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A review on 'The Rule of Law' by Tom Bingham

DEBDATTAA DAS¹

ABSTRACT

The following is a review on the book, 'Rule of Law' by Tom Bingham. Critically acclaimed by TTTT, it is an elaborate and extremely engaging read. The subject-matter of the book revolves around the doctrine of 'Rule of Law' which is followed in countries across the world including India. The concept is explained in a detailed, carefully crafted study of theories and practices that prevail in the social arena. What makes this book so inclusive is the fact that it includes the thoughts, theories and proclamations of a number of eminent people in the field of law and polity.

Here, I have tried to capture the theme and essence of the book in a brief yet comprehensive piece of writing. The content covers a brief understanding of the topic of the book in the first part i.e., Introduction. Thereafter, a summary of the entire book along with my own analytical study. In furtherance of the impact that of the book on my mind, an attempt to relate the book's contents with modern day practices, thereby proposing how these concepts may be applied to the modern-day world. And finally, some concluding thoughts about the book for its future readers.

TITLE: The Rule of Law

AUTHOR: Tom Bingham

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I. INTRODUCTION

The present book deals with the doctrine of Rule of Law which is a prime governing principle in most countries with a written constitution today. It has been extensively studied and analysed by the author in depth. The author reiterates the limits to the powers held by authorities. It is the law of the land which provide the governors the authority and the same law that demarcates

¹ Author is a Student at Ajeenkya D Y Patil University, India.

the extent of exercise of those powers. Authorities, governments, even people are bound to follow what the Law commands. Hence, the Law is superior to all.

II. SUMMARY AND ANALYSIS

The first part of the book mentions the thinkers who have contributed to the theory of Rule of Law, with most emphasis on A. V. Dicey of the Oxford University who was the first to formulate a proper definition of the rule of law. It also focuses on the development of the concept over the years. The legal giants Magna Carta² and Habeas Corpus appear in this section along with other landmark legal instruments such as the French Declaration of the rights of men and citizens³, the Bill of rights and laws pertaining to legal ethics, human rights, abolition of slavery and torture etc.

The next part of the book deals with essential elements of the rule of Law that would bring to the reader's attention the practical applicability of the book's contents. It includes the theories and principles of access to justice, law not being a discretion, judicial exercise of power, equality before law, human rights, dispute resolution, fair trial and the correlation between rule of law and the international legal systems.

Bingham discusses the importance of access to justice stating 3 reasons, (1) people should know and understand the law in order to realise what acts or omissions are right or wrong in the eyes of law; (2) people must know about their rights and obligation in order to enjoy or perform them respectively; (3) only when there are compelling laws governing institutions such as trade and commerce and those interested in dealing with the same are aware of them, would they gain the confidence to do so without putting their livelihood at risk.

Next, he deals with the non-discretionary nature of laws saying that any question of law shall be resolved by application of law and not by discretion. It means that there can be no arbitrariness or undue preference in the working of law-governing institutions. In the next chapter concerning equality before the law, he quotes religious and literary authorities for establishing the notion of equality. Here, he explains about the likes being treated alike principle that also forms a part of our own Indian Constitution.⁴ Stating how people in a different position such as minors or mentally ill persons are treated differently before the law, he asserts that such special treatment not being violative of equality among people.

Further, he explains the exercise of powers by the State-officials and ministers in good faith,

² King John of England, The Magna Carta (1215).

³ Declaration of the Rights of the Man and of the Citizen, France, 1789.

⁴ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India., Art. 14, The constitution of India, 1950.

in the best interest of the public and in a fair manner. This is extensively prominent in our country when the executive organ of the government is challenged upon the constitutionality of their acts decisions.

The author discusses human rights in detail with reference to the articles of the European Convention on Human Rights⁵. He affirms the fundamental and indispensable nature of human rights, tracing it to being an essential of the rule of law, stating that how widely this relation is detested by scholars around the world. He argues based on the civil liberties part of human rights to be in accordance with the principles of rule of law. I, however, do not agree with him on this. I believe that rule of law and human rights can have this correlation only in specific situations and the two may exist independent of each other, rather in defiance of each other.

In the next chapter, he deals with dispute resolution assessing the competence of judiciary. He insists on the dispute resolution system to be without prohibitive costs, inordinate delay and in bona fide intention. However, the high litigation costs of countries like the United States and procedural delays in the judicial process resulting in the high pendency of cases in India are living examples how difficult it is to achieve this in practice.

Next comes what forms the foundation of all legal systems and the sole reason of people relying upon them- *The fairness of trials*. Most nations of the world with an active judiciary, maintain the standards relating to fairness. It is one of the key aspects of rule of law, recognised across the world.

Lastly, he mentions about the rule of law being applied to international legal order. This segment basically deals with the obligations of nations with respect to other nations as well as the individuals. In modern times, individuals are seen as subjects of international law and action may be brought against a State if found guilty of violating an individual's internationally protected rights. *The rule of law among nations means the regulation of mutual intercourse of nations, and international contacts and relations of individuals, by legal concepts, standards, institutions and procedures.*⁶ Hence, even in the global arena, the rule of law prevails.

The last part of the book examines the justifiability of the application of rule of law in cases of terrorism or offences related to the integrity and security of the nation. *Terrorism is a criminal act and should be treated accordingly – and that means applying the law fairly and consistently.*⁷ The author seems to agree with this, quoting “...while the State has the right to

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms Rome, Vol. 4.XI, 1950.

⁶ Charles Rhyner, Opening Statement before Boston Conference on World Peace through Law, 27 March 1959.

⁷ Madeleine Albright, the US Secretary of State, the occasion a speech to the University of World Economy and Diplomacy at Tashkent in Uzbekistan, 17 April 2000.

*employ to the full its arsenal of legal weapons to repress and prevent terrorist activities, it may not use indiscriminate measures which would only undermine the fundamental values they seek to protect. For a State to react in such a way would be to fall into the trap set by terrorism for democracy and the rule of law.”*⁸. On the contrary, most governments tend to take effective and strict actions in such situations and it is also affirmed by the Protective principle of State Jurisdiction under international law.

He lastly deals with the rule of law and the sovereignty of the parliament. He says that despite having the law-making power, the parliament cannot go beyond the law, especially the power conferred to them. He ends with a note of achieving a universal secular religion which shares a common purpose with the principle and application of the Rule of Law.

III. APPLICATION

To reiterate, there is no area law or even our daily life practices where the principles, so beautifully explained in this book, cannot be applied. However, for the sake of not being infuriatingly vague, and that of the ease of the reader, I would suggest one of them.

Let us consider a simple scenario where a person, say Neha is aggrieved by the action of another person say, Nitin. Nitin took Neha's purse without her knowledge and with the intention of not returning it to Neha and not even informing Neha about the change of possession. The possibilities that arise from Neha's point of view are- Neha is not aware of her rights with regards to her belongings and hence, does not invoke any legal proceedings or the opposite- Neha is aware of her rights. Now, there exist multiple possibilities in this step as well. Neha is unaware of the procedure to be followed or; Neha is aware of the procedure and yet chooses to ignore the violation and does nothing or; Neha is aware of the procedure and yet, somehow finds out about the thief and steals one of Nitin's belongings as revenge or; Neha is aware of the procedure and makes a complaint to the local police Station about her missing item. Advancing, the scene at the police station would have the following possibilities- the police officer in charge refuses to take her complaint on account of her being a woman not accompanied by a man or; registers her complaint but does not start investigation or; registers her complaint and starts investing. Further, when the investigation is complete, and the matter reaches the court, the magistrate may dismiss the case without hearing or; go on adjourning the case or; hear the case and consider all the evidence. When Nitin is called upon, he may plead that he was not aware that stealing a purse was a crime or; he may plead that he was aware of

⁸ Guidelines on Human Rights and the Fight Against Terrorism, adopted by the Committee of Ministers, 11 July 2002, at the 804th Meeting of the Ministers' Deputies.

the crime but he did not do it or; he might plead guilty. The magistrate may after hearing all of this not hold Nitin guilty despite all evidences indicating Nitin to be guilty or; hold that the evidences do not ascertain Nitin's guilt or; hold Nitin guilty of committing the crime of stealing.

In each of those points in the preceding fictional scenario, the just and fair trail of possibilities would be- Neha is aware of her rights and Nitin is aware of his obligations, Neha knows the procedure to be followed and approaches the local police station, the police registers her complaint and starts investigation, when the matter is presented before the court, the Magistrate hears the matter, examines the evidence and on the occasion of being satisfied of the evidence indicating Nitin's guilt, holds him guilty.

In such a case, all the entities involved would have acted in accordance with the law and the conditions for its enforcement that have been discussed above, hence, upholding the *Rule of Law*.

Similar analogies may be drawn in other matters concerning crime, justice, civil procedure, working of institutions or any other matter that relates to the question of legal reasoning.

IV. CONCLUSION

The book exhibits information that is useful not only for law students or professionals but also every person living in a civilised society in order understand the justice system better. Specially so, because law, in practice, affects every person in some way or the other and it is crucial to comprehend the basis of its application.

I would say that this book with respect to its contents and philosophy is applicable unceasingly. Though dealing with law, a subject of dynamic nature, one must realise that even though laws are ever-changing as per the requirements of the advancements in the society, the fundamental principles remain the same. For without these, the existence and integrity of a legal system becomes questionable.
