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Topic- Concept of Rule of Law

# Rule of Law

“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.”-Caroline Kennedy

In order to understand the concept of rule of law, it is to be comprehended that the state is governed not by the ruler or the nominated representatives of the people but by the law. The term ‘Rule of Law’ is nowhere defined in the Indian Constitution but this term is often used by the Indian judiciary in their judgments. Rule of law has been declared by the Supreme Court as one of the basic features of the Constitution so it cannot be amended even by the constitutional amendment. Rule of law is seen as an integral part of good governance.[1]

As per rule of law, it is required that the people should be governed by the accepted rules rather than the decisions that are arbitrarily taken by the rulers. For this, it is essential to keep in mind that the rules that are made should be general and abstract, known and certain and it should apply equally to all individuals.

Legal limitation on government is the essential attribute of constitutionalism. Rulers are not above law under the concept of constitutionalism, government power is divided with laws enacted by one body and administered by another and for that an independent judiciary exists to ensure laws.[2]

## **Concept of Rule of Law**

The originator of the concept of rule of law was Sir Edward Coke the Chief Justice in James I Reign.

The concept of rule of law is of old origin. Greek philosophers such as Plato and Aristotle discussed the concept of rule of law around 350 BC. Plato wrote “Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state”. Aristotle wrote “law should govern and those who are in power should be servant of the laws.”

The derivation of the phrase ‘Rule of Law’ is from the French phrase ‘la principle de legalite’ which implies

principle of legality. By this phrase it refers to a government based on principles of law and not of men. One of the basic principles of Constitution is rule of law and this concept is up to standard in both India and America Constitution.

The doctrine of rule of law is the entire basis of Administrative law. As discussed by Aristotle, the concept of rule of law is grounded in the ideas of justice, fairness and inclusiveness. Today, an intricate chain of fundamental ideas is incorporated in rule of law which further encompasses equality before law, equal treatment before the law for government, independence of judiciary, consistency, transparency and accountability in administrative law.[3]

## **Meaning of Rule of Law**

To simply understand the meaning of rule of law, it means that no man is above law and also that every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.

The term 'rule of law' is originated from England and India has taken this concept. The concept of rule of law further requires that no person should be subjected to harsh or arbitrary treatment. The word 'law' in rule of law means that whether he is a man or a society, he must not be governed by a man or ruler but by law. In other words, as per Article 13 of the Indian Constitution rule of law means law of land.

According to Black's Law Dictionary: "Rule of Law" means legal principles of day to day application, approved by the governing bodies or authorities and expressed in the form of logical proposition.

According to Oxford Advance Learner's Dictionary: "Rule of Law" means the situation in which all the citizens as well as the state are ruled by the law.

## **Postulates of Rule of Law**

In 1885, Professor A.V Dicey developed this concept of Coke and propounded three principles or postulates of the rule of law in his classic book 'Law and the Constitution.' According to Professor A.V Dicey, for achieving supremacy of law three principles of

postulates must be followed which are as follows:

- Supremacy of law,
- Equality before law and
- Predominance of Legal Spirit

## **1. Supremacy of law**

As per the first postulate, rule of law refers to the lacking of arbitrariness or wide discretionary power. In order to understand it simply, every man should be governed by law.

According to Dicey, English men were ruled by the law and the law alone and also where there is room for arbitrariness and that in a republic no less than under a monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects. There must be absence of wide discretionary powers on the rulers so that they cannot make their own laws but must be governed according to the established laws.

## **2. Equality before law**

According to the second principle of Dicey, equality before law and equal subjection of all classes to the ordinary law of land to be administered by the ordinary law courts and this principle emphasizes everyone which included government as well irrespective of their position or rank. But such element is going through the phase of criticisms and is misguided. As stated by Dicey, there must be equality before law or equal subjection of all classes to the ordinary law of land. French legal system of Droit Administrative was also criticized by him as there were separate tribunals for deciding the cases of state officials and citizens separately.

## **3. Predominance of Legal Spirit**

According to the third principle of Dicey, general principles of the Indian Constitution are the result of the decisions of the Indian judiciary which determine to file rights of private persons in particular cases. According to him, citizens are being guaranteed the

certain rights such as right to personal liberty and freedom from arrest by many constitutions of the states (countries). Only when such rights are properly enforceable in the courts of law, those rights can be made available to the citizens. Rule of law as established by Dicey requires that every action of the administration must be backed and done in accordance with law. In modern age, the concept of rule of law oppose the practice of conferring discretionary powers upon the government and also ensures that every man is bound by the ordinary laws of the land as well as signifies no deprivation of his rights and liberties by an administrative action.[4]

### **Rule of Law under Indian Constitution**

In order to develop Indian democracy, rule of law has played a great role. At the time of framing of Constitution, the framers had two options i.e. USA and England. Some of the provisions were adopted from USA and some of them were adopted from England. Rule of law was adopted from England by our constitutional fathers and many provisions were incorporated in the Indian Constitution. Indian Constitution is considered to be supreme and no one is



above Indian Constitution. Rule of law is also given impliedly in the preamble and such concept is enshrined in Part III of the Indian Constitution.

In case of violation of such rights, one can approach Supreme Court or High Court under Article 32 and 226 of the Indian Constitution. The Constitution of India is enriched with the principles of law i.e. justice, equality and liberty. Any law made by the Central government or State government must be complied in accordance with the Constitution of India. If any law made by the legislature contravenes with the provisions of the Constitution then such law will be declared void.

Under Article 32 of the Indian Constitution, the Supreme Court has the power to issue writs in the nature of Habeas Corpus, mandamus, prohibition, quo warranto, and certiorari. The power of judicial review is also given to Supreme Court in order to prevent any ultra vires law so as to preserve 'Rule of law'.

## **Role of Indian Judiciary**

There are a plethora of cases where the concept of rule of law was discussed and came into light. Some of the cases are as follows:

**ADM Jabalpur v. Shivkant Shukla [5]**

This case is also known as “Habeas Corpus case”. It is one of the most important case when comes to rule of law. The question that was raised before the hon’ble court was that whether there was any rule of law in India apart from Article 21 of the Indian Constitution. It was in context relating to the proclamation of emergency where the enforcement of Articles 14, 21 and 22 were suspended.

**Som Raj v. State of Haryana [6]**

In this case it was held that the absence of arbitrary power is the postulate of rule of law upon which the whole constitutional edifice is dependent.

**Union of India v. Raghubir Singh [7]**

In this case it was held by the court that a considerable degree that governs the lives of the people and regulates the State function flows from the decision of the superior courts.

Chief Settlement Commissioner, Punjab v. Om Prakash[8]

In this case, Supreme Court observed “In our constitutional system, the central and most characteristic feature is the concept of rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the matter into notice.”

Keshvananda Bharti v. State of Kerala [9]

In this case, the Supreme Court enunciated the concept of rule of law as one of the most important aspects of doctrine of basic structure.

Maneka Gandhi v. Union of India [10]

In this case Supreme Court declared that Article 14 strikes against arbitrariness.

Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil [11]

In this case, the ratio laid down was “If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant,

it is the duty of the courts to appreciate the evidence and construe the law in a manner which would subserve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates.”

Secretary, State of Karnataka and Ors. v. Umadevi [12]  
A Constitution Bench of this Court has laid down the law in the following terms: “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 upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.”

## **Conclusion**

From the above mentioned discussion, it can be concluded that Supremacy of law is the Aim, Rule of Law is the best tool to achieve the Aim. Some of the efforts are also taken by the court where the Rule of Law is linked with Human Rights of the people. Strategy is being evolved by the court by which government can be forced not only to submit to law but also to create conditions where capacities can be developed by the people so as to enjoy their rights in proper and meaningful manner.

In the Indian society, the rule of law has not achieved the intended results. A few examples where rule of law was upheld by our judiciary and ensured justice can be clearly seen in the creation of new avenues seeking remedies for human rights violations by filing of PIL pleas.

The originator of this concept i.e. Sir Edward Coke, the Chief Justice of King James I's reign maintained that the King should be under God and the law and also he established the supremacy of law against the executive

and that there is nothing higher than law.