

RULE OF LAW UNDER INDIAN CONSTITUTION

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By

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The term 'The Rule of Law' is derived from the latin Phrase 'La Le galite'¹ which refers to a government based on Principles of law and not of men. The concept of the rule law is of old origin. Edward Coke is said to be the originator of the concept when he said that the kings must be under the god and law and this vindicated the supremacy of law over the pretensions of the executives. Professors A. V. Dicey later developed on the concept. According to Dicey firstly no man is punishable or can be lawfully made to suffer in body or good except for a distinct branch of the law established in the ordinary legal manner before the ordinary course of law of the land and not in any arbitrary or discretionary way by person in authority. Secondly no one is above the law. Every man irrespective of his rank and condition is subject to the ordinary law of the land and amenable to the jurisdiction of the ordinary courts. Thirdly that the journal principle of the constitution (as per the example right to personal liberty, right to public meeting etc.,) are the rights of the private persons in particular cases brought before the court.

In a democratic country, rule of law is the basic and essential principle which is necessary for the successful working of democracy. The Constitution of India embodies the principle of Rule of Law as a fundamental rule in its working. This position has been recognised in the preamble. Preamble literally means "to go before". The Indian Constitution contains a preamble stating its objectives India, is to be a sovereign, democratic Republic. The word "Sovereign" denotes freedom or foreign control. Democratic signifies that power flows from the people. In 1976 the 42nd Amendment added the words "Socialist" means freedom from exploitation of all forms and "Secular" means equal respect of all religions and exclusion of theocratic influences in government. The word "Republic" emphasizes exclusion of hereditary or monarchical principle and adoption of the principle of election. The preamble goes on to state that the purpose of the constitution is to secure to all citizens Justice, Liberty and equality and to promote Fraternity unity and integrity of the nation.

To begin with in 1950 when the constitution came into force there already existed a large volume of laws and which continued with the only limitation that they must not be inconsistent with the fundamental rights as enshrined in part III of the constitution. Besides this old laws, new laws were enacted by the Central and the State Governments These laws form a uniform body of laws which govern our society and regulates all human conduct within our country.

Most important feature of the Indian Constitution is the provision of Fundamental Rights as enshrined in Part II of the Constitution to the Citizens as well as non-citizens. In every democratic system of government, there are some rights which are regarded as fundamental rights. They are so regarded because they are vitally necessary for the attainment by the individual of his full moral and spiritual stature. Without these rights the individuals' moral and spiritual life will remain stunted and he is not be able to develop his potentialities. These rights relate to equality, freedom, religion, cultural and Educational rights against exploitation and rights of Constitutional remedies by way of the rights of Habeus Corpus, Mandamus, Prohibition, Certiorari and quo-warranto Article 12 to 33 of the Indian Constitution.

The most important among the fundamental rights the right to equality. The constitution 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, (Art. 14). This provision guarantees that no man is above the law and every person, whatever be his rank or condition is subject to the jurisdiction of the ordinary courts. So we see that one of the essentials of rule of law is fulfilled by the Article 14. Another important feature of the fundamental rights is that some of the fundamental rights are available to all persons whether natural or artificial, and citizen or not, while some of them are available to citizens of India only. Right to freeedom from discrimination, right to equality of opportunity in state employement, right to freedom of speech etc., rights relating to the protection of interests of minorities, rights of the minorities to establish and administer educational institutions and the prohibition against acceptance of foreign title etc., are available to the citizens only and other rights and prohibition in part III of the constitution apply either all persons residing within the territory of India and subject to its territorial jurisdiction. The object of fundamental rights is to establish rule of law which means every one is subject to law

irrespective of his position so that the majority may not oppress the minority.

Further the constitution of India has not only provided the fundamental rights but has also provided the machinery for the enforcement of the fundamental right, by itself. Has been included in the fundamental rights by the name and title of "Right of Constitutional Remedies", in Article 32. The right to move the Supreme Court by appropriate proceeding for the enforcement of fundamental rights conferred by part I of the constitution is guaranteed under Art. 32 (1). The Constitution further empowers the Supreme Court to issue direction or orders or writs, including the writs in the nature of habeas Corpus, Mandamus, Prohibition Quo- Warranto and Certiorari whichever may be appropriate, for the enforcement of any said rights ' Art. 32 (2). Besides these rights the constitution expressly provides that the Government of India may sue or be sued by, the name of Union of India and the government of a State may sue or be sued by the name of the State.

The Primary purpose of Fundamental rights is to put certain rights beyond the reach of the legislature. The Judiciary have the power to review legislature action and strike down unconstitutional law. This power of the courts is called power of judicial review the power to invalidate legislation infringing the constitutional provisions. Such power of judicial review proves that rule of law prevails under our constitution, In England such a power is unknown because parliamentary Supremacy prevails in England and no law of parliament can be declared invalid by the courts. It was in America that Doctrine of Judicial Review was provided. Chief Justice Marshall of the United States' Supreme Court gave effect to it for the first time in the famous case of *Marbury vs. Madison* in 1803. It is from the United States that we have borrowed this doctrine and made it a part of our constitution.

Let us now see whether there is a provision in the-constitution regarding the establishment of an independent and impartial judiciary which is an essential prerequisite for upholding the principle of rule of law. The constitution provides for the establishment of subordinate courts of both the civil and criminal jurisdiction. Above the subordinate courts in each district, each state has its own High Court which has power of Superintendence over all the courts and tribunals though the territories relation to which it exercises Jurisdiction. Further the independence of the judges of both the subordinate courts and High Court is governed by the manner of their appointment under the constitution. It provides that the appointments of persons to the judicial services of a state will be made by the governor of the state in accordance with the rules made by him in that behalf of after consultation with the High Court exercising jurisdiction in relation to such States.

As regard to the appointment of High Court Judges as per Article 217 the Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. Other Judges of the High Court by the President but in their appointment he also consult the Chief Justice of the High Court in addition to the Chief Justice of India and the Governor. This method of appointment guarantees that the judges appointed would be persons of ability integrity and independence.

The Constitution also guarantees fundamental rights to citizens and the need for an impartial and independent judicial body is all the more impertinent for deciding matters between the states and its citizens. The constitution of India has thus created such a body in the forms of Supreme Court of India which has been entrusted with the work to act as the interpreter and guardian of the provisions made in the constitution of India. Supreme Court which is the final court of appeal. Article 124 (2) provides that every judge of the Supreme Court shall be appointed by the president under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in states as the president may deem necessary. In appointing the Chief Justice' no specific obligation to consult any one is laid down. All appointments are no doubt made on the advices of the council of Ministry. This provision again ensures the independent of the highest judiciary

Some of the following cases which proves that the Rule of Law in Practice

The important case *The Kesavannanda Bharati vs. State of Kerala*. AIR. 1973 SC 1461. The question of fundamental Rights came up for decision before the Supreme Court. 13 Judges sat to decide this case. As per the majority of Judges (Ray, Palekar Mathew, Beg, Dwivedi and Chandrachand J.J., Contra) Article 368 does not enable the president to alter the basic structure or frame work of the constitution. (Sikri. C. J. Contra) power to amend the constitution is to be found in Art. 368 (as it stood even before the 24th amendment) and not elsewhere, Article 368 contained both the power and procedure for amending the constitution. According to (Sikri C. J. Shelat, Hedge, Grover and Mukherjee J J. Contra) there are no implied limitations on the power of amendment under Article 368, the Sikri C.J. the basic structure may be laid to consist of the following features 1. Supremacy of the constitution, 2. Republication and Democratic form of government, 3. Secular character of the constitution 4 Separation of powers between the legislature, the executive and the judiciary 5. Federal character of the constitution. Constitution (Twenty fourth amendment) Act (1971) expressly empowering parliament to amend by way of addition, variation or repeal any provision of the constitution and making Article 13 not applicable to such Amendment. This case really shows how the rule of law is maintained under our constitution.

In the next case *Bachan Singh vs. State of Punjab and Mai Singh vs. Union of India*. AIR (1982) SC 1325. The rule of law permeates the entire fabric of the constitution and indeed forms one of its basic features. The rule of law excludes arbitrariness, its postulate is "intelligence without passion" and "region freed from desire", what is a necessary element of the rule of law is that the law must not be arbitrary or irrational and it must satisfy the test of reason and the

democratic form of policy seeks to ensure this element by making the forms of law accountable to the people.

In the case known as *Ameerunnissa Begum vs. Mahboob Begum* AIR 1953 SC 91. The Act known as the walliuddaula Succession Act of 1950 passed in the Hyderabad State. The question of succession to the property left by a noble man - of Hyderabad by name walliuddaula one of the claimants to the property of the deceased noble man was Mahaboob Begum. She claimed to be one of his lawful married wife\$. Instead of allowing her claim to be adjudicated upon by the court of law, the Act of 1950 provide that the claims of Mohboob Begum to participate in the property of the Nawab are excluded. The legislation by denying to Mahaboob Begum a right to go to court of law, which was available to others in a similar situation was patently discriminatory in character, and was held to be Un-Constitutional. . The Supreme Court was held that a legislature which must, of necessity,-have the power of; making special laws to attain particular objects must have large powers of selection or classification of persons and things upon which such laws are to operate. More differentiation or inequalities of treatment does not per se amount to discrimination and it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view in order to invalidate an enactment under Art. 14.

In the case known as *Romesh Thapper vs. State of Madras* AIR (1950) SC 124 the question Restriction on freedom of speech and expression came for decision before the Supreme Court. The Government of Madras acting under power conferred by Section 9 (1-A) of the Madras maintenance of Public Safety Act 1949, banned entry and circulation of the Journal "Crossroads" in the State. The petitioner contended that the order' of the Government of Madras contravened his fundamental right of freedom of speech of expression guaranteed to him under Art. 19 (1) (a) of the Constitution. The Supreme Court was held that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the state or the overthrow of it, such law cannot fall within the reservation under Clause (2) of Article 19, although the restrictions which seeks to impose may have been conceived generally in the interest of public order. Clause (2) of the Art. 19 having allowed the imposition of restrictions on the freedom of speech and expression only in the case of where danger to public security is involved an enactment, which is capable of being applied to cases where no such danger could arrive, cannot be held to be constitutional and valid to any extent. It follows that Section 19 (1-A) Madras Maintenance of Public Order Act 1949, which authorises imposition of restrictions for the wide purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under CL (2) and is therefore void and unconstitutional.

In *Venkataramana vs. State of Mysore* (1958) SC 255. In this case the validity of the Madras Temple Entry Authorisation Act was by the Trustees of Sri Venkata Ramana Temple. The impugned Act authorised Harijans to enter and worship in any Hindu Temple. The Trustees contended that their temple belonged to the Gowda Saraswath Community of the Hindus and that under Art. 26 (b) they hold to manage the affairs of the temple as they pleased in matters of religion. It was argued that exclusion of Harijans from the temple was a marker of religion and the impugned Act authorising temple entry for them violated the guarantee of Art. 26 (b), on behalf of the State it was conceded that the Act was valid under Art. 25 (2) (b) it was argued that Art. 25 (2) (b) applied not only to temples which are open to entire Hindu public but also to denominational public temple (i. e. temples appertaining to certain groups such as Varkavites etc). The Supreme Court held that Art. 25 (2)(b) applies to denominational public Temples also and so the Temple Entry legislation was valid as a measure of social reforms.

In *Chintamani Rao vs. Madhya Pradesh* (1950) S.C.R. 759. The question is nature of reasonable restrictions upon occupational free Adom. In this case the Central Provisions and Bearer regulation of manufacture of Beedies (Agricultural Purpose) Act of 1948 was questioned as unconstitutional. The Act provides (that in the agricultural season no one should engage in the manufacture of Beedies. The object of the legislation was to divert labour engaged in the manufacture of Beedies to the agricultural sector where there was dearth of labour impending the success of the grow more food campaign. It was held by Supreme Court that the restriction was excessive and arbitrary and therefore was not protected by Cl. (6) of Art. 19 and in consequence held the Act to be void.

In *Indira Gandhi vs. Raj Narain* (1975) SC 2292. The Validity of 39th Amendment was questioned. In this case the Supreme Court speaking through Ray, C.J. held that the validation of the appellant's election by clause (4) of Article 329-A was not by applying any law and, therefore, it offended the Rule of Law, Giving content to the concept of the rule of law, Khanna, J. also held that it postulates that the decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such decision is the antithesis of a decision taken in accordance with the Rule of Law. According to Mathew J. the Rule of Law postulates the pervasiveness of the spirit of law throughout the whole range of government in the sense of excluding arbitrary official action in any sphere. The Rule of Law is an expression to give reality to something which is not readily expressible. It is impossible enunciate the rule of law which has as its basis that no decision can be made unless there is a certain rule to govern the decision. Referring to the provision of clause (4) of Article 329-A which took away the jurisdiction of the Supreme Court in matters of election of the Prime Minister, Beg, J. observed that the jurisdiction of the Supreme Court to try this case on merits cannot be taken away without injury to the basic postulates of the Rule of Law and of justice within a politically democratic constitutional structure.

The above cases show how the concept of rule of law prevails under our constitution which is essential for the successful working of democracy in a democratic country.