

Rule of Law & Constitutional Governance

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Rule of Law

- ▶ Rule of law – the **supreme manifestation of human civilization and culture**
- ▶ Derived from ‘**la principe de legalite**’ (French) = ‘**principal of legality**’
- ▶ **Also known as nomocracy**
- ▶ **denotes** the legal principle that **law should govern a nation, and not arbitrary decisions by individual government officials.**
- ▶ Provides that **decisions should be made by the application of known principles or laws without the intervention of discretion in their application**
- ▶ **Of old origin**– discussed by Ancient Greek philosophers such as **Plato** and **Aristotle** around 350 BC.
- ▶ Among the first modern authors to give the principle theoretical foundations was **Samuel Rutherford** in ***Lex, Rex*** (1644). The title is Latin for "the law is king" and reverses the traditional *rex lex* ("the king is the law").

Rule of Law

- ▶ In UK, Sir Edward Coke –the originator of the concept, said “that the king must be under the god and law”
- ▶ In 1607, Coke said in the Case of Prohibitions "that the law was the golden met-wand and measure to try the causes of the subjects; and which protected His Majesty in safety and peace: with which the King was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, *quod Rex non debet esse sub homine, sed sub Deo et lege* (That the King ought not to be under any man but under God and the law).“
- ▶ “Between a tyrant and a prince there is this single or chief difference, that the latter obeys the law and rules the people by its dictates, accounting himself as but their servant”–John of Salisbury
- ▶ Later, Prof. Albert Venn Dicey developed the concept – the rule of law contemplated the absence of wide powers in the hands of governmental officials. & wherever there is discretion, there is room for arbitrariness.

Dicey's formulation of the concept of Rule of law –the three principles

- ▶ 1. **Absence of discretionary power in the hands of the governmental officials.**
- ▶ It denotes that justice must be done through known principles. **Discretion implies absence of rules**, hence in every exercise of discretion there is room for arbitrariness
(Supremacy of law)

Rule of law –the three principles (contd..)

- ▶ 2. No person should be made to suffer in body or deprived of his property except for a breach of law established in the ordinary legal manner before the ordinary courts of land.

In this sense, the rule of law implies:

- a) **Absence of special privileges for a government official or any other person**
- b) **All the persons irrespective of status must be subjected to the ordinary courts of the land.**
- c) **Everyone should be governed by the law passed by the ordinary legislative organs of the state.**

(Equality of law)

Rule of law –the three principles (contd..)

- ▶ 3. The rights of the people must flow from the customs and traditions of the people recognized by the courts in the administration of justice

[role of judiciary in enforcing individual rights and personal freedoms irrespective of their inclusion in a written constitution]

(Predominance of Legal Spirit)

Attributes of Rule of Law in 21st Century

- ▶ As regards individual liberty – state should not pass discriminatory laws & should not place undue restrictions on individual freedoms, adequate safeguards against abuse of power & effective maintenance of law and order
- ▶ As regards criminal administration – due criminal process, no arrest without the authority of law, presumption of innocence, legal aid, public trial and fair hearing
- ▶ As regards judicial process – independence of judiciary, independent legal provision and standards of professional ethics

Rule of Law (contd)

- ▶ **Criticism** and Support of Dicean Concept
- ▶ Position in UK then (**King can do no wrong** etc)
- ▶ Undue emphasis on judiciary
- ▶ Assumption that there was no Administrative law in UK

Rule of Law in India & Indian Constitution

- ▶ Art.14 – **Right to Equality**– Equality Before Law & Equal Protection of Laws
(Reasonable Classification, Protection against arbitrariness , legitimate expectation etc)
- ▶ Art.21 – **Fairness, Justice and Reasonableness**
- ▶ **Article 265** – Taxes not to be imposed save by authority of law : No tax shall be levied or collected except by authority of law
- ▶ **Exceptions to Rule of Law: Protective Discrimination and Compensatory Discrimination** [Art.15(3),(4)&(5) 16(4),(4A) & (4B)
- ▶ **Legislative Privileges and immunities**–Art.105 & 194
- ▶ **Immunities of the President etc**– Article 361

RoL limits the Government

- ▶ As a practical matter the Rule of Law limits the efficiency of an evil government because the Rule of Law limits any government's freedom of maneuver to act in its own arbitrary self interest.....**John Finnis**
- ▶ **The Rule of law as formulated by the International Commission of Jurists in 1959–**
The ICJ submitted this report on the International Congress of Jurists held in New Delhi, India, on January 5–10, 1959

Conclusion

- ▶ Rule of Law– a basic feature of the Constitution
- ▶ Absolutely essential to render justice to the people
- ▶ The best shield of protection to government officials
- ▶ “whenever there is discretion there is room for arbitrariness”
- ▶ A beacon light to all the officials in discharging their duties

THANK YOU