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# **RULE OF LAW: A COMPARATIVE ANALYSIS** **BETWEEN USA, U.K AND INDIA**

Authored by- Anjana Pradeep

## **ABSTRACT**

The concept of Rule of Law refers to the principle where in no individual is above the law, i.e., Supremacy of Law is emphasized. The concept of Rule of Law has been followed by many nations across the globe, among which the prominent nations being India, USA and UK. The underlying objective behind the drafting of this research paper is to bring out the comparative elements of the concept of Rule of Law and its application in India, USA and UK. The concept of the rule of law is a fundamental component of a welfare state, and as such, it must be efficiently implemented in every country. The demand for an equitable society is reflected in the rule of law ideals. They promote wealth, the implementation of human rights, and a dignified life for all.

Keywords: Rule of Law, United Kingdom, United States of America, India.

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## INTRODUCTION

The term "rule of law" refers to the supremacy of the law. Tracing back to the origin of the word "Rule of Law", it comes from the French phrase "La Principe de Legalite," which meaning "legality principle." According to the concept of Rule of Law, the government must govern according to legal principles. Man's arbitrary powers shall not govern any person or state. The principle of arbitrariness is opposed by the rule of law. The concept was originated by Sir Edward Coke, but it was A.V Dicey who brought out the soul of the concept of Rule of Law into existence. Sir Edward Coke was the first to introduce the rule of law. He was the Chief Justice throughout James I's reign and the founder of the rule of law doctrine. He was the first to propose something more powerful than the monarch. God and the law, he said, must be placed above the king. It was further developed by A.V Dicey, through his book 'Law and the Constitution', which was published in 1885 and lays emphasis on key concepts such as Democracy, Peoples' Rights and Separation of Powers among other.<sup>1</sup> According to the concept of Rule of Law by A.V. Dicey, three components shall be established to prove the existence of the concept in the governance of a nation. They are as follows:

1. Supremacy of Law
2. Equality before Law
3. Predominance of legal spirit.

The World Justice Project (WJP) is an international civil society organisation that collects data on how the rule of law is applied around the world. According to the WJP Rule of Law Index rankings for 2020, Denmark, Norway, and Finland have the highest rule of law ratings. For the third year in a row, countries' rule of law scores has deteriorated rather than improved. There has been a steady decrease. The countries with the lowest overall rule of law scores were the Democratic Republic of Congo, Cambodia, and Venezuela. They are the same as they were in 2019.<sup>2</sup>

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<sup>1</sup> C.K TAKWANI, LECTURES ON ADMINISTRATIVE LAW 20, (EBC 2019).

<sup>2</sup> WORLD JUSTICE PROJECT, <https://www.worldjusticeproject.org/rule-of-law-index/> (last visited July 07, 2021).

## Rule Of Law In India

Since ancient times, India has been a strong supporter of the rule of law. Dharma's dominion was established by Dharma Shastras or Neeti Shastras, and even the King was subject to Dharma's control. Because of the influence of its implementation in England, India adopted the Rule of Law. The provisions of the rule of law are enshrined in India's Constitution, which serves as the country's fundamental law. The Constitution is the state's supreme power, and no one has authority over it. Article 13(1) declares that any law enacted in violation of the Constitution will be declared null and void. Justice, liberty, fraternity, and equality are some of the elements in the Constitution's preamble that embody the principles of the rule of law. Article 21 guarantees the right to life, which includes the right to a dignified existence, and is a rule of law requirement.

Part III of the Constitution contains provisions concerning the rule of law and guarantees the protection of fundamental rights. Article 14 guarantees equality in the sight of the law. It states that in the eyes of the law, everyone is equal. Article 32 and Article 226 of the Constitution make fundamental rights enforceable. The Indian Constitution has provisions concerning the independence of the judiciary, executive, and legislature. Parliament, as well as the state legislatures, are democratically elected. The Constitution also includes mechanisms for judicial review.<sup>3</sup>

A critical analysis of some landmark judgements by the Indian Judiciary helps us to get a clearer perspective of the application of the concept of the Rule of Law.

1. Kesavananda Bharati v. State of Kerala<sup>4</sup> - In this case, some of the petitioner's property was being taken over by the government and the issue was whether the judiciary has the authority to change the Constitution. It was decided that the Rule of Law constitutes the underlying structure of the Constitution.
2. ADM Jabalpur v. Shivkant Shukla<sup>5</sup> - Fundamental rights were taken away in this case due to the declaration of emergency. The question was whether just Article 21 protects people's lives and freedoms. According to the court, only Article 21 protects life and liberty and retains substantive power.

<sup>3</sup> KRISHAN KESHAV, ADMINISTRATIVE LAW 20 (Singhal Law Publishing 2019)

<sup>4</sup> AIR 1973 SC 1461.

<sup>5</sup> (1976) 2 SCC 521

3. Maneka Gandhi v. Union of India<sup>6</sup> - In this case, the petitioner's passport was taken in the public interest. The petitioner then filed a complaint in court, raising concerns about the relationship between Articles 14, 21, and 19. The Supreme Court expanded the reach of Article 21 by declaring that no one shall be denied the right.

Apart from the above quoted landmark judgements, there are other judgments pronounced by the Indian judiciary where in the concept of Rule of Law has come into play. The judgements and the concepts evolved therein are as follows:

1. Bandhua Mukti Morcha V. Union of India<sup>7</sup> - Rehabilitation of bonded labourers.
2. Rudal Shah V. State of Bihar<sup>8</sup> - Compensation of unlawful detention.
3. People's Union for Democratic Rights V. Union of India<sup>9</sup> - Minimum Wages.
4. Hussainara Khatoun V. State of Bihar<sup>10</sup> - Speedy trial.

## **Rule Of Law In United Kingdom**

The United Kingdom is one of the countries that has implemented the rule of law in its administration. Although it lacks a formal constitution, the principle of the rule of law, legislature, and judiciary is enshrined in its unwritten constitution. In the United Kingdom, the rule of law has evolved over time. When laws are enacted for a specific reason in the United Kingdom, they must be followed. If someone breaks the laws, he should be penalised accordingly. Due to the application of the rule of law, the principle of equality is also maintained. In the perspective of the law, everyone is equal. They are treated in a fair and equitable manner. A.V Dicey, the father of the rule of law and parliamentary sovereignty, felt that authorities should be tried in the same court as ordinary citizens, indicating to the general public that the government was not being unjustly lenient on an official.<sup>11</sup> All laws must be passed in a just and equitable manner. No one can be imprisoned or punished for crimes they haven't committed, according to the laws. As a result, no one can be treated unfairly in the name of the law. The rule of law was effective in limiting the administrative authorities' authority.

The victim of trespass was awarded compensation in the case of Entick v. Carrington<sup>12</sup>, despite

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<sup>6</sup> 1978 AIR 597

<sup>7</sup> AIR 1984 SC 802.

<sup>8</sup> AIR 1983 SC 1086.

<sup>9</sup> AIR 1982 SC 1473.

<sup>10</sup> AIR 1979 SC 1360.

<sup>11</sup> Nicola Laver, The rule of law in the UK, INBRIEF (July 07, 2021), <https://www.inbrief.co.uk/legal-system/therule-of-law/>.

<sup>12</sup> 1765 19 St Tr 1030

the fact that the trespassing and ransacking were carried out on the King's orders. A person's fundamental right was upheld. Even though the order comes from a minister, the accused will be held guilty for trespass and will be obliged to pay damages in the case of Wilkes v. Wood.<sup>13</sup> The Sharma v Brown-Antoine<sup>14</sup> established that criminal law should be applied equally to all people. This law should not be applied to anyone.

## **Rule Of Law In United States**

The rule of law is enshrined in Constitution of the United States. The Constitution is the supreme law of the country, according to Article IV of the Constitution. All new statutes shall be codified in accordance with the Constitution and its provisions. The Government operates in line with the Constitution, and no action taken by the government will be in violation of it. According to the 14<sup>th</sup> Amendment of the Constitution, it is guaranteed that everyone in society is treated equally.

The United States Constitution grants citizens' rights in order to protect and improve their lives. The United States' government is structured on the ideas of separation of powers, which is an extension of the rule of law. The legislative body (Congress) is responsible for enacting legislation. The executive branch, which comprises the President, Cabinet, and other agencies, is responsible for enforcing laws.

In Church of the Lukumi-Babalu Aye, Inc. v. City of Hialeah<sup>15</sup>, it was determined that local ordinances infringed on people's First Amendment rights. These clauses were found to be in violation of the Constitution and were declared unconstitutional. Any statute that breaches the Constitution would be struck down, according to the ruling in Marbury v. Madison<sup>16</sup>. In the United States, this case established the right to judicial review. In the case of Brown v. Board of Education<sup>17</sup> it was established that segregating children on the basis of race violated the United States Constitution's Fourteenth Amendment. The court concluded that this practise was in violation of the equal protection provision, and that segregation should be prohibited.

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<sup>13</sup> 1763 19 St Tr 1153

<sup>14</sup> [2007] 1 WLR 780 (TT)

<sup>15</sup> 508 U.S. 520 (1993).

<sup>16</sup> 5 U.S. 137

<sup>17</sup> 347 U.S. 483 (1954)

## **COMPARATIVE ANALYSIS**

Although the United Kingdom does not have a formal constitution, the concept of the rule of law is ingrained in its administration. The Indian Constitution does not contain a provision explicitly expressing the rule of law, although several of its provisions reflect the concept. Article IV of the United States Constitution reflects the rule of law, stating that the Constitution is the supreme law of the land.

Equality, fraternity, liberty, and justice are all enshrined in the Constitutions and governance of India, the United States, and the United Kingdom. These provisions are found in India's Preamble. The constitution of the United States contains these sections. In India, the United Kingdom, and the United States, the court has also played an essential role in the development of the concept of rule of law.

The rule of law was implemented in the United Kingdom to prevent arbitrariness and limit the King's absolute powers, as well as to improve society. The rule of law was implemented in India for the benefit of the state and to enhance the country's democratic values. The rule of law was established in the United States for the benefit of the state and to reduce inconsistencies in governance.

## **CONCLUSION**

I am a staunch believer of the fact that the judiciary of the three countries have contributed significantly to the development of the concept of rule of law. The judiciary has consistently upheld this concept. I also believe it has played an important role in the development of the judiciary and society in all three countries, but more efficient application of the rule of law in the judicial process is required. The framers of India's and the United States' constitutions recognised the importance of the rule of law in a democratic setting and included provisions for it in their respective constitutions. In its government, the United Kingdom has also followed the rule of law. The judicial systems of all three countries address the rule of law and have issued numerous landmark decisions based on the provisions of the rule of law. Separation of powers is observed in all three countries.

