



RULE OF LAW IN INDIA: THE FOUNDATION OF OUR DEMOCRACY

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1. Abstract

Rule of Law is one of the basic features of the Constitution and is the bedrock of our democracy. It enshrines the idea that all men should be governed by law which is just, equal and supreme. It's an essential feature which has evolved with time and is the soul of Article 14, which provides equality before law and equal protection of the laws. It is also the forefather of all fundamental rights, government policies and directive principles of state policy as it upholds the supremacy and spirit of the law. In the 71 years of independence which our country has witnessed, it has seen many governments rise and fall. There were many attempts to bend, break & even destroy the concept of the rule of law but it was the collective magnanimity & consonance of the judiciary which stopped this from happening. Hence, this paper aims to provide a historical overview of the evolution of the Rule of Law in India through various legislations, cases and ideas propagated over time and its significant contributions to protecting the liberties of citizens of India while highlighting the role of the judiciary in upholding the Rule of Law.

2. Introduction:

From time immemorial, mankind has always vested the power of its administration into some system,

ideology or person for maintaining the order of society. We as a society have been witness to a variety of systems starting from 'survival of the fittest' in the ancient times; rise of monarchy & despotism in the medieval times; to the creation of ideologies of capitalism and socialism and to the birth of democracies, communists and republics in the modern times. This makes one wonder, why should our systems today outlast the ones before? What have we learned from countless years of history which can actually make a difference? How can we govern ourselves better?

The answer we came up with was that man had could not be trusted to govern itself. As long as there stood a monarch or a group of people who were above others, there could always be misuse of power. So now, another question arose. What could be brought about to prevent this misuse of power? What could replace the 'Rule of Men' which was prevalent from thousands of years? What was the ultimate remedy?¹

And here it was that the theory of 'Rule of Law' came into existence. In its simplest version, it means the supremacy of the law above all individuals, wherein every action is governed according to the law of the land treating all individuals as equal while having frameworks maintaining the spirit of this law. No one was superior to the law, but only a subordinate. The concept of Rule of Law

¹ Alistair Price, *Why the Rule of Law Matters*, WORLD JUSTICE PROJECT, (Jan 13, 2018, 11:19 PM), <https://worldjusticeproject.org/news/why-rule-law-matters>



was that the state was governed, not by the ruler or the nominated representatives of the people but by the law at large. A country that enshrined the rule of law would be one where there would be a basic and core law from which all other laws would derive their authority and be administered by the state. The monarch or the representatives of the republic would also be governed by the laws derived out of this supreme law which was established and their powers would also be limited by this law.²

3. Background:

The concept of the rule of law has its origins dating back to ancient times, wherein philosophers like Plato & Aristotle had first talked about such an idea³. Over the years, the idea developed in the kingdoms of man wherein even kings agreed to also be bound by the law they laid down, one major example being the *Magna Carta* of 1215 signed by King John, the first declaration of rule of law.⁴ These ideas were propagated through medieval thinkers like Hobbs, Locke & Rousseau further ahead. Even Indian philosopher Chanakya had mentioned about the rule

of law, in reference to king imposing the same in his reign. The term rule of law was coined by Sir Edward Coke and was derived from the French phrase 'la principe de legalite' which meant the principle of legality. Though, the real credit for this theory actually goes to A.V Dicey, who in his book *Introduction to the Study of the Law of the Constitution* (1885) took the idea ahead and remains to be one of the most popular works on the subject.⁵

3.1. A.V. Dicey's Theory:

The theory propounded by A.V. Dicey was based on three fundamental principles which were basically made for differentiating England's governance at that time from all other republics in Europe, especially criticizing French & Dutch governance by giving a contrast between them and English governance. In the process, Dicey justified England's excellence on three grounds, which are now recognized as the three basic fundamentals for the rule of law:⁶

3.1.1. Supremacy of Law

The law is supreme. All individuals must obey it. This also includes those who are making laws; hence they are answerable to the public at large and the judiciary in specific for the laws they create.⁷

3.1.2. Equality before the Law

All individuals are equals before the law. Nobody is above it. This concept of equality is based on equity between

² Bhavani Kumar, *Rule of Law in India*, ACADEMIKE BY LAWCTOPUS, (Jan. 14, 2018, 3:33 PM), www.lawctopus.com/academike/rule-of-law-in-india/.

³ Mokshita Jain, *Rule of Law: Essence of Administrative Law in India*, EDUCONCOURS, (Jan. 14, 2017, 4:41 PM), educoncourses.com/2017/10/08/rule-law-essence-administrative-law-india/.

⁴ Ivan Sage, *Democracy, Constitutionalism & Rule of Law*, VICTORIA UNIVERSITY OF WELLINGTON JOURNAL, Pg. 25.

⁵ Note 1.

⁶ Brian Z. Tamanaha, *The History & Elements of the Rule of Law*, SINGAPORE JOURNAL OF LEGAL STUDIES (2012), Pg. 232-247

⁷ Note 4.



individuals and hence aims to bring about equal standing keeping into mind the lower sections of the society as well. Also, the laws must be non-discriminatory and should be enforced in a just manner.⁸

3.1.3. Predominance of Legal Spirit

There must be a mechanism to enforce these laws and make sure these laws are not arbitrary to the interest of the public. This basically referred to the independence of judiciary.⁹

4. Evolution of the Rule of Law in India: Articles & Provisions

The concept of the 'Rule of Law' was fused within the Indian Constitution while it was in the process of creation. The preamble of the constitution itself talks about equality, liberty, justice and fraternity to be guaranteed to all. The Constitution was made as the instrument which defined the law of the nation and hence different laws were required to be in consistency with it. By this process, the constitution became the supreme law from which the all organs like the legislative, executive & judiciary derived their authority and therefore is considered the edifice of the 'rule of law' in India.¹⁰

The concept of equality before law & equal protection of law is enshrined within **Article**

14 of the Constitution, while the right to personal life & liberty within **Article 21** of the Constitution. These rights are those basic rights which A.V. Dicey had promulgated. Since the notion of rule of law was the basis on which the Constitution was made, the impact of its ideology could be seen inexplicably from **Article 13-Article 32**(Part III) which guaranteed fundamental rights to the citizens of the country. Out of these, there were several important articles which were introduced in the modern concept and are pillars of the rule of law like: **Article 21**, which provides protection against self-incrimination, double-jeopardy & right on detention; **Article 32 & Article 226**, which provide remedies through writs to the aggrieved & **Article 19**, which provides several important rights like freedom of speech & expression, freedom of movement etc.¹¹

The basic structure of the constitution itself is made to uphold the rule of law. Hence, in the words of Justice R.S. Pathak of the Hon'ble Supreme Court, "It must be remembered that our entire constitutional system is founded on the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason."¹²

5. Evolution of the Rule of Law in India: Important Cases & Principles Evolved

⁸ Uma Pal, *Right to Equality- A Fundamental Right*, LEGAL SERVICES INDIA, (Jan 13, 2018, 12:12AM)

http://www.legalservicesindia.com/article/print.php?art_id=1688

⁹ *Ibid.*

¹⁰ *Concept of Rule of Law*, LAWTEACHER, (Jan 19, 2018, 6:21 AM), <https://www.lawteacher.net/free-law-essays/constitutional-law/introduction-concept-of-rule-law-essays.php#ftn9>

¹¹ Sanjay Gupta, *Defending the Indian Constitution & the Rule of Law-Right up to the 21st Century*, LEGALSERVICES INDIA, (Jan. 19, 2018, 6:40 PM), <http://www.legalservicesindia.com/article/article/defending-the-constitution-&-the-rule-of-law-248-1.html>

¹² Note 10.



Even though the original provisions for the rule of law were laid down in the Constitution of India, their validity and perpetuity was evolved through several landmark cases which decided the separation of powers between the three pillars of democracy and laid the bedrock for continuous developments of the principles of the rule of law.

The first development took place in **Shankari Prasad v Union of India**¹³, where the issue which was raised before the courts was whether the fundamental rights could be amended by the Parliament through Article 368 of the Constitution wherein the Supreme Court held that the Parliament had unlimited power to amend the fundamental rights of the Constitution which were guaranteed under Article 368 because according to Article 13 of the Constitution, the term 'law' had meant any legislative action and not a constitutional amendment. Therefore, a constitutional amendment would have been valid even if it abridged any of the fundamental rights.

This was further upheld in **Sajjan Singh v Union of India**¹⁴ by the Supreme Court and now gave absolute power to the parliament to take away the basic liberties guaranteed by the makers of the constitution. The balance of power had tilted in favour of the parliament and the Ninth Schedule had become an instrument of misuse.

As the saying goes, 'power corrupts, and absolute power corrupts absolutely.' it was not long before court doors were knocked once again for the sake of justice. This led to the historic case of **IC Golak Nath v**

¹³ Shankari Prasad v Union of India, AIR 1951 SC 458:[1952] 1 SCR 89

¹⁴ Sajjan Singh v Union of India, AIR 1965 SC 845:[1965] 1 SCR 933

State of Punjab¹⁵, wherein the Supreme Court took away the absolute power of the parliament to amend the fundamental rights and again restored equilibrium to the separation of powers in particular and the rule of law in general¹⁶.

But yet again, the Rule of law was struck another blow with the 24th Amendment by the Parliament which restored the amending power of the Parliament and also increased the scope of its own powers. This was challenged in **Keshavananda Bharti v. State of Kerala**¹⁷, wherein the basic structure doctrine was laid by the Supreme Court. The courts held that the Parliament had wide powers in regard to amending the Constitution but this power was limited and could have not included the power to abrogate the basic feature of the Constitution. There were implied limitations which were put within which the parliament could amend the Constitution. Thus, the rule of law was preserved.

After the Keshavananda Bharti case, the concept was expanded and was applied upon a variety of cases which presented themselves. In the case of **Indira Gandhi v. Raj Narain**¹⁸, the Supreme Court had invalidated the Indira Government's attempt to immunise the election dispute by removing power of the courts to have the trial of a Prime Minister. In **Raman Dayaram Shetty v. International Airport**

¹⁵ IC Golak Nath v State of Punjab, AIR 1967 SC 1643: [1967] 2 SCR 762

¹⁶ SOLI J. SORABJEE & ARVIND P. DATAR, NANI PALKHIVALA THE COURTROOM GENIUS, Pg. 41-56 (9th Edition, LexisNexis 2017)

¹⁷ Keshavananda Bharti v. State of Kerala, AIR 1973 SC 1461: (1973) 4 SCC 225

¹⁸ Indira Gandhi v. Raj Narain, AIR 1975 SC 2299



Authority of India¹⁹, the Supreme Court held that the great purpose of rule of law was the protection of individual against arbitrary exercise of power, wherever it is found.

But there was one case which shall always remain as a stain on the magnificent history of the judiciary of India, which is **A.D.M. Jabalpur v Shivakant Shukla**²⁰, famously known as the habeas corpus case. According to the Shah Commission Report, around 1, 08,010 detentus were imprisoned in courts and denied their right to be presented in the court of law. In this case the judges upheld the autocracy of the government and hence erred in conferring justice. It was the lone dissenter, Justice H R Khanna, who went against such oppression, for which his name shall always be remembered in the walls of righteousness & justice.

In **National Legal Services Authority v. Union of India**²¹, the courts enumerated upon the importance of the rule of law and exclaimed that “The rule of law is not merely public order. The rule of law is social justice based on public order. The law exists to ensure proper social life. This is the rule of law that strikes a balance between society's need for political independence, social equality, economic development and internal order, on the one hand and the needs of the individual, his personal liberty and his human dignity on the other. It is the duty of

the Court to protect this rich concept of the rule of law.”

6. Research Methodology

The quality and value of research depends upon the proper and particular methodology adopted for the completion of research work. Taking into mind the enormity of the topic, historical doctrinal and empirical legal research methodology has been adopted. To make an authenticated study of the research topic ‘Rule of Law in India: The Foundation of our Democracy’ enormous amount of study material was referred. The relevant information and data necessary for its completion has been gathered by secondary data sources available in the books, journals, research articles and bare acts of the Constitution of India. Keeping in view the need of present research, various cases filed in the Supreme Court which moulded the concept of Rule of law and their judgments have also been used as a source of information.

7. Conclusion

In the 71 years of independence which our country has witnessed, it has seen many governments rise and fall. There were many attempts to bend, break & even destroy the concept of the rule of law but it was the collective magnanimity & consonance of the judiciary which stopped this from happening. There may have been some mistakes down the road, but they were corrected while there was still time. What the rule of law envisaged were the basic liberties of its citizens, which have been upheld by our Constitution.

Rule of law has become the foundation of our democracy and only its survival guarantees the balance of powers. It is like the Himalayas which protects us from the

¹⁹ Raman Dayaram Shetty v. International Airport Authority of India, 1979 AIR 1628 : 1979 SCR (3)1014

²⁰ ADM Jabalpur v Shivakant Shukla, AIR 1976 SC 1207 : (1976) 2 SCC 521; The initials A.D.M refer to Additional District Magistrate

²¹ National Legal Services Authority v. Union of India, WP (Civil) No 604 of 2013



cold winds of Siberia, while at the same time ensuring that the monsoon winds do not fly away. Through the provision laid down & the precedents evolved, we have achieved our solemn aim of keeping law supreme and stopping dictatorial & authoritarian regimes of the rule of man from arising back into our country.

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