

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

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RULE OF LAW: A DETAILED **ANALYSIS**

AUTHORED BY - HIMANSHU

ABSTRACT

Administrative law is a separate branch of law and subject to academic study, but in recent decades has evolved into a “responsible” area of study for law students and practitioners. In order to recognize Britain's independent existence, the English people armed themselves with Dicey's notion of the rule of law against the proliferation of administrative law. The concept of "rule of law" is a building block of modern democratic societies. Although the term is not defined anywhere in the Indian Constitution, it is widely used in judgments by Indian judicial authorities. The "rule of law" is neither "rule" nor "law", but the principle of "state political morality" that maintains an "appropriate balance" of "rights" and "power" between individuals and between individuals and the state. . . , to make it a free and civil society. It is the result of centuries of struggle for people to have their inherent rights recognized. The main purpose of this paper is to give a detailed analysis of the "rule of law": its origins, characteristics, its place in the US Constitution, its place in the Indian Constitution, its basic principles and exceptions. Therefore, the conclusion was finally drawn in the paper. Several journals, books and articles were consulted and reviewed in preparation of this study. The Internet also supports this process. Therefore, this paper is the result of an educational research methodology.

Keywords – rules, laws, political morality of nations, right balance, rights, power

"The foundation of our democracy is the rule of law, which requires an independent judiciary and judges who can make decisions regardless of the prevailing political winds."

-Caroline Kenn

Introduction

Administrative law is a separate branch of law and the subject of academic study, but has been for decades

It has acquired full prominence as a “responsible” discipline for law students and practitioners. so to recognize it

To ensure an independent existence, the British fought against it, armed with Dicey's notion of the rule of law.

Development of administrative law. The "rule of law" is the new "language" of global moral and supreme thought.

A manifestation of human civilization and culture. The rule of law therefore gives the constitution an eternal value

The inherent nature of democracy and good governance. This concept is an animation of the laws of nature and will remain so.

A historical way of thinking that appeals from the rule of law, not from those in power. that might be fine

Lal Bahadur Shastri says:

"The rule of law should be respected in order to maintain the basic structure of our democracy."

further enhanced

Meaning and Concept of ‘Rule of Law’

The concept of "rule of law" is a building block of modern democratic societies. This term is not defined anywhere

Although it is a provision of the Indian Constitution, it has been frequently used in judgments by Indian judicial authorities. The “rule of law” is neither

"Rules" are not "laws" but doctrines of "national political ethics" that maintain an "appropriate balance" between the two.

'Rights' and 'powers' between individuals and between individuals and nations for a free and civil nation

company. The "right balance" is established by "laws" based on liberty, justice, equality and accountability.

In this way, the rule of law strikes a balance between the needs of society and the needs of the individual. The rule of law comes from the French expression "la principe de legalite", which means "a".

Government based on the rule of law. Edward Coke is considered the originator of the concept of the rule of law.

He said the king must be under God and law. Edward Koch made three important points about the rule of law.

First, the rule of law is necessary to ensure that there is no authoritarian rule by a monarch. Second, it is certain

There are no arbitrary powers of government. And finally, we need to protect individuals and their families.

right.

Objects based on Edward Koch's "rule of law" theory are:

1. To protect the government from authoritarian rule.
2. Eliminate arbitrary powers of government.
3. Laws and ordinances shall be applied equally regardless of social status, class, etc.
4. Do things the legally correct way.
5. Protection of individuals and their rights. 6. Law is supreme
7. Administrative actions may be challenged by law.

The rule of law, like many other concepts, is a stable and dynamic concept that cannot be precisely defined. The term "rule of law" is used in contrast to "rule by the people" and "rule by law". The rule of law means that the law is overriding, safe, regular and predictable, based on the principles of liberty, equality, non-discrimination, benevolence, accountability and non-arbitrariness. Generally, rule of law is used in two senses: formal and ideological. The formal sense refers to organized power rather than domination by one person, and the ideological sense refers to regulation of the relationship between the people and the government. therefore-

“The rule of law is the most important element of any civil society.”

where he is from

The rule of law is the result of centuries of struggle for people to recognize their inherent rights. This concept is very old, dating back to around 350 BC. by the Greek philosophers Aristotle and Plato. This concept changed society's perception and changed the perception and interpretation of the rule of law by many authors. Plato defined the rule of law in these words: "The law is supreme in its nature, and no one is above it." According to Aristotle, "The law is the ultimate sovereign of the state." It should be." German common law proposed the principle that the king was always subject to law and was the independent source of the rule of law in the Middle Ages.

According to John Locke, governments act according to the law.

Features of Rule of Law:

1. The rule of law is observed when authorities are not allowed to act capriciously in exercising their powers.
2. According to the rule of law, no one shall be punished or afflicted unless and until he commits a crime.
3. According to the rule of law, everyone is equal before the law. H. Rights cannot depend on groups of people.
4. The rule of law applies universally and is also part of most legal systems around the world, and is therefore an essential foundation for most democracies.
5. Subject to the rule of law, a person may be accused of committing a criminal offense and shall be punished only if the charge is proven by an independent tribunal, such as a court.

Dicey's Concept on 'Rule of Law'

Albert Ben Dacy (English jurist and constitutional theorist) developed the concept of the rule of law in his book *The Laws of the Constitution* (1885). He explains that we need to know the difference between administrative law and the rule of law. In his opinion, the rule of law is the same for everyone, whether it's a prime minister or an ordinary banker in an office. Therefore, the same law should apply to everyone, there should be no discrimination under the rule of law, and the rule of law is paramount.

A.V. Daisy established his three rule of law postulates:

1. Rule of law
2. Equality before the law
3. Penetration of the Spirit of Law

1. Rule of law

AV Dicey's first postulate states that the rule of law is the absence of arbitrariness and broad discretion. In other words, everyone should obey the law. The law is undeniably unique and dominates rather than influencing arbitrariness and discretion. A person can only be punished by the rules of law and nothing else.

2. Equality before the law

The second postulate of the rule of law is that there must be equality before the law and that there must be equal submission of all classes to the laws of the common land under the jurisdiction of the ordinary courts. Therefore, this means that government officials and other persons are not entitled to special privileges. It said there was no need for ad hoc courts or special courts to handle cases of the government and its officials.

3. Rule of the Spirit of Law

The third postulate of the rule of law states that rights such as individual liberty and freedom from arbitrary arrest are the result of British judicial decisions. And the British Constitution is the result of that country's common law, and individual rights are determined by court rulings. Courts are guarantors of liberty.

Merits and Demerits of Dicey's Concept

Merits

- 1.A.V. Daicie developed the theory that he contributed to limiting the powers of the administrative authorities.
2. Dicey's theory of the rule of law played an important role in the development and perception of administrative law.
3. This theory serves as a benchmark for considering administrative action.

Demerits:

1. Dicey's rule of law theory was also not fully accepted during this period.
2. Dicey's theory failed to distinguish between free and arbitrary power.
3. Dicey dealt only with individual rights and ignored executive powers

Rule of Law in U.S Constitution

America adopted the concept of the rule of law from medieval England, described as "a government of law rather than a human government". The Federal Constitution of 1787 changed the concept of constitutional government and introduced "constitutional supremacy". According to Article 6 of the U.S. Constitution, "The Constitution shall be the supreme law of the nation." The famous Marbury v. Madison case¹ shows that the U.S. Constitution and the powers of judicial review are extensions of the rule of law. . In that case, Judge Marshall ruled that unconstitutional acts by Congress are not considered laws. The key tenets of the US Constitution are federalism, separation of powers, and the rule of law. They are also called the heart of the

American Constitution because they help achieve freedom, equality, order, and justice. The US Constitution has three main principles.¹

1. The U.S. Constitution requires governments to be politically accountable to both the states and the people they govern.
2. The U.S. Constitution assumes that legitimate expectations are due to and governed by the people, and similar principles are enshrined in the preamble, stating that the Constitution is not made by the government. It is stated that it is to be enacted by the people rather than by the people.
3. Political primacy and equality of all laws with the legislative branch are contrary to the US Constitution, which declares it the supreme law.

¹ 5 US (1 Cranch) 137 (1803)

Rule of Law in Indian Constitution

The rule of law has played an important role in the development of Indian democracy. When the Constitution was drafted, the drafters adopted some US provisions, some US provisions, and some British provisions. The Founding Fathers took the concept of the rule of law from Britain and many of its provisions are incorporated into the Indian Constitution. In India the constitution is of utmost importance and no one can surpass it. The Preamble of the Indian Constitution clearly sets out the principles of the rule of law in the third part of the Constitution. The Constitution of India takes precedence over its three wings. H. Parliamentary, Executive and Judiciary. It is enriched by justice, equality and freedom. Article 14 of the Constitution provides for equality under the law and equal legal protection. Fundamental rights are conferred on Indian citizens by Sections 13, 14, 15, 19, 21, 22, 25, 28 and 31A. Any violation of these rights can be appealed to the Supreme Court or Supreme Court pursuant to Articles 32 and 226 of the Indian Constitution. It is imperative that laws issued by central or state governments are complied with in accordance with the Indian Constitution. However, if it is found to violate the provisions of the Constitution, the law will be invalid. Under Article 32 of the Constitution, the Supreme Court has the power to issue judgments such as writs of habeas corpus, orders, injunctions, warrants, and awards. Therefore, the Supreme Court maintains the rule of law and also has judicial review powers to block any Ultravirus Act.

Basic Principles of the Rule of Law

The law has certain basic principles. they are-

1. The law is over everything and everyone. No one is above the law.
2. Everything should be done according to the law and not according to whims or fantasies.
3. No one should be harmed unless it clearly violates the law.
4. Absence of arbitrary power is at the heart of the rule of law.
- Five.
5. Equality under the law and equal legal protection.
6. Discretion should be exercised within reasonable limits provided for by law.
7. Appropriate protection against abuse of power by the executive branch.
8. An Independent and Impartial Judiciary.
9. Fair and Impartial Trial.
10. Fast process.

Landmark Cases:

In the famous case of Kesavananda Bharati Sripadagarvar & Orus v. Kerala & Anr², the court upheld the principle of basic structure and ruled that any part of the constitution can be amended without changing the basic structure².

In Indira Nehru Gandhi v. Raj Narain³, the court ruled that the "rule of law" is also part of the basic structure of the constitution and therefore cannot be changed.

In Bihar v Sonawati Kumari ⁴, the court ruled that under the concept of "rule of law" all authorities operating in the state, including the executive branch, are obliged to comply with the rules.

In Bhachan Singh v. Punjab ⁵, the five judges, Judges Y. Chandrachud, A. Gupta, N. Antwalia, P. Bhagwati and R. Sarkaria, all argued against the rule of law. There is no arbitrary act in the concept, there is no arbitrary act in the concept of the rule of law, and when arbitrary power is exercised, this is considered a denial of the rule of law. This case is also known as the "death penalty case". In Som Raj v. Haryana ⁶, the case was filed by three Supreme Court Justices, Justices K. Puttaswamy, Raghunath Mishra and M.M. Judge. The absence of arbitrary power is the ultimate goal of the rule of law on which the entire constitution directly depends, Mr. Punchy says.

The ADM Jabalpur v. Shivkant Shukla case⁷, widely known as the habeas corpus case, is one of the most important rule of law cases. In this case, the question arose in court as to whether the rule of law in India was in conflict with Article 21 of the Indian Constitution. Judge A.N. Ray, Judge Hans Raj Khanna, Judge M. Hamedullah, Y.

The Supreme Court expands the scope of the rule of law in Veena Seth v. Bihar⁸, saying that the rule of law extends to the poor, oppressed, ignorant and illiterate, who make up the majority of the Indian population. Certified. Courts hold that the rule of law does not exist only for those who have the means to fight for their rights, but often defend and maintain their primacy and exercise most of their

² (1973) 4 SCC 225

³ 1975 AIR 865

⁴ 1961 AIR 221

⁵ AIR 1980 SC 89

⁶ 61990 AIR 11

⁷ 1976 AIR 1207

⁸ AIR 1983 SC 339

rights. It has ruled that it does so in order to maintain the status quo that allows it. To abuse the community.

In the case of the Union of India v. Raghvir Singh⁹, the Court held that the principle of the "rule of law" governs to a large extent the lives of the people and, through the decisions of the High Court, the functioning of the state.

In the case of Punjab Chief Reconciliation Commissioner v. Om Prakash and Orus¹⁰, the Supreme Court found that in the current scenario the court has the power to review administrative actions against the criteria of legality.

Supreme Court in the case of S.G. Jaishingani v. India,¹¹ very clearly characterizes the requirements of the rule of law. Courts here believe that the rule of law means that decisions should be made on the basis of known principles, those decisions should be predictable, and the public should know where the decisions are. determined to mean something.

However, when decisions are made without reference to principles, they are unpredictable and such decisions are contrary to decisions made in accordance with the rule of law.

In Supreme Court Counsel Case in the Records Society v. Union of India¹², also known as the Second Judge Case, the Supreme Court ruled that lack of arbitrariness is one of the key concepts of the rule of law. dropped.

The Chief of Karnataka and the Constitutional Court in the case of Orus v. Umadevi and Orus¹³ said: Although the rule of law is at the core of our constitution, we have maintained and violated Article 14 by demanding that the courts ignore the need to agree to the necessity of Article 14 in conjunction with Article 16 of the Constitution. It is certainly impossible to issue an order to do so. Constitution.

"

⁹ 1989 AIR 1933

¹⁰ 1969 AIR 33

¹¹ 1967 AIR 1427

¹² AIR 1994 SC 268

¹³ AIR 2006 SC 18

Exceptions to 'Rule of Law'

Apart from that characteristic, there are some exceptions related to the rule of law.

1. Articles 361, 361(2), 361(3) and 361(4) of the Constitution of India provide certain exemptions to the President and Governors.
2. Exemption from foreign diplomats.
3. Immunity of the Supreme Court and Supreme Court Justices, including Article 121 of the Indian Constitution. Limit discussion of the actions of these judges in Congress.
4. State laws are few and far between, the Homeland Security Act (MISA) and the National Security Act of 1980 (NSA).

"Rule of law" in the modern sense

In today's scenario, Daisy's notion of the rule of law is not fully accepted. The modern concept of the rule of law is so broad that it represents an ideal that all governments must achieve. The modern notion of the rule of law was developed by the International Judicial Commission in 1959, also known as the Delhi Declaration, and later reaffirmed in Lagos in 1961.

According to modern concepts, "rule of law" means "function". The exercise of governmental power in a free society should be done in a way that preserves the dignity of the individual human being. International Judiciary Commission to the specific working committees of the Commission on Personal Liberty and the Rule of Law, the Commission on Government and the Rule of Law, the Commission on Criminal Administration and the Rule of Law, and the Commission on Justice and the Rule of Law. divided. . The Commission on Individual Freedom and the Rule of Law said states should not enact discriminatory laws, interfere with religious beliefs, or unduly restrict freedoms.

The Government and Rule of Law Commission pointed out that "rule of law" means not only adequate safeguards against abuse of power, but also a government that can maintain law and order. The Criminal Administration and Rule of Law Commission said that "rule of law" means due process of law, prohibition of unauthorized arrest, legal aid, public and fair trials, and presumption of innocence. . Finally, the Commission on Justice and Rule of Law said that "rule of law" means an independent judiciary, an independent legal profession, and standards of professional ethics.

According to Federalist Kim Davis, there are seven types of modern law. laws and regulations, principles of natural law, fixed rules and regulations govern discretion, due process and judicial impartiality, preemption of judges and courts over administrative authorities and courts, and judicial review of administrative actions. Eliminate concept.

The rule of law in the modern sense ensures that political interests are promoted and that criticism of government is not only allowed but positively evaluated._

Conclusion

The concept of the rule of law was not perfect, but because it seized the executive power and underestimated it by its actions, the principle of the rule of law was adopted as the watchdog of the constitution in each country. It is the best tool for gaining the supremacy of the law. Courts have even made efforts to link the concept of the rule of law with human rights. The modern conception proposed by David provides an overarching conception so that the government can use it in an elegant way, since the main task of administrative law is to bridge the gap between power and freedom. Become. Governments therefore set rules and conditions within the framework of the rule of law that do not affect the dignity of individuals. From this we can conclude that –

"True freedom requires the rule of law and justice, and a legal framework in which the rights of some people are not guaranteed by denying them the rights of others."