how powerful or high in status he may be, law will always be above them.

The rule of Law is one of the basic and general principles of the constitution. It is characterized in the words of Max Weber as – "legal domination as an idea of government of law rather than an idea of men."

So, in essence rule of law means that everyone from the government to its officials, together with citizens should act according to the law.

The doctrine of rule of law has been described as supremacy of the law. This means that where there is rule of law no person can be said to be above the law, even the functions and actions of the executive organ of the state shall be within the ambit of the law.

Rule of law imposes a duty on all citizens in a parliamentary democracy to obey the law and for such obedience the law itself must be just law and not arbitrary or oppressive law.

The aim of rule of law like other constitutional principles is the uplifting of freedom and fundamental rights of the people. The rule of law has propounded to make sure that the executive doesn't use law of the land or country to oppress or curtail freedom of individuals as they are found in the bill of rights.

In the Indian context, the meaning of rule of law has somewhat been much expanded. The Supreme Court has in various occasions further enunciated and illustrated the rule of law through its judgement in furtherance of the basic principles as laid down by A.V. Dicey. It is considered as a part of the basic structure of the Constitution and, hence, it cannot be abrogated or destroyed even by the Parliament. The ideals of constitution; liberty, equality and fraternity have been enshrined in the preamble. Rule of law mandates that no person shall be subjected to harsh, uncivilised or discriminatory treatment even if the object is to protect and secure law and order.

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Origin of the Rule of Law

The first proponents of the doctrine of the rule of law are believed to be Greek philosophers including Aristotle, Plato, Cicero. For instance Plato in his book known as 'Complete Works of Plato' is found to have written that the collapse of the state is not far where the law is made subjective to the authorities but the states where the law is considered as supreme all the blessings of the god falls on such state and it flourishes through all times.

The rule of law is an ancient ideal first posited by Aristotle, a Greek scholar, as a system of rules inherent in the natural order.

In England, Rule of law began sometimes around 1215 when King John of England signed the Magna Carta of 1215. The signing of Magna Carta indicated the consent of the Monarchy of England to be under the law and the law to be supreme. The doctrine of rule of law in England took a new look after the conflict between the parliament and monarchy or king aroused. In this conflict the parliament and the monarchy were struggling to be supreme authority. This conflict was resolved in favour of the parliament. After parliament became supreme over the monarchy it started making the laws which controlled and limited power of the monarchy. Hence executive organs in England became subjected to the law of the parliament and that was the beginning of the rule of law in England.

In the United States of America (U.S.A.) the doctrine of rule of law was first introduced in 1776 by the constitutional lawyers known as Paine. He is of the view that America being a free country considers Law as the king because in every country which is free law should be the king and no one else.

More ideas of Rule of law were further developed by the renowned English constitutional lawyer by the name of Dicey.

In the modern sense, the most famous exposition of the concept of rule of law was given by Prof. Albert Venn Dicey in his book 'THE LAW OF THE CONSTITUTION' in respect to the powers which the government must exercise in accordance to the law. Rule of law consists of several basic principles which law and policy makers, judges and law enforcement agencies should consider while exercising authority in a democratic society. This means all duties, power and functions of government, including its organs and authorities are done in accordance with the law.

Dicey's Concept of Rule of Law

It would be appropriate to discuss the views of Dicey, as he is known to be the main exponent of the concept of rule of law. However the origin of his doctrine was attributed to Sir Edward Coke. He introduced for the first time that, 'King is under God and the Law.' The firm base of rule of law owes its exposition to Albert Venn Dicey. Dicey, in his book Law and Constitution in the year 1885 further developed this concept given by Coke. According to Dicey's theory, rule of law has three pillars based on the concept that "a government should be based on principles of law and not of men", these are-

- Supremacy of Law;
- Equality before the Law; and
- Predominance of Legal spirit.

1. **Supremacy of Law**

This is the first pillar of Dicey's concept of rule of law. It means that the law rules over all people including the persons administering the law. According to Dicey the absolute supremacy of the law as opposed to the arbitrary power of the government is what constitutes the rule of law. In other words a man should only be punished for the distinct breach of law, and not for anything else. The person cannot be punished by the government merely by its own fiat but only according to the established law.

Further, Dicey asserted that discretion has no place where there is supremacy of law. According to him discretion is a link to arbitrariness. Dicey says that wherever there is discretion, there is room for arbitrariness and discretionary authority on the part of the government to jeopardize the legal freedom of the people.

2. **Equality before Law**

The second important pillar of Dicey's concept of Rule of Law is Equality before Law. In other words, every man irrespective of his rank or position is subject to the ordinary law and jurisdiction of the ordinary court and not to any special court. According to him special law and special courts is a threat to the principles of equality. Therefore he is of the view that there should be the same set of laws for all the people and should be adjudicated by the same civil courts.

3. **Predominance of the legal spirit**

The third pillar of Dicey's concept of Rule of Law is predominance of legal spirit. According to Dicey, for the prevalence of the rule of law there should be an enforcing authority and that authority he found in the courts. He believed that the courts are the enforcer of the rule of law and hence it should be free from impartiality and external influence. Independence of the judiciary is therefore an important pillar for the existence of rule of law. He asserted that the courts of law and not the written constitution are the ultimate protector of an individual's fundamentals.

Dicey's theory has been criticised by many from various angles but the basic tenet expressed by him is that power is derived from, and is to be exercised according to law. In substance, Dicey's emphasis, on the whole, in his enunciation of rule of law is on the

absence of arbitrary power, and discretionary power, equality before law, and legal protection to basic human rights and these ideals remain relevant and significant in every democratic country even today.

Exceptions to Rule of Law

In order to cope up with the need of practical government, a number of exceptions have been engrafted on these ideals of rule of law provided by Dicey in modern democratic countries, e.g., there is a universal growth of broad discretionary powers of the administration; many administrative tribunals have developed; the institution of preventive detention has now become the normal feature in many democratic countries. Nevertheless even after incorporating certain exceptions the basic ideas of rule of law are still preserved and promoted.

In India, Dicey's concept of rule of law cannot be said to be followed in strict sense, there are certain exceptions provided under the Indian Constitution and other laws. For example:

- **Existence of wide discretionary power to the executive-**

President and governor of this state are given wide discretionary power in relation to certain matters under the Indian Constitution. Under **Article 72 and 161**, the president and the governor respectively have a prerogative to grant pardons, reprieves, respite or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. **Article 85** provides the president with discretion in relation to the prorogation of either house of the parliament and the dissolution of the house of people. The governor on the other hand has discretion in sending the report to the president under **Article 356** of the constitution and in reserving bills for consideration under **Article 200**.

Police which are a part of the executive are given wide power of arrest without warrant in case of cognizable offences. Criminal courts in India have wide discretionary power in providing sentences.

- **Immunities and privileges-**

Under Indian constitution equality before law doesn't mean that the power of a private citizen should be the same as public official. Public officials like ministers, local authorities, public officers and others of the like have many powers, immunities and privileges which ordinary citizens don't have. For example-

1. The President/Governor is not answerable to the court of law in discharge of his executive functions.
2. No criminal proceedings whatsoever can be instituted against President or Governor of state, while he is in office.
3. No civil proceedings in which relief is claimed can be filed against the President or Governor except after an expiration of a 2 month notice that is served on him.
4. Under International laws, the visiting heads of state, heads of government, ministers, officials and foreign diplomats who are posted in the country are not subjected to jurisdiction of local courts in discharge of their official functions.

Rule of Law And Indian Constitution

Rule of law has no fixed articulation in the Indian constitution though the Indian courts refer to this phrase in variety of its judgements. The maxim 'The King can do no wrong' has no application in India and all public authorities are made subject to jurisdiction of ordinary law courts and to the same sets of laws. In Indian constitution is the law of the land and prevails over Judiciary, the Legislature and the Executive. These three organs of the state have to act according to the principles engraved in the constitution.

Under the Indian constitution the rule of law is incorporated in many of its provisions. For example the object of achieving equality, liberty and justice are reflected in the Preamble to the Indian constitution. **Article 14** guarantees right to equality before law and equal protection of law. It states that no one shall be denied the equality before law and the equal protection of the law by the state. The direct connotation of these words provided under Article 14 is that the law is supreme and there is no scope of arbitrariness as everybody is governed by the rule of law. Law treats everybody equally without any biases, which is the basic requirement of Rule of Law. In the case of **Maneka Gandhi v. Union of India** the Supreme court in clear words observed that Article 14 strikes at arbitrariness in state actions and ensures fairness and equality in treatment. Rule of law which is the basic feature of the Indian Constitution excludes arbitrariness. Where there is arbitrariness there is denial of Rule of Law. **Art 15, 16, 23** further strengthened the ideal of equality by the incorporation of protective discrimination as a means of ensuring equality amongst equals.

Article 13 of the Indian Constitution is another example which upheld the doctrine of Rule of Law in India. The "laws" defined under **Article 13** as rules, regulations, bye-laws and ordinances can be struck down if they are contrary to the constitution of India. In **Keshavananda Bharti v. State of Kerala**, the Supreme Court has included the Rule of Law as the basic feature of the Constitution. In this case, though the Supreme Court upheld the amending power of the Parliament which extends to every Article provided under the Constitution but has limited that power by providing that such power cannot be used in amending the basic feature of the Constitution.

Fundamental rights are universal and inalienable rights. Such fundamental rights can only be protected by the state that respects the Rule of Law. Fundamental rights are provided under **part III** of the Indian Constitution. Such Fundamental Rights cannot be abrogated and can be enforced under **Article 32 and 226 of the Constitution**. The Indian Constitution is the supreme law of the land and every law has to be in conformity with the Constitution. If any law is in violation of any of the provision of the Constitution,

especially the fundamental rights shall be declared void. One of the basic postulates of the Rule of Law besides justice and equality is Liberty. The fundamental right to life and personal liberty is provided under **Article 21** of the Constitution. This Article postulates that no person shall be deprived of his life and liberty except by the procedure established by law, thus making the law supreme. Such right also guarantees that no person is convicted except for the violation of law which is in force at the time of commission of an offence and not for any other act. The principle of double jeopardy and self-incrimination is also well recognized in the Indian Constitution.

Article 19 which provides various freedoms to the individual is again something which runs on the principles of Rule of Law as these freedoms can only be curtailed on the grounds of reasonableness which should be satisfied on the basis of Article 14, 19 and 21 of the Constitution. These three articles are so essential to the Indian Constitution that they are often called as the Golden Triangle Articles of the Constitution. In **E.P Royappa v. State of Tamil Nadu & Another** The Supreme Court held that for the state to justify its action of curtailment of fundamental right it has to fulfil all the requirements provided under Article 14, 19 and 21.

Another significant derivative of rule of law is **judicial review**. Judicial review is the essential part of the rule of law. It not only protects the constitutional principles but also checks administrative actions and its legality. All actions of the state authorities and bureaucracy are all subject to judicial review and are accountable to the courts for the reasonableness of their actions.

These are the essential ingredients and the basic assumption of rule of law and not of men in all civilized nations. The Indian constitution has also provided adequate provision for the independence of judiciary as it is the guardian of the constitution and fundamental rights of the citizens. Judicial review is considered as one of the basic features of the constitution. Hence the principles of rule of law run entirely through the fabric of the Indian Constitution.

Indian Case Laws

As mentioned earlier, rule of law is not expressly provided under the Indian Constitution but it has been assertively pronounced as the essential part of the Constitution by the Supreme Court through several judgements. Some of them are as under:

A.K Gopalan Vs State

Also known as the Habeas Corpus case, the order of detention passed during emergency was challenged in this case on the grounds that such order is violative of the principles of rule of law which is the basic feature of the Indian Constitution. The issue that was before the Supreme Court to decide was whether there is any rule of law in India apart from Article 21 of the Constitution. The majority bench in the case decided the matter in the negative while Justice khanna gave a dissenting Judgement.

He observed that the Rule of Law is accepted in all civilised society and is considered as a symbol of society being free. He further observed that Rule of Law is the only means of archiving the balance between individual liberty and public order. Hence he was of the

opinion that even if there was no such Article like Article 21 in the Indian Constitution the state has no power to deprive a person of his life and liberty without the authority of law.

A.K Kraipak V Union of India

Supreme Court on the question whether the principle of natural justice can be followed in administrative function held that every instrumentalities of the state is bound by the doctrine of rule of law and is charged with the duty of discharging their functions in a just, fair and reasonable manner, which forms the basic principle of Rule of Law without which the concept of Rule of Law has no validity. The rule of law is applicable to the entire field of the administration as every organ of the state is regulated by the rule of law.

Indra Nehru Gandhi V Raj Narayan

In this case the 39th amendment to the Constitution was challenged which has placed the election of President, Prime Minister, Vice-President and the Speaker of Lok Sabha unjustifiable in the courts of law. Holding the amendment as unconstitutional chief justice Ray found the amendment as violative of the basic structure of the Constitution i.e., Rule of Law. Rule of Law being anti thesis to arbitrariness does not empower the parliament to pass a retrospective law validating an invalid election. Such exercise of power is opposed to the basic principles of Rule of Law.

Bachan Singh v. state of Punjab Singh

This a landmark judgement on death penalty. The question whether death penalty can be imposed under section 302 of IPC was discussed in this case. While the majority of the judges held that the death penalty can be imposed under rarerest of the rare situation, justice Bhagwati dissented with the majority opinion and said that imposition of the death penalty under Section 302 of IPC is ultra vires and void as it violates Articles 14 and 21 of the Constitution.

Justice Bhagwati has emphasized that rule of law denies any room for arbitrariness and unreasonableness. To ensure this, he has suggested that the power of the parliament to make law should not be unfettered and the excesses of executive and legislative power should be brought under the check by the independent judiciary so that the rights of the citizen can be protected.

Sambamurthy v. state of Andhra Pradesh

In this case the Supreme Court upheld the principles of rule of law as the basic structure of the Indian Constitution. Clause 5 of Article 371-D was challenged before this court which provided the government with the power to modify or annul the administrative tribunal's order. Chief Justice Bhagwati in this case held clause 5 of Article 371-D as unconstitutional on the basis of doctrine of basic structure. He held that clause 5 is contrary to the principle of rule of law which is the basic structure of the Constitution and is thus unconstitutional. Judicial review which is one of the tenets of rule of law is provided to the courts under the constitution to ensure that the law is observed and is complied with by the executive and other authorities and such power of judicial review cannot be taken away from the court. Any such attempt would be against the Rule of law and thus ultra vires.

Yusuf Khan v. Manohar Joshi

The SC laid down that the constitution places a duty over the state to maintain and preserve law and order and to see that no act violence overpasses the mandate provided by the rule of law.

Hence, it is quite evident that the concept of rule of law is gaining importance and attention and judicial efforts are made to make it stronger.

Modern Concept of Rule of Law

From the above, it is clear that there has been a constant alteration and modifications in the concept of Rule of Law to suit the need of the present scenario. According to Prof. Baxi A study of Keshvananda, Indira Gandhi and other Habeas corpus cases provides a distribution of Indian Judicial thought on the conception of the rule of law which has evolved well over a quarter century. The Concept of Rule of Law has been given a new dimension by the liberal interpretation of the Supreme Court of India. Rule of law today envisages not arbitrary power but controlled power.

The modern concept of the Rule of law of law is now so greatly developed that it provides an ideal setup for any government to achieve. The concept was developed by the International Commission of Jurist, known as Delhi Declaration 1959, which was later confirmed at Lagos in 1961. According to this formulation, the dignity of man as an individual is upheld. It implies that the rule of law should be so applied as to create conditions in which the dignity of an individual should be given priority. The dignity of an individual doesn't include only the recognition of civil and political rights but also social, economical educational cultural and developmental rights. In Short for the proper incorporation of the Rule of law, Human Rights mechanism should be ensured. Particularly in the content of third world countries like India, Human Rights mechanism is utmost necessary.

Moderating the Dicey's meaning in the present day context Prof. Wade has included, effective control of and proper publicity for delegated legislation under the concept of Rule of Law, particularly when it imposes penalties that should as far as practicable be defined; every man should be responsible to, the ordinary laws whether he be a private citizen are public official, the private man's right should be determined by impartial and independent tribunals and fundamental private rights are safeguards by ordinary laws of England.

Conclusion

The above mentioned judgement clearly states the evolution in the concept of rule of law in India. The basic principles of rule of law are not followed *stricto sensu* in the Indian context. It has modified the application of rule of law from time to time to meet the exigency of the situation.

Rule of law is the fundamental principle of governance in any civilized democratic country. It is the antithesis of arbitrariness. A democratic country like India prides itself on the rule of law. When a crime is committed a process is followed. The perpetrator is arrested, contingent on judicial sanction. Suspects are questioned. Evidence is collected. Interrogations are conducted. A case is built up. The court examines the testimonies and evidence. The defendant has a right to legal defense.

The judiciary after scrutinizing the whole case, based on the law, hands down its decision, which can then be appealed against. In every civilized society, this process is undertaken, not just because the criminal jurisprudence provides that the guilty is presumed to be innocent until convicted, but because this is the only way to provide the system with legitimacy so as to provide the arbitrary exercise of power. The fundamental principle of the rule of law is that every human being, even if he is a criminal, is entitled to basic human rights and due process. Encounter killings are the complete denial of such due process which forms the essential part of rule of law. Observing rule of law is the true basis of a democratic society. Without it democracy is nothing but an empty phrase.

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