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# **SIGNIFICANCE OF RULE OF LAW IN UPHOLDING THE CONSTITUTIONAL ORDERS AND ITS IMPACT ON INDIVIDUAL LIBERTIES**

AUTHORED BY-TEJASVA GULATI

## **ABSTRACT**

In this paper firstly we will go through the history of Rule of Law and we will see that how it came to the India, and what is the current scenario in today's time. Rule of Law while an individual speaks it, the scope of it seems really small, but that's exactly not the scenario. To talk more about the topic we will discuss our topic with the help of relevant articles and case laws provided in the Indian Constitution and also we will discuss that how it reflects it's impact in the matter of individual liberties, as individual liberties previously faced many difficulties and providing justice to them is also one of the major duties of the government, while upholding the dignity of basic structure as well.

## **INTRODUCTION:**

So now, before we understand and go through the full details of or topic , it's important that we first shift our focus towards in understanding the definition of Law, as it will be better to say that Law itself is a very vast term and if we just simply define law by one single definition ,it won't be fair. As many of the people when asked about, 'what law is' they just simply answer that Law is nothing but a set of rules and regulations made by the government for the sake of their country, this is the most common definition of Law that mostly people say , while different authors after sharing their own experiences have tried to built their own definitions of Law, like according to <sup>1</sup>Salmond, Law is the set of rules which is made by the government for the well being of the society. Now if we carefully observe this definition , it can be found out that there is some kind of rigidity in this definition of Law, another definition which was made by <sup>2</sup>John Austin, that says Law is the command of sovereign backed by the sanction, which basically means that Law is order of the sovereign governed by the supreme authority , now here in this definition of Law the

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<sup>1</sup><https://lawbhoomi.com/john-salmonds-definition-of-law>

<sup>2</sup> <https://lawbhoomi.com/law-according-to-john-austin/>

question is raised about that till what limit can the Law be allowed to use its freedom , there must be some boundaries. So Salmond's definition and Austin's definition of Law is basically opposite to each other, one is saying about the rigidity and the other is saying about freedom, but what if we just combine these 2 definitions, then it can be said as that Law is basically the freedom of the society , with certain rules and regulations on it. Now this is something more rational than before as Law works both on society as well as logic.

Now that we have got an understanding about what Law is , it will be more easy to learn about the concept of Rule of Law. In simple words, it means that how the procedure of law should be applied on everyone and that procedure must be just, fair and reasonable. Now coming to our topic of which the 1<sup>st</sup> part speaks about the importance of Rule of Law on Indian Constitution. Before talking on this we must reflect our thoughts that how the Rule of Law was adopted by our country and also the history of Rule of Law.

### **HISTORY OF RULE OF LAW:**

irstly we will talk about the origin of Rule of Law which was introduced by <sup>3</sup>Sir Edward Coke in the year 1628 , where in England he was the first person to go against the rule that is popularly known as, 'King is above all'. While expressing his views , he said there must not be any kind of Law which forms any kind of colonization and also said that everyone including the King must be treated equally before Law and there also must not be any kind of arbitrariness in the Government. Hence by this the concept of Rule of Law was introduced.

After Sir Edward Coke there was the entry of <sup>4</sup>Sir Albert Venn Dicey (A.V. Dicey) who further elaborated his thoughts on the topic of Rule of Law. For this he also wrote a book popularly known as , 'An Introduction to the Study of the Law of the Constitution' in the year 1885 in which he majorly relied on the three major principles of the topic that are as follows:-

1. <sup>5</sup>Supremacy of the Law- Basically in his principle of Dicey explained that in this world there must not be any kind of arbitrariness in the system, by stating the term arbitrariness he meant that for punishing a man , there must be a procedure established by Law which states that the Law

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<sup>3</sup> Williams, I. (2012). The Tudor Genesis of Edward Coke's Immemorial Common Law. *The Sixteenth Century Journal*, 43(1), 103–123. <http://www.jstor.org/stable/23210757>

<sup>4</sup> <https://www.legalbites.in/concept-of-rule-of-law/>

<sup>5</sup> Supra footnote 4

must be just, fair and reasonable and also he explained that no authority is greater than Law and for the sake of society , people must accept that Law is Supreme.

2. <sup>6</sup>Equality before Law- In this principle, Dicey explained that there must not be any kind of wrong towards any person, irrespective of the religion , race and cast that he belongs and irrespective of what's his gender. Everyone must be treated equally before Law and there must be same sets of rules that every person has to follow and there must not be any person who should get any kind of special treatment under the supervision of Law.

3. <sup>7</sup>Independent Judiciary – While explaining his third principle, Dicey relied his thoughts on the functioning of the Judiciary. He said that in the working of the constitution Judiciary plays a major role in it. He further explained that there must always be an Independent Judiciary means they are free to make their own decisions, can enforce laws and even overrule the decisions made by the Legislative and the Executive that are not compatible with the functioning of the society. Also, Article 13 of our constitution defines about Independent Judiciary and about its review.

These were the three major principles that explained the fundamental nature about how a Law must be and accordingly the state must work under it for the development of Society.

Now that we have talked about the origin of Rule of Law we must also talk about the Indian History of it.

### **INDIAN HISTORY OF RULE OF LAW.**

Now basically if we talk about the concept of Rule of Law and it's principles it was originally borrowed from England and later we adopted it, but India way before this concept has it's own meanings of Law. Firstly, <sup>8</sup>India is country that follow traditions , customs , rituals and also ethnicity, so if we talk about the relation between Law and India , India has it's own precedents. So as I was saying that India is a country that believes in traditions , so rule of Law in India has originated from the concept of , <sup>9</sup>'Dharma' that was already existing way before than the concept of rule of law, the concept of Dharma is really simple and even today if somebody explore our country , they can see that the concept of Dharma is known to every Indian Child, basically by saying this what we mean is , that since our childhood we are being thought to worship GOD , i.e

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<sup>6</sup> Supra footnote 4

<sup>7</sup><https://www.britannica.com/topic/judicial-independence>

<sup>8</sup> <https://www.britannica.com/place/India/People>

<sup>9</sup> <https://www.lawctopus.com/academike/dharma-and-law/>

<sup>10</sup>Brahma ji, Vishnu ji and Shiva ji as nothing is above him. The concept of Dharma basically leads someone in the good direction of his life by showing him the path of peace and discipline. This concept of Dharma is derived from the great Hindu Mythology and there are a lot of things in it , that people all over the world rely on those things to lead their life.

### **RULE OF LAW IN INDIAN CONSTITUTION.**

Now as we got an idea about the history of Rule of Law, we will now discuss about our our topic which talks about the Rule of the Law in upholding the Constitution and it's impact on individual liberties. Now, Rule of Law is such a wide term that defining it can't be defined in the practical field , but it can be witnessed. <sup>11</sup>Article 14 of our Indian Constitution which says about equality before Law defines the concept of Rule of Law, but all the other articles are also covered under the ambit of Rule of Law, such that each and every law made till now in India covers the concept of Rule of Law. Each and every article of our constitution is made for the sake of people only. In fact <sup>12</sup>Article 32 of our Indian Constitution which talks about constitutional remedies highlights the issues of individual liberties in which individuals are allowed to move to the Supreme Court in the case of violation of their fundamental Rights. In our country there are laws for everyone starting from the person who is a victim and coming to the person who has committed the wrong. If we talk about the significance of Rule of Law in our Constitution , it has played such an important role that the concepts such as <sup>13</sup>Judicial Review, Separation of Powers, Fundamental Rights , Directive Principles of State Policy, Fundamental Duties and the system of checks and balances' are all covered under the ambit of Rule of Law. The Preamble which is the most important part of our Indian constitution and in the case of <sup>14</sup>Keshavananda Bharati v State of Kerala, the supreme court observed that Rule of law is the one of the most important feature under the Doctrine of Basic Structure. Also in this case , Supreme court also observed that Preamble is the part of Indian Constitution by overruling the <sup>15</sup>Berubari case. The case of Keshavananda Bharati is so important because the Supreme court laid down such principles which followed the basic structure doctrine and these principles are still being used today for the development of our country. Also, Article 14 of the Indian Constitution which talks about equality before law as

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<sup>10</sup> <https://vedicfeed.com/hindu-trinity/>

<sup>11</sup> <https://www.constitutionofindia.net/articles/article-14-equality-before-law/>

<sup>12</sup> <https://www.drishtiiias.com/daily-updates/daily-news-analysis/article-32-of-the-constitution>

<sup>13</sup> <https://www.studyiq.com/articles/salient-features-of-constitution-of-india/>

<sup>14</sup> AIR 1973 SC 1461

<sup>15</sup> AIR 1960 SC 845

mentioned in one of the Dicey's principles too, reflects the concept of Rule of Law. For better understanding of it lets discuss some important cases of it.

1. <sup>16</sup>State of West Bengal v Anwar Ali Sarkar(1952)

So, basically what happened in this case was that there was this act known as, The west Bengal special offences acts in the year 1950, and this act mentioned about the availability of special courts in the case of some certain offenses. Section 3 of this Act allowed the state government to enable the establishment of Special Courts. Section 5 of this Act, mentioned that in the cases of such certain offenses the proceedings will be heard in these special courts, rather than the normal procedure. The other party in this case, when received an order from the special court, they filed a complaint against it and the matter went in the Supreme Court. The SC in this matter, hence declared this act unconstitutional as it was going against the normal procedure, and the SC said that it also violates Article 14 of the Constitution.

2. <sup>17</sup>EP Royappa v State of Tamil Nadu(1974)

So, basically the petitioner in this case was a member of the government authority and somewhere in the year 1969 what happened was that the seat of the Chief Secretary fell vacant and hence the petitioner i.e. Ep royappa was appointed for it after the order of the Chief Minister, but this post appointed to him was only for a temporary period of time. After this the another post of Special Duty of sales tax department was created which was also of the same level to that of the post of Chief Secretary, and accordingly the petitioner was appointed for it, but he didn't joined that post. After he came back, the post of Chief Secretary was appointed to the officer junior than the petitioner, and accordingly he filed a writ petition under Article 32 of the constitution. The Supreme court in this case, while giving their judgement said that there was no bad intention of the state to make such changes, but observed that giving the post of Special Duty equal status as to the post of Chief Secretary and appointing a junior for the post of Chief Secretary who is less experienced than the petitioner was arbitrary and hence violative towards Article 14 and Article 16 of Indian Constitution. This case also laid down the test of arbitrariness.

3. <sup>18</sup>National Legal Services Authority v Union OF India(2014)

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<sup>16</sup> AIR 1952 SC 75

<sup>17</sup> 1974 AIR 555

<sup>18</sup> AIR 2014 SC 1863

So, basically this case was regarding the rights of the transgender community, and as know this community back then faced a lot of problems regarding their establishment in the society. In this the SC while giving their judgement relied on various sources and said that Transgender Community is now being recognized as the third gender and they now will be given equal opportunities just like the other genders , as depriving them of the equal status in the society will lead to a violation of Article 14, Article 15 ,Article 16 and 21 of the Indian Constitution. Also, I would like to tell that these transgenders are way before recognized by our great Hindu Mythology, like the best example of it I can present here is of Shikhandi from Mahabharat, the great warrior who actually killed Bhishma along with the help of Arjuna.

#### 4. <sup>19</sup>Javed v State of Haryana(2001)

In this case , there was an act known as Haryana Panchayati Raj act, and what this act told was that if any couple has more than 2 children in the state, then that particular couple would be disqualified from having the status in the panchayat, however there was an exception that the couples already having more than 2 children before the commencement, then the effect of the status in the panchayat would not fall on them, Hence regarding the constitutionality of this act a petition was filed before the Supreme Court.

The Supreme court while giving their judgement, observed that the provisions regarding this act was not arbitrary and hence fair and also observed there the Article 14 of the Indian constitution limits the concept of class legislation and not the test of reasonable classification.

#### 5. <sup>20</sup>Air India v Nargesh Mirza(1981)

In this case an airline company known as Air India made some rules and regulations regarding the retirement of air hostesses that majorly carried three conditions that are as follows-

- 1, Once they turn the age of 35
2. Once they get pregnant
3. If the women working for them got married within the time of 4 years.

If any of these three conditions were fulfilled , women were considered to be as retired and the same rules and regulations was not applicable for men working over there and accordingly a

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<sup>19</sup> AIR 2003 SC 3057

<sup>20</sup> AIR 1981 SC 1829

petition was filed for the same in the supreme court. The Supreme Court while giving their judgement said that the actions taken by the Air India were completely discriminatory and was violative of Article 14,15 and 16 of the Indian Constitution.

6. <sup>21</sup>Joseph Shine v UOI(2018)

So basically this case is related with the issue regarding extramarital affairs and what happened in this case was that a man named Joseph Shined filed a writ petition under Article 32 challenging the constitutional validity of Section 497 of IPC which says about the offence of adultery and along with that section 198(2) of CRPC was also included. In this case the arguments of the petitioner contended that this offence was arbitrary and discriminatory in nature as it only provides men with the right to file a complaint, if they find their wife got engaged in the extramarital affairs and the women in this case, have no right to file complaint against men if they found their husband getting involved with another women. The Supreme court in this case hence ruled that this act was unconstitutional as it was arbitrary and was completely biased towards men and hence violative of Article 14 and 15 of the Indian Constitution.

Now as we saw, that in all these cases, how the decisions were taken by the Supreme court and how people of India are also allowed to approach the Supreme Court in case if they face some difficulty, This is what explains the fundamentality of Rule of Law and the ways it adopts to maintain the structure of constitution and at the same time giving the rights and duties to the citizens of the country to enjoy individual liberty as well. Coming to these topics we will also cover some cases regarding Article 19 and Article 21 of the Indian Constitution.

1. <sup>22</sup>Romesh Thappar v State of Madras(1950)

So basically in this case, the petitioner did not like Pandit Jawaharlal Nehru and his policies, so he wrote and published the few articles about him, in a magazine called as Crossroads, So one day the state government of madras banned the spreading of the magazine so that readers could not the ideas and thoughts reflected by the petitioner about Pandit Nehru. The issue ultimately showcased it's way in the front of Supreme Court of India and after hearing the complete matter, the Supreme Court ruled in the favour of Petitioner saying that banning the spreading of the magazines violates the fundamental right of the petitioner and is against Article 19 of the Indian Constitution which talks about the freedom of speech and expression.

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<sup>21</sup> 2018 SC 1676

<sup>22</sup> AIR 1950 SC 124: 1950 SCR 594

2. <sup>23</sup>Brij Bhushan Sharma v State of Delhi(1950)

In this case there was this petitioner known as Brij Bhushan Sharama who published some article that mentioned about the criticizing of the Indian Government and he was a news journalist. In response to that the state government found that the article contains bad comments about the Indian Government and hence charged the petitioner liable under the offense of sedition, while the petitioner in his arguments presented that it was his right to freedom of speech and expression and hence challenged the constitutionality of the said act. The case hence was presented before the Supreme Court and Supreme Court while giving their judgement ruled in the favour of Brij Bhushan sharma saying that freedom of press also includes the freedom of speech and expression and also told that restrictions must only be there if there is really a danger towards the society.

3. <sup>24</sup>Bombay Art International v Om Pal Singh(1996)

This case is also popularly known as the Phoolan Devi case. She is a well known identity in today's times also. Her story was that when she was a child she grew up in poverty as her family was not very financially well at that time and also she was a rape victim, she was raped multiple times by the people of her village and then later when she grew old , she joined some gang and later then started building her status and she also killed the people who raped her , eventually she became the member of the parliament and till now she is being respected by the society. There was this film named as Bandit Queen which was based on the full story of Phoolan devi, and in that movie , multiple scenes were there which showcased the act of rape and sexual harassment as well, regarding this a petition was filed in the supreme court and the issue was framed regarding the obscenity in this case. After hearing the arguments of both the sides the supreme court in this case ruled in the favour of the movie bandit queen and said that the movie reflected the work of artistic freedom and the nudity which was reflected in that movie, doesn't actually gave way to the obscenity, as supreme court said that while seeing that movie no person will have the feelings of lust, but may have other opinions.

4. <sup>25</sup>Ak Gopalan v state of madras(1950)

In this case, there was this person whose name was Ak gopalan and he was the communist leader and he said things which mainly opposed the ideologies of the govt, so one day the madras govt

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<sup>23</sup> SCR 605

<sup>24</sup> 4 SCC 1

<sup>25</sup> AIR 1950 SC 27

brought him to jail because of his actions and after this when some time got passed and he was already in jail at that time, a new order was drafted against him under the prevention detention act which was for further punishment, so Ak Gopalan in response approached to the supreme court , under Article 32 of the constitution challenging the constitutionality of this act, and the issues were framed regarding the violation of Article 19 and Article 21 in this case. The judges while giving their judgement denied the arguments given by the petitioner in this case and limited the scope of Article 19 and 21 as well and later said that personal liberty can be given under physical capacity only and freedom under Article 19 was only for free people in India and not the ones who are suffering for their actions. This judgement of Supreme Court created a question mark for the matters regarding individual liberties in India and also regarding Rule of Law.

5. <sup>26</sup>Maneka Gandhi v Union of India(1978)

So in this case there was this women, popularly known as Maneka Gandhi and she then got her passport registered under the Passport Act of 1967. After some days she received a letter of order from the Passport department and in that letter, an order has been issued against her for the seizure of her Passport. After this happened, she wrote a letter to the Passport Department, asking to know for the valid reasons for her Passport Seizure. After some days she got a reply , that the reason for the seizure of her passport is because of public safety and in that letter as she demanded the valid list of reasons, that was not provided. She then filed a writ petition under Article 32 and approached the Supreme Court of India regarding the constitutionality of the act and the violation of her fundamental rights under Article 14 ,19 and 21. After hearing to both the sides, judges while giving their judgement ruled in the favor of Maneka Gandhi and said that Article 21 defines the term that says about, ‘procedure established by law’ and also said that the scope of Article 21 can’t get isolated and have to be used in a wider perspective , also referring to Article 19 the judges said that the freedom in India has the broad meaning and it cant be defined for the limited number of audience only, and hence by saying they overruled the case of AK Gopalan v state of Madras.

6. <sup>27</sup>KS Puttaswamy v Union of India(2017)

In this case , there was an retired high court judge whose name is KS Puttaswamy and he then filed a writ petition under Article 32 of the Constitution and raised an issue regarding privacy in India because of government guidelines that had mandated the Aadhaar scheme in India. The main issue that was presented before the Supreme Court regarding this problem was to make

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<sup>26</sup> 1978 SCR (2) 621

<sup>27</sup> (2017) 10 SCC 1

Privacy a fundamental right under Article 21 of the Indian Constitution. The Supreme Court here while giving the judgement in this case, ruled in the favor of Mr. Puttaswamy and said that Privacy in India is a big concern and it should be added as a fundamental right under Article 21 of the Indian Constitution. Hence by this judgement, all the previous judgements like the <sup>28</sup>Kharak Singh case and the <sup>29</sup>MP Sharma case. This case is often referred to as the landmark judgment under Article 21 of the Constitution.

Now the every article under Indian Constitution, defines the concept of Rule of Law and it's impact on Individual Liberties , but the reason that we have taken Article 14, 19 and 21 is that these three is popularly known as to form the Golden Triangle of the Constitution , which basically defines the core concept of Rule of Law and also ensures the people that it will not lead to violation of their basic rights and duties.

### **RESEARCH METHADODOLOGY**

During the writing of this paper , we have gone through the various research materials to understand the topic and also gone through the various articles and cases of the Indian Constitution, and on the basis of that the paper has showcased the key factors of our topic.

### **CONCLUSION**

Now that we have talked about the topic, we have got a brief idea about it that how the governance of Law takes place in our country. Currently if we look at the current scenario, we can observe that Indian Economy is growing in a very good rate, and this indicates that the government of India is taking their efforts to improve the overall conditions of our country and as we generally talk about the Laws in India, we can observe that for every possible act of a person, there is a Law to talk about and if the people of India are not justified by it, then there are amendments that take place in the overall procedure. So by this we can say that Rule of Law in India has played it's role both in upholding the constitutional orders and also have given the space towards individual liberties.

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<sup>28</sup> 1964 SCR (1) 332

<sup>29</sup> 1954 SCR 1077