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# **THE ADOPTION OF 'RULE OF LAW' IN INDIAN CONSTITUTION**

Authored By- Jatin Rana

## **Abstract**

In this article, the derivation of the concept of Rule of Law and A.VDicey's point of view in his definitions is discussed. It deals with the essentials of the concept of Rule of Law with respect to written and unwritten constitution of different countries. Why dicey denied the development of the administrative branch as the separate branch from judiciary? And the reasons for its acceptance by him after sometime. The reasons for criticizing the legal system of France 'Droit Administratif' by Dicey though it was the best legal system comparatively. The branch of Droit administrative 'Conseil d' Etat' became the model concept for the other countries.

An introduction of the concept of Rule of Law in India and its interpretation in various provisions of the Constitution of India. The remedies available to the person in the Constitution for any arbitrary action of administration which is against the Rule of Law. The plethora of Indian cases which shows the prevalence of Rule of Law in legislature and judiciary. It also deals with the procedure and tools to apply Rule of Law in India.

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## Introduction

The Rule of Law has been derived from the French phrase “*La Principe de legalite.*” This French phrase states that the government should function on the principle laid down by the law.

The concept of Rule of Law was firstly derived by in England by *Sir Edward Coke* and later in 1885, *A.V Dicey* supported the concept of Rule of Law and defined it as supremacy of the regular law in the country in a controlled manner so as to prevent the influence of arbitrary power.<sup>1</sup>

According to *William Wade*, the Rule of Law means that the government should be based according to law not law according to the government.<sup>2</sup> Law should be the supreme authority prevailing in the country. No king has the authority above the law of the land.

*Lord Denning* also said that the powerful or high status of any person in the society cannot affect the efficacy of the law of the land. No one should be made above the law and everyone should be provided the same roof under the law.<sup>3</sup>

## Dicey’s Concept Of Rule Of Law\

The concept of Rule of Law was firstly originated in England. Sir Edward Coke was the first jurist to derive the concept of Rule of Law. In 1885, A.V Dicey defined the concept of Rule of Law. He stated that Rule of Law is the absolute supremacy of regular law as opposed to the influence of arbitrary power.<sup>4</sup>

Dicey gave three meaning to the Doctrine of ‘Rule of Law’.<sup>5</sup>

1. Supremacy of law:- Dicey stated that law should be the supreme authority of the country. There should be no authority above the law. Dicey gave the shadow of ‘*Lex Rex*’ in his ideas which means that ‘law is the king.’ It implies that king is not above the law of the country.
2. Equality before law:-Dicey stated that there should be same and equal laws for all citizens and the government. There should be no entertainment of particular privileges in the favor of government which creates the situation of arbitrariness or misuse of the powers.

In this aspect, Dicey criticized ‘*Droit Administratif*’<sup>6</sup> on the basis that it has two types of courts i.e. civil court and administrative court. Civil court heard cases of citizens against citizens while administrative courts heard cases of government against citizens.

Dicey said that providing separate courts for the cases of the government was the contradiction of the principle of equality.

He said that there should not be any procedure which hides or fades the arbitrary functionalities of the government.

3. Judge made Constitution:- England has an uncodified or unwritten constitution. It never had its written constitution. The judgment prevailed in the court became the key source and reference material to the future problem or cases to be present in the court. So, Dicey states that the judgment of the court should protect the rights of the people and for that, Judiciary

<sup>1</sup>Dicey’s ‘The law and the constitution (1885)’.

<sup>2</sup> Wade and Forsyth, Administrative law (2009).

<sup>3</sup>Gouriet v. union of post office workers.

<sup>4</sup> Supra no. 1

<sup>5</sup> ibid

<sup>6</sup> Legal system of France (18<sup>th</sup> century)

should be made independent. Judiciary is the only way to protect people from the arbitrary actions of the government and to provide remedies if someone gets affected by such type of actions of the government.

- **Predominance of legal spirit**:—Since, Indian Constitution is codified so Judge made Constitution is not applicable in India. Judicial decisions are based on the principles laid down in the constitution. Constitution confers rights to every citizen of the country which are not supposed to be infringed by any corrupt or arbitrary action of the government or its official (administrative authority). Here also, Rule of Law functions to protect such rights of the citizens and to make them enforceable.<sup>7</sup>

Dicey firstly believed that there was no administrative law in England. He ignored the excess discretionary power of the government under the constitutional maxim that 'king can do no wrong', and the growth of the tribunals in England. He also wrongly criticized the French legal system i.e. '*Droit Administratif*' as a procedure to support prevalence inequality of law and to fade the liability of the government for its own acts. But, the French legal system was not the same. It was the best administration with the special body '*Conseil d'Etat*'<sup>8</sup> which aimed to make everyone equal in the eyes of law, to restrict arbitrary action of the government and to provide remedies to the person who got affected by such acts of the government. *Conseil d'Etat* had become the model concept for other countries because of its efficiency.

After the famous cases of *Rice*<sup>9</sup> and *Arlidge*<sup>10</sup>, Dicey started believing the development of administrative law in Britain. Government started delegating Quasi-Judicial powers to its own officials and further development of tribunals for the efficacy of the Rule of Law.

## **Adoption Of Rule Of Law In Indian Constitution**

While framing Indian constitution Indian framers adopted Rule of Law from England as the basic feature of the Indian constitution.<sup>11</sup> The Rule of Law in the constitution concludes that Indian administration should function according to the laws.<sup>12</sup>

The shadow of Rule of Law lies over the preamble of Indian constitution and the constitution itself. In the preamble justice, liberty and equality are conferred to the people of India. Under part III of the Indian constitution, certain rights are also conferred to the citizens of India. In case violation of these rights, citizens are empowered with article 32 and 226 to file a suit for violation or infringement of their rights. Article 13 lays down the principle of judicial review for any post or pre constitutional law which violates any right of the citizens conferred in part III.<sup>13</sup>

Article 14 also lays down the principle of Rule of Law. It states that every citizen should be equal in the eye of law and equal protection of law should be provided to every citizen of India.

The article limits the discretionary power of the administrative and prohibits arbitrary actions of the same.

In the case of *Usha Mehta v. Government of Andhra Pradesh* the Hon'ble court held that the concept of Rule of Law is the positive concept and every citizen should be treated equally. No court will give any illegal judgment on the reference of any already given illegal judgment on the same

<sup>7</sup> Article 32 and Article 226 of Indian constitution

<sup>8</sup> Established by Napoleon in 1789

<sup>9</sup> Board of Education v. Rice, 1911 AC

<sup>10</sup> Local Governmental Board v. Arlidge

<sup>11</sup> *Bachchansingh v. state of Punjab* AIR 1982 SC 1325

<sup>12</sup> Article 14 of Indian constitution

<sup>13</sup> *State of Punjab v. Dalbir Singh*, 2012 AIR SC 1040

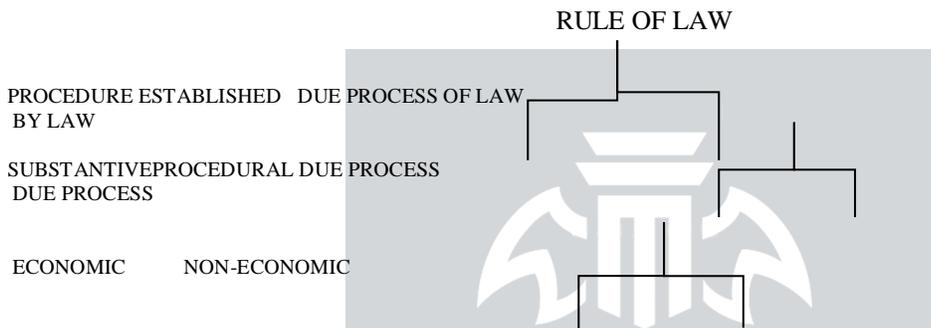
type of issues.<sup>14</sup>

Under part XIV A of Indian constitution, tribunals for administrative and other purposes are made which perform their functions on the basis of the concept of Rule of Law.<sup>15</sup> Any type of illegal or arbitrary action of the administrative agency is restricted under article 14. If any action of administrative agency is illegal, arbitrary, or fails to pass the test of reasonability, the Hon'ble court can restrict such actions.<sup>16</sup>The administrative authority while passing any decision should give reasons in the support of their decision.<sup>17</sup>

In the case of Verappa v. Raman and Raman Ltd., it was held that in the discharge of administrative function it is necessary to observe the principles of Natural Justice.<sup>18</sup>

In the famous case of Indra Nehru Gandhi v. Raj Narayan<sup>19</sup>, the Hon'ble court held that the Equality before law is one of the important essential of the concept of Rule of Law. No action should infringe any right of the citizen enshrined in the constitution. At the time of the emergency in the country or any part of the country, article 19 (1)(a) and 21 shall remain in function.

### Tools To Apply Rule Of Law



In many countries including India, the Rule of Law is applied in two different ways i.e. procedure established by law and due process of law.

Procedure established by law are the laws or acts enacted by the legislature and the procedure to follow it in legal way while. It confers limited power to the judiciary because it has only to follow the rule or law made by legislature. Due process of law is the laws which are not written but are made and applied by the judiciary and administrative authority at the time of immediate requirement of such type laws.

Due process of law is further divided into parts i.e. substantive due process and procedural due process. Substantive due process is referred to the laws which are conferred by the statues and acts on whose basis judiciary protects the rights of the citizens from the government interference. Procedural due process is referred to the orders or guidelines given the Hon'ble Court and the ordinance given by the central or the state.

<sup>14</sup> 2012 (11) JT 154: 2012 (10) SCALE 468: 2012 (8) SLT 101.

<sup>15</sup> Article 323A and 323B of the Indian constitution

<sup>16</sup> State of state of west Bengal v. Anwar Ali Sarkar AIR 1952 SC 75

<sup>17</sup> Tara Chand v. Delhi Municipality AIR 1977 SC 567

<sup>18</sup> AIR 1952 SCR 583

## Conclusion

Dicey supported the concept of Rule of Law (derived by Sir Edward Coke) and made a scientific analysis of it. He concluded the concept of Rule of Law as the procedure which limits the discretionary powers of the government and its officials. He denied the saying the “king can do no wrong.” He believed that the excess discretionary power lead to the arbitrary actions of the government.

In India, Rule of Law has become the principle of Natural Justice.<sup>20</sup> The concept of Rule of Law is well enshrined in the constitution of India in part III and in its preamble. From its evolution till now its primary aim was only to restrict discretionary powers of the government and its officials. The welfare of the people was kept at the upmost functionary of the government under the roof of the concept of Rule of Law. Government or its any officials should function legally without any arbitrary action. If any citizen gets affected by any arbitrary or illegal action of administrative authority, the affected person can file a petition under article 32 and 226 of the Indian constitution. If there is any pre-constitutional law or Central or State legislature passes any law which is inconsistent with any provision of part III of Indian constitution, it will be void to such inconsistency with the provision.<sup>21</sup>



<sup>20</sup> Khatri v. State of Bihar AIR 1981 SCR 408

<sup>21</sup> Doctrine of severability.