



THE RULE OF LAW AND ITS MODERN CONCEPT- A COMPARATIVE STUDY

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Abstract

This paper is intended to give a new dimension to the rule of law. Rule of law has been discussed with various details giving it a new angle. A comparative analysis has also been done in this paper by the author. This paper is an insight into the concept of rule of law and the need of rule of law even today.

Introduction

Rule of law means preventing or restricting the use of arbitrary exercise of power and promoting equality for all the citizens. In simple words it can be interpreted that law is above all including government or the King.

This research paper gives a clarity regarding the meaning of rule of law and its historical perspective which is very important in order to study the rule of law in detail. The most famous concept of rule of law by Dicey has also been discussed. Universal aspect of rule of law has also been explained with a comparative analysis of rule of law in India and United Kingdom. The exceptions to the rule of law has also been studied as it gives an understanding regarding the limitations of rule of law. At last, the modern concept of rule of law has also been discussed which makes it clear that in this modern world, rule of law is still needed without which democracy is nothing.

The author in this paper has studied the concept of rule of law with a new angle and has tried to show that rule of law will always be required in every democratic country in order to ensure justice and equality to the citizens.

Meaning of Rule of Law

Rule of law means that no man is above law and every person is subject to the jurisdiction of ordinary courts of law irrespective of position and rank. The phrase rule of law has been derived from the phrase *la principle de legalite* which implies principle of legality.

According to Black's Law Dictionary, Rule of Law means legal principles of day to day application, approved by the governing bodies or authorities and expressed in the form of logical proposition.

According to Oxford Advance Learner's Dictionary, Rule of Law means the situation in which all the citizens as well as the state are ruled by the law.

According to Sir Edward Coke, Rule of law means the absence of arbitrary power on the part of government.

Thus, in simple words, rule of law means supremacy of law and that nothing is above law. The government or the king also have to abide by the law

Historical Perspective of Rule of Law

Sir Edward Coke, the Chief Justice in James I Reign was the originator of the rule of law. The Greek Philosophers including Aristotle, Plato, Cicero etc. were the ones who first wrote about the doctrine of rule of law. For example, **according to Aristotle, Law should govern and those who are in power should be servants of law.**



The term rule of law has been originated from England around 1215 when King John of England signed the Magna Carta. The signing of Magna Carta meant that law would be supreme as it would be above the consent of the Monarchy. There was a fight between the Monarchy and the Parliament for supreme authority but the conflict was in favour of the Parliament. Thus, the Parliament made laws which had led to the control and limitation towards the power of Monarchy. Thus, the Executives in England became subjected to the law of the Parliament and this how the rule of law began in England.

In the United States of America, this doctrine of rule of law was first introduced in 1776 by the Constitutional lawyer, Paine according to whom law is the king and no one else.

In modern sense, more ideas regarding rule of law was developed by the most famous English Constitutional lawyer, Dicey.

Concept of Rule of law by Dicey

The concept of rule of law came into picture through Sir Edward Coke who believed that King is under God as well as Law. The base for this rule of law was given by Albert Venn Dicey. **In 1885, Dicey developed the concept given by Coke in his book, "Law and Constitution".**

According to Dicey, the Rule of law consists of three pillars which are based on the concept that the government should be based on the principles of law and not of men. These are:-

- **Supremacy of Law**

It is the first pillar for the concept of rule of law given by Dicey. This means that law is above all the people including the people who are administering it. Rule of law had been

constituted in order to promote absolute supremacy of law so that there is no arbitrariness. In other words, a person can only be punished for the breach of law and not for anything else.

- **Equality before Law**

This is the second most important pillar of rule of law as given by Dicey. Every individual is subjected to the ordinary law and jurisdiction of the ordinary court irrespective of their ranks or position. Special laws and special courts were considered as a threat to the equality as explained by Dicey. Therefore, same set of laws must be there for all the individuals and must be adjudicated by the same civil courts which was believed by Dicey.

- **Predominance of the Legal Spirit**

According to Dicey, this third pillar of rule of law means that in order to enforce rule of law, an enforcing authority is required. Dicey considered courts to be the best enforcing authority without any impartiality and external influence. Therefore, Dicey believed in independent judiciary and not on written Constitution for protecting individual's fundamentals.

Universality of Rule of Law

Rule of law is considered to be very durable which delivers mainly four universal principles:-

- **Accountable:** Both government and citizens are accountable under the law.
- **Law is just:** Law has clarity. It is publicized and stable. Law is evenly applied.
- **Fair and Accessible:** The process by which law has been made either through



administration etc. and is enforced are fair, accessible and efficient.

- **Justice is Impartial:** Justice is delivered timely and is competent. Law also restricts the arbitrary use of power.

These four universal principles mentioned above of the rule of law works as a definition of the rule of law and are accepted standards and norms universally.

Rule of law in India

India has been an advocate of rule of law since ancient times. For example: Dharma's dominion was established by Dharmashastras or Nitishastras and even the King was subjected to the control of Dharma.

India adopted the rule of law in the influence of its implementation in England. The requirements of rule of law are fulfilled by the Indian Constitution which is known as the Grundnorm of the country. Constitution is considered as the supreme law of land and nothing is higher than this.

India has a written Constitution as well as body of laws which are subjected to it and deals with various issues such as rules and regulations, executive orders and conventions. Together they are called law and their application to the general public is called rule of law.

Liberty, justice, equality and fraternity are some of the elements of the Indian Constitution which are mentioned in the Preamble and this is what is known as rule of law.

Parliament and State Legislatures are democratically elected. Mechanism for Judicial Review are also included in the Indian Constitution.

The court also has played a very important role in the establishment of rule of law. Following are some of the examples:

- **Keshvananda Bharti v. State of kerela¹**

In this case, some of the property of the petitioner was acquired by the government. It was decided that the Judiciary has the authority to amend the Constitution for the benefit of the people. Therefore, it was clear that the basic structure of the Constitution cannot be changed and this framework was determined as the rule of law.

- **ADM Jabalpur v. Shivkant Shukla²**

In this case, fundamental rights of the people were removed forcefully due to declaration of emergency. The question before the court was whether Article 21 will protect people's lives and freedom. According to the court, Article 21 guarantees life and liberty and also stated further that though Article 21 loses procedural power during the declaration of emergency but it will retain its substantive power.

- **Maneka Gandhi v. Union of India³**

Under this case of dispute, the passport of the petitioner was confiscated in the public interest. The petitioner filed a complaint in court raising concern regarding the relationship between Article 14, 21 and 19. The Supreme Court expanded the reach of Article 21 by declaring that no one shall be

¹ Keshvananda Bharti v. State of kerela (1973) 4 SCC 225

² ADM Jabalpur v. Shivkant Shukla (1976) 2 SCC 521

³ Maneka Gandhi v. Union of India (1978) AIR 597, 1978 SCR (2) 621



denied the said right. Procedures must also fulfil the criteria set out in the preceding three articles in order to be considered as legitimate.

Rule of Law in United Kingdom

Rule of law was formed when King John adopted the document known as Magna Carta in 1215. This was the most important written text which curtailed the King's authority and obliged him to observe law for the first time. It confirmed the supremacy of rule of law and it was considered above the monarch.

United Kingdom implemented the rule of law in its administration. It lacks a written Constitution but the rule of law, legislature and judiciary is present in its unwritten Constitution. Therefore, rule of law in United Kingdom evolved over time.

The rule of law first appeared in United Kingdom in the case of ⁴**Golder v. United Kingdom**, where the court based its broad interpretation of Article 6 (1) of the Convention (Right to a fair trial) from which right of access to court on the reference to the rule of law was made in the Preamble of the Convention. Rule of law became a guiding principle for the court as it was considered as an inspiration and was inherent in all the Articles of the Convention. It was also defined as one of the fundamental principles of a democratic society. The close relationship between the rule of law and democratic society has been underlined by the court with the help of different expressions in this case.

Another notable case which led to the establishment of rule of law was ⁵**Entick v. Carrington** where it was made clear that police must show lawful authority to enter

private property and seize personal property. In this case police officer went into Entick's property and seized personal papers without having warrant which led to arrest and loss of personal liberty. Thus, a fundamental value under the rule of law is that personal liberty of a person cannot be harmed unless he or she has broken any law.

Therefore, in United Kingdom, rule of law has evolved since generations in order to keep a check on the arbitrary power. The rule of law along with Parliamentary Sovereignty and rulings of the court is fundamentally the defining principle of unwritten Constitution of United Kingdom.

Exception to the Rule of Law

In today's world, it is very important to cope up with the new era of the government which is more practical and this is the reason that there are various exceptions to the rule of law.

In India, the concept of rule of law given by Dicey cannot be followed strictly. There are various exceptions here under the Indian Constitution and other laws. For example:

- Equality before law does not mean that the power of private citizens will be same as the power of public officials. For example: A police officer has the power to arrest but no private person has the power to do that.
- Rule of law cannot prevent certain classes of persons from being subjected to special rules. For example: Members of armed forces are controlled by military laws, medical practitioners are subjected to the regulations framed by the Medical Council of India etc. **Article 361** of the Indian Constitution provides that the

⁴ Golder v. United Kingdom, 21 February, 1975 (34)

⁵ Entick v. Carrington (1765) 19 St Tr 1030



President or the Governors of the State shall not be answerable to any Court for the exercise and performance of the powers and duties of the office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. No criminal proceedings shall be instituted or continued against the President or the Governor of a State in any Court during his term of office. No process for the arrest or imprisonment of the President or the Governor of State shall be issued from any Court during his term of office. So, such kind of persons are immune from ordinary courts.

- Ministers and other executive bodies are given very wide discretionary powers by the Statutes today. Even a large number of legislation is passed in the form of delegated legislation which means rules, order or statutory instruments made by ministers and other bodies and not directly by the Parliament. These rules did not exist at the time of Dicey.
- Certain members of society are governed by special rules in their professions i.e. lawyers, doctors, members of armed forces and police. Such class of people are treated differently from ordinary citizens.

In United Kingdom, modern notion of rule of law was shaped due to the fights between English Monarchs and their subjects, the struggle of power between Parliament and Stuart Kings and the war between British empire and American colonies. Rule of law evolved in United Kingdom in order to block unfettered and unconstrained authority.

There are cases where the principles of rule of law is being destroyed in United Kingdom. **The Legal Aid Sentencing and Punishment of Offenders Act, 2012** is a huge part of justice but now it is simply unavailable. For most type of cases two tier system of justice is there which includes one for rich and one for everyone else. This destroys the principle of equality before law which is considered as a universal principle of rule of law which is being affected. Even **the violation of fair trial imposed by counter terrorism** has led to avoiding the principles of rule of law recently. Thus, the spirit of rule of law sometimes leads to biasness in the United Kingdom as the legislature there is the sovereign authority in order to make laws.

Modern Concept of Rule Of Law

Rule of law is considered as an important aspect for the betterment of the society. The written or unwritten Constitution of India and United Kingdom includes the rule of law. Separation of powers is also a notion that is followed by both India and United Kingdom. Rule of law today is not strictly followed but it has some flexibility. Judiciary has also included the concept of rule of law today for the benefit and justice of the society.

There have been various modifications in the rule of law today but it has created a new path which includes controlled power rather than arbitrary power.

The modern concept of rule of law has been greatly developed which can be greatly developed by any government. International Commission of Jurist known as Delhi Declaration, 1959 developed this concept which was later confirmed at Lagos in 1961. Dignity of a man as an individual is upheld according to this formulation. It means that the rule of law should be applied in such a



way that it creates conditions in which the dignity of an individual should be given priority. Recognition of civil and political, social, economic, educational, cultural and developmental rights are included in the dignity of an individual. Ensuring of human rights mechanism is required for the proper incorporation of the rule of law. For example, in case of India, Human Rights mechanism is very much needed as it comes under third world country.

Rule of law is considered as the fundamental principle for any good governance in today's developed or developing democratic countries. Observation of rule of law has become a true basis of a democratic society.

Thus, rule of law by Dicey has been modified in the present day as it now includes effective control and has become a proper publicity for delegated legislation. Rule of law now works hand in hand with practicality of governance.

Conclusion

The rule of law is that framework which leads to fair and just society with the help of its universal principles that include accountability, justice, accessibility and impartiality. It restricts the exercise of arbitrary power.

In many countries, the rule of law has been adopted as an essential liberal democratic mode of governance for the economic and social development and it is considered necessary for the existence of democratic form of government.

Therefore, it can be concluded that the supremacy of law is the ultimate aim of the rule of law. In India, there are various instances where the court has linked the rule of law with human rights of the people with

their great efforts. The strategy of the court is mainly to make the government realise that nothing is above law so that all the citizens can enjoy their rights in a proper and meaningful manner. Therefore, according to my opinion, rule of law will always reside in the democratic countries whether they have written or unwritten Constitution. Thus, Democracy is nothing without rule of law.

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