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RULE OF LAW IMPLEMENTATION IN INDIA: A CRITICAL REVIEW

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ABSTRACT

Any legal and political system cannot function without the principle of the Rule of Law. It is based on the principles of equality, non-arbitrariness, and justice. The principle's origins may be traced to ancient Greece, where it was predominately beneficial. A.V. Dicey provided an accurate interpretation, suggesting a three-pronged description of the concept. However, his approach is not without faults. In India, the Constitution embodies the Rule of Law in principles contained in the Preamble and Part III of the Indian Constitution. Over time, the judiciary has construed the Constitution in a way that allows for a liberal application of the concept. Due process and a fair, just, and non-adversarial method have been defined as part of the Rule of Law. This is achieved by the idea of separation of powers and any intrusion by one organ significantly weakens the said principle. Thus, this paper aims to critically analyse the application of the Rule of Law in India.

Keywords: *Rule of Law, Dicey Theory, Constitutional Provisions, Judiciary, Parliament*

I. INTRODUCTION

The word 'Rule of Law' refers to the principle of legality, which alludes to a government established on legal principles rather than men's ideals. No individual, whether wealthy or destitute, or from any background, is above the law[1]; it is a shield against the

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1 Justice V. Dhanapalan, "Basic Structure of the Indian Constitution – An Analysis," (2014) 8 SCC J-1."

oppressive authority of governmental agencies[2]. The Rule of Law is the pinnacle of human culture and civilization, as well as a new "*lingua franca*" for global moral discourse. The term 'Rule of Law' should not be confused with the term 'law'. It is commonly regarded as a state political morality concept that emphasizes the Rule of Law in ensuring a proper balance of rights and powers between people and between citizens and the state in any free and civil society. Law founded on freedom, justice, equality, and accountability can help to achieve such balance.[3] The Rule of Law is one of the most important components in a list of modern political concepts that also includes human rights, free-market economy, and democracy principles.[4] Thus, the Rule of Law is a dynamic notion that may be interpreted in a variety of ways to help a government operate successfully.

II. EVOLUTION

The Rule of Law dates to the dawn of society. Many interpretations of the Rule of Law refer texts from Plato and Aristotle as evidence of its beginnings in classical Greek philosophy. As a result, Greek views on the Rule of Law are best understood as illustrative models that provide inspiration and authority for succeeding times. The Romans made both positive and negative contributions to the Rule of Law history, with the negative tradition having far more consequences.[5] In the medieval period, the Germanic customary law notion that the monarch is subject to the law has been largely recognized as an independent source of the Rule of Law.[6] The Magna Carta, epitomized a third ancient root of the Rule of Law—the effort of nobles to use the law to repress kings, although it stands on its own as a past narrative with resonating consequences in the Rule of Law tradition.[7] Later, there were the approaches to Rule of Law that were Liberalist and Federalist. Locke's proposal included a limited delegation of authority from citizens to the government and he defined the division of powers between the legislative and the executive to ensure that the government functions by legally passed laws. Thus, Locke believed that law should be formed by majority vote,

2 Shailendra Kishore Singh, *Rhetoric and the Rule of Law vis-à-vis the Supreme Court of India*, CNLU LJ, 82 (2012).

3 Venkat Iyer. *Citizen's Rights and the Rule of Law problems and prospects*. Lexis Nexis, 7 (1st ed., 2008).

4 Jeremy Waldron, *The Concept and the Rule of Law*, Georgia Law Review, 134 (2008).

5 Cicero, Niall Rudd, Jonathan Powell Niall Rudd. *The Republic and the Laws*. Oxford University Press, 50 (2008).

6 Fritz Kern. *Kingship and Law in the Middle Ages*. New York: Frederick A. Praeger Publishers, 186 (1st ed., 1956).

7 William H. Dunham. *The Great charter: four essays on Magna carta and the history of our liberty*. New York: Pantheon Books, 26 (1965).

in keeping with the consensual nature of civil society.[8]

In 1885, A.V. Dicey adopted Montesquieu's methodology, examined the UK model and set down three principles originating from the Rule of Law[9]:

a) Supremacy of Law

It denotes the country's legal supremacy and absolute authority. Dicey considered that where discretion is allowed, there will be arbitrariness. As a result, it was decided that the law established in a court of law must be implemented in the land and that no one can take the law into their own hands.

b) Equality before the law

This implies that the law must be applied in a reasonable and equitable manner. In a court of justice, everyone, regardless of position or status, should be subjected to the same laws and procedures as everyone else.

c) Predominance of Legal Spirit

Dicey thought that simply establishing the above two principles would not be sufficient and that the legislation would also need to be enforced. He also advocated for an independent and impartial judiciary, which he believes is essential for the implementation of the Rule of Law.

The Rule of Law notion proposed by Dicey has both merits and demerits. The Rule of Law enforced and aided in instilling an attitude of constraint in government. The government was obligated to work within the confines of the law. Furthermore, by declaring that the law is paramount, he proclaimed that all laws passed by the legislature are superior, supporting parliamentary sovereignty. Self-conferment of power is impossible since even ordinary law is paramount. Dicey, on the other hand, utterly misread the true character of French administrative law, which was in reality admired and served as a model for various European communities.[10] However, Dicey's theory is prominently referred and laid down the foundation for framing the principle of the Rule of Law in the Indian context.[11]

8 John Locke. *Second Treatise of Government*. Prometheus Books, 47 (1986).

9 A.V. Dicey. *The Law of the Constitution*. OUP Oxford, 198 (8th ed., 2013).

10 Neville Brown, John Bell. *French Administrative Law*. OUP Oxford, 48 (1998).

11 Mark D. Walters. *A.V. Dicey and the Common Law Constitutional Tradition*. Cambridge University Press, 226-258 (1st ed., 2020).

III. APPLICATION OF THE RULE OF LAW IN INDIA

The Rule of Law was adopted by India from the common law justice system, which had its origins in British jurisprudence. The absence of arbitrary authority is the basic requirement of the Rule of Law, which underpins our whole constitutional structure.[12] Governance must be based on rules rather than being arbitrary, ambiguous, or fantastical.[13] The notion of the Rule of Law cannot be implemented in its spirit and letter unless all state instrumentalities are obligated to carry out their functions in a just and equitable way.[14]

IV. CONSTITUTIONAL PROVISIONS

The principle of the Rule of Law in India may be traced back to the Upanishads. It may also be found in classics such as the Mahabharata and Ramayana, as well as the Ten Commandments, Dharma Chakra, and other fundamental scriptures. In contemporary times, India's constitution demonstrates this desire for a nation run by the Rule of Law. It declares the constitution to be the primary law of the nation, deriving power from the government and administration. Several articles of the Constitution are understood to embody the Rule of Law as it is applied in India in the light of Dicey's theory. The Constitution is considered the country's *ground norm*, from which all other laws receive their authority, making all other laws subordinate to it and preserving the postulates of the Rule of Law envisioned in the Indian Constitution. In addition, Art.13(1) says that every law passed by the legislature must be in accordance with the Constitution, or it will be deemed unconstitutional.[15] As a result, each legislation that is enacted must comply with the requirements of the Constitution.

Our constitution's Preamble includes the words justice, liberty, and equality, which are unambiguous indicators of a just and fair society with no disparities amongst the masses, regardless of their social status. Part III of the constitution, i.e., fundamental rights, meets all of Dicey's conditions for a country to be governed by the Rule of Law. The concept of equality before the law and equal protection under the law, as stated by Dicey, is enshrined in Art.14 of India's constitution.[16] Art.21 of the constitution guarantees the fundamental right to life and personal liberty.[17] Art.19 guarantees the people of India the right to free

12 S.G. Jaisinghani v. Union of India (UOI) and Ors., AIR 1967 SC 1427; T.N. Godavarman Thirumulpad v. Ashok Khot and Ors., AIR 2006 SC 2007.

13 Re. John Wilkes, (1770) 4 Burr 2528.

14 A.K. Kraipak and Ors. v. Union of India (UOI) and Ors., AIR 1970 SC 150.

15 Constitution of India, Article 13(1).

16 Constitution of India, Article 14.

17 Constitution of India, Article 21.

speech and expression.[18] The concept that no one may be punished for any crime unless the legislation in force of the country provides the same at the time the crime was committed, is explicitly established in the constitution. The constitutional principles of double jeopardy and self-incrimination have also been effectively incorporated. Art.32[19] and Art.226[20] of the constitution provide the Supreme Court and the High Courts, respectively, the authority of judicial review to protect the independence of the judiciary. Thus, our whole constitutional structure is founded on the Rule of Law.[21]

V. JUDICIAL PRONOUNCEMENTS

Judicial decisions, in addition to constitutional provisions, have played an important role in the understanding and advancement of India's Rule of Law. The Rule of Law is considered an integral component of the Constitution's core framework.[22] According to Justice R.S. Pathak, "*It must be recalled that our constitutional structure is built on the Rule of Law, it is difficult to conceive of legal power that is arbitrary in character and travels beyond the boundaries of reason in any system thus designed.*"[23] Judicial rulings have been critical in preventing the state from acting arbitrarily. The Supreme Court of India decided in *A.K. Kraipak and Ors. v. Union of India (UOI) and Ors.*[24] that our welfare state is governed and controlled by the Rule of Law. The court in *Maneka Gandhi v. Union of India (UOI) and Ors.*[25] assured that the government's arbitrary exercise of authority would not infringe on people's rights. The Supreme Court of India interpreted Art.14 of the Indian Constitution and extended its scope in *E.P. Royappa v. State of Tamil Nadu and Ors*[26]. This article was given a new dimension, and it was seen as a safeguard against arbitrariness. In a subsequent ruling, the Apex Court concluded that the Rule of Law, as enshrined in Art.14 of the Constitution, is a "basic feature" of the Indian Constitution that cannot be abolished even by a constitutional amendment under Art.368 of the Constitution.[27]

18 Constitution of India, Article 19.

19 Constitution of India, Article 32.

20 Constitution of India, Article 226.

21 Alok Kumar Yadav, "Rule of Law," International Journal of Law and Legal Jurisprudence Studies, 205-220 (2017).

22 Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461.

23 Suman Gupta and Ors. v. State of J and K and Ors., AIR 1983 SC 1235.

24 A.K. Kraipak and Ors. v. Union of India (UOI) and Ors., AIR 1970 SC 150.

25 Maneka Gandhi v. Union of India (UOI) and Ors., AIR 1978 SC 597.

26 E.P. Royappa v. State of Tamil Nadu and Ors., AIR 1974 SC 555.

27 Indira Nehru Gandhi v. Raj Narain and Ors., AIR 1975 SC 2299.

India has an independent judiciary that keeps a check on the other branches of government while conducting its responsibilities independently, in accordance with the third principle of the Rule of Law. In *L. Chandra Kumar v. Union of India (UOI) and Ors.*[28], the court found the judiciary's independence to be part of the fundamental structure. In a subsequent decision, the Supreme Court ruled that disagreements over the constitutionality of government activities shall be resolved by judges who are independent of the Executive.[29] As a result, the government's ultra vires or arbitrary activities are restrained. The *P. Sambamurthy v. State of Andhra Pradesh*[30] was a landmark event in the history of the Rule of Law. In this case, the Supreme Court of India upheld the paramount importance of the Rule of law within the basic structure of the Indian Constitution. The legal challenge was centered on Art.371D (5), granting the government authority to alter or annul administrative tribunal's decisions. Chief Justice Bhagwati's verdict held the same to be unconstitutional, invoking the basic structure doctrine. He ruled that it contradicted the core principle of the rule of law, an indispensable constitutional element. Chief Justice Bhagwati declared the doctrine of "judicial review," integral to the rule of law, and asserted that no power could diminish this authority, whereby any such endeavor would violate the rule of law and the basic structure of the Constitution.

In recent times, the Delhi High Court has further upheld the rule of law and stated that disregarding the same would propel the country towards inevitable ruin.[31] The Himachal Pradesh High Court has also interpreted the rule of law to decide that the settlement of disputes on the street is contrary to the rule of law.[32] The Supreme Court later decided on the rule of law violation had an adverse effect on access to justice, which is a fundamental right.[33] Thus, the Indian judiciary has played a crucial role in shaping the Rule of Law in India.

VI. COMPARATIVE ANALYSIS

For society's well-being, the rule of law is a crucial concept. There are written or unwritten constitutions that contain the rule of law in countries like India, the UK, and the US. All three nations uphold the principle of separation of powers. The approach permits some

28 L. Chandra Kumar v. Union of India (UOI) and Ors., AIR 1997 SC 1125.

29 Union of India (UOI) v. R. Gandhi and Ors., (2007) 4 SCC 341.

30 P. Sambamurthy v. State of Andhra Pradesh, MANU/SC/0736/1986.

31 Navin Soni v. Munish Soni and Ors., 2022/DHC/1480.

32 Freed and Ors. v. State of H.P., ILR 2020 III HP 112.

33 Hussain and Ors. v. Union of India (UOI) and Ors., AIR 2017 SC 1362.

flexibility, though not entirely committed herewith. The judiciary also incorporates the doctrine of the rule of law into its procedures for the advancement of society and the speedy delivery of justice.

This concept was implemented in the UK to control the king's arbitrary actions, restrain his unbridled power, and promote civilization. While it was applied in India to reinforce democratic values and foster the advancement of the nation. Additionally, the US adopted this concept to reduce the discrepancy in governance and give due regard to the welfare of the state.

However, it is challenging to implement the rule of law in the UK since it does not have a written constitution, which can expound the applicability leading to biases. Whereas, India and the US, these countries have written constitutions, though expressly stated in Article IV of the US Constitution but not in the Indian Constitution, can exemplify the rule of law reflecting though various provisions of law and judicial pronouncements.

VII. CRITICAL ANALYSIS

The Rule of Law has been enshrined in the soul of our constitution by its framers. The three branches of government work together to establish the Rule of Law through a system of checks and balances. Besides following the laws as put down by the parliament and interpreted by the court, the judiciary has worked effectively toward the creation of the Rule of Law and has had equal support from both citizens and the government. In the Constitutional Assembly Debates, Dr P. S. Deshmukh discussed about the want for the Rule of Law in the unlawful society of India.[34] Prof. K. T. Shah also stated the Rule of Law to be essential in maintaining the liberty of the nation.[35] Several others debated on the importance of the Rule of Law but did not incorporate the Rule of Law explicitly in the Constitution and implied the same through various constitutional provisions as mentioned above. The notion of the Rule of Law was jeopardized during one of the darkest episodes in democratic India, the Emergency. The 42nd Amendment was enacted in an attempt to modify the Constitution. There was an abuse of Art.356 that weakened the country's core federal framework. When Justice A.N. Ray was named Chief Justice of India in the 1970s, the other three senior judges were dismissed, and the judiciary was no longer an autonomous and untainted entity from political interference. Even back then, the judiciary preserved the

34 "Constituent Assembly Debates (Proceedings) - Vol. VII (1948)," available at: http://164.100.47.194/Loksabha/Debates/cadebatefiles/C07121948.html.

35 "Constituent Assembly Debates (Proceedings) - Vol. VII (1948)," available at: http://164.100.47.194/Loksabha/Debates/cadebatefiles/C07121948.html.

spirit of the Rule of Law, demonstrating the enormous strength that such a notion wields in defeating oppressive government. Thereby, the Rule of Law in India has taken on a new connotation as it is recognized to be an integral component of the Constitution's core framework, and as such, it cannot be repealed even by Parliament.

However, the execution in India has not been devoid of problems. Some of the issues that impede the seamless execution of the Rule of Law include obsolete legislation and an overburdened judiciary. There have been occasions where corruption has harmed the legal system as well as the administrative system. The problem of the judiciary's encroachment into other government institutions in the guise of activism is present all the time. The court's ability to restrain the activity of other organs must be considered. The idea of the Rule of Law also prohibits the court from conferring authority on itself. The court's interpretations and decisions are never sufficient to assure Rule of Law adherence. Corruption, fraudulent encounters, and unjust regulations are all threats to the Rule of Law. The concept of equality comes to mind when contemplating the notion of the Rule of Law. This, too, has been highly criticized. In India, no case may be brought against officials and diplomats, and members of parliament have special rights when it comes to legal measures against them. The government has the inherent power to act solely on its initiative and without regard for checks or balances. Moreover, there have been several instances where the public has resorted to violence in response to an act of Parliament or a judicial pronouncement or has committed acts contrary to law that are not, in their opinion, contrary to Law and Justice, resulting in situations where the Rule of Law has only become a *de jure* concept while the Rule of Men has prevailed in practice. For example, the Sabarimala case[36] decision sheds light on men's discretion in following Supreme Court orders solely to the extent that they are comparable to the beliefs they hold. The court had permitted women of menstrual age, i.e., between the ages of 10 and 50, to pray at the temple. All women of menstrual age are historically barred from entering the Lord Ayyappa temple. After the judgement, there were widespread protests, as well as instances of violence against women attempting to enter the shrine. Even after the practice was deemed unlawful by the Supreme Court, women were denied their constitutional right to worship and equality standards were breached. Apart from these examples, there a plenty of others that point to the adulteration of the indigenous concept of Rule of Law. Thus, this emphasized the need to relook at the application of the Rule of Law in India and focus on the proper implementation of the same.

Therefore, the Rule of Law was largely derived and firmly ingrained in the Indian system. The rule was recognized by the constitution's framers, who ensured that it was appropriately

36 Indian Young Lawyers Association and Ors. v. State of Kerala and Ors., (2017) 10 SCC 689.

incorporated into the country's structure. Part III of the Indian Constitution which deals with people's fundamental rights, was used to achieve the same. The judiciary has also played a role in ensuring that justice is provided to the people by reinforcing all the procedures outlined in the Constitution. However, the lack of implementation and shortcomings are observed, which need to be tackled to ensure the prevalence of the principle of 'Rule of Law.' It also necessitates taking the appropriate measures to establish a speedy justice delivery mechanism to fully implement the Rule of Law. Similarly, the parliament should ensure that no law is passed that infringes on citizens' rights or violates the Constitution. The public administration must ensure that the Rule of Law is effectively implemented by constitutional directives that carry out the law's objective criteria equally.[37] Every government official in a position of public trust is responsible for ensuring that national goals are met.[38] The government should guarantee that no such laws are enforced in the country. The Law Commission of India is trying to create a society in which there are no impediments to the Rule of Law's seamless operation. The constitution should always be regarded as the supreme law of the nation, regardless of the situation. If any government organ seeks to conduct something that is beyond its constitutional power, the act should be deemed unconstitutional and hence invalid from the outset. There will be no impediments to India's complete adoption of the Rule of Law if each government department plays a key role. Despite all its obstacles, India has achieved considerable progress in terms of the practical effectiveness of the Rule of Law throughout the years. Our forefathers aspired to a Constitutional India in which every person is treated equally before the law and his or her liberty is protected. They envisioned an India with free of arbitrary power, democracy and an effective Rule of Law. The Constitution, as well as its creator's vision, will stand the test of time and it is now up to future generations to turn the idea into a reality. Hence, the Rule of Law is widely considered to be a contemporary ideal that is a gift of democracy to all citizens and is a fundamental component of successful governance.

37 State of Punjab and Ors. v. G.S. Gill and Ors., AIR 1997 SC 2324.

38 Superintending Engineer, Public Health, U.T. Chandigarh and Ors. v. Kuldeep Singh and Ors., AIR 1997 SC 2133.