



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## NO ONE IS ABOVE LAW – THE INDIAN PERSPECTIVE

Shweta Chaturvedi.

I/c. Principal (Law)

Shree L.R.Tiwari College of Law

### Abstract

*The Concept of Rule of Law has not been defined anywhere in the Constitution of India. Rule of Law in the basic sense means that every individual of the state no matter of any caste, sect or religion is subject to law. The state is not governed by the ruler or the elected representative but by law. The concept of Rule of law can be traced back in the ancient Indian culture and mythology. Rule of law is the basis of any democracy. In the modern India the constitutional provisions are framed as such which support the concept of Rule of law. The Judiciary has also in its various decisions have proven time and again that ‘No one stands above Law’.*

### Introduction

“The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing”: - Caroline Kennedy

“In order to understand the concept of rule of law, it is to be understood that the state is governed not by the ruler or the elected representatives of the people but by ‘The Law’. The term ‘Rule of Law’ is nowhere defined in the Indian Constitution but this term is often used by the Indian judiciary in their judgments. Rule of law has been declared by the Supreme Court as one of the basic features of the Constitution so it cannot be amended even by the constitutional amendment. Rule of law is seen as an integral part of good governance”.

## Meaning of Rule of Law

To understand the concept of Rule of Law it means the no person is above the law and every individual is subject to jurisdiction of the court of law and shall have to face the consequences for their wrong doings irrespective of their position or rank in any field whatsoever.

The term 'rule of law' is originated from England and India has taken this concept. The concept of rule of law further requires that all persons of the state are subject to and held accountable to the law of the land that is legally enforced in the state. It is in a way a safeguard against the dictatorship or its supports the democratic form of government. It further states that the Authority is enforced in such a way that the no government can exercise power in an unchecked way.

Prof Dicey explains that there should be absence of arbitrary power i.e. no person shall be subjected to harsh or arbitrary treatment. He further explains that there should be 'Equality before the Law' i.e. any person no matter how rich, powerful or influential is equal before the law of the land and subjected to the same magnitude of judgements as an ordinary person. He further explains 'Supremacy of Law' i.e. the law is supreme and the highest authority and that no one is above law.

According to Black's Law Dictionary: "Rule of Law" means legal principles of day to day application, approved by the governing bodies or authorities and expressed in the form of logical proposition.

According to Oxford Advance Learner's Dictionary: "Rule of Law" means the situation in which all the citizens as well as the state are ruled by the law.

## Background

The term "Rule of Law" is derived from the French phrase '*La Principe de Legalite*' (the principle of legality) which refers to a government based on principles of law and justice as opposed to the arbitrariness of a ruler. The concept of Rule of Law in its most fundamental sense is the foundation upon which modern democratic society is founded and seeks to establish. The principle of Rule of Law vests in a state that is governed by laws and not by the arbitrary actions of men. The Rule of Law is a crucial component in a list of items that make up contemporary political ideals; other items in this list include democracy, human rights, and the principles of the free-market economy.

## Origin

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

In England, Rule of law began sometimes around 1215 when King John of England signed the Magna Carta of 1215. When the Magna Carta was signed it indicated that the Monarchy of England consented to be under the law and that the law would be supreme. The said principle of rule of law had taken a new phase in England, just after the conflict between the parliament and monarchy or king aroused. In this the Parliament and the Monarchy were in conflict for their supremacy. But the former succeeded and the Parliament arose as the supreme power. It then started making laws thus limiting the power of the Monarchs. Thereby the Executive organs in England were subjected to the new laws which were created by the Parliament and that was the beginning of Rule of Law in England.

But a detailed analysis of the concept of Rule of Law was done by Professor A.V. Dicey who in his book *“Introduction to the Study of the Law of the Constitution”* published in the year 1885 tried developing the concept of Rule of Law.

### **Development of Rule of Law in India**

In India, the concept of Rule of Law can be traced back to the ancient times.

**Dharma:** The Rule of law originated in Dharma. Dharma meant law, duty and morality. Dharma was considered as the very origin of the almighty. Individuals considered it as their guiding force and followed it for the functioning of the society. It had created a sanction just like any other law. It was also believed that people disobeying Dharma would be punished by the almighty himself. Dharma had the sanction of law and the moral belief in the lives of the people. In the Early Indian society it was believed that no one including the King could be considered above Dharma.

**Shruti:** Shruti means that which was heard. The Shrutis are believed to be the very words of God. They are found in the four vedas i.e. Rigveda Yajur Veda, Samveda and the Atharva Ved and the six Vedangas with Eighteen Upanishads. They are considered to be the ultimate source of law.

**Upanishads:** Its traces can also be found in the epics like Mahabharata and Ramayana, Ten Commandments, Dharma Chakra and other seminal documents. People since ancient times considered it as the law made by the supreme. Even the king was considered as the mean to realize the dharma and every individual irrespective of their position was required to follow the same. Therefore, Rule of law can be traced in Indian society from the ancient time.

In modern times there are no drafts in which Rule of Law is directly discussed or mentioned. Constitution is considered as the root of the legal system in India. All the Laws passed by the legislation are considered only if it is as per the Constitution. Unconstitutional Laws do not stand a place in the Indian legal system. The Constitution does not clearly mention of the Rule of Law but reflects in certain articles the theories of the Rule of Law. They are as under:

## The Constitutional Provisions in India

Article 13 – It describes the means for Judicial review. It directs a duty on the state to respect and implement the fundamental right. It also states that any law which infringes the fundamental right shall be void to the extent to which it contravenes the fundamental right. The state should not make any law derogatory to fundamental rights.

Article 14 – It deals with the right to equality. It is one of the fundamental right. It ensures guarantee to every person the right to equality before law and equal protection of the laws. It is not only right of Indian citizens but also right of non- citizens. Thus article 14 reflects the rule of Law as contemplated under the A.V, Dicey's theory.

Article 19 – It says that everyone has the right to freedom of opinion and expression, this right includes freedom of opinion and expression without interference and to seek, receive and communicate information and ideas through any media and regardless of limitations and boundaries but subject to law. Any contravention of this right shall be dealt with the Supreme Law of the country.

Article 21 – It deals with the right to life and personal liberty. That no person shall be deprived of life or personal liberty except according to the procedure established by law. It includes all aspects to make meaningful an individual's life and that the executive cannot exercise its power arbitrarily to hamper this right. This article also clearly states that no one is above law.

## Judicial Precedents

The judicial pronouncements time and again has played an important role thus proving the development of Rule of Law in India.

a) Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

The famous judgment of Kesavananda Bharati, which advocated the basic structure doctrine, has also discussed the significance of rule of law in India. It was held that the basic structure of the Constitution cannot be altered with any amendments of the Parliaments. Therefore, no one including the Parliament has the right to abolish or destroy rule of law. Thus, it signifies how the law is greater than any of the wings of Indian democracy.

b) Maneka Gandhi v/s. Union of India

This case saw a high degree of judicial activism. This was a landmark judgement which significantly expanded the interpretation of Article 21 of the Constitution of India. The Supreme Court gave its decision against the ruling government thus proving that No one is above Law.

c) Mannam Sugar Mills Co- operative Ltd. V/s. Deputy Superintendent of Police.

In the above case, “*No one is above the law, not even those in power*”, the Kerala High Court said while directing the state government to take action against those who erect illegal flag poles irrespective of their affiliations.

“*No matter how high a person you are, the law is above you,*” Justice Devan Ramachandran said and added that people in power, who understand the laws and the government, should be held more accountable.

The observations by the court came after it found violation of its order not to erect any more flag poles illegally in Kerala, by the ruling party in the state.

d) A.K. Kraipak V. Union of India

The judicial decisions have played an indispensable role to counter any arbitrariness on part of the state. In *A.K. Kraipak V. Union of India*, the Apex Court held that ours being a welfare State, it is regulated and controlled by the Rule of Law.

e) “In the *E.P. Royappa v State of Tamil Nadu* Article 14 of the Constitution of India was interpreted by the Supreme Court and its ambit was broadened. A new dimension was given to this article and it was considered as a guarantee against arbitrariness. The Apex Court in a subsequent judgment 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”

f) “In the case of *Vinay Tyagi v. Irshad Ali (2012)*, it was held by the court that the investigation must be honest, just, fair and reasonable, and in accordance with the law. In another case of *State of West Bengal v. Sampat Lal (1984)*, it was held by the court that the court has residuary power to issue certain directions to the police officers when the requirement of the law is not taken into consideration and investigation is unjust and unfair. Thus, Custodial deaths are in violation of the basic principles of criminal jurisprudence”.

## Analysis

Our Indian Constitution is one of the lengthiest in the world. It was made with the view to cover the need of the diverse population of our nation. This Constitution of India is the Supreme Law of India. The document is divided particularly demarcating the Fundamental Right, Duties and Directive Principles of State Policy. All the laws of the nation are made inconsistent with the Constitution. This Constitution was made on the basis of the Doctrine of Rule of law. The three branches of the constitution, the Judiciary, the Legislature and the Executive, work in co-ordination with each other. Thus maintain the checks and balance on towards the establishment of Rule of Law. There are several judgements of the various courts which would support the above context. The Supreme and the High Courts has time again through their judgement made very clear the point that 'No One stands above law' and that the powers given to the officials should not be used arbitrarily and capriciously.

But even in spite of this, with the changing scenario in the world it has been seen that due to certain loop holes in the existing laws or certain requirement or judgement of the Court there has been outburst of the public in general. This has led to the changes and amendments in the existing laws which make us draw the inference that the Rule of Public prevails over the Rule of Law.

## Conclusion

Thus, on the basis of the aforementioned information it can be concluded that Rule of Law has its root in the Constitution of India is the base of every Law enacted by the Legislature. Also with the advent of time it has been increasing with pace. This development is credited with the various new laws and the numerous judicial pronouncements.

The need of the hour is to keep changing the policies and Laws as per the changing situations; keeping in mind to keep alive the true essence of Rule of Law and not allowing the corrupt to interpret and make use of the law for their own benefits. Endeavours should always be to keep alive the context that 'No one stands above Law'.

## References

[https://www.business-standard.com/article/current-affairs/no-one-is-above-law-not-even-those-in-power-kerala-high-court-121122001274\\_1.html](https://www.business-standard.com/article/current-affairs/no-one-is-above-law-not-even-those-in-power-kerala-high-court-121122001274_1.html)

<https://www.lexisnexis.co.uk/blog/future-of-law/no-one-is-above-the-law-the-importance-of-advancing-the-rule-of-law>

<https://www.legalserviceindia.com/legal/article-719-rule-of-law.html#:~:text=The%20term%20'Rule%20of%20Law,even%20by%20the%20constitutional%20amendment.>

<https://blog.ipleaders.in/indian-history-rule-law-legal-principle-born-long-ago/>

