Rule of Law and the Constitution of India: A Conceptual Analysis

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Abstract

The rule of law, rooted in the idea of reason, is an ancient constitutional concept grounded in the idea of natural law thinking. It espouses sovereignty of law over man and emphasises on equal subjection to the law for everyone, regardless of rank or status in society. It is a set of universally applicable principles that form the core of constitutionalism, respecting the rights of individuals and rejecting the arbitrary withdrawal of those rights. Conceptually, it is a dynamic in nature that redefines the relationship between the state and the individual, safeguarding and advancing the civil and political rights of the individual, and advancing a socio-economic, cultural, and educational environment suitable for the realisation of legitimate aspirations and the dignity of the individual in a free society. Rule of law, in essence, forms the kernel of a constitutional democratic polity and makes it effective and functional. It may be formal as well as substantive, providing certainty and good content to the law, ensuring protection of individuals and society. It is deeply embedded in the Constitution of India in letter and spirit, which embodies the principles of equality, non-arbitrariness, separation of powers, judicial review, and judicial independence. Post-WW II has witnessed a renewed interest in its nature, opening up a new dimension which encompasses a couple of ideas, including human rights and independence of the judiciary.

This paper explores the meaning and nature of the rule of law and how it has been incorporated into the Constitution of India.

Introduction

The rule of law has a very strong appeal across the globe since ancient times as it emerged as a check against the arbitrary exercise of power by person(s) in authority. The concept of the rule of law has been subject to diverse interpretations across the political spectrum, making its understanding elusive. Although criticised, A. V. Dicey formulated a British conception of the rule of law, giving it a constitutional dimension and a formal conception that generated interest among constitutional law scholars globally. In the post-World War II era, the International Commission of Jurists redefined the rule of law, adding new dimensions to the concept of law, introducing fairness, the independence of the judiciary, human rights, etc., to match the changing notion of international society. Such a changing dimension of the rule of law has found its way into democratic constitutions worldwide to safeguard the interests of individuals as well as society. This paper explores the meaning and nature of the rule of law and how it has been incorporated into the Constitution of India. As it is a conceptual study, the doctrinal method has been adopted, studying established literature and few landmark case law.

Concept of Rule of Law

The idea of the rule of law dates back to ancient and modern natural law thinking - theological or secular - which essentially "insists that the authority of law derives not from the power of any political ruler, but from a higher source." It maintains that the law of men must be measured against the prescriptions of such higher law. Aristotle (384–322 BC) states that "the rule of law is preferable to that of any individual". [1]

The rule of law, essentially, means the supremacy or sovereignty of law over man. It insists on equal subjection to the law for everyone, regardless of rank or status in society. It is prescriptive as well as protective in nature, as it sets a standard of conduct for citizens to follow and protects citizens who demand that the government act according to law. It is an age-old concept that has influenced the legal and political philosophy underlying constitutional law. It may be interpreted as philosophy, or political philosophy, laying down the fundamental requirements of law for the government or those in power. It is an idea of western democratic liberalism,

[1] Hilaire Barnett, Constitutional and Administrative Law 77 (Cavendish Publishing Limited 2002)

applicable to a political society, serving as a yardstick to measure the actions of the government when it is acting under the law, and to assess how far the rights of the individual(s) are recognised and protected. Its chief characteristics are "a democratically elected, responsible – and responsive – government and a separation of powers, which will result in a judiciary which is independent of government". In liberal democracies, it is considered as a 'good'.[2]

The rule of law is a set of principles that respects the rights of individuals and abhors the arbitrary withdrawal of those rights. It has universal applicability regardless of the form of government, the nature of the legal system, and socio-economic and cultural traditions, provided the state is subject to law, thereby assuring the respect and protection of an individual's rights. It is a dynamic concept that redefines the relationship between the state and the individual, safeguards and advances the civil and political rights of the individual, and creates a socio-economic, cultural, and educational environment suitable for the realisation of legitimate aspirations and the dignity of the individual in a free society. [3]

> Rule of law is a set of closely interrelated principles that together make up the core of the doctrine or theory of constitutionalism, and hence a necessary component of any genuine liberal (any modern democratic regime that protects a range of familiar civil and political liberties and in which governmental action is constrained by law, interpreted and applied by independent judged) or constitutional democratic polity.[4]

As to the meaning of the rule of law, there exists a dichotomy i. e., it may be formal or substantive. Formal rule of law looks into it nature of promulgation – if it is done by a properly authorized person in a properly authorized manner with sufficient clarity about the norm, it does not look into is content or correctness. Whereas those who advocate for its substantive conception look beyond and examine it nature – if it is good or bad. They distinguish between 'good laws' and 'bad laws'.[5]

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[2] Id. 67-92
[3] JEAN-FLAVIEN LALIVE, FORWARD TO INTER. COMM'N JURIST, THE RULE OF LAW IN A FREE SOCIETY (1959). at.VI, VII
[4] T R S ALLEN, CONSTITUTIONAL JUSTICE: A LIBERAL THEORY OF THE RULE OF LAW 1 (Oxford University Press 2003)
[5] Paul Craig, *Formal and Substantive Conception of the Rule of Law: An Analytical Framework*, in THE ROLE OF LAW AND THE SEPARATION OF POWERS 95 (Richard Bellamy ed., 2005).

Contest over Rule of Law

Dependent upon cultural and political background, theorists define rule of law differently. Even within the western liberal tradition, it has more than one meaning. To few it represents an aspirational philosophy, whereas to others, it is a mere device to comply with regardless of its nature – bad or good.[6]

The nature of rule of law which provides argument for power to governmental authority, supporting the protection of individual liberty or constitutional legitimacy makes itself object of suspicion as well as reverence; it offers sufficient ground for uncertainty and contest as it lacks a uniformly agreed meaning to act as a governing principle for constitutional theory and analysis.[7]

Rule of Law as a constitutional concept

So far, A V Dicey's writing on the rule of law, which he characterizes from an English Constitution perspective, has a lasting influence, which says[8]:

1. Rule of law contrasts the exercise of wide, arbitrary, or discretionary powers of constraint by persons in governmental authority.
2. Rule of law mandates that no one is above the law and all are subject to the ordinary law administered by ordinary tribunals.
3. Rule of law which is the predominance of legal spirit pervades the English Constitution which is the result of ordinary law of the land and judicial decisions of courts adjudicating upon the rights of private persons.

Dicey's exposition had a lasting impact[9] on the meaning of rule of law in constitutional discourse, and considered to be final[10], but he only interpreted upon the meaning and not the inventor of the rule of law[11].

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[6] Barnet, supra note 1 at 76.
[7] Allen, supra note 3 at 1
[8] A. V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION, 183-205 (THE MACMILLAN PRESS LTD London and Basingstoke, 1979)
[9] Barnett, supra note 1, at 81
[10] Sir Ivor Jennings, The Law and the Constitution 54 (University of London Press 1964)
[11] E.C.S WADE, INTRODUCTION TO A. V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION (Universal Law Publishing Co. Pvt. Ltd., 2003 Reprinted by permission of Palgrave Macmillan) (1959)

Sir Ivor Jennings was critical of Dicey's exposition terming it as conservative and being unconcerned towards social justice which requires the exercise of discretionary power in executing rules[12]. According to Jennings rule of law, in addition to the notion of liberty[13], implies the following[14]:

1. the state as a whole needs to be regulated by law (In continental legal theory called as a legal State)
2. separation of power to prevent tyranny
3. notion of equality to prevent unequal distribution of property (like should be treated alike)

Jennings maintains that in criminal law rule of law implies a combination of equality before the law and a rigidly defined limit on the police powers, which according to Professor Jerome Hall includes

- categories of crimes should be of determined by general rules of fixed character,
- a person should not be punished except for crime that falls within the general rules,
- penal statutes should be strictly construed, and
- penal laws must not be retrospective[15].

In modern constitutions, which are founded upon continental model rather than the British model, the value of certain rights represents the rule of law, such rights are unchangeable and considered as permanent. The presence of Magna Carta, the Bill of Rights and Act of settlement, which have influenced many modern constitutions, provides an illustration of the idea of unchangeable rules of law.[16]

Rule of Law in the International Context

Under international law, the progress towards the recognition of human rights of individual citizens in a state runs very close to Dicey's conception of equality before the law, exemplifying the conception of the rule of law.[17] "Rule of Law as a living concept permeating several

[12] Barnett, supra note 1, at 81
[13] Jennings, supra note 5, at 53
[14] Id. 48-50 (University of London Press 1964); See also Barnett, supra note 1, at 81
[15] Id. at 50
[16] WADE, supra note 6, at xcix
[17] WADE, supra. Note 6 at xcvii

branches of the Law and having great practical importance in the life of every human being… it has great significance for the orderly conduct of relations between States."[18]

In the post-World War II scenario, the International Commission of Jurist in an International Congress held in New Delhi, India, on January 5-10, 1959 (herein after Delhi Declaration) reformulated the meaning and content of the concept of rule of law by widening its reach and ambit to include the human rights spelled out in the UN Charter and Universal Declaration of Human Rights (UDHR). The Preamble to the UDHR expressly proclaims, inter alia, "… Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law"[19].

The Delhi Declaration discussed rule of law in relation to four areas i. e. a) The Legislative and the Rule of Law, b) The Executive and the Rule of Law, c) The Criminal Process and the Rule of Law, and d) The Judiciary and the Legal Profession under the Rule of Law. For this, four committees were set up to detailly deliberate and redefine the contours of rule of law.

> The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality.[20]

The committee on The Legislative and the Rule of Law, inter alia, observed that "Every legislature in a free society under the Rule of Law should endeavour to give full effect to the principles enunciated in the Universal Declaration of Human Rights"[21]. The committee on the Executive and the Rule of Law outlined that the rule of law not only depends on the idea of safeguards against abuse of power by the executive, but also on the presence of an effective government capable of maintaining law and order ensuring adequate socio-economic

[18] JEAN-FLAVIEN LALIVE, FORWARD TO INTER. COMM'N JURIST, THE RULE OF LAW IN A FREE SOCIETY (1959).at V
[19] OHCHR, Universal Declaration of Human Rights (1948).
[20] INTER. COMM'N JURIST, THE RULE OF LAW IN A FREE SOCIETY (1959) at 4.
[21] Id at. 5

conditions necessary for life in the society. The committee on the criminal process and the rule of law elaborated certain safeguards for the accused in a criminal trial like presumption of innocence and certainty forms part of rule of law. The committee on The Judiciary and the Legal Profession under the Rule of Law concluded that an independent judiciary is an essential feature of a free society governed by rule of law.[22]

Rule of reason – a facet of the rule of law

Cicero (106–43 BC) states "True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions…." Following the Greek thinking, the Roman adopted the law of nature (*ius naturale*) which corresponds to 'that which is always good and equitable'. Natural law – that exist independently of the existence of God and believes in rationality of man – assumed significance in focusing on the individual and led to American or the French Declarations asserting the rights of man laying the foundation of political society ushering an era constitutionalism and rule of law.[23]

Essentially, the rule of law is characterized as the rule of reason when reason blends the principles of due process and equality, which demands justification or a condition of legitimacy of state action while dealing with a person, as it is considered as common good (if the members of the community are respected with equality and dignity, it is good for the community). Although the governmental regulations or policy decisions must comply with the objectives/purposes of the legislation – enacted by democratic procedures - authorizing them with power, it must submit to certain standards of justice that considered as essential elements of common good. Partly, such standards are intrinsic to the concept of law as a tool of governance which depends on reasoned justification. As a result of this argument, basic liberties like speech, thought, conscience and association are essential constituents of the rule of law. Partly, further, while espousing the common good, the government must not unfairly discriminate between citizens by selectively applying the law it claims to honour. "The equal dignity of citizens, with its implications for fair treatment and respect for individual autonomy,

[22] Id at. 6-14
[23] Barnett, supra note 1 at 78

is the basic premise of liberal constitutionalism, and accordingly the ultimate meaning of the rule of law". [24]

Rule of Law and Constitutionalism

The rule of law is also seen as an institutional restraint on the power of the government to protect civil society and its members from its oppressive activities. The rule of law, as constitutionalism and limited government, emerged alongside modern liberalism. This came as a result of Montesquieu's separation of power which argues for genuine separation and balancing of power acting as a foundational principle for the modern liberal political and legal theory. Montesquieu's conception emerged as unique, and distinct from Lockean liberal philosophy by the introduction of an independent and separate jural power leading to the conceptualization and institutionalization of independent judiciary within a constitutional set up. This contexualises the rule of law as constitutionalism (i. e. limited government), and justified by Medison's Federalist Nos. 10 and 51, and Hamilton's Federalist No. 78 arguing for an independent judiciary for the cause of public good and liberty of individuals.[25]

"When the rule of law is interpreted as a principle of constitutionalism, it assumes a division of governmental powers or function that inhibits exercise of arbitrary state power… It Is essential that there should be an independent judiciary to ensure that law is fairly applied and strictly enforced."[26]

Rule of Law Index

For the World Justice Project (WJP), the rule of law is "a durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just law, open government, and accessible and impartial justice."[27] The WJP adopts rule of law index as diagnostic tool to help identify strengths and weaknesses, promote policy choices, lead development of program, and further research to strengthen the rule of law locally as well

[24] Allen, supra note 3 at 2
[25] Shannon C. Stimson, Constitutionalism and the Rule of Law, in THE OXFORD HANDBOOK ON POLITICAL THEORY 317-332 (JOHN S. DRYZEK ET AL.eds.2006).
[26] Allen, supra note 3 at 31
[27] WORLD JUST. PROJECT, RULE OF LAW INDEX (2025), https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2025.pdf.

as globally. The four universal principles identified by WJP have been developed on the idea resonating all major legal tradition.

1. Accountability – all private and public actors accountable under the law.
2. Just law – all laws are just, certain and published with clarity ensuring human rights including property, contract, and procedural rights.
3. Open government – legislative process (enactment, administration and enforcement) is fair, efficient and accessible to all.
4. Accessible and Impartial justice – delivery of justice is by competent, ethical, neutral and independent representatives who are accessible, resourceful and reflect the communities they serve.

Further, this conceptual framework has been expanded into eight more factors and again detailly disaggregated into 44 sub-factors. The eight factors are constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Based upon the host of criteria and parameter adopted WJP found that for the eighth consecutive year, the rule of law weakened in more countries than those in which it improved (68% declined vs. 32% improved).

Constitution of India and the Rule of Law

Although the rule of law is not expressly mentioned anywhere, it is deeply embedded in the Constitution of India in letter and spirit. The Preamble to the Constitution, although aspirational, provides a detailed framework for establishing a rule-of-law society in India. It acts as a key to understanding the Constitution and the fundamentals behind its structuring. It provides a picture of a substantive rule of law in the form of goals which shall be achieved by the institutions of the governance under the Constitution of India. The goals are: Justice (social, economic and political); Equality of status and opportunity; Liberty of thought, expression, belief and worship; and fraternity assuring the dignity of the individual. The objectives have been given the status either as fundamental rights in part III or directive principles of state policy in part IV.

Fundamental rights enumerated in the Part III of the Constitution are a limitation on the power of the State. They serve as a Bill of Rights[28] limiting the power of the government. According to Bhagwati, J.[29] they (fundamental rights) are recognised to protect the dignity of the individual and create conditions for every human being to develop his personality to the fullest extent. "They weave a 'pattern of guarantees on the basic-structure of human rights' and impose negative obligations on the State not to encroach on individual liberty in its various dimensions. Such a limitation has been clearly incorporated into Article 13 (2), which mandates that the state cannot make any law that takes away or abridges the fundamental rights mentioned in Part III, leading to a limitation on Parliament's amending power in the landmark case of Kesavananda Bharati in 1973.

Part IV of the Constitution enumerates the Directive Principles of State Policy, which, though not enforceable, are fundamental to the governance of the country and impose a duty on the state to frame laws according to these principles.[30] This aims to create the socio-economic conditions to achieve general welfare and social progress.

The Constitution clearly provides for the establishment of Legislature (Parliament and State Assemblies) and the Executive (Central and State) and their functioning, and confer power on the Judiciary with independence,

The rule of law implies a higher law that is just, reasonable, and non-discriminatory. Nowadays, it envisages controlled power, not arbitrary power. By and large, the Constitution of India aims to promote rule of law through various provisions. Constitutional values like constitutionalism, liberty of the people, absence of arbitrary power in the government, an independent judiciary. [31]

According to Prof. Upendra Baxi Indian rule of law can be found in a space where a continuous conversation between "rights, development, governance and justice" happens. It is deeply

[28] In West Virginia Board of Education v. Barnett (1943), the Supreme Court of USA observed that the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.
[29] Maneka Gandhi v. Union of India, AIR 1978 SC 597 Para 53
[30] India Const., art. 37
[31] M. P. Jain, Indian Constitutional Law 8 (Ruma Pal & Samaraditya Pal eds. LexisNexis Butterworth 2010 Reprint 2010) (1962)

rooted to establishment of fundamental rights, and "normatively conceived not just as a sword against State domination and violation and historic civil society norms and practices but also as a shield empowering an encyclopaedic regime of "progressive" state intervention in the life of civil society". It provides for the constitutional obligation of the state under the Directive Principles of State Policy and conceptualises an extraordinary power of the judiciary.[32]

Noted jurist Soli Sorabjee remarked that the rule of law acts as a golden thread connecting several articles of the Constitution, highlighting its necessity, and the Supreme Court of India has duly given effect to the concept of rule of law in its various judgments.[33] P. N. Bhagawati, J., noted that the rule of law is one of the basic features of the Constitution of India and runs through the entire Constitution. Further, he observed that rule of law means law must be non-arbitrary or rational and it must satisfy the test of reason and as a democratic norm framers of law must be accountable to the people; "its postulate is 'intelligence without passion' and 'reason free from desire'. Whenever we find arbitrariness or unreasonableness there is a denial of the rule of law."[34] H. R. Khanna, J. noted that "Our Constitution postulates Rule of Law in the sense of supremacy of the Constitution and the laws as opposed to arbitrariness".[35]

Rule of Law is not expressly mentioned anywhere in the Constitution but in Kesavananda Bharati case it has been designated as a basic feature of the Constitution India. Although it accepts the supremacy of the Constitution, it denies the sovereignty of Parliament over the Constitution. Underlining the importance of the rule of law, the Court opined that "Rule of Law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principles of natural justice may undermine rule of law so also, at times, arbitrariness, proportionality, unreasonableness etc…" The Court highlighted the existence of the rule of law in India but, in the same vein, pronounced that it is not absolute.[36]

While striking down a part of the 39th Constitutional Amendment, Khanna, J. observed that the rule of law postulates a decision-making process that stands on the application of known rules

[32] Upendra Baxi, Rule of Law in India 7-25 (SUR - INTERNATIONAL JOURNAL ON HUMAN RIGHTS No. 6 Year 4), https://sur.conectas.org/wp-content/uploads/2017/11/sur6-eng-upendra-baxi.pdf.
[33] Soli J. Sorabjee, *Rule of Law: Its Ambit and Dimensions*, in RULE OF LAW IN A FREE SOCIETY 3-9 (N.R. MADHAVA MENON ed. 2008).
[34] Bachan Singh v. State of Punjab, AIR 1982 SC 1325
[35] Kesavananda Bharathi v. State of Kerala, (1973) 4 SCC 225 Para 1529
[36] K. T. Plantation Pvt. Ltd. v. State of Karnataka AIR SC 3430 Paras 136, 140

and principles; such decisions, in general, should be predictable, enabling a citizen to know where he stands. If a decision is taken without applying any rule or principle and is not predictable, then such a decision has not been taken in accordance with the rule of law and is antithetical to it. [37]

R. S. Pathak, J. stated that a constitutional democracy like India with a written constitution, and commitment to justice, equality, liberty and fraternity to its citizens is deeply rooted to the idea of rule of law, which is universal and omnipotent and postulates that no one, be it state or individual shall act contrary to the law and no one shall be denied right or justice. The rule of law is clearly reflected in the philosophy and structure of the Constitution, it is the primary governing principle of the Constitution of India, governing the organs of the state (Legislature, Executive and Judiciary) (Para 865).[38]

Principle of equality

One of the finest features of rule of law is that every executive action – be it political or diplomatic - must be supported by some legislative authority, if it is to operate to the prejudice of any person. An enacted law provides certainty as to the standing of a person whereas an executive action based upon discretion does not offer any certainty, and if it is "unchanneled, arbitrary discretion, discrimination is writ large on the face of it" violating principle of equality under the Constitution of India equality before the law which is a natural corollary of the concept of the rule of law. [39] The rule of law is essentially embodied in the right to equality enshrined in Art. 14 of the Constitution of India.[40]

According to Mathew, J. to constitute as a basic structure of the Constitution, the concept has to be terrestrially present having "its habitat within the four corners of the Constitution", it has to be embodied to a specific provision embodying the core element of the concept. Outlining the concept of rule of law as basic structure, he observed that the provisions of the Constitution have been enacted to give effect to the rule of law which is a genuine concept implying equality

[37] Smt. Indira Nehru Gandhi v. Raj Narain and another, 1975 (Suppl) SCC 1 Para 205
[38] S. P. Gupta and others v. President of India and others, AIR 1982 SC 149
[39] Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and others, AIR 1967 SC 1836 Para 32
[40] Basheshar Nath v. Commissioner of Income Tax, Delhi and others, AIR 1959 SC 149

before the law or equal subjection of all to the ordinary law of the land, and this aspect embeds the rule of law to Article 14. [41]

In M Nagraj and others v. Union of India[42], the Supeme Court held that the principle of equality as mentioned in Article 14 is integral to the concept of rule of law. The rule of law and equality before the law are designed, inter alia, to secure socio-economic justice.

> There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation was not a matter of judicial scrutiny or judicial review and judicial relief and all these features would lose their significance if judicial, executive and legislative functions were united in only one authority, whose dictates had the force of law.[43]

Absence of arbitrariness

In a dissenting opinion, which became the law of land later, H. R. Khanna, J. opined: "rule of law is the antithesis of arbitrariness…" It is an accepted norm across all civilised societies. According to eminent constitutional scholars, Wade and Philips, rule of law is a mark of a free society. Although its content may differ from country to country, it is identified with the liberty of the individual. It seeks to harmonise between the opposing notion of liberty of individual and public order which is possible by the existence of independent courts, such courts can hold the government accountable to the law. Rule of law postulates that protection of life and liberty of individuals is not dependent on the existence of any constitutional provision like Article 21.[44]

P. N. Bhagawati J. observed, "From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14."[45] Reiterating the same, Bhagawati,

[41] Smt. Indira Nehru Gandhi v. Raj Narain and another, 1975 (Suppl) SCC 1 Para 205
[42] AIR 2007 SC 71
[43] Id at Para 31
[44] A. D. M., Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521 Para 527, 530
[45] E P Royappa v. State of Tamil Nadu, AIR 1974 SC 555 Para 85

J. again held that [46] the principle of reasonableness and non-arbitrariness of the governmental action is intrinsic – philosophically as well as legally – to the idea of equality Article 14. Article 14 invalidates arbitrary State action and guarantees fairness and equality of treatment. In order to conform to such idea of equality, the procedure envisaged under by Article 21 must answer the best of reasonableness. It must be 'right, just and fair' and must not be arbitrary, fanciful or oppressive. Hence, Article 21 requires a procedure to be 'right, just and fair' for the deprivation of any person's life or liberty.

Separation of powers and judicial review

While discussing about principle of constitutionality, the Supreme Court observed that the Constitution of India, which is prepared by the Constituent Assembly by exercise of law-making power, is a controlled Constitution that espouses the principles of check and balance. Article 14 (Equality), Article 19 (Freedom), and Article 21 (Life and personal liberty) represent its foundational value which form the foundation of the rule of law in India. Such foundational values epitomise the principles of constitutionality forming the basis of judicial review, separation of powers and rule of law.[47]

According to noted constitutional lawyer and jurist H. M. Seervai mere conferment of discretionary power does not amount to violation of equality; equality is violated when such discretion leads to arbitrariness at the hands of those on such power is conferred, and according to the 'theory of guided power' such arbitrary act(s) shall be corrected by the Courts under the provisions of the Constitution (Para 107).[48]

The Constitution of India, the supreme law of the land which flow from the people distributes the sovereign power of the state among the Legislature, the Executive and the Judiciary. Acting as the *sentinel on the qui vive*, the Judiciary review the action of the administration and legislature which is an essential feature of democracy governed by rule of law. [49]

[46] Maneka Gandhi v. Union of India, AIR 1978 SC 597 Para 56
[47] I. R Coelho v. State of Tamil Nadu, AIR 2007 SC 861 Para 49
[48] M Nagraj and others v. Union of India, AIR 2007 SC 71
[49] State of Bihar v. Subhash Singh, (1997) 4SCC 430

Independent Judiciary

Pathak, J. opined that Judiciary maintains and enforces the rule of law in its daily activities of interpretation and adjudication of disputes like adjudicating the constitutional validity of legislation and executive actions. While discharging responsibilities for administration of justice within the framework of the Constitution, it upholds the credibility posed by the people on it. "Indispensable to that faith id the independence of judiciary. An independent and impartial judiciary supplies the reason for the judicial institution, it also gives character and content to the constitutional milieu (Para 866). [50]

P. N. Bhagawati, J. observed that for a country like India which is marching to achieve social justice under the banner of rule of law and democracy, the principle of independence of judiciary is not merely an abstract concept, rather it is a "living faith which must derive its inspiration from the constitutional character and its nourishment and sustenance from the constitutional values." The judiciary act as a bulwark against the excesses of executive and its abuse of power by standing between the citizens and the state, hence, it is absolutely necessary for the judiciary to be independent and free from executive influences or pressure which has been elaborately provided in the Constitution. [51](Para 26)

While striking down the National Judicial Appointment Commission Act, 2014 and Constitution (Ninety-ninth) Amendment Act for violation of basic feature upholding judicial independence, J. S. Khehar, J. observed that it can be deduced from a collective reading of Article 12, 36 and 50 that independence of the judiciary is a basic feature of the Constitution of India and primacy of judiciary in matter of appointment is an integral element of it (para 380). Madan B. Lokur, J. concurring the above observed that the rule of law and independence of judiciary go hand in hand and are integral part of basic structure of the Constitution (para 712).[52]

[50] S. P. Gupta and others v. President of India and others, AIR 1982 SC 149
[51] Id
[52] Supreme Court Advocates-on-Record Assn. v. Union of India, (2016)5SCC 1

Conclusion

Rule of law, as a liberal concept, has been accepted across the democratic world to foster individual as well as collective good. The idea of the rule of law has been accepted by the Supreme Court of India and has been given deserving treatment by acting as a true guardian of the Constitution and the citizens. But there is a cause of concern as India is ranked at 86 amongst 143 nations by the World Justice Project in its 2025 Rule of Law Index Report which needs to be considered in a separate research paper.

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