

## RULE OF LAW UNDER INDIAN CONSTITUTION

By Chitra Singh<sup>229</sup>

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

— Tiffany Madison

Rule of law in a plain language can be defined as a situation in which the law of the land is superior than the government ruling the land. It is a legal regime which restrains the power of the government. It does so to ensure that the government does not resort to arbitrary power or abuse its power in order to rule over the people of the land. As stated by several political and legal philosophers, democracy cannot be sustain in a country without establishment of rule of law.

The rule of law is a celebrated, historic concept, the meaning of which is still not clear and is interpreted differently by different nations and thus needs a multi-dimensional aspect to understand its concept. Attempts have been made to define the rule of law by major philosophers, one of which is also Aristotle. He tried to understand the concept by equating rule of reason, whereas others related rule of law with natural justice.<sup>230</sup> However, the most influential explanation came from Lon.L.Fuller who argues that rule of law requires publicly promulgated rules which are written in advance and some of which adheres to natural justice.<sup>231</sup>

The rule of law can also be better understood through its differentiation by ‘rule of men’. The law should be laid prior to its application and be publicly known so that its applicators and to whom the law would be applied, both could be bound by it. If its applicators or the courts are given the job of forming the law in disguise of applying it, then it would be rule of men, which is in contrast to rule of law. The purpose and elements of rule of law can also be looked into in order to understand rule of law deeply. Some of the elements of rule of law as given as given by fuller are that law must be published, law should exist and obeyed by all without exceptions, it should be prospective in nature and it must not command the impossible.

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<sup>230</sup> Richard H. Fallon Jr., ‘The rule of law’ as a concept for constitutional discourse, 97 columbia law review, 1 (1997)

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In this article the writer would discuss Albert Venn Dicey's rule of law in detail , moving forward to the provisions of the Indian constitution which reinstates the idea of rule of law in it and finally would try to analyse the application of rule of law on ground reality through cases.

### **A.V.DICEY's RULE OF LAW**

Above all the definitions given in the previous chapter, the concept of rule of law given by A.V.Dicey is considered. It is the most popularly cited and referred to concept amongst all. The definition he gave can be understood in three parts.

1. The first peripherally says that an individual should be not subjected to wide discretionary powers. He said, “ 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.”<sup>232</sup>

He here wants to say that an individual can suffer due to any arbitrary power exercised by the powerful. It would contrast the idea of rule of law. Only the law established in the court of law of the land can be exercised on the land and no individual cannot take the law into his hands.

2. His second says about equality in the sense of ‘ equal subjection’ or equal opportunity of law given to each and every citizen of the country in its courts. He explained this meaning of rule of law through an experience he had in France. In France, he saw that law or ‘*droit administratif*’ treats its official differently from ordinary positions and gives them higher position in the society. This, he said it is contrary to the rule of law as under rule of law, every individual must be governed by same law. In his word 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.” <sup>233</sup>

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<sup>232</sup> Jefferey Jowell & Dawn Oliver, The Changing Constitution, 4-7, (4d ed., 2000).

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3. For the third part, Dicey did not believe in written constitution. In his idea, the law should be based and formed from the precedents said by the court of the land. 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.”<sup>234</sup>

The concept of rule of law given by Dicey, however, was widely criticised by many philosophers. William Robson in his book *Justice and Administrative law* published in 1928 criticised Dicey and said that he misinterpreted both English and French law.<sup>235</sup> In English law, special rights, immunities and exemptions, as they believed that in England there is a ‘colossal distinction’ between the rights and duties of a private individual and public authorities. Also, he stated that in French law, *droit administratif* did not intend to give special privileges to officials but to allow experts in public administration to work freely from the official liability.

Also another point against Dicey’s rule of law is that in the contemporary world, there is hardly any country which does not have a written constitution. It would be really hard for a state to have an unwritten code and rather depend on the precedents given by the court. It would leave state and its citizens and even the court in a situation of dilemma and no formal law would be decided in such situation.

However, despite having few drawbacks, Dicey’s rule of law is the prevailing concept of rule of law. It is the most noble concept amongst others. It sets certain set of rules and guidelines which would apply to everyone and not discriminate on the grounds of race, sex or educational or economic differences. If followed judiciously both by the government and the citizens, many conflicts can be avoided. Also it gives major importance to individual and their interests. On the other hand, if not followed, the country can work arbitrarily and can be dictated by a single person.

The rule of law is being followed by most of the countries across the world. However, countries have modified the rule of law and interpreted it according to their conditions.

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<sup>234</sup> Jefferey Jowell & Dawn Oliver, *The Changing Constitution*, 4-7, (4d ed., 2000).

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The rule of law is being followed by the Constitution of India also. Many of its provisions enshrine the concept of rule of law. In India, law is supreme and every other thing comes under it. The following chapters would be discussing the situation of rule of law in India.

## THE EVOLUTION OF RULE OF LAW IN INDIA

After understanding the concept of rule of law deeply, it would now be appropriate to move on to the situation of rule of law in India and how it is being treated in the country.

The very fact that the Constitution of India is considered as the sovereign of the state reinstates the idea of rule of law in India. The Constitution of India starts with a preamble which gives the Constitution a base and lays down ideas and principles giving importance to the individuals and their interests. It also states that India is a Sovereign Democratic Republic nation. The ideas protecting the individual's interests can be stated as follows :

“ **Justice** – social, economic and political;

**Liberty** – of thought, expression, belief, faith and worship;

**Equality**- of status and of opportunity;

**Fraternity** – assuring the dignity of the individual and the unity of the nation”<sup>236</sup>

Being ruled by Britishers for two hundred years, the constitution framers did not want to take the risk of again being under a powerful or dictatorship type of rule and thus, introduced the principle of rule of law in Indian Constitution. Like any other government, Indian government too works on three pillars : 1). The Legislature, 2). The Executive, 3). The Judiciary. These three have been given separate powers and no institution can interfere with another's primary work. Although there is no water-tight division between the power of these institutions. Also powers have been distributed between the Centre and the State. These arrangements have been in order to avoid any domination by an institution over others. These arrangements would allow rule of law to prevail over the country.

The parliament and the state legislatures are elected democratically by the people of the country or a state. The Constitution also provides provisions to assure the independence of the judiciary. Judicial review has also been provided to ensure the victim gets justice. It plays a great role towards implementation of rule of law as it not only checks the constitutionality of law but also limits the administrative actions. All the bureaucrats and other public authorities come within

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<sup>236</sup> Indian Const., Preamble

the scope of judicial review. Through section 247, the Constitution provides for the establishment of additional courts for better and fast administration. Also, article 14 has ensured every citizen of India right to equality before law and equal opportunity of law. The article 22, protects an individual from arbitrary arrest. Therefore, the first aspect of the definition of rule of law given by Dicey. All instruments of the government derive their power from a single source, i.e, the Constitution of India. All their powers and authorities are clearly prescribed in it.

The stated fundamental rights in the Constitution ensures equality to all citizens of India, freedom of speech and expression, freedom to practice any religion, etc. all this satisfies both first and second aspect of the definition.

The Supreme Court from time and again have invoked rule of law in many of its judgements. In *Bachan Singh*, Justice Bhagwati stated that rule of law excludes arbitrariness and unreasonableness. To ensure it, he said that it is necessary for the government to be democratic in making laws and there should be independent judiciary to limit the powers of the legislature and the executive.<sup>237</sup>

In *P. Sambhamurthy vs State of Andhra Pradesh*, the Supreme Court declared a provision enabling executive to interfere with the working of tribunal justice unconstitutional as it violates the principle of rule of law.<sup>238</sup>

In another important judgement regarding reinstating of rule of law in India is of *Yusuf Khan vs. Manohar Joshi*. In this case the Supreme Court objected on the frequency of issuing of ordinances in the absence of assembly by the state government.

However, the judgment of *A.D.M Jabalpur vs S.Shukla* reiterated the two essential principles of rule of law. In it the judge said –

“ rule of law is the antithesis of arbitrariness... Rule of law is now the accepted norm of all the civilised societies... Everywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notion of individual liberty and public order. In every state the problem arises of reconciling human rights with the requirements of public interests.

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<sup>237</sup>Bachan Singh v. State of Punjab , AIR 1980

<sup>238</sup> P. Sambamurthy & Ors vs Union Of India & Ors on 5 May, 1987



Such harmonising can also be attained by the existence of independent courts which can hold the balance between citizen and the state and compel government to conform to the law.”<sup>239</sup>

However, a question still needs to be asked whether the rule of law touches everyone? Whether every citizen of India is benefitted by the rule of law? Does everyone comes under it? Has not rule of law failed in India?

These questions are difficult to answer but needs to be answered. It is well evident in India that ordinary people face injustice in their daily lives mainly through corruption or other fiscal offences. Even anti-corruption and criminal law in general have failed to curb the offences. It so happens in many such cases that famous, powerful people are left scot-free and are not charged under the offences they have committed. Thus, it happens that lawlessness dominates over the society and in such situations rule of law fails. Even if we look at the composition of parliament or state legislatures people having criminal background or even having criminal charges against them have become ministers in order to frame laws in the interests of the people at large. In the PUCL Bulletin of September, 2002, Mr. Rajinder Sachar wrote that “around 700 legislators in the state and 14 in the parliament had criminal background or were facing trial on charges of murder, extortion, etc...”<sup>240</sup>

## CONCLUSION

Thus, even though our Constitution enshrines the principles of rule of law and our honourable judges have from time and again reiterated the importance of rule of law in efficient governance, its implementation at many occasion have failed.

Therefore, need of the hour is to correct its implementation in order to deliver justice to everyone and ensure that law is above all.

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<sup>239</sup> additional District Magistrate, ... vs S. S. Shukla Etc., 1976, SCR 172

<sup>240</sup> Venkat Iyer, Citizens' Rights and the Rule of Law, 22, ( 1d ed., 2008).