CONSTITUTIONAL PROVISIONS UNDER THE RULE OF LAW: ANALYSIS

By Anisha Goyal
From Symbiosis Law School, Hyderabad

PART-I

1. INTRODUCTION:

1.1. Historical Background:
The concept of the Rule of Law is an age-old concept which was first brought by Sir Edward Coke and later discussed by great Greek philosophers like Aristotle and Plato in around 350 BC. Rule of Law is a phrase derived from a French phrase “la principe de legalite” which means that the government is entirely depends upon law and not on the men. It is a concept which was a part of the English Constitution at first but lately was adopted by the Constitutions of USA and India. The Administrative Law is entirely based on the doctrine of Rule of Law which is entirely based on the opinion of Plato which was “Where the law is in the hands of a different authority and has nothing of its own the fall of the state is insured, whereas if the law is the supreme and the government is a slave to it then the subjects of the state enjoy full rights and such state functions smoothly.” However, the meaning of this phrase has evolved and during the years as it went through several criticisms and has developed to an extent which has now become an essential part of the Constitution of India.

1.2. Dicey on Rule of Law:
According to Dicey there are three principles of the Rule of Law:

- **Supremacy of Law**: Dicey was of the opinion that all men whether a common man or a man with the government authority are considered as equals when it comes to the law and are not above the law. He said that a man cannot be punished for anything other than the breach of the law, which has already been established which needs to be proven in front of the court by following the ordinary procedure of law.

- **Equality before Law**: In this Dicey try to convey that no man is above the law and all are equal before the law. The people with Government authority are also bound to follow the law and there cannot be any specific court for dealing with their subject matters.

- **Predominance of Legal Spirit**: Dicey opined that, it was not fair to include only the above two mentioned principles in the Rule of Law, so he included this where it has been said that for the enforcement of law there shall be an authority. This authority shall be free and fair and shall not be influenced by any external forces. Hence, it becomes very important for a State to provide freedom of decision to the Judicial authority of the country.

1.3. The Constitution of India and the Rule of Law: A brief Introduction:

---


3 Diganth Raj Sehgal, June 2019, Rule of Law and its Exceptions, Available at: https://blog.ipleaders.in/rule-law-exceptions/
There are three principles of the doctrine of Rule of Law which are Justice, Equality and Liberty. The Constitution of India is the supreme law which prevails over any law whether made by the Central Government or the State Government. The law shall not prevail if it is against the mandates of the Constitution of India. Article 13 (1)⁴ of the Constitution of India states that any law made prior to the formulation of the Constitution of India will be considered as void if it does not match with the mandates of the Constitution of India, whereas if the law is not completely inconsistent then it will be void to an extent of its inconsistency, which is the first principle of the Rule of Law explained by Dicey. Part III of the Constitution of India explicitly talks about the various Fundamental Rights. Article 14⁵ of the Constitution of India provides for Equality before the law, which is the second principle of the Rule of Law. Article 21⁶ of the Constitution of India guarantees the Right to Life and Personal Liberty which a person shouldn’t be deprived of except for the procedure which has been established by the law, which covers the third principle of the Rule of Law explained by Dicey which is protection of liberty.

There are various landmark judgments which state the importance of Rule of Law in the Constitution. In the case of Kesavanda Bharti V/S State of Kerala⁷ the court was of the opinion that the Rule of Law is an important principle for the basic structure of the Constitution of India. In another landmark judgment of Maneka Gandhi V/S Union of India⁸ the court held that Article 14 of the Constitution of India is a tool against arbitrariness. In another important case of A.D.M Jabalpur V/S Shivakant Shukla⁹ the apex court held that Article 21 of the Constitution of India cannot be suspended as it is a part of the Rule of Law.

2. Research Questions:
The research paper dealt with the following questions at the time of the research:
1. What is the concept of Rule of Law?
2. What is the relevancy of the Rule of Law?
3. What is the theoretical and practical application of the Rule of Law in India?
4. What are the problems faced for the implementation of the Rule of Law in India?

3. Research Objectives:
In the light of the above-mentioned Research Questions the following objectives of research can be derived:
1. To study the concept of Rule of Law.
2. To understand the Relevancy of the Rule of Law.
3. To understand the provisions related to the Rule of Law as enshrined under the Constitution of India as its theoretical aspect.
4. To know the practical applicability of the Rule of Law in India.
5. To understand the problems faced as to the implementation of the Rule of Law in India.

⁴All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. ‍⁵The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. ⁶No person shall be deprived of his life or personal liberty except according to procedure established by law. ⁷Kesavanda Bharti V/S State of Kerala, AIR 1973 SC 1461. ⁸Maneka Gandhi V/S Union of India, AIR 1978 SC 597. ⁹A.D.M Jabalpur V/S Shivakant Shukla, AIR 1976 SC 1207.
4. **Significance of the Study:**
The research work will be helpful to the judiciary while giving decisions regarding the cases related to the Rule of Law. This will also be beneficial for the academicians and the lawyers in understanding the scope and the objectives of the Rule of Law. This will also help the undergraduates and the post-graduate students in understanding the origin, principles the Constitutional provisions of the Rule of Law.

This study will also be helpful for the people pursuing their studies in the fields of Constitutional Law, Public Law and Administrative Law. This study will benefit the public at large as this will provide them with information about the Rule of Law in simple and understandable language.

5. **Research Methodology:**
There are several types of Research Methods but mainly there are two types of research methodology, Doctrinal Method of research and the Non-Doctrinal Method of research. The Doctrinal Method of research mainly deals with the research done by the data already available in the library, whereas the Non-Doctrinal Method of research deals with the first-hand data which is collected through various surveys and field works. This type of study is based on the Doctrinal Method of research as the data collected is from the already existing books, constitutional documents, research articles, journals and online websites. This type of research helps the researcher to come up with creative ideas and new arguments and helps to avoid the already existing ones. This type of research gives a wider perspective about a topic to the individual.

6. **Sources of Data:**
There are mainly two types of sources of data, primary data and secondary data. This research data collected here are from primary as well as secondary sources of data. The primary data includes the provision of the Constitution of India and USA and judicial decisions of India and other countries. The secondary data includes the data from books, journals, articles and materials from reliable websites.

7. **Literature Review:**
The review of literature is an important aspect of any research work. For the completion of the research work a researcher needs to perform a detailed research on the given topic. The researcher in order to get a wider view of the topic needs to not only look into the works related to the research topic but also the related areas. One of the works that the researcher has referred to for my research work is *The Rule of Law as a Concept of Constitutional Discourse*\(^{10}\) by Richard H. Fallon Jr. where the author has referred to the historical background of the Rule of Law. The other work is *Rule of Law in India*\(^{11}\) by Bhavani Kumar where the author has explained about the concept of Rule of Law in India and the theoretical and practical applicability of the Rule of Law in India with the help of landmark judgments. The other very helpful work of Uprendra

---


\(^{11}\)Bhavani Kumar, November 2014, *Rule of Law in India*, Available at: https://www.lawctopus.com/academike/rule-of-law-in-india/.
Baxi named as *The Rule of Law in India*\(^{12}\) gives a detailed information about the Rule of Law and its evolution over the years. The other work is *Rule of Law Under Indian Constitution*\(^{13}\) by Pranav Kaushal where the author has explained concept and the provisions of Rule of Law under the Constitution of India. Another Article that I have referred to for the purpose of my research work is *Rule of Law and the Indian Constitution*\(^{14}\) by K. Sangeetha in which the author described in detail all the aspects of the Rule of Law in India and related provisions as to the Rule of Law in India. Another article that researcher has referred to is *Rhetoric and the Rule of Law vis-a-vis the Supreme Court of India*\(^{15}\) by Shailendra Kishore Singh where the author has described the conceptual framework of the Rule of Law in India and discussed various landmark judgments. Another article that the researcher has referred to is *Rule of Law and India in 2014*\(^{16}\) by Shivangi Prasad and Attreyi Mukherjee in which both the authors have deeply analysed the various problems as to the implementation of the Rule of Law in India. Another article that the researcher has used for the purpose of my research is *Rule of Law*\(^{17}\) by J.K. Tandon in which the author has given the relevancy of the Rule of Law. Another article that the researcher has referred to is *Rule of Law*\(^{18}\) by H.R. Khanna in which the author has given a detailed historical background of the Rule of Law. Another very informative article that the researcher has referred to is *Rule of Law and Access to Justice*\(^{19}\) by Justice F.M. Ibrahim Kalifulla in which the author has explained in detail the various provisions in the Constitution of India related to the Rule of Law and the other related aspects.

The objective of writing literature review is to ensure that the topic chosen by the researcher is not already analysed in the same way and the researcher comes up with new ideas and avoid the already existing ones.

**PART II**

**1. Concept of Rule of Law:**

Administrative Law can be defined as a changing or a dynamic concept which has been defined in *Administrative Law* by Massey. However, it cannot be stated that it does not agree to the basic concepts which are commonly represented by the subject. The Rule of Law is one such concept which is based on the principles of “freedom, equality, non-discrimination, fraternity, non-arbitrariness and accountability”. The concept of Rule of Law “shares the common English inheritance and apart from the statement of generalities, it embraces a body of specific detail.”\(^{20}\) Wade was of the opinion

---


\(^{13}\)Pranav Kaushal, January 2019, Rule of Law under Indian Constitution, Available at: https://lawcorner.in/rule-of-law-indian-constitution/.


\(^{15}\)Shailendra Kishore Singh, Rhetoric and the Rule of Law vis-a-vis the Supreme Court of India, CNLU LJ [2011-2012] 82.

\(^{16}\)Shivangi Prasad & Attreyi Mukherjee, Rule of Law and India in 2014, 2014 PL July 73.


that “Rule of Law requires the government should be subject to law, rather than the law subject to the government.”

The Rule of Law is said to be the modern name for the Natural Law. The Romans named it as *Jus Naturale*, the medievalists called it as Law of God, Hobbes, Locke and Rousseau put it as *Social Contract* and *Natural Law*. The concept of the Rule of Law has been derived from a French phrase *la principle de legalite* which means a government that is based on the principles of law and not that of men. In India the idea of Rule of Law was derived from the Upanishads. In the case of *Mohinder Singh Gill v. Chief Election Commissioner*, the court was of the opinion that since the times of Adam and Kautilya, Rule of Law has been classified as Natural Justice making it Social Justice. A.V. Dicey was of the opinion that wherever there is discretion, there is a room for arbitrariness. In the Indian scenario, justice system has been influenced by the Rule of Law.

2. The Relevancy of Rule of Law:
The relevancy of the Rule of Law can be shown by applying certain principles which are as follows:

- The Doctrine of Separation of Powers between the Legislature, Judiciary and the Executive.
- The laws are framed by the representative of the people in a transparent manner.
- The law and the administration of law is open to criticism.

No one is considered above the law, which means that the law shall be applied in a just and fair manner.

The law shall be known to everyone so that they may follow it.

No one is subjected to any torture in the name of law.

The trials are open to everyone and they shall be conducted in a free and fair manner.

Every person is considered to be innocent until proven guilty and has the right to remain silent, also he has the right not to self-incriminate.

No person can be punished for a crime that is not known to the law at the time of it’s commitment.

3. Theoretical Application of Rule of Law:
The Constitution of India is a country where the rules are governed by the Rule of Law. The Rule of Law states that the Constitution has the supreme power of land and that the Legislative and Executive derive their power from the Constitution. As per Article 13 (1) of the Constitution of India the others laws so made by the Legislature shall be in conformity with the Constitution or else they would be considered as invalid. Article 21 of the Constitution of India provides that every person has the right to life and nobody has the right to take away this right of an individual except for the procedure established by law. Whereas, Article 14 of the Constitution of India states that all the citizens shall be treated equally and should not be discriminated on the basis of sex, caste, gender, etc.

---

There are some important judgments in this regard. The first judgment in the case of *A.D.M Jabalpur v. Shivakant Shukla*\(^{25}\) the question raised was for the suspension of Articles 14, 21 and 22 of the Constitution of India during an emergency situation, in which the bench was of the opinion that the life and liberty of an individual cannot be taken away except for the procedure established by law. Hence, the Rule of Law is an accepted norm of a civilized society.

In another case of *Chief Settlement Commissioner v. Om Prakash*\(^{26}\) the court held that the Rule of Law is the most important characteristic of the Constitution of India. The administrative functions shall be tested through the standards of legality of the rule of law. If they are not in conformity with the standards so set then any aggrieved can bring this to the notice of the law of court.

In another case of *State of Karnataka v. Umadevi*\(^{27}\) the court held that rule of equality in the process of basic employment is the basic structure of the Constitution of India. Rule of Law is considered to be the core of our Constitution; hence, it is not possible for the judiciary to overlook or allow the violation of Article 14 of the Constitution of India.

### 4. Practical Application of Rule of Law:

The practical applicability of the Rule of Law in India has always been criticized, and said that it is concept merely on papers. It can be said that India is one of the most corrupt nations as per the data of the 2012 World Justice Project. India was ranked as 83\(^{rd}\) and 96\(^{th}\) globally in the categories of absence of corruption and maintenance of order and security. With the problem of corruption there is another problem of old laws being into existence in India. Even after the existence of such problems the Constitution has always tried to safeguard the concept of Rule of Law in India.

In the case of *Union of India v. Raghubir Singh*\(^{28}\) the court held that the lives of the people and the regulation of rules and laws are governed by the superior courts. In another case of *Maneka Gandhi v. Union of India*\(^{29}\) the court held that if the judiciary applies the power in an arbitrary manner, it would not amount to infringe the rights of an individual. The Rule of Law can be practically applied in various ways in India, here are some of the ways it can be practically applicable.

#### 4.1. Rule of Law as a part of the Basic Structure of the Constitution of India:

The Rule of Law has been adopted from the Preamble of the Constitution of India, as it has been mentioned that the Constitution is the supreme law and the other rules have to be in conformity with these laws. The courts have the power to declare the other laws as invalid which are not in conformity with the Constitution of India.

Rule of Law in India has been defined differently in different cases. As the Rule of Law is the basic structure of the Constitution of India, it cannot be destroyed by the Parliament. The Supreme Court of India in

\(^{26}\) Chief Settlement Commissioner v. Om Prakash, AIR 1969 SC 33.  
\(^{29}\) Maneka Gandhi v. Union of India, AIR 1978 SC 597.
the case of *Indira Gandhi v. Raj Narain*30 was of the opinion that to satisfy a challenge raised under Article 14 of the Constitution of India the State Acts shall not only be non-discriminatory, but shall also be immune from arbitrariness, unreasonableness or unfairness and shall also be in the public interest.31 32 33

In another case of *A.D.M Jabalpur v. Shivakant Shukla*34, the question that was raised was that whether there was any Rule of Law other than Article 21 of the Constitution of India. The majority view was that there is no other Rule of Law in India other than the Constitutional rule of law, whereas the minority view was that even in the absence of Article 21 of the Constitution of India the court cannot deprive any person of his right to life and liberty other than the procedure established by law.35

Part III of the Constitution of India guarantees the fundamental rights. In the case of *Sankari Prasad Singh v. Union of India*36 the question that was raised was that whether the fundamental rights can be amended under Article 368 of the Constitution of India. The apex court held that the court has the power to amend the fundamental rights under Article 368 of the Constitution of India, as it has been stated under Article 13 of the Constitution of India that ‘Law means any Legislative action and not a Constitutional amendment. Hence, a Constitutional amendment would only be valid if it concise any of the fundamental rights.37

The same question was raised in the case of *Sajjan Singh v. State of Rajasthan*38, in which the court relied on the *Sanskari Prasad Singh v. Union of India*39 and stated that if the framers of the Constitution wanted to exclude the fundamental rights from the power of the Constitution, they would have stated it clearly.

The decision given in the above two cases was overruled in the case of *Golaknath v. State of Punjab*40 in which the court held that the Parliament has no right to take away the fundamental rights or the power to amend it. Hence, the Rule of Law was squashed down to the twenty-fourth Constitutional Amendment Act, 1971.

The decision given in the *Golaknath Case* was overruled by a majority in *Kesavnanda Bharti v. State of Kerala*41. The Court held that the Parliament has the power to amend the articles in the Constitution of India but the power so provided is restricted. The Parliament in the name of amending the Articles cannot change the basic structure of the Constitution.

4.2. Judicial Activism vis-à-vis Rule of Law:
The society develops only if there is proper implication of the laws in the society. Judicial

---

36Sankari Prasad Singh v. Union of India, AIR 1951 SC 458.
39Supra 17.
41Supra 7.
Activism has also taken up the form of Judicial Legislation. This is a tool in order to fulfil the gap of Rule of Law in the judiciary. In Madhav Haskot’s Case the court was of the opinion that the poor people shall be provided with free legal aid services as this is a part of reasonable, fair and just procedure of law.

In Hussainara Khatoon’s Case the court was of the opinion that a speedy trial is an integral part of “Article 21” of the Constitution of India. In another case of Nandini Satpathy v. D.L. Dani the court was of the opinion that an accused during the time of interrogation has the right to consult an attorney and also have the right not to make any self-incriminatory statements about themselves.

In another case of Bandhua Mukti Morcha, the apex court held that the right to life guaranteed under Article 21 of the Constitution of India also includes the right to live life with human dignity. Other such examples of decisions on such matters are right to protection against solitary confinement, right against handcuffing, right against custodial violence, the rights of an arrestee and the rights of female employees against sexual harassment at workplace.

4.3. Assimilation of Rule of Law in Judicial Process:

The Judicial assimilation of Rule of Law can be explained with the help of the doctrine of Separation of Powers given by Dicey. It states that the power has been divided into three that is Judiciary, Executive and legislature. In the Delhi Laws case the court held that the doctrine of separation of powers as the essence of the constitution. In another case of Som Raj v. State of Haryana the court gave a secondary meaning to the Rule of Law. The court held that the assumption of the Rule of Law is dependent upon the absence of arbitrary power.

In another case of case of Sukhdev v. Bhagatram Mathew J declared that whatever be the concept of the Rule of Law, whether it be the meaning given by Dicey in his The Law of the Constitution or the definition given by Hayek in his Road to Serfdom and Constitution of liberty or the exposition set-forth by Harry Jones in his The Rule of Law and the Welfare State, there is, as pointed out by Mathew, J., in his article on The Welfare State, Rule of Law and Natural Justice in Democracy, Equality and Freedom, substantial agreement is in juristic thought that the great purpose of the Rule of Law notion is the protection of the individual against arbitrary exercise of power, wherever it is found. It is indeed unthinkable that in a democracy governed by the Rule of Law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of

---

42Madhav Haskot’s Case, AIR 1978 SC 1548.
43Hussainara Khatoon’s Case, AIR 1979 SC 1819.
45Bandhua Mukti Morcha Case, AIR 1984 SC 802.
47T.V. Vantheeswaran v. State of Tamil Nadu, 1983 (2) SCC 68.
52Delhi Laws Case, 1951 SCR 747.
the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the Rule of Law and its bare minimal requirement. And to the application of this principle, it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.  

In another case of Amlan Jyoti Borooah v. State of Assam and Others the court laid down certain restrictions as to the rule of law. Also, in another case of Yusuf Khan v. Manohar Joshi the court held that the duty of the state is to protect the Rule of Law and also to ensure that there are no violent acts being upheld which negate the rule of law.

5. **Problems as to the enforcement of Rule of Law in India:**

   India being one of the largest democratic nations in the world the implementation of the Rule of Law becomes very important and equally difficult. There are certain problems which need the immediate attention of the government for the enforcement of the Rule of Law in India. Certain issues are listed below:

   - **Corruption:** Corruption is an evil that is deeply-rooted in our country. This is one of the major reasons for the non-enforcement of the Rule of Law in India. India has various anti-corruption acts but all in vain. The independent judiciary plays a vital role in order to keep a check on the corruption in India.

   - **Delay in Justice:** The implementation of the Rule of Law becomes furthermore difficult due to the delay in the justice system. Firstly, there are many people in India who are not provided with justice and secondly, the one who can afford to get justice have to wait for a long time as there are a lot of procedures that needs to be followed. There are a lot of cases those are pending in India.

   - **Non-Cooperating Police Officers:** The Police and the other administrative officers in India discriminate against the people belonging to minority section of the society and also against women. There are thousands of cases regarding custodial death, rapes which go unreported and the conviction rate of such cases is near to zero.

   - **Inconsistent policy making and government action:** A policy can be effectively implemented only if it has been drafted in the right way, as it must keep all the necessary points in mind. No right of an individual shall be violated. But policies drafted in India are inconsistent and sometimes not violative of the Constitution of India.

   In the 2G Spectrum Allocation Case and Vodafone Tax Case the court was of the opinion that the actions of the government shall be consistent with the Rule of Law so that it does not cause any damage to the development of the country.

**PART III**

1. **Conclusion and Suggestions:**

   The foremost duty of any government is to protect the rights of all the citizens of the

---

country. There were several steps and schemes followed as to the implementation of the Rule of Law. With respect to all the provisions of the Constitution or any other Act the Rule of Law plays an important part in the formation and interpretation of such laws. There are various hinderances as to the implication of the Rule of Law, but the Legislation works together in order to eradicate such problems.

Rule of Law has originated from England and since then it has been used as a common law in different countries. The concept of Rule of Law is based on the principle of supremacy of law i.e., nobody is above the law. This concept brings in the basic structure which provides the subjects with the basics rights which cannot be taken away by the government. The Rule of Law has been established in the form of Golden Triangle constituting Articles 14, 19 and 21 of the Constitution of India. These laws protect people in case anyone tries to tyrannise an individual. No person or group can subjugate the other as this would be the violation of the fundamental rights of an individual and will be held punishable for his act.

I would like to conclude my research paper by a quote, by Abraham Lincoln, the 2nd President of the United States of America; “if you once forfeit the confidence of your fellow citizens, you can never regain their respect and esteem. It is true that you can fool the people some of the time and some of the people all the time, but you cannot fool all the people all the time.”