

Constitutional Principle: The Doctrine of Rule of Law

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Abstract: “Rule of Law” comes from a French phrase, ‘la principe de legalite’. It translates to ‘Principle of legality’ which means a government that has its basis on principles of law and not principles of men. This concept was therefore against the powers of arbitration. The article discusses the rule of law as a principle on which a democracy functions which emphasises that law is supreme, and everyone is subject to the law. The article discusses how the doctrine is important for keeping a check on the power holders. The application of the principle in India has also been discussed along with various decisions of the Supreme Court regarding the rule. The article concludes with giving out the importance of the rule of law, especially in a democratic state without which, the organs of the government will not have anything to be inspected by.

Keywords: Constitutional Principle, Rule of law, Principle of legality, Legislation, Comparative analysis.

INTRODUCTION

The word Rule of Law is derived from a French expression 'la principe de legalite' but has its definition as the 'principle of legality'. The phrase suggests that the government should also be centred on rules of law not on the ideals of men. In comparison to the dominance of arbitrary power, Dicey describes the rule of law as "the full supremacy or predominance of regular law and prevents the nature of official arbitrariness, prerogative, or perhaps even wide discretionary control." The concept is a complex one that can be perceived for a democracy to operate properly and smoothly [1]. The rule of law prohibits the arbitrary exercise of power and allows it all to be performed on either the basis of well-defined and existing rules. The rule of law legalisation is paramount and that it's subordinate to everybody.

The law proclaims that every person is subject to the jurisdiction of the courts of law and that no one is above them. It demands that no unfair treatment be granted to anyone and that everyone be ruled only by law. The state personifies the law as the sole holder of authority, but the functional nature of the rule means that the government should be founded on formally written rules and that it should be respected by all [2]. It is a state of affairs in which there are legal obstacles to governmental arbitrariness and legal guarantees for the safety of individuals are available.”

As per the Oxford Advance Learner's Dictionary, the rule of law means "the situation under which the law governs all citizens but also the state." According to Black's Law Dictionary, "rule of law" includes "legal principles of day-to-day application, approved more by governing bodies or authorities and expressed as both a logical proposition." The credit lies with Sir Edward Coke for the origin of this definition. He successfully maintained in the fight against the King that the King is now under God and the law, and he developed the supremacy of the law.”

THE DOCTRINE OF RULE OF LAW

Origin of Rule of Law

Since time immemorial, the rule of law has existed. It has also been developed and modified and elements that just aren't there since then have been introduced to it that have contributed to the notion in various meanings and approaches [3]. It has been connected back to antiquity Greek thought several times. The Greek ideas thus brought attention and precedent for later periods of time. The Roman contribution to the custom of the rule of law was mild to severe, with far greater implications being the adverse culture."

One of the origin of the rule of law is said to have been the German national legal proposition that only the king is under the law. While this falls on its own without a monumental occurrence with clattering repercussions with in history of the rule of law, the Magna Carta, 1215, epitomised a third mediaeval origin of the rule of law, the attempt of noble families to use law to control kings [4]. Locke called for either a restricted delegation of powers from people to their governing body while addressing the liberalist solution to the constitution, which would be exercisable in nature and could be withdrawn if the institution fails to fulfil its commitments. Locke suggested separating the abilities of the government organs to ensure that its government's actions were in line with the provisions duly enacted. Locke also argued that as the monarch might be the judge of his own cases, the complete monarchy is not suitable for civil society and said the implementation of legislation might also actually occur by a majority vote.

Dicey's Principles of Rule of Law

A.V Dicey lays down three principles as the tenets of rule of law. These principles are as follows:

- Supremacy of Law:

Dicey notes that the government can have no arbitrary and discretionary authority, which ensures that any act is by reason of law. "There is room for arbitrariness anywhere there is discretion, but in a republic much less than with a monarchy, the discretionary authority upon on part of the government must, on either the part from its citizens, mean uncertainty for legal liberty." Wade suggests that its executive, or maybe the other way round, should be subordinate to the constitution. It is appropriate for the people as well as the government to adhere to the word of god.

Dicey says that even in the governing bodies, the absence of discretionary powers so that they have no ability to make laws in compliance with their wishes and desires and have to rule by the pre-established laws [5]. These pre-established laws are not really easily modified. In the context of an entity, they are secure in nature, the life of which plays a vital role of freedom and protection. Laws should also be rooted in moral values, which cannot be done if they are formulated in a way that is too detailed."

- Equality before law:

Equal opportunity and equitable subjection with all classes to either the ordinary letter of the law applied also by ordinary courts is one of the most essential concepts of the rule of law. This concept calls for balance in the eyes of law between the government and therefore its subjects, all of whom are subject to the rules.

- Predominance of Legal Spirit:

This theory states that only the ideals we see despite the existence of laws have emerged from judgments of the courts that defined the freedom of the citizens. Dicey goes on to argue that its constitution of either a state grants such rights to its people that are more important than many others, such as constitutional rights or mere documentary protection, is also not adequate and must be properly implemented.

Rule of law in India

The Indian constitution embodies for its nature its British constitution structure. The constitution restricts the authority exerted by the government organs. "The absence of arbitrary power is the first requirement of the rule of law which our entire constitutional system is based." The rule of law is considered supreme in India and hence applies in anyway state institutions. The principle of the Rule of Law will not be maintained in spirit and letter if the state's instrumentalities are not obliged in a reasonable and just way to discharge their work."

Justice, equality and democracy are now the essential component of our constitution, which three foundations of the rule of law, and any enactment brought into force must comply with Constitution. All the rules are also nuts, keeping in mind the rule of law. Any law not confirmed by the rule of law would have been contrary to the constitution and so would be invalid. The Supreme Court held that only the parliament has the authority to amend the provisions of the constitution in the case of *Keshavananda Bharti v. State of Kerala*, but it should not interfere with the fundamental framework of the constitution. "The Supreme Court stated that "Our Constitution postulates the rule of law as compared to arbitrariness in the sense of constitutional principles and rules [6]. The addition of Article 329-A including its Constitution, which gave such immunities to the Prime Minister, was held to still be unconstitutional in *Indira Nehru Gandhi v. Raj Narayan*, as it clashed only with core constitutional framework., Justice S B Sinha notes in *Binani Zinc Limited v. Kerala State Electricity Board and Ors* (2009) that "This is now a well-established point of law that the rule of law, inter alia, theorises that all laws would, of course, be prospect subject to enacting a specific provisions or intention to the counter."

In the *Secretary's case, the State of Karnataka and Ors*. The Supreme Court ruled, *v. Umadevi and Ors*, that it is apparent the commitment to the rule in equality in public employment is a fundamental characteristic of our Constitution and as such the rule of law is just the cornerstone of our Constitution, An order upholding a breach of Article 14 or requiring an overlook and the need to comply with the provisions of Article 14, read in Article 16 of the Constitution, would definitely prevent the court [7]. In the *State Secretariat, Karnataka and Ors. The Constitutional Bench v. Umadevi and Ors* held that it is clear too that commitment to the rule of equality in social welfare is a fundamental component of our Constitution and also that the rule of law is the heart of our Constitution, An decision upholding a breach of Article or requiring a neglect of the need to comply with the terms of Article 14, interpreted in Article of the Constitution, would definitely prevent a court.

In *Amlan Jyoti Borooah v. State of Assam*, it was held that: "Equity must not be equated with compassion. Equitable principles must emanate from facts which by themselves are unusual and peculiar [8]. A balance has to be struck and the Court must be cautious to ensure that its endeavour to do equity does not amount to judicial benevolence or acquiescence of established violation of fundamental rights and the principles of Rule of law. Justice Bhagwati, in *Bachan Singh v. State of Punjab* said that the rule of law sets aside the scope for arbitrariness and unreasonableness. The power of the democratic legislature shall not be unrestricted. In *Yusuf Khan v. Manohar Joshi* the SC laid down the proposition that it is the duty of the state to

preserve and protect the law and the constitution and that it cannot permit any violent act which may negate the rule of law [9].

In the case of ADM Jabalpur v. Shivakant Shukla the question was whether apart from Article 21, there could be said to be any rule of law in India to which the majority of the bench replied in negative except the dissenting opinion of Justice H.R Khanna who 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 [10][11]. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning...”

CONCLUSION

The purpose including its rule of law is to protect individuals from what can be seen as one of the unconstitutional use of power by government officials. It is very important to see that every kind of authoritarian power in a democracy isn't really possessed by officers. Every action taken by the government needs a justification why the same could be done. When the government is also not kept in check by the rule of law, it would not be possible for democracy to succeed. There's now a major drawback of the rule of law, which was that rule often represents the system's inflexibility, but often the rigidity is needed to preserve the system in place, because if the society wants to function but without influence of arbitrariness and in decisions and rules taken in a democracy by the power holders, the rule cannot be dispensed with.

REFERENCES

- [1] Dicey, A.V., The Law Of The Constitution 198 (8th Ed.)
- [2] Ex-Attorney General Mr. Mannigham Buller, Quoted In S. Rajagopalan, Administrative Law, 1970.
- [3] Takwani C.K, “Lectures On Administrative Law” Third Edition Reprinted, 2004, pp. 17, Eastern Book Company.
- [4] Cicero, THE REPUBLIC AND THE LAWS, Translated By Niall Rudd (Oxford: Oxford Univ. Press 1998), The Republic, Book Two, 48, pp. 50.
- [5] Kern, KINGSHIP AND LAW IN THE MIDDLE AGES, pp. 182.
- [6] William H. Dunham, “Magna Carta and British Constitutionalism,” In the Great Charter, Introduction by Erwin N. Griswold (New York: Pantheon 1965) pp. 26.
- [7] Locke, Second Treatise of Government, Pp. 47 (Ss. 88–89); pp. 65–66 (Ss. 123–24).
- [8] Ibid., pp. 52 (Ss. 95–96).
- [9] Wade’s Administrative Law, 1994, pp. 34-36.
- [10] [Http://Www.Ourcivilisation.Com/Cooray/Btof/Chap181.Htm](http://Www.Ourcivilisation.Com/Cooray/Btof/Chap181.Htm) (Accessed On 22/10/2015).
- [11] A.K. Kraipak V. Union of India, AIR 1970 SC 150.