

DEVELOPMENT OF RULE OF LAW IN INDIA

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Abstract

In general, the term "Rule of Law" refers to a government that is founded on legal ideas rather than men. The word 'Administrative Law' encompasses different interpretations of the term Rule of Law: Preference for judges and ordinary courts of law over executive authority and administrative tribunals; Elimination of discretion; Due Process of Law or fairness; Natural Law or adherence of the principles of natural justice; Judicial review of administrative activity. The Rule of Law runs like a Gordian knot through every provision of the Constitution, and it is undeniably one of its most fundamental elements, requiring that every organ of the state behave within the bounds of powers provided by the Constitution and the Law.

The research paper focuses on the vital aspects of rule of law and its development in India. This research paper encompasses topics like: Concept of rule of law in India, Supreme Court's viewpoint over rule of law, Vital ingredients of rule of law, Precedents ruled through major cases with respect to rule of law in India.

Introduction

The theory of Rule of Law states that the state is controlled by the law, not by the monarch or the people's nominated representatives. The Grundnorm¹ of the country, or the basic and core law from which every other law receives its authority, is the supreme authority of the state in a country that enshrines the rule of law. The rule of law is a realistic and dynamic idea that, like many others, defies precise definition.

The rule of law is a shared ideal, stated by international organisations and national governments as a precondition for acceptable modern governance, however the concept of 'Rule of Law' was only imprinted in the area ruled by Dharma during British rule. Generally, Indians are pragmatic and do not place undue emphasis on the letter of the law; instead, they follow the living rules of 'Dharma.' Unfortunately, so-called learned leaders of Independent India were unable to access the lofty principles of their forefathers, which ruled the administration of justice in the pre-invasion era, i.e., between 300 and 1200 A.D., due to the impact of English education.

India's Constitution intends for the country to be governed by the rule of law. It states that the constitution is the supreme power in the land, and that the legislative and executive branches draw their authority from it. Article 13(1) stipulates that any law passed by the legislature must be in accordance with the Constitution, failing which it would be ruled null. Article 21 adds to the protection against arbitrary executive action by declaring that no one shall be deprived of his or her life or liberty unless the procedure prescribed by law is followed.

Literature Review :

Rule of Law in India by Bhavani Kumar, SLS Pune: Basic concept of rule of law.

“Comparative Analysis of Rule of Law in India & UK” [delivery.php \(ssrn.com\)](#)

The Rule of Law in India by Upendra Baxi

Rule of Law in India by Shivaraj S. Huchhanavar

Rule of Law and Economic Development BY ADYA SINGH

Evolution of the Rule of Law in India by Law Bhoomi

Statement of Problem

Under the concept of constitutionalism, rulers are not above the law; government authority is separated with laws sanctioned by one body and directed by another, and a free legal executive exists to ensure that laws are followed. The question of how significant the concept of Rule of Law is in a democratic society, such as India, is crucial.

Hypothesis

Studying the:

Origin of Rule of Law

Concept of Rule of Law

Vital ingredients of Rule of law

Inclusion of Rule of Law in to the Indian Legal System and its constitutional importance.

Supreme Court's viewpoint over rule of law.

Precedents ruled through major cases with respect to rule of law in India.

¹'Kelsen's Theory of Grundnorm', Mridushri Swarup

<http://manupatra.com/roundup/330/Articles/Article%201.pdf>(Last retrieved on 19.04.2022)

Research Questions

Q.1) How the concept of rule of law originated?

Q.2) What are the essential ingredients of Rule of law?

Q.3) How Rule of Law Developed in India?

Through applicability of constitutional provisions.

Through judicial precedents of the supreme court.

Q.4) What are the criticism of applicability of rule of law in India?

Objectives and Scope of Study

The very objective of this research paper is

To understand the concept of Rule of Law Conceptually.

To understand the concept of rule of law and the development of the doctrine of rule of law in India, and

The thereafter applicability of rule of law in the governance of this country.

The scope of this research paper particular focuses on the timeline of the last years of pre-independent India and how throughout time the concept of rule of law has evolved in India.

Introduction

The doctrine of rule of law is the righteous manifestation of human civilization and their culture; the doctrine has become a new "*lingua franca*" of an ethical and moral thought at a global level affecting the polity of various states. It is an integral attribute of democracy and good administration and an eternal value of constitutionalism.²

Additionally, the terminology "Rule of Law" is derived from the French phrase "La Principe de Legalite" (the principle of legality), which refers to a government founded on legal and justice principles rather than a ruler's arbitrary decisions.

Origin

The Rule of Law thesis may be traced back to the Ancient Romans during the establishment of the first republic; it has since been advocated by various mediaeval intellectuals in Europe through the social contract theory, including *Hobbs, Locke, and Rousseau*. Indian scholars like *Chanakya* have embraced the rule of law notion in their own unique style, arguing that the King should be ruled by the law. Sir Edward Coke is credited for coining the phrase "the king must be under God and Law," which established the primacy of law over executive pretensions in the United Kingdom.

Meanwhile *A. V. Dicey* developed the Rule of Law theory, and his idea on the rule of law is still the most prevalent.

Concept

The doctrine of rule of law is used in contradiction of to the doctrine of rule of man. As even the most autocratic form of government is exercised on the foundations of some fundamental laws but it does not denote that there is rule of law.

In its most centric and ideological sense, the concept of rule of law represents an ethical code for the exercise of public power. The doctrine denotes in its purest form the presence of both *JUS and LEX* and not just *LEX*.

The concept represents values and not institutions and connotes a climate of legal order which is just and reasonable.

Rule of Law

To grasp the significance of the rule of law, one must understand that no one is above the law and that everyone, regardless of position or status, is subject to the jurisdiction of a just and reasonable

² Massey, I P (2012). Administrative law, Lucknow: Eastern Book Company

legal system.

Rule of Law implies lawful standards of everyday application, endorsed by the overseeing bodies or specialists, and communicated as a consistent recommendation.³

A.V. Dicey's Concept of Rule of Law

By getting a glance of administration in France (*Droit Administration*) Dicey developed the contents of his theory. Dicey was an individualist; at the end of the golden Victorian era of laissez-faire in England, he wrote about the concept of the rule of law. That was the reason why Dicey's concept of the rule of law contemplated the absence of wide powers in the hands of government officials. According to him, *wherever there is discretion, there is room for arbitrariness*.⁴

To Dicey rule of law meant *the virtual exclusion of official discretion*.

It stands for the view that the decisions should be made by the known principles of law.

It means the absolute supremacy of regular law as opposed to the influence of arbitrary power and excludes existence of arbitrariness and prerogative law.

Postulates Of Rule Of Law

The rule of law doctrine has shown to be an effective and powerful tool in keeping administrative authorities in check. It acted as a benchmark against which all administrative operations were measured. Almost all legal systems embrace the broad notion of rule of law as a fundamental guarantee. Dicey's philosophy is built on three pillars, each of which is based on the idea that "government should be based on law, not persons."

According to Professor A.V. Dicey, there are three essentials that must be followed in order to achieve incomparability of law. They are:

The supremacy of Law

This has always been the fundamental notion of the rule of law, which states that the law governs all people, including those who administer it. While exercising their rights to make and administer the law, legislators must provide reasons that can be justified under the law.

2. Equality before Law

While the principle of supremacy of law provides checks and balances on the government's authority to develop and enforce the law, the principle of equality before the law strives to ensure that the law is applied and enforced fairly. It is not sufficient to have a just law; it must also be applied in a just approach. In matters of sex, religion, ethnicity, and other factors, the law must not discriminate.

Fairness must exist under the vigilant sense of the law, or similar subjection of all classes to the land's legal systems

3. The predominance of Legal Spirit

The third principle stresses the significance of the judiciary in enforcing individual rights and personal liberties, regardless of whether they are explicitly stated in a written constitution. Dicey believed that simply enshrining the above two concepts in the country's constitution or other legislation was insufficient to ensure that the state adhered to the ideals of the rule of law. There had to be some sort of regulatory mechanism, and Dicey thought it could be found in the courts. The courts are the guardians of the rule of law, and they must be impartial and free of external interference.

³ Black's Law Dictionary

⁴ Dicey, Law of Constitution (8th Edn.)

Development Of Rule Of Law In India

Indians embraced the Common Law system of justice, which is centred on the Rule of Law and has its origins in British jurisprudence. Meanwhile, India has a written constitution, as well as a body of laws that are subservient to it and deal with different subject areas, such as laws and restrictions, executive orders, and conventions. All of them can be grouped together as 'law,' and their application to the general public is known as the 'Rule of Law.'

The postcolonial era was the one where the concept of Rule of Law in relation to the Indian Constitution was introduced. Despite the fact that the rule of law was never directly expressed, it was challenged and recognised in the case of *ADM Jabalpur v UOI*⁵. "Whether the rule of law was present in the constitution other than Article 21[9]" was the question before the Court.

Constitutional Provisions;

The Constitution is the guiding principle of the country, from which all other laws gain their power, making all other laws subservient to it and sustaining the principles of the Rule of Law as envisioned in the Indian Constitution. In addition, Article 13(1) specifies that any law passed by the legislature must be in accordance with the Constitution, or it will be considered illegal. [9]⁶ As a result, any new law must comply with the Constitution's provisions. Our constitution's Preamble includes the words justice, liberty, and equality, which are unambiguous indicators of a just and fair society with no disparities between the masses, regardless of their social status. Dicey's definition of equality before the law is enshrined in Article 14 of the Indian Constitution, which establishes the principle of equality before the law and equal protection under the law⁷. The constitutional right to life and personal liberty, which is a fundamental human right, is also guaranteed to everyone⁸.

The Indian ROL concepts are inextricably linked to how fundamental rights are conceived; *far from reiterating either the liberal or libertarian theologies of rights as corpus of limitation on state sovereignty and governmental conduct*. Rule of law ideas in India also enable progressive state action.⁹ Like:

Article 17 prohibits discrimination on the basis of "untouchability."

Articles 23-24, which establish "rights against exploitation," make agrarian serfdom (bonded and other forms of forced labour) and similar historical practices of violent social exclusion illegal.

Articles 14-15 empower the state to fight inequality in its various forms under the umbrella of fundamental rights.

Articles 27-30 provide a panoply of fecund protection of the rights of religious, cultural, and linguistic minorities.

The Indian ROL is understood normatively not only as a sword against governmental dominance and transgressions of ancient civil society ideas and standards, but also as a shield empowering an encyclopaedia regime of "progressive" state intervention in civil society's life.

Judicial Precedents.

The Hon'ble Supreme Court and various High Courts have made significant contributions to protecting freedoms and preventing human rights violations and abuses through judicial activism

⁵ (1976) 2 SCC 521

⁶ Art. 13 (1), the Constitution of India.

⁷ Art. 14, the Constitution of India.

⁸ Art. 21, the Constitution of India.

⁹ The Rule of Law in India by Upendra Baxi

and public interest litigation, as well as other bodies such as the National Human Rights Commission and State Human Rights Commissions and various non-governmental organisations, ensuring that the Rule of Law and respect for citizens' rights are not only on paper but a reality. The prominent and contentious case of His Holiness Keshavanand Bharti v. State of Kerala¹⁰ contested the Constitution's 24th Amendment Act of 1971. The Supreme Court unanimously overturned the decision in *Glok Nath's case*¹¹, holding that parliament has broad powers to amend the constitution, which extend to all Articles, but that these powers are not unlimited and do not include the power to destroy or repeal the constitution's basic features or framework. Art 368 imposes implied constraints on the power of amendment.

The judicial decisions have played an indispensable role to counter any arbitrariness on part of the state. In *A.K. Kraipak V. Union of India*¹² the Apex Court held that ours being a welfare State, it is regulated and controlled by the Rule of Law. In *Maneka Gandhi v. Union of India*¹³, the court ensured that the exercise of power in an arbitrary manner by the government would not infringe the rights of the people.

*The Apex Court in a subsequent judgment held that Rule of Law embodied in Article 14 of the Constitution is the "basic feature" of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of the Constitution*¹⁴.

India has an independent judiciary that keeps a check on the other branches of government while exercising its tasks freely, in accordance with the third tenet of Rule of Law. The constitutional validity of Articles 323A¹⁵ and 323B¹⁶ was challenged in *L Chandra Kumar v Union of India*¹⁷, on the grounds that they are contrary to the spirit of the constitution because they exclude the Supreme Court's jurisdiction under Article 32 and the High Court's jurisdiction under Article 226 of the Constitution of India in matters tried by the Central Administrative Tribunal under the said provisions.

The court deemed the judiciary's independence to be part of the fundamental structure, and it also overturned the constitutional modification to Article 323A. In a subsequent decision, the Supreme Court determined that disagreements regarding the legitimacy of government acts will be decided by judges who are independent of the Executive.¹⁸ As a result, the government's extra vires or arbitrary activities are checked.

The Habeas Corpus Case¹⁹ was a pivotal historic event of the rule of law. The Supreme Court was

¹⁰*Keshavanand Bharti v. State of Kerala*, AIR 1973 SC 1461

¹¹*Glok Nath v. State of Punjab*, AIR 1971 SC 1643

¹²*A.K. Kraipak and Ors. Vs. Union of India*, AIR 1970 SC 150.

¹³*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹⁴*Smt. Indira Nehru Gandhi v. Shri Raj Narain*, AIR 1975 SC 2299.

¹⁵Art. 323A, the Constitution of India.

¹⁶Art. 323B, the Constitution of India.

¹⁷*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

¹⁸*Union of India v. R Gandhi*, (2007) 4 SCC 341.

¹⁹*ADM Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1283.

asked if there is any other depository of the rule of law in India than Article 21²⁰ of the constitution. The majority verdict on this topic was negative, but Justice H.R. Khanna wrote a dissenting opinion in which he stated that even in the absence of Article 21 in the Constitution, the state does not have the jurisdiction to deprive a person of his life and liberty without the authority of law.

Expansion of the doctrine by the Indian Judiciary²¹

Two types of adjudicative responses emerged over time.

First, Supreme Courts began to use the Directive Principles as a tool for constitutional interpretation, preferring an interpretive approach that aided rather than hindered the Directives. This "indirect" justifiability has played a significant role in the development of the substantive/"thick" versions of the Indian ROL. Second, the Court has begun to convert some Directives into rights in its more activist iteration since the 1980s. Perhaps the most important example is the judicial declaration that the Directive mandating free and compulsory education for young people aged 6 to 14 is a fundamental right.²⁹ The Court created a constitutional amendment in this case, enshrining this right as part of the Article 21 rights to life and liberty. Indian Justices worked to create boundaries and restrictions to the authority of delegated legislation (processes by which the executive power actually legislates) at the same time that the Constitution was adopted. They acknowledged this power, but with a critical caveat: the administration's rule-making power should not supersede the legislative function of policy enunciation, backed by prescriptive consequences. Thus arose the "administrative law explosion," in which Justices actively policed the implementation of delegated legislation rather than invalidating it. The administration may adopt binding rules, but courts have made it their business to question and even invalidate specific administrative rule-making procedures. A surprising array of court tools for administrative action review has developed.

Analysis

The Rule of Law had been enshrined in the conscience of our constitution by its framers. The three branches of government work together to establish Rule of Law through a system of checks and balances. By obeying the laws as handed down by the parliament and interpreted by the judiciary, the judiciary has worked well to promote Rule of Law and has had equal support from civilians and government. Meanwhile the fundamental Critiques have often maintained that the Rule of Law in India is merely a theory with no practical application.

Like:

The heinous concept of honour killing was widespread in Indian society, particularly in the north. This practise comprises the murder of a family member who the perpetrators believe has brought disgrace or dishonour to the family by breaching communal or religious values, usually for reasons such as divorcing or separating from their spouse or indulging in inter-caste marriage. The decision is made by an extra-constitutional organisation known as the Khap Panchayat, which engages in feudalistic activities and has no qualms about committing crimes that are punishable under the Indian Penal Code, 1860. The panchayat's acts show that the core human right of "right to life and liberty" is not respected.²² A woman's right to choose her life partner is protected by the Constitution. It is based on individual choice, which is protected by Article 21 of the Constitution, and such a right is unlikely to surrender to concepts like "class honour" or "group mentality." It's

²⁰ Art. 21, the Constitution of India.

²¹ The Rule of Law in India by Upendra Baxi

²² Shakti Vahini v. Union of India (UOI) and Ors, AIR 2018 SC 1601.

because, even if it's practised by the collective under whatever guise, the concept of class honour has no legitimacy.²³ The court has issued several rules to help reduce the practise, but countless cases of honour killing have been documented, and the general public has generally ignored the Apex Court's verdict.

Mob lynching is another defeatist mentality that exists in our society. Lynching is a form of violence in which a crowd, under the guise of administering justice without a trial, executes a suspected criminal after torturing and mutilating him. A self-constituted court that sentences someone without due process of law is known as a lynch law. The Supreme Court called it "terrible acts of mobocracy"²⁴ and noted that "the law is the most powerful sovereign in a civilised society."²⁵ The majesty of law cannot be tainted simply because an individual or a group develops the attitude that they have been empowered by the principles laid out in law to take its enforcement into their own hands and gradually become law unto themselves, punishing violators on their own terms and in the manner that they see fit.²⁶ People from religion and caste-based minorities are usually the victims of this evil behaviour. This practise is a modern-day illustration of a lawless society in which basic human and fundamental rights are denied.

In addition to the problem of corruption in the lawmaking and justice delivery systems in India, there is also the issue of outdated legislation. India's laws do not include a "sunset" clause, and the Indian Independence Act of 1947 stated that all laws in effect under the colonial rulers would continue to exist under the new system until specifically overturned by the parliament.

While these issues persist, it is wise to note that the constitutional system has established sufficient safeguards to ensure that the Rule of Law will always exist in some form.

Most notably, in *Maneka Gandhi v. Union of India*, the court ensured that the government's arbitrary exercise of power would not infringe on people's rights, and in *Keshavananda Bharati*, the court ensured that laws could not be made that essentially go against the Rule of Law by stating that the basic structure could not be breached.

In addition to the judicial decision, the constitutional system provides for the protection of the rule of law by establishing monitoring agencies. The Central Vigilance Commission's and the Comptroller and Auditor General's roles in exposing these inconsistencies are commendable, and this demonstrates how the law has provided for its own protection by establishing multiple levels of safeguards that ensure that it will be effective at some level. The Indian Election Commission, a constitutional authority, has also been tasked with ensuring free and fair elections with some efficiency.

Conclusion

Despite its inconsistencies, crudities, delays, and flaws, Rule of Law still represents as much of that disposition's outcomes as we can collectively impose. It is impossible to survive without it, and it is only with it that we can ensure the future that is rightfully ours. The finest of man's hopes are entwined in its process; when it fails, they must fail; the extent to which it can reconcile our passions, wills, and conflicts is the extent to which it can find us.

Meanwhile, a study of *Keshavananda Bharti*, *Indira Gandhi* and *Habeas Corpus* cases, writes professor Baxi, "*provides a distillation of Indian Judicial thought on the concept of the rule of*

²³ *Asha Ranjan v. State of Bihar and Ors*, (2017) 4 SCC 397.

²⁴ *Tehseen S. Poonawalla v Union of India and ors*, AIR 2018 SC 3354.

²⁵ *Krishnamoorthy v. Sivakumar and Ors*, AIR 2015 SC 1921.

²⁶ *Shakti Vahini v. Union of India (UOI) and Ors*, AIR 2018 SC 1601.

law, which has evolved well over a quarter of century”²⁷

The Courts have worked to strengthen these procedures and ensure that justice is delivered efficiently to all persons through their rulings. Problems such as antiquated legislation and congested courts are minor stumbling blocks, and organisations such as the Law Commission of India try to eliminate them in order to achieve a system in which the Rule of Law can operate freely

²⁷ Jain, A.K (2015). Administrative law, Ascent Publications

