



RULE OF LAW IN INDIAN CONSTITUTION-A CRITICAL LEGAL ANALYSIS

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Abstract

According to the idea of the rule of law, no one is above the law and everyone is subject to its authority, regardless of their position or rank. It is a translation of the French word "la principe de legalite," which indicates that laws, not people, should dominate. The phrase has been understood differently by people in various nations. The phrase "rule of law" hasn't been defined in detail, although it is based on A.V. Dicey's definition. Rule of law is not referenced in the Indian constitution anywhere, but the SC has assertively ruled in a number of instances that it is an essential component of the text. The whole Indian Constitution upholds the rule of law. India's status as a sovereign state is made abundantly clear in the preamble and declaration. For many years, our court has employed judicial activism to broaden the scope of the law's applicability by enforcing several constitutional provisions. Despite the courts and the constitution's founders' extensive attempts, the Rule of Law doctrine has not been completely applied in India. Effective law enforcement is hampered by two issues: outdated legislation and overburdened courts. As a result, in order to guarantee that the Rule of Law is properly implemented, the relevant authorities—including the legislature, the legal system, and numerous agencies—must take the appropriate steps.

Key Words: Supremacy, Sovereign, Judicial Activism, Legislation, Predominance.

Introduction

India gained independence in 1947, but it almost took another two years for the constituent assembly to complete the constitution. A number of factors, including the adoption of fundamental rights into the constitution, the guarantee of equality for all Indians regardless of caste or religion, the rule of law, and a democratic nation with the univers adult franchise, contributed significantly to the adoption of the constitution and the republic's establishment. The phrase "rule of law" is not used once in the constitution, yet it is present in several laws and rulings.

Upendra Baxi points out,

The Indian Rule of Law, according to this normative conception, "*stands here not just as a sword against state domination and violation and historic and society norms and practises, but also as a shield empowering an encyclopaedic regime of 'progressive' state intervention in the life of civil society.*"

Research Issue

1. Is there a distinct meaning for the term "rule of law"?
2. How was the Rule of Law acknowledged and applied by the SC?
3. How can the three branches of government—the legislature, executive

Objective of the Study

1. Research the concept of the rule of law, including its definition, makeup, and application.
2. To examine the Rule of law's application.
3. To determine if the judiciary, executive branch, and legislature are improving the rule of law.

The rule of law is a philosophy that applies in all eras and has distinctive qualities. It was practised in ancient, medieval, and contemporary periods.

Rule of law refers to the sovereign governing the people in such a way that there are little repercussions if they become dictators. Thus, the monarch must uphold the law.

As a result, there are two components to the rule of law:

- a) The law should always be the foundation of a ruler's decisions.
- b) The law ought to support every subject's activity.

Until these two objectives are met, the rule of law is not created.

In 3050 BC, the Greek philosophers Aristotle and Plato examined the concept of the rule of law. The Rule of law first originated after the establishment of the first republic in Ancient Rome, and it was later popularised by numerous mediaeval intellectuals in Europe through the social contract idea.

Government is founded on the principles of law, not on any one person, according to the doctrine known as "*Rule of Law,*" which is derived from the French word "*la principe de legalite.*"

No one is above the law, according to Plato's definition of the phrase "rule of law."

The law should be the supreme sovereign of the state, according to Aristotle.

The existence of arbitrariness or even a great deal of discretionary power on the side of the government is forbidden, according to Professor A.V. Dicey, who states that *"the rule of law is the absolute supremacy or majority of the regular law as opposed to the influence of arbitrary power."*

The fundamental principle of the British legal system, according to Dicey, is the rule of law: "This notion is accepted in the constitutions of the United States of America and India."

Rule of law is based on three tenets:

1. **Supremacy of Law:** Unless for a particular breach of the law established in the usual process of justice before the ordinary courts of this country, no one may be punished or may legitimately be made to suffer in body or possessions.
2. **Equality before the Law:** The law applies to everyone equally.
3. **Predominance of Legal Spirit** – The outcome of court decisions determining persons' rights in specific cases brought before the court.

Using the Theory in an Indian Situation

The Constitution of India is the country's supreme law. Even the legislative branch and the judicial branch must base their judgements on the Constitution. As a result, the Constitution governs Indian society.

Each decision made by the executive, legislative, or judicial branches must be in accordance with the constitution. A constitutional breach occurs when the legislative, executive, or judicial departments of government exceed the restrictions imposed by the document. The essential principle of the Indian legal system, according to Dicey's theory, is that the law should be paramount and binding on both state officials and subjects.

One common misconception is that the principle of the rule of law is not mentioned in the constitution. This represents a grave misinterpretation of the rule of law and constitutional law. The supremacy of the law is the definition of the rule of law, and in India, the constitution is regarded as the ultimate law. In at least hundreds of instances, the SC has declared that no statute or executive action is permissible if it goes against the fundamental principles of constitutional law.

How much proof is required, according to Dicey's definition of the rule of law, to show that constitutional law prevails?

Rule of Law's first component is the absence of arbitrary power.

The first component is the lack of arbitrary powers, especially discretionary powers. The first half of the notion, the lack of arbitrary powers, is entirely applicable, while the second half of the concept, the absence of discretionary authority, is not significant in the Indian legal system.

A.K. Kraipak v. Union of India¹ is one of the most well-known administrative law decisions that deals with the concept of bias. In this decision, the Supreme Court provides a full rationale and application of the principle of rule of law to the Indian court system. The rule of law is the cornerstone of all administrative and constitutional law, according to the court. Rule of law is an incredibly powerful tool for combating the executive's arbitrary power-use. In addition, the court went further and stated that the rule of law will become less essential if the executive does not utilise its powers in accordance with the concept of natural justice, which is the just, fair, and reasonable exercise of authority.

In the same year's case State of MP v. Thakur Bharat Singh², the court used the following remarks to emphasise the relevance and importance of this notion.

There, the common law legal system—the foundation of the Indian legal system—is applied. Any restriction that prevents a comprehensive judicial review of an executive decision is certainly arbitrary and violates the ideal of the rule of law, which is safeguarded by the constitution.

In Som Prakash v. State of Haryana³, which addresses the idea of bias as it is prevalent in administrative law, the SC stated that the absence of arbitrary power is the first element of the rule of law and that the executive, even when exercising discretionary powers, must exercise those powers reasonably. Rule of law dictates that the arbitrary exercise of authority, even if it is discretionary, would be a negation of the theory upon which the entire framework of the constitutional superstructure is founded.

In Supreme Court Lawyer on Record Association v. Union of India⁴, the SC discussed the issue of discretionary powers and came to the conclusion that the presence of such powers did not amount to a breach of the rule of law. The concept of discretionary powers is essential in today's administrative age, yet they cannot be utilised arbitrarily since the rule of law prohibits such behaviour.

In the prestigious case of Indira Sawhney II v. Union of India⁵, the supreme court extensively outlined a very well-known application of the rule of law. The court has harshly criticised and disapproved the government's actions that have a tendency to undermine the rule of law under the pretence of administrative necessity or political and administrative collaboration. The SC declared that the executive branch must always uphold the rule of law doctrine and should not wait for the judiciary to invalidate an executive action for doing so.

The absence of arbitrary authority, which is the first element of the Rule of Law, is relevant to the Indian legal system. The Indian legal system does not totally adhere to the lack of discretionary powers, which makes up the second half of the first element of rule of law. In the current administrative period, discretionary powers are essential for the legal system to function properly and effectively. Because of this, discretionary authority is in

¹ A.I.R 1967 SC 1170.

² A.I.R 1967 SC 1170.

³ A.I.R. (1990) 2SCC 653.

⁴ A.I.R 1994 SC 268

⁵ A.I.R. 2000 SC 498.

use, but because it is required by the principle of the rule of law, its arbitrary use is constrained, limited, disallowed, and unlawful by the law.

Application of equality is the second component of the rule of law.

The globally accepted concept of equality is included into every legal system, including the Indian legal system. The idea of equality being universally applicable says a lot about how rule of law doctrine is put into practise.

The Supreme Court (SC) developed the concept of basic rights in the most well-known case, I.C. Golaknath v. State of Punjab, dated 1967. According to the SC, executive or legislative action could not alter the unalienable nature of fundamental rights. The government or executive must work within the confines of the law and is not allowed to impose restrictions on or curtail basic rights, according to the rule of law. Which legislation, according to the Dicey's rule of law, will permit the ruler to infringe upon someone's basic right? Consequently, by imposing restrictions or limitations on the sovereign, the rule of law protects the rights of individuals or subjects.

In Gauri Shankar v. Union of India⁶, the Supreme Court's interpretation of the concept of equality was built on Salmond's definition of equality. According to John Salmond, equality entails treating all people equally and with justice, as well as handling situations similarly.

According to the Indian Supreme Court, Salmond's idea of equality is the basis for Article 14 of the Indian Constitution's notion of equality.

The Supreme Court of India determined that the transgender community is legally entitled to the fundamental rights safeguarded by articles 14 and 21 of the Indian Constitution in National Legal Services Authority v. Union of India⁷. Any law or government action that prevents transgender people from enjoying their constitutional rights would be considered discriminatory.

In Shayara Bano v. UOI (2017)⁸, the Supreme Court of India decided that the practise of triple talak violates the equality principle and is incompatible with article 14 of the Indian Constitution.

This fact demonstrates how the Indian legal system makes extensive use of the second element of the rule of law, equality. The concept of equality has been used by the court in several instances, although they all cannot be covered here. Therefore, it would be true to argue that the concept of equality is one of the cornerstones upon which the Indian legal system is based.

The third element of the rule of law is the actual application of the supremacy of court.

The Indian legal system likewise adheres to the common law system, hence the rule of law is completely and completely applied. The judiciary's authority is recognised in the essential structure of the Indian Constitution.

⁶ A.I.R. 1995 SC 55

⁷ (2014) 5 SCC 438.

⁸ (2017) 6 MLJ 378

In *Chief Settlement Commissioner Punjab v. Om Prakash*⁹, the court emphasised the supremacy of the courts, which is the third element of the rule of law, as being the core and most defining feature of our Indian Constitution.

The Indian Supreme Court (SC) confirmed in the case of *State of Punjab v. Khanchand*¹⁰ that the idea of the rule of law is the cornerstone of the constitution and that, as a result, its third element—the supremacy of the court—is important and upheld in the Indian legal system. Thus, when any public official or employee abuses their position of authority, it is without a doubt under the control of the judiciary.

The three elements that make up A.V. Dicey's theory of the rule of law are as follows:

i) Absence of arbitrary and discretionary power.

The first half of this principle—the lack of arbitrary powers—applies fully while the second—the absence of discretionary power—is only partially applied since Indian law forbids or prohibits the arbitrary use of discretionary authority.

ii) The equality principle, this second element of the rule of law is heavily utilised in the Indian judicial system.

(iii) The judiciary is independent and everyone is below the law, it protects the right of every individual. Courts have the last say, this idea is also completely and consistently applied by the Indian legal system.

Basics of the Rule of Law

- The law is supreme, and no one is above it.
- Decisions should not be made haphazardly but rather in conformity with the law.
- The lack of arbitrariness lies at the heart of the rule of law.
- Equal treatment and rights under the law.
- A fair procedure should be followed;
- A quick trial.
- Independent, unbiased judicial system.

Conclusion

After thoroughly reviewing and analysing the concept of rule of law, the contemporary researcher believes that it is the cornerstone of any legal system. The researcher thoroughly considered each of its three elements in order to ascertain the goal and significance of rule of law. The researcher came to the conclusion that Professor Dicey had eloquently and uniquely explained the components of the rule of law. The

⁹ A.I.R 1969 SC 33.

¹⁰ A.I.R. 1974 SC 543.

study also found that the advantages of the rule of law are not only many but also very important. As a consequence, it seems that the rule of law has turned into an essential component of every legal system.

