

Rule of Law and its operation In India

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ABSTRACT

Executive law is a very important field of law that is widely studied in academia. The Dicey universality of the rule of law is based on the idea that a government should be founded on legal principles rather than human ones. The rule of law's universality acts as a stepping stone for a populous nation. Our Constitution does not expressly contain the word "rule of law," but judges and other judicial officials do. The rule of law refers to the balance between people's rights and the government's authority to produce a civil society. This generalization is the result of millennia of human conflict. The purpose of this article is to present a complete description of the "Rule of Law," including its background, features, position in the Indian and American constitutions, guiding principles, and exceptions. As a result, the body of this article contains various papers, journals, studies, case laws, and books. As a result, the Doctrinal Research Methodology generated this report.

Keywords- Law, Rule, Correct balance, Rights, Powers, State Public Morality.

Introduction

Executive Law arose from the necessity to construct and develop a legal system of public administration, a generalization that may be compared to the long-standing concept of justice under law. As a result, the people of England used Dicey's Concept of Rule of Law to strike the emergence of administrative Law in order to accept its independent actuality. The rule of law represents the apex of human civilisation and culture, as well as the new "lingua franca" of moral speech. The rule of law increases the value of our constitution, which promotes our republic and effective government. This generality remains a nonfictional concept that makes a significant appeal not via prominent personalities, but through the rule of law.

Meaning and Concept of 'Rule of Law'

The Rule of Law's wide application is a stepping stone for contemporary civilisation. Although this phrase is not defined in our Constitution, it is regularly used by courts. Rule of law is a "state political morality" theory that maintains a "correct balance" of "rights" and "powers" between people and between persons and the state in order to produce a free and civil society. The term "rule of law" refers to neither a rule nor a law. Law, which is founded on liberty, justice, equality, and responsibility, provides the "correct balance." As a result, the Rule of Law brings existing reality and societal conditions into harmony. The French word "la Principe de legalite" is where the English phrase "the rule of law" originates. Which means a government predicated on the principles of law. Edward Coke is said to be the originator of the Concept of Rule of Law. He said that the King must be under God and Law. Edward Coke had three major points regarding 'Rule of Law'. First and first, the rule of law is necessary to ensure that the monarchy does not rule in an authoritarian fashion; second, it prevents the government from exercising arbitrary power; and first and foremost, it is necessary to defend individuals and their rights.

The following goals are based on Edward Coke's "Rule of Law" theory:

1. To protect government against authoritarian rule.
2. To assess the government's arbitrary power.
3. Laws and orders are applied equally to everyone, regardless of status, rank, etc.
4. To carry out actions fairly correctly.
5. Protection of rights and individuality.
6. The rule of law
7. The law may call administrative behaviour into question.

IT's Origin

The Rule of Law has been the result of centuries of struggle by people to gain recognition of their fundamental rights. The concept dates back to ancient Greece and was debated by philosophers such as Aristotle and Plato around 350 BC.¹ Over time, the concept has evolved and influenced many authors' perspectives on the rule of law. Plato defined it as "supreme in nature, and nothing is above the law," while Aristotle believed that "law should be the final authority of the State." In the medieval period, German Customary law introduced the principle that the King is always under the law, making it an independent source of the rule of law.

The Rule of Law has several key features:

1. Authorities must exercise their powers in accordance with the law, and not based on their personal preferences.
2. No one can be punished or made to suffer without committing a breach of the law.
3. Everyone is equal before the law, regardless of their social class.
4. The Rule of Law is a fundamental principle of society, as it operates universally and is a cornerstone of legal systems around the world.
5. A person can only be punished if they are charged with a crime and that charge is proven by an independent court.

RULE OF LAW IN US CONSTITUTION

The concept of the Rule of Law was adopted by America from medieval England, where it was expressed as "A government of laws, not of men". The Civil Constitution of 1787 changed the way the indigenous government was viewed and introduced the "Principle of indigenous Supremacy". As stated in Composition VI of the American Constitution, "Constitution should be the supreme law of the land". The power of judicial review and the American Constitution are extensions of the Rule of Law, as seen in the Marbury v. Madison case where Justice Marshall held that an act of Congress contrary to the Constitution was not considered a law. The American Constitution's major components are Federalism, Separation of Powers, and the Rule of Law, which are also regarded as the heart of the American Constitution as they contribute to achieving liberty, equality, order, and justice. The American Constitution has three primary principles:

1. The government has a responsibility to both the state and the people it governs and must be accountable for their actions.
2. The American Constitution upholds the belief that legitimate authority comes from the people and is ultimately controlled by them. This is stated in the Preamble, which affirms that the Constitution is created by the people, not the government.
3. Any attempt to establish political supremacy or to make all laws subject to the council would be contrary to the American Constitution, which recognizes it as the supreme law of the land.

RULE OF LAW IN INDIAN CONSTITUTION

The Rule of Law principle has played a significant role in developing the Indian Republic. During the framing of the Constitution, the framers adopted some principles from the USA and England. The concept of the Rule of Law from England was embraced by the indigenous fathers, and many of its principles were incorporated into the Indian Constitution. In India, the Constitution is considered supreme, and no one is above it. The Indian Constitution's Preamble establishes the Principles of Rule of Law in Part III of the Constitution. The Constitution is supreme over the three branches of government: Parliament, Executive, and Judiciary. It upholds justice, equality, and liberty. Article 14 of the Constitution provides for Equality before the Law and Equal Protection of the Law. Every citizen of India has fundamental rights through Articles 13, 14, 15, 19, 21, 22, 25, 28, and 31A. If an individual's rights are violated, they can approach the Supreme Court or High Court under Articles 32 and 226 of the Constitution of India. Any law made by the Central or State Government must comply with the Constitution of India. If a law violates the Constitution's principles, it will be declared void. According to Article 32 of the Constitution, the Supreme Court has the power to issue writs such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari. The Supreme Court also has the power of judicial review to uphold the Rule of Law and prevent any ultra vires laws.

EXCEPTIONS TO RULE OF LAW

Despite the Rule of Law having certain features, there are exceptions to it which include the following:

1. The President and Governors are granted some immunity under Articles 361, 361(2), 361(3), and 361(4) of the Indian Constitution.
2. Foreign Diplomats are also granted immunity.
3. Supreme Court and High Court Judges are granted immunity under Composition 121 of the Indian Constitution, which restricts the discussion of their conduct in Parliament.
4. Various laws, such as the Conservation of Internal Security Act (MISA) and the National Security Act of 1980 (NSA), also provide immunity.

¹ ijct.org

RULE OF LAW IN MODERN STATE

Dicey's understanding of the Rule of Law is not fully accepted in modern times. The modern concept of the Rule of Law is broad and serves as an ideal for all governments to strive towards. The International Commission of Justices, also known as the Delhi Declaration, formed the modern idea of the Rule of Law in 1959, which was later reaffirmed in Lagos in 1961. The modern concept of the Rule of Law implies that "the government's functions in a free society should uphold the dignity of individuals." The Commission had several working panels divided into the Committee on Individual Liberty and the Rule of Law, the Committee on Government and Rule of Law, the Committee on Criminal Administration and Rule of Law, and the Committee on Judicial Process and Rule of Law. The Committee on Individual Liberty and Rule of Law stated that the State should not pass discriminatory laws, infringe on religious beliefs, or impose undue restrictions on freedom. The Committee on Government and Rule of Law stated that the Rule of Law not only requires safeguards against abuse of power but also ensures that the government maintains law and order. The Committee on Criminal Administration and Rule of Law stated that the Rule of Law includes Due Felonious Process, No arrest without the authority of law, Legal aid, public trial and fair hail, and Presumption of Innocence. The Committee on Judicial Process and Rule of Law stated that the Rule of Law means an Independent Judiciary, an Independent Legal Profession, and a standard of Professional ethics.

CONCLUSION

Although not perfect, the Rule of Law has successfully limited the powers of the executive branch. This is why many countries view it as essential to upholding the Constitution and ensuring the supremacy of the law. The court has even connected the Rule of Law to Human Rights. David's modern interpretation provides a comprehensive understanding, allowing the government to utilize it effectively. The main objective of executive law is to balance power with liberty.

