

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 6
(April 2022)

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Website – www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

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INTERNATIONAL JOURNAL
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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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EQUALITY AND RULE OF LAW: A **COMPARATIVE ANALYSIS OF INDIA AND USA**

By: Johny Kumar

INTRODUCTION

Once, Homes, C.J. observed in a case that: “The provisions of the constitution are not mathematical formulae having their essence in any form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is not gathered by taking the words simply from a dictionary, but by considering their origin in line of their growth”.

This statement indicates that every constitution has its own basis of evolution. It embraces a certain pattern of rules to develop the adopted structure of constitution. “A federal state has a central authority and also has one at the state level to work in different departments for the formation, execution and implementation of the policies at its own level. The policy laid down need not to be exhaustive all together, but can widen gradually with the interpretation its scope. This paper in subsequent pages will explore the differences between the constitutional framework of India and the United States, on the basis of rule established and will elaborate upon the difference between the concepts of “Right to Equality.”

Things that appear identical from afar may not appear to be similar when viewed up close. Applying the same principle to the relationship between the United States of America (US) and India in the context of the Right to Equality, it is observed that, despite the similarity in the words used to express the provision related to the "Right to Equality," both countries have differences in how the right is applied. Aside from the fact that they are both ethnically and culturally heterogeneous cultures with democratic governments and similar legal systems, they have distinct interpretations of the same right. In both countries, the scope of the right is different.

The Declaration of Rights and, more importantly, the Bill of Rights had given the United States this right. It was put into the Bill of Rights by the fourteenth Amendment in 1868, however in

India, the legislative assembly had the intention to instil this right in the constitution from the beginning. The Assembly followed suit by including them in Chapter III, titled "Fundamental Right." This was the fundamental distinction between the two. Each country's goal is different. The Indian Constitution stipulates that basic rights be subject to reasonable limitations. This action was taken by the Assembly to limit the power of this privilege and to allow for its judicial use. However, in the latter country, there is no such explicit mechanism for power restraint. The judiciary was left to interpret the provision based on the circumstances and the judges' diligence. The cases of Doctrine "Separate but equal," in which a ruling in favour of racial discrimination was made even after the amendment, only to be overturned subsequently. Decisions in India are made in accordance with the constitution's provisions.

HISTORICAL BACKGROUND

The notion of the "rule of law" stems from many traditions and continents and is intertwined with the evolution of the history of law itself. The Code of Hammourabi, promulgated by the King of Babylon around 1760 BC, is one of the first examples of the codification of law, presented to the public and applying to the acts the ruler. In the Arab world, a rich tradition of Islamic law embraced the notion of the supremacy of law. Core principles of holding government authority to account and placing the wishes of the populace before the rulers, can be found amid the main moral and philosophical traditions across the Asian continent, including in Confucianism. In the Anglo-American context, the Magna Carta of 1215 was a seminal document, emphasizing the importance of the independence of the judiciary and process as fundamental characteristics of rule of law. In continental Europe notions of rule of law focused on the nature of the State, particularly on the role of constitutionalism.¹

Aristotle said more than two thousand years ago, "The rule of law is better than that of any individual". Rule of law has been championed by Roman jurists, medieval natural law thinkers, Enlightenment philosophers such as Hobbes, Locke, Rousseau, Montesquieu in their theory of social contracts and the American founders; German philosophers Kant, Hegel and in this century such ideologically diverse figures as Hayek, Rawls, Scalia, Jiang Zemin and Lee Kuan Yew.

¹ http://www.unrol.org/article.aspx?article_id=3

RULE OF LAW

Rule of law is one of the pillars of the modern world, and widely considered necessary for sustained economic development for the implementation of democracy and the protection of human rights. It has however emerged in western liberal democracies, and some people question how far it is likely to take root fully in the different cultural, economic and political context of Asia.²

In democracies, the use of arbitrary power is considered as asthma to the rule of law. Fundamentally, constitutional limits on power, a key feature of democracy, requires adherence to the rule of law. Thus, the rule of law could be defined as the subjugation of state power to a country's constitution and laws, established or adopted through popular consent. This is the meaning of the commonly cited phrase "a government of laws, not of men", made famous by John Adams, the second president of the United States.³ Under such a system, law should be supreme to the capricious authority of any individual. The rule of law is the supreme check on political power used against people's rights. Without the regulation of State power by a system of laws, procedures and courts, democracy could not survive. Although the rule of law protects the majority from arbitrary power and tyranny, it also has a necessary function to protect the minority both from the arbitrary power and the tyranny of the majority.⁴

The term Rule of Law is derived from the French phrase to la principe de legalite (the principle of legality) which refers to a government based on principles of law and not of men. It also means that power should be exercised within the statutory ambit and purported exercise of exercise of it would not just be ultra virus, but in a true sense of term arbitrary.⁵ Lord Chief Justice Coke quoting Bracton said the case of Proclamations,⁶ "the king himself ought not to be subject to man, but subject to god and the law, because the law makes him King".⁷

The rule of also law, also called supremacy of law, means that the law is above everyone and it applies to everyone. Rule of law is a general legal maxim according to which decisions should be made by applying known principles or laws, without the intervention of discretion in their application.⁸ This maxim is intended to be a safeguard against arbitrary governance. The word

² Upendra Baxi, 'Rule of Law in India' published in Asian Discourses of Rule of Law.

³ The article 'A Necessary Accompaniment for Democracy'.

⁴ Ibid.

⁵ Chhavi, Rule of law: A reflection upon we the people and beyond www.legalserviceindia.com/article/1459-Rule-of-law.html.

⁶ (1610) 77 ER 1352.

⁷ <http://www.ourcivilisation.com/cooray/btof/chap180.htm>

⁸ Black's Law Dictionary, Fifth Edition, 1979, page. 1196.

'arbitrary' (from the Latin "arbiter") signifies a judgment made at the discretion of the arbiter, rather than according to the rule of law.⁹

For much of human history, rulers and law were synonymous- law was simply the will of the ruler. A first step away from such tyranny was the notion of rule by law, including the notion that even a ruler is under the law and should rule by virtue of legal means. Democracies went further by establishing the rule of law. Although no society or government system is problem-free, rule of law protects fundamental political, social, and economic rights and remind us that tyranny and lawlessness are not the only alternatives.

Rule of law means that no individual, president or private citizen, stands above law, Democratic governments exercise authority by way of law and are themselves subject to law's constraints. Laws should express the will of the people not the whims of kings, dictators, military officials, religious leaders, or self-appointed political parties.

Citizens in democracies are willing to obey the laws of their society then, because they are submitting to their own rules and regulations. Justice is best achieved when the laws are established by people who must them.

- Under the rule of law, a system of strong, independent courts should have the power and authority, resources, and the prestige hold government officials, even top leaders, accountable to the nation's laws and regulations.
- For this reason, judges should be well trained, professional independent, and impartial. To serve their necessary role in the legal political system, judges must be committed to the principles democracy.
- The law of democracy may have many sources, written constitutions, statutes and regulations, religious Regardless of origin the law should enshrine certain provisions to protect freedoms of citizens.
- Under the requirement of equal protection under the law, the law may not be uniquely applicable to any single individual or group

⁹ Curtis, Thomas, 'The London Encyclopedia', page, 565 (1829).

- Citizens must be secure from arbitrary arrest and unreasonable their homes or the seizure of their personal property.
- Citizens charged with crimes are entitled to a speedy and public trial, along with the opportunity to confront and question their accusers. If convicted, they may not be subjected to cruel or unusual punishment.
- Citizens cannot be forced to testify against themselves. This principle protects citizens from coercion, abuse, or torture and greatly reduces the temptation of police to employ such measures.

The adoption and practice of basic principles of the rule of law are barometers for any democracy. Apparent contradictions in principle of practice do not negate the rule of law's overall importance. The awful consequences of the breakdown of the rule of law in dictatorship as recounted above make its importance self-evident. In democratic societies, deviations from the principles of the rule of law, such slavery and systematic discrimination in the United States, or the unequal treatment of women historically, serve as powerful arguments for the fulfillment of those principles. Thus, while there is no set definition of the rule of law encompassing all its practices, there is a basic realm of common principles. The scholar Rachel Kleinfeld Belton, identifies five elements of rule of law:-

1. A government bound by and ruled by law.
2. Equality before the law.
3. The establishment of law and order.
4. The efficient application of justice.
5. The protection of human rights.

DIFFERENTIATION BASED ON THE RIGHT TO EQUITY

Article 14 of the Indian constitution establishes a strong foundation for the constitution by prohibiting discrimination among citizens, akin to the United States' "Bill of Rights" provision. However, India has a concept of justifiable classification, which means that when specific circumstances happen, certain persons are treated unequally. The state has the authority to treat

such people differently if the circumstances merit it. The court in this decision declared that when there is arbitrariness or unreasonability, the rule of law might be annulled. The law can be overturned by the courts, but this rule can only be used in conjunction with a reasonable categorization imposed as a subsidiary rule to this article. This imposition, however, cannot be arbitrary."

The Civil Rights Act of 1964, along with previous Supreme Court decisions, outlined the American affirmative action programme, which was not based on quotas. Through various legislative frameworks, the United States grants women and minorities special status; nevertheless, this does not empower the community. The term quota refers to the setting of a percentage for the purpose of reserving a certain number of seats for a specified group of people. As a result, this quota system can be utilised to reinforce the concept of "Right to Equality," bringing these unequal groups on line with others.

All men are born equal, and their creator has endowed them with certain unalienable rights, such as the right to life, liberty, and the pursuit of happiness."

The states are prohibited from denying anybody the right to "life, liberty, or property, without due process of law," or from "denying to any person within its jurisdiction the equal protection of the laws" under this section of "The Bill of Rights." These two rights were just recently incorporated in the United States, and there was no legislative intention to do so at the time. The state's dynamic changes prompted its incorporation. The Indian legislation, on the other hand, was written with the intention of including this from the start.

It is clear that the right to equality in America does not guarantee social equality. Article 14 of India's constitution, on the other hand, expressly prohibits discrimination between individuals. Any law that is found to be discriminatory can be declared invalid by the court. The protection of minorities is demonstrated by the recent Triple Talaq case. Minorities face discrimination in the United States. If a community is excluded from any law and confronts inequalities, and the judiciary does not deem the law unlawful, the discrepancy will persist until another change is enacted or a judgement is rendered in their favour." The Negroes in the United States are a classic illustration of this, as they obtained their rights through a legal amendment.

There isn't much of a distinction between the children's rights in both countries. In terms of children's rights, both countries are on roughly the same page. The difference is in the age range that is required by law for children to attend compulsory education. Children in India between the

ages of 6 and 14 are allowed to receive compulsory education as required by law. In the United States, however, the age limit is set at 16 years old since it is believed that at this age, the child has matured and is capable of managing any type of work alone.

Inequality between men and women:

Women, as the most important and contentious segment of the global population, are protected by special legislation in both countries. Despite the fact that there are numerous laws in favour of women, the problem lies in their administration and execution. In comparison to India, women's rights are better safeguarded in the United States.

The United States is an outlier in terms of traditional roles and rules, and it has a global presence. With the rise of "liberal feminism" in the United States, campaigners are focusing on women's independence, which includes their own personalities, passions, and pursuits, resulting in them becoming more confident, educated, and so on. Along with this, the concept of "radical feminism" emerged, changing people's stereotyped attitudes and beliefs.

In the United States, women's rights in terms of opportunity and employment are better protected. The standards on protecting women from workplace harassment were only recently introduced in India, whereas the United States had a settled legislation on the subject and women in their country were highly empowered and autonomous, whereas women in India are still fighting for equal rights. It would take decades for India's women's status to improve.

The United States issues dual citizenship certificates to citizens who live there. The bill of rights applies to all states that make up a federal country, requiring each to follow the same set of regulations, resulting in equality of laws at both the state and federal levels. The regulations for internal race among the countries are all circumscribed by all of the states. Every country recognises the importance of the right to equality as the cornerstone of all rights. The countries have strengthened this rule as a result of the rivalry.

In terms of the Indian scenario, there is no legal provision for the concept of dual citizenship. Every Indian citizen has just one citizenship in their name; nevertheless, because Articles 14 and 15 of the constitution are regarded India's ultimate legislation, the laws are mostly based on these articles. Despite the constitution's prohibitions, discrimination occurs on the basis of caste, sex, religion, ethnicity, and other factors. As a result, India continues to struggle to increase the

protections afforded by the "Right to Equality."

EQUAL PROTECTION IN THE UNITED STATES: JUDICIAL INTERPRETATION

Following the American Civil War, the United States' constitution was amended with three new amendments: a) the Thirteenth Amendment, which abolished slavery in 1865; b) the Fourteenth Amendment, which granted citizenship to former slaves in 1868; and c) the Fifteenth Amendment, which guaranteed former male slaves the right to vote in elections in 1870.

The Fourteenth Amendment imposed a significant federal restriction on the states, prohibiting them from depriving anybody of their "life, liberty, or property, without due process of law," and ensuring that everyone under a state's authority receives equal protection under the law. Later interpretations by the United States Supreme Court in the twentieth century gave these two clauses greater weight. The Supreme Court interpreted the due process clause in the case of *Gitlow vs. New York* (1925) to extend the Bill of Rights' protection of speech to the states, holding both levels of government to the same constitutional standard. Similarly, the Supreme Court selectively implemented the due process provision in subsequent decades to preserve additional rights and liberties provided in the Bill of Rights from state encroachment, a process known as "selective incorporation."

INDIA'S JUDICIAL INTERPRETATION OF EQUAL PROTECTION

"Equal protection of the law" is declared in Article 14 of our Indian constitution, which is borrowed from Section 1 of the United States Constitution's 14th Amendment Act.

The right to equality was acknowledged as one of the basic principles incorporated in the Indian constitution in the case of *Indra Sawhney vs. UOI*. Article 14 of the Indian Constitution is applicable to all persons, not only citizens. This article also entitles a company, which is a legal entity, to benefit from it. This notion implies equality for equals and attempts to end hostile discrimination and inequity oppression.

It was observed in the case of *Ramesh Prasad v. State of Bihar* that the goal of both the concepts of "Equality before the law" and "Equal protection of the law" is equal justice. According to Article 14 of the Indian Constitution, everyone is equal in the eyes of the law. There is no one who can

stop the government from providing specific arrangements for women and children.

The court in *Choki v. State of Rajasthan* decided that it is legitimate on the basis that it makes particular provisions for women and hence is protected under article. The constitution (first amendment) Act of 1951 inserted Article 15(4).

In *D.S Nakara v. UOI*, the Supreme Court declared Rule 34 of the Central Services (Pension) Rules, 1972 invalid on the grounds that the distinction created between pensioners retiring before and after a specified date was arbitrary and violated Article 14 of the Indian Constitution.

CONCLUSION AND SUGGESTIONS:-

With the above analysis of the concept in UK as well as in India it can be concluded that the Dicey's Concept of Rule of Law is idealist in Nature which is quite impossible to implement in the nation like India. According to Dicey's theory justice must be done through known principles of law and not by principles of men. He believes that where there is discretion there is always a room for arbitrariness. Our framers of the constitution while incorporating the parent act tried to involve the concept into the Constitution of India but the intention with which our framers incorporated the concept have gone in vain.

Today, we need the rule of law for punishing deviations and lapses from the code of conduct and standards of behavior which the community speaking through its representatives has prescribed as the law of the land. Once an impression comes to prevail that it is difficult to secure the conviction of the actual culprits in a court of law, the victims of the offence or their close relatives, would look to extra-legal methods to settle scores with the culprits. Such a situation would necessarily be a precursor to collapse of administration of criminal justice and result in a state of chaos and anarchy. Every effort has, therefore, to be made to eliminate or in any case minimize political and other extraneous interference in the investigation of the crimes. Unless we can do that, the rule of law for which we have such ideological affinity would suffer grievous casualty and be subjected to severe strain.

Today in India, the strange phenomenon and paradox is that while on ideological plain democracy is supposed to strengthen the rule of law and the administration of criminal justice, in actual

practice, the electoral process which is an integral part of democracy is undermining the rule of law and due administration of criminal justice. This must be put to an end. The traditional concept in all civilized liberal nations is that democracy and rule of law are close allies of each other. It has to be the effort of all well-meaning persons to ensure that their kinship is not weakened and that each of them continues to lend strength to the other.

The concept of rule of law does not merely mean formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

Despite its inconsistencies, its crudities, its delays and its weaknesses, Rule of Law still embodies so much of the results of that disposition as we can collectively impose. Without it one cannot live; only with it one can insure the future which by right is ours. The best of man's hopes are enmeshed in its process; when it fails they must fail; the measure in which it can reconcile our passions, our wills, our conflicts, is the measure of our opportunity to find ourselves. Man may be a little lower than the angels, he has not yet shaken off the brute and the brute within is apt to break loose on occasions. To curb and control that brute and to prevent the degeneration of society into a state of tooth and claw, what is required is the 'Rule of Law'.¹⁰

The comparison of these two approaches to equality yields a number of intriguing modules. First, promoting either of these approaches to equality to the exclusion of all others is not a good idea. The vocabulary of Marxism best expresses a totally collectivist, results-oriented push for substantive equality, which, in fact, contradicts the intrinsically uneven traits of persons, harms individual liberty, and even proves ineffective at removing true inequalities. The Indian system emphasises the importance of achieving substantive equality while simultaneously safeguarding individual liberties and rights. Early America had a totally individualist view to equality of opportunity, and this formalistic approach still exists to some extent now. It refutes the idea that those born into a social hierarchy have substantially different chances, and it defends existing inequalities by mentioning the constitution's legal equality for all people.

Second, each of these approaches yields significantly distinct legal principles, which might be summarised as an effects-based approach to promoting equality on the one hand, or a formalistic

¹⁰ <http://www.legalserviceindia.com/article/l457-Rule-of-Law-in-India-&-UK.html>

purpose of ensuring antidiscrimination on the other. Each of these criteria has its own set of drawbacks. The Indian approach, at least in theory, focuses realising the goal of a society free of unfair disparity, while the Western approach is primarily concerned with the effects of past discrimination and ongoing social stratification of castes. However, the hostility that such Indian-style schemes have engendered reflects the shared values of individual rights and merit that have kept such programmes from being adopted in the United States. The upper-class protests in India mirror a sense among the country's youth that they are disadvantaged, with some experiencing a clear lack of opportunity. It's debatable whether their impressions are accurate, but the clashing ideologies make it difficult for Indian leaders and voters to reconcile their interests.