

# RULE OF LAW VIS-À-VIS GLOBALIZATION IN INDIA: A CRITICAL STUDY

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*“The rule of law should be respected so that the basic structure of our democracy is maintained and further strengthened”*

*– Lal Bahadur Shastri*

## ABSTRACT

The democracy is considered to be one of the of the best forms of governing system in the whole world and our nation is also a democratic nation where the principles od democracy are resonating in each and every section of the society. The democracy is considered to be the will and interest of the majority of the people but actually through a proper democratic governance, the voice of the minority will also be protected. The core principle behind the democratic governance is the actual participation of a large number of people since no other forms of government can claim for such an active as well as vibrant participation. If we are connecting the democracy with that of the rule of law, we will come to know that both the things shall need to go hand-in-hand with each other since rule of law should need to be there in a democratic society to remain it as a democratic one, else it may transform to some anarchial form. In the present-day society, globalization plays a very crucial in all aspects of development such as social, political, legal and economic development. As time passes, the ambit of democracy and rule of law is also changing from the very basic doctrine at the time we get independence and here the globalization also plays a key role since it focuses on the cross-border and transnational relationships with various nations. This research paper intends to deal with how the rule of law plays an important role in a democratic society like India where the process of globalization has also crossed certain milestones during the last few decades.

**Keywords:** *Rule of Law, Democracy, Globalization, Market Economy, Transnational, Constitution, Liberalization*

## INTRODUCTION

The democracy is considered to be the will of the people those who are residing in the nation. It shall not be considered as the very best and most appropriate form of government but it is considered to be one among the best form of governing system in the whole world in this contemporary era of law and justice system. The strength of democracy lies with the active participation of the people with much active role by the government. In a democratic nation like India where the general election takes place in every five years, at certain times, the true spirit of democracy is limited to that particular time only where at all the other times the country may be governed by an autocratic form of governing system with a tagline of the democratically elected government as the representative of the common people. Thus, democracy is considered to be the association or the assembly of common people where Sir Thomas Hobbes describes the same as the population or association of the common wealth where so many like-minded people will come together for having a better governance system.<sup>i</sup>

The rule of law is another principle which should need to have a great importance in every democratic nation since rule of law defines that no man shall be above the law of the nation and simply, it means that the law shall be above all including the sovereign, the king or the concerned governing system. The aspect of rule of law is thus very much similar as well as important to the principle of rule of law because if there is only a law governing system which treats the common people equally and if that particular legal system does not segregate any section of the people as weaker or more powerful, then only the real democracy in consonance with rule of law can be identified in a nation.<sup>ii</sup>

In a globalized economy like India, rule of law is very much important since only with a proper codified legislation, the globalized economy can withstand in par with the democratic nature of the governing system in the nation else it will change to an anarchial or tyrannical situation. But it is very difficult to follow the exact principle of rule of law and democracy in a globalized economy since there is a lot of disparity and difference between the governing systems of one

nation with that of another and since no common legal order or no particular sovereign is there in each nation, it will not be a generalized one and the rule of law cannot fully implement in such a situation. Thus, the rule of law must need to be protected in in order for having the efficient functioning of a democracy in a globalized economy like India.

## **RULE OF LAW AND DEMOCRACY**

The rule of law can be considered as the sacrosanct principle of democracy because the former is very much needed in order for the good administration system in a democratic governance. If the will of the people must need to be protected, then no one shall act above the law and that is actually being given by the principle of rule of law. This can be considered as one of the major reasons for which eminent jurists states that the democracy cannot withstand without the aid of back support of the principle of rule of law since if there is no equality among the people and the officials who are there to govern us and if the rulers are given much higher status than the law, then definitely the principle of democracy will be crumbled and state of anarchy may arise.<sup>iii</sup> Thus, to have a proper administration and good governance, the ideals of democracy must need to be linked with the rule of law.

The principles of rule of law at certain times in the nation are only limited to the time when election takes place. At that point of time, every political leader irrespective of the political parties they belong to make speeches on rule of law and how the same aspect is very much important in a democratic nation like India for an effective and good governance across the nation. The problem associated with the implication of rule of law in a vast democratic nation like India is that the laws are actually made by the rulers who gets elected through the direct election process by casting of votes by the common people and they themselves are creating rules for the nation and for themselves.<sup>iv</sup> Thus, there are high chances for the rapid decline in the concept of rule of law because it is very easy to them for making laws which protects some personal, private or political interests rather than the general public interest of the nation. If such situation arises, then the democratic structure of the nation is badly affected by the principle of rule of law. That is one of the main reasons for the disintegration of the democratic structure of the nation since the rule is making by the rulers themselves and at certain times, the are acting in a capacity which is deemed to be above the law as compared to the power than a common

man possess in this democratic nation. Thus, proper implementation of rule of law is very much essential in a democratic nation like India.

## **RULE OF LAW AND GLOBALIZATION**

The concept of globalization started to emerge from the late 1980's where the international conventions and association of different world leaders pointed out that in order to have a collective development, we should need to have association and linkage with various nations in the world. Thus, the process of liberalization and globalization stated to strike as a wave all over the world and eventually in the early 1990's with the implementation of Liberalization, Privatization and Globalization policies implemented by the then government headed by Shri Rajiv Gandhi opens the Indian economy with foreign traders which results in higher market expansion and globalization across the nation. Actually, the globalization and liberalization activities not only affect the economic market of a nation but it highly influences the political ideologies and political influences in the nation which may sometimes lead to a good governance and at certain times, such process of globalization will negatively affect the political structure of the nation and sometimes leads to the conflict of collapse of a government.<sup>v</sup>

The concept of rule of law is also very much connected with the principles of globalization since the globalization will deeply affects the political structure of a nation and being getting affected by such an external force, the cardinal principle or the basic structure of a democratic nation, that is, the principle of rule of law must need to be protected and it should not be shattered even to a very small extent due to the waves of globalization which will takes place in the nation from time to time. In the earlier times, we can say that there was defined territorial jurisdictions in a nation but as time passes with the advancement of technology and globalization aspects, such limits in territorial jurisdiction were widely discarded and a new relationship known as cross-border, transnational or supranational relationships started to arise between different nations. The problem associated with such a change is nothing but the implication of the proper system of rule of law in the nation. This is because of the fact that the rule of law was actually being limited to a particular defined territory, that is, a particular nation who is having a sovereign authority or ruler to guide the whole people residing in the nation but with the emergence of globalization all over the world, at certain times, the rule of law will not be able to properly



implement in such a globalized economy since there is no defined territorial jurisdiction or limits in the ambit of globalization and no prescribed or defined set of rulers can be identified in a globalized economy where so many set of rulers and governing authorities can be identified.

## **IMPACT OF GLOBALIZATION IN RULE OF LAW**

The globalization can be considered as one of the landmark shifts in the last century where every nation gets easily connected with another one in respect of trading activities as well as other allied relations between various nations. Even though the process of globalization has many impacts in the overall development including the social, political, legal as well as the economic development of a nation, it also shatters the basic principle of rule of law which must need to be followed in every nation, especially in a democratic nation like India to protect the true spirit and essence of democracy which are being followed in our nation from time to time. The globalization thus affects the political system of our nation as well since in each and every issue inside the nation, the world leaders from across the world can interfere and state their opinions even if it is dissenting with that of the government and thus, such a supranational and cross-border relationship started to emerge all over the world.<sup>vi</sup>

Since, with the emergence of globalization, the whole world came to a concept of single global village, the trade transactions and other allied activities became in an easier way but at certain times, the rule of law or the democratic values of the nation are shattered and they are getting adversely affected due to such globalization. The major problem arises in the principle of rule of law while thinking from a global perspective is that there is no central or common sovereign authority to rule and guide the nation. In the absence of such a common authority, there will be high chances for have clash between the various governing systems across the world since no prescribe set of rules and regulation can be followed in such a situation. In the contemporary world, the ideologies of Sir AV Dicey on rule of law is being criticized so some extent if the same is connecting with the perspective of globalization since the theory of rule of law according to the findings of Sir AV Dicey will not be able to meet the transnational relationship or supranational relationships where there is no defined territory or defined central sovereign authority which is actually very much essential to have good implementation of rule of law

across the nation and this can be considered as a negative impact of globalization in connection with rule of law.

## **RULE OF LAW VIS-À-VIS GLOBALIZATION IN INDIA**

India being the largest democratic nation in the world has a very crucial role in the implementation of rule of law in its basic democratic structure. The Constitution of India itself promotes the idea of rule of law to such an extent and it is stated that the cardinal principle of our Constitution is the rule of law itself since the Constitution clearly states as per the provision of equality as no one shall be treated unequally on any basis and everyone who is residing in the nation must need to be treated in an equal manner which is exactly similar to the provisions of rule of law existing in our nation.<sup>vii</sup> The idea of rule of law also states that everyone shall be bound by the law and no one shall be above the law, that is, even the predominant leaders as well as the political bureaucrats who governs the nation comes under the law of the land and they shall not be placed above the law or the Constitution under any circumstances.

The globalization in India has many positive impacts on the nation including the overall growth of the nation in terms of social and economic development but to an extent, the country gets adversely affected with the concept of globalization since it shatters the basic ideologies behind the rule of law and democracy that must need to be existed and protected in our nation from time to time without any dilution in the law. Being a democratic nation, the country at certain times in this contemporary scenario acts beyond the scope of rule of law since the democratic structure of governance is now slightly shifting towards an autocratic one which is actually not at all good for a healthy democracy. The issues on rule of law and democracy with the adaption of globalization should need to be tackled in order to protect the basic structure of democracy that must need to be followed in a nation like India. Thus, through proper monitoring and regulation of the existing laws and regulations of the nation, the rule of law can be protected to an extent with the ideologies of democracy. The Constitution at all the times gave paramount importance to the principle of rule of law since it is considered to be the basic cardinal rule upon which the nation runs and thus it is the duty of the government in order to protect such a sacrosanct principle for the common benefit of the larger number of people residing in the nation.

## CONCLUSION AND SUGGESTIONS

The rule of law being the sacrosanct principle of a democratic nation like India must need to be protected in all aspects and the government must need to make adequate laws and regulations in order to protect the principle of rule of law even if there is an over encroachment due to the various facets of globalization. If there is proper implementation of rule of law only, the democratic structure of the nation can be protected and thereby protects the will of the people by the government acting as a responsive government to the people are than as a mere representative government where at certain time they act as mere spectators. The judiciary in India is also having a very key role with respect to the implementation of rule of law in the nation since to have an independent and impartial judicial system across the nation, it is very important to have rule of law rather than rule of man since if the latter is being there, the whole judicial system will be deeply affected by the adverse influences of the rule of man.<sup>viii</sup> Thus, the government should need to take adequate care to protect the cardinal principle of rule of law even if the globalization processes are taking place in the nation from time to time.

The process of globalization should also need to go in par with the basic democratic structure of the nation which is wholly laid down under the principle of rule of law. The government should need to properly tackle the adverse impact of globalization on rule of law by making concrete regulations in order to guide the globalization activities without curtailing the rights of the citizens and violating the principles of rule of law and democracy. Thus, through a proper governing system, the rule of law and democracy can be protected in our nation.

## LITERATURE REVIEW

- 1) *Jean Hampton, Democracy and The Rule of Law, Nomos*, Vol. 36, The Rule of Law, pp. 13-44, (1994), <https://www.jstor.org/stable/24219503>

The ideals of democracy and the rule of law is actually connected with each other and one should need to go in consonance with another. The said research work focuses on how these toe ideals, that is, the rule of law and democracy is actually interconnected with each and other and how the two system plays a very crucial role in the proper administration of a

nation. The author in this research also pointed out the philosophies of Sir Thomas Hobbes regarding the idea and need for having a government and how such governments will play a very crucial for the proper administration of justice in a nation.

- 2) **Ulrich K Preuss, *Perspectives of Democracy and the Rule of Law***, Journal of Law and Society, Autumn, Vol. 18, No. 3, pp. 353-364, (1991), <https://www.jstor.org/stable/1410200>

The various facets of democracy and rule of law was discussed in this research work and the author also tries to establish a connection between the aforementioned principles which is having very importance in the administration of every governing system across the nation. The idea of separation of powers and how it is connected with the rule of law was also discussed. The key element is that every democracy should need to have rule of law since the democracy shall be for the will and interest of the people and the concerned governing authority shall not in any way affects the rights and interests of the people and those officials who rules the nation must also need to come under the broader ambit of law.

- 3) **David Gilmartin, *Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India***, The American Historical Review, April, Vol. 115, No. 2, pp. 406-427, (2010), <https://www.jstor.org/stable/23302577>

The rule of law is considered to be the sacrosanct and cardinal principle of every democracy and it plays a very crucial role in the administration of every democratic nation. In the said research work, it clearly establishes how the rule of law is deeply connected with the basic fundamental rights of the citizens residing in a particular nation and with the aid of this rule of law, how the life of the concerned citizens is also being protected. The various facets of the rule of life is being mentioned by the author such as the principle of democracy and its implication in one's life, the caste and class system which exists in the nation still now as well as the role of judiciary in interpreting certain laws and regulations which is actually connected with the principle of rule of law from time to time.

- 4) **Séamus Murphy, *The Rule of Law: What Law? Whose Rule?*** Studies: An Irish Quarterly Review, Winter, Vol. 95, No. 380, pp. 397-406, (2006), <https://www.jstor.org/stable/30095923>



The rule of law cannot be considered to have an exact definition since it cannot be put in a straitjacket formula since it is not static but is in dynamic nature where the transition in the liberal and wider interpretation of the concept of rule of law happens from time to time. The governing system of every nation must need to be prudent enough to incorporate the concept of rule of law in the nation. Thus, it is not the one who rules and frame rule for the nation, it should need to be the law who governs us and that law should need to frame law for the nation.

- 5) **James Putzel, *Globalization, Liberalization, and Prospects for the State***, International Political Science Review / Revue internationale de science politique, January, Vol. 26, No. 1, pp. 5-16 (2005), <https://www.jstor.org/stable/1601647>

The concept of rule of law is not at all a static one but it is clearly a dynamic one which changes from time to time with the changes as well as the legal developments that took place in a particular nation. The political as well as the legal structure of a very vast democratic nation like India is quite unpredictable and with the advancement of the liberalization and globalization philosophies, the concept of rule of law became much wider and more complex. At this juncture, actually, the rule of law will not be able to applied properly since rule of law does not specify about the cross-border or transnational relationships that can take place in a globalized economy like that of the contemporary world.

- 6) **Ajit Pal Singh, *Globalization and Its Impact on National Politics with Reference to India: An Overview of Different Dimensions***, The Indian Journal of Political Science, October - December, Vol. 69, No. 4, pp. 801-814, (2008), <https://www.jstor.org/stable/41856470>

The process of globalization has impact on the structure and governing system of a democratic nation like India. The globalization will deeply affect the political influences in a nation since the politics are closely integrated with the rule of law because the national politics plays such a key role in the administration of law and justice system in the nation. The research work proposes that the globalization is having a huge impact on the national politics as well since it deeply affects the governing structure of the nation irrespective of the political parties who is in actual power. Thus, the rule of law must need to be protected in order to protect the basic structure of democracy in a nation like India even though the

globalization makes such a radical change in the whole administrative structure of the nation.

## ENDNOTES

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- <sup>i</sup> Jean Hampton, *Democracy and The Rule of Law*, Nomos, Vol. 36, The Rule of Law, pp. 13-44, (1994)
- <sup>ii</sup> Ulrich K Preuss, *Perspectives of Democracy and the Rule of Law*, Journal of Law and Society, Autumn, Vol. 18, No. 3, pp. 353-364, (1991)
- <sup>iii</sup> David Gilmartin, *Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India*, The American Historical Review, April, Vol. 115, No. 2, pp. 406-427, (2010)
- <sup>iv</sup> Séamus Murphy, *The Rule of Law: What Law? Whose Rule?* Studies: An Irish Quarterly Review, Winter, Vol. 95, No. 380, pp. 397-406, (2006)
- <sup>v</sup> James Putzel, *Globalization, Liberalization, and Prospects for the State*, International Political Science Review / Revue internationale de science politique, January, Vol. 26, No. 1, pp. 5-16 (2005)
- <sup>vi</sup> Ajit Pal Singh, *Globalization and Its Impact on National Politics with Reference to India: An Overview of Different Dimensions*, The Indian Journal of Political Science, October - December, Vol. 69, No. 4, pp. 801-814, (2008)
- <sup>vii</sup> Theodor Meron, *Democracy and the Rule of Law*, World Affairs, Summer, Vol. 153, No. 1, A Charter for Democracy, pp. 23-27, (1990)
- <sup>viii</sup> P K Tripathi, *Rule of Law, Democracy and the Frontiers of Judicial Activism*, Journal of the Indian Law Institute, January-March, Vol. 17, No. 1, pp. 17-36 (1975)