



Rule of Law - A Foundation For Democratic Governance

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Abstract of Rule of Law

For Democratic societies Rule of law stands as a corner stone serving as a bed rock upon which rights institutions and freedoms are built and protected. This abstract scrabble the fundamental principles and significance of rule of law with in democratic governance exploring its important elements challenges and the vital role it plays in building societal stability justice and progress. The Rule of law embodies at its core that the principle that the individuals entities institution regardless of position or status which are subjective and accountable under the law. It ensures a system where all laws are clear and predictable and which are equally imposed to all ensuring fairness protection of human rights and justice. Legal certainty accountability access to justice equality before law are the key components included in the rule of law, which collectively establish a reasonable frame work for equity just and order in the society. The rule of law serves as a safeguard against limiting and abusing and preventing the power of governmental authorities in the democratic societies. Rule of law promotes checks and balances and prevent the concentration of power in any particular institutional or individual. It under pins the separation of powers between executive legislative and judicial branches to operate independent. The rule of law fosters a system of governance which is characterized by accountability transparency and respect fundamental rights and freedoms to protect all the civil liberties through the mechanism of constitutionalism judicial review and civil liberties.

In many parts of the world the priority for rule of law faces unique challenges and threats. Legal norms undermine the rule of law eroding the public trust and confidence in justice system in this regard in week institutions corruption political interference in judicial processes. Additionally evolving technological advancements evolving societal complexities and global inter connectedness which posses new challenges to the traditional conceptions of rule of law necetating adaptation and reform efforts.

Overall the rule of law as foundational Principle for protecting rights ensuring legitimacy of governmental authority, essential for upholding justice and democratic governance. Rule of law promotes human dignity and economic developments fairness fundamental freedoms and societal stability in the society. It is the realization which requires sustains commitments vigilant promotion and continuous improvements to face the challenges and uphold the principle in the ever changing world is only possible through Rule of Law.

RULE OF LAW

A Foundation for Democratic Governance

Rule of Law means that no man is above law and also that every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.

The doctrine of rule of law is the entire basis of Administration law.

As Aristotle stated that the concept of rule of law is grounded the ideas justice, fairness and inclusiveness.

In order to complicate the chain of fundamental views is to assimilate in Rule of Law which further comprehends to provide equal treatment in the eye of law for government and treatment of every citizen equally before law and freedom of judiciary and viscosity limp and liability in administrative law.

As explained with a meaning in Black's¹ Dictionary "Rule of Law" legal principles of day to day application, approved by the governing bodies or authorities are expressed in form of logical application.

According to Oxford Advance Learner's Dictionary --- "Rule of Law" means the situation in which all the citizens as well as the state are ruled by the law.

Around 1215 King John of England signed Magna Carta which is evidence that Rule of Law began during that period. Since the concert of monarch of England signed Magna Carta it is to be understood that the monarch is also under the law and the law is to be supreme. The fight between Parliament and monarch raised and took a new look after the existence of Rule of Law. Both Parliament and Monarchy together started struggling for supreme authority in this conflict; finally it was ended in favor of the parliament. Now the Parliament started making new laws and controlling and limiting the powers of monarch since it is the supreme power over the monarchy. Finally in England the executive organ subjected to the law of parliament which raised curtain for the Rule of Law in England.

In the year 1776 the constitutional lawyer Paine in United States of America introduced the Doctrine of Rule of Law. He opined that in every country which is free and the law should be the king and no one else. Since America being a free country he considered that law as the king.

¹ Black's Law Dictionary meaning Rule of Law

After some period of time Dicey worked more upon Rule of Law.

The “Law of Constitution” a book by Dicey which is the most famous exposure of concept of “Rule of Law” by Prof Dicey which mainly relates the powers of the governments which must be implemented in accordance to the law. The policy makers the law authorities and agencies and the Judges should follow the several basic principles while exercising in a democratic society. In accordance with the law it is concluded that all the duties and powers and functions of the governments including its organs and authorities should obey.

Dicey asserts three principles of postulates must be adhered to in order to achieve the supremacy of law.

1. Supremacy of Law.
2. Equality before the law.
3. Predominance of legal spirit or Judge made laws.

Rule of Law is a political arrangement by which society chooses to be governed by a set of predetermined prescriptions made by some constitutionally chosen body, following some set of procedure, such prescriptions made by the law making body are published.

The law is uniform in its application, the text of law.

The concept of the Rule of law is, such a law is enforced by legally sanctioned or authorized body.

And lastly the enforcement is even handed that people are not chosen for the purpose of the enforcement, but the law is not applied selectively to the people.

The basic elements of the rule of law must be discussed elaborately. The first element is a law, law as we understand, in those countries where this is Anglo-saxon, Jerusalem style.

Law is made by a competent legislature. Sometimes, not sometimes a major part of the law is made, and is subordinate legislation made by the executive authority of the state in excess of or in excess of statutory power vested in him, there are various sources from which law emanates, but then all these sources are acknowledgement to be a constitution are to be constitutionally authorized sources of law.

These bodies make a law.

At first, the requirement is that they should be a well-established, constituting predetermined body which makes the law.

The tasindars or the village people or tane dars can't make the law. They are only to implement the law.

Law making is interested to the members of the parliament or the state legislature. And the subordinate law making is interested depending upon the particular statute to somebody created under the statute which is authorized to make subordinate legislation like rules, regulations so on and so forth

Now if a law is made, what does the law contain?

It simply put it that it contains the Do's and Don't do this.

The Indian Penal Code made some 175 years ago says that causing death of a human being by a fellow human being is an offense. The degree of the offense varies where it's culpable homicide amounting to murder.

There are final districts of the lawyers who are not warred about it.

The prescription is certainly made by the law and therefore causing of death of a human being is an offense.

There are some exceptions even to this. Those are general exceptions to in IPC under what exceptions the act is done.

Any act of crime is done by a child below seven years of age even though if he kills or shoots somebody, is not an offence because the law recognizes the child has not retained the age of discretion and he will be punished for that.

There are two people who perfectly answer the offence of murder under the law. The Judge who imposes the capital punishment and the Talari or the hangs man who executes the punishment. They exactly answer the charge of murder and they are fit into the description of that section.

The important thing which exonerates then is the general exception in the IPC --- here we must just imagine that as if a man who is carrying on the job of executing a condemned prisoner by hanging.

He is the reason for causing the death immediately by his act of hanging or a judge who gave the pronouncement that a particular person to be hanged for the offense committed by him and determined to have been committed by him. Both of them perfectly answer the charge but then an exception in the penal code would save them because otherwise these jobs cannot be done.

The Next major requirement of Rule of Law is it must be published and it needs the publicity. Publicity in the sense that, if any action which is even lawful may be required some publicity or else it may not be noticed by the people.

For example – If a land is to be acquired by the government lawfully under land acquisition act, it has to be published either in the newspaper or in the form of notification by the way of publication to let know the intention of the government by the people in that particular area.

But in the old act 1894 Land Acquisition the government used to let the people know in that locality by the beat of Tom Tom.

But, it was the Law followed in the 19th century. Later it was stopped and the incharge of acquisition of land is authorized to the collector in that particular jurisdiction.

One is this, every law made in this country, that's the general pattern followed all over the world in countries. They are guzzeted so that anybody who wants to know what is the conduct which is prohibited by the law can we do something or not.

That's the publication. It's not compulsory to publish, and there's no need to telecast through T.V or Newspaper.

Cases related to Rule of Law

The important judgments of basing the rule of law is

❖ Kesavanandha bharathi sree pada galvaru and others Vs State of Kerala and another two.

In this case the court set out the standard of basic structure and also held that without changing the basic structure in the

❖ Union of India Vs Raghueersingh

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 superior court's decision.

❖ State of Bihar Vs Sonavathi kumara

The court opined that as the concept of rule of law all authorities operating with in the state including executive government is bound to obey the rules.

❖ In Indra Nehru Gandhi Vs Rajnarayan

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, this is a famous case to declare the power of rule of law during emergency.

Rule of Law in Modern Sense

According to the modern concept of Rule of law it is a brooder ideals to government to follows as per declaration of 1959 which was establish by International Commission of Jurist in Delhi. The committees have

included the government intervention, individual liberty in criminal action by upholding the dignity of the person. The importance of religious freedom and non discrimination laws and the judicial system was emphasized by the committees.

The modern law including principles of Natural law, Due Process, Settled law, judicial preference of and judicial review of administration of process are the seven types of laws as identified by Mayer Kin Davis. The political participation and constructive criticism of governments is the definition of modern rule of law to encourage.

Exceptions to “Rule of Law”

Through Articles 361, 361(2), 361(3) & 361(4) of the Indian Constitution states that President and Governors are provided with some immunity.

1. The President or the Governor are Raj Pramukh of the State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done purporting to be done by him the exercises and performance of those powers and duties.
2. During the term of the office in any court no criminal proceeding not show above shall be instituted or continued against the president or the Governor of a state.
3. During his term of office no process for the arrest or imprisonment of the President or the Governor of the state shall issue any court.
4. Any civil proceeding in which relief is claim against the President or the Governor of the state shall be instituted during his term of office in any court in respect of any act done or purporting to done by him in his personal capacity whether before or after he continued in his office as a President or as a Governor of such state until the expiration of humans next of after notice in writing as been delivered in President or Governor as the case may be or left his office stating the nature of the proceedings the cause of action therefore name, description, residence of the party by whom such proceedings are to instituted and the relief which he claims.

Immunity to the Foreign Diplomats.

The Vienna convention contains some provisions in relations to different privileges and immunities which are granted in the diplomatic envoys or agents as per diplomatic relations of 1961.

Immunity to Supreme Court and high court judges including Article 121 of the constitution which restricts the discussions on the behavior of the judges in the parliament.

Conclusion:

Rule of law is the basic fundamental principal that ensures equality, protection and justice of every individual right in the society. In relation to judiciary and constitutional its priority is permanent.

Rule of law plays a crucial role in upholding and interpreting constitutional principles as a guardian in the field of judiciary.

By applying constitutional provisions the judiciary acts as a check on executive and legislative powers, ensuring the government activities applying constitutional provisions. If any violation to constitution the judiciary has the power to struck down the laws or government actions, by preventing arbitrary exercises of authority by reinforcing the rule of law.

No doubt rule of law is a bed rock which is served by the constitution, providing powers and limitation by the each branch of the government by frame work for governance deneating.

The rule of law ensures the rule of principles contentiously which are apply to protects the every individual from government pressure is to interpretation the constitution by the judiciary.

The judiciary is free from the all external influence impartial and is very fare in legal proceedings. Rule of law is the corner stone for the independence of judiciary. This independence is offer enshrined in the constitution for safeguarding for the rule of law against all the political pressures and ensures the equal protection of law for everyone. By providing avenues for legal redress and due process that judiciary ensures to the entire individual to have a fair opportunity to assert their rights. Hence the rule of law requires the legal processes are predictable or accessible and transparent. This transparency of legal institutions strengths the legitimacy of all the legitimacy and reinforces public trust in the rule of law.

Concluding that no doubt the rule of law find its embodiment in the judiciary and the constitution. The judiciary plays pivotal role and upholding the principles of justice individual rights and equality through constitutional interpretation judicial review in safeguarding independence. Since the rule of law privies creating the society where the legal principles reign, since constitution is the supreme law of the land.