

RULE OF LAW-AN OVERVIEW

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Abstract:

Background/Objectives: The concept of rule of law opposed to arbitrary use of discretionary power of administrative authorities. It says that rule should be according to law and not according to man. It is the basic structure of our Constitution. Equality before law is corollary of rule of law.

Methods/Statistical analysis: The methodology which is going to be adopted for the present research work will mainly be based on doctrinal analysis, i.e., the theoretical sources. The theoretical work will relate to administrative action of public body; their policies; Constitutional, Legislative, Executive and judicial control of administrative action through doctrine of legitimate expectation. It is proposed to collect material from various discipline of administrative and Constitutional law. It is also pertinent to mention that research will heavily reply on various journals, reviews and national & international judicial pronouncements.

Findings: the modern concept of rule of law implies that the function of government in the free society should be executed in such a way so that civil and political rights of individual are recognized. Rule of law opposed to arbitrary power. It is corollary to Article 14 as it requires fairness in administrative actions. To enable or to compete with each other on equal planes it is necessary to take positive steps to equip the disadvantaged to bring to the level of fortunate advantage.

Keywords: Rule of law, right to equality, judicial review.

1. Introduction

The term 'rule of law' means principle of legality¹ derived from the French phrase '*la principe de legalite*' (the principle of legality) which refers to a government based on principles of law and not of men² In this sense concept of rule of law opposed to arbitrary power.³

Rule of law in its basic form is the principle that on is above the law. The principle is intended to a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. Thus the rule of law is hostile both to dictatorship and to anarchy. Rule of law cannot exists without transparent legal system, the main components of which are clear set of laws that are freely and easily accessible to all, strong enforcement structures, and an independent judiciary to protect citizens against the arbitrary use of power by the state, individuals or any other organizations.⁴ In order to achieve objectives outlined in constitution of India: Justice, Liberty, Equality and fraternity: Rule of Law is the only instrument available. Otherwise people will not be able to control and curb monopolistic power and madness of political parties which "drains vitality from the rule of law".⁵

The phrase "Rule of Law" has to be distinguished from phrase "a rule of law". The latter phrase is used to designate some particular legal rule like the rule against perpetuities. Those are rule of law, but Rule of Law is of the ideals of our political morality and it refers to the ascendancy of law as such and the institution of legal system in a system of governance.⁶

Rule of law is a basic principle of English Constitution. This doctrine has been enshrined in Constitution of U.S.A. and in the Constitution of India as well.⁷ One should go further and assert that the rule of law is utterly dependent upon the existence of a free society whose political institutions are endowed with authority only to promote such freedom. This was clearly pointed out by Justice Jackson in an address delivered on the 150th Anniversary of the United States Supreme Court:

However well the Court and its bar may discharge their tasks; the destiny of this Court is inseparably linked to the fate of our democratic system of representative Government.⁸

The concept of the Rule of Law is of old origin. Edward Coke is said to be the originator of this concept, when he said that the King must be under God and Law and thus vindicated the supremacy of law over the pretensions of the executives.⁹ The term Rule of Law is used in contradistinction to 'rule of man' and 'rule according to law.' Even in the most autocratic forms of government, there are some laws according to which the powers of the government are exercised, but it does not mean that there is the Rule of Law. Therefore, Rule of Law means that the law rules, using the word 'law' in the sense of '*jus*' and '*lex*' both. In this sense, the 'Rule of Law' is an ideal. It is a modern name for the natural law. In history, man has always appealed to something higher than that which is his creation. In jurisprudence, Romans called it '*jus naturale*,' Mediaevalists called it the 'Law of God,' Hobbes, Locke, and Rousseau called it 'social contract' or 'natural law' and the modern man calls it 'Rule of Law.'¹⁰

2. Dicey's Rule of Law

The expression the rule of law was given prominence by Dicey. According to him, the rule of law is one of the cardinal principles of the English legal system.¹¹ It has some different meaning and corollaries. The origin of the rule of law is ascribed to Edward Coke in England when he remarked that the king must be under the God and law.¹² Dicey's formulation of Rule of Law contains three principles.

- a. Absence of arbitrary power
- b. Equality before Law
- c. Individual Liberties.¹³

3. Modern Concept Of Rule Of Law

The modern concept of the Rule of Law is fairly wide. Davis¹³ gives seven principal meanings of the term Rule of Law:

- I. Law and Order;
- II. Fixed rules;
- III. Elimination of discretion;
- IV. Due Process of law or fairness;
- V. Natural Law or observance of the principles of natural justice;
- VI. Preference for judges and ordinary courts of law to executive authorities and administrative tribunals; and
- VII. Judicial review of administrative action.¹⁴

Recent aggressive judicial activism can only be seen as a part of the efforts of the Constitutional Courts in India to establish Rule of Law society which implies that no matter how high a person may be the law is always above him. The court is also trying to identify the concept of the rule of law with human rights of the people. The Court is developing techniques by which it can enforce the government not only to submit to the law but also to create conditions where people can develop capacities to exercise their rights properly and meaningfully. The public administration is responsible for effective implementation of the rule of law and constitutional commands which effectuate fairly the objective standards laid down by law. Every public servant is a trustee of the society and is accountable for due effectuation of constitutional goals. This makes the concept of the rule of law highly relevant to our context.¹⁵

4. Rule Of Law-A Basic Structure and Essential Feature of The Constitution

The basic concept of the Rule of Law is not a well-defined legal concept. The courts would not invalidate any positive law on the ground that it violates the contents of the Rule of Law. However, in *A.D.M Jabalpur v. Shivakant Shukla*,¹⁶ popularly known as Habeas Corpus case an attempt was made to challenge the detention orders during the Emergency on the ground that it violates the principles of the Rule of Law as the "obligation to act by the rule of law. It is a central feature of our constitutional system and is a basic feature of the Constitution". Though the contention did not succeed and some justices even went on to suggest that during an emergency the emergency provisions themselves constitute the Rule of Law, yet if the reasoning of all the five opinions is closely read it becomes clear that the contention was accepted, no matter it did not reflect in the final order passed by the court. Therefore, even despite the unfortunate order to the effect that the doors of the court during an emergency are completely shut for the detenus, it is gratifying to note that the concept of the rule of law can be used as a legal concept.

In *A.K. Kraipak v. The Union of India*,¹⁷ it was held that for a democratic Government, the rule of law is a basic requirement. The rule of law runs like a golden thread through every provision of Constitution and indisputably constitutes one of its basic features, which requires that every organ of the State must act within the confines of the power conferred upon it by the Constitution and the law.

The rule of law remains none the less a vital necessity to the fair and proper government. The enormous growth in the powers of government makes it all the more necessary to preserve it.¹⁸ The rule of law is a dynamic concept. It changes with the change in social, economic and political values and valuations. The basic postulate, however, remains the fullest development of individual personality keeping in view "the interests of society."¹⁹

In *Chief Settlement Commissioner, Punjab v. Om Prakas*⁷ the Supreme Court observed:

In our constitutional system; -the central and most characteristic feature is the concept of the 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 appropriate action in the competent court.

In *Sambamurthy v. State of A. P.*⁸ the Supreme Court had declared the provision authorizing the executive to interfere with tribunal justice as unconstitutional characterizing it as "violation of the rule of law which is a basic and essential feature of the Constitution."

5. Equality Before Law - A Corollary of Rule Of Law

Supreme Court rightly observed in *Som Raj v. the State of Haryana*,²⁰ that the absence of arbitrary power is the first postulate of Rule of Law upon which whole constitutional edifice is based. If the discretion is exercised without any principle or any, it is a situation amounting to the antithesis of Rule of Law.

In *Advocate Supreme Court of India v. The Union of India*,²¹ It is well-settled that every State action, to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the Rule of Law.

In *Bachan Singh v. state of Panjab*,²² Justice Bhagwati has emphasized that Rule of Law exclude arbitrariness and unreasonableness. To ensure this, he has suggested that it is necessary to have a democratic legislature to make laws, but its power should not be unfettered, and that there should be an independent judiciary to protect the citizen against the excesses of executive and legislative power.

In *D.C.Wadhwawa v. state of Bihar*,²³ the Supreme Court has again invoked the Rule of Law concept to decry too frequent use by a State Government of its power to issue ordinances as a substitute for legislation by the Legislature.

In *Yusuf Khan v. Manohar Joshi*,²⁴ the Supreme Court has laid down the proposition that it is the duty of the state to preserve and protect the law and the Constitution and that it cannot permit any violent act which may negate the rule of law.

As Justice Mathew has said in *Indira Nehru Gandhi v. Raj Narain*,²⁵ that:

[T]here is in the world no government or legal system which has no discretion. It is not possible that a government may be composed of law alone, but not of men, and those men may not be given discretion. All the governments are composed of law and men. The needs of modern government are to make wide discretionary power inescapable. If discretion is taken as arbitrariness, there may not be a single political system having the rule of law. Discretion is essential for the viability of any political system. The only important aspect is a misuse of discretion.

6. Conclusion

Every executive has to exercise power according to the law. If they do some act, they have to justify their act according to the law. The court can also invalidate the act if found contrary to the law. The rule of law requires the courts to restrict the arbitrary use of power. Thus everything must be done according to the law, and every authority has to act according to the law. Dicey's rule of law proved to be a powerful instrument for judging and testing the validity of administrative actions and controlling administrative actions within their limits, in this way controlling arbitrary actions of the Government. It can

be viewed as a governing system of administrative powers, and thus administrative law does not infringe but promotes Rule of Law.

References

- ¹ J.J.R. Upadhyaya, *Administrative Law*, 27 (2004).
- ² I.P.Massy, *Administrative Law*, 20 (1998).
- ³ Upadhyaya, *Supra* note 1 at 27.
- ⁴ Available at www.lexisnexis.co.uk accessed on October 27, 2016.
- ⁵ *Ram Prasaed Narayan Sahi v. State of Bihar*, AIR 1953 SC 215 at 217.
- ⁶ Available at plato.stanford.edu accessed on October 27, 2016.
- ⁷ Upadhyaya, *Supra* note 1 at 27.
- ⁸ Quoted in Jagdish Swarup, L. M. Singhvi, *Constitution of India-II*, 236-237(2006).
- ⁹ Massy, *Supra* note 2 at 20.
- ¹⁰ Jagdish Swarup, L. M. Singhvi, *Supra* note 8 at 236.
- ¹¹ Upadhyaya, *Supra* note 1 at 27.
- ¹² U.P.D. Kesari, *Lectures on Administrative Law*, 24 (14th Ed).
- ¹³ M.P.Jain, *Indian Constitutional Law*, 6 (2006).
- ¹⁴ Upadhyaya, *supra* note 1 at 29-30.
- ¹⁵ I.P.Massy, *Administrative Law*, 2 (1999).
- ¹⁶ (1976) 2 SCC 521.
- ¹⁷ A.I.R. 1970 SC 150
- ¹⁸ H.W.R. Wade, *Administrative Law*, 25-26 (1977).
- ¹⁹ Upadhyaya, *Supra* note 1 at 30.
- ²⁰ (1990) 2 SCC 653 at 658-59.
- ²¹ AIR 1988 SC 1768 at 1769.
- ²² AIR 1982 SC 1325.
- ²³ AIR 1987 SC 579.
- ²⁴ 1999 SCC (cri) 577.
- ²⁵ AIR 1975 SC 2299.