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# **RULE OF LAW IN INDIA - A REFLECTION UPON WE THE PEOPLE AND BEYOND**

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# **ABSTRACT**

The rule of law, in simple words, means the supremacy of the law of the land over other things or persons. There is no specific definition of the rule of law, but one of the most famous definitions was given by A.V. Dicey who based its definition on three pillars, which are the rule of law, equality before the law and the rule of law. India has adopted the rule of law of the common law legal system rooted in British jurisprudence. The Indian judiciary has played a leading role in shaping the rule of law in India. Through its various species the court took a positive and dynamic view of the provisions of the constitution ensured the observance of the rule of law in its true spirit. The idea of rule of law is enshrined in the Constitution of India. One can conclude from the introduction and well the fact that it declares India as a sovereign state. Courts have used aid to increase legal activity for years the scope of the rule of law through various provisions of the Constitution. Even after so many efforts by the constitutionalists and the judiciary, the implementation of the rule of law is still in progress. There is no full screen in India. Things like an outdated legislature and overburdened courts are some of the things that stand in the way of smooth implementation. Therefore, institutions such as parliament, judiciary, Law are responsible for the commission and various other agencies must take necessary steps to ensure smooth implementation of the rule of law to ensure that it is implemented in its true sense.

# **INTRODUCTION**

Thomas Paine quoted in his pamphlet *Common Sense*: **THE LAW IS KING**. Because as in absolute governments the law is, so in free countries the law **SHOULD** be king; and let there be no others.

The rule of law can be traced back to Aristotle and was supported by Roman jurists; medieval natural law thinkers; Enlightenment philosophers like Hobbes, Locke, Rousseau, Montesquieu in their theory of the social contract, and the American founders; German philosophers Kant, Hegel and 19th-century advocates of *Rechtsstaat*; and in this century such ideologically diverse figures as Hayek, Rawls, Scalia, Jiang Zemin and Lee Kuan Yew.

The term rule of law is derived from the French phrase *la Principe de legalite* (principle of legality), which refers to a government based on legal principles rather than people. It also means that the power should be exercised within the limits prescribed by law and its alleged exercise

would not only be ultra vires but also arbitrary in the truest sense of the word.

According to A V Dicey, whenever there is discretion there is room for arbitrariness. Even the most autocratic form of government has a legal framework within which the government operates. In monarchy, this concept was developed to check the power of arbitrary powers of rulers who claim to have divine powers. Similarly, in a democratic state, it ensures that police officers must be able to justify publicly that the exercise of power is socially just and legal.

Now the concept has become a new consequence, according to which the holders of public power must be able to publicly justify that the exercise of power is legally valid and socially just. It is the modern modernized name of natural law. In jurisprudence it was known to the Romans as "jus natural" and in the middle Ages as "the law of God". Over time, Rousseau, Hobbes, and Locke called it the "social contract" or "natural right". Modern people call it "rule of law".

Efforts to define the meaning of the rule of law usually concern the values and purposes that the rule of law is supposed to serve. First, the rule of law should protect anarchy and the Hobbesian war of all against all. Second, the rule of law should allow people to plan their affairs with reasonable certainty, so that they can know in advance the legal consequences of various actions. Third, the rule of law should be ensured by at least a certain type of official.

## **Supremacy of law**

It means the rule of law and absolute power in the country. The law governs all men, including development and administration of the law. Dicey believed that wherever there is discretion there is also arbitrariness. That is why it was said that the law established in the court should be implemented in the country and not a man can take the law into his own hands.

## **Equality before the law**

This means that the law must be applied fairly and equitably. Every person, regardless of position or perhaps they should be subject to the same law and procedure as all other litigants. He said: "Every official from the Prime Minister to the soldier or the tax collector is the same responsibility for every act done without a legal basis as any other citizen.

## **Predominance of the legal mind**

Dicey believed that the formulation of the above two principles is not sufficient and must be carried out. Powers to follow and enforce laws. He thought the court was that authority. He proposed a neutral and

An independent judiciary, which would be a very important aspect in the implementation of the principles of the rule of law.

## **RESEARCH METHODOLOGY**

This study is based on secondary data collection, specifically a doctrinal approach. The researcher has gathered information from a variety of sources, including commentaries, books, treatises, articles, notes, comments, and other written works, in order to provide a comprehensive perspective. To better understand the topic, the researcher has also analysed a range of judicial decisions, aiming to identify any patterns or trends that may exist.

## **DICEY'S CONCEPT OF RULE OF LAW**

In his book *Law and Constitution*, Dicey gave three meanings to the doctrine of rule of law

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## **Rule of law in India and Supreme Court decisions:**

The fundamental rights enshrined in Part III of the Constitution limit the legislative power of the Parliament of India. This includes freedom of speech, expression, association, movement, life, property, profession and person. In a broader sense, the constitution itself determines the system of fundamental rights of the country. To ensure and promote the basic rights and freedoms of citizens and the observance of the principles of the democratic rule of law. A popular habeas corpus case, *ADM Jabalpur v. Shivkant Shukla*<sup>1</sup> is one of the most important rule of law cases. In that case, the question before the court was "whether there is rule of law apart from Article 21 in India<sup>2</sup>". This referred to the suspension of the implementation of Articles 14<sup>3</sup>, 21 and 22<sup>4</sup> during the emergency declaration. The majority's answer to the question of law was no. Judge H.R. Khanna, on the other hand, disagreed with the majority opinion and observed that "Even in the absence of Article 21 of the Constitution, the State has no right to deprive a person of life and liberty without law. Without such sanctity of life and liberty, the distinction between a lawless society and a law-governed society would no longer matter.

When applied to state authorities, it assumes that any state institution that does something that would otherwise be wrong (for example, takes land from a man) or violates a man's freedom (for example, refuses to grant a building permit), can justify its right. In a manner permitted by law - and that means in almost every case directly or indirectly activities permitted by law.

A secondary meaning of the rule of law is that government is exercised based on recognized rules and principles that limit discretion. The Supreme Court observed in the case of *Som Rajvs. State of Haryana*<sup>5</sup> that the absence of arbitrary power is the primary principle of the rule of law on

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<sup>1</sup> ADM Jabalpur v. Shivkant Shukla [AIR 1976 SC 1207]

<sup>2</sup> Protection of Life and Personal Liberty

<sup>3</sup> Right to Equality

<sup>4</sup> Protect against arrest and detention

which the entire constitutional edifice depends. Using discretion without a rule is a concept that is the opposite of a concept. The third meaning of the rule of law emphasizes the independence of the judiciary and the supremacy of the courts. The Supreme Court in **Union of India vs. Raghbir Singh**<sup>6</sup> rightly reiterated that there is no doubt that the lives and public duties of a large number of people are governed by the judgments of the Supreme Courts.

Although complete absence of discretion or inequality is not possible in the current administrative era, the concept of rule of law has been developed and spread in common law countries like India. The rule of law provided a kind of touchstone by which to evaluate and test the administrative law currently in force in the country. The rule of law traditionally means the absence of arbitrary powers, and thus any increase in administrative arbitrariness or discretion can be condemned and protected by procedures and other means of control. The rule of law also includes the supremacy of the courts. Therefore, the courts should finally have the power to review administrative actions, and its apparent decline must be criticized.

The basic principle of the common law system followed by India remains the implicit principle in the rule of law that the executive must act according to the law and not according to his own will.

In the common law system, the executive is not considered to have any inherent powers, but all its powers come from law. This is one of the most important principles that plays an important role in democratic countries like India. There is a fine line between litigation and legal activism. The rule of law is the basis for judicial review of administrative actions. The judiciary ensures that the executive remains within the limits of the law and does not exceed it. Thus, legal activity is kept under control. However, there are cases in India where the judiciary has tried to encroach on the domain of the executive and parliament. A recent example of this would be the current reservation scenario for other retrograde classes. The judiciary argued that the creamy layer should be excluded from the benefits of the reservation policy, while the parliament and the executive opposed it. As mentioned earlier, Dicey's theory of rule of law was adopted and incorporated in the Constitution of India. The three-tier judiciary, the parliament and the executive function in harmony with each other. The public can approach both the Supreme Court and the High Court in case of violation of their fundamental rights. If the power of the executive or parliament is abused in any way, that abuse can be overturned in the ordinary courts. This can be argued because it is contrary to proper law. The rule of law also requires certain legal procedure to be followed. Ultra vires can be called anything that falls outside the scope of the relevant law. No one shall be deprived of his life or personal liberties except according to law, nor of his property

except according to law. Government officials and the government itself are not above the law. In India, the concept is equality before law and equal protection of laws. Any

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<sup>6</sup> Union of India vs. Raghubir Singh 8194-8195 OF 1985

offense committed by anyone is punished in the same way. A law decided in ordinary courts applies equally and equally to all men. The doctrine of equality is also accepted in the public service. The public can file a suit for breach of contract etc. against the officers and employees of the state government.

In *Chief Solution Commr; In Punjab v Om Prakash*<sup>7</sup>, the Supreme Court observed that "the most central and characteristic feature of our constitutional system is the rule of law, which in that context means the power of courts to review all administrative action in accordance with law. Administrative or executive action that does not meet the standard is set aside after the victim has reported.

In India, the importance of the rule of law has increased significantly. It is considered to be part of the basic structure of the Constitution and therefore cannot be cancelled or destroyed by Parliament. Ideals of the Constitution; liberty, equality and fraternity are written in the preamble. The Constitution establishes the supreme law of the land and any law passed must be consistent with it. Any violation makes the law ultra vires. In *Kesavanda Bharti vs. State of Kerala (1973)*<sup>8</sup> - The Supreme Court declared the rule of law as one of the most important aspects of constitutional doctrine.

In the case of *Menaka Gandhi vs. Union of India*<sup>9</sup> Supreme Court has declared that Article 14 is against arbitrariness. In *Indira Gandhi Nehru vs. Raj Narain*<sup>10</sup> Article 329-A was added to the constitution by the 39th Amendment, which gave certain immunity from judicial review until the election of the prime minister. The Supreme Court struck down Article 329-A because it abridges the basic structure of the constitution. *Binani Zinc Limited Vs. Kerala State Electricity Board and Ors. (2009<sup>11</sup>)* Judge S B Sinha states that "It is now a settled principle of law that the rule of law presupposes, among other things, that all laws are contingent, subject of course to an express order or intention to the contrary." In *Gadakh Yashwantrao Kankarrao Vs. The ratio set by Balasaheb Vikhe Patil*<sup>12</sup> was as follows: "If the rule of law is to be preserved as the essence of democracy, which presupposes the purity of elections, it is the duty of the courts to appreciate the evidence and interpret the law in such a way as to serve that higher goal and not to encourage the acceptance, especially the strengthening, of even imperceptibly declining electoral standards." The survival of democracy presupposes the rule of law and it is necessary that the best possible men be elected. As representatives of the correct governance of the country. This can best be achieved by men of high moral and ethical values who win elections based on merit and not based on the relative disadvantage of the candidates with a negative vote in the elimination

process. .

In *Sukhdev v. Bhagatram Mathew J*<sup>13</sup>. stated that "Whatever the concept of the rule of law, be it the meaning given by Dicey in *The Law of the Constitution* or the definition of Hayek in *The Road to Slavery* and his "Constitutional Freedom" or Harry Jones in *The Rule of Law and the Welfare State*", as stated by Mathew, J. in his article "Welfare State, Rule of Law and

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<sup>7</sup> Chief Solution Commr; In *Punjab v Om Prakash* 937 of 1965

<sup>8</sup> *Kesavanda Bharti vs. State of Kerala* (1973) SCC 225; AIR 1973 SC 1461

<sup>9</sup> *Menaka Gandhi vs. Union of India* AIR 1978 SC 578

<sup>10</sup> *Indira Gandhi Nehru vs. Raj Narain* 1975 AIR 865 SC 333

<sup>11</sup> *Binani Zinc Limited Vs. Kerala State Electricity Board and Ors.* (2009) 349 OF 2006 <sup>12</sup>

*Gadakh Yashwantrao Kankarrao Vs. The ratio set by Balasaheb Vikhe Patil* 2 OF 1991<sup>13</sup>

*Sukhdev v. Bhagatram Mathew J* AIR 1995 SC 1331

Natural Justice" in the Journal of Democracy, Equality and Liberty, "There is a fundamental agreement in legal thought that the primary purpose of the concept of the rule of law is to protect the individual against the arbitrary exercise of power, wherever found. Indeed, in a democracy governed by the rule of law, it is inconceivable that the executive government or any of its officials would have arbitrary power over the interests of an individual. All actions of the board must be rationally justified and free of arbitrariness. That is the core of the rule of law and its minimum requirement. And in the application of this principle, it does not matter whether the exercise of power is accompanied by the consolidation of some right or the denial of some privilege.

*Secretary, State of Karnataka and Ors. v. Umadevi and Ors*<sup>14</sup>. The Constitutional Court of the European Court established the law as follows: "Therefore, it is clear that the observance of the principle of equality in public work is the main feature of our constitution, and since the rule of law is the core of our constitution, the court certainly cannot issue a decree confirming the violation of laws. Section 14 or section 14 is thought to be dependent on the need to comply with section 16 of the constitution.

In the case of *Amlan Jyoti Borooah vs. State of Assam*<sup>15</sup>. S B Sinha opined that "Justice should not be equated with mercy. Equality principles must be based on facts which are unusual and strange in themselves. A balance must be found, and the court must ensure that its pursuit of justice does not mean benevolence on the part of the court or consent to the violation of expressed fundamental rights and principles of the rule of law. Further, in *Bachan Singh v. State of Punjab* *Singh*<sup>16</sup> Justice Bhagwati emphasized that the rule of law excludes arbitrariness and irrationality. To ensure this, he proposed that a democratic parliament is needed to make laws, but that its power should not be unlimited, and that there should be an independent judiciary to protect citizens from executive and legislative excesses.

In addition, *P. sambamurthy v. SC of Andhra Pradesh* <sup>17</sup> declared the provision that authorizes the executive to intervene in the judiciary unconstitutional, describing it as "a violation of the rule of law, which is clearly a fundamental and essential feature of the Constitution".

Another case is *Yusuf Khan Vs Manohar Joshi* <sup>18</sup> where the SC proposed that it is the duty of the state to preserve and protect the law and the constitution and that it cannot allow any violent act that could overthrow the rule of the state. The law, thus, it is tacit that the concept of rule of

law is gaining importance and attention and legal means to strengthen it.

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<sup>14</sup> Secretary, State of Karnataka and Ors. v. Umadevi and Ors 1979 SCR 937

<sup>15</sup> Amlan Jyoti Borooah vs. State of Assam 23 2009

<sup>16</sup> Bachan Singh v. State of Punjab Singh 273 of 1979

<sup>17</sup> P. sambamurthy v. SC of Andhra Pradesh 417-454 of 1987

<sup>18</sup> Yusuf Khan Vs Manohar Joshi 673 of 1998

## **RULE OF LAW IN INDIA**

The rule of law played an important role in the development of Indian democracy. During the drafting of the constitution, the authors had two options, the United States and England.

Some provisions were adopted by the United States and some by England. Our constitutional fathers adopted the rule of law from England and many provisions were included in the Indian Constitution. The Constitution of India is considered supreme and no one is above the Constitution of India. The rule of law is also implied in the preamble and such a concept is enshrined in Part III of the Constitution of India.

If these rights are violated, appeals can be made to the Supreme Court or High Court under Articles 32 and 226 of the Constitution of India. The Constitution of India is enriched with principles of law viz. justice, equality and freedom. All laws passed by the Central Government or the State Government must be followed as per the Constitution of India. If any law passed by the parliament conflicts with the provisions of the constitution, the law is declared null and void. Under Article 32 of the Constitution of India, the Supreme Court has the power to issue writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Judicial review was also given to the Supreme Court to prevent ultra vires

legislation to maintain the rule of law. *Gadakh Yashwantrao Kankarrao vs. Balasaheb Vikhe Patil*

That case stated: "If the rule of law is to be preserved as an essential element of democracy, where the integrity of elections is a necessary condition, it is the duty of the courts to analyse the evidence and interpret the law in a way that serves that higher purpose and does not imperceptibly contribute to the acceptance, let alone the imposition, of declining electoral standards. The Survival of Democracy assumes that the rule of law prevails and it is necessary that the best possible men be chosen as elected representatives. The proper administration of the country. This can best be achieved by men of high moral and ethical values who win elections on their own merits and not through negative votes in a process of elimination based on the relative disadvantage of candidates.

## CRITIQUES

The opposite of the rule of law is personal rule. The rule of law is necessarily governed by the people, because the law is inert. Men are necessary to fulfil the law, but all men tend to interpret the law with their own knowledge, interpretations and ethical reasons. At best, a set of laws are well-intentioned guidelines for implementing the laws of human leadership.

Despite the seemingly enviable position of students in almost all industries, business, education, transport, banking, insurance etc. administrative agencies intervene in the activities of individuals, corporations and other corporations and non-corporations, observes Justice Ramaswamy. Administrative work involves a lot of discretion. For example: In the case of national planning, the executive has broad powers in relation to the land ceiling, control of basic industries, taxation, labour mobilization, etc. Even the Parliament passes laws against personal freedom, such as the Detention Act or the Internal Security Act of 1971, the National Security Act of 1980. Even the simplest thing, such as discriminatory wages for employees, can be called inequality, which is against the rule of law. The case *Frank Anthony Employees Union v. Union of India* included discrimination against employees which was held to be in violation of an individual's right to equality and unfair classification of pensioners was held in *Nakara vs. Union of India* as arbitrary.

The most important feature of the concept of rule of law is "equality". This it has been much criticized. Government has the inherent power to act solely at its own will and without oversight or restraint. Full equality is possible under general conditions not only in India but in every country. e.g.

- No action can be taken against Indian bureaucrats and diplomats
  - No criminal case can be instituted or continued against the President or the State Governor in any court during his term of office. The arrest or imprisonment of the President or the Governor of the State shall not be commenced in any court during his term of office.
  - Privileges of members of parliament in actions taken against them.
  - There are separate courts to resolve administrative issues.

Based on these facts, it can be said that equality in India does not prevail in its concrete sense. Dicey's concept of the rule of law has also been criticized. The law changes over time. As society develops, the laws of the land should also develop. Some see the rule of law as nothing more than a tool for those in power to maintain the status quo of the legal system.

The general consensus is that the status quo, far from being neutral, protects the powerful at the expense of the powerless. This lack of impartiality in the rule of law contradicts Aristotle's established ideal that all people should be equal under the law; that people's humanity, not their position in society, requires the fair application of laws. More extreme critics argue that "the liberal paradigm destroyed the rule of law." The basis of this argument is that, given the actual state of the world, many people equate the rule of law with the rule of law. This is a flawed equation, however, because "equality simply means that there are laws, and says nothing about the quality of those laws." Therefore, there are many shortcomings in the concept of the rule of law, which indicate the reason why the concept has not been properly implemented.

## CONCLUSION

The rule of law is the idea of law, justice and morality. It considers what laws, standards, rules, procedures, systems and structures should and should not be in place. Nations and/or their representatives should publicly declare standards. There are three realities in this formulation. One is that the law governs both the people and the government itself. Next, people should obey the law. Third, the standards we call justice must be followed—not just in the sense of being known, knowable, and predictable, but in the deepest sense of justice. It is a necessary part of democracy and good governance and also helps promote stability and peace. Some believe it can help prevent wars. In addition, human rights can be preserved under the criticism of the rule of law, i.e. absolutism and despotism. The rule of law in Indian society has not achieved the desired results because the deeply held values of constitutionalism or adherence to the Indian constitution have not taken root in the society. Corruption, terrorism, etc. everything is antithetical to the rule of law. In recent times, common law traditions, the Indian constitution and the steadfast role of the judiciary have contributed to the development of the rule of law. But sometimes we slipped back into government at will, only to return to a sadder and wiser rule of law, when the hard facts of human nature proved the selfishness and selfishness of man, and the truth of the saying that power corrupts and is absolute. . Power absolutely corrupts. Some examples of how our legal system has respected the rule of law and ensured justice can be clearly seen in the creation of new avenues for redress of human rights violations through PIL petitions and the promotion of genuine judicial intervention in the areas of the elderly and children . . . work, prostitution, clean and healthy environment, etc., but on the darker side, there are also violations of fundamental rights. For example, class and gender discrimination against eunuchs makes the community one of the most disempowered groups in Indian society. Sexual, but also a very deprived social minority. A recent example is the singur case in the High Court Division Bench consisting of Hon'ble Justice S S Nijjar and Hon'ble Justice Pinaki Chandra Ghosh who also heard the case.

It seems that the police department under the control of the home ministry is not even aware of the existence of article 21 of the constitution of India.... This article specifically guarantees that

"no one shall be deprived of his life or personal liberty except according to law." Unaware of the said guarantor, the police deployed a large crowd protesting against the proposal to buy their land." During that period, there was a complete absence of rule of law in West Bengal. Meaningful rule of law in a society requires democracy and governance. Of law for a democratic country. Hence one can conclude that democracy and the rule of law are interdependent and cannot flourish without the other. India is the largest democracy in the world, but the rule of law is generally under threat. It is imperative that further steps be taken to promote and maintain a rule of law society in India, without which our fundamental democratic rights will be seriously undermined.

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