

RULE OF LAW AND HUMAN RIGHTS IN INDIA

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ABSTRACT:

“The rule of law and human rights are two sides of the same principle, the freedom to live in dignity”. The rule of law denotes an expectation of non-arbitrary governance. It also invokes law distinctive characteristics: formality, institutional independence, and authority. Taken together with a basic conception of the person, the rule of law can be treated as ‘good governance consistent with human rationality or agency’ and is often associated with human dignity. The paper begins by providing introduction to rule of law and human rights in society and also it deals with origin and development of rule of law and human rights in modern society and how it is useful to people. Later, it discusses with the rule of law and human rights in India. In that we discuss about the problems faced by Indian’s (poverty, malnutrition and diseases etc..) and also the policies, programs, commission, conventions and committees which are helpful to them to protect their rights from the arbitrary powers.

INTRODUCTION:

RULE OF LAW and HUMAN RIGHTS are similar phrases. Both rule of law and human rights played important role in society. All human beings have the right to be treated with dignity and respect. Such, dignity and respect are enjoyed by all human beings and are protected by the rule of law. The rule of law is the vehicle for the promotion and protection of the common normative framework. It means protection of the live, health and dignity of person .It also provided a structure through which exercise of power is subjected to agreed rules, guaranteeing the protection of all human rights .The rule of law and the protection of human rights are necessary for a democracy to function in the society. It is because in a democracy the people are the sovereign and hence govern themselves. In democratic governance, the citizen must agree in democratic process on the rule of law. Example: Rule Of simple majority apply, means there is violation of needs of some people over others and minorities. It causes ‘Tyranny of the majority’. Government should not exercise any arbitrary power against individual rights. It is the duty of government to protect the individual rights.

MEANING, NATURE AND OBJECT:

RULE OF LAW:

That individual, person and government shall submit obey and be regulated by law, and not arbitrary action by an individual or a group of individual.¹

DEFINITION:

According to **garner**², is often used simply to describe the state of affairs in a country where, in main, the law is observed and order is kept. It is an expression synonymous with “law and order”.

¹www.duhaime.org>legal dictionary on 24.02.2018 (1.30 pm).

Rule of law play important role in administration .Rule of law derived from the French word “la principe de legalite”. It means a government based on the principle of law.³ “The rule of law is the principle of that law should govern a nation, as opposed to being governed by decision 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”.

The main object of rule of law is to maintain law and order,by equally apply law to every person irrespective of their status or rank in the society⁴. It compels individual to bind with law and order. It protects the individual rights without arbitrariness the government should exercise their power and also limiting the powers of government.

HUMAN RIGHTS:

Fundamental rights, especially those believed to belong to an individual and in whose exercise a government may not interfere as the right to speak, associate, work etc⁵..

DEFINITION:

❖ **Lord Bingham**(former senior law lord), The Rule of law,2010:

The rule of law requires that the law affords adequate protection of fundamental rights. It is a good start for public authorities to observe the letter of the law, but not enough if the law within a particular country does not protect what are their regarded as the basic entitlements of the human rights.

❖ **Human Rights Act, 1993:**

Section 2(d) ‘Human Rights’means the rights relating to life, liberty, equality ,and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.

Human rights is relating to human.Nature of human rights is different .It belong with the being. It is inseparable with human being. It does not require any state recognition, any legitimacy from the state and any enforcement⁶. It is universal to all human being and also its one of the basic needs for human beings. All human beings enjoys they rights without any discrimination of rights. The main duty of state is to protect the rights of human beings. One important implication of these characteristic is that human rights must themselves be protect by the rule of law⁷.

The main object of human right is to protect and promote the individual rights like life, liberty, and dignity etc... Government should protect human rights and also punish for infringement of law⁸.

In both rule of law and human rights are concentrating on individual rights. The government should protect those rights without arbitrary powers and also duty of the government is to protect individual from infringements by other individuals. The right to life that means the government must strive to protect people against homicide by their fellow human beings⁹.

² Dr. KailashRai- Administrative law; 9th edition reprint on 2015;pg.31.

³ Dr. KailashRai- Administrative Law; 9th edition reprint on 2015;pg.30.

⁴ C. K. Takwain,5th edition 2012; pg.20.

⁵ [www.dictionary.com>browse>humanrights](http://www.dictionary.com/browse/humanrights) on 24.02.2018 (1.30pm).

⁶ <http://www.illsindia.com>>2015/11/12.

⁷ www.abysinnialaw.com/studyon-line/item/942-naturallawanddefinitionofhumanrights on 22.02.2018 (10.30pm).

⁸ <http://www.illsindia.com>>2015/11/12.

⁹ Refer in Dr. U. Chandra (human rights) and Pandey (constitution of law).

ORIGIN AND DEVELOPMENT:**RULE OF LAW:**

The concept of rule of law is very old. In the 13th century Bracton, a judge in the reign of Henry III in a way introduced the concept of rule of law without naming it as rule of law. He wrote: "The king himself ought to be subject to god and the law, because law makes him king".

Edward Coke is said to be the originator of concept of rule of law .When he said that the "king must be under god and law" and thus vindicated the supremacy of law over the pretensions of the executives¹⁰. In India, the concept of rule of law can be traced back to the Upanishad. It provides that law is the king of kings¹¹. By its power the weak shall prevail over the strong and justice shall triumph¹². Later it was developed by Prof. A.V .Dicey who in his classic book "The Law and the Constitution" Published in the year 1885. He attributed the following three meaning to the rule of law:

1. **Supremacy of law:** no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land .According to dicey wherever their discretion ,there is room for arbitrariness¹³.
2. **Equality before law:** So dicey held that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction the ordinary tribunals¹⁴.
3. **Predominance of legal spirit or judge –made constitution:** Individual liberty is mention like protection of life and personal liberty, right to freedom... and courts are there to protect individual liberty etcare provided by the written constitution of a country .But this principle is not applicable in India as in India we consider the constitution to be the basic ground work of law from which all other laws are derived¹⁵.

Rule of law is dynamic concept but it is somewhat difficult to define. Every person has its own way of defining the rule of law like supremacy of law or clarity, stability, universality etc... All these reason are to exist the rule of law. It is for the protection of human rights.Rule of law was not accepted totally in modern concept. It was developed by the International Commission of Jurists know as Delhi Declaration,1959 which was later confirmed at logos in 1961. According to this formulation-"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 up held. This dignity requires not only the recognition of certain civil and political rights but also creation of certain political, social, economical, educational and cultural which are essential to full development of his personality"¹⁶. Likewise **Wade and Phillips**¹⁷explains rule of law as

- 1) Absence of arbitrary.
- 2) Defining the manner of exercise of discretionary powers.
- 3) Jurisdiction of ordinary law and courts to all citizens.
- 4) Impartial and independent tribunals to decide private rights.

¹⁰ C.K. Takwani-Administrative Law; 5th edition 2012, pg.20.

¹¹ Educoncours.com>2017/10/08 rule of law in India on 24.02.2018 (1.45pm).

¹² www.lawteacher.net/free-law-essay/administrative-law/originandconceptofruleoflaw/administrative-law-essay.php.on.24.02.2018 (1.45pm).

¹³ Dr. KailashRai-Administrative Law; 9th edition reprint on 2015; pg.31-33.

¹⁴ C. K. Takwani-Administrative Law;5th edition 2012,pg.20-22.

¹⁵ C. K. Takwani-Administrative Law;5th edition 2012,pg.20-22.

¹⁶ www.lawteacher.net on 24.02.2018 (1.45pm).

¹⁷ Dr. KailashRai- Administrative Law;9th edition reprint on 2015,pg.33.

5) Safeguarding of private fundamental rights by ordinary law.

HUMAN RIGHTS:

Human rights are older than states. History of human rights can be traced back to man itself. When there was no state, natural law etc..there was human rights. History of human rights starts with the history man itself. Different names were given to human rights. It is inherent rights has the child from the womb of the mother acquires it. First human right is proprietary right. Proprietary right was latterly called as easement right which was legally recognized rights. The law of trust emerged as universal law. Afterthat natural law emerged¹⁸. In this era natural law is known as human right. Therewere social contract theories propounded by Thomas Hobbes, John Locke, and J.J.Rousseau in the period of renaissance. The theory was developed called leviathan. The reserved rights became fundamental rights in the modern period which was called human rights of first generation. In first stage it was known as easement rights. In the second stage it was called civil and political rights. It is called human rights which continued till industrial revolution. It developed according to the state. The mid 19th century led to the right of workers. International labor organization(1850-1925) was not made by any authority but by labor organization. Nature of human right changed with industrial revolution. Due to this era it was consider as social right. Human rights changed with Russian revolution 1916. Outcome of this, first constitution was made USSR in 1916. It concentrated in social and economic rights in its constitution itself. This led to dawn of second generation of human rights. Afterthat large new groups emerged demanding different rights. In later half of 20th century led to the recognition of rights of group more than rights of individual. First generation limited the individual rights. Lastly, human rights of third generation concerned with rights of groups less concerned with individual rights. World War II led to drastic effect to human rights. There was total destruction. It is necessary and compulsive to state to change from laissez-faire to welfare state. It felt necessary for the uniform standard of human rights that led to the declaration of Universal Declaration of Human Right (UDHR), 1948. The situation demanded the universalization of human rights. Thereafter almost fifty countries became independent within ten years. Most of the countries drafted own constitution and the fundamental rights were there.

Due to the development of a society the individual rights are also developed and also protected by the government. These basic rights are applicable to all persons in the society without any discrimination and inequality.

RULE OF LAW AND HUMAN RIGHTS IN INDIA:

The rule of law and human rights are two sides of the same principle. It means the freedom to live in dignity. The Indian parliament has also defined human rights in THE PROTECTION OF HUMAN RIGHTS ACT, 1993, as: the rights relating to life, liberty, equality and dignity of the individual guaranteed by constitution embodied in the International Covenants which could be relevant for the purpose would be the UDHR which has proclaimed by the UN in 1948¹⁹. The declaration consists of a preamble and thirty articles, setting forth the human rights and fundamental freedom to which all men and women, everywhere in the world, are entitled,

¹⁸www.lawteacher.net on 24.02.2018 (1.45pm).

¹⁹www.liveindia.in/the-rule-of-law-and-human-rights-in-india/on-24.02.2018 (10.30pm).

without any discrimination. The relevance of the Articles of UDHR and the concept of Rule of Law are as follows:

- **Article 1** itself sum up the basic doctrine on which human rights are founded, namely: all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The declaration includes various civil and political rights, which we find enshrined in part III of our constitution which was adopted the year after the universal declaration (the constitution of India was adopted by the constitution assembly on 26th November 1949). However, in addition to these basic civil and political rights, it has also incorporated in part IV of the constitution what are generally viewed as ‘socio-economic rights’. For instance, it is expressed stated in;

- **Article 23** of the declaration that “ everyone , without any discrimination has the right to equal pay for equal work ; everyone who work as the right to just and favorable remuneration ensuring for himself and his family and existence worth of human dignity and supplemented, if necessary, by other means of social protection”. Again,

- **Article 25** of the declaration states that “everyone has the right to standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social service, and the right to security in the event of unemployment, sickness, disability, old age”. Under

- **Article 26** “everyone has the right to education shall be free, at least in the elementary and fundamental stages”. And finally ,

- **Article 8** of the declaration speaks of “access to justice for enforcement of these fundamental rights”. Many of these socio-economic right found in the universal declaration and also in part IV of our constitution which, in terms of,

- **Article 37** of the constitution, as stated- “are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws”. However, if one were to dispassionately consider the ground reality, one would find a very different and stark picture²⁰.

Even though 63 years have elapsed since the adoption of the constitution, we are faced with the grim reality of over 30% of the population of this country being subjected to dry poverty. India is crippled, in my point of view, by staggering poverty, which results in grave hunger, malnutrition and disease. While the rule of law may have come to be accepted as part of the basic structure of our constitutional system, to my mind, it is difficult to argue that the rule of law is a core value so long as millions of Indians are not free from want. Poverty in India constitutes, at the most fundamental level, a denial of rule of law. The reality is that the constitution’s promise of equality rings hollow for an unconscionably large section of Indian society even today²¹. What it means in real terms is that no less than 410 million Indians or about cannot afford two square meals a day that meet minimal nutritional needs, According to a new ‘multi-dimensional’ poverty index developed by United Nations Development Program .acute poverty in eight Indian states(400 million, including Bihar, Jharkhand, Madhya Pradesh ,Orissa , Rajasthan, Uttar Pradesh and West Bengal) together account for more poor people than in the 26 poorest African nations combined (410 million, including war-ravaged Somalia and Sierra Leone). Today, India is so proud of its vibrant democracy, its strong secular tradition and independent judiciary which breathed life into the promise of the constitution. And also it is difficult to deal with in prospect statistics on poverty, hunger, death, nutrition and health care etc... Whether India’s constitutional guarantees for these deprivations of

²⁰<http://www.linkedin.com/pulse/rule-law-human-rights-india/on-24.02.2018> (10.30pm).

²¹www.liveindia.in on 24.02.2018 (10.30pm).

basic need? But human rights provided guarantees for basic needs. Example: violation of personal liberty without authority of law. But last 6 decades the state was failed to eradicate the poverty which is more than a third of the population of this country to suffer, and to ensure that all its citizens are extended the minimum benefits of nutritious food and basic health care, is the single most important violation of human rights of our citizens. For instance, The Protection of Human Rights Act, 1993 was enacted by parliament to meet the national as well as international demand for the constitution of the National Human Rights Commission, State Human Rights Commission in the state and Human Rights Courts for a holistic protection of human rights. In addition to these DPSP also there to protecting and promoting human rights. Example:

1) **Mahatma Gandhi National Rural Employment Guarantee Act, 2006**, which guarantees a minimum employment of 100 days each year to eligible adults²², and

2) **The Right to Education Act, 2009**, which guarantees the right to education to all children between the ages of 6 and 14²³.

The SC of India has, through its various pronouncements, enhanced the coverage of the various rights guaranteed by the constitution. It was Justice P.N. Bhagwati, who, in

FRANCIS'S CORALIE'S CASE²⁴, declared that the “the right to life is not a mere right to life under **Article 21** and cannot be restricted to mere animal existence”. It means right to life includes the right to live with human dignity and also with basic necessity of life such as clothing, nutrition, shelter, education, health care and mingling with fellow human being...there is implicit in **Article 21** the right to protection against torture or cruel, inhuman which is enunciated in **Article 5 of UDHR** and guaranteed by a **Article 7 of ICCPR**. The court has forged remedies and brought about dramatic and far-reaching changes. For instance in SC rules in;

MANEKA GANDHI V. UNION OF INDIA²⁵ that **the right to life under Article 21 of the constitution** cannot be suspended even in an emergency.

HUSSAINARA KHATOON V. STATE OF BIHAR²⁶, the court state that: 2...the government in a social welfare state must set up rescue and welfare homes for the purpose of taking care of women and child who have nowhere else to go and who are otherwise uncared for by the society. It is the duty of government to protect women and children who are homeless or destitute... we direct that all women and children who are in jails in the state of Bihar under “protective custody” or who are in jails because their presence is required for giving evidence or who are victims of offence should be released and taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after.8...we, therefore, direct the government of Bihar to inquire into these cases and where it is found that the investigation has been going on for a period of more than six months without satisfying the magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary, the government of Bihar will release the undertrial prisoners, unless the necessary orders of the magistrate are obtained within a period of one month from today.

²² <https://www.linkedin.com> on 24.02.2018 (10.30pm).

²³ <https://www.linkedin.com> on 24.02.2018 (10.30pm).

²⁴ Francis Coralie v. Union Of India, 1981 AIR 746, 1981 SCR (2) 516.

²⁵ 1978 AIR 597, 1978 SCR (2) 621.

²⁶ (1980) 1 SCC 108.

BANDHU MUKTI MORCHA V.UNION OF INDIA²⁷; recognized the **right to live** a free life and have voluntary employment.

SUNIL BATRA (I) V.DELHI ADMINISTRATION²⁸; recognized the **right against the prison atrocities**.

UNNIKRISHNAN V.STATE OF ANDHRA PRADESH AND OTHERS²⁹; incorporated the **right to education** 6-14 year age group children.

HASKOT V.STATE OF MAHARASHTRA³⁰; recognized the **right to speedy trial**.

NILABATI BOHRA CASE³¹; gave right to saint custodial death new contours turning this **human rights into fundamental rights** in expanded **Article 21**.

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS V.UNION OF INDIA³²; but apart altogether from the requirement of convention 59, we have article 24 of the constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine engaged in any other hazardous employment. Due to this constitutional prohibition, no child below the age of 14 years can be allowed to be engaged in constitution work. There can therefore be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the employment of children act, 1938, no child below the age of 14 years can be employed in construction work and union of India as also state government must ensure that this constitutional mandate is not violated in any part of country.

VINCENT PANIKUNANGARA V.UNION OF INDIA³³; court observed a healthy body is the very foundation for all human activities. That is why the adage “SariramdyamKhaludharmaSadhanam”. In a welfare state, therefore, it's the obligation of the state to ensure the creation and the sustaining of condition congenial to good health.

STATE OF PUNJAB V.MOHINDERSINGH CHAWLA³⁴; the court held that: it is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. The problem is, for all its talk of pro-poor policies, the Indian government's overall expenditure on health until the financial year 2000-2001 did not even amount to 1% of total GDP. Public expenditure on health for the current financial year 2009-2010 is expected to be a measly 1.45%, according to figures published by Government of India's Ministry of Health and Family Welfare. According to a study published by the World Health Organization, aggregated government expenditure on health by all central government departments (health, defense, labor,etc...) state departments, local bodies and public enterprises amounted to 1.3% of India's GDP for each of the years from 1999-2002. As the statistics quoted above will show, the goal of securing health for the poor is riddled the challenges at multilevels: a lack of prioritization of the health sector vis-à-vis other

²⁷ 1997,10 SCC 549.

²⁸ 1980 AIR 1579, 1980 SCR (2) 557.

²⁹ 1993 AIR 2178, 1993 SCR (1) 595.

³⁰ 1978 AIR 1548, 1979 SCR (1) 192.

³¹ 1993 AIR 1960, 1993 SCR (2) 581.

³²(1982) 3 SCC 235.

³³ (1987) 2 SCC 165.

³⁴ (1997) 2 SCC 83, see also Shantistar Builders v. NarayanaKhimalaTotame, (1990) 1 SCC 520; Mohini Jain (miss) v. State of Karnataka, (1992) 3 SCC 666.

sector which receive a great share of public expenditure, a consequent paucity of resources, and finally, challenges stemming from faulty implementation, including leakages and other inefficiencies. These are ultimately large policies questions within the domain of the legislature and the executive. At the same time, over the course of the last few years, orders of the SC in the “right to food” case have had some bearing on the right to health in the context of the governments social security program.

CONCLUSION:

India’s constitution is celebrated the world over as an expression of progressive, liberal ideals symbolizing the hopes and aspiration of its founding father for a pluralistic society founded on value of democracy, secularism, equality, and liberty. The SC has, in great measure, fulfilled its role as a vanguard of the constitution, not only preserving and protecting the rights of individuals against arbitrary state action, but also asserting the rights of the vulnerable and weak in the face of glaring state in action. The central government cannot close its eyes to large scale fraud in the public distributionsystem taking the narrow constitutional position that implementation is each state’s responsibility. A shocking 58% of India’s subsidized food grains had not reached BPL families and also 410 million Indian’s who go to bed without a square meal a day. For so long as there are Indians who lives in poverty and in want, the constitution’s promise of rule of law is benefit of meaning, and human right of vast population is reduced non-existent. Long year ago, one of India’s greatest statesmen, PanditJawaharlal Nehru, remarked in his new legendary tryst with destiny speech, that the service of India means the ending of poverty and ignorance and disease and inequality of opportunity.

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