

## **Awareness of Legal Protection in India**

Rajesh Khatana-Research Schloar

Dr. Sunita Gurjar-Research Supervisor

Department of Law- SunRise University, Alwar

### **Abstract:**

*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 Constitution of India intended for India to be a country governed by the rule of law. It provides that the constitution shall be the supreme power in the land and the legislative and the executive derive their authority from the constitution. The paper begins by providing an introduction to Dicey's three pillars on what a Government must be based on and how the Indian Constitution fulfills these three requirements. Later, it discusses the theoretical and practical application of this rule of law in India.*

**Key-Words: F.A, U.S, D.I.Q, E.C.P.**

### **Introduction:**

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. A county that enshrines the rule of law would be one wherein the Grundnorm of the country, or the basic and core law from which all other law derives its authority is the supreme authority of the state. The monarch or the representatives of the republic are governed by the laws derived out of the Grundnorm and their powers are limited by the law. The King is not the law but the law is king.

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 maintaining that the King should be governed by the word of law.

The formal origin of the word is attributed to Sir. Edward Coke, and is derived from French phase '*la principe de legalite*' which means the principle of legality.

The firm basis for the Rule of Law theory was expounded by A. V. Dicey and his theory on the rule of law remains the most popular. Dicey's theory has three pillars based on the concept that "a government should be based on principles of law and not of men", these are:

### **Supremacy of Law:**

This has always been the basic understanding of the rule of law that propounds that the law rules over all people including the persons administering the law. The lawmakers need to give reasons that can be justified under the law while exercising their powers to make and administer the law.

### **Equality before the Law:**

While the principle of supremacy of law sets in place cheques and balances over the government on making and administering the law, the principle of equality before the law seeks to ensure that the law is administered and enforced in a just manner. It is not enough to have a fair law but the law must be applied in a just manner as well. The law cannot discriminate between people in matters of sex, religion, race etc. This concept of the rule of law has been codified in the Indian Constitution under Article 14 and the Universal Declaration of Human Rights under the Preamble and Article 7.

### **Pre-Dominance of Legal Spirit:**

In including this as a requirement for the rule of law, Dicey's belief was that it was insufficient to simply include the above two principles in the constitution of the country or in its other laws for the state to be one in which the principles of rule of law are being followed. There must be an enforcing authority and Dicey believed that this authority could be found in the courts. The courts are the enforcers of the rule of law and they must be both impartial and free from all external influences. Thus the freedom of the judicial becomes an important pillar to the rule of law.

In modern parlance Rule of Law has come to be understood as a system which has safeguards against official arbitrariness, prevents anarchy and allows people to plan the legal consequences of their actions.

## **THEORETICAL APPLICATION OF RULE OF LAW IN INDIA:**

Indian adopted the Common law system of justice delivery which owes its origins to British jurisprudence, the basis of which is the Rule of Law. Dicey famously maintained that the Englishman does not need Administrative law or any form of written law to keep checks on the government but that the Rule of Law and natural law would be enough to ensure the absence of executive arbitrariness. While India also accepts and follows the concept of natural law, there are formal and written laws to ensure compliance.

The Constitution of India intended for India to be a country governed by the rule of law. It 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 legislature 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.

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 a 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 fulfills all the requirements of Dicey's theory to be recognized as a country following the Rule of Law.

The Supreme Court of Indian has further strengthened this mechanism through its various judgments, the foremost of them being, *A D M Jabalpur v. Shivkanth Shukla* In this case, the question before the court was 'whether there was any rule of law in India apart from Article 21'. This was in the context of suspension of enforcement of **Articles 14, 21 and 22** during the proclamation of an emergency. The answer to the majority of the bench was in negative for the question of law. However, Justice H.R. Khanna dissented from the majority opinion and observed that:

*“Even in absence of Article 21 in the Constitution, the state has got no power to deprive a person of his life and liberty without the authority of law. Without such sanctity of life and liberty, the distinction between a lawless society and one*

*governed by laws would cease to have any meaning...Rule of Law is now the accepted norm of all civilized societies”.*

In *Chief Settlement Commr; Punjab v. Om Prakash*, it was observed by the Supreme Court that, “In our constitutional system, the central and most characteristic feature is the concept of 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 matter into notice.” In the case of *Satvant Singh Sawhney v. D Ramathanana* the Supreme Court has held that every executive action, if it operates to the prejudice of any person, must be supported by some legislative authority.

In *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors* a Constitution Bench of this Court has laid down the law in the following terms: “Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.”

Most famously in the case of *Kesavananda Bharati v. State of Kerala*[vii] the Supreme Court held that the Rule of Law is an essential part of the basic structure of the constitution and as such cannot be amended by any Act of Parliament, thereby showing how the law is superior to all other authority of men.

## **PRACTICAL APPLICATION OF RULE OF LAW IN INDIA:**

Critiques have often maintained that the Rule of Law in India is merely a theory with no practical application. While it cannot be denied that the country is one where corruption runs rampant and according to 2012 World Justice Project data, India fares well on openness of government and democratic controls, in the category limited government powers, which evaluates the checks on government, India ranks 37th of the 97 countries surveyed around the world, is first among five in its region and comes in second out of 23 lower-middle-income countries. Yet the rule of law that exists on paper does not always exist in practice. When it comes to procedural effectiveness, India fares poorly. In the categories of the

absence of corruption and order and security, India ranks 83rd and 96th globally.  
[viii]

In addition to the problem faced in India due to corruption in the lawmaking and justice delivery systems, there also exists the problem of old laws still being in place. India does not adopt a ‘sunset’ clause in its laws and post-independence the Indian Independence Act provided that all laws existing under the colonial rulers would continue to exist under the new system unless explicitly revoked by the parliament.

While this did provide the nation with a firm basic system of laws, thereby preventing a situation of anarchy in the immediate aftermath of independence, some of these laws were drafted to suit the environment of those time and they become hard to interpret in the current environment. This leads to ambiguity and endless litigation in an attempt to interpret the provisions.

While these problems persist it is important to note that the constitutional mechanism has provided enough safeguards to endure that the Rule of Law in some form will always persist. One of the most important factors contributing to the maintenance of the Rule of Law is the activity of the courts in the interpretation of the law. It is rightly reiterated by the Supreme Court in the case *Union of India v. Raghbir Singh* that it is not a matter of doubt that a considerable degree that governs the lives of the people and regulates the State functions flows from the decision of the superior courts.

Most famously in the case of *Maneka Gandhi v. Union of India* [ix] the court ensured that exercise of power in an arbitrary manner by the government would not infringe the rights of the people and in *Kesavananda Bharati*[x] the court ensured that laws could not be made that essentially go against the Rule of Law by saying that the basic structure could not be breached.

Apart from the judicial decision, the constitutional mechanism in itself provides for the protection of the rule of law through the creation of monitoring agencies. While there have been numerous scams that have come to light in the last few years, the fact that must also be noted is that these scams have come to light and the justice delivery mechanism has been set in motion against the perpetrators.

The role of the Central Vigilance Commission and the Comptroller and Auditor General in the exposure of these discrepancies is commendable and this shows

how the law has provided for its own protection by putting in place multiple levels of safeguards which ensure that it will be effective at some level. The Election Commission of India, a constitutional body has also been undertaking the task of ensuring free and fair elections with some degree of efficiency.

Since the use of location data on mobile phones and other portable electronic devices is a relatively new development in technology, no laws yet exist to address the issues associated with location privacy. Nonetheless, location privacy can be viewed from a legal standpoint as an extension of physical privacy and a subset of online or information privacy.

The earliest hint at a right to privacy comes from the **Fourth Amendment to the U.S. Constitution**. Although the word “privacy” is never mentioned in the text, the amendment states that:

*“the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”*

This guarantee is, of course, directed at privacy in the physical realm at a time when the Internet did not exist, but has since been interpreted to include the virtual realm.

Because privacy is a broad term that can encompass many things, the courts have traditionally determined whether a case is considered an invasion of privacy based on expectation and the presence of third parties. It boils down to a question of whether a person can reasonably expect that no one else will find out about their private information without intent. For example, someone walking down a public street talking on a cell phone cannot assume that his or her whereabouts are unknown, since there are plenty of people that could see them on the street, but he or she can expect the contents of the phone conversation to be private. This traditional interpretation of privacy, however, poses some problems when it comes to location privacy. With the ability of mobile devices to pinpoint almost exactly one’s geographic location, it is possible to know someone’s location without being within the range of eyesight and, as a result, is quite unexpected.

Several federal laws have been passed to address specific issues of privacy concerning health (Health Insurance Portability and Accountability Act), finance (Right to Financial Privacy

Act), education (Family Educational Rights and Privacy Act), and children (Children's Online Privacy Protection Act), but not yet online privacy in general.

The infringement of privacy by the government has also been regulated through the

- **Privacy Act:** protects the privacy of records collected and maintained by the federal government, allows individuals access to these records but limits disclosures to third parties
- **Wireless Communications and Public Safety Act:** limits the use of the E911 location tracking on cellphones to emergencies only, unless by explicit authorization
- **Electronic Communications Privacy Act and Amendments:** requires a warrant for a police officer to request data records on a consumer from a communications provider.

Since 2001, several bills concerned with commercial information privacy have been proposed, including the

- **Location Privacy Protection Act** – proposed July 11, 2001 to the Senate, died in committee
- **Best Practices Act** – introduced to the House of Representatives on February 10, 2011, still under consideration
- **Do Not Track Me Online Act** – introduced to the House of Representatives on February 11, 2011, still under consideration
- **Commercial Privacy Bill of Rights Act** – introduced to the Senate by Senators John Kerry and John McCain on April 12, 2011, still under consideration
- **Consumer Privacy Protection Act** – proposed April 13, 2011 to the House of Representatives, still under consideration
- **Do-Not-Track Online Act** – introduced to the Senate by Senator John Rockefeller on May 9, 2011, still under consideration
- **Geolocational Privacy and Surveillance Act** – preparing to be introduced to the Senate by Senator Ron Wyden

All of these bills address and promote some form of

- **Transparency:** informing the user of what information will be collected, what the information will be used for, how long the information will be kept, and whether the user will be able to access, modify, or request the removal of the information later
- **Consumer Consent:** allowing the user to choose whether or not to share that information
- **Use Limitation:** using consumer information only for the purposes specified and not sharing the data with third parties unless with explicit consent
- **Data Minimization:** only collecting the information necessary for a product to perform its task
- **Data Integrity and Quality:** ensuring that the data collected is accurate and correctly reflects the person from whom it is collected

- **Security:** taking extra precautions to make sure that the data is not accessible or personally identifiable except to those with authorization and that the data is destroyed properly when no longer necessary
- **Accountability:** placing the responsibility of maintaining these standards of information collection on one or a few people

None of these bills so far, however, have succeeded in being passed.

In the past, regulation for information privacy, including location privacy, has been avoided for fear of stifling innovation and the growth of the online industry, but it has become clear that some guidelines are necessary in order to maintain consumer trust and to avoid expensive and wasteful litigation. Since commercial entities, government, and the public all have personal interest in the privacy issue, it is important that the resolution be a joint effort by all parties.

## CONCLUSION:

The founding fathers of India accomplished what the rest of the world though impossible- establish a country that would follow the letter of the law and implement the Rule of Law. In all matters such as the protection of the rights of the people, equal treatment before the law, protection against excessive arbitrariness, the Constitution of India has provided enough mechanisms to ensure that the Rule of Law is followed.

Through its decisions, the Courts have strived to reinforce these mechanisms and ensure smooth justice delivery to all citizens. Problems such as outdated legislation and overcrowded courts are but small hindrances and bodies such as the Law Commission of India work towards ironing out these problems with the aim of achieving a system where there are no barriers to the smooth operation of the Rule of Law.

## REFERENCES:

- [i] 'Kelsen's Theory of Grundnorm', Mridushri Swarup <<http://manupatra.com/roundup/330/Articles/Article%201.pdf>> (Last retrieved on 20.09.2014)
- [ii] "Common Sense", Thomas Paine <<http://www.gutenberg.org/files/147/147-h/147-h.htm>> (Last retrieved on 20.09.2014)

[iii] AIR 1967 SC 1207

[IV] *A D M Jabalpur v. Shivkanth Shukla*, AIR 1976 SC 1207, para 154

[v] AIR 1967 SC 1836, para 33

[VI] AIR 2006 SC 1806

[vii] AIR 1973 SC 1461

[viii] 'Rule of Law in India',

<<http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=61fb07af-8c80-4868-b707-b9939e9dae87&txtsearch=Subject:%20Administrative%20Law>> (Last retrieved: 23.09.2013)