



The Rule of Law Concept and Explanation

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Concept of Rule of Law

The doctrine of rule of law has its origin in England and it is one of the fundamental characteristics of the British constitutional system. It lays down that the law is supreme and hence the government must act according to law and within the limits of the law. It is the legal principle that law should govern a nation, as opposed to being governed by arbitrary decisions of individual government officials. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behavior, including behavior of government officials.

A V Dicey in his book *The Law of the Constitution* (1885) has given the following three implications of the doctrine of rule of law.

1. Absence of arbitrary power, that is, no man is punished except for a breach of law
2. Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non official) to the ordinary law of the land administered by the ordinary law courts
3. The primacy of the rights of individual, that is, the constitution is the result of the rights of the individual as defined and enforced by courts of law, rather than constitution being the source of the individual rights

Most legal theorists believe that the rule of law, popularized in 19th century, has purely formal characteristics, and possess the characteristics of generality, equality, and certainty, but there are no requirements with regard to the content of the law and protection of individual rights.

Today Dicey's theory of rule of law cannot be accepted in its totality. The modern concept of the rule of law is fairly wide and therefore sets up an ideal for any government to achieve. Accordingly - "The

rule of law implies that the functions of the government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld. This dignity requires not only the recognition of certain civil or political rights but also creation of certain political, social, economical, educational and cultural conditions which are essential to the full development of his personality".

The relevance of the Rule of Law is demonstrated by application of the following principles in practice:

- The separation of powers between the legislature, the executive and the judiciary.
- The law is made by representatives of the people in an open and transparent way.
- The law and its administration is subject to open and free criticism by the people, who may assemble without fear.
- The law is applied equally and fairly, so that no one is above the law.
- The law is capable of being known to everyone, so that everyone can comply.
- No one is subject to any action by any government agency other than in accordance with the law and the model litigant rules, no one is subject to any torture.
- The judicial system is independent, impartial, open and transparent and provides a fair and prompt trial.
- All people are presumed to be innocent until proven otherwise and are entitled to remain silent and are not required to incriminate themselves.
- No one can be prosecuted, civilly or criminally, for any offence not known to the law when committed.
- No one is subject adversely to a retrospective change of the law.

Rule of Law and Indian Constitution

In India the Constitution is supreme. The preamble of our Constitution clearly sets out the principle of rule of law. It is sometimes said that planning and welfare schemes essentially strike at rule of law because they affect the individual freedoms and liberty in many ways. But rule of law plays an effective role by emphasizing upon fair play and greater accountability of the administration. It lays greater emphasis upon the principles of natural justice and the rule of speaking order in administrative process in order to eliminate administrative arbitrariness.

Important Components of Rule-of-Law Reforms

a) Court Reforms

- The efficiency of the courts is an important component in rule-of-law reforms as the existence of a judiciary is a fundamental aspect of the rule of law.
- To increase accountability and transparency, information technology systems may be installed to provide greater public access. To increase independence of the courts, the government can provide them with funding that will allow them to make their own financial and administrative decisions.
- Recent aggressive judicial activism can also be seen as a part of the efforts of the Constitutional Courts in India to establish rule-of-law society, which implies that no matter how high a person, may be the law is always above him. Court is also trying to identify the concept of rule of law with human rights of the people. The Court is developing techniques by which it can force the government not only to submit to the law but also to create conditions where people can develop capacities to exercise their rights properly and meaningfully. However, separation of powers should be maintained.

b) Legal Rules

- Another important rule-of-law reform goal is to build the legal rules. As Fuller stated, "laws must exist."

c) Institutional Encouragement on the Global Level

- To encourage additional country-specific development, in the early 1990s the World Bank and the International Monetary Fund (IMF) began conditioning financial assistance on the

implementation of the rule of law in recipient countries. These organizations had provided aid to support initiatives in legislative drafting, legal information, public and legal education, and judicial reforms, including alternative dispute resolution. By conditioning funds on the establishment of the rule of law, the World Bank and the IMF also hope to reduce corruption, which undermines economic development by scaring away investors and preventing the free flow of goods and capital. Currently, in its Sustainable Development Goals (SDG), the United Nations (UN) also champions the rule of law as a vehicle to bring about more sustainable environmental practices.

Conclusion

Rule of law is mostly believed to be a modern concept which is a gift of democracy however it is something which is fundamental to the very basic idea of good governance

We need to focus on the weaknesses and loopholes so that we can remove or plug them. Having said this, we cannot resist ourselves from adding that it is not that only the three organs of the State are to be blamed for the dismal state of rule of law in the society. Other actors like the media, civil society and even the ordinary citizen cannot run away from their respective responsibilities. Therefore it is equally important that all the actors of the society ensure for the maintenance of Rule of Law.

Rule of Law in India

The concept of Rule of Law permeates into the Indian Legal System through the Constitution. Part III of the Constitution of India acts as a restraint on the various organs exercising powers. While conferring the rights on the citizens, it imposes restrictions on the power that can be exercised. Under our Constitution, we have adopted the British System of Rule of Law. Absence of arbitrary power is the first essential of Rule of Law upon which our whole constitutional system is based.[xi] Governance must be by rule, and not arbitrary, vague and fanciful.[xii] Under our Constitution, the Rule of Law pervades over the entire field of administration and every organ of the state is regulated by Rule of Law. The concept of Rule of Law cannot be upheld in spirit and letter if the instrumentalities of the state are not charged with the duty of discharging their function in a fair and just manner.[xiii]

Judiciary and Rule of Law:

The Indian Judiciary has played an instrumental role in shaping Rule of Law in India. By adopting a positive approach and dynamically interpreting the constitutional provisions, the courts have ensured that the Rule of Law and respect for citizens' rights do not remain only on paper but are incorporated in spirit too.

In the case of A.D.M. Jabalpur v. Shiv Kant Shukla[xiv], KHANNA, J. observed:

“Rule of Law is the antithesis of arbitrariness.....Rule of Law is now the accepted norm of all civilized societies.....Everywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order.”

In Bachhan Singh v. State of Punjab[xv], it was held that the Rule of Law has three basic and fundamental assumptions. They are:-

1. Law making must be essentially in the hands of a democratically elected legislature;
2. Even in the hands of the democratically elected legislature, there should not be unfettered legislative power; and
3. There must be independent judiciary to protect the citizens against excesses of executive and legislative power.

The first case which stirred a debate about Rule of Law was Shankari Prasad v. Union of India[xvi], where the question of amend ability of fundamental rights arose. The question lingered and after witnessing the game play between the government and the judiciary, the issue was finally settled in the case of Kesavananda Bharati v. State of Kerala[xvii]. In this case, the Hon 'ble Supreme Court held that the Rule of Law is the “basic structure” of the Constitution. The Hon 'ble Supreme Court by majority overruled the decision given in Golak Nath's case[xviii] and held that Parliament has wide powers of amending the Constitution and it extends to all the Articles, but the amending power is not unlimited and does not include the power to destroy or abrogate the basic feature or framework of the Constitution. There are implied limitations on the power of amendment under Art 368, which are imposed by Rule of Law. Within these limits Parliament can amend every Article of the Constitution. Justice H R Khanna played a vital role in preserving the Rule of law although he concurred with the majority decision.

In the case of Indira Nehru Gandhi v. Raj Narayan[xix], the Apex Court held that Rule of Law embodied in Article 14 of the Constitution is the “basic feature” of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of the Constitution. Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid, since it was clearly applicable only to the then current prime minister and was an amendment to benefit only one individual. It was decided that the law of the land is supreme and must prevail over the will of one person.

Rule of Law is a basic concept which originated from the Common Law in England, and since has become an overarching concept which defines the Law in Common Law countries.

The essence of the concept is simple. "Be you ever so high, law is above you" - essentially the law makes no distinction between persons, all are equal before the law and everyone is entitled to the protection of law. This basic concept has evolved to create the concept of rights which cannot be taken away by any government or King. The foremost right is that no one shall be treated differently by the law or the courts because of who he is or where he comes from.

In Indian law, this has been encapsulated in what is called the Golden Triangle of the Constitution - Articles 14, 19 and 21. Article 14 deals with the right to equality, and says that no one shall be deprived of the right to equality and the equal protection of laws. Article 19 enumerates basic freedoms afforded to every citizen - such as freedom of speech, freedom of movement, freedom to carry out trade or profession etc. Article 21 says that no one shall be deprived of life or personal liberty except in accordance with procedure established by law.

Rule of Law protects people against powerful persons who may wish to tyrannize and subjugate others by holding that all are equal before the law, and that everyone is entitled to equal protection of laws. If any person or group ever tries to subjugate others, the Courts will hold them accountable for their actions, and will seek to protect the Common man, because our nation is governed by Rule of Law, not according

to whims and fancies of a particular person or group of people.

So this was all about rule of Law its provisions and things relevant in order to Indian constitution.

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