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# RULE OF LAW ON ADMINISTRATIVE LAW

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## **ABSTRACT**

Administrative law is a distinct branch of law and a subject of academic study, although it has just acquired full recognition as a 'responsible' field of study for law students and practitioners. To recognise its autonomous existence, the people of England utilised Dicey's Concept of Rule of Law as a weapon to strike the rise of administrative law. The notion of the 'Rule of Law' is a cornerstone of our modern democratic society. This phrase is not defined in the Indian Constitution, although it has been often utilised by the Indian judiciary in its decisions. The 'Rule of Law' is neither a 'rule' nor a 'law'; rather, it is a philosophy of 'state political morality' that maintains a 'correct balance' between the 'rights' and 'powers' of individuals and between individuals and the state in order to create a free and civil society. It is the consequence of centuries of struggle by people for acknowledgment of their fundamental rights. The major goal of this study is to provide a complete examination of 'Rule of Law,' including its genesis, characteristics, position in the United States Constitution, position in the Indian Constitution, essential concepts, and exceptions. Finally, a conclusion has been offered in the study. Several journals, books, and articles were consulted and considered when writing this research work. The internet has also been helpful in this process. As a consequence, this work is the product of Doctrinal Research Methodology.

**Keywords:** rule, law, state political morality, correct balance, rights, powers.

## **INTRODUCTION**

Administrative law is a distinct branch of law and a subject of academic study, although it has just acquired full recognition as a "responsible" field of study for law students and practitioners. So, in order to recognise its autonomous existence, the people of England utilised Dicey's Concept of Rule of Law as a weapon to strike the rise of administrative law. The 'Rule of Law' is a new 'lingua franca' of global moral philosophy, as well as the Supreme expression of human civilization and culture. As a result, Rule of Law gives everlasting worth to the Constitution and is an essential characteristic of democracy and effective administration. This notion is a natural law animation that remains a historical idea that makes a compelling appeal not by a powerful man but by the

Rule of Law.

## **MEANING OF RULE. OF LAW**

The notion of the 'Rule of Law' is a cornerstone of our modern democratic society. This phrase is not defined in the Indian Constitution, although it has been often utilised by the Indian judiciary in its decisions. The 'Rule of Law' is neither a 'rule' nor a 'law'; rather, it is a philosophy of 'state political morality' that maintains a 'proper balance' between the 'rights' and 'powers' of individuals and between individuals and the state in order to create a free and civil society. The 'right balance' is determined by 'law,' which is founded on liberty, justice, equality, and accountability. Thus, the Rule of Law strikes a balance between the requirements of society and the needs of the individual. The term "Rule of Law" is derived from the French word "la principipe de legalite," which means "law-based government." The concept of the rule of law is credited to Edward Coke. He stated that the King must be subject to God and the Law. Edward Coke made three main statements about the 'Rule of Law'.

First, it is necessary to guarantee that there is no autocratic control of the monarch; second, it is necessary to ensure that there is no arbitrary power of the government; and last, it is necessary to defend individuals and their rights. Objects based on Edward Coke's "Rule of Law" Theory include restricting government from authoritarian power, to prohibit arbitrary government authority, equality in the execution of laws and orders, regardless of status/rank, etc, act in a legally correct manner, individuals and their rights must be protected, the rule of law is supreme and administrative acts can be challenged in court. The Rule of Law, like many other conceptions, is a viable and dynamic concept that cannot be precisely defined. The term Rule of Law is used in contrast to the terms Rule of Men and Rule of Law. The rule of law indicates that the law is definite, regular, and predictable and is founded on the principles of freedom, equality, non-discrimination, fraternity, accountability, and non-arbitrariness. In general, the term "Rule of Law" has two meanings: formatic and ideological. Formatic Sense refers to organised authority as opposed to one man's dominance, while Ideological Sense relates to the regulation of people's relationships with the government.

Rule of Law is the outcome of centuries of struggle by people for acknowledgment of their fundamental rights. The topic is very old and was debated by the Greek philosophers Aristotle and Plato around 350 BC. Many authors modified their perceptions and interpretations of the rule of

law as a result of the concept. Plato defined Rule of Law as "it is supreme in nature, and nobody is above the law." Aristotle believed that "law should be the final sovereign of the State." In the mediaeval time, German customary law offered the notion that the King is always subject to the law, and it was the autonomous source of rule of law. The government, according to John Locke, operates in line with the law. The Rule of Law concept is protected when authorities are not permitted to behave according to their whims and fancies while exercising their authority. No one may be punished or made to suffer under the Rule of Law premise unless and until he has broken the law. Everyone is equal before the law, according to Rule of Law, which means that law cannot be founded on a class of people. Rule of Law is a crucial basis of most democracies since it is universal in its application and has been a feature of most legal systems across the world. According to the Rule of Law concept, a person can be punished only if he is charged with a crime and that charge is proven by an independent body, such as a court.

### **CONCEPT OF RULE OF LAW BY DICEY**

The concept of Rule of Law was conceived by Albert Venn Dicey, a British jurist and constitutional theorist, in his book 'The Law of the Constitution' (1885). He claims that one should understand the distinction between administrative law and the Rule of Law. He believes that the rule of law applies equally to everyone, whether he is a Prime Minister or a regular bank clerk working in an office. Thus, the same laws should be made applicable to everyone, there should be no discrimination under the rule of law, and the rule of law is ultimate in nature. According to Dicey's theory, administrative law's rule of law consists of three basic concepts: the supremacy of the law, equal before the law, and predominance of the legal spirit.

#### **THE SUPREMACY OF LAW**

The Rule of Law states that 'no man is punished or may legitimately be made to suffer in body or property except for a specific transgression of law established in the regular legal manner before the ordinary courts of the realm'. This has always been a fundamental concept of the law, which goes hand in hand with the notion that the law governs all individuals, even those in charge of the law. While exercising their power to make and administer the law, legislators must offer justifications that are not permitted by law.

#### **EQUAL BEFORE LAW**

No one is above the law, as the phrase implies. In the perspective of the law, everyone is equal. It

implies that there should be no distinction between the affluent and the poor, the official and the non-official, the majority and the minority. Everyone should be treated the same way. Nobody can be degraded, and nobody can be enhanced.

### PREDOMINANCE OF THE LEGAL SPIRIT

There should be some kind of enforcement authority, and Dicey felt it could be achieved through the courts. The courts are the enforcers of the rule of law, and they must be unbiased and devoid of any outside pressures. As a result, judicial independence becomes a crucial pillar of the rule of law. Civil freedoms are often assumed to be derived from a written constitution. This is not true, however, because Britain has an unwritten Constitution. In England, the true source of law is the spirit of the law. Customs, gatherings, and court rulings all reflect the spirit of the law. Individual rights and liberties, according to Dicey, are safer in the United Kingdom than in France.

### A V DICEY'S RULE OF LAW CONCEPT'S PROS AND CONS

#### The Pros

It assists in the limitation of administrative authority, it plays a significant role in the formation and implementation of administrative law also assists in the evaluation of administrative action.

#### The Cons

His point of view was also not universally embraced at the time, it ignored the distinction between free will and uncontrollable power and he is unfamiliar with the notion of successful Droit administration in France.

## **RULE OF LAW IN CONSTITUTION**

### U.S CONSTITUTION

America inherited the mediaeval English notion of Rule of Law, which was stated as "a government of laws, not of men." The federal Constitution of 1787 introduced the "Principle of Constitutional Supremacy" and altered the notion of constitutional governance. "The Constitution should be the supreme law of the land," states Article VI of the American Constitution. The historic case of *Marbury v Madison*<sup>1</sup> demonstrates that the American Constitution and the authority of judicial review are extensions of the rule of law. In this case, Justice Marshall ruled

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<sup>1</sup> *marbury v madison* (1803) 5 us (1 cranch) 137

that a congressional act that violated the Constitution was not considered a law. Federalism, separation of powers, and the rule of law are the three main tenets of the American Constitution. They are also known as the "heart of the American Constitution" since they help to accomplish liberty, equality, order, and justice.

The American Constitution is based on three fundamental concepts. The American Constitution mandates that the government be politically accountable to both the state and the people it governs. The American Constitution thinks that the legitimate expectation is one that originates with and is controlled by the people, and the same notion is stated in the Preamble, which declares that the Constitution is founded by the people, not the government. Political supremacy and the identification of all laws with the legislature are antithetical to the American Constitution, which declares it to be the highest law of the land.

### INDIAN CONSTITUTION

The Rule of Law principle has played a significant influence in the development of Indian democracy. The framers of the Constitution adopted several provisions from the United States, as well as some provisions from the United States and England. Our forefathers accepted the English notion of Rule of Law, and many of its principles are included into the Indian Constitution. The Constitution of India is regarded ultimate, and no one is above it. Part III of the Indian Constitution clearly states the Principles of Rule of Law in the Preamble. The Indian Constitution is supreme over its three wings, namely Parliament, the Executive, and the Judiciary. It is full of justice, equality, and liberty. Article 14 of the Constitution guarantees equality before the law and equal protection under the law. Articles 13, 14, 15, 19, 21, 22, 25, 28, and 31A provide fundamental rights to all Indian citizens. If an individual's rights are violated, he or she may file a complaint with the Supreme Court or a High Court under Articles 32 and 226 of the Indian Constitution. Any legislation enacted by the Central Government or a State Government must be in compliance with the provisions of the Indian Constitution; nevertheless, if such law is found to be in conflict with the provisions of the Constitution, it will be deemed void. The Supreme Court has the authority to grant writs such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari under Article 32 of the Constitution. Thus, the Supreme Court gains the authority of judicial review in order to safeguard the Rule of Law and avoid any supra vires laws.

## LANDMARK CASES

The court promulgated the idea of fundamental structure in the well-known case of Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr<sup>2</sup> and concluded that any provision of the Constitution might be altered without changing its essential structure.

The court held in the case of Indira Nehru Gandhi v Raj Narain<sup>3</sup> that the 'Rule of Law' is also a component of the basic framework of the Constitution and so cannot be altered.

The court concluded in the case of State of Bihar v Sonawati Kumari<sup>4</sup> that under the idea of 'Rule of Law,' all authorities working inside the State, including the executive authority, are required to follow the laws.

In the case of Bachan Singh v State of Punjab<sup>5</sup>, a five-judge bench comprised of Justice Y Chandrachud, Justice A Gupta, Justice N Untwalia, Justice P Bhagwati, and Justice R Sarkaria held that the concept of Rule of Law is free of arbitrary action, and that any action taken with arbitrary power is considered a denial of Rule of Law. This is also known as the "Death Penalty Case."

In the case of Som Raj v State of Haryana<sup>6</sup>, the Supreme Court's three-judge bench, comprised of Justice K Puttaswamy, Justice Raghunath Mishra, and Justice M.M Punchhi, held that the absence of arbitrary power is the absolute goal of the principle of rule of law, on which the entire Constitution is directly dependent.

One of the most significant instances of rule of law is ADM Jabalpur v Shivkant Shukla<sup>7</sup>, also known as the Habeas Corpus Case. In this case, the court was asked if the Rule of Law in India is separate from Article 21 of the Indian Constitution. Thus, the five-judge bench of Justice A.N Ray, Justice Hans Raj Khanna, Justice M Hameedullah, Justice Y.V Chandrachud, and Justice P.N Bhagwati declared that there is no rule apart from Article 21 and that no independent rule of law can ever exist.

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<sup>2</sup> Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225

<sup>3</sup> Indira Nehru Gandhi v Raj Narain 1975 AIR 865

<sup>4</sup> State of Bihar v Sonawati Kumari 1961 AIR 221

<sup>5</sup> Bachan Singh v State of Punjab AIR 1980 SC 898

<sup>6</sup> Som Raj v State of Haryana 1990 AIR 1176

<sup>7</sup> ADM Jabalpur v Shivkant Shukla 1976 AIR 1207

In the case of *Veena Seth v State of Bihar*<sup>8</sup>, the Supreme Court expanded the scope of Rule of Law, stating that Rule of Law extends to the impoverished and oppressed, the uneducated and illiterate, who comprise the bulk of mankind in India. The court held that the Rule of Law does not exist just for those with the resources to fight for their rights, which they frequently do in order to maintain the status quo that protects and sustains their domination and allows them to abuse a huge segment of the population.

In the case of *Union of India v Raghubir Singh*<sup>9</sup>, the court stated that the principle of 'Rule of Law' rules the lives of the people and regulates the functioning of the state to a significant extent from superior court decisions.

The Supreme Court remarked in the case of *Chief Settlement Commissioner Punjab v Om Prakash & Ors*<sup>10</sup> that in the current context, the authority of the law courts is to assess administrative activities by the criteria of legality.

In the case of *S.G. Jaisinghani v Union of India and Others*<sup>11</sup>, the Supreme Court characterised the criteria of rule of law in a very clear manner. The court remarked that the Rule of Law implies that judgements should be made by using recognised principles, that such decisions should be predictable, and that the citizen should know where he stands. However, if a judgement is made without reference to any principle, it is unexpected, and such a decision is the polar opposite of one made in conformity with the Rule of Law.

The Supreme Court declared in the case of *Supreme Court Advocates on Record Association v Union of India*<sup>12</sup>, often known as the "Second Judges Case," that the lack of arbitrariness is a fundamental notion of rule of law.

In the case of *Secretary, State of Karnataka and Ors v Umadevi and Ors*<sup>13</sup>, the Constitution Bench stated that "it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly

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<sup>8</sup> *Veena Seth v State of Bihar* AIR 1983 SC 339

<sup>9</sup> *Union of India v Raghubir Singh* 1989 AIR 1933

<sup>10</sup> *Chief Settlement Commissioner Punjab v Om Prakash & Ors* 1969 AIR 33

<sup>11</sup> *S.G. Jaisinghani v Union of India and Others* 1967 AIR 1427

<sup>12</sup> *Supreme Court Advocates on Record Association v Union of India* AIR 1994 SC 268

<sup>13</sup> *Secretary, State of Karnataka and Ors v Umadevi and Ors* AIR 2006 SC 1806

be disabled from passing an order maintaining and infringement of article 14 in requesting the ignoring of the need to agree to the necessity of article 14."

## **MODERN CONCEPT OF RULE OF LAW**

The notion of the rule of law is a compelling one. It cannot be interpreted to suggest that it is a set legal system that does not change. The International Commission of Jurists convened in New Delhi in 1959 to examine the subject of Legal Law. The key findings are as follows:

The purpose of the legislation is "to protect and promote the political and social rights of the individual in a free society." Creating the social, economic, educational, and cultural circumstances for a person to attain his or her legitimate objectives and dignity. It should not infringe on religious beliefs or on freedom of expression or personal freedom. Minority groups are not discriminated against. The security guards are insufficient to prevent the authorities from abusing their power. There should be independent courts that operate in a secure manner without intervention from the law or management. The rule of law necessitates the existence of an autonomous legal profession.

In today's world, Dicey's idea of Rule of Law is not universally embraced. The current definition of the Rule of Law is quite broad, and hence it establishes an ideal for any government to strive for. The International Commission of Jurists developed the current concept of Rule of Law, often known as the Delhi Declaration, in 1959, which was later ratified in Lagos in 1961. The 'Rule of Law' indicates that "the functions of government in a free society should be exercised in such a way that the dignity of a man as an individual is upheld," according to the Modern Concept. The International Commission of Jurists was divided into four working committees: the Committee on Individual Liberty and the Rule of Law, the Committee on Government and the Rule of Law, the Committee on Criminal Administration and the Rule of Law, and the Committee on Judicial Process and the Rule of Law. The Committee on Individual Liberty and the Rule of Law argued that the state should not establish discriminating legislation, interfere with religious convictions, or impose unnecessary limits on freedom. According to the Committee on governance and the Rule of Law, 'Rule of Law' involves not just strong safeguards against abuse of power, but also effective governance capable of preserving law and order. According to the Committee on Criminal Administration and the Rule of Law, 'Rule of Law' entails due criminal process, no arrest without the authority of the law, legal assistance, public trial and fair hearing, and the presumption

of innocence. Finally, the Committee on Judicial Process and the Rule of Law defined 'Rule of Law' as an independent judiciary, an independent legal profession, and a norm of professional ethics. According to Federalist Kim Davis, there are seven types of Modern Law: Law and Orders, Natural Law Principles, Fixed Rules and Regulations, Due and Fair Process of Law, Preferences for judges and Courts of Law over executive authority and administrative tribunals, and Judicial Review of Administrative Action.

Thus, the rule of law in the contemporary meaning guarantees that political interest is encouraged and that criticism of the government is not only permissible but actively rewarded.

## CONCLUSION

As a result, the Rule of Law argues that decisions must be made using recognised principles and rules, that such decisions must be foreseen, and that individuals must be aware of their location. It does not involve any form of violence. According to the preceding debate, the core of the law is the aim; the rule of law is the finest tool for achieving goals. Some efforts are also being made by the courts in areas where the Rule of Law is connected to Human Rights. A court devised a system in which the government could be obliged not only to legislate but also to create conditions in which the people might acquire the capacity to enjoy their rights in a fair and understandable manner.

The concept of Rule of Law was not flawless, but it took charge of administrative authorities and undercut them with their measures, which is why the principle of Rule of Law has been embraced as the watchdog of the Constitution by numerous countries. It is the most effective means of achieving legal supremacy. The court has even attempted to combine the notion of Rule of Law with Human Rights. The current notion offered by David gives a wide concept while also allowing the government to wield it gracefully, as the major job of administrative law is to bridge the gap between power and liberty. Thus, the government, guided by the Rule of Law, establishes laws and conditions that do not violate any individual's dignity.