

COMPARATIVE STUDY OF RULE OF LAW IN INDIA AND UK

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Abstract

“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”¹.

Dicey used the phrase 'rule of law' for the first time in 1875² to describe a salient feature of the Constitution. He borrowed the concept of 'rule of law' from 'W.E. Hearn'³. Rule of Law embodies the doctrine of supremacy of law. It is prime and essential need of the very ordered and meticulous society. If the government functions bestowing to the Doctrine of rule of law then liberty of the individual and their right can be safeguarded in better manner. The premise embedded in the rule of law that executives must operate in compliance with the law, and not by its own diktat or fiat, is nonetheless a paramount principle of the common law system. All the powers granted to the executives come from the fundamental principles and those principles doesn't postulate any inherent powers to the executives which flow and ooze out of the law. This principle plays such a vital role in all democratic countries.

Key words: Rule of Law, Principle, Liberty, Equality, Right

I INTRODUCTION

“The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law”⁴

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¹ Caroline Kennedy Quotes, , BRAINYQUOTE , https://www.brainyquote.com/quotes/caroline_kennedy_443266 (last visited Feb 29, 2020).

² A. V. Dicey, Stubbs' Constitutional History of Great Britain, Nation 20 (4th March 1875); 154, also see A. V. Dicey, The Rule of Law, (1980), p. 67. (last visited Feb 29, 2020)

³ A. V. Dicey, op. cit, p. 67.

⁴ Dwight D. Eisenhower Quotes, , Brainy Quote , https://www.brainyquote.com/quotes/dwight_d_eisenhower_112052 (last visited Feb 29, 2020).

- 'Dwight D. Eisenhower'

An idea of "Rule of Law" denotes supremacy of law. It is not a new concept. Rule of Law is deduced from French Phrase "La Principe de Legality"⁵ that is 'Principal of lawfulness and legality'. A rule of law is pillar of regime which claims that the law is paramount above all as else and that all individuals are protected by law. It is the Supervisory doctrine in which all humans' authorities or agencies are obliged by law. Around 350 B.C, Plato and Aristotle said that " law guide the governments and it must function under the direction of law. "In the 13th century, Bracton who is acting judge in the era of Herry III talked about the concept of law without using the expression rule of law. According to him whatever says by the king is law, and it is supreme"⁶ . "Edward Coke said that the king works under the law and God". Different legal scholars label expression of Rule of law in various term. According to Mediaevalists - it is " Law of God". According to Hobbes, Locke, Rousseau - "Social law", " Natural Law", It is called rule of law at present⁷. It is a complex concept and not capable of any precise definition. It basically includes justice, fairness, equity, harmonization of conflicting interest and try to locate the essence of the law.

II RULE OF LAW IN UNITED KINGDOM

The idea of rule of law has emerged and developed through prolong process. Even in UK, it has emerged to obstruct the unlimited and unrestricted power. In today's civilized society rule of law needs long struggle between king and people and the struggle for superiority between parliament and king⁸

⁵ Origin And Concept Of Rule Of Law, , <https://www.lawteacher.net/free-law-essays/administrative-law/origin-and-concept-of-rule-of-law-administrative-law-essay.php> (last visited Feb 29, 2020).

⁶ Dwight D. Eisenhower Quotes, *supra* note 1

⁷ kudrat, Rule of Law in India, Academike (2015), <https://www.lawctopus.com/academike/rule-of-law-in-india-2/> (last visited Feb 29, 2020).

⁸ Varsha Rajora, Comparative Analysis of Rule of Law in UK & India (2010), <https://papers.ssrn.com/abstract=1533265> (last visited Feb 29, 2020).

Principles of Rule of Law was developed in the year 1215 under the rule of King John. As when "King John has accepted the excellent document known as Magna Carta"⁹. This is one of the most significant written documents which made the power of king limited and for the first time the king was forced to follow the law. It was witnessed that even the power of crown was not absolute and a king is not above the law and he must follow law. It reaffirms the supremacy of law.

Role of chief justice Sir Edward Coke

He announced that the crown could not as a judge by acting on his own reason to conclude the decision, but should be tried by judges who implement the to the facts. Coke further asserted that "Crown should not be under man, but under the law and God (quod rex et lege)"¹⁰.

Dicey's thesis about Rule of law

"A.V. Dicey in his work the law of constitution observes and outlines three cardinal principle which emerge out of rule of law in reference with UK"¹¹.

1. **Supremacy of Law** - There should be no absolute discretionary power to be enjoyed by Government Officials. If the discretionary power will be given than it would lead to arbitrariness. And restricted can be imposed on the arbitrary power of the authorities according to the procedure of law. If is necessary for the proper functioning of law.
2. **Equality before Law** - There should be no discretionary Power to be given in the hands of Government Officials and justice must be performed according to the established principles. If the discretionary power will be given than it would lead to arbitrariness.

⁹ Varsha Rajora, Comparative Analysis of Rule of Law in UK & India, SSRN Electronic Journal (2010).

¹⁰ Comparative Analysis of Rule of Law in India and UK, , <http://www.legalserviceindia.com/article/l457-Rule-of-Law-in-India-&-UK.html> (last visited Feb 29, 2020).

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3. **Predominance of Legal Spirit** - Essence of the supreme law must flourish a true meaning and wisdom of the legal norms is just and fair. And where there is an infringement of legal principle judiciary is the key organ to regulate and guarantee right to citizens.

In UK, the rule of law serves in two unique ways:

".... that law should be translated by courts in such a way that they offer an appropriate standard to the rule of law. This is the manner through which the standard of law capacities, however assessments switch on what the idea known as rule of law implies"¹².

Lord Nuberger, President of UK Supreme Court in his speech comment on Rule of law. According to him the expression denotes the relationship between authority and people or between citizen and citizen. This relationship must be governed by law. He further mentions that rule of law requires that:

- Law must be accessible
- Law must implement an order efficiently
- Regulate the relationship in just and fair manner

III APPLICABILITY OF THE STANDARD OF RULE OF LAW IN INDIAN CONSTITUTION

A phenomenon of standard legislation forms a basis to the contemporary democratic culture. For the proper administration of polity, it is necessary that there should be a law as it is helpful for better administration and effective implementation of policies. One of a chief function of constructing law is to avoid conflicts and maintain peace and public order in community and formulate a harmony surrounding to welfare of individual in achieving all these objective Rule of law play a vital role.

India has accepted the Common law equity conveyance agreement that attains its sources in British Jurisprudence whose instruments is rule of law and justice. However, as Dicey mentioned that

¹² The Rule of Law Lecture, , UKEssays.com , <https://www.lawteacher.net/courses/public-law/the-rule-of-law/lecture.php> (last visited Feb 29, 2020).

Englishmen do not require regulatory legislation or any variety of compound law to maintain the legislature in mind, the rule of law and the phenomenon of natural law, but there is official and written law to ensure consistency.

"...As India guarantees to citizens of India through the preamble that the Indian to be a " Sovereign Socialist Secular Democratic Republic and to secure all its citizens: Justice, social , economic and political ; Liberty of thought , expression , belief, faith and worship ; Equality of status and of opportunity; and to promote among them all ; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation"'"¹³.

Indian regimes state that the polity of its structure will be operated by the democratic principles, which implies that it will be a sovereign power in the land and different bodies such as the legislature, executive and judiciary shall obtain autonomy from the divine law of the land. Any law made by law making authority required to be in uniformity with Article 13 as mentioned in part III of the constitution otherwise that will be declared to be void as that law infringes the basic norms of the constitution. As Article 13 provides that "Any law which is inconsistent with Part III whether that law is Pre constitutional law and Post constitutional law is void upto the level of inconsistency"¹⁴.

***Indira Gandhi Nehru v. Raj Naraian*¹⁵**

In this case, by virtue of the 39th amendment of 1975¹⁶, Article 329A was inserted which refers to the exemption from review by judiciary of the referendum of the Prime Minister's. Apex court ruled that Article 329A¹⁷ was unconstitutional because it removed the fundamental constitutional feature.

¹³ Indian Constitution, Preamble, p. 1, coi_part_full.pdf, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf (last visited Feb 29, 2020).

¹⁴ Indian Constitution, Article 13, p. 6, coi_part_full.pdf, https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf (last visited Feb 29, 2020).

¹⁵ (1975) 2 SCC 159 (India)

¹⁶ The Constitution (Thirty-ninth Amendment) Act, 1975 | National Portal of India, , <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-thirty-ninth-amendment-act-1975> (last visited Feb 29, 2020).

¹⁷ *Id.*

Dalbir Singh v. State of Punjab¹⁸

In this case, court ruled that if any law created after the beginning of the constitution violates the fundamental right which constitutes the basic framework of the constitution, it would be declared unconstitutional up to the point of inconsistency.

India is a modern nation state. The constitution confers the spirit of good governance and welfare of the people so it guarantees fundamental rights to the Indian citizens so that they can significantly contribute to live their life in harmony so long as they comply with statutes. These basic civil and political freedom start taking priority over the ordinary law of the land.

In resemblance with Article 21 specially enumerates about “No person shall be deprived of his life or personal liberty except according to the procedure established by law”¹⁹. So, Article 21 impart a further examination against unjustified action. Correspondingly Article 14 enumerate Dicey's concept of Equality before law as the above article mention that " Equality before law states that there shall not be any refusal to any person equality before the law or the equal protection of the laws with in the territory of India prohibition of discrimination on the grounds of religion, race , caste , sex or place of birth”²⁰.

*“.....India has inserted not only equality before law but also American concept of equal protection of law as the former concept basically focus on that everyone should be treated equally but latter concept has more positive approaches which inculcate that equal should be treated in equal and unequal should be treated alike”*²¹.

Succeeding articles also mention about fundamental liberties such as freedom of religion, abolition of untouchability, freedom against exploitation. The Constitution further provide protection against the infringement of fundamental rights as one the principle aim of law is to harmonized between

¹⁸ (1982)16 SC 1413

¹⁹ *Id.* p. 10

²⁰ *Id.* p. 6

²¹ Singh. V.N. Shukla's Constitution of India. Lucknow: Eastern Book Co, 1990.

conflicting interest and to protect people interest and guarantee basic human freedom against misuse or arbitrary use of power so that a balance can be created in society.

IV INDIAN JUDICIARY AND IDEA OF RULE OF LAW

Work of rule and regulation is to mandate social security as an environment of constant fear is prevailing which try to make changes to the bedrock of the idea of justice , diversity, tolerance so here law and judiciary plays an essential role in achieving the standard of civilized society by replacing arbitrary regulation and discretionary power of government. As in Indian there is a distribution of power between different organs of the government so that other organ i.e. legislature and executive have no domination over the judiciary as the paramount motive of Rule of Law is to promote basic fundamental freedom as enshrined in the constitution which in turn identical to the universal declaration of human right. Like in India, there are countless categories of individuals who are belong to weaker and marginalized section, such as deprived females, schedule tribes, etc. Right in an effective and efficient can be provided when judiciary perform its role in an impressive manner. The Courts in India through review, litigation of social interest and precedent have made a notable commitment to defending liberty and avoiding the violation of human right thereby ensuring rule of law and civil right of citizen do not remain in law books incorporated in practice also. The apex court has demonstrated, rule of law many a time in judgment to popularize constitutional the idealistic value and principle.

In "*Golak Nath Case*"²² where Supreme overruled its earlier pronouncement of "*Shankari Prasad v. Union of India*"²³ and "*Sajjan Singh v. State Of Rajasthan*"²⁴ and ruled that parliament not having authority to modify fundamental rights as explained in the constitution so as to suppress or curtail basic freedom which are basic civil liberties which are given to citizens. Most prominent case when it comes to rule of law is "ADM Jabalpur"²⁵ in this case the question before the Supreme court was 'whether there was any Rule of Law in India apart from Article 21'.²⁶ This was in connection of suspension of fundamental right during with period of emergency but Justice H.R. Khanna in his

²² I. C. Golaknath v. State of Punjab 1967 AIR 1643 (1967)

²³ 1951 AIR 458 (1951)

²⁴ 1965 SCR (1) (933) (1965)

²⁵ (1976) 2 SCC 521

²⁶ *Id.*

dissented opinion observed that " Rule of law is the antithesis of arbitrariness Rule of law now the accepted norm of civilised society as it seek to maintain a balance between opposing notion of individual liberty and public order and in every state the problem arises of reconciling human rights with the requirements of public interest". Such harmonizing can only be attained by the existence of independent courts which can hold balance between citizen and the state and compel government to conform with law"²⁷.

....." *Even in the absence of Article 21 in the constitution, the state has got no power to deprive a person of his life, liberty without the authority of law. Without such sanctity of life and liberty, the distinction between lawless society and one governed by laws would cease to have any meaning...."*

In "***Bachan Singh v. State of Punjab***"²⁸ - "Justice Bhagwati has stressed that Rule of Law eliminate arbitrariness and unreasonableness"²⁹. Court further mentioned that "to protect this there should be democratic set up where legislature should make law, but its power is not unrestricted and there should be judicial independence to secure its citizen from abuse of authority"³⁰.

In "***P. Sambhamurthy v. State of Andhra Pradesh***"³¹ - "The apex court declared that the provisions authorizing the executive to interfere with tribunal justice as unconstitutional characterising it as violation of the rule of law which is a basic and essential feature of the constitution"³² as referred in "Keshwananda Bharti case"³³.

In "***Yusuf khan alias Dilip Kumar v. Manohar Joshi***"³⁴ - "The Apex court formulates that it is the obligation upon state to defend law and constitution. It cannot give sanction to the activity which is against the heart and soul or which negates rule of law"³⁵.

²⁷ *Id.*

²⁸ 1980 CriLJ 636

²⁹ *Id.* p. 30

³⁰ *Id.* p. 34

³¹ 1987 SCR (1) 879

³² *Id.*

³³ (1973) 4 SCC (225)

³⁴ (2000) 2 SCC 696

³⁵ V.N. Shukla's Constitution of India (1990), *supra* note 18

In contemporary time value which emanate from rule of law

- Prohibits unlimited power of government
- Preserve and strengthen individual freedom.
- An independent judiciary
- Judicial review
- Free and fair election
- Independent human right organization
- Transparency and Accountability i.e. state should be responsive to people.

V CRITICAL ANALYSIS

1) As Dicey never accepted the administrative law so he pointed out that the people do not need any public law and also does not required as a form of compose law. According to him in UK, the basic idea on which the sanctity of law depend it would be sufficient to curtail the arbitrary use of power whereas in India there is not only Natural law phenomena but also formal and written law which acknowledge to provide justice to the people and restrict the arbitrary use of power.

2) As the judiciary is the principle organ to protect the vision and spirit of justice, equity, good conscious which is consider to be part and parcel of Rule of Law In UK , Judiciary protects the citizen from the arbitrary power by going through Precedents only whereas In India, The Judiciary provides Justice by going through Precedents as well as written law of the nation. For example, Supreme law of India that is Constitution of Indian.

3) As the Rule of Law talks about equality before law, In UK, this concept is strictly followed. In **“Wilkes Vs Wood”**³⁶ - where it was concluded that an action for harm suffered for trespass is maintained even the motion of trespass is taken by minister. Whereas as in India, Equality before law as well as Equal protection of law both applies as everyone cannot be put on similar footing as there is a diversity in India where certain protection given to weaker section.

³⁶ 1763 19 St tr 1153(UK)

4) In UK, Legislature is the sovereign authority to make so it becomes difficult to implement the spirit of rule of law as sometimes it may happen that law might lead to biasness whereas in India, Sovereignty lies in the Constitution and every law is emerged from it so there is less chance of biasness.

5) The Rule of Law does not cover the wide unrestricted authority by the government. As in modern period government most of the occasion use their discretionary power which is granted by parliament for performing its function and to provide security and a feeling of protection to the people. According to “**Ivor Jennings**, the arbitrary power might be increase during national emergencies. This was examined in the year 1914 when the English government was given extreme powers by the provisions of the domain of the regulation. In India also during the emergency time, President can suspend Fundamental Rights except Art. 20 and Art. 21”.

VI DIFFERENT APPROACHS TO RULE OF LAW

Functional Approach -: This approach focusses on how the law function in restricting government discretion which is beyond their powers and how the law serves to the need of the people³⁷.

Formal Approach - Fuller approach towards the goodness of law as it is agreed that the Eight Principles of Lon Fuller communicate the Rule of Law substance.

1. “Law must be general in nature
2. Law must also be widely promulgated
3. Law should be forth-coming in nature
4. Law must be lucid inn manner
5. Law must be non-contradictory
6. Law must not ask the impossible
7. Laws which are made for the welfare of the citizens should remain relatively constant

³⁷ Nahakul Subedi Rule of Law: Principles and PracticesRule of Law.pdf, , <http://dms.nasc.org.np/sites/default/files/documents/Rule%20of%20Law.pdf> (last visited Mar 1, 2020).

8. 'There should be congruence between what written statute declare and how officials enforce those statutes'³⁸.

Substantive Approach :- This strategy is less worried about formal rules and concentrated primarily on the result that is justice. As Dworkin in his research proposal mention that according to political view, judiciary is the predominant authority to decide the legal problem. Rule of law necessitates the intrinsic core or basic values.

VII CONCLUSION

From above mention comparative study of rule of law of both the countries it can be stated that the scenario in both the countries are drastically varies. Dicey's idea is one of the perfect cases to make an ideal and paradise state but which is quite impossible to follow it in rigid sense in today's time where there is so much disorientation in society and where autonomy of social-cultural and institutions are being targeted. Even our founding father of the supreme law i.e. constitution while drafting act integrate the ideas in the Constitution of India. Despite all the inconsistency the standard phenomena of rule of law is important for every country as its ultimate purpose is to restrict the arbitrariness and absoluteness of government and tried to balance between power and rights of authorities and citizens as "Rule of law is anti-thesis to arbitrariness". Here judiciary plays an important role to check on the discretionary power of the government and preserve and protect basic liberties of the people.

³⁸ Rule of Law in Indian Constitution (Autosaved) | Rule Of Law | Jurisprudence, , SCRIBD , <https://www.scribd.com/document/250451998/Rule-of-Law-in-Indian-Constitution-Autosaved> (last visited Mar 1, 2020).