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Rule of Law: The Basic Foundation Stone

MR. ARUN KUMAR¹ AND DR. RITU SINGH MEENA²

ABSTRACT

The idea of the rule of law has been around for ages and is quite significant in politics. Because of the Rule of Law, nobody is above the law. No person shall be subjected to harsh, uncivilized, or discriminatory treatment, even when the goal is to secure the utmost requirements of law and order, according to the rule of law. According to the rule of law, everyone, including institutions and entities, must abide by laws that are: Publicly enacted, Enforced equally, and adjudicated independently. Furthermore, it is in line with universal human rights standards. It necessitates taking steps to ensure adherence to the values of the rule of law, accountability to the rule of law, equality before the law, fairness in the application of the law, separation of powers, involvement in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. The fundamental principle of the Indian Constitution is that all people are equal before the law, which gave rise to the idea of equality. Another fundamental principle is the rule of law. The concept of the rule of law refers to the supreme control of the law over governmental activity and personal conduct. It is comparable to a scenario in which both the government and people are subject to the law and must abide by it. It stands in contrast to oppressive or arbitrary rule. The establishment of the liberal democratic system of governance in the West is correlated with the rule of law, which is the result of historical processes across centuries. There are conflicting perspectives about the rule of law.

Keywords- Rule of law, Equality, Democracy, Accountability, Constitution, Basic structure.

I. INTRODUCTION

One feature of what Dicey refers to as the English "rule of law" is the guarantee of equality before the law.³ It implies that no one is above the law and that common courts have jurisdiction over everyone, regardless of their status or circumstance. Dicey stated that "with us, every official, from the Prime Minister down to the policeman or a Collector of taxes, is under the same responsibility for any act done without legal basis as any other citizen. "The term "Rule of Law" is derived from the French expression "La Principe de Legalite" (the principle of

¹ Author is an Assistant Professor at Maharishi Law School, Maharishi University of Information Technology, Noida, India.

² Author is an Assistant Professor at Maharishi Law School, Maharishi University of Information Technology, Noida, India.

³ Dicey-law of the constitution, pp.202-3(10th ed.).

legality), which designates a government based on moral and legal standards as opposed to a ruler's arbitrary decisions. The foundation of contemporary democratic society and what it aspires to build is the idea of the Rule of Law in its purest form. A state that is run by laws rather than by men acting arbitrarily upholds the rule of law. A list of factors that constitute modern political ideas includes the rule of law as one of them, along with democracy, human rights, and free-market economic principles.⁴

II. ORIGIN OF RULE OF LAW

The rule of law has developed through centuries and is intricately tied to historical circumstances that have caused the progressive establishment of liberal democracies, as well as their underlying modes of governance and legal systems.⁵

In Greek and Roman antiquity, philosophical debates focused on the place of law in society. The *Laws*, one of Plato's final dialogues, is credited with introducing the notion that the government should be subject to the law.⁶ The concept was further developed by his pupil Aristotle in his work "The Politics (circa 350 B.C.)", where he contrasted the rule of law, which is based on reason, with the rule of man, which is based on passion, to explain why the government should be bound by the law to prevent arbitrary rule and the abuse of power.⁷ Both thinkers concurred that laws must be passed for the benefit of everybody.⁸

⁴ Jeremy Waldron, *The Concept and the Rule of Law*, Vol. 43, Georgia Law Review, (2008) available at https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1028&context=lectures_pre_arch_lectures_sibley.

⁵ Anthony Valcke, *The Rule of Law: Its Origins and Meanings (A Short Guide for Practitioners)* (March 1, 2012), available at SSRN, <http://ssrn.com/abstract=2042336>.

⁶"We must not commit the running of your state's government to anyone just because they are wealthy or because they have some other advantage, like physical prowess, height, or a different birth, but rather to the person who is most obedient to the state's laws, who will be awarded the palm." The same applies to laws that are passed for the benefit of specific classes rather than the general welfare of the state. Such rules make states into parties rather than polities, and their concepts of justice are meaningless... And when I refer to the rulers as servants or ministers of the law, I do it not out of curiosity but rather because I firmly believe that the success or failure of the state depends on such service or ministry. In contrast, I believe that the condition in which the law is superior to the rulers and the rulers are the inferiors of the law is one that is on the road to salvation and the fullness of all the blessings that the Gods are capable of bestowing".

⁷ "Absolute monarchy, or the arbitrary control of a sovereign over all people in a city of equals, is believed by some to be completely at odds with nature;... Because of this, it is considered fair that everyone is ruled as well as ruled among equals, and as a result, everyone should have a chance. Furthermore, it is asserted that the rule of law is superior to any human rule. On the same note, even if some people should be in charge, they should only serve as the law's protectors and ministers.... Since desire is a wild beast and passion corrupts the minds of rulers, even the finest of men, he who commands the law to govern may be understood to command God and Reason alone to rule, while he who commands man to rule adds an element of the beast. Law is rationality that is undisturbed by desire".

⁸ "Men demonstrate that every law that merits the title of law must be morally admirable and excellent. Examples of these arguments include the following. They assert that it is obvious that laws were initially made to ensure people's safety, the survival of states, and the peace and happiness of society. Those who first drafted laws of this nature also convinced the populace that if they were to accept and obey them, they would only write and publish laws that would promote general morality and happiness. Following their settlement and approval, these regulations were duly given the title of Laws. Since it is obvious that the very definition of "law" encompasses the

Rule of Law is no foreign concept in India and has its origin in Kautilya's Arthashastra too which said that all are equal before the law if a soldier committed a crime then he was also subjected to the Danda(Punishment) like the common citizen of the state and just because he was a soldier he was not exempted from the punishment.

And the same concept is run throughout India during many rulers' policies and we can say the rule of law is the bedrock of British Rule in India. They brought different laws during their regime in India like Indian Penal Code, Indian Evidence Act, And other Acts which indicated that the offender should be punished whether he was Indian or British One, "accused is the only accused". No matter from which country he belonged.

III. DICEY'S VIEW ON THE RULE OF LAW

Professor Dicey gave the three meanings of the Rule of the Laws thus-

1. Absence of the Arbitrary Power or the Supremacy of the law

It denotes the law's unquestionable supremacy over the government's discretionary power. A person may be punished for breaking the law, but he cannot be punished for anything else, in other words. This is the cornerstone of Dicey's concept of the rule of law. It suggests that everyone, even those who uphold the law, is subject to it. According to Dicey, the rule of law means that the law always has the absolute upper hand over the arbitrary power of the government. Or, to put it another way, a man should only be punished for the specific law offense and nothing else. The only way the government may punish someone is in line with the law, not just by decree.

2. Equality before the law

It refers to the submission of all classes to the common law of the land as applied by common law courts. "No one is above the law with the lone exception of the kings who can do no wrong," this statement meant. Everyone in England is subject to the same laws, regardless of whether they are state employees or private citizens. Therefore, in Great Britain, public officials do not possess privileged positions. In Great Britain, there is a single legal code and single judicial system that applies to both government officials and private citizens, for example. The second foundational principle of Dicey's concept of the Rule of Law is equality before the law. In other words, regardless of rank or prestige, every man is subject to regular law and the power of the usual court, not any special court. According to his argument, unique laws and courts pose a

entire essence and force of justice and equity, we can reasonably conclude that those who created unjust and harmful enactments for the people acted contrary to their promises and professions and established anything other than properly so-called laws".

threat to the values of equality. He thinks that everyone should be bound by the same laws and that those laws and civil cases should be decided by the same civil courts.

3. The constitution is the result of the ordinary law of the land

It implies that the norms that have been established and upheld by the court, rather than the written constitution, are the source of an individual's illumination. The third pillar in Dicey's definition of the Rule of Law is the domination of the legal spirit. Dicey found the courts to be the organization in charge of upholding the law because he thought there ought to be one. He believed that because the courts protect the rule of law, they must be impartial and free from extraneous influence. As a result, the independence of the judiciary is an essential component of the rule of law. He claimed that the judicial system, not the written constitution, is the ultimate protector of a person's fundamental rights.

The first and the second aspect applied to the Indian system but the third aspect of Dicey's Rule of Law does not apply to the Indian system as the source of the right of an individual is the constitution of India.

IV. VIEWS OF DIFFERENT PHILOSOPHERS AND JURISTS IN RESPECT OF RULE OF LAW

(a) Prof. (Dr.) Upendra Baxi said that the notion also has a substantive requirement in addition to its formal and procedural aspects, "Everywhere and always, the rule of law is a site of people's nagging fights for justice, fairness in government, and morality in society. The Indian rule of law is envisioned here normatively as a shield enabling an encyclopedic regime of "progressive" official participation in the affairs of civil society, as well as a sword against State control and violation and historical civil society norms and practices".

(b) A.V. Dicey, a British jurist, developed a novel theory of the rule of law by connecting it to the idea of legal equality by stating, "No man is above the law and every man, whatever be his rank or circumstance, is subject to the regular law of the realm and amenable to the authority of the ordinary tribunals".

(c) The Magna Carta of 1215, the philosophical and legal forerunner of the contemporary idea of the rule of law, advanced the idea that, "No one, not even the sovereign, is above the law and that everyone must be protected from the arbitrary exercise of governmental authority". John Locke emphasized that "All of the government's powers must be "directed to no other purpose than the peace, safety, and public benefit of the people" for them to be seen by the people as legitimate. He stressed that a government's legitimacy does not merely depend on a popular agreement".

(d) The Romans placed a strong emphasis on a functioning legal system with open and impartial courts to close the gap between the rule of law and its actual execution by the government.

(e) The Greeks thought that the development of a successful and equitable society required the foundation of the rule of law. Even Herodotus had claimed that, despite being free, Greeks were not truly free; the law was their ruler.

(f) The words of Cicero, who upheld the rule of law, are as follows: "It is a far greater disgrace, in a state which rests upon law, that there should be a departure from the law. Because the law is the foundation of our liberty, the source of justice, and the bond that protects our privileges within the commonwealth. The state without law would be like a body without a mind; therefore, we must all obey the law to be free, including the judges who interpret it and the magistrates who apply it".

(g) In a perfect world, according to Aristotle, "Justice would not require any laws at all; nevertheless, in a flawed society, such as India today, justice can only exist if the interactions between the state and its citizens are governed by law. Being quite realistic, he could also imagine a situation in which a nation's laws were fair and just but were willfully ignored by an unfair and arbitrary government".

(h) According to Austrian philosopher Frederich Hayek, "Constraints on individual freedom are of the utmost importance in a society where the rule of law prevails. As a result, the state imposes restrictions on freedom only very seldom". However, the recent arrest of an 80-year-old Catholic priest named Father Stan Swamy, who has Parkinson's disease, on sedition charges for his work as a human rights advocate, is a clear violation of personal freedoms. Furthermore, India's human rights law and practice have been severely harmed by Amnesty International's expulsion from the nation

V. RULE OF LAW AND DEMOCRACY

To put it plainly, democracy concentrates on how societies choose people who will retain power, whereas the rule of law is focused on how political authority is used. The fundamental tenet of the rule of law assumes that every citizen, including legislators and others in positions of authority, is subject to and responsible under the law. In this sense, the rule of law seems to support democratic governance that is made for and by the people, as well as being in stark contrast to the ideas of dictatorship, autocracy, and oligarchy, where those in positions of power and governance conduct their affairs outside of and above the reach of the law. True rule of law government is referred to as a "nomocracy," which comes from the Greek words *nomos* (law) and *Kratos* (rule). Today, democracy and rule of law governance are most compatible.

“Human rights, the rule of law, and democracy are all interconnected and mutually reinforcing, and they all fall under the umbrella of the UN's universal and unbreakable basic values and principles”.- General Assembly of the United Nations, 2012.

The processes of establishing democracy and the rule of law might reinforce one another. A foundational element of democracy that promotes equality and accountability is the rule of law. The fundamentals of contemporary democracy—protecting everyone's rights, promoting inclusivity, and limiting the arbitrary exercise of power—are advanced through strengthening the rule of law.⁹

UN Secretary-General's Report on the rule of law and transitional justice in conflict and post-conflict societies S/2004/616 (2004)

The Organization's aim is fundamentally based on the idea of the "Rule of Law." It refers to a principle of governance according to which all individuals, institutions, and organizations, both public and private, including the State itself, are answerable to laws that are publicly promulgated, equally enforced, and independently decided upon while also being compliant with international human rights standards. The values of the supremacy of the law, equality before the law, accountability to the law, justice in the application of the law, the separation of powers, involvement in decision-making, legal clarity, avoiding arbitrary behavior, and procedural and legal transparency must all be upheld. Additionally, significant efforts have been undertaken to provide tools for the rule of law. The World Justice Effort is one ambitious project that has created a Rule of Law Index to gauge how closely nations adhere to the rule of law. The index is based on measurements of how well the following principles are being followed. I the extent to which laws are clear, widely known, stable, and protect fundamental rights; (ii) the process for enacting, administering, and upholding laws is approachable, fair, and effective; and (iii) access to justice is provided by qualified, moral, and independent lawyers and judges who are sufficient in number, have access to sufficient resources, and are representative of the society.¹⁰

World Justice Project - Rule of Law Index 2011

⁹ <http://rolalliance.org/rol-alliance-impact/rule-of-law-democracy/>

¹⁰ World Justice Project, “Rule of Law Index 2011”, URL: <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021>. Access accessed on 14 July 2022.

Factor 1 Limited Government Power	Factor 4 Fundamental Rights
Norway (1/66)	Sweden (1/66)
New Zealand (2/66)	Norway (2/66)
Sweden (3/66)	Netherlands (3/66)
Australia (4/66)	New Zealand (4/66)
Netherlands (5/66)	Germany (6/66)
Germany (6/66)	Australia (9/66)
Canada (7/66)	United Kingdom (13/66)
United Kingdom (9/66)	Canada (14/66)
Hong Kong SAR (14/66)	France (15/66)
France (15/66)	Chile (18/66)
United States (16/66)	United States (19/66)
Chile (17/66)	Italy (20/66)
Italy (29/66)	Hong Kong SAR (21/66)
China (37/66)	Ukraine (44/66)
Iran (58/66)	Kenya (52/66)
Pakistan (61/66)	Venezuela (53/66)
Kenya (61/66)	Cambodia (62/66)
Ethiopia (63/65)	Pakistan (63/66)
Ukraine (64/66)	China (64/66)

Cambodia (65/66)	Ethiopia (65/66)
Venezuela (66/66)	Iran (66/66)

source:worldjusticeproject.org

VI. RULE OF LAW IN THE LIGHT OF THE CONSTITUTION OF INDIA

The Rule of Law as it is applied in India is thought to be embodied in some Constitutional articles. Both Dicey's original postulates and how British India had applied them had been known to those who drafted our Constitution. They must uphold the ideals of the Rule of Law as they are outlined in the Constitution because it is the nation's foundational law and all other laws are in deference to it.

According to Article 13(1), any law passed by the legislature must be following the Constitution or it would be deemed invalid.¹¹

Article 14 of the Constitution of India reads as under: "On Indian soil, the State is not allowed to deny anyone's right to equality before the law or to equal protection under the law. The aforementioned article is divided into two sections; it forbids the State from denying anyone "equality before the law" as well as "equal protection of the laws." Discrimination is prohibited by the Rule of Law. According to the idea of "equal protection of the laws," the State must treat individuals differently depending on their circumstances to provide equality for everyone. It has a constructive attitude. As a result, it follows that those who are equal should be treated similarly, while those who are not would need to be treated unfairly. The concept of equality is that every member of society is afforded equal chances and is free from all forms of discrimination and before the law everyone is equal".¹²

The citizens are protected under Article 15 against any type of discrimination by the State based on religion, race, caste, sex, place of birth, or any combination of those factors. The State may nonetheless provide any unique measures for women or children despite this Article. Additionally, it permits the State to make special allowances for socially and economically disadvantaged classes to promote their growth. Scheduled Castes (SC) and Scheduled Tribes (ST) are also covered.¹³

Article 21 of the Indian Constitution says, "No person shall be deprived of his life or personal

¹¹ See Article 13 of the Indian Constitution.

¹² See Article 14 of the Indian Constitution.

¹³ See Article 15 of the Indian Constitution.

liberty except according to procedure established by law".¹⁴

And so many articles talk about the rule of law and accordingly no one is above the law. Even The President of India who is the symbol of unity of India is also elected.

VII. IMPORTANT JUDGMENT

In the case of *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*,¹⁵ the Hon'ble Supreme Court of India stated plainly that, "Rule of Law is recognized as a part of the basic construction of the Constitution or and, thus, it cannot be abrogated or abolished even by the Parliament."

In the Indian Constitution of 1950, the idea of the rule of law is woven throughout like a golden thread. Judge H. R. Khanna made the following observation in *Additional District Magistrate, Jabalpur v. Shivakant Shukla and Others*.¹⁶ by stating that, "Arbitrariness is opposed by the rule of law. It has become synonymous with personal freedom. The competing ideas of individual liberty and public order are kept in check by maintaining a balance between them. Human rights and public interest needs must be balanced in every State, which is a difficult task. Only the presence of independent courts that can maintain the delicate balance between citizens and the State and force Governments to abide by the law would allow for such harmonization".

In *Suman Gupta and Ors. Etc v. State of J & K and Ors.*,¹⁷ It was decided that "It must be kept in mind that the Rule of Law is the very foundation of our entire constitutional structure, and in any system so designed it is impossible to conceive of lawful power which is arbitrary in character and travels beyond the confines of reason".

According to the ruling in the case of *Smt. Indira Nehru Gandhi v. Shri Raj Narain*,¹⁸ it was held that "Rule of Law is enshrined in Article 14 of the Constitution is the "basic characteristic" of the Indian Constitution and cannot be eliminated, not even by a constitutional amendment made under Article 368".

Navin Soni V. Munish Soni & Ors.,¹⁹ it was held by the Delhi High Court, "The administration of justice must proceed fairly and impartially. To ensure that our nation's operations are unimpeded, particularly during tumultuous times, attempts to circumvent or undermine judicial decisions must be taken seriously. The only thing that guarantees a nation's civilized operation

¹⁴ See Article 21 of the Indian Constitution.

¹⁵ (1973) 4 SCC 225; AIR 1973 SC 1461.

¹⁶ (1976) 2 SCC 521; AIR 1976 SC 1207.

¹⁷ AIR 1983 SC 1235

¹⁸ AIR 1975 SC 2299

¹⁹ CONT.CAS(C) 640/2018 & CM APPLs. 16138-39/2022

and propels it toward advancement and development is the rule of law. ***And It was further said that a country is driven towards ultimate collapse by the absence of the rule of law or by the existence of complete disdain for it. As a result, the Court must adopt a strict stance when an Order of the Courts is disobeyed, and the Courts should not hesitate to use the sword of contempt when dealing with a scenario involving intentional disobedience***".

When receiving a Lifetime Achievement Award from the Rotary Club of Vijayawada, CJI N.V. Ramana spoke about the value of the Rule of Law in a democracy. Legal professionals, judges, and other audience members were exhorted by CJI to spread awareness of the importance of the Rule of Law. Any country that lacks the rule of law experiences anarchy. It is necessary to educate people on the value of the rule of law. Making people aware of the value of the Rule of Law is especially the responsibility of lawyers, judges, and professors.²⁰

"The rule of law is very much a terrestrial idea with its habitat within the four corners of the constitution. It is not like a flashing star up above the constitution".²¹

In the case of Sanjay@ Mausam v. State of U.P.,²² Allahabad High Court observed, " The disregard shown by the senior-most officials to the orders passed by the Court has grave consequences on the rule of law in the country".

Speaking at the 2nd Justice HR Khanna Memorial National Symposium, which was organized by RMNLU & NLUO in collaboration with the CAN Foundation, Justice Pardiwala addressed the audience on the subject of "Vox Populi vs. Rule of Law: Supreme Court of India." According to Justice Pardiwala, the rule of law is what sets Indian democracy apart and it all started with the Indian Constitution. However, he asserted that the rule of law was upheld even in nations that did not have parliamentary democracies or that had dictatorships in place. According to Justice Pardiwala, this meant that the rule of law in a democracy like India needed to be carefully examined. Further, he said, "Attacks on judges personally because of their decisions create a dangerous situation where the judges must consider what the public thinks rather than what the law thinks. It undermines the rule of law ".

VIII. CONCLUSION

So From the above discussion, we can say that rule of law is the soul of any governance, and without it, no government would survive. The court must establish the principle of the rule of

²⁰ CJI N.V.Ramana, if Rule Of Law Is Not Present In Any Nation Anarchy Reigns, URL: <https://www.livelaw.in/top-stories/if-rule-of-law-is-not-present-in-any-nation-anarchy-reigns-chief-justice-nv-ramana-188399>. Accessed on July 14, 2022.

²¹ Smt. Indira Nehru Gandhi v. Shri Raj Narain and Anr. (1975) Supp. SCC 1.

²² CRIMINAL MISC. BAIL APPLICATION No. - 22305 of 2021.

law in a broader sense so that the law is supreme and there is equality in the society,

The judge should treat all people equally without any biases and their decision should be fair and it should not arbitrary they should make the people confident that the accused will be punished without any focus that he is a politician or something else.

And it is the duty of all three organs of the democracy that is the Legislature, Executive, and The Judiciary that they should work within their spheres and that is a clear separation of the power among all the three organs. And no one should use the doctrine of the colorable legislation just to satisfy itself or to complete its will.

And it is the foremost duty of the Apex Court to check and balance the power of all three organs. And all work is in the progress of society and an individual will survive in society if he has faith in the rule of the law.
