



RULE OF LAW AND STATE POLITICAL MORALITY: AN ANALYTICAL STUDY

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Abstract

The theory of "Rule of Law" is used worldwide. However, the meaning of this theory varies, depending on several factors such as geography and history etc... This article provides a brief overview of how the concept of Rule of Law is understood in the context of state political morality especially in countries like India, which is a developing nation. The research confirms that the concept, which originates from the West, is used and perceived quite differently in the India in context of state political morality. In there is conflict and contradictions between upholding the Rule of Law and adopting Ethical principles. Some of Laws or government actions might be legally permissible but ethically unjust and there is a need to balance the necessity and maintaining the rule of law and ethical standards creates a significant dilemma. Rule of law should be used as an instrument to uphold the state political morality in the present political era and not otherwise. The concept of 'Rule of law' is a building block of our modern democratic society. 'Rule of Law' considered as in today's context that it is neither a 'rule' nor a 'law' rather it is a doctrine of 'State political morality' which maintains a correct balance between the rights and powers between the individuals and the State to make it a free and civil society.

Keywords: Rule of Law, State Political Morality, India, free and civil society, Ethical principle's etc.

“It is the Rule of Law alone which hinders the Rulers from turning themselves into the Worst Gangsters.”

- Ludwig Von Mises¹

1. Introduction

The Rule of Law refers to the principle that all the individuals, including the government of any nation are accountable to the rule of law. The rule of law comprises a number of principles of a formal and procedural character addressing the way in which a community is governed. The Rule of law is one ideal in an array of values that dominates liberal Political morality: others include democracy, human rights, social justice and economic freedom. States political morality involves the ethical consideration, values and principles that guide the actions and decision of government or state. The theory of 'Rule of law' is derived from the French phrase “le principe de legalite” meaning of which is “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”.²

‘Constitutional theory cannot rest content with a narrow, formal conception of the rule of law... The formal conception directs our attention to matters of individual right and human dignity. [But] we are obliged to confront wider questions of liberty, [and] equality....in order to make concrete our commitment to the rule of law in the circumstances of particular cases.’³

2. ORIGIN OF RULE OF LAW

At the very first the doctrine of the rule of law is believed to be originated by the Greek philosophers including Aristotle, Plato, and Cicero. Plato in his book ‘Complete works of Plato’ articulated that “the collapse the state is not far where the law is made subjective to the authorities but the states where the law considered as supreme all the blessings of God falls on such state and it flourishes through all times”. The concept further developed in Ancient Rome, where the idea of "principles of law" emerged. Roman jurists such as Cicero and Ulpian articulated the notion that laws should be based on principles of justice and fairness and should restrain the arbitrary exercise of power by rulers.

In around 1215 when King John of England signed the Magna Carta of 1215, which indicates the consent of the Monarchy of England to be under the law and the law to be supreme. In the United States of America doctrine of Rule of Law was first introduced in 1776 by the Constitutional lawyer’s. They articulated that America being a free country considers Law as the king because in every country which is free law should be the king no one else. Thinkers like John Locke and Montesquieu emphasized the importance of laws as instruments of protecting

¹ Austrian-American economist; historian, logician and sociologist

² Wade and Philips - Constitutional Law (7" edition)

³ Allan, Law, Liberty, and Justice 39

individual rights and limiting governmental power. Montesquieu, in particular, advocated for the separation of powers as a safeguard against tyranny.

In the recent developing era the most famous composition of the concept of Rule of Law was given by Prof. A.V. Dicey in his book 'The Law of the Constitution'. Rule of Law consists of several basic principles which everyone including law and policy makers, judge and law enforcement agencies should consider while exercising his authority in a democratic society. This means all duties, power and functions of the government, including its organs and authorities are done accordance with law.

The rule of law gained prominence with the development of constitutional democracies and the establishment of written constitutions. The concept of Rule of Law became a foundational principle of liberal democracies, focusing on the supremacy of law over the arbitrary exercise of power and ensuring that government actions are confined by legal norms.

Various Concept's of Rule of Law

Prof. AV. Dicey's Meaning :-

A. V. Dicey propounded very famous three postulates of Rule of Law, which are –

1. There must be Supremacy of law
2. Equality before the law should be followed
3. Thirdly, there should be Predominance of Legal spirit

The first postulate in the words of Dicey, it means "the absolute supremacy or predominance of regular law as opposed to influence of arbitrary power and excludes the existence arbitrariness.... or even of wide discretionary authority on the part of the government".⁴ The second proposition of Rule of Laws states that there must be equality before law and equal subjection all classes to the ordinary law of land administered by ordinary law courts. The rule of law prohibits the need for extraordinary tribunals or special courts to deal with the cases of Government and its servants. The third principle given by Dicey states that for the prevalence of the rule of law there should be an enforcing authority and that authority he found in the court. He believed that the courts are the enforcer of the rule law and hence it should be free from impartiality and external influence. He asserted that the courts of law and not the written constitution are the ultimate protector of an individual's fundamentals.

The theory of A.V. Dicey has been criticized by many other jurists from various angles but the basic problem recognized by him is that power is derived from, and is to be exercised according to law. In substance, Dicey's proposition, on the whole, in his enunciation of rule of law is on the absence of arbitrary powers, and discretionary power, equality before law, and legal protection to basic human rights and these principles are very relevant and significant in every democratic country even today modern era.

⁴ A v. Dicey - The law of Constitution, p. 202

Prof. A. L. Goodhart –

“The essence of Rule of law is that public officers are governed by law which limits their powers. It means government under law - the supremacy of law over the government is distinct from government by law -The mere supremacy of law in society generally which would apply also to the totalitarian states.”⁵

Prof. E. C. S. Wade –

“The basic assumption of rule of law is absence of arbitrary power on the part of the government. According to him, its primary meaning is that everything must be done according to law. The secondary meaning it Rule of Law is that government should be conducted within a framework of recognized rules and principles which restrict discretionary powers”.⁶

Sir Ivor Jennings-

“He equates the Rule of Law with democracy as understood by the liberal tradition. It demands in the first place that the powers of the executive should not only be derived from the law (as Dicey said) but they should limited by law. Every political authority except perhaps Parliament is subject to considerable limitations”.⁷

There has been various criticism of the concept of rule of law. The very first is that by focusing on the procedures used to create the law, one not able to sight properly the content and consequences of those laws. The Another criticism pointed by the critical theorists, is that the theory of rule of law is merely a method by which the ruling classes can justify their rule, because they are in centre of determining which laws get passed or not (in other words, they argue that the rule of law is in reality the rule of the people’s who have the power to make or change laws). Yet another criticism focuses on the emphasis that rule of law recognized the prevention of arbitrary action, while giving legitimacy to all actions performed “according to the law”, even when most people would oppose those actions.

3. RULE OF LAW VIS-À-VIS STATE POLITICAL MORALITY

The Rule of law hitherto has been regarded largely to concern with negative ideals e.g.- protecting the individuals from arbitrary powers, but it has recently moved on to positive plane mainly because the report of International Commission of Jurists which met in 1959 at New Delhi. The report lays emphasis not only on the provision of adequate safeguard against abuse of power but also on the existence of effective government capable of maintaining law and order and of achieving such social, economic security, social welfare and education for the mass of the people.

⁵ The Rule of laws and Absolute Sovereignty, (1958) 106

⁶ Wade und Phills constitutional laws (7th ed.) pp, 74-75

⁷ The Law and the constitution (5th ed.) pp. 43-62

In the law of Lagos (1961) the Rule of law explained by the jurists, judges and lawyers following words-“The Rule of law is a dynamic concept which should be employed let only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish certain social, economic educational and cultural conditions under which the legitimate aspirations and dignity may be realized.”

The concept of rule of law, in modern age does not oppose the practice of conferring discretionary power upon the government but emphasizes on spelling out the manner of their exercise. The Rule of law is considered as component of a just and morally sound political system. Rule of law ensures that the state operates within a framework of established laws and principles promoting fairness, justice and accountability. State political morality encompasses broader ethical considerations that shape the policies, laws and actions of the government, including but not limited to Rule of Law.

‘When a citizen lives under the rule of law, it is conceivable that the duties imposed upon him or her will be very extensive and onerous... Yet, if the rule of law is a reality, the duties will have limits and the limits will not be dependent upon the will of any other person.’⁸

4. RULE OF LAW UNDER THE INDIAN CONSTITUTION

Constitution is considered to be the supreme document in India. The preamble of our Indian constitution states about the principle of rule of law because it contains the objectives of social, economic and political justice, equality of status and opportunity, and fraternity and dignity of individuals in India.

- i. **Article: 14-** This Article guarantees right to equality before law & equal protection of laws. The meaning of these words states that law is supreme and there is no scope of arbitrariness as everybody is ruled by the law.

In the case of “*Maneka Gandhi v Union of India*”⁹ The Supreme Court observed that Article 14 strikes at arbitrariness in state actions, ensure fairness and equality to all. Article 15,16,23 of the Constitution further strengthened the ideal of equality by the incorporation of protective discrimination as a means of ensuring equality among equals.

- ii. **Article: 13 -** of the Indian constitution upheld the concept of Rule of Law. The definition of laws written under Article 13 as rules, regulations, notification, byelaws, ordinances, custom and usage can be struck down if they are contradictory to the constitution of India.

⁸ N. E. Simmonds, Law as a Moral Idea (Oxford University Press 2007), 101

⁹ AIR 1978 SC 597

In “*Keshavananda Bharti v. State of Kerala*”¹⁰ The Supreme Court declared the Rule of law as the basic structure of the Constitution.

- iii. **Article: 21-** This Article states that no person shall be deprived of his life and liberty except by the procedure established by law; this article expanded by the judiciary in very vastly to upheld the basic rights of the individual and rule of law.
- iv. **Article: 19** – This article provides various freedoms to the citizens of India is again something which runs on the principles of Rule of Law and these freedom can only be prohibited on the grounds of reasonable restrictions as enumerated in the constitution itself which should be satisfied on the basis of article 14, 19 and 21 of the Constitution.
- v. **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.

In *E P. Royappa v. State of Tamil Nadu & Another*¹¹ The Supreme Court held that the state must have to justify its action of restrictions of fundamental right and it has to fulfill all the requirements provided under Article 14, 19 and 21. This case is also related to the new and dynamic concept of the right to equality principle.

5. Judicial development

Through various decisions by the apex courts the Rule of Law has been upheld and judiciary tried to strike a balance between individual rights as protected in democratic setup of this country and the interest of state as to uphold the rule of law.

A.K. Gopalan v. State¹² (Habeas Corpus case)

This case is related to the order of detention passed during emergency which 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 main issue that was before the Supreme Court to decide whether there is any rule of law in India apart from Article 21 of the Constitution. The majority bench of the supreme court in the case decided the matter in the negative while Justice Khanna in his minority judgement, gave a dissenting opinion, observed that Rule of law is accepted in all civilized society and is considered as only means of achieving the balance between individual liberty and public order.

¹⁰ AIR 1973 SC 1461

¹¹ 1974 SCR (2) 348

¹² AIR 1938 SC 27

Bachan Singh v. State of Punjab¹³

In this leading case the majority of the judges ruled that the death penalty can be imposed only when there is rarest of the rare situation while justice Bhagwati gave minority 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 in his minority judgement said that rule of law denies any room for arbitrariness and unreasonableness. To uphold the rule of law, he has suggested that the power of the parliament to make law should not be unfettered and the excesses of executive and legislative power must be checked by the independent judiciary so that the rights of the citizen can be protected.

Sambamurthy v. state of Andhra Pradesh¹⁴

In this case the Clause 5 of Article 371-D was challenged before the supreme court which states that the government with the power to modify or annul the administrative tribunal's order. Chief Justice of India PN Bhagwati in this case ruled clause 5 of Article 371-D as unconstitutional on the basis of doctrine of basic feature. He held that clause 5 is contrary to the concept of rule of law which is the basic structure of the Constitution and is thus unconstitutional. Judicial review which is one of the principle 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.

A.K. Kraipak v. Union of India¹⁵

This is related to the question whether the principle of Natural justice can be followed in administrative functions? In this leading case the Apex Court held that every instrumentalities of the state are bound by the Concept of "Rule of law" and the instrumentalities had the duty of discharging their functions in a just, fair and reasonable manner..

Indira Nehru Gandhi v. Raj Narain¹⁶

The Apex Court while declaring the 39th Amendment as unconstitutional then the Chief Justice of India Ray held that the 39th amendment is violative of the basic structure of the constitution i.e. Rule of Law. Rule of Laws is always antithesis to arbitrariness and it does not empower the parliament to pass a retrospective law validating an invalid election.

¹³ Criminal Appeal No. 273 of 1979

¹⁴ 1987 AIR 663

¹⁵ 29 April 1969

¹⁶ 1975 SCC(2) 159

Veena Sethi v. State of Bihar¹⁷

In this leading case while entering the scope of Rule of Law , hon'ble Supreme Court Stated that Rule of Law extends to poor and downtrodden, ignorant and illiterate, who constitute the majority of humanity of India.

Keshvanand Bharti v. State of Kerala¹⁸

The Supreme Court ruled that while Parliament has the power to amend the constitution, it cannot alter its basic structure, which includes principles like democracy, federalism, secularism and the Rule of Laws. This decision reinforced the supremacy of the constitution and the rule of law as essential elements of India's governance.

Vineet Narain v. Union of India¹⁹

The SC directed the CBI to act independently and autonomously in investigating - corruption cases, highlighting the importance of maintaining the rule of law and integrity of the investigative agencies.

DC Wadhwa v. State of Bihar²⁰

The Apex Court used rule of law to stop State government which was too frequently using its ordinance making power as a substitute of legislation by the legislature.

Som Raj v. State of Haryana²¹

Supreme Court held that the absence of arbitrariness is the very first postulate of rule of law upon which whole constitutional edifice is based.

Yusuf Khan v. Manohar Joshi²²

The Apex Court imposed the duty on the state to preserve and protect the laws and Constitution and that it may not permit any violent act which negate Rule of Law .

¹⁷ AIR 1983 SC 339

¹⁸ 1973 4 SCC 225

¹⁹ 1996 SCC (2) 199

²⁰ 1987 AIR 579

²¹ 1990 AIR 1176

²² WP (Civil) 673 of 1958

State of Madhya Pradesh v. Ramashankar Raghuvanshi²³

The Supreme Court secured fairness to public employment and by holding that reliance on police reports are misplaced in democratic republic.

Chief Settlement Commissioner, Punjab v. Om Prakash²⁴

In this case, Supreme Court observed “In our constitutional system, the central and most characteristic feature is the concept of rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the matter into notice.”

Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil²⁵

In this case, the ration laid down was “If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant, it is the duty of the courts to appreciate the evidence and construe the law in a manner which would sub serve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates.”

Secretary, State of Karnataka and Ors. v. Umadevi²⁶

A Constitution Bench of the Supreme Court has ruled the law in the following manner :“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.”

6. Conclusion

Rule of law is the fundamental principle of governance in any civilized democratic country. The concept of Rule of Law totally perfect but it has taken charge of administrative powers and that's the reason for principle of Rule of Law to be adopted by various countries. it is seen that there is contradictions between upholding the law and adopting ethical principles. Rule of law should be used as an instrument to uphold the state political morality . In the context of the Indian society, the concept of rule of law has not achieved the intended results. There are various examples where rule of law was upheld by the judicial institutions and ensured justice can be clearly seen in the creation of new avenues seeking remedies for human rights violations by filing of PIL pleas.

²³ 1983 AIR 374

²⁴ AIR 1969 SC 33

²⁵ AIR 1994 SC 678.

²⁶ (1992) 3 SCR 826.

The concept of 'Rule of law' is a building block of our modern democratic society. It is said that the concept of 'Rule of Law' is neither a 'rule' nor a 'law' rather it is a doctrine of 'State political morality' which maintains a correct balance between the rights and powers between the individuals and the State to make it a free and civil society.

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