



CHANGING DIMENSION OF RULE OF LAW AND ITS APPLICATION UNDER THE CONSTITUTION OF INDIA

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“The Constitutional Principles are the pillar of the separation of powers in what is today a democracy under the rule of law.”
Sedley L.J.

Abstract

Rule of law is global phenomena one of the most important doctrines established under the jurisprudence of administrative law. The country which does not follow constitutionalism is the one which is working against doctrine of rule of law. In India rule of law has a deep rooted history from ancient times to till the commencement of the Constitution of India. There is no express provision regarding to deal with the principle of rule of law under the Constitution of India but many landmark judgements have marked the significance of the concept, thus pointing it as an inventible subject to study. The concept of rule of law and its application has been always part of hot discussion in each and every society and country. As everything marks its pros and cons, so does the doctrine has, Dicey was unable to draw the conclusion that slavish adherence to the law does not ensure justice or the principles of a democratic and contemporary constitution.

Keywords

Rule of law, 'La Principe De Legalite, Executive, Legislature, Judiciary, Droit Administratif, Magna Carta.

Introduction

Sir Edward Coke CJ, was the originator of the concept of rule of law¹ and it has been developed by **Pro. A. V. Dicey**. Further he also established the supremacy of the law against the executive. **John Adams** used the historic phrase “a government of laws and not of men”. In this research paper researcher has tried to deal with principle of rule of law and its application under the Constitution of India. In this regard the researcher has dealt provisions meaning, definition, nature and concept, essentials of the rule of law, objectives of the study, review of literature, national perspective, judicial pronouncements, hypothesis, objectives of study, moot questions, research methodology, international perspective, critiques, concluding remarks and suggestions.

Changing Dimension of rule of law

Prof. A. V. Dicey observed throughout all civilised societies about the principle of rule of law that no State can repudiate this perception². In the opinion of Dicey that individuals ought not to be subjected to the power of officials wielding wide discretionary powers. So the fundamentals concept of the rule of law is that all powers need to be authorized³. Diversified changing dimension of the rule of law has been found in the case of *A.K. Gopalan's case* where judiciary has dropped the expression ‘due process of law’ and instead accepted the concept of ‘procedure established by the law’ in Article 21 of the Constitution of India, so the concept of ‘due process of law’ could not be imported, an ipso facto violation to the rule of law.⁴

¹ “An Introduction to the Study of the Law of the Constitution” published in 1885

² Dicey A. V., “An Introduction To The Study Of The Law Of The Constitution” Universal Law Publishing Co., Delhi, 5th Edition 2008, p. Xcviii.

³ Jowell Jeffrey and Oliver Daw, “The Changing Constitution”, Oxford University, New York, 7th Ed. 2011. P. 13

⁴ Dr. Basu D. D., “Comparative Constitutional Law, Wadwa and Co. Publishers, Second Edition, 2008, p.22

Meaning, Definition, Nature and Concept of Rule of Law

The term 'rule of law' is originated from the French word "*La principe de legalite*" that means "the principle of legality". It refers to a government based on principle of law not of men and it oppose to arbitrary powers. In other words we can say that rule of law declare the supremacy of law that means no one is above the law. It also shows that government of law not to men. Rule of law denied all kinds of arbitrary and discretionary powers of the government or officials.

Rule of law has been defined by different jurist. **Sir Edward Coke** advocated for the king to be subject to God and the Law, referring to the French phrase '*la principe de legalite*,' which means the principle of legality. **Aristotle** formulated the question of "whether it was better to be ruled by the best man or the best laws, he did approached in realistic manner, noting that it depended not only on the type of law under consideration but also on the type of regime that enacted and administered the law in question." **John Locke** contrasted principle of rule of law with rule by "extemporary Arbitrary Decrees". **Montesquieu** work on the rule of law is best known in reference with his insistence on the separation of powers- particularly the separation of judicial power from executive and legislative authority. **Albert Venn Dicey**, rule of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power or wide discretionary power. Rule of law means the exclusion of the existence of arbitrariness on part of the government.

Prof. Albert Venn Dicey has written in his book "An Introduction to the Study of the Law of the Constitution" in 14th century about the situation of England that there was no written constitution and no provision regarding to protection of fundamental rights only civil rights of the people were protected by the rule of law. At that time there was a maxim which was very famous about the system of the government that "king can do no wrong". The policy of the government was *legisfair and working was like police state not to the welfare state*. The rule of law is a viable and dynamic concept that, like many others, cannot be precisely defined. This does not, however, imply that there is no agreement on the fundamental values that it represents. The term "rule of law" is used in contrast to "rule of man" and "rule of law." Legal equality, according to Dicey, was the key to the Rule of Law: "With us, no man is above the law, and every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. The essence of rule of law means that no man can be arrested, punished or be lawfully made to suffer in body or in goods except by the due process of law violations of law found in the ordinary legal form in the ordinary courts of the country. Englishmen are ruled by the law, and only the law; a man can be punished for a breach of the law, but not for anything else.⁵ The rule of law requires that the government be subject to the law rather than the law being subject to the government.⁶

Why the Rule of Law?

Rule of law is necessary because of-

- It maintains the political equality and protects the rights and liberties of the citizens;
- It is necessary to control the arbitrariness and monopoly of the government;
- It establishes the political system and works on the concept of welfare state;
- It protects the constitutional ideology and values; and
- It is necessary for establishment and smooth functioning of the judicial system.

Essentials of the Rule of Law

According to Professor A. V. Dicey rule of law talks about the supremacy of law which follows theses four following principles-

1. Supremacy of the law

Supremacy of law establishes theory of checks and balances on the government's ability to make and enforce the law. The principle of equality before the law seeks to ensure that the law is justly administered and enforced.

2. Equality before the Law

Dicey stated that there must be equality before the law or equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. As per Dicey no one is superior or above the law whatever his/her post or capacity. Even king is not law but law is the king. The principle of equality has been already implemented under the Constitution of India in article 14 which deals with the equality before the law and equal protection of the laws.

3. Constitution is the result of the ordinary laws of the land

It refers that that constitution of any country is the basic and original source of the domestic laws of the land of that particular country. All laws and policies of the country regarding their sources and validity based on

⁵The Law of the Constitution (1915) 202

⁶Wade & Forsyth, Administrative Law (2009) 17-21

constitution of that country. It reflects in the theory of grand norms propounded by the Hans Kelson. Which is already implemented under the Constitution of India in the article 13 (1), (2) and (3)

4. Predominance of legal spirit

It believes that the courts are the enforcement agencies of the rule of law and hence it should be free from impartiality and external influence. In this regard that agency must be free from interferences and must be independent. In regards Constitution of India talks about the principle of separation of power which talks about the all three organs of the government must be separate, distinct and independent. So, the courts as enforcing machinery are free and independent from the legislature as well as executive at both levels of the governments.

Objectives of the Study

The purpose of this research paper is to thoroughly examine India's domestic constitutional, legal and judicial framework for rule of law in India. The analysis will examine the different constitutional provisions in the context of principle of rule of law and its application under the Constitution of India.

Review of Literature

Here review of the literature investigates India's present constitutional framework for the principle of rule of law in India. This review will examine the pertinent sources. As we know that the object of review of literature is to find out about the research gap. So, in this regards researcher has tried to deal with the principle of rule of law in Indian scenario from ancient India to current perspective.

Hypothesis

India do not have any specific constitutional provision regarding the rule of law but have some specific articles of the Constitution of India and judicial pronouncements that contribute to establish the principle of rule of law by applying all these articles but they are not sufficient to combat rule of law because they are only indirect provisions to interpret the same principle. There is a lack of a clear constitutional and legal framework and effective implementation mechanisms to establish the same principle.

Objectives of the Study

Basic objectives of the this research papers are as under-

1. To explore and analyze, extensively, the current constitutional framework regarding rule of law;
2. To study the judicial response in implementation of such constitutional provisions;
3. To analyze and identify international constitutional framework to deal with the principle of rule of law;
4. Evaluate India's constitutional measures to combat the principle of rule of law with a special reference to some other countries. .

Moot Questions

Here are some moot questions that a researcher aims to address with their research-

1. Is there any constitutional framework regarding the principle of rule of law in India?
2. What is international constitutional and legal framework to deal with the principle of rule of law in India?
3. What is the judicial response in implementation of the principle of rule of law in India?
4. Is there any direct constitutional provisions made by the Indian Legislature to establish the principle of rule of law in India?

Research Methodology

The researcher has use of primary as well as secondary sources in this research paper. It involves analytical, descriptive, critical and comparative approaches to deal with the issue. Primary data comes from legislative documents and judicial decisions, while secondary sources include textbooks, research articles, and online resources.

Historical Perspective

Rule of law was not an imported doctrine and was prevalent in the society during early Vedic period and full of scriptural and coated the various illustrations dealing with the same principle. Established principle and their references were found in scriptures such as Veda, Upanishad, sage Yajnavalkya's Smriti, Manusmriti, Mahabharata (Vyas Maharishi), Ramayana and Kautilya's Arthashastra, etc. **Shruti:** Shrutis refer to what is heard. Shrutis are the four Vedas, namely the Rigveda, Yajurveda, Samaveda, and Atharvaveda. These four Vedas are further divided into four sections: the Samhitas, Upanishads, Brahmanas, and Aranyakas. Vedas have six Vedangs like Shiksha, Kalp, Vyakaran, Jyotish, Chhand and Nirukta. **Smriti:** Smritis are what are remembered and these are the texts based on the recollection of sages who were regarded as "repositories of sacred revelation." Smritis were also referred to as dharmashastras. Few important Smritis which is very important to explain the various legal principles like Manusmriti, Yajnavalkya Smriti, Brihaspati Smriti, and Narada Smriti etc. **Mahakavya:** The Ramayana and the Mahabharata are two of the most well-known mahakavyas. We can easily find out rule of law in the both.

The **Mauryan, Guptas and Satwahan Empires** have also tried to establish the principle of rule of law. But it has been observed that in the **Mughal period** that few kings have been tried to apply the principle of rule of law in their administration but majority of the emperor take decisions arbitrary. Same situation has been continuing in the **British period**. They never tried to establish the principle of rule of law. After independence we have a written constitution and framers of the Indian Constitution have tried to establish the principle of rule of law.

National Perspective

Rule of law or the principal stating that no one's above the law is the basic structure of Indian constitution. The framers of the constitution has tried to established the principle of rule of law with the help of various provision *vis-a-vis* preamble which talks about the social, economic and political justice, fundamental rights like articles 13, 14, 19, 21, 22, 25, other constitutional rights under articles 311 and 312 and remedies under articles 32 and 226 as writs jurisdiction protects the rule of law.

Judicial Pronouncements

We have some landmark judgements where the SC and HCs have explained and tried to establish the principle of rule of law. Some of the landmark cases are:

Kesavananda Bharati v. State of Kerala, 1973⁷ here the petitioner sought protection and rights of his property under Article 19 (1) (f) and contended that the 24th and 25th Amendment was violating fundamental rights. The Supreme Court with a majority of 7:6 held that the Rule of Law is an essential part of the basic structure of the constitution and as such cannot be amended by any Act of Parliament under article 368.

A. K. Kraipak v. Union of India, 1970⁸ in this case the Supreme Court held that every state as too is bound by the doctrine of rule of law and they're entitled to discharge any duty in a fair and just way, which forms the basic essence of rule of law. The court said that rule of law is applicable to every organ of the government.

National Legal Service Authority v. Union of India, 2014⁹ regarding the rights of transgender people the Supreme Court once again interpreted the personal liberty which includes dignity mentioned in Article 21 and came to the conclusion that every person irrespective of their gender are entitled to live their life on their own terms and do it with dignity.

Bhim Singh v. State of Jammu & Kashmir, 1985¹⁰ the petitioner was awarded compensation for the mistreatment he endured. The court while giving their judgment kept the principal of rule of law in mind and saw the way law enforcement acted as an inexcusable offence for acting in such an arbitrary way.

ADM Jabalpur v. Shivkant Shukla, 1975¹¹ here during the proclamation of emergency in the country the enforcement of Articles 14, 21 and 22 was suspended, though the majority of the bench were in negative for the question of law.

Chief Settlement Commissioner, Punjab v. Om Prakash & Ors., 1968¹², the Supreme Court held that in our constitutional system, the central and most characteristic feature is the concept of rule of law which means the authority of the law courts to test all administrative action by the standard set for the legality. The court further held that the authority given to the courts to determine the legal standard of any decision taken by any authority is the most prominent feature of rule of law relevant in India.

Maneka Gandhi v. Union of India, 1978¹³ the court upheld the principal of rule of law that leaves no space for any arbitrary actions or laws bring exercised. Where any law is made with not keeping the equal treatment of people in mind is a place wheel rule of law can't ever be recognised.

Indira Gandhi v. Raj Narain, 1975¹⁴ the Supreme Court struck down this amendment saying it was unconstitutional and violative of the basic structure of the Constitution i.e., Rule of Law. Rule of Law being anti thesis to arbitrariness does not empower the parliament to pass a retrospective law validating an invalid election. Such exercise of power goes against the basic principles of rule of law. Rule of law is the fundamental principle of governance in any civilised democratic country.

Some other landmark judgements where courts has tried to established the principle of rule of law like **State of Bihar v. Sonavati Kumari¹⁵**, **S. G. Jaisinghaniv. Union of India and others¹⁶**, **B. Sambmurti v. State of**

⁷ Ibid

⁸ AIR 1970 SC

⁹ AIR 2014 SC 1863

¹⁰ AIR 1986 SC 494

¹¹ AIR 1976 SC 1207

¹² (1968) 3 Supreme Court Reporter 655; Civil Appeal No. 938 of 1965; Civil Appeal No 1195 of 196

¹³ AIR 1978 SC 597; (1978) 1 SCC 248

¹⁴ 1975 AIR 865, 1975 SCR (3) 333

¹⁵ AIR 1961 SC 221-222

¹⁶ AIR 1967 SC 1422

*Andhra Pradesh*¹⁷, *DTC v. DTC Workers Union*¹⁸, *Sheela Barse v. State of Maharashtra*¹⁹, *Air India v. Nargis Mirza*²⁰, *Rudal Singh v. State of Bihar*²¹ and *Peoples Union for Democratic Rights v State of Bihar*²² etc.

International Perspective

The **Magna Carta** of the **United Kingdom**, the French maxim "*la principe de legalite*," in the France and historic case of *Marbury v. Madison* (1803),²³ are the best example to explain and established the principle of rule of law in the global scenario.

Critiques

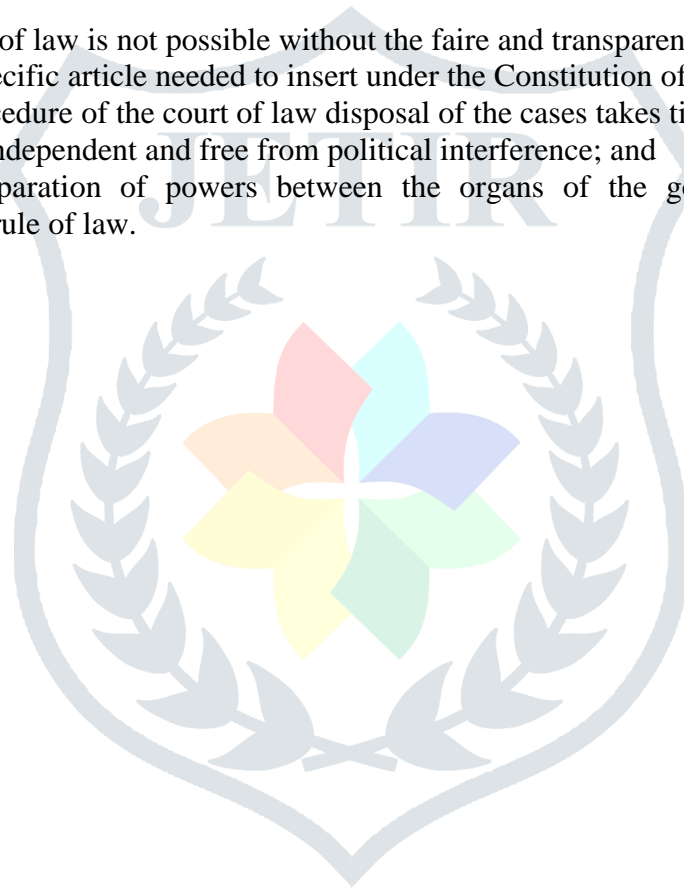
1. Sir Ivor Jennings, the famous jurist characterizes the Rule of law as "an unruly horse" because it categorising discretionary power along with arbitrary power
2. Rule of law allots undue moral superiority to Judiciary
3. Rule of law is contradictory
4. Over emphasis the role of judicial decision

Concluding Remarks

The principle of rule of law has its universal acceptance in each and every civilised society and democratic countries. After reviewing the history, information and legal issues involving the implementation of the "Rule of Law," we can draw the conclusion that the idea itself has changed over time. The dynamic nature of rules in the world is what has caused this evolution. The doctrine has undergone a significant change in perception as a result of being made a fundamental component of all judicial rulings.

Suggestions

1. Application of rule of law is not possible without the faire and transparent executive authority;
2. There must be a specific article needed to insert under the Constitution of India;
3. Due to lengthy procedure of the court of law disposal of the cases takes time;
4. Judiciary must be independent and free from political interference; and
5. There must be separation of powers between the organs of the government regarding effective implementation of rule of law.



¹⁷ AIR 1987 SC663

¹⁸ AIR 1991 SC 101

¹⁹ AIR 1983 SC 378

²⁰ AIR SC 564 & AIR 1981 SC 1829

²¹ AIR 1983 SC 1036

²² AIR 1987 SC 335

²³ 5 U.S. (1 Cranch) 137 (1803)