

Significance of Rule of Law in India

Rashmita Bishi¹, Dr. Anil Kumar Tandi²

¹BA(Sans)(H), DD.H.N., BALLB, Advocate Orissa High Court, Cuttack.

²M.A.(Eco), LLM, Ph.D., Principal, Mahamaya Institute of Legal Science, Nuapada, Odisha.

Abstract:

The Rule of law is the foundation of a democratic society. Rule of law is the basic feature of the constitution of India, which guarantees Justice, equality and liberty. The constitution of India is the supreme fundamental law and all laws have to be in consonance or in accord with the constitution. The rule of law under the constitution serves the needs of the people without unduly infringing their rights. It recognizes the social reality and tries to adjust itself to it from time to time avoiding the authoritarian path. Article 14 of the constitution of India provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Judiciary is the guardian of the Rule of law. Hence, it is not only the third pillar but also a central pillar of the democratic state.

Keywords: Rule Of Law, Constitution, Justice, Liberty

Introduction:

Rule of law is a basic feature of the constitution which promotes the whole of the constitutional fabric and is an integral part of the constitutional structures. Though the terms “Rule of law is not expressly indicated in the text of the constitution. It is event from on overview of the constitutional provisions and the judicial decisions of the Apex Court. This rule of law is fundamental to good governance¹. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the court of law².

Law is the manifestation of principle of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another law steps into iron out such creases and ensures equality to protection to individuals as well as group liberties mans status is a creature of substantive as well as procedural law to which legal incidents would attach justice, equality and fraternity are trinity for social and economic equality. Therefore law is the foundation on which the potential of the society stands³.

Under our constitution the rule of law pervades over the entire field of administration. Every organ of the state under constitution is regulated and controlled by the rule of law. In a welfare state like ours it is inevitable that the jurisdiction of the administrative bodies is increasing

at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the state are not charged with the duty of discharging their functions in a fair and just manner⁴. The Indian constitution enshrines the fundamental rights to individuals which operates as limitation on the exercise powers by the government. If there is an infringement of the fundamental rights of a citizen, the rule of law requires that there should be a proper forum for the redress of his grievances. For this purpose it is provided that an aggrieved person may even move the Supreme Court directly by appropriate proceedings for the enforcement of his fundamental rights. The rule of law under the constitution thus serves the needs of the people. It recognizes the social reality and tries to adjust itself to it from time to time avoiding the authoritarian path⁵.

The Indian constitution lays down in part IV the directive principles of state policy. It enjoins to bring about a social order in which, justice, social, economic and political shall inform all the institutions of national life. It directs it to work for an egalitarian society where there is no concentration of wealth, where there is plenty, where there is equal opportunity for all, to educated, to work, to livelihood and where there is social justice. It is true that the representative of the people are charged with the responsibility of realizing the aims objectives of the constitution, but left to themselves there is a possibility that uncontrolled and unrestricted power might lead to an authoritarian state. The rule of law promotes the lofty ideals enshrined in the directive principles of state policy and draws its sustenance from the higher judiciary which upholds the constitutionality of laws keeping in view the philosophy of these ideals⁶.

A growing threat to the rule of law is coming from undue delay in judicial proceedings. In the absence of expeditious determination and enforcement law loses effectiveness and respect consequently the officials and public both tend to ignore it and behave in any manner that suits them. In order to ensure the rule of law the system must, therefore, ensure effective remedies against the violation of the law⁷.

Essential Element of the Rule of Law:

Absence of Arbitrary Power:-

In *S.C. Jaisinghania Vs Union of India and others*⁸, the Apex Court held that “the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional systems based. In a system governed by the rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits.

Definition of Rule of Law:

According to Edward Coke, “Rule of Law means:

1. Absence of arbitrary power on the part of the Government.
2. No man is punishable or can be made to suffer in body or good except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.

According to Prof. A.V. Dicey, the rule of law means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes

the existence of arbitrariness or even of wide discretionary authority on the part of the government

Dicey's Rule of Law:

According to Prof. Dicey, rule of law contains three principles or it has three meanings as stated below:-

1. **Supremacy of Law** : The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land
2. **Equality before Law** : the Second meaning of the Rule of Law is no man is above law
3. **Predominance of Legal Spirit** or the Third meaning of the Rule of Law is the general principles of the constitution are the result of juridical decisions determining the rights of private persons in particular cases brought before the Court.

Rule of Law in Indian Constitution:

The preamble of the constitution of India clearly sets out the principles of the rule of law emphasizing justice, equality and freedom. Article 14 provides that, the state shall not deny to any person equality before the law or the equal protection of the law within the territory of India. The Constitution of India provides that the constitution shall be the supreme power in the land and the legislative and the executive derive their authority from the constitution. Article 13(2) states that all the laws which are made after the commencement of the constitution are void to the extent of the infringement of the fundamental rights given in part III of the constitution. Article 32 of the Indian constitution grants every individual the right to make the Supreme Court for the enforcement of their fundamental rights. This means that if someone believes their fundamental rights have been violated, they can approach the Supreme Court directly for relief.

Article 15(1) provides that, The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 16(1): There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 16(2): No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Article 19(1): All citizens shall have the right- (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India;

Article 20(1): No person shall 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, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more

than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22(1): No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Article 39-A: Equal justice and free legal aid- The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Rule of Law and Indian Judiciary:

The rule of law is a part of the basic structure of the constitution⁹. In *Smt. Shakila Abdul Gafar Khan Vs Vasant Raghunath Dhoble and Anr*¹⁰, the Supreme Court observed that, Article 21 which is one of the luminary provisions in the constitution of India and is a part of the scheme for fundamental rights occupies a place of pride in the constitution. The Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen, life or personal liberty includes a right to live with human dignity. There is an in build guarantee against torture or assault by the state or its functionaries. Chapter V of the code of criminal procedure, 1973 deals with the power of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Article 20(3) and 22 of the constitution further manifest the constitutional protection extended to every citizen and the guarantee held out for making life meaningful and not a mere animal existence. It is therefore difficult to comprehend how torture and custodial violence can be permitted to defy the rights following from the constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system.

In *Maneka Gandhi Vs Union of India*¹¹, the Supreme Court held that, the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to life with dignity. The court emphasized that the procedure established by law must

be fair, just and reasonable and it cannot be arbitrary, oppressive or unreasonable. In *Common Cause Vs Union of India*¹², the Apex court held that, Article 21 also prohibits arbitrary or unlawful definition. It ensures that no person can be detained without proper legal justification or without following the due process of law. It safeguards against arbitrary arrests and protects individuals from being unlawfully deprived of.

their freedom. It also encompasses the right to a fair trial. It guarantees that every person accused of an offence shall have the right to a fair and impartial trial, including the right to legal representation, the right to be heard and the right to present evidence in their defense.

The Indian judiciary has played an instrumental role in shaping rule of law in India, by adopting a positive approach and dynamically interpreting the constitutional provisions, the courts have ensured that the rule of law and respect for citizens rights do not remain only on paper but it also available in the society.

In *Bachan Singh Vs State of Punjab*¹³, the Apex Court held that Rule of law has three basic and fundamental assumptions. They are (1) There must be independent judiciary to protect the citizens against excesses of executive and legislative power. (2) Even in the hand of the democratically elected legislature, there should not be unfettered legislative power and law making must be essentially in the hands of a democratically elected legislature.

In *S.C. Jaisinghania Vs Union of India and others*¹⁴ the Apex Court held that “the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be conferred within clearly defined limits. The rule of law from this point of views means that decision should be made by the application of the known principles and rules and, is general such decisions should be predictable and the citizens should know where he is. If a decision is taken without any principle or without any route. It is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.

In *Sundramannian Swamy Vs Monmoha Singh*¹⁵, the Hon’ble Supreme Court observed that, today, corruption in our country not only poses a grave danger the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the rule of law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption devalues human rights, chokes development and undermines justices, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the court is that any anti corruption law has to be interpreted and worked out in such a fashion as to strengthen the right against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.

Fairness Investigation - Rule of Law:

Criminal justice system mandates that any investigation in to the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or highjack the investigation so as to throttle a fair

investigation resulting in the offenders escaping the punitive course of law. These are important facets of rule of law. Breached of rule of law amounts to negation of equality under Article 14 of the Constitution of India. Article 21 of the Constitution of India makes it clear that the procedure in criminal trial must be right just and fair and not arbitrary fanciful or oppressive. Article 21 enshrines guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is the first imperative of the dispensation of justice¹⁶.

Free and fair investigation and trial is enshrined in Article-14, 21 and 39-A of the constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confirmed only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party getting fair trial would in violation of Article 14 of the constitution.

In *Nirmal Singh Kahlon Vs State of Punjab*¹⁷, the Apex Court observed that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the constitution of India. In *Subramanian Swami Vs CBI*, the Apex Court has ruled that any investigation into crime should be fair and should not be tainted. It has been further held that rule of law is a facet of equality under Article 14 of the constitution of India.

The rule of law has really there basic and fundamental assumptions. One is that law making must be essentially in the hands of democratically elected legislature, subject of course to any power in the executive in an emergent situation to promulgate ordinance effective for a short duration while the legislature is not in session as also to enact delegates legislation. In accordance with the guidelines and laid down by the legislatures, the order is that, even in the hands of a democratically elected legislature, there should not be unfettered legislative power. For, as Jefferson said “let no man be trusted with power but tie him down from making mischief by the chains of the constitution, and lastly there must be an independent judiciary to protect the citizen against excesses of executive and legislative power¹⁸”.

Significance of Rule of law in India:

The rule of law under the constitution has a glorious content. It embodies the modern concept of law evolved over the centuries. It empowers the legislature to make laws in respect of matters enumerated in the three lists annexed to schedule VII. In part IV of the constitution, the directive principles of the state policy are laid down. It enjoins it to bring about a social order in which justice, social, economic and political shall inform all the institutions of national life. It directs it to work for an egalitarian society where there is no concentration of wealth, where there is plenty, where there is equal opportunity for all, to education, to work, to livelihood and where there is social justice. But having regard to the

past history of our country, it could not implicitly believe the representatives of the people, for uncontrolled and unrestricted power might lead to an authoritarian state. It, therefore, preserves the natural rights against the state encroachment and constitutes the higher judiciary of the state as the sentinel of the said rights and the balancing wheel between the rights, subject to social control. In short, the fundamental rights, subject to social control, have been incorporated in the rule of law. That is brought about by interesting process. In the implementation of the directive principles, parliament or the legislature of a state makes laws in respect of matter or matters allotted to it. But the higher judiciary tests their validity on certain objective criteria, namely (i) whether the appropriate legislature has the legislative competency to make the law, (ii) whether the said law infringes any of the fundamental rights (iii) even if it infringes the freedom under Article 19, whether the infringement only amounts to “reasonable restriction” on such rights in “public interest”. By this process of scrutiny, the court maintain the validity of only such law as keep a just balance between freedoms and social control. The duty of reconciling fundamental rights in Article 19 and the law of social control is cast upon the courts and the touchstone or the standards is contain in the said two expression. The standard is an elastic one, it varies with time space and condition what is reasonable under certain circumstances may not be so under different circumstances. The constitutional philosophy of law is reflected in part III and IV of the constitution. The rule of law under the constitutions serves the needs of the people without unduly infringing their rights. It recognizes the social reality and tries to adjust itself to it from time to time avoiding the authoritarian path. Every institution or political party that functions under the constitution must accept it, otherwise it has no place under the constitution.¹⁹

Promotion of International Peace and Security:

The rule of law is fundamental to international peace and security and political stability, to achieve economic and social progress and development and to protect people’s rights and fundamental freedoms. It is foundational to people’s access to public services, curbing corruption, restraining the abuse of power and to establishing the social contract between the people and the state²⁰.

Article 51 of the constitution declares the directive principle that the state shall foster respect for international law and treaty obligation²¹. The state shall endeavour to

1. Promotes international peace and security
2. Maintain just and honourable relation between nations.
3. Foster respect for international law and treaty obligations in the dealings of organized peoples with one another, and
4. Encourage settlement of international disputes by arbitration.

Conclusion:

The rule of law constitutes the core of our constitution and it is the essence of the rule of law that the exercise of the power by the state whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional

limitations. Article 14 of the Indian Constitution specifically provides that the state shall not deny to any person equality before the law or the equal protection of laws. The absence of arbitrary power is the first essential of the rule of law upon which the Indian Constitutional system is based.

References:

1. Judicial Accountancy Vs Union of India & ors, (1991) 4 SCC 699.
2. Zahira Habibulla H. Sheikh Vs State of Gujarat, (2004) 4 SCC 158.
3. Suresh Kumar & ors Dalmia Cement Vs Union of India & Ors, www.indiankanoon.org/doc/239122.
4. V N Shukla, Constitution of India, 14th Edition, Eastern Book Company.
5. Ibid.
6. Ibid.
7. Ibid.
8. AIR 1967 SC 1427
9. Smt. Indira Neheru Gandhi Vs Sri Raj Narain and Anr, (1975) Supp. SCC 1; Kesavananda Bharti Vs State of Kerala, AIR 1973 SC 1461.
10. AIR 2003 SC 4567
11. 1978 AIR 597.
12. AIR 2018 SC 1665
13. (1982) 3 SCC 24.
14. Supra note 8.
15. (2012) 3 SCC 64.
16. Ajay Kumar Pandey Vs State of UP and others on 27 January 2021, AIR online All 81.
17. (2009) 1 SCC 441.
18. Bachan Singh, Sher Singh And Another Vs. State of Punjab and ors, AIR 1982 SC 1325.
19. I.C. Golaknath and Ors Vs State of Punjab and Anr, AIR 1967 SC 1643.
20. United nation and the rule of law, <http://www.un.org>.
21. Vandana Shiva and Ors Vs Union of India and Ors, 1995 (32) DRJ 447.