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## Rule of Law in India- An analysis

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### ABSTRACT

*The author in this paper not only aims to bring forth the value and meaning of the rule of law, but also tries to portray its importance as a tool which limits abuse of power. The introduction of this paper sets out to give a brief of the meaning of rule of law, its origin and a brief analysis of the definition given by A.V. Dicey in his book "The Law of the Constitution (1885)". The second part of the research paper talks about the two theories of the Rule of Law- The Rule-Book and Rights Based theories. The analysis basically elucidates upon how the doctrine of Rule of Law has been upheld in almost all judicial decisions in India. Finally, the author concludes with how the need of the hour is to correct its implementation and execution so that law prevails over everyone and everybody.*

**Keywords**— Rule of law, India, Rule-book, Rights-based, Constitution

### 1. RULE OF LAW IN INDIA

*"When the Rule of Law disappears, we are ruled by the whims of men."*

-Tiffany Madison

### 2. INTRODUCTION

Rule of law can be described as a circumstance in which the law of the land that must be adhered to is superior than the government administering the land. It is a legal routine that controls the government's authority, and does this to guarantee that the government does not turn to arbitrary power or misuse its authority to rule over the population of the land. As expressed by a few political and legal theorists, democracy can't continue in a nation without foundation of rule of law. Efforts have been taken to define the rule of law by major theorists, one of whom is Lon. L. Fuller. He contends that rule of law requires openly declared rules that are written before time, some of which comply with natural justice.[1]

The phrase 'Rule of Law' is derived from the French expression 'la principe de legalite' (the principle of legality), which alludes to a government based on principles of law, not of men. It is one of the fundamental principles of the English Constitution and is acknowledged in the Constitution of U.S.A and India too. The whole foundation of Administrative Law is the doctrine of rule of law.

Sir Edward Coke, the Chief Justice of King James I's rule, was the originator of this doctrine. He said that even the King ought to be under God and the Law, and he set up the superiority of the law against the executive. Later, Albert Venn Dicey (a British legal jurist and established theorist) evolved the doctrine in his book, 'The Law of the Constitution' (1885).

The definition he gave can be comprehended in three parts:

(a) The first, broadly speaking, says that no man is above law. He stated,

*"no one is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established before the ordinary courts of land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary powers of constraint."*

No man can be punished except for a particular breach of law made in a normal legal manner under the watchful eye of ordinary courts. People in power don't have wide, arbitrary or discretionary powers. Dicey declared that wherever there is discretion, there is space for arbitrariness. Only that which is set up in the court of law can be implemented; no individual can take the law in his own hands.

(b) The second tells us about equality in the meaning of 'equal subjection', or equal opportunity of law given to every single citizen of the nation in its courts. He clarified this meaning of rule of law through an ordeal he had in France, where he saw that law or 'droit administratif' treats its authorities in a different manner than its normal individuals and gives them higher position in the society. This is in opposition to the rule of law, under which each individual must be subject to the same law. He said, "every

official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." [2]

- (c) For the third part, Dicey did not have confidence in a written constitution. As per him, the law ought to be framed on the foundation of precedents set by the court. He said that constitutional law is "the result of the judicial decisions determining the rights of private persons in particular cases brought before the courts." [3]

The Rule of Law, as thus articulated, has been adopted and concisely fused in the Indian Constitution. In India, law is supreme and everything else goes under it. Any law found infringing upon any provision of the Constitution, especially the fundamental rights, is pronounced void. The expressed fundamental rights in the Constitution guarantee equality to all citizens of India, the right to freedom of speech and expression, right to practice any religion, and so on. This fulfills both first and second part of the definition under Article 14. Through Section 247, the Constitution gives the foundation of additional courts, for better and quicker administration. The Article 22 shields a person from arbitrary arrest, thus going under the first meaning of the rule of law by Dicey.

### **3. RULE-BOOK AND RIGHTS-BASED THEORIES OF THE RULE OF LAW**

In explaining the rule of law, liberals have frequently depended on two distinct notions of law: rule based (procedural) and rights-based. These theories differ in the manner in which that they highlight specific provisions of the rule of law over others, for example, generality over equality or the other way around.

Lon Fuller's definition is a good example of a procedural notion of the rule of law. Fuller found that a procedural notion of rule of law contains eight essentials, which are: law is adequately broad (there must be rules); it is openly proclaimed; planned; clear and comprehensible; it is free of inconsistencies; adequately consistent to empower individuals to arrange their relations; not difficult to comply; and it must be regulated in a way adequately harmonious with the wording of its written rules so that individuals can abide by them. These essentials implied that there were minimum standards that had to be complied with and that if the proposed law failed to fulfill the standards, it would lose its footing as a law.

Conversely, rights-based theories are increasingly worried about the acknowledgment and creation of the rule of law as a type of political morality.

As per Ronald Dworkin, a rights-based notion of the rule of law presupposes that citizens have moral rights and obligations concerning each other, and political rights against the state as a whole. It demands that these rights be recognised in positive law, with the goal that they might be implemented upon the demand of individual citizens through courts or other legal institutions. The rule of law on this notion is the ideal of rule by a correct public perception of individual rights. It doesn't differentiate, as the procedural notion does, between the rule of law and substantive justice; on the other hand, it requires, as a component of the ideal of law, that the tenets in the rule book capture and uphold moral rights.

Dworkin's model of integrity is an attribute for such a rights-based theory. It necessitates that judges not only observe and apply rules in their judgements, but also elaborate on them so that they are modified as per their purposes to demonstrate the practice of interpretation in its 'best light'. The model force of equality drives this model. The place of the rule of law in this setting is in the first phase of judicial interpretation. According to Dworkin:

*"The most abstract and fundamental point of legal practice is to guide and constrain power of government ... law insists that force not be used or withheld ... except as licensed or required by individual rights and responsibilities flowing from past decisions. This characterization of the concept of law sets out, in suitably airy form, what is sometimes called the 'rule of law'."*

### **4. ANALYSIS**

In *Shankari Prasad v. Union of India*, [4] the constitutional legitimacy of first amendment (1951), which restricted the right to property, was challenged. The Supreme Court ruled that the ability to alter the Constitution under Article 368 likewise included the ability to amend fundamental rights and that "law" in Article 13 incorporates just an ordinary law made in exercise of the legislative powers and does exclude Constitutional amendment which is made in exercise of constituent power. Hence, a Constitutional amendment will be legitimate regardless of whether it curtails any of the fundamental rights. This question came up again in *Sajjan Singh v. State of Rajasthan*, in which the Supreme Court affirmed the majority judgment of *Shankari Prasad* case.

Nonetheless, both these cases were overruled by the Supreme Court in *Golak Nath v. State of Punjab* [5], and the Rule of Law was sub-served by the Judiciary from curtailing away. Be that as it may, the Rule of Law was demolished with the Constitution (Twenty-Fourth Amendment) Act, 1971. This was challenged in the case of *Kesavananda Bharati v. State of Kerala* [6]. The Supreme Court by majority overruled the ruling given in *Golak Nath's* case and held that Parliament has wide powers to amend the Constitution and it stretches out to all Articles, yet the power to amend is restricted and excludes the ability to revoke the basic framework of the Constitution. There are implicit restrictions on the amending power under Article 368. Within these restrictions, Parliament can amend each Article of the Constitution. Hence, Rule of law succeeded.

In *Indira Nehru Gandhi v. Raj Narain* [7], the Supreme Court nullified Clause (4) of Article 329-A introduced by the Constitution (Thirty-ninth Amendment) Act, 1975 to immunise the problem regarding election to the office of the Prime Minister from any sort of judicial review. The Court said this infringed the concept of Rule of Law which can't be revoked even by the Parliament.

In *ADM, Jabalpur v. Shivakant Shukla* [8], the question before the court was 'whether there was any rule of law in India apart from Article 21'. This was related to suspension of implementation of Articles 14, 21 and 22 amid the declaration of an emergency. The

ruling of the majority of the bench was not in favour of the question of law. However, Justice H.R. Khanna dissented from the opinion of the majority and said that:

*“Even in absence of Article 21 in the Constitution, the state has got no power to deprive a person of his life and liberty without the authority of law. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning...Rule of Law is now the accepted norm of all civilized societies” [9]*

In *Secretary, State of Karnataka and Ors. v. Umadevi and Ors* [10] a Constitution Bench of this Court has laid down the law in the following terms:

*“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.”*

In *Bachan Singh v. State of Punjab*, [11] Justice Bhagwati expressed that rule of law doesn't include arbitrariness and unreasonableness. To safeguard this, he said that it is important for the government to be fair in making laws and there ought to be an independent judiciary to restrict the powers of the legislature and the executive.

It was held that the Rule of Law has three essential and basic assumptions. They are:

- (a) Law making must be in the hands of a democratically elected legislature;
- (b) There ought not be unrestricted legislative power even in the hands of a democratically-elected legislature;
- (c) There must be an independent judiciary to safeguard the citizens against excess legislative and executive power.

In *P. Sambamurthy & Ors. v. State of Andhra Pradesh & Anr.* [12], the Supreme Court has announced a provision which authorizes the executive to meddle with tribunal justice as unconstitutional characterizing it as “violative of the rule of law which is clearly a basic and essential feature of the constitution.”

In the case of *Binani Zinc Limited Vs. Kerala State Electricity Board and Ors.* [13], Justice S.B. Sinha said that “It is now a well settled principle of law that the rule of law inter alia postulates that all laws would be prospective subject of course to enactment an express provision or intendment to the contrary.”

The Supreme Court, in *Som Raj & Ors. v. State of Haryana & Ors.* [14] declared that the absence of arbitrary power is an essential postulate of Rule of Law upon which the entire constitutional structure relies. Discretion being practiced without any rule is a concept which is an absolute opposite of the concept if Rule of Law.

In *Veena Sethi v. State of Bihar*, [15] the rule of law was extended further to the poor people and down-trodden and the oblivious and illiterate, so as to incorporate all types of humanity in India. The rule of law isn't just for the individuals who can fight for it and they really do that to maintain their status quo; was the decision of the Supreme Court.

## 5. CONCLUSION

It is very obvious that the idea of rule of law is picking up significance and attention and judicial efforts are made to make it more grounded, but today in India, it is nearly losing its ground as a powerful norm of Social Order, since it isn't 'the government of law' that can lead the nation, rather it is the 'government of wise men' which runs the nation. Rule of law didn't succeed to accomplish equality in a pluralistic society like India, for the reason that the most altruistic law can be executed in the most oppressive way, Rule of law in India couldn't create confidence among the people even after nearly 300 hundred years of its rule in this nation as still more than 70 % cases are settled outside the Law Courts. Hence, despite the fact that our Constitution incorporates the provisions of Rule of law and our noteworthy judges have consistently emphasized the significance of rule of law in proficient governance, its execution on numerous events has failed. Hence, the need of the hour is to correct its execution so as to give justice to everybody, and guarantee that law is above everybody.

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