



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

“RULE OF LAW - IN INDIAN PROSPECTIVE”

Author Name:Pranjya Paramita Panda(research scholar)

Author Name: Bhagabati Ray(student)

P.G. Department of Law,

Sambalpur university

INTRODUCTION

Rule of Law is primarily about striking a balance between law and liberty, so that the law does not become tyranny and liberty does not become license. According to Prof. A.V. Dicey, the guarantee of equality before the law is an aspect which may be interpreted as the “Rule of Law”. It means that no man is above the law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary Courts. Rule of Law runs like a golden thread in our constitution which in several articles emphasizes the necessity of law but special emphasis has been given to Art.14 and the so called the hub of the Constitution, i.e. Art.21

The early beginning of democratic governance and the rule of law

India won independence nearly 65 years ago. British rule is a distant memory. It may seem ironic to recall that it was British rule that brought a system of governance to the country as a whole. Before the advent of colonial rule, there were native Indian rulers. Every part of India was under a king or a queen or under a satrap. Democracy or representative government, as we know it today, was not prevalent in any part of the country.

The Government of India, under Britain, was a colonial government and it was mainly concerned with the maintenance of law and order and the collection of revenue. British rule also exploited India’s natural and human resources for the benefit of Britain’s domestic industry. Nonetheless, for the first time, there was an organized attempt to govern-to set up schools, establish dispensaries and hospitals, lay roads and bridges, produce electricity, connect India through a rail network and restart the process of trade with other countries.

The question naturally arises, was there in ancient India the Rule of Law? The king was the law-giver and his word was the law. There was no legislative body that made law. There were ministers, but they were servants of the king and not accountable to the people. The king's court was the only forum for seeking justice. There were no formal institutions of law or of justice. By the standards of modern democracy, one must conclude that the Rule of Law, as we know it today, was absent during that time.

It was democracy which brought about a complete transformation in our view about the Rule of Law. Democracy was defined as representative government. In terms that have now passed into the realm of constitutional law, democracy was described by Former President of America, Abraham Lincoln as "Government of the people, for the people and by the people".

RULE OF LAW- ITS AMBIT AND DIMENSION

Rule of Law has different facets and because of its indiscriminate promiscuous use, has meant different things to different people at different times. Probably that is what prompted **Sir Ivory Jennings**, the famous constitutional historian, to characterize Rule of Law as "an unruly horse".

Professor Dicey gave three propositions regarding Rule of Law-

- a. Absence of Arbitrary power or supremacy of the law.
- b. Equality before law.
- c. The Constitution is the result of the ordinary law of the land.

Rule of Law runs like a golden thread in our Constitution, which in several articles emphasizes the necessity of a law. For example, **Article 14** of the Constitution of India, states "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The guiding principle under Art.14 is that all persons and things similarly circumscribed shall be treated alike both in privileges conferred and liabilities imposed. Laws should be applied to all in the same condition. The Supreme Court in **Bheshar Nath's case** in 1959 observed that the principle of the Rule of Law was an essential element of the guarantee of equality. Fundamental Rights guaranteed by our Constitution are not absolute. Reasonable restrictions can be imposed on the various Fundamental Rights under Article 19 but they must be prescribed by law, not by departmental circular.

The same requirement can be found in **Art. 21** of the Constitution of India provides that, "No person shall be deprived of his life or personal liberty except according to the procedure established by Law". This right is available to the citizens as well as non-citizens. In the famous **Gopalan case**, personal liberty was held to mean only liberty relating to or concerning the person or body of the individual. Also, it covered protection only against arbitrary executive action. But, later on, its ambit was widened to say that the 'procedure established by law' had to be just, fair and reasonable. In **Maneka Gandhi v. Union of India**, the Supreme Court in fact overruled the Gopalan's case expressing the view that the attempt of the court should be to expand the reach and ambit of the Fundamental rights rather than to attenuate their meaning

and context by a process of judicial construction. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

It may be interesting to know that the Universal Declaration of Human Rights, 1948 (UDHR), the Magna Carta to Mankind, in its preamble mentions that human rights should be protected by the Rule of Law.

Today the concept of the Rule of Law is more comprehensive. In this context, would refer to the expansion of its concept and content by the International commission of Jurists. It declared in 1959 that the Rule of Law "is not merely to safeguard and advance civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and human dignity may be realized". Thus Rule of Law is a dynamic concept, which also takes within its ambit all human rights of all individuals, which are indivisible and are interdependent.

RULE OF LAW- THE SEIGES WITHIN

For constitutional lawyers, belief in the Rule of Law is an article of faith. In a democratic set up we take it for granted. But few are aware about that the Rule of Law concept has a deep historical lineage. It can be traced to ancient Greece, to the concepts of justice and fairness discussed by the great philosopher, Aristotle. It was the progressive Greek civilization which gave rise to the western concept of democracy. Thereafter, if one were to identify the single most important milestone in the development of the concept, it would have to be the **Magna Carta**, by which the King of England was forced to acknowledge that

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we (the king) proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."

Some of the forms and aspects of the Rule of Law may be formulated as under.

1. Fundamentally, the Rule of Law is concerned with the liberty of the individual and is based on the recognition of his essential human rights including the right to life.
2. The right to life postulates the right to live in dignity and the right not to be deprived of liberty without the due process of law.
3. The liberty of the individual has to be reconciled with societal needs and public order, a reconciliation which involves a fine balancing act.
4. A government of laws is organized under a basic organic law, the constitution, so that the making of laws, the enforcement of laws and the interpretation of laws are entrusted to institutions set up there under.
5. Each institution must operate under the limitations put on it by the Constitution.

a. The Legislature has to act within the scope of its constitutional prerogative, it must have the legislative competence to pass an Act and the law must not violate Part III of the Constitution, that is to say, the Fundamental Rights of citizens.

b. The Executive must act within the law and every executive action must have the authority of law.

c. The Judiciary interprets the law and affords the guarantee that the laws in the constitution will be properly interpreted, properly applied and correctly construed.

CONCLUSION

All formal institutions are in place- Parliament, Legislatures, Executive Governments, Courts, Civilian Administration and the Police. Rules have been made for each institution and each institution is bound by the rules. The rules themselves are quite clear and unambiguous. If each formal institution of a democracy observes the rules, there would indeed be the Rule of Law.

REFERENCES

- J.N., Pandey ,Constitutional Law of Land, Central Law Agency, Allahabad, 2010C. Subhash, Kashyap, Our Constitution(An Introduction to India's Constitution and Constitutional Law), National Book Trust, New Delhi, 2015
- Mool Chand and Ramchandran, Raju, Sharma, Constitutionalism Human Rights and the Rule of Law(Essays in honour of Soli J Sorabjee),Lexis Nexis, New Delhi,2015
- Ashok k Jain, Constitutional Law of India, Ascent Publications, Delhi,2016
- Bashesar Nath v. The Commissioner of Income Tax-Delhi & Rajasthan AIR (1959) SC 149
- A.K.Gopalan v. State of Madras, AIR 1950 SC 27
- Maneka Gandhi v. Union of India, AIR 1978 SC 597