

# Rule of Law: A Legal Landscape

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## Abstract

The present study portrays the origin, the expansion, the meaning and also the adaptation of the concept of "Rule of Law" in the Indian Legal System. It elucidates the different perspectives on the subject along with the various pronouncements of Indian Courts which enabled the expansion of this principle as blood within the Indian liberal democratic set-up.

## The History

The concept of rule of law is of old origin. It was long before when philosophers like Aristotle and Plato discussed it in around 350 BC.

Plato, when discussing rule of law, said, *"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"*. Likewise, Aristotle also recognised the concept of Rule of law by writing that *"law should govern, and those who are in power should be servants of the laws"*.

It is a known fact that the phrase has been derived from the French phrase *'la principe de legalite'*, i.e., the principle of legality. It thus refers to a government that is not based on principles of men, but of law. Rule of law is one of the basic principles of the English Constitution and the doctrine is accepted in the Constitution of U.S.A and India as well. In fact, the entire basis of Administrative Law is the doctrine of the rule of law.

The concept originated when Sir Edward Coke, the Chief Justice of King James I's reign in his high regards maintained that the King should be under God and the Law and he established the supremacy of the law against the executive and that there is nothing higher than law. The 'rule of law' can be best explained through the famous formulation of Lord Coke where the learned Law Lord made a comparison between *"the golden and streight metwand of law"* as

opposed to *"the incertain and crooked cord of discretion"*.

## Meaning & Features

A.V. Dicey, a British jurist and constitutional theorist, later developed the same concept in his book 'The Law of the Constitution' (1885). His writing on the British Constitution (which is unwritten) includes three distinct though associated ideas on Rule of Law:

- *Absence of discretionary powers and supremacy of Law*: viz. no man is above law. No man is punishable except for a distinct breach of law established in an ordinary legal manner before ordinary courts. The government cannot punish any one merely by its own fiat. Persons in authority do not enjoy wide, arbitrary or discretionary powers. Dicey asserted that wherever there is discretion there is room for arbitrariness.
- *Equality before Law*: Every man, whatever his rank or condition, is subject to the ordinary law and jurisdiction of the ordinary courts. No person should be made to suffer in body or deprived of his property except for a breach of law established in the ordinary legal manner before the ordinary courts of the land.
- *Predominance of legal spirit*: The general principles of the British Constitution, especially the liberties and the rights of the people must come from traditions and customs of the people and be recognized by the courts in administration of justice from time to time.

A variety of ideas have been used for the expression 'rule of law, and over the years, it has amassed a number of meanings and corollaries including their criticisms.

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In common parlance it is often used simply to describe the state of affairs in a country where, in the main, the law is observed and order is kept – i.e., as an expression synonymous with ‘law and order’.

### Rule of Law Under The Indian Constitution

The concept of Rule of Law traces back to the Upanishads in India. In present day as well, the scheme of the Indian Constitution is based upon the concept of rule of law. The framers of the Constitution were well familiar with the postulates of rule of law as propounded by Dicey and as modified in its application to British India. It was therefore, in the fitness of things that the founding fathers of the Constitution gave due recognition to the concept of rule of law.

The doctrine of Rule of Law as articulated by Dicey has been embraced and very concisely incorporated in the Indian Constitution. The ideals of the Constitution viz.; justice, liberty and equality are enshrined in the Preamble itself (which is part of the Constitution). The Constitution of India has been made the supreme law of the state and other laws are required to be in conformity with it. Laws are declared void when found in violation of any provision of the Constitution, particularly, the fundamental rights. The Indian Constitution also incorporates the principle of equality before law and equal protection of laws enumerated by Dicey under Article 14. The very basic human right to life and personal liberty has also been enshrined under Article 21. Article 19(1) (a) of the Indian Constitution guarantees the third principle of the Rule of law (freedom of speech and Expression). No person can be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence is also very well recognized in the Indian Constitution. The principles of double jeopardy and self-incrimination also found its rightful place in the Constitution. Articles 14, 19 and 21 are so basic that they are also called the golden triangle Articles of the Indian Constitution.

The Constitution also ensures an independent and impartial Judiciary to settle disputes and grievances for violation of fundamental rights by virtue of Articles 32 and 226. In *Union of India v. President, Madras Bar Association*, the Supreme Court held that “Rule of Law has several facets, one of which is that disputes of citizens will be decided by Judges who are independent and impartial; and that disputes as to legality of acts of the Government will be decided by Judges who are independent of the Executive”.

### Rule of Law – Part Of The Basic Structure

The Constitution (First Amendment) Act, 1951, raised a question mark on the status of Rule of law in India. In *Shankari Prasad v. Union of India*, when question arose as to whether the fundamental rights can be amended under

Article 368, the honourable Apex Court held that Parliament has the power to amend Part III of the Constitution under Article 368. The reasoning given behind the judgement was that under Article 13 ‘law’ means any legislative action and not a constitutional amendment and therefore, a constitutional amendment would be valid if it abridges any of the fundamental rights. The question again came up for consideration in *Sajjan Singh v. State of Rajasthan* where the judgement in *Shankari Prasad* was upheld. Hon’ble Chief Justice Gajendragadkar held that if the framers of the constitution envisioned to eliminate fundamental rights from the space of the amending power, they would have made a clear provision in that behalf.

However, both these cases were overruled by the Apex Court in *Golaknath v. State of Punjab* and it held that Parliament has no power to amend the Part III of the Constitution so as to take away or abridge the fundamental rights and thus, at the end the Rule of law was sub-served by the Judiciary from abridging away. However, the Rule of law was crumpled down with the Constitution (Twenty-Fourth Amendment) Act, 1971. Parliament by the way of this Amendment inserted a new clause (4) in Article 13 which provided that ‘nothing in this Article shall apply to any amendment of this constitution made under Art 368’. The Amendment not only restored the amending power of the Parliament but also extended its scope by adding the words “to amend by way of the addition or variation or repeal any provision of this constitution in accordance with the procedure laid down in the Article”.

This was challenged in the landmark case of *Keshavananda Bharti v. State of Kerala*. The Supreme Court by majority overruled the decision given in *Golaknath’s* case and held that Parliament has extensive powers of amending the Constitution and it encompasses all the Articles, but the amending power is not unconstrained and does not comprise the power to destroy or abrogate the basic feature or framework of the Constitution. There are implied limitations on the power of amendment under Article 368. Within these limits Parliament can amend every Article of the Constitution. Thus, Rule of law prevailed.

Since *Keshavananda* case, rule of law has been much expanded and applied differently in different cases. In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court invalidated Clause (4) of Article 329-A inserted by the Constitution (Thirty-ninth Amendment) Act, 1975 to immunise the election dispute to the office of the Prime Minister from any kind of judicial review. The Court said that this violated the concept of Rule of law which cannot be abrogated or destroyed even by the Parliament.

The *Habeas Corpus* case according to many scholars is a black mark on the rule of law. The case entails Dicey’s third principle of rule of law. The legal question in this case

was whether there is any rule of law over and above the Constitutional rule of law and whether there was any rule of law in India apart from Article 21 of the Constitution regarding right to life and personal liberty. A five judge Bench with a majority of 4:1 (going by strict interpretation) held in the negative.

The majority judges held that the Constitution is the mandate and the rule of law. They held that there cannot be any rule of law other than the constitutional rule of law. Excluding moral conscience, they held that there cannot be any pre-Constitution or post-Constitution rule of law which can run counter to the rule of law embodied in the Constitution, nor can there be any rule of law to nullify the constitutional provisions during the time of Emergency.

The majority judges held that *"Article 21 is our rule of law regarding life and liberty. No other rule of law can have separate existence as a distinct right. The rule of law is not merely a catchword or incantation. It is not a law of nature consistent and invariable at all times and in all circumstances. There cannot be a brooding and omnipotent rule of law drowning in its effervescence the emergency provisions of the Constitution"*. Thus they held that Article 21 is the sole repository of right to life and liberty and during an emergency, the emergency provisions themselves constitute the rule of law.

In a powerful dissent, Justice H.R. Khanna observed that *"Rule of law is the antithesis of arbitrariness...Rule of law is now the accepted form of all civilized societies...Everywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order. 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 the balance between citizen and the state and compel governments to conform to the law"*.

With the Constitution (Forty-Fourth Amendment) Act, 1978 it has been laid down that even during emergency, Articles 20 and 21 will not be suspended.

In *Raman Dayaram Shetty v. International Airport Authority of India*, the Supreme Court held that *'the great purpose of rule of law is the protection of individual against arbitrary exercise of power, wherever it is found'*.

## Inference

Over the years, the Courts have used judicial activism to expand the concept of rule of law. For example, in Courts are trying to establish a rule of law society in India by insisting on 'fairness'. In *Sheela Barse v. State of Maharashtra* the Supreme Court insisted on fairness to women in police lock-up and also drafted a code of guidelines for the protection of prisoners in police custody, especially female prisoners. In *Veena Sethi v. State of Bihar* also the Supreme Court extended the reach of rule of law to the poor who constitute the bulk of India by ruling that rule of law is not merely for those who have the means to fight for their rights and expanded the locus standi principle to help the poor.

Therefore, though it may be hard to find scholarly consensus on what the rule of law connotes, but nonetheless there is at least a broad agreement on what it is not.

## References

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