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RULE OF LAW: A BUILDING BLOCK OF OUR MODERN SOCIETY

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ABSTRACT

Although administrative law is a distinct area of law and a subject of academic study, it has just attained full recognition as a "responsible" area of study for lawyers and law students. Thus, in order to combat the expansion of administrative law, the people of England employed Dicey's Concept of Rule of Law as a weapon. Our contemporary democratic society is built on the idea of the "Rule of Law."

Despite having no definition in the Indian Constitution, the Indian Judiciary frequently uses this term in its rulings. Rule of law 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. Rule of law is neither a rule nor a law. It is the outcome of centuries of effort by people to get their inalienable rights recognized.

The major goal of this essay is to provide a full analysis of the "Rule of Law," including its history, characteristics, place in the U.S. Constitution and the Indian Constitution, as well as its guiding principles and exceptions. So, the paper's conclusion has finally been offered. Numerous journals, books, and articles were consulted and taken into consideration when creating this research study. The internet has also helped with this process. Consequently, the Doctrinal Research Methodology produced this report.

According to Caroline Kennedy, "The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing"

INTRODUCTION

Although administrative law is a distinct area of law and a topic for academic study, it has just attained full recognition as a "responsible" area of study for lawyers and law students. Thus, in order to combat the expansion of administrative law, the people of England employed Dicey's Concept of Rule of Law as a weapon. Rule of Law is the supreme expression of human civilization and culture and the new "lingua franca" of global moral thought. Rule of Law is a fundamental component of democracy and effective government, and it gives the Constitution eternal worth. This theory, which is an animation of natural law and still holds true today, presents a strong case for the Rule of Law rather than a powerful individual. Former Prime Minister of India, that is, Lal Bahadur Shastri rightly quoted that—"The Rule of Law ought to be respected with the goal that the basic structure of our democracy is maintained and further reinforced".

The concept of 'Rule of Law' is a building block of our modern democratic society. Despite having no definition in the Indian Constitution, the Indian Judiciary frequently uses this term in its rulings. Rule of law 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. Rule of law is neither a rule nor a law. Law, which is built on freedom, fairness, equality, and accountability, creates the "right balance." Rule of Law achieves this balance between societal and individual requirements.

"La principie de legalite", which translates to "a government based on the principles of law," is the source of the English phrase "the rule of law." The concept of the rule of law is credited to Edward Coke. The King, he reasoned, must be subject to both God and the Law. 'Rule of Law' was the subject of three key arguments made by Edward Coke. First and foremost, the rule of law is necessary to prevent the monarchy from exercising authoritarian rule; second, it prevents the government from exercising arbitrary power; and third, it is necessary to defend individuals and their rights.

Objects based on Edward Coke's theory of "Rule of Law" are listed as follows:

- 1) To restrict Government from authoritarian rule.
- 2) To exclude arbitrary authority of the Government.
- 3) Equal application of laws and orders irrespective of status or rank and so on.

- 4) To do things in legally right way.
- 5) Protection of individuals and their rights.
- 6) Law is Supreme.
- 7) Administrative actions can be questioned under law.

The Rule of Law, like many other comparable concepts, is a live and evolving idea and cannot be precisely defined. The phrase "rule of law" is used in opposition to "rule of men" and "rule by law." Rule of law is the idea that the law which is founded on the ideals of freedom, equality, non-discrimination, and fraternity rules. Accountability, non-arbitrariness, and certainty, regularity, and predictability are all present. In general, the terms "rule of law" and "ideological sense" are used interchangeably. Ideological sense refers to the regulation of the interaction between the population and the Government, while formatic sense refers to the organised power as opposed to a rule by one man.

ORIGIN AND FEATURES OF RULE OF LAW

The struggle for recognition of one's inalienable rights has lasted for millennia, and the rule of law is the product of that struggle. The Greek philosophers Aristotle and Plato addressed the idea in the year 350 BC, making it a very old and antiquated idea. The idea altered societal perceptions as well as how many authors perceived and interpreted the rule of law. Rule of law, according to Plato, is "supreme in nature, and no one is above the law." Law ought to be the State's ultimate sovereign, according to Aristotle. The German Customary Law, which was the independent source of the rule of law during the Middle Ages, proposed the idea that the King is always subject to the law. According to John Locke, the government acts in accordance with the law.

Features of Rule of Law are listed as follows:

- 1) When the authorities are prohibited from acting irrationally while exercising their authority, the Rule of Law is protected.
- 2) According to the Rule of Law premise, no one may be punished or made to suffer unless and until he has actually broken the law.
- 3) Everyone is equal before the law, according to the rule of law, hence a group of people cannot be the basis of a law.

- 4) Rule of law is a fundamental tenet of most democracies because it is applicable to everyone and has long been ingrained in most legal systems around the world.
- 5) A person can only be punished in accordance with the Rule of Law if they are accused of committing a crime and that accusation is supported by an independent tribunal, such as a court.

“A.V. DICEY’S CONCEPT ON RULE OF LAW”

In his work "The Law of the Constitution," British jurist and constitutional theorist Albert Venn Dicey created the idea of the rule of law (1885). One should be aware of the distinction between administrative law and the Rule of Law, he claims. He asserts that the rule of law applies equally to everyone, regardless of whether they are prime ministers or just regular office workers like bank tellers. As a result, everyone should be subject to the same laws, and the rule of law should prohibit all forms of discrimination. A.V. Dicey propounded three postulates of Rule of Law, namely Supremacy of Law, Equality before the Law, and Predominance of a Legal Spirit.

- 1) **Supremacy of Law-** According to AV Dicey's first postulate, the absence of arbitrary behaviour or broad discretionary authority is what is meant by the rule of law. In other words, the law ought to apply to every man. Law is unquestionably the supreme and governing form of arbitrary and discretionary power, as opposed to impact or influence. Only in accordance with the law may someone be punished.
- 2) **Equality before the Law-** According to the second postulate of the rule of law, all classes must be equally subject to the common law of the land as it is applied by common law courts. Therefore, it indicates that neither a government official nor anyone else receives any unique rights. It claims that the cases involving the government and its employees do not require the use of extraordinary tribunals or special courts.
- 3) **Predominance of a Legal Spirit-** The right to personal liberty, freedom from arbitrary detention, and other rights are products of English judicial decisions, according to the rule of law's third premise. Additionally, the English Constitution is a product of common law, and judicial rulings establish individual rights. The courts are the guarantors of the liberty.

A.V. Dicey's concept on Rule of Law has various merits as well as demerits. The merits of the concept can be summarized into the following points:

- A.V. Dicey's theory contributed to the establishment of administrative authority's power limits.
- Administrative law has developed and received widespread attention in large part thanks to Dicey's Rule of Law thesis.
- For the evaluation of administrative action, the theory serves as a scale.

A.V. Dicey's concept had the following demerits:

- In that time period, Dicey's thesis of the Rule of Law was not entirely recognized.
- Through his idea, Dicey was unable to discern between arbitrary and discretionary power.
- Dicey solely concerned with individual rights, ignoring administrative authority.

BASIC PRINCIPLES ON RULE OF LAW

There are certain basic principles on Rule of Law:

- 1) Law is supreme, above everything and everyone. Nobody is above law.
- 2) All things should be done according to law and not according to whims and fancies.
- 3) No person should be made to suffer except for a distinct breach of law.
- 4) Rule of law is based on the absence of arbitrary power.
- 5) Equality before law and Equal Protection of Law.
- 6) Discretionary powers should be exercised within reasonable limits set by law.
- 7) Adequate safeguard against executive abuse of powers.
- 8) Independent and Impartial Judiciary.
- 9) Fair and Just Procedure.
- 10) Speedy Trial.

RULE OF LAW IN THE U.S. CONSTITUTION

The phrase "A government of laws, not of persons" was how mediaeval England expressed the idea of the rule of law, which America inherited. The "Principle of Constitutional Supremacy" was adopted by the federal constitution of 1787, which altered the idea of constitutional government. The American Constitution's Article VI states that the "Constitution should be the supreme law of the land." The American Constitution and the right to judicial review are extensions of the rule of law, as may be seen from the well-known

case of Marbury v. Madison¹. In this instance, Justice Marshall ruled that a congressional act that was in violation of the Constitution was not to be treated as a law. Federalism, separation of powers, and the rule of law are the three main tenets of the American Constitution. They also serve as the foundation for liberty, equality, justice, and order, which is why they are known to be the "heart" of the American Constitution.

The American Constitution is based primarily on three fundamental ideas.

- 1) According to the American Constitution, the government must be politically accountable to both the state and the people it represents.
- 2) The Preamble to the United States Constitution states that the Constitution was created by the people, not by the government, and that the legitimate expectation is that which originates with and is governed by the people.
- 3) The American Constitution, which states that it is the highest law of the land, is adverse to political supremacy and the equating of all laws with the legislature.

RULE OF LAW UNDER THE INDIAN CONSTITUTION

The development of Indian democracy has been significantly influenced by the Rule of Law notion. When the United States Constitution was being drafted, some provisions from the USA, some from the UK, and some from England were adopted. The Rule of Law is a notion that our founding fathers acquired from England, and the Indian Constitution includes many of its provisions. The Constitution is regarded as supreme in India, and no one is thought to be above it. The principles of the rule of law are spelled forth in Part III of the Indian Constitution's Preamble. The Parliament, the Executive Branch, and the Judicial Branch are subordinate to the Indian Constitution. Any law passed by the Central Government or a State Government must be followed in line with the Constitution of India; however, if proven to be in violation, the law would be ruled invalid. The Supreme Court has the authority to grant writs, such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari, in accordance with Article 32 of the Constitution. In order to protect the Rule of Law and stop any supra vires laws, the Supreme Court also has the authority to conduct judicial reviews.

¹ 5 US (1 Cranch) 137 (1803)

LANDMARK CASES WITH RESPECT TO THE RULE OF LAW

- 1) In the famous case of Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr², the court propounded the principle of basic structure and held that any part of the Constitution can be amended without modifying the basic structure of it.
- 2) In the case of State of Bihar v Sonawati Kumari³, the court held that as per the concept of 'Rule of Law', all the authorities operating within the State including executive government is bound to obey the rules.
- 3) In the case of Indira Nehru Gandhi v Raj Narain⁴, the court decided that the 'Rule of Law' is also a part of the basic structure of the Constitution and hence, it cannot be amended.
- 4) In the case of Som Raj v State of Haryana⁵, the three bench judge of Supreme Court comprising of Justice K Puttaswamy, Justice Raghunath Mishra and Justice M.M Punchhi, held that the absence of arbitrary power is the absolute aim of the principle of rule of law upon which directly the whole Constitution is dependent.
- 5) In the case of Bachan Singh v State of Punjab⁶, the five bench judges comprising 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 from arbitrary action and if any action is done with arbitrary power then it will be considered as the denial of Rule of Law. This case is also known as "Death Penalty Case".
- 6) In the case of ADM Jabalpur v Shivkant Shukla⁷, popularly known as the Habeas Corpus Case, is one of the most important cases of rule of law. In this case a question rose before the court whether Rule of Law in India is apart from Article 21 of the Indian Constitution. Thus, the five judge bench comprising of Justice A.N Ray, Justice Hans Raj Khanna, Justice M Hameedullah, Justice Y.V Chandrachud and Justice P.N Bhagwati held that there is no rule apart from Article 21 and there can never be a separate rule of law.

² (1973) 4 SCC 225

³ 1961 AIR 221

⁴ 1975 AIR 865

⁵ 1990 AIR 1176

⁶ AIR 1980 SC 898

⁷ 1976 AIR 1207

- 7) The Supreme Court extended the scope of Rule of Law in the case of Veena Seth v State of Bihar⁸, where the court stated that Rule of Law extends to the poor and the downtrodden, ignorant and the illiterate, who constitute the majority of humanity in India. The court ruled that the Rule of Law does not exist merely for those who have the means to fight for their rights and often do so for the perpetuation of the status quo which protects and preserves their dominance and permits them to exploit a large section of the community.
- 8) In the case of Union of India v Raghubir Singh⁹, the court held that the principle of 'Rule of Law' is a considerable degree which governs the lives of the people and regulates the functions of the state from the decision of the superior courts.
- 9) In the case of Chief Settlement Commissioner Punjab v Om Prakash & Ors¹⁰, the Supreme Court observed that in the present scenario, the authority of the law courts is to test the administrative actions by the standard of legality.
- 10) The Supreme Court in the case of S.G. Jaisinghani v Union of India and Others¹¹ characterized the prerequisites of rule of law in a very lucid manner. Here the court observed that the Rule of Law means that decisions should be made by the application of known principles and such decision should be predictable and the citizen should know where he is. But if a decision is made without referring to any principle then it is unpredictable and such decision is the antithesis of a decision taken in accordance with the Rule of Law.
- 11) In the case of Supreme Court Advocates on Record Association v Union of India¹², also known as the "Second Judges Case", the Supreme Court held that the absence of arbitrariness is one of the important concepts of rule of law.
- 12) The Constitution Bench of the court in the case of Secretary, State of Karnataka and Ors v Umadevi and Ors¹³, stated that "Thus, 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 be disabled from passing an order maintaining and infringement of article 14 in requesting the ignoring

⁸ AIR 1983 SC 339

⁹ 1989 AIR 1933

¹⁰ 1969 AIR 33

¹¹ 1967 AIR 1427

¹² AIR 1994 SC 268

¹³ AIR 2006 SC 1806

of the need to agree to the necessity of article 14 read with article 16 of the constitution”.

EXCEPTIONS TO THE RULE OF LAW

In addition to basic characteristics, the Rule of Law has some exclusions, including:

- 1) The President and Governors are granted some protection under Articles 361, 361 (2), 361 (3), and 361 (4) of the Indian Constitution.
- 2) Protection from foreign diplomats.
- 3) Judges of the Supreme Court and High Courts enjoy immunity, and Article 121 of the Indian Constitution prohibits debate of their behaviour in Parliament.
- 4) The National Security Act of 1980 (NSA) and the Maintenance of Internal Security Act (MISA) are two laws that govern the country.

RULE OF LAW IN MODERN SENSE

The Dicey's concept of the Rule of Law is not entirely embraced in the current situation. The modern definition of the Rule of Law is fairly broad, which creates a standard for all governments to strive for. The International Commission of Jurists created the Delhi Declaration in 1959, sometimes known as the modern concept of the rule of law, which was later reaffirmed in Lagos in 1961. In a free society, the functions of the government "should be conducted in such a way that the dignity of a man as an individual is protected," according to the Modern Concept.

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 were the four working committees that made up the International Commission of Jurists. According to the Committee on Individual Liberty and Rule of Law, the State should not enact discriminatory legislation, interfere with people's right to practice their religion, or impose excessive restrictions on their freedom. According to the Committee on Government and Rule of Law, "Rule of Law" includes both effective governments that can uphold law and order and proper safeguards against the misuse of power. According to the Committee on Criminal Administration and Rule of Law, "Rule of Law" refers to the following: Presumption of Innocence, Legal Aid,

Public Trials, and Fair Hearings. Last but not least, according to the Committee on Judicial Process and Rule of Law, "Rule of Law" refers to an independent judiciary, independent legal profession, and a standard of professional ethics.

Federalist Kim Davis claims that there are seven different categories of modern law, including law and order, the natural law principle, fixed rules and regulations that do away with the notion of discretion, due and fair process of law, the preference of judges and courts of law over executive authority and administrative tribunals, and judicial review of administrative action.

Thus, the rule of law in the modern sense ensures that political interest is encouraged and that criticism of the government is not only allowed but also rewarded.

CONCLUSION

Although the concept of the rule of law was imperfect, it did take control of administrative authorities and restrained them with its measures, which is why many nations embraced it as the guardian of the Constitution. It is the most effective strategy for establishing legal supremacy. The court has even made an effort to connect the idea of rule of law and human rights. Since the primary function of administrative law is to close the gap between power and liberty, David's modern notion offers a broad concept as well as the ability for the government to utilise it gracefully.

As a result, the government establishes laws and regulations in accordance with the Rule of Law that respect each person's dignity. In light of this, it may be said that "true freedom requires the rule of law and justice as well as a legal framework in which the rights of some are not ensured by the denial of rights to others."

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