

Rule of Law by Dicey

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Origin of Rule of Law

- The origins of the Rule of Law theory can be traced back to the Ancient Romans during the formation of the first republic; it has since been championed by several medieval thinkers in Europe such as Hobbs, Locke and Rousseau through the social contract theory.
- Indian philosophers such as Chanakya have also espoused the rule of law theory in their own way, by maintain that the King should be governed by the word of law. The concept of Rule of Law is that the state is governed, not by the ruler or the nominated representatives of the people but by the law.
- The expression 'Rule of Law' has been derived from the French phrase 'la principle de legalite', i.e. a Government based on the principles of law.

Definition of Rule of Law

- According to Edward Coke , “Rule of Law means:
 - A) Absence of arbitrary power on the part of the Government.
 - B) No man is punishable or can be made to suffer in body or good except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.

Definition of Rule of Law (Contd.)

- As per Prof. A.V.Dicey, “the rule of law means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government.” (The Law of the Constitution)
- Dicey regarded rule of law as the bedrock of the British Legal System: ‘this doctrine is accepted in the constitutions of U.S.A. and India.

Dicey's Rule of Law

According to Prof. Dicey, rules of law contains three principles or it has three meanings as stated below:

1. Supremacy of Law : The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land
2. Equality before Law : the Second meaning of the Rule of Law is no man is above law
3. Predominance of Legal Spirit or the Third meaning of the Rule of Law is the general principles of the constitution are the result of juridical decisions determining the rights of private persons in particular cases brought before the Court.

Dicey's Rule of Law

- The Rule of Law, in its most basic form, is the principle that no one is above the law. The rule follows logically from the idea that truth, and therefore law, is based upon fundamental principles which can be discovered, but which cannot be created through an act of will.

Critical Analysis of Dicey's Rule of Law

Dicey's concept of Rule of Law had its advantages and disadvantages which are discussed as follows:

- Rule of Law imposed and helped in imbibing a sense of restraint on administration. The government was bound to work within the legal framework. Further, by stating that the law is supreme, he made every law made by the legislature supreme, thus, promoting parliamentary supremacy. There cannot be self-conferment of power as even an ordinary law is supreme. All laws, public or private, are being administered by the same set of independent and impartial judiciary. This ensures adequate check on the other two organs.
- Nonetheless, on the other hand, Dicey completely misunderstood the real nature of the French droit administratif. He thought that this system was designed to protect officials, but the later studies revealed that in certain respects it was more effective in controlling the administration than the common law system. The reality is that French Conseil d'Etat is widely admired and has served as model for other countries as well as for court of justice for European communities. He also did not realise the need for codification of laws which could lead to more discretion, thus hampering Rule of Law.

Rule of Law and Indian Constitution

- The Constitution of India provides that the constitution shall be the supreme power in the land and the legislative and the executive derive their authority from the constitution. Any law that is made by the legislative has to be in conformity with the Constitution failing which it will be declared invalid, this is provided for under Article 13 (1).
- Article 21 provides a further check against arbitrary executive action by stating that no person shall be deprived of his life or liberty except in accordance with the procedure established by law.

Rule of Law and Indian Constitution (Contd)

- Article 14 ensures that all citizens are equal and that no person shall be discriminated on the basis of sex, religion, race or place of birth, finally it ensures that there is separation of power between the three wings of the government and the executive and the legislature have no influence on the judiciary. By these methods, the constitution fulfils all the requirements of Dicey's theory to be recognized as a country following the Rule of Law.

Rule of Law and Indian Judiciary

- The Indian Judiciary has played an instrumental role in shaping Rule of Law in India. By adopting a positive approach and dynamically interpreting the constitutional provisions, the courts have ensured that the Rule of Law and respect for citizens' rights do not remain only on paper but it is also available in the society.
- In *Bachhan Singh v. State of Punjab*, it was held that the Rule of Law has three basic and fundamental assumptions. They are- 1) There must be independent judiciary to protect the citizens against excesses of executive and legislative power. 2) Even in the hands of the democratically elected legislature, there should not be unfettered legislative power; and Law making must be essentially in the hands of a democratically elected legislature;

Thank You