



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2022; 2(2): 98-99
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www.criminallawjournal.org

Received: 20-05-2022

Accepted: 10-07-2022

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Rule of law: The utopia we must create

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Abstract

Rule of law refers to the political and philosophical principle that all individuals and institutions are subjects to the same law regardless of their status and authority. It is the bedrock of every successful democracy.

Definition: The mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power^[1].

The philosophy of rule of law is intimately connected with constitutionalism^[2]. Although the phrase was first used in the 16th century by Samuel Rutherford when he argued against the monarch's divine rights, it was popularised in the 19th century by A.V. Dicey. If not the phrase but the idea actually belongs to ancient thinkers such as Aristotle who wrote, "it is more proper that the law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and servants of the law".

This article explores the principle of rule of law through its various definitions as well as its role in a democracy. At the end the article concludes with the authors opinions on the rule of law.

Keywords: Rule, law, ultra vires, constitution, democracy, India, England

Introduction

Meanings of rule of law as explained by Dicey

Dicey gave three meanings of rule of law. They were as follows

1. The law is supreme- the law is the supreme power in a nation while the power of the government is arbitrary. A person may only be punished for the breach of the law. The executive and the legislative derive their power from the law again asserting the supremacy of the law.
2. Every citizen is equal before the law- Legal egalitarianism or Equality before law is a phrase of English origin that implies the absence of special privilege for individuals and groups and the equal treatment of every individual or group irrespective of their status or authority in the society. [This is different from equal protection of law which is an American phrase with a rather positive implication contrary to equality before law which is a negative concept^[3]. It is one of the basic principles followed by liberalists and is sometimes referred to as the principle of isonomy^[4]. It is enshrined in article 14 of the Indian constitution. It asserts that the law can be called supreme only when nothing is above the law and everyone is equal before the law.
3. The constitution is the lex loci- the law is not the written constitution but the rules and regulations as interpreted and enforced by the judiciary^[5]. which may mean that though the law is supreme it is still inferior the judiciary. I personally believe this third meaning renders the law absolutely powerless.

The constitution has several borrowed features, one of them being Rule of Law which was adopted from the British Constitution. In India the third principle given by Dicey does not apply as the constitution is regarded as the superior most power in the country. The judiciary is bound by duty to uphold this supremacy by acting in accordance with the Indian constitution. The rule of law also finds an implied mention in the preamble and the concept is enshrined in part 3 of the constitution. Part 3 of the Indian constitution refers to article 12 to 35 which deal with the Fundamental rights. Thus, it can be asserted that the protection of our fundamental rights is an essential for upholding the rule of law. In case of violation of such rights as described in part 3 of the constitution every citizen can approach the high court or the supreme court under article 32 and 226. Article 32 states that every citizen has the right to approach the supreme court and seek remedy if their fundamental rights are violated.

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Article 226 provides the high courts with the right and authority to issue writs such as habeas corpus, mandamus, certiorari, quo warranto etc. any law that violates the fundamental rights of the citizens is declared ultra vires^[6] by the courts hence all laws and legislations must be in accordance with the constitution.

Why the law and not the leader?

One of the basic features of a democracy is that the government consists of people who represent the public. These people govern through the law which is held sacred by the people of the nation. In the absence of rule of law the nation will collapse and fall into chaos. For example, in my article 'Earth- a supra nation', I have suggested that if we lived in a supra nation there would be a constant danger of the whole planet falling into the hands of the wrong leader^[7] just as Germany had to go through a time of absolute misery under the leadership of Adolf Hitler. Be it a country or a supra nation the supremacy of the law is an essential for development and wellbeing of the citizens.

A utopian principle or a reality

The constitution is a non-living entity and cannot speak for itself except through its laws relating to amendment which are hardly taken into consideration by undemocratic leaders and governments, so can we really achieve absolute rule of law in our nation? The answer is complicated. we may be naïve and look at a few cases where some individuals were punished for violating someone's fundamental rights in order to uphold the rule of law or we may look at an incident where the fundamental rights of lakhs of citizens were violated by a single leader that is during the national emergency under the rule of the Indira Gandhi government. I believe there is not a single institution that cannot be corrupted. The answer is thus understood by the reader. :)

Conclusion:

In most cases our country succeeds in upholding this sacred principle and the public can live peacefully but there is no saying when the legislature will take hold of the judiciary and our system will collapse. Despite such evil forebodings we may endeavor to achieve true rule of law by keeping an independent judiciary and by educating the general public about its rights and duties as enshrined in the constitution. Aristotle may have written about rule of law as an abstract political and philosophical truth but in the 21st century it is a necessity. With war, famine, and epidemic almost off the human agenda and with unlimited time to work on the future, we may be approaching towards a society with greater connectivity and greater development in the science and technology^[8]. This will come with greater power both political and social. Rule of law will be our basic need in such a modern society. Looking at the future we must educate our youth to learn to be better leaders and completely uproot corruption. Because in the coming years with the possibility of a supra nation we will not be able to afford a corrupt system of justice.

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