

RULE OF LAW AND DEMOCRACY

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ABSTRACT

The concept of the Rule of Law, which describes how states are governed, has been around for millennia. Rule of Law entails that all institutions, including the government, must uphold the supremacy of the law as opposed to Rule by Law, which places the government above the law and uses the law to govern. One of the goals of this study is to show that the rule of law is essential to democracy and that solely caring about the rule of law during elections is insufficient to maintain democracy. The study aims to establish that the principles of democracy are strongly related to the Rule of Law. In addition to this, it establishes how philosophers from time to time have reiterated how the law is above the king. This study has also compared the modern concept of rule of law to the traditional theory and bursts the misconception that Parliament Sovereignty is above the Rule of Law. The paper also mentions a few landmark judgements which have set a great impact on society and have helped in limiting the powers of government. In India, no organization may assert ultimate authority. Parliament is sovereign to the extent that it enacts laws in accordance with clearly defined constitutional processes and according to procedural guidelines established by Parliament and state legislatures. The Constitution may only be amended by Parliament, subject to the procedural rules outlined in the document and the Supreme Court's interpretation of the law. But the ability to change the Constitution's fundamental provisions is not included in that power.

Key Words: Rule of law, Parliament sovereignty, Indian constitution, authority, democracy, equality, fundamental, law, executive, political, arbitrary power, legal system.

1. INTRODUCTION

The principles of democracy are closely related to the Rule of Law. A democratic state that upholds the rule of law is one in which the populace chooses its government, which is subject to the law and works to ensure that the law is upheld by all state residents. Rule of law is the foundation of all democratic societies. Democracy and rule of law are the heart of our societies. They are crucial to the smooth operation of our society and play an important role in it. The core element of the rule of law implies that every citizen, including legislators and those in positions of authority, is subject to and accountable to the law.

Democracy and the rule of law go hand in hand. A society with a dictatorship makes it impossible for the Rule of Law to even exist in a society. So, one cannot exist without the other.

We all know what democracy is. So, quoting Abraham Lincoln, "it is a government of the people, by the people, for the people". In simple words, it is a government where representatives are elected 'by' the people on their behalf, 'for' their development and deciding laws and resolving issues. The

government is accountable to the people and therefore Lincoln has said the government 'of' the people.

2. BUT NOW WHAT IS “THE RULE OF LAW”?

If I simply say, rule of law means that all persons, institutions and entities are under the law. Law is above all. But I'd like to go a little back into the past.

The concept of the Rule of Law is a very old one. Sir Edward Coke is said to be the originator of the Rule of Law. He was the Chief Justice in England during the reign of King James I. He was a strong believer that the king should also be under the law. He criticized the Divine concept which said that the king can do no wrong and that the king is above the law and is infallible and was given divine authority. He was only to answer to God for his actions, not to the people, as he was under no obligation to do so. God granted the king absolute authority to rule the populace. According to this theory, the king is above the law and his subjects have no right to contest his rule or his decisions.

Looking at our own wonderful nation India, the idea of the Rule of Law is a traditional one. Supreme Court Justice B.N. Srikrishna observed here that “the rule of law was not an imported doctrine and was prevalent in the society during the Vedic period. Elaborate references to it were found in the scriptures such as Veda, Upanishads, Sage Yajnavalkya’s Smriti, Manusmriti etc. etc.” he added.¹ The Upanishads too provide that law is the king of kings and that there is nothing higher than law.

Well, a lot of time has passed since then and the credit perhaps today for developing the rule of law goes to none other than Professor A.V. Dicey, who in his book² published in 1885, tried developing the concept of rule of law. Indian philosophers like Chanakya have also endorsed the rule of law theory, arguing that the King should be subject to the legal system. Rule of law is the idea that the state is governed by the law, not by the ruler or the elected officials chosen by the populace.

There are three concepts of rule of law given by Dicey-

1. According to Dicey, “no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before ordinary courts of law”. This book explains why the rule of law is infallible. That it excludes the existence of arbitrariness in any form. Dicey asserts that “**wherever there is discretion, there is room for arbitrariness**”.
2. In the second place, he says that “every man, be his rank or condition, is subject to the ordinary law of the realm and amendable to the jurisdiction of the ordinary tribunals”, meaning no man is above the law. If an ordinary private man or a state official breached the same law, both will be treated the same way. Just because the person was a state official doesn't give him a special privilege.

3. The third sense of the Rule of Law is that, in particular cases brought before the Court, the general rules of the Constitution are the product of judicial rulings deciding the rights of private individuals to file. The lawful essence is seen in its tradition, conventions and judicial rulings.

3. MODERN CONCEPT OF RULE OF LAW

However, the modern concept of rule of law is fairly wide. Today's highly developed understanding of the Rule of Law offers the perfect framework for any government to operate under. This concept of rule of law was developed by "The International Commission of Jurists known as "The Delhi Declaration", 1959. The Delhi Declaration said about the rule of law that the rule of law implies that the functions of a government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld. This dignity requires not only the recognition of certain civil or political rights but also the creation of political, social, economic, educational and cultural conditions, which are essential for the full development of his personality.

The dynamic concept that the rule of law has become in the formulation of the Delhi Declaration does indeed safeguard and advance the civil and political rights of the individual in a free society, but it is also concerned with the establishment by the state of social, economic, educational, and cultural conditions under which man's legitimate aspirations and dignity may be realized".³

So, in the final say, we cannot say that rule of law means any government under any law. That is not rule of law. That is what politicians think it is. What it means is the rule by a democratic law, under a democracy within the framework of democratic principles. It is a law which is passed in the democratically elected parliament after adequate debate and discussion.

4. RULE OF LAW AND PARLIAMENTARY SOVEREIGNTY

As we move on to the idea of rule of law concerning parliamentary sovereignty, it is currently believed that sovereign parliaments can supersede the rule of law. Dicey believed that the purpose of the rule of law was to prevent the abuse of political, executive, or royal authority. But now it has a much broader meaning in modern times.

As discussed earlier, it means recognition of basic human rights which must be acknowledged in a liberal society and this sense, there may be a conflict between parliamentary sovereignty and the rule of law. Any discretionary power needs to be controlled to ensure that such power is exercised in good faith and consonance with rule of law because, after all, discretionary laws are the ones creating problems. In the case of *RV Jackson*, it is stated that the rule of law is one in which all individuals and authorities within the state, whether public or private, ought to be bound by and entitled to the advantages of laws that are made in public, which go into general effect after they are passed, and which are publicly governed by the courts. In other words, it highlighted the importance of transparency and the fact that the rule of law applies to all courts, parliaments, and governmental bodies.

5. DECISIONS OF COURTS

The very popular habeas corpus case⁴ is one of the most important cases when it comes to rule of law. The question in front of the courts was whether there was any rule of law in India apart from article 21. This was in times of emergency during the suspension of Articles 14, 21 and 22. Justice H.R. Khanna tilted the majority (which was negative) and observed that even in the absence of Article 21, the state has got no power to deprive a person of his life and liberty without the authority of law, i.e., even during the execution of Presidential order, if a person is detained, the high courts are supposed to entertain the writ of Habeas Corpus filed, challenging the grounds of his detention. In simpler words, it means you cannot do anything which is not sanctioned by law. You must be able to justify the actions according to the law.

Remember when Dicey asserted that wherever there is discretion, there is room for arbitrariness. We have talked previously that how arbitrariness and discretionary powers are the enemies of rule of law. A similar observation was made in the case of Som Raj which said the fundamental tenet of the Rule of Law, upon which the entire constitutional structure depends, is the absence of arbitrary power. The concept that is antithesis of the concept is discretion being used without any guidelines.

Many judgements came thereafter and finally, in 1973, the Supreme Court in Kesvananda Bharti case⁵ held that rule of law is a part of the basic structure of the constitution and cannot be destroyed even by the parliament. Additionally, it established the Supreme Court's right to review decisions and, as a result, its authority over all constitutional issues. It is possibly the Supreme Court of India's most well-known constitutional ruling.

Maneka Gandhi v. Union of India

The Supreme Court stated unequivocally that Article 14 prevents state actions from being taken arbitrarily and ensures fairness and equality in treatment. Arbitrariness is prohibited by the rule of law, which is a fundamental aspect of the Indian Constitution. Arbitrariness undermines the Rule of Law wherever it exists. The inclusion of protective discrimination as a means of ensuring equality among equals in Articles 15, 16, and 23 strengthened the idea of equality even further.

Skill Lotto Solutions Pvt Ltd v. Union of India

In this case, it was held that Article 32 is an important and integral part of the basic structure of the constitution as it is meant to ensure the observance of the Rule of Law. Dr BR Ambedkar said, "if I was asked to name any particular article in the constitution as most important...I could not refer to any other article except this one. It is the very heart and soul of the constitution".

6.CONCLUSION

Professor Jeffery Jowell says "This is fundamental: - whether the degree of legality and legal certainty there may be if an individual is not able to challenge the government in a democracy and assert his/her rights, including human rights, the rule of law cannot be said to pertain"⁶

Rule of law does not mean rule only by law. The rule of law is a much richer concept and this must be appreciated in the globalizing process. It requires that once an individual has access to a court, the court should be independent of the government. "Justice must not only be done but seen to be done" he added.

There should also be a fundamental need to recognise the dignity of humankind. It must be recognised as other values such as the right to life. Disregarding rule of law will lead to bizarre situations, to a reign of tyranny. Plato has famously said, "if the law is master of government and the government is its slave, then the situation is full of promise and men can enjoy all the blessings and all what the god showers on the state".

Let's question ourselves for once. We all know the phrase 'equality before the law', but we all know that some people are more equal than others before the law. Or trials? Are they fair? Unfortunately, they are not because the investigations are not fair and people are treated badly. Or what about human rights? Are they being protected? Look at the thousands of migrant workers who walked on the highways during COVID-19 having blood sweat and tears and suddenly next morning asked to get out and go home. Is that a human right?

The UDHR 1948 gives rule of law a central place. It highlights rule of law as a crosscutting issue linking the three pillars of the UN: peace and security, human rights and development. By daring to claim that all human beings are free and equal, regardless of colour, creed or religion, the UDHR marked a significant change. For the first time, a global agreement put human beings at the centre of its agenda, not power politics.

As advanced by the General Assembly and the Security Council in the twin resolutions on the study of peace-building architecture, the rule of law is an essential component of peacebuilding. Sustaining peace requires an integrated and comprehensive approach across the UN framework, focused on coherence between strategy, defence, development, human rights, equality between men and women and the rule of law, in support of efforts undertaken by the Member States.

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