



RULE OF LAW: A DETAILED ANALYSIS

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ABSTRACT

Administrative law is a separate branch of law and a subject for academic study but since last few decades, it has gained full stature as a 'responsible' field of study for the law students and practitioners. So, to recognize its independent existence, the people of England used the weapon of Dicey's Concept of Rule of Law to strike the growth of administrative law. The concept of 'Rule of Law' is a building block of our modern democratic society. This term is nowhere defined in the Indian Constitution but has been often used by the Indian Judiciary in their judgments. '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 between the individuals and the state to make it a free and civil society. It is a result of struggle made by people since centuries for recognition of their inherent rights. The main objective of this paper is to give a detailed analysis of 'Rule of Law' namely its origin, features, position in U.S Constitution, position in Indian Constitution, basic principles and its exceptions. Thus, at last in the paper, conclusion has been provided. In the process of making this research paper, several journals, books and articles were referred and taken into consideration. Internet has also been a support in this process. Hence, this paper is a result of Doctrinal Research Methodology.

Keywords- rule, law, state political morality, correct balance, rights, powers

"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*

Introduction

Administrative law is a separate branch of law and a subject for academic study but since last few decades, it has gained full stature as a “responsible” field of study for the law students and practitioners. So, to recognize its independent existence, the people of England used the weapon of Dicey’s Concept of Rule of Law to strike the growth of administrative law. ‘Rule of Law’ is a new ‘lingua franca’ of global moral thought and the Supreme manifestation of human civilization and culture. Thus, Rule of Law adds eternal value to the Constitution and an inherent attribute for democracy and good governance. This concept is an animation of natural law and remains a historical idea which makes a powerful appeal not by a powerful man but by the Rule of Law. So, it can be well quoted by Lal Bahadur Shastri that-

“The Rule of Law ought to be respected with the goal that the basic structure of our democracy is maintained and further reinforced”.

Meaning and Concept of ‘Rule of Law’

The concept of ‘Rule of Law’ is a building block of our modern democratic society. This term is nowhere defined in the Indian Constitution but has been often used by the Indian Judiciary in their judgments. ‘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 between the individuals and the state to make it a free and civil society. The ‘correct balance’ is made by ‘law’ which is based on freedom, justice, equality and accountability. Thus, Rule of Law makes equilibrium between the needs of society and the individual.

The Principle of Rule of Law is derived from the French phrase “*la principe de legalite*” which means a Government based on the principles of law. Edward Coke is said to be the originator of the Concept of Rule of Law. He said that the King must be under God and Law. Edward Coke had three major points regarding ‘Rule of Law’. Firstly, Rule of Law is required to ensure that there is no authoritarian rule of the crown; Secondly, it ensures that there is no arbitrary authority of the Government; and lastly, it is required for the protection of Individuals and their Rights.

Objects based on Edward Coke’s Theory of “Rule of Law” are-

1. To restrict Government from authoritarian rule.
2. To exclude arbitrary authority of Government.
3. Equal application of laws and orders irrespective of status/rank etc.
4. To do things in legally right way.
5. Protection of Individuals and their Rights.
6. Law is Supreme
7. Administrative actions can be questioned by law.

The Rule of Law is a viable and dynamic concept like many other such concepts, is not capable of any exact definition. The term Rule of Law is used in contradistinction to Rule of Men and Rule according to law. Rule of law means that the law rules, which is based on the Principles of Freedom, Equality, Non-discrimination, Fraternity, Accountability and Non-arbitrariness and it is certain, regular and predictable. Generally, Rule of Law is used in two senses, i.e. in Formatic Sense and Ideological Sense. Formatic Sense refers to the organized power as opposed to a rule by one man and Ideological Sense refers to the regulation of the relationship of the citizens and the Government. Thus-

“Rule of Law is the most important element in any civil society”

It's Origin

Rule of Law is a result of struggle made by people since centuries for recognition of their inherent rights. The concept is very ancient and old and was discussed by the Greek philosophers Aristotle and Plato at the time of 350 BC. The concept transformed the notions of the society and changed the perception and interpretation of rule of law by many authors. Plato defined Rule of Law by stating that ‘it is supreme in nature and nobody is above the law’. According to Aristotle ‘law should be the final sovereign of the State’. The German Customary law proposed the principle that the King is always under the law and it is the independent source of rule of law in the medieval period. According to John Locke, the government acts in accordance with the law.

Features of Rule of Law

1. The principle of Rule of Law is upheld when the authorities while exercising their powers are not allowed to act according to their whims and fancies.
2. Under the principle of Rule of Law, no person can be punished or made to suffer, unless and until he has committed the breach of law.
3. According to Rule of Law, everyone is equal before the law, i.e. law cannot be based on a class of persons.
4. Rule of Law is essential bedrock of most of the democracies as it is universal in its application and also it has been the part and parcel of most of the legal systems in the world.
5. According to the principle of Rule of Law, a person can be punished only if he is charged of committing a crime and that charge is proved by an independent tribunal like that of a court.

Dicey's Concept on 'Rule of Law'

Albert Venn Dicey (a British jurist and constitutional theorist) developed the Concept of Rule of Law in his book ‘The Law of the Constitution’ (1885). He states that one should know the difference between administrative law and the Rule of Law. According to him, Rule of Law is equal for everyone whether he is a Prime Minister or a normal bank clerk working in an office. Thus, same laws should be made applicable to everyone, no discrimination should be done under the rule of law and rule of law is supreme in nature. A.V Dicey propounded three postulates of Rule of Law, which are-

1. Supremacy of Law
2. Equality before the law
3. Predominance of a legal spirit

1. *Supremacy of Law*

The first postulate of AV Dicey states that Rule of Law refers to the lacking of arbitrariness or wide discretion of power. In other words, every man should be governed by law. Law is indisputably the incomparable and dominating instead of impact to influence of arbitrary power and discretionary power. A person can be punished of the rules of law and by nothing else.

2. *Equality before the law*

The second postulate of Rule of Law states that there must be equality before law and equal subjection of all classes to the ordinary law of land administered by ordinary law courts. Thus, it implies absence of special privileges for a government official or any other person. It states that there is no need for extraordinary tribunals or special courts to deal with the cases of Government and its servants.

3. *Predominance of Legal Spirit*

The third postulate of Rule of Law states that the Rights such as Right to Personal Liberty, Freedom from arbitrary arrest etc are the result of judicial decisions in England. And the Constitution of England is the result of ordinary law of the land and the individual rights are established by judicial decisions. The courts are the guarantors of the liberty.

Merits and Demerits of Dicey's Concept

Merits

1. The theory developed by A.V. Dicey helped in making limits to the power of administrative authorities.
2. Dicey's theory of Rule of Law played a major role in growth and recognition of administrative law.
3. The theory acts as a scale for the test of administrative action.

Demerits

1. Dicey's theory of Rule of Law was not completely accepted during that era also.
2. Dicey, through his theory, failed to distinguish between discretionary and arbitrary power.
3. Dicey dealt with the right of individual only and ignored powers of administration.

Rule of Law in U.S Constitution

America adopted the concept of Rule of Law from medieval England, which was expressed as "A government of laws, not of men". The federal Constitution of 1787 changed the concept of constitutional government and introduced the "Principle of Constitutional Supremacy". According to Article VI of the American Constitution, "Constitution should be the supreme law of the land". It can be observed from the famous case of Marbury v

Madison¹ that the American Constitution and the power of judicial review are the extensions of rule of law. In this case, the Justice Marshall held that an act of Congress contrary to the Constitution was not regarded as a law. The major essentials of the American Constitution are Federalism, Separation of Powers and Rule of Law. They are also referred as the heart of the American Constitution as they contribute to achieve liberty, equality, order and justice. There are mainly three basic principles of the American Constitution.

1. The American Constitution requires its government to be politically responsible to both the state and the people who are governed by it.
2. The American Constitution believes that the legitimate expectation is the one which originates with people and controlled by the people and the same principle is described in the Preamble which states that the Constitution is established by the people and not by the government.
3. Political supremacy and identification of all laws with the legislature are hostile to the American Constitution as it declares it be the supreme law of law.

Rule of Law in Indian Constitution

The principle of Rule of Law has played a major role in developing Indian Democracy. At the time of framing of Constitution, the framers adopted some of the provisions from USA and some of the provisions from USA and some of the provisions from England. Our constitutional fathers adopted the concept of Rule of Law from England and many of its provisions are incorporated in the Indian Constitution. In India, the Constitution is considered to be supreme and no one is above it. The Preamble of Indian Constitution clearly sets out the Principles of Rule of Law in Part III of the Constitution. The Indian Constitution is supreme than the three wings of it, i.e. Parliament, Executive and Judiciary. It is enriched with justice, equality and liberty. Article 14 of the Constitution provides Equality before Law and Equal Protection of Law. Fundamental Rights are available to every citizen of India through Articles 13, 14, 15, 19, 21, 22, 25, 28 and 31A. In case an individual faces violation of such rights then he can approach Supreme Court or High Court under Article 32 and 226 of the Constitution of India. It is compulsory that any law made by the Central Government or State Government should be complied in accordance with the Constitution of India but if found contravening with the provisions of the Constitution then such law will be declared void. According to Article 32 of the Constitution, the Supreme Court has the power to issue writs namely Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. Thus, the power of judicial review also comes in the hands of Supreme Court in order to preserve Rule of Law and to prevent any ultra vires laws.

¹ 5 US (1 Cranch) 137 (1803)

Basic Principles on Rule of Law

There are certain basic principles of law. They are-

1. Law is supreme, above everything and everyone. Nobody is above law.
2. All things should be done according to law and not according to whims and fancies.
3. No person should be made to suffer except for a distinct breach of law.
4. Absence of arbitrary power being heart and soul of Rule of Law.
5. Equality before law and Equal Protection of Law.
6. Discretionary powers should be exercised within reasonable limits set by law.
7. Adequate safeguard against executive abuse of powers.
8. Independent and Impartial Judiciary.
9. Fair and Just Procedure.
10. Speedy Trial.

Landmark Cases

In the famous case of Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr², the court propounded the principle of basic structure and held that any part of the Constitution can be amended without modifying the basic structure of it.

In the case of Indira Nehru Gandhi v Raj Narain³, the court decided that the 'Rule of Law' is also a part of the basic structure of the Constitution and hence, it cannot be amended.

In the case of State of Bihar v Sonawati Kumari⁴, the court held that as per the concept of 'Rule of Law', all the authorities operating within the State including executive government is bound to obey the rules.

In the case of Bachan Singh v State of Punjab⁵, the five bench judges comprising of Justice Y Chandrachud, Justice A Gupta, Justice N Untwalia, Justice P Bhagwati and Justice R Sarkaria, held that the concept of Rule of Law is free from arbitrary action and if any action is done with arbitrary power then it will be considered as the denial of Rule of Law. This case is also known as "Death Penalty Case".

In the case of Som Raj v State of Haryana⁶, the three bench judge of Supreme Court comprising of Justice K Puttaswamy, Justice Raghunath Mishra and Justice M.M Punchhi, held that the absence of arbitrary power is the absolute aim of the principle of rule of law upon which directly the whole Constitution is dependent.

² (1973) 4 SCC 225

³ 1975 AIR 865

⁴ 1961 AIR 221

⁵ AIR 1980 SC 898

⁶ 1990 AIR 1176

In the case of ADM Jabalpur v Shivkant Shukla⁷, popularly known as the Habeas Corpus Case, is one of the most important cases of rule of law. In this case a question rose before the court whether Rule of Law in India is apart from Article 21 of the Indian Constitution. Thus, the five judge bench comprising of Justice A.N Ray, Justice Hans Raj Khanna, Justice M Hameedullah, Justice Y.V Chandrachud and Justice P.N Bhagwati held that there is no rule apart from Article 21 and there can never be a separate rule of law.

The Supreme Court extended the scope of Rule of Law in the case of Veena Seth v State of Bihar⁸, where the court stated that Rule of Law extends to the poor and the downtrodden, ignorant and the illiterate, who constitute the majority of humanity in India. The court ruled that the Rule of Law does not exist merely for those who have the means to fight for their rights and often do so for the perpetuation of the status quo which protects and preserves their dominance and permits them to exploit a large section of the community.

In the case of Union of India v Raghubir Singh⁹, the court held that the principle of 'Rule of Law' is a considerable degree which governs the lives of the people and regulates the functions of the state from the decision of the superior courts.

In the case of Chief Settlement Commissioner Punjab v Om Prakash & Ors¹⁰, the Supreme Court observed that in the present scenario, the authority of the law courts is to test the administrative actions by the standard of legality.

The Supreme Court in the case of S.G. Jaisinghani v Union of India and Others¹¹, characterized the prerequisites of rule of law in a very lucid manner. Here the court observed that the Rule of Law means that decisions should be made by the application of known principles and such decision should be predictable and the citizen should know where he is. But if a decision is made without referring to any principle then it is unpredictable and such decision is the antithesis of a decision taken in accordance with the Rule of Law.

In the case of Supreme Court Advocates on Record Association v Union of India¹², also known as the "Second Judges Case", the Supreme Court held that the absence of arbitrariness is one of the important concepts of rule of law.

The Constitution Bench of the court in the case of Secretary, State of Karnataka and Ors v Umadevi and Ors¹³, stated that "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 maintaining and infringement of article 14 in requesting the ignoring of the need to agree to the necessity of article 14 read with article 16 of the constitution".

⁷ 1976 AIR 1207

⁸ AIR 1983 SC 339

⁹ 1989 AIR 1933

¹⁰ 1969 AIR 33

¹¹ 1967 AIR 1427

¹² AIR 1994 SC 268

¹³ AIR 2006 SC 1806

Exceptions to 'Rule of Law'

Besides its features, there are some exceptions attached to Rule of Law, they are-

1. President and Governors are provided with some immunity through Articles 361, 361 (2), 361 (3) and 361 (4) of the Indian Constitution.
2. Immunity to Foreign Diplomats.
3. Immunity to Supreme Court and High Court Judges including Article 121 of the Indian Constitution which restricts the discussion on the conduct of such judges in Parliament.
4. Few laws of land namely maintenance of Internal Security Act (MISA) and National Security Act, 1980 (NSA).

'Rule of Law' in Modern Sense

In today's scenario, the Dicey's concept of Rule of Law is not accepted in totality. The modern concept of the Rule of Law is fairly wide and therefore it sets up an ideal for any Government to achieve. The modern idea of Rule of Law was formed by the International Commission of Jurists, otherwise called the Delhi Declaration, 1959, which was later affirmed at Lagos in 1961. According to the Modern Concept, the 'Rule of Law' implies that "the functions of the government in a free society should be so exercised in which the dignity of a man as an individual is upheld". The International Commission of Jurists divided itself into certain working committees, namely, Committee on Individual Liberty and the Rule of Law, Committee on Government and Rule of Law, Committee on Criminal Administration and Rule of Law, and Committee on Judicial Process and Rule of Law. The Committee on Individual Liberty and Rule of Law stated that the State should not pass discriminatory laws, the State should not interfere with religious beliefs, and the State should not place undue restrictions on freedom. The Committee on Government and Rule of Law stated that 'Rule of Law' not only means adequate safeguards against abuse of power but also effect government which is capable of maintaining law and order. The Committee on Criminal Administration and Rule of Law stated that 'Rule of Law' means Due Criminal Process, No arrest without the authority of law, Legal aid, Public trial and fair hearing and Presumption of Innocence. Lastly, the Committee on Judicial Process and Rule of Law stated that 'Rule of Law' means Independent Judiciary, Independent Legal Profession and standard of Professional ethics.

According to Federalist Kim Davis, there are seven types of Modern Law; namely, Law and Orders, Principle of Natural Law, Fixed Rules and Regulations eliminate the idea discretion, due and fair process of law, Preferences for judges and Court of Law to executive authority and administrative tribunals, and judicial review of administrative action.

Thus, the rule of law in modern sense ensures that there is encouragement of political interest and where the criticism of the government is not only permitted but also given a positive merit.

Conclusion

The idea of Rule of Law was not totally perfect but it has taken charge of administrative powers and understated them with their measures and that's the reason for the principle of Rule of Law to be adopted by various countries as the watchdog of the Constitution. It is the best tool to achieve the Supremacy of law. Even efforts have been taken by the court to link the concept of Rule of Law with Human Rights. The modern concept proposed by David provides a broad concept as well as it makes it possible for the government to use it in a graceful manner as the main task of the administrative law is to fulfill the gap between power and liberty. Thus, the government under the guideline of Rule of Law makes rules and conditions which do not intercept with any individual dignity. So, it can be concluded that-

“Genuine freedom requires the rule of law and justice and a legal framework in which the rights of some are not made sure about by the denial of rights to other people”.

