

SUPREMACY OF LAW IS AN INTENT AND RULE OF LAW IS THE WEAPON TO ATTAIN IT : A STUDY OF RULE OF LAW IN INDIA

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BEST CITATION – ADV. BHUMI TANDON, SUPREMACY OF LAW IS AN INTENT AND RULE OF LAW IS THE
WEAPON TO ATTAIN IT : A STUDY OF RULE OF LAW IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4
(4) OF 2024, PG. 500-505, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

Establishing rule of law has been an important goal of social development and social evolution in modernity. The rule of law is nearly generally bolstered at the national and universal level. Rule of law is also an integral part of democratic experimentations historically as well as contemporaneously. But what is the meaning of rule, law and rule of law? Do these mean the same thing in different cultures and histories? Is it possible to learn some new insights and modes of engagement vis-a-vis law and society from a cross-cultural meditation on rule of law. The study undertakes such an exploration. The phrase 'Rule of Law' treasures Supremacy of Law and it means that all are equal in the eyes of law. The Rule of Law is deep-rooted in history and accepted as a notion by large number of nations. It differs from the concept of Rule of Man. The common objective for the development in all the societies is to live with human dignity and which is possible with the practice of rule of law. Rule of law can be expressed by only by practices and these practices are possible by expressing such intentions in the Supreme law of the land. Acknowledgements of the Fundamental rights and the concept of justice of all kind in the Constitution is strong evidences of the adoption of the concept of Rule of Law. This paper proposes an exhaustive discussion on rule of law as a political perfect and contends that its pertinence to the universal level will depend on that perfect being seen as a implies instead of a conclusion, as serving a work instead of characterizing a status.

1. INTRODUCTION

"Genuine freedom requires the rule of law and justice and a legal framework in which the rights of some are not made sure about by the denial of rights to other people".

Although administrative law is a distinct area of law and a topic for academic study, in recent years it has fully emerged as a "responsible" field of study for lawyers and law students. Therefore, the English people utilized Dicey's Concept of Rule of Law as a weapon to attack the expansion of administrative law in order to acknowledge its independent existence. The "rule of law" is the ultimate expression of human civilization and culture

and the new universal language of moral philosophy.⁷⁷⁶

Consequently, the rule of law guarantees permanent validity of the Constitution and is a prerequisite for the functioning of democracy and good governance.

Thus, it is better to quote Lal Bahadur Shastri's observation that "the rule of law must be respected with the aim of maintaining and further strengthening our basic democratic system".⁷⁷⁷

⁷⁷⁶ "Rule of Law in the Constitution: A Complete Guide", available at : <https://www.loydlawcollege.edu.in/blog/rule-of-law-in-constitution.html#:~:text=Therefore%2C%20the%20English%20people%20utilized,universal%20language%20of%20moral%20philosophy.> (Last visited on April 13, 2024)

⁷⁷⁷ *Supra* note 1

1.2 MEANING AND CONCEPT OF RULE OF LAW

One of the foundational concepts of our modern democratic society is the "rule of law." Although the phrase is currently defined by the Constitution of India, it has been frequently used by Indian judges in decisions. A philosophy of national political ethics that maintains an appropriate balance between the rights and privileges of the individual and the state in order to build a free society balances the rule of law with law based on freedom, justice, equity and accountability.⁷⁷⁸

The term "la principe de legalite" (government based on legal principles) is the French equivalent of the rule of law, that's where the term originates Edward Coke, is credited with introducing the idea of the rule of law. Chief Justice Edward Coke of England, who held office during the reign of King James I, is considered to be the originator of this doctrine. Justice Coke while emphasizing the supremacy of law against the executive stated that the King should be under God and Law. The theory of Justice Coke was developed by Dicey in his classic work "The Law and the Constitution" which was published in the year 1885.⁷⁷⁹

According to him, the prince must be governed by God and law. Coke's three main remarks on the "rule of law" First and foremost, the rule of law is necessary to prevent the monarchy from exercising totalitarian control; it also guarantees that the government does not act arbitrarily; and last, it is necessary to safeguard people's rights.

1.2.1 Objects based on Edward coke's theory of "rule of law" are:

1. To prevent authoritarian dominance in governance
2. To reject the capricious power of the state

3. Uniform enforcement of laws and directives, regardless of level or position
4. To act in accordance with the law
5. Defense of persons and their rights
6. The law is king
7. Lawmakers have the authority to scrutinize administrative acts

Rule of law means that the law rules, which is based on the principles of freedom, equality, non-discrimination and accountability.

1.2.2 Features of Rule of Law

1. The rule of law is maintained while officials are not allowed to act arbitrarily when exercising their powers
2. Under the rule of law, no one can be fined or harassed unless he has broken the law
3. The rule of law means equal treatment under the law, without discrimination based on class
4. Under the rule of law, a person can only be punished if he is accused of committing a crime and that accusation is proved by an impartial tribunal such as a court.⁷⁸⁰

1.3 IMPORTANT FACTORS OF RULE OF LAW

- **Legal Equality:** The rule of law requires that all individuals, regardless of their status, are equal before the law. It means that everyone should be treated fairly and impartially by the legal system.
- **Transparency:** Transparency is a crucial aspect of the rule of law. It means that laws, regulations, and legal processes should be clear and publicly available. This ensures that

⁷⁷⁸ *Supra* note 1

⁷⁷⁹ "Rule of Law", available at : <https://byjus.com/free-ias-prep/rule-of-law-upsc-notes/> (Last visited on April 13, 2024)

⁷⁸⁰ "Rule of Law: A detailed Analysis" , available at : <https://www.ijcr.org/papers/IJCRT2010155.pdf> (Last visited on April 13, 2024)

individuals understand their rights and can hold the legal system accountable.

- **Accountability:** The rule of law holds individuals and institutions accountable for their actions. This includes government officials and entities. It means that those who violate the law should be held responsible.⁷⁸¹
- **Fair and Impartial Judiciary:** A fair and impartial judiciary is essential for the rule of law. It ensures that legal disputes are resolved in a just manner, without any bias or influence. Judges should be independent. They should make decisions based on the law and evidence presented before them.
- **Access to Justice:** The rule of law requires that everyone has access to justice. This means that individuals should have the right to seek legal remedies. They should have their cases heard in a timely manner and receive a fair judicial process.
- **Respect for Human Rights:** The rule of law goes hand in hand with the protection of human rights. It requires that legal practices respect and uphold fundamental human rights. No one should be subjected to arbitrary arrests, torture, or other human rights abuses.
- **Consistency and Predictability:** The rule of law demands consistency and predictability in the application of laws. Laws should be applied uniformly to all individuals and situations. It should not have favouritism or arbitrary decision-making. This ensures that people can rely on the law and make informed

choices.

- **Separation of Powers:** The rule of law is closely connected to the principle of separation of powers. It means that the powers of government are divided among different branches. This separation prevents the concentration of power. It provides checks and balances within the system.⁷⁸²

1.4 DICEY'S RULE OF LAW

British lawyer and constitutional theorist Albert Wayne Dicey introduced the concept of the rule of law in his 1885 book "The Law of the Constitution".

Dicey emphasized the difference between administrative justice and the rule of law. He emphasized that the rule of law applies equally to all persons, whether they are ordinary mayors or treasury secretaries, and therefore it is important that the same laws universally apply without discrimination, with the rule of law being paramount. Dicey in his work stated that the Rule of Law is fundamental to the English legal system and gives the following three meanings to the doctrine:

1. Supremacy of Law

- a. Rule of law according to Dicey means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power or wide discretionary power.
- b. It means the exclusion of the existence of arbitrariness on the part of the government.⁷⁸³
- c. This in essence means that no man can be arrested, punished or be lawfully made to suffer in body or in goods except by the due process of law and for breach of a law established in

⁷⁸¹ "Rule Of Law - History, Principles, Important Factors, Exceptions, Significance, And More!" available at : <https://testbook.com/ias-preparation/rule-of-law-upsc> (Last visited on April 13, 2024)

⁷⁸² *Supra* note 6

⁷⁸³ *Supra* note 4

the ordinary legal manner before the ordinary courts of the land.⁷⁸⁴

2. Equality before Law

- a. While explaining this aspect of the doctrine, Dicey stated that there must be equality before the law or equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts.
- b. Dicey believed that the exemption of civil servants from the jurisdiction of the ordinary courts of law and providing them with special tribunals was the negation of equality.
- c. He stated that any encroachments on the jurisdiction of the courts and any restriction on the subject's unimpeded access to them are bound to jeopardise his rights.

3. Judge-made Constitution

- a. Dicey observed that in many countries rights such as the right to personal liberty, freedom from arrest, freedom to hold public meetings, etc. are guaranteed by a written Constitution; in England, it is not so.
- b. In England, those rights are the result of judicial decisions in concrete cases that have actually arisen between the parties.
- c. Thus he emphasized the role of the courts of law as guarantors

of liberty and suggested that the rights would be secured more adequately if they were enforceable in the courts of law than by mere declaration of those rights in a document.⁷⁸⁵

1.4.1 MERITS OF DICEY'S RULE OF LAW

1. The theory developed by A.V. Dicey helped in making limits to the power of administrative authorities.
2. Dicey's theory of Rule of Law played a major role in growth and recognition of administrative law.
3. The theory acts as a scale for the test of administrative action.

1.4.2 DEMERITS OF DICEY'S RULE OF LAW

1. Dicey's theory of Rule of Law was not completely accepted during that era also.
2. Dicey, through his theory, failed to distinguish between discretionary and arbitrary power.
3. Dicey dealt with the right of individual only and ignored powers of administration.

1.5 RULE OF LAW AND INDIAN CONSTITUTION

The rule of law in India may be traced back to the Upanishads, which were eventually included by the drafters of the Constitution.⁷⁸⁶

- The declaration of the Indian state as a sovereign in the constitution restores the notion of the Rule of Law.
- The Constitution is the supreme law of the land, and anything that runs counter to it will be ruled unconstitutional by the courts.
- The preamble to the constitution offers the core principles and ideals important to people.
- The framers of the Constitution did not

⁷⁸⁴ "Rule Of Law - History, Principles, Important Factors, Exceptions, Significance, And More!" available at : <https://testbook.com/ias-preparation/rule-of-law-upsc> (Last visited on April 13, 2024)

⁷⁸⁵ *Supra* note 9
⁷⁸⁶ Rule of law, safety and the judicial system available at : <https://www.pewresearch.org/global/2024/03/13/rule-of-law-safety-and-the-judicial-system/> (Last visited on April 13, 2024)

want to risk being ruled by a dictator. Therefore, they thoroughly embedded the Rule of Law in the constitution, making it the Supreme Law. The Indian government is organized into three branches: the Legislature, the Administrative, and the Judiciary of India.⁷⁸⁷

- This establishes a separation of powers among the three organs, with one organ not interfering with the operation of the other.⁷⁸⁸
- Part III of the constitution, i.e., the fundamental rights, satisfies all of Dicey's prerequisites for a country to be governed by the Rule of Law.
- The idea of equality before the law and equal protection under the law, as described by Dicey, is enshrined in Article 14 of the Indian constitution. Article 21 of the constitution guarantees the fundamental right to life and personal liberty.
- Article 19 guarantees the people of India the right to free speech and expression. The constitutional idea of double jeopardy and self-incrimination has also been appropriately enshrined. Articles 14, 19, and 21 are so fundamental and crucial to the constitution that they are commonly referred to as the Golden Triangle Articles.⁷⁸⁹

1.5.1 Exceptions Of The Rule Of Law

The rule of law demands both rulers and ruled to be accountable to the law, which is of indisputable significance in modern democratic countries. It may be claimed that the rule of law is not an accurate representation of any condition of events but rather a complicated notion that becomes even more complex when put into action.

- Ambassadors and diplomats cannot be sued or prosecuted in the nations where they serve since they are above the law of the host country; instead, they can be deported.
- There are certain people who are immune to the country's laws. The President and Vice President, Governors, members of the Parliament (National Assembly), and other high-ranking government officials are among those who fall within this category.
- The expanding domain of judges and attorneys, as well as their encroachment on areas formerly reserved for politicians and voters, leads to the loss of much that is politically and democratically valued.
- When there are catastrophic situations that force the government to proclaim a state of emergency or when there is war, the government normally exercises some discretionary powers.

1.6 RULE OF LAW AND INDIAN JUDICIARY

In the famous case of *Kesavananda Bharati v. State of Kerala*⁷⁹⁰, 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. In *Indira Nehru Gandhi v Raj Narain*⁷⁹¹, 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.

In *State of Bihar v Sonawati Kumari*⁷⁹², 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. Whereas in *Bachan Singh v State of Punjab*⁷⁹³, the five bench

⁷⁸⁷ *Ibid*

⁷⁸⁸ *Supra* note 11

⁷⁸⁹ *Supra* note 9

⁷⁹⁰ AIR 1973 SC 1461

⁷⁹¹ AIR 1975 SCC 865

⁷⁹² AIR 1961 SC 221

⁷⁹³ AIR 1982 3 SCC 24

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”.

In another case of **Som Raj v State of Haryana**⁷⁹⁴, 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. The Supreme Court extended the scope of Rule of Law in the case of **Veena Seth v State of Bihar**⁷⁹⁵, 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. In landmark judgement **of Supreme Court Advocates on Record Association v Union of India**⁷⁹⁶, 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.

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 of the need to agree to the necessity of article 14

read with article 16 of the constitution”.⁷⁹⁷

1.7 CONCLUSION

The concept of the rule of law, originally developed by A.V. Dicey was later included in the Constitution of India, plays an important role in the formation of democratic states. The rule of law is a fundamental principle that emphasizes the importance of equality before the law, prohibition of conduct, protection of individual rights and serves as a safeguard against abuse of power, ensuring that no one violates the law with position or regardless of position. In India, the Constitution has enshrined the rule of law and its principles have been mentioned in the Preamble and in various articles to ensure equality, justice and freedom for all citizens. Judiciary play an important role in maintaining the rule of law in by judicial review powers⁷⁹⁸. The Rule of Law governs the unfettered exercise of power by the supreme law-making authority of the territory, whereas the Rule by Law is established by the highest law-making authority of the land. Despite the fact that the rule of law was largely derived from British jurisprudence, its presence in Indian politics is undeniable. The rule was taken into consideration by the authors of the constitution, who ensured that it was appropriately incorporated into the country's framework. There is also a need to take the necessary steps to establish a timely justice delivery system in order to fully implement the Rule of Law.

⁷⁹⁴ AIR 1990 SCR (1) 535

⁷⁹⁵ AIR 1983 SC 339

⁷⁹⁶ AIR 1994 SC 268

⁷⁹⁷ “ Rule of Law : A detailed analysis”, available at : <https://www.ijcr.org/papers/IJCRT2010155.pdf> (Last visited on April 13, 2024)

⁷⁹⁸ “Rule of Law in the Constitution: A Complete Guide” , available at : <https://www.loydlawcollege.edu.in/blog/rule-of-law-in-constitution.html#:~:text=Therefore%2C%20the%20English%20people%20utilized,universal%20language%20of%20moral%20philosophy> (Last visited on April 13, 2024)