



APPLICATION OF DOCTRINE OF RULE OF LAW BY JOSEPH RAZ IN INDIA

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ABSTRACT

Aristotle said: "It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians and the servants of the Laws". Rule of law is that concept where the state is governed, not by the ruler or the nominated representatives of the people but by the law. Joseph Raz is a follower and current propounder of legal positivism in the world. His work is recognized and admired not only in the legal sphere but also in Philosophy and moral thinking. One of his most distinguished works is his critique on 'Rule of Law', in his paper titled as "The Rule of Law and its Virtues". He has discussed the doctrine of rule of law and provided some principles or virtues which are essential to establish law as an obedient and guiding force for the public as well as government. This essay will analyze the application of his virtues of rule of law, such as, Law should be clear, open and prospective; Law should be relatively stable; Independent judiciary; Adherence to Principles of Natural Justice; Court should have power of Judicial review; Courts should be easily accessible; Discretion of crime preventing agencies should not be allowed to pervert the law, in Indian scenario. It aims to provide how rule of law virtues are imbedded in the legal system and how they have been

protected and guarded by the judiciary so as to establish the sovereignty of LAW in India.

KEYWORDS: Rule of law, Executive, Constitution, Supreme Court, Basic Structure.

INTRODUCTION

"Rule of Law is the antithesis of arbitrariness.....Rule of Law is now the accepted norm of all civilized societies.....Everywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order."

- Justice Khanna

The term 'Rule of law' is a phrase that is very commonly used whenever law is being studied. It is derived from the French phrase 'la principe de legalite' which means the 'principal of legality'. It refers to 'a government based on principles of law and not of men'. In other words, the concept of 'la principe de legalite' is opposed to arbitrary powers. In another words 'Rule of Law' can be defined as a rule where law is the governing authority and everyone is equal before law. Rule of law is where the powers (limited) and functions of government & liberties of citizens are authorized and protected by the Law. The Rule of Law generally has few basic fundamental assumptions, such as, law making must be essentially in the hands of a democratically elected legislature; even in the hands of the democratically elected legislature, there should not be unfettered legislative power; and there must be independent judiciary to protect the citizens against excesses of executive and legislative power.



Joseph Raz¹ has understood the meaning of Rule of Law in two ways, one in narrow sense and other in wider sense. According to him Rule of Law means ‘people should obey the law’ or ‘government shall be ruled in accordance with law’. The former meaning can be considered in a broader sense where ambit of law is not limited to the governance or government; rather it involves its application to whole of public in general.

Rule of Law in a very fundamental way refers that ‘law should be considered highest and it must guide the behavior of its subjects’. According to Joseph Raz, ‘law’ to be accepted and become the guiding force, it must satisfy mainly two conditions. One would be satisfying that *law should confirm to the standard designed to guide the actions or behavior effectively*. This can be fulfilled by the following requisites:

- Law should be clear, open and prospective;
- Law should be relatively stable;
- Law should be based on the rules which are clear, open, stable and general.

Second condition includes the legal machinery to enforce and safeguard the law. Law without the enforcing authority is same as *a cruise without compass in an ocean*. The same can be achieved by following principles:

- Law must be guaranteed by independent judiciary;

- Principles of Natural Justice should be adhered;
- Court should have power of Judicial review;
- Courts should be easily accessible;
- Discretion of crime preventing agencies should not be allowed to pervert the law.

These virtues are discussed in detail in forthcoming sections of this essay.

APPLICATION OF VIRTUES IN INDIA

1. All laws should be prospective, open and clear

The term ‘all laws’ includes all sources of law in India which are in hierarchy as follows: Constitution²; Legislature³; Judiciary⁴; Administrative; & People (customs & usage). The above mentioned principle is referring to 3 different aspects of laws; (a) prospective, (b) open and (c) clear. This section analyses whether aforementioned sources of law are prospective, open and clear.

(a) All laws should be prospective: Prospective laws means laws should be applicable for the future actions not past conducts. According to **Article 20(1)** a person cannot be subject to penalty or conviction against the laws which are not in force. Penalty includes fine and conviction, means imprisonment and death sentence. This provision of constitution clearly establishes that criminal substantive laws should be prospective in application.⁵ But,

¹ Joseph Raz, ‘The Rule of Law and its Virtue’ (1979) The authority of law: Essays on law and morality.

² *Minerva Mills v Union of India* (1980) AIR 1789

³ Article 245(1), Constitution of India, 1950

⁴ *Kesavananda Bharati v State Of Kerala* (1973) 4 SCC 225; *See also*; Article 141, Constitution of India, 1950.

⁵ *Hitendra Vishnu Thakur v State of Maharashtra* (1994) 4 SCC 602; *See also Commissioner Of Income-Tax v Hindustan Electro Graphites Ltd.* (1989) 177 ITR 465 MP.



according to the doctrine of beneficial construction substantive criminal law can be applied retrospectively if it is for the benefit of the offender.⁶ It does not prohibit a civil liability retrospectively i.e. with effect from a past date.⁷ However procedural laws can be retrospective with the expressed provision stating the same.⁸

In '*Raja Nand Kumar case*', 1775, also known as Judicial Murder case, accused was punished for the offence of fraud. He was sentenced to death by then Supreme Court accepting retrospective effect of punishing the offence of forgery with capital punishment, under the influence of Governor – General Warren Hasting. If laws started applying retrospectively then it can cause a huge blunder to the society. Therefore it can be said that every law is prima facie a prospective "*unless it is expressly or by necessary implication made to have retrospective operation*" otherwise it can create havoc.

(b) All laws should be open
All laws should be open means, they should be published or there should be attempt to make available the knowledge of the same to general public, otherwise people could be made liable for the action without knowing their existence as a crime.

In '*Harla v. State of Rajasthan*⁹', a commissioner made rules and put those in his custody without making them public. Later appellant was arrested under the same rules. Court said there were no means available with the accused to know that his actions are criminal in nature, hence arrest was illegal. Court further held that rules made by administration should be made public as they are based on individual wisdom, unlike legislative enacts which are based on common wisdom and can be available to public by one or any other means. In India an 'act' will become 'law' only when it is published or notified in a reasonable manner to public, eg. Gazette of India.¹¹ Judiciary is not required to publish as they are court of record, therefore easily accessible.¹² Therefore in India laws are required to be in publication.

(c) All Laws should be Clear

All laws should be clear means that there shouldn't be any vagueness or ambiguity in understanding or in interpretation of laws. In '*Shreya Singhal v. UOI*¹³', apex court observed that Section 66A of Information Technology Act is vague. Court said words used in the section, such as, 'annoying' or 'erroneous', etc. are very vague in nature and are open to arbitrary use as per the requirement. Arbitrariness is against the Fundamental rights.¹⁴ Therefore, court held

⁶ *Ratan Lal v State of Punjab* (1965) AIR 444; See also *T. Barai v Henry Ah Hoe and Anr.* AIR 1983 SC 150.

⁷ *Govind Das And Ors. v The Income Tax Officer And Anr.* AIR 1977 SC 552.

⁸ *Mithilesh Kumari and another v Prem Behari Khare* AIR 1989 SC 1247.

⁹ *Harla v State of Rajasthan* (1951) AIR 467; See also *Bangalore Woollen, Cotton And v Corporation Of The City* (1962) AIR 562.

¹⁰ *B.K. Srinivasan & Another etc. v State Of Karnataka & Ors.* 1987 AIR 1059; See also *D.B. Raju*

v H.J. Kantharaj And Others (1990)SCR (3) 336; *M/S. Pankaj Jain Agencies v Union Of India* (1995) AIR 360.

¹¹ *Rajendra Agricultural University v Ashok Kumar Prasad* (2010) (1) SCC 730

¹² Article 129, Constitution of India, 1950

¹³ *Shreya Singhal v UOI* AIR 2015 SC 1523.

¹⁴ *E. P. Royappa v State Of Tamil Nadu & Anr* (1974) AIR 555



that law should be clear, if not, then it can be struck down on the ground of arbitrariness.

Therefore, the first virtue is applicable in India but subject to some limitations.

2. Laws should be relatively stable

Laws are made according to the needs and requirement of the society. If the society is changing then laws should be. But the change must not be very frequent; otherwise it will lead to confusion, uncertainty, risk, etc. Illustration regarding the same can be observed clearly if the laws are related to business. If laws are not relatively stable then there will always uncertain markets. Apart from this, instability can create a fear in respect of taking decisions.

In India, there are few laws which are very stable, but few are very dynamic. Constitutional provisions and legislative enactments are relatively stable, as they require long and tedious process to amend. Laws in Indian can be amended by a simple majority in the Parliament,¹⁵ or by special majority that is majority of the total membership of each house and by majority of not less than two thirds of the members of each house present and voting, or by Ratification by the State Legislatures after special majority.¹⁶ However, the power to amend the constitution is not unlimited. Supreme Court through various decisions held that, some part of constitution such as, Fundamental Rights, Separation of Powers,

judicial Review, etc. cannot be amended as they are part of *Basic Structure* of the grundnorm.¹⁷ Judicial decisions are also relatively stable as court doesn't go against the precedents unless required by the change in the legal and logical jurisprudence of the society.¹⁸

But administrative law is very dynamic in nature, as executive has given powers to take action according to emergent situations; if normal course is followed then it may lead to more harm. Ordinance power can be taken as example here at the central level¹⁹ and at lower level a District Magistrate has power to implement Section 144 of CrPC at his discretion, as per the situational need. Administrative law requires discretion to combat emergency situation at ad hoc basis, but in accordance with existing laws. Therefore, in India apart from administrative law other laws are relatively stable.

3. The making of particular laws should be guided by open, stable, clear and general rules

This principle is indicating at those fundamental general rules on the basis of which other particular laws should be formulated. These fundamental general rules should be open, clear, stable and general in nature.

The general principles can be Justice, Preamble of Constitution, Fundamental Rights or Democracy, etc. *These are the pillars on which weight of other particular laws are levied.* One of the general rule is

¹⁵ Second Schedule, Article 100(3), 105, 11, 124, 135, 81, 137, Constitution of India, 1950

¹⁶ Seventh Schedule, Article 73, 162, Chapter IV of Part V, Chapter V of Part VI, Constitution of India, 1950

¹⁷ *Kesavananda Bharti v State of Kerala* AIR 1973 SC 1461; See also *Indira Nehru Gandhi v. Raj Narain* AIR 1975 SCC 2299; *Minerva Mills Ltd. v Union of*

India (1980) 3 SCC 625; *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261

¹⁸ *Justice K. S. Puttaswamy (Retd.) and Anr. v Union Of India And Ors* (2017) 10 SCC 1; See also *Navej Singh Johar & Ors. v. Union of India, Secretary Ministry of Law and Justice* 2018; *Joseph Shine v. Union of India* 2018

¹⁹ Article 123, Constitution of India, 1950



'created can't go against the creator'²⁰, which was discussed in 'In Re Delhi Laws Act' case where court said Parliament can delegate the law making power but *skeleton* for the same will be given by creator i.e. Parliament. It is the inherent power of the Parliament to make laws²¹ under the theory of Separation of Powers.²²

But general principles are generally not very clear; rather they are difficult to interpret. As seen in the aforementioned case where court gave general term of 'skeleton', but the same is not clearly defined. Another example can be taken of Preamble of Indian Constitution, which is open, stable and general but they are not clear. Terms such as democratic, secular or social have very broad ambit and they are still evolving. Fundamental Rights are also general in nature but still they are not clear, still courts are developing their scope.²³ The fundamental general rules can be stable and open but can't be clear at the same time.

But irrespective of these inconsistencies, Indian laws follow fundamental rules such as Fundamental Rights²⁴, free and fair election under Democracy²⁵, secularism²⁶ etc.

4. Independence of Judiciary

Having open, stable and clear laws are not sufficient. There should be independent authority that can guard these laws for the public. Dr. B R Ambedkar once said "The people of a nation may lose confidence in the

Executive or the Legislature but it will be an evil day if they lose their confidence in its judiciary". The judiciary is the guardian of human rights and civil liberties against the harm of atrocities. The judicial institutions are not only Courts of law; they are also the Courts of Justice. The Constitution of India guarantees this independence in the following manner:

- Security of tenure of Judges²⁷
- Parliament can't curtail the powers of Supreme Court²⁸
- Prohibition on discussion of conduct of High Court and Supreme Court judges²⁹
- Power to punish for its contempt³⁰

Appointment of judges of High Court and Supreme Court are appointed by the President after the *consultation* with such of the Judges of the Supreme Court and of the High Courts in the States. But the word *consultation* has connoted the meaning that it does not mean concurrence and implies only exchange of views.³¹ Later on apex court held that Chief Justice will render his advice after consultation with two senior most judges.³² But the limit of consultation was increased to four senior most judges.³³ However, legislature appointed National Judicial Appointment Commission through the constitutional amendment act 2014 for the appointment or transfer of judges of higher judiciary. The commission had much more

²⁰ *In Re The Delhi Laws Act* (1951) AIR 332

²¹ Article 245, Constitution of India, 1950

²² *Kesavananda Bharti v State of Kerala* AIR 1973 SC 1461

²³ *Justice K. S. Puttaswamy (Retd.) and Anr. v Union Of India And Ors* (2017) 10 SCC 1

²⁴ Article 13, Constitution of India, 1950

²⁵ *Indira Nehru Gandhi v. Shri Raj Narain & Anr.* 1975 AIR 865.

²⁶ Preamble; Article 14 and 25, Constitution of India, 1950; See also Special Marriage Act, 1954

²⁷ Article 124(2) & (4) and Article 217(1), Constitution of India, 1950

²⁸ Article 138, Constitution of India, 1950

²⁹ Article 121, Constitution of India, 1950

³⁰ Article 129 and 215, Constitution of India, 1950

³¹ *S P Gupta v Union of India* AIR 1982 SC 149

³² *Supreme Court Advocates-on Record Association v. Union of India* AIR 1994 SC 268

³³ *In re Special Reference 1 of 1998*



intervention from the Executive organ of the state. Supreme Court struck down the commission on the ground that it violates the Independence of Judiciary, which is a part of basic structure.³⁴ Hence, apex court reiterated its previous stance of on appointment of judges through the collegium system without any interference from other state organs.³⁵

Apart from these provisions & judicial precedents, apex courts also held in many of its decisions that independence of judiciary is sine quo non to safeguard the basic structure of judicial review. Therefore, in the light of aforementioned points it can be said that India has an independent judiciary.

5. *Natural justice principles are protected*

Principles such as Audi alteram partem, Nemo judex in causa sua, Right to counsel, Reasoned decisions are few amongst which are considered as principles of Natural Justice. Audi alteram partem means *hearing to the parties must be given before deciding their rights and liabilities*. Nemo judex in causa sua means *no one can be judge in his own cause*, as it may lead to biasness.

In 'A. K. Kraipak & Ors'³⁶, court said Natural Justice Principles are *supplementary to legislation and can't supplant it*. Court also mentioned that *'if the law is silent, the principles of Natural Justice can come into picture otherwise legislative provisions will prevail*.

However in 'Maneka Gandhi' case,³⁷ apex court elevated the principle of Audi alteram partem as the part and parcel of Fundamental Rights, hence become higher authority over legislative provisions, as Part III is the part of Basic Structure³⁸. Similarly in Delhi Transport Corporation v. DTC Mazdoor Union³⁹, the Supreme Court held that *"the audi alteram partem rule, in essence, enforce the equality clause in Article 14 of the Constitution, is applicable not only to quasi-judicial bodies but also to an administrative order adversely affecting the party unless the rule has been excluded by the Act in question."*

Nemo in propria causa judex, esse debet, or Nemo judex in causa sua i.e.; no one should be made a judge in his own cause. It is also recognized as the rule against bias. It is the very fundamental requirement of the natural justice that the authority giving decision must be composed of impartial persons acting fairly, without prejudice and bias. Bias can be defined as an operative prejudice, whether conscious or unconscious, as result of some preconceived opinion or predisposition, in relation to a party or an issue. Bias such as:

- Personal Bias, meaning personal or professional relationship of friendship or hostility between the authority and the parties which can hamper the judicial decision, is unacceptable.⁴⁰

³⁴ Supreme Court Advocates-on-Record - Association and another v. Union of India (2016) 5 SCC 1

³⁵ In re Special Reference 1 of 1998

³⁶ A. K. Kraipak & Ors. Etc v Union of India AIR 1970 SC 150

³⁷ Maneka Gandhi v Union Of India 1978 AIR 597.

³⁸ Kesavananda Bharati v State Of Kerala (1973) 4 SCC 225

³⁹ Delhi Transport Corporation v. DTC Mazdoor Union (1991) AIR 101; See also Cantonment Board, Dinapore v Taramani Devi AIR 1995 SC 61

⁴⁰ Mineral Development Corporation Ltd. v State of Bihar AIR 1960 SC468; See also Baidyanath Mohapatra v state of Orissa (1989)4 SCC 664; Jiwan K. Lohia v Durga Dutt Lohia (1992) 1 SCC 56.



- Pecuniary Bias, meaning any financial interest howsoever small it may be is bound to vitiate the action, should be far away from justice.⁴¹
- Subject Matter Bias, meaning the situations where the deciding officer is directly or indirectly in the subject matter of the case, is against the jurisprudence of adjudication.⁴²

According to judicial decisions it can be established that *Nemo iudex in causa sua* is a part of principles of natural justice.

A procedure which does not make available legal service to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as “reasonable, fair and just” under the umbrella of Article 21.⁴³ The *Right to be represented by the counsel* is also a part of principle of natural justice under the ambit of Article 21 of the constitution of India.⁴⁴

As a primary rule principles of natural justice are not above legislature as they are made under judicial capacity. But if they are part of Basic Structure or fundamental rights then legislature can't take it away as they are at higher authority compared to legislature. Therefore, in India principles of Natural Justice are protected under the constitution through the judicial interpretation.

6. Court should have Review Powers for implementation of other Principles

Judicial review is the power of the judiciary to examine the constitutionality of legislative enactments & executive orders of the central and state government. In other words it is a system of check & balance, where the actions of Legislative or Executive are constrained within the ambit of constitution. Judicial Review phrase is not given in the constitution per se. But its jurisprudence can be interpreted through the various articles under Indian constitution, such as, Article 13, 32, 226 and 227. Supreme Court with the help of these articles has protected supremacy of the constitution, maintained the federal equilibrium among the state organs and upheld the fundamental rights of the general people.

In ‘*Minerva Mills*⁴⁵’ case constitutional validity of 42nd Constitutional (amendment) act, 1976 was challenged. Apex court described the importance of judicial review as:

“Our Constitution is founded on a nice balance of power among the three wings of the state namely the Legislature, the Executive & the Judiciary. It is the function of the Judges nay their duty to pronounce upon the validity of laws”

Supreme Court declared the amendment unconstitutional on the ground that the act will deprive the court its judicial power and

⁴¹ *Jeejeebhoy v Astt. Collector, Thana* AIR 1965 SC 1096.

⁴² *Gulla palli Nageshwara Rao v APSRTC* AIR 1959 SC 308.

⁴³ *Hussainara Khatoon & Ors v Home Secretary, State Of Bihar* (1979) AIR 1369.

⁴⁴ Article 22, Constitution of India, 1950; See also *Board of Trustees of Port of Bombay v Dilip Kumar Raghvendra Nath Nandkarni* AIR 1983 SC 109

⁴⁵ *Minerva Mills v Union of India* 1980 AIR 1789



will make Fundamental Rights a box of rhetoric dreams as they would never be granted and rights without remedies. Court reiterated the situation of *Kesvananda Bharati*⁴⁶ case and held power of Judicial Review as a part of Basic Structure, meaning it cannot be taken away in any situation.

In '*L. Chandra Kumar*'⁴⁷ case where establishment of Tribunals under Article 323-A and 323-B of the Constitution was challenged on the ground that it is contrary to the spirit of the Constitution as it excludes the jurisdiction of the Supreme Court under Article 32 of the Constitution and the High Court under Article 226 of the Constitution. Apex court held that:

- Article 32, 226 and 227 of the constitution have the status of basic structure,
- Judicial review of legislative action in exercise of power by subordinate judiciary or Tribunals created under ordinary legislation cannot be to the exclusion of the High Courts and the Supreme Court.
- All decisions of tribunals would be subject to scrutiny before Division Bench in their respective High Courts under Articles 226/227.

It is settled legal proposition that the policy decision taken by the State or its authorities/instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable or in contravention of the statutory provisions or violates the rights of individuals guaranteed under the statute.⁴⁸ Subject to this reason not

only legislative actions but administrative actions can also be reviewed by the judiciary.

Therefore, in India Judicial Review power is safeguarded under the shadow of Basic structure and same cannot be taken away by any state authority.

7. Courts should be easily accessible

Easy accessibility means any one could approach to the court without any difficulty. This principle is guarded under the safe hands of Public Interest Litigation. Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. Public Interest Litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two parties, one making a claim or seeking relief against the other and that other opposing such claim or relief.⁴⁹

Through the concept of PIL the principle of *locus standi* has been relaxed. Any bonafide individual can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of any breach of fundamental rights of such persons or determinate class of persons, in Supreme Court under Article 32 seeking judicial redress for the legal wrong or legal

⁴⁶ *Kesavananda Bharati v. State Of Kerala* (1973) 4 SCC 225

⁴⁷ *L. Chandra Kumar v Union of India and Others* (1997) 3 SCC 261

⁴⁸ *Tamil Nadu Education Deptt., Ministerial and General Sub-ordinate Services Association v State of*

Tamil Nadu AIR 1980 SC 379; See also *Monarch Infrastructure (P) Ltd. v Commissioner, Ulhasnagar Municipal Corporation* AIR 2000 SC 2272

⁴⁹ *People's Union for Democratic Rights v Union of India* 1982 AIR 1473



injury caused to such person or determinate class of persons.⁵⁰ A private interest case can also be treated as public interest case where the petitioner might have moved to the court in her private interest and for redressal of the personal grievance, but the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice.⁵¹

PIL can be filed if the affected people are incapable of doing so under the following situations:

- If people are poor, ignorant, or uneducated about their rights.⁵²
- If people don't have access to the court.⁵³
- If there is need to protect the constitutional machinery.⁵⁴

PIL has been used as a strategy to combat the atrocities prevailing in society by the Supreme Court by the release of bonded laborers⁵⁵, by banning smoking at public places⁵⁶, by issuing guidelines for rehabilitation and compensation for the rape on working women⁵⁷, by laying down exhaustive guidelines for preventing sexual harassment of working women in place of their work⁵⁸ and also protected environment.⁵⁹

In addition to this, court has even cornered the requirement of any proper or traditional format for filing the case. In '*Sunil Batra*'⁶⁰ case court accepted a letter as PIL. In '*Hussainara Khatoon*'⁶¹ court treated a newspaper article as PIL. Therefore, India is the only country who has got the privilege of such easy accessibility of Supreme Court.

8. The discretion of the Crime Preventive agencies should not be allowed to pervert the law

Discretion is the power of a person under authority given by contract, trust or will to make decisions on various matters based on his/her opinion within general legal guidelines or it can be defined as public official's power to act in certain circumstances according to personal judgment. Discretion is required to perform the duties, as it is not always reasonable or feasible to seek the permission through the lengthy process. But this discretion should be within the prescribed limit of law.

Crime Preventive agencies such as, Police, CBI, ED, etc. should be checked whether they are working within the ambit provided under law. If any violation happens then High Court of the State can be easily accessed

⁵⁰ *S.P. Gupta v President of India and Ors* AIR 1982 SC 149

⁵¹ *Indian Banks' Association, Bombay and ors v M/s Devkala Consultancy Service and Ors* (2004) 11 SCC 1

⁵² *Mumbai Kamgar Sabha, Bombay v M/S Abdulbhai Faizullabhai & Ors* 1976 AIR 1455; See also *Guruvayur Devaswom Managing Commit. v C.K. Rajan and Ors* (2003) 7 SCC 546

⁵³ *Sunil Batra v. Delhi Administration* 1980 AIR 1579

⁵⁴ *S.P. Gupta v. President of India and Ors* AIR 1982 SC 149

⁵⁵ *Bandhua Mukti Morcha v Union of India* (1997) 10 SCC 549

⁵⁶ *Murli S. Dogra v Union of India* (1995) 1 SCC 14

⁵⁷ *Delhi Domestic Working Women's Forum v Union of India* (1995) SCC (1) 14

⁵⁸ *Vishaka v State of Rajasthan* AIR 1997 SC 3011

⁵⁹ *Vellore Citizens Welfare Forum v Union Of India & Ors* AIR 1996 SC 2715; See also *M.C. Mehta v Union of India (Taj Trapezium Case)* (1997) 2 SCC 353

⁶⁰ *Sunil Batra v Delhi Administration* 1980 AIR 1579

⁶¹ *Hussainara Khatoon & Ors v Home Secretary, State Of Bihar* 1979 AIR 1369



under Article 226.⁶² The scope of the Article 226 is not only limited to writs but also be used for any other purpose⁶³, which may include:

- Malafide action means any improper exercise or abuse of power.⁶⁴
- Unreasonableness.⁶⁵
- Colorable legislation means that under the “colour” or “guise” of power conferred for one purpose, the authority is seeking to achieve something else which it is not authorized to do under the law in question then the action of the authority shall be invalid and illegal.⁶⁶
- Irrelevant considerations meaning means that power must be exercised taking into account the considerations mentioned in the statute.⁶⁷

Therefore, in India, to make sure that discretion of the crime preventive agencies are within control, recourse has been provided under law.

CONCLUSION

Distinct Flowers of this land are together because they are not governed by any one of them, they are governed by something which is above all and everyone is equal to that. It is nothing but the Rule of Law who is binding us all and giving sense of Unity in Diversity. Constitution is considered as supreme law of the land. All other organs of the state work within the guidance of the grundnorm. Every

function, either it may be legislative or executive or judicial, is given, performed and governed in accordance of the supreme law. In India laws are in accordance to the standard designed to guide the actions effectively, as they are clear, open and prospective; relatively stable; and they are based on the rules which are clear, open, stable and general. In addition to this, country has an effective legal machinery to enforce and safeguard the law through the mechanism of easy accessibility to the court; judicial review; independent judiciary. Both law and law enforcing machinery has been efficiently implemented by the judiciary considering obedience to law as foremost and paramount in the largest democracy of the world under the shadow of the highest law of the land, Indian Constitution.

⁶² Article 226, Constitution of India, 1950

⁶³ *Radhey Shyam & Anr v Chhabi Nath & Ors* (2009) 5 SCC 616

⁶⁴ *Jaichand v State of West Bengal* (1967) AIR 483; See also *State Of Punjab v V K Khanna & Ors* AIR 2001 SC 343.

⁶⁵ *Sheo Nath Singh v Appellate Assistant* 1971 AIR 2451

⁶⁶ *Smt. Somavanti And Others v The State Of Punjab And Others* 1963 AIR 151

⁶⁷ *The Barium Chemicals Ltd. And Anr v The Company Law Board and Others* 1967 AIR 295; See also *Smt. S. R. Venkataraman v Union of India & Anr* 1979 AIR 49.