



Rule of law

Rule of law is a product of struggle by the people from centuries for recognition of their inherent rights and the concept of a rule is very ancient and old. During the ancient times, the concept of rule of law was discussed by the Greek philosopher Aristotle and Plato at the time of 350 BC so now you can imagine how old this concept. Plato has written that if rule of law under the supervision of any law then it doesn't have any value and the concept of state will get collapsed and if the law is master of government and government work as a slave for law then the concept of state will work effectively and humans can enjoy their rights.

According to Plato the meaning of rule of law is that it is supreme in nature and nobody is above the law.

According to Aristotle has written that law should be the final sovereign of the state.

According to Sir Edward Coke "Rule of Law" means the absence of arbitrary power on the part of Government.

This phrase was derived from the French phrase "**la Principe de legality**" which means that the principle of legality whatever the legal system principle is called a rule of law. Which refers to government is based on the principles not on any individuals and according to the law everything will move. Rule of law is the basic principle of the English constitution and this doctrine is accepted by the US and as well as India also.

The entire basis of Administrative law is the Rule of law and delegated legislation is the backbone of administrative law.

Development

Rule of law was developed by a British jurist Albert Venn Dicey in his book called "The Law of the Constitution" 1885. In this book, he develops this concept and he identifies 3 principles while establishing the rule of law.

According to Albert Venn Dicey rule of law first meaning is "**No man is punishable except for a Distinct breach of Law**" established in the ordinary legal manner before the ordinary court. The government or any high-class authority cannot punish any individual on the personal ground till the time an individual has committed an offence and if the offence is committed then proper procedure and trial will be conducted and in case the final verdict is that the offence is committed then physical or economic punishment will be given to the accused person. This clearly indicates that even if 100 criminals are not arrested is ok rather than punishing one innocent person.

"No man is above the law" every man, whether he is from a higher rank or whatever his position is subjected to ordinary law under the jurisdiction of the ordinary court. No man will be deprived from his personal property until the time he has breached any law established by the ordinary court. [**Article 14 of The Constitution of India**](#) also talk about that "Every Man is equal before the law, no one is above".

Constitutional rights are the source of a judicial decision it means that the source of rights is not the constitution but the rules or law enforcement by the court. The British constitution is the result of judicial result and all the rights are given under the Constitution is decided and framed from some or the other judicial decisions.

The principle of Rule of law is accepted by Article 14 of the Constitution and it has 2 main rule that no man is above the law and no man is punishable except for a breach of law and the last rule given above is not accepted by our constitution. So, the first and second rule applies to the constitution but the third rule of dicey is not accepted by our Indian system. All rules passed by the legislature must be within the provision of the Constitution and if any law is made which encroached any of the provisions of the constitution then it will be declared as void by the Supreme Court.

Basic Principles of Rule of Law

1. Law is supreme and nobody is above the law.
2. All the things should be done according to a law not as per whim.
3. No person should be suffered except for the breach of law.
4. Absence of arbitrary is the soul of the rule of law.
5. Equality before the law and equal protection of the law.
6. Speedy trial.
7. The fair and just procedure should be conducted.
8. Independent and impartial judiciary.

Kesavananda Bharati vs. the State of Kerala under this case the principle of Basic Structure was propounded and it was said that any part of the Constitution can be amended without disturbing the basic structure of it.

Indira Nehru Gandhi vs. Raj Narain, the court held that rule of law is also part of the basic structure and in the list rule of law was also added and it means that no amendment can be done in rule of law.

The **State of Bihar vs. Sonawati Kumari**, it is an integral part of Rule of law that all the authority within the State including executive government should be bound to obey the rules.

In case of **Bachan Singh vs. the State of Punjab**, popularly known as “**Death Penalty Case**” the rule of law is free from arbitrary action if anywhere any action is done with arbitrary power then it will be considered as the denial of the concept of Rule of Law.

In case of **Som Raj vs. State of Haryana**, that absence of arbitrary power is absolute motive of the principle of rule of law upon which directly the whole Constitution is dependent.

Rule of law in modern Sense

Today the dicey theory of Rule of law cannot be accepted in total. The modern concept of rule of law is very wide and therefore set up an example for the government to achieve and this concept was developed by the International Commission of Jurists which is also known as Delhi Declaration, 1959.

According to this, the Rule of the law says that the function of the government in a free society is to exercise and create a condition in which the dignity and respect of an individual are increased or upheld. It does not only recognize civil or political rights but the introduction of certain social, political, economic, and educational etc. which are necessary for the full development of personality.

According to Davis, there are 7 types of Modern law

1. Law and orders.
2. Principle of Natural law.
3. Fixed rules and regulations.
4. Eliminate the idea discretion.
5. Due and fair process of law.
6. Preferences for judges and court of law to executive authority and administrative tribunals.
7. Judicial review of administrative action.

So, in proper manner rule of the law say that it silent on the democratic system, where the political interest is encouraged and criticism of the government is not only permitted but given positive merit.

How Freedom of Speech and Expression is an integral part of the Rule of law

Rule of law is very founding stone of stage of democratic stands that's why it is considered as an important and integral part of Rule of Law. To ask for the right of others and the way they are expressed can be either by speaking, writing, drawing, etc. and above all rule of law does not go with arbitrariness which can

be established by giving freedom and one of such freedoms is freedom of Speech and expression.

Now, let's understand about Freedom of Speech and expression is one of the important fundamental rights given under the Constitution for every individual to enjoy it fully. Freedom of speech and expression should be used in a very delicate manner because while expressing the idea, thought it should not defame or hurt the sentiments of any individual or religion view and without the fear of getting punished for any offensive act. As per [UDHR \(Universal Declaration of Human Resources\)](#) every individual has the right to freedom of expression and opinion. The right involves the right to hold the information without any interference from any media or other sources. Right to freedom of speech and expression is recognized as an essential human right under [Article 19 of the UDHR](#) as well as in [ICCPR \(International Covenant on Civil and Political Rights\)](#).

Freedom of Speech and Expression in the Indian Constitution

[Article 19\(1\)](#) of the Indian Constitution says the **Freedom of Speech and expression** means the right to express one's ideas by the help of words, gesture, painting, writing etc. or by any other specified mode. It also includes the publication of articles, books etc. so the freedom of the press is also included under this category.

1. It also helps individuals to be well informed about the current situation of highlights of society or nation.
2. Help the individual to the development of ideas, thoughts, opinions etc. which will help in decision making.
3. Varieties of ideas help in maintaining a balance between stability and social changes.
4. Help in achieving of Self-fulfilment.

In [Shivkant Shukla vs. ADM Jabalpur](#) the government of M.P. appealed against the High Court ruling in the Supreme Court. The problem arises that whether Rule of law aside from Article 21 of the Constitution of India. There is no rule apart from Article 21 and there can never be separate rule of law.

Conclusion

It was very clear that the idea of the Rule of law was not totally perfect. Rule of law has taken charge of administrative powers and understated them with their measures and this concept was adopted by various countries as a watchdog of the constitution. The modern concept given by David was a broad concept as well as possible for the government to use it in a graceful manner and administrative law main task was to fulfil the gap between power and liberty. The government under the guideline of Rule of law make to rule or conditions that do not intercept with any individual dignity.

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. Raghbir 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.