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Rule of Law

NONY NEMA¹

ABSTRACT

The term "Rule of Law" is frequently used by the Indian judiciary in its judgements, despite the fact that it is not explicitly defined in the Indian Constitution. According to the Supreme Court, one of the fundamental elements of the Constitution is the rule of law, which cannot be altered even by constitutional amendment. A crucial element of effective government is the rule of law. People must be governed by accepted laws rather than unstable rulings, according to the rule of law. It is imperative to keep in mind that the rules established should be inclusive and abstract, well-known and sure, and apply equally to everyone. Constitutionalism's judicial restraints on the executive branch characterise it. According to the notion of constitutionalism, governmental authority is divided into laws that are enacted by one body and carried out by another, and there is an independent court to ensure that the laws are upheld. The term "rule of law" is said to have been created by Sir Edward Coke, the Chief Justice during James I's reign. There is a long history behind the idea of the rule of law. Greek philosophers like Plato and Aristotle disputed the idea of the rule of law in the year 350 BC. The term "Rule of Law" comes from the French phrase "la principe de legalite," which translates to "the principle of legality." This phrase adheres to a system of government based on laws rather than customs. One of the key tenets of the Constitution is the rule of law, which is upheld in both India and the US. The idea of the rule of law serves as the cornerstone of administrative law. Aristotle's discussion of the rule of law is built on the ideas of justice, fairness, and inclusion. Today's definition of the rule of law encompasses a complex web of fundamental principles, such as judicial independence, uniformity, transparency, and accountability in administrative law, as well as equality before the law and equal treatment for governments. The rule of law notion, its tenets, and its significance in the Indian Constitution are frequently highlighted in the paper.

Keywords: *Rule of Law, Origin, Rule of Law and the Indian Constitution, Modern concept of Rule of Law.*

I. INTRODUCTION

Simply expressed, the rule of law entails that no one is above the law and that everyone is subject to the jurisdiction of regular courts of law, regardless of their position or status. India has embraced the phrase "rule of law," which was first created in England. No one should be

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treated arbitrarily or harshly, according to the idea of the rule of law. The term "law" in the phrase "rule of law" denotes that a person or a group of people must be ruled by the law rather than a man or ruler. To put it another way, the rule of law is defined as the law of the land under Article 13 of the Indian Constitution. The goal of the rule of law, like other constitutional ideas, is to advance people's freedom and fundamental rights. The notion of the rule of law makes sure that the administration does not use local or national laws to repress or restrict the liberties protected by the constitution. In the context of India, the idea of the rule of law has been somewhat expanded. The Supreme Court has articulated and demonstrated the rule of law on several occasions through its judgements, supporting views of A.V. Dicey. It is regarded as an essential component of the fundamental structure of the Constitution and cannot, therefore, be repealed or repealed by Parliament. The preamble enshrines the founding principles of the constitution: liberty, equality, and fraternity. Even if the goal is to defend and secure peace and order, the rule of law states that no one should be subjected to harsh, uncivilised, or discriminating treatment. The constitution's foundational ideas of liberty, equality, and fraternity are enshrined in the preamble. Although maintaining peace and order is the main objective, the rule of law stipulates that no one shall be subjected to harsh, inhumane, or discriminatory treatment.

(A) Review of Literature

1. Thomas Henry Bingham's book "RULE OF LAW," in which he strove to persuade readers and those in positions of authority that the power that anyone possesses is conferred upon them by LAW itself and should, therefore, be used wisely and in line with it. The purpose of the book is to show that the use of legal authorities must be in compliance with the law and not at the discretion of the person in charge.

2. The most well-known modern explanation of the concept of rule of law in terms of the powers that the government must exercise in accordance with the law was provided by Prof. Albert Venn Dicey in his book "THE LAW OF THE CONSTITUTION."

(B) Research Methodology

The research methodology used in this paper is based on secondary sources which include various articles, blogs and relevant data of other resourceful websites.

II. ANALYSIS

(A) Origin of Rule of Law

The concept of the rule of law is claimed to have been first advanced by Greek philosophers including Aristotle, Plato, and Cicero. For instance, Plato stated in his book "Complete Works

of Plato" that states where the law is deemed supreme enjoy all of the god's blessings and prosper throughout time, but states where the law is made subjective to the authorities are not far from the collapse of the state. Aristotle, a Greek philosopher, first put out the idea of the rule of law as a set of natural order laws.

In 1215, King John of England signed the Magna Carta, establishing the rule of law in that country. Magna Carta's signature granted the English Monarchy permission to be governed by the law and established the rule of law as supreme. The concept of the rule of law in England took on a new significance after the conflict emerged between the parliament and the monarchy or king. In this conflict, the parliament and the monarchy were competing for supremacy. The parliament prevailed in this dispute resolution. Following its accession to the throne, parliament started passing laws that limited and regulated the monarchy's authority. As a result, the rule of law in England began when the executive branches were made subject to parliamentary law.

The concept of the rule of law was first introduced in the United States of America (U.S.A.) in 1776 by the constitutional lawyers known as Paine. He holds that because America is a free nation, it considers the law to be supreme, and that every free nation should hold the same position. Famous English constitutional lawyer Dicey came up with even more theories regarding the rule of law.

(B) Dicey's Idea of the Rule of Law

Given that Dicey is frequently recognised as the principal proponent of the rule of law concept, it would be reasonable to discuss his opinions. On the other hand, Sir Edward Coke is credited with developing his doctrine. He said for the first time, "King is beneath God and the Law." Alvin Venn Dicey is frequently credited with creating the legal system. In his 1885 book *Law and Constitution*, Dicey expanded on Coke's concept. The three pillars of the rule of law, according to Dicey's theory, are founded on the idea that "a government should be formed on principles of law and not of men."

- Supremacy of Law

This is Dicey's first tenet of the concept of the rule of law. It suggests that everyone, including those who enforce the law, must abide by it. The rule of law, in Dicey's opinion, is characterised by the law's total supremacy over the arbitrary power of the government. Or, to put it another way, a guy ought to face punishment only for breaking the law. Only in conformity with the law and not on the basis of the government's own power may someone be punished. Dicey said that where the law is dominant, discretion has no place. He thinks that arbitrariness and prudence go hand in hand. Dicey contends that when there is discretion, government arbitrary

action and discretionary power to violate people's legal rights are possible.

- Equality before Law

The second tenet of Dicey's concept of the Rule of Law is equality before the law. In other words, every man is subject to regular law and conventional courts, not special courts, regardless of rank or position, and vice versa. He feels that the egalitarian principles are threatened by special legislation and special courts. He consequently thinks that everyone should be bound by the same set of laws and have their cases adjudicated by the same civil courts.

- Predominance of Legal Spirit

The third tenet of Dicey's Rule of Law philosophy is the primacy of the legal spirit. Dicey believed that the courts served as the enforcing authority necessary for the rule of law to prevail. He believed that because the courts uphold the law, they need to be impartial and free from extraneous interference. Therefore, the independence of the judiciary is essential for the establishment of the rule of law. He asserted that, rather than the written constitution, the courts of law serve as the ultimate protector of a person's fundamental rights.

(C) Rule of Law and the Indian Constitution

The Indian constitution contains numerous sections that reference the rule of law. For instance, the pursuit of justice, liberty, and equality is stated in the Preamble of the Indian Constitution. Article 14 guarantees both equal treatment before the law and equal protection under the law. No one should be denied equality before the law or equal protection of the state's laws, according to this clause. The overarching message of Article 14 is that everyone is subject to the rule of law, which means that there is no tolerance for arbitrary action. To uphold the rule of law, everyone must be treated equally and without bias. The Supreme Court stated unequivocally in *Maneka Gandhi v. Union of India* that Article 14 forbids state conduct that is arbitrary and advances fairness and equity of treatment. The rule of law, which is a key component of the Indian Constitution, forbids arbitrary behaviour. Where there is arbitrariness, there is no Rule of Law. The principle of equality was further improved by the inclusion of protective discrimination as a safeguard for equality among equals in Articles 15, 16, and 23.

An example of how India's Rule of Law philosophy has been applied is found in Article 13 of the Indian Constitution. Rules, regulations, bye-laws, and ordinances are all considered "laws" according to Article 13 and are subject to repeal if they conflict with the Indian Constitution.

The Supreme Court declared the Rule of Law to be a fundamental component of the

Constitution in *Keshavananda Bharti v. State of Kerala*². Despite affirming that the Parliament has the authority to amend every article of the Constitution, the Supreme Court has curtailed this authority by stipulating that it cannot be used to alter the Constitution's core principles.

Unalienable and existent worldwide are fundamental rights. Only a state that supports the rule of law can preserve such basic rights. The Indian Constitution's Part III safeguards fundamental rights. The Constitution's Articles 32 and 226 permit the enforcement of these Fundamental Rights. In accordance with the Indian Constitution, all laws must be. Any law that infringes upon the Constitution, especially the fundamental rights, is ruled unconstitutional. One of the tenets of the Rule of Law is liberty, along with justice and equality.

The Constitution's Article 21 guarantees the basic rights to life and freedom. This Article contends that the law is ultimate and that no one's life or freedom can be taken away from them unless they abide by the legal system. This clause also guarantees that no one is penalised unless and only to the extent that they have violated the law in force at the time of the offence. The concepts of double jeopardy and self-incrimination are recognised by the Indian Constitution.

Numerous freedoms granted to individuals under Article 19 of the Constitution are another illustration of how Rule of Law principles are in play because such freedoms can only be restricted if they are reasonable, as defined by Articles 14, 19, and 21 of the Constitution. In *E.P. Royappa v. State of Tamil Nadu & Others*, the Supreme Court came to the conclusion that for the state to be justified in restricting fundamental rights, it must adhere to all the requirements outlined in Articles 14, 19, and 21.

(D) Modern concept of Rule of Law

The rule of law in modern society has developed to the point that it now offers the best structure for any government to follow. The idea was developed by the International Commission of Jurists and adopted as the Delhi Declaration in 1959. It was later endorsed in Lagos in 1961. This strategy safeguards the dignity of the individual man. It suggests that the rule of law should be implemented in a way that prioritises respect for individual dignity. Respect for one's individual dignity includes acknowledging one's social, economic, educational, cultural, and developmental rights in addition to one's civil and political rights. To put it briefly, the proper application of the Rule of Law depends on human rights procedures. Mechanisms for protecting human rights are particularly crucial in the context of developing nations like India.

² The *Keshavananda Bharati* verdict, also known as the *State of Kerala & Anr. (Writ Petition (Civil) 135 of 1970)*, is a major Supreme Court of India case that articulated the basic structure theory of the Indian Constitution.

(E) Criticism of the Rule of Law

The phrase "rule of law" suggests that the law controls or rules the community. No person or branch of government is above the rules set by elected officials, according to the rule of law principle. In a Western democracy, these laws are meant to be pre-established, codified, impartial, and objective and to reflect the morality of the society. Everybody must obey their orders in the same way. As a result, legal equality should be promoted by the rule of law. The ability of the ruling elite to manipulate the law has been noted as a drawback of the rule of law, according to critics. Because the resolution of legal disputes and issues is decided by social power structures rather than the law itself, the law cannot possibly serve as an effective barrier to the government's misuse of power. Since the ruling class has a significant influence on how the law is interpreted and applied by the courts, the rule of law just legitimises previously existing legal linkages and power structures. The idea of the rule of law has consequently gained unjustified authority in the modern world. Some academics have noted that one of the problems with the rule of law is its narrow definition, partly in response to the aforementioned argument.

III. CONCLUSION

The rule of law is a fundamental principle of government in any civilised democratic nation. It stands in sharp contrast to arbitrariness. India, a democratic nation, is proud of its legal system. When a crime is committed, a process is followed. The offender has been captured while legal action is ongoing. Questions are asked of suspects. There is a gathering of evidence. There are interrogations. A case is developed. The court examines the testimony and evidence. The accused has a right to legal counsel. The judiciary issues a decision that is subject to appeal after considering all the evidence and implementing the law. This procedure is used in every civilised society since it is the only way to give the system legitimacy and permit the arbitrary exercise of power, as well as because criminal law mandates that the guilty are presumed innocent until proven guilty. Every human being, including criminals, is entitled to fundamental human rights and due process, according to the rule of law. Killings committed during encounters are a complete violation of due process, which is a crucial element of the rule of law. Adherence to the law is the fundamental tenet of a democratic society. Without it, democracy is nonetheless a slogan.

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