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“Rule of Law in India, UK and USA- A Comparative Study”

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Abstract

Rule of law refers to the concept where no individual or person is above the law. India, United States of America and the United Kingdom follow the principles of rule of law. This paper contains a comparative study between the application of rule of law in these three nations. I have taken into consideration the application of rule of law in India, United States and United Kingdom. It also contains the application of rule of law in the governance of the three nations. The principles of rule of law stand against arbitrariness and are embedded in the constitution-written and unwritten. It was originated by Sir Edward Coke and was further developed by A.V Dicey. This paper further includes the provisions of rule of law in the Constitution of the nations. I believe that the judiciary of the three nations has played an important role in developing the concept of rule of law. This concept has been constantly upheld by the judiciary. I claim, that it has been crucial in the development of the judiciary and the society of all the three nations, but there is a need of more efficient application of rule of law in the judicial process. Furthermore, this paper also discusses about the separation of power in the three nations. I consider that regardless, the provisions of separation of powers have been constituted in the framework of administration of these three nations, they are not been followed strictly. Still, flexibility prevails in the application of separation of powers in these nations. The concept of rule of law is an essential part of a welfare state and hence, shall be applied in every country effectively. The principles of rule of law reflect the demand for an equitable society. They bring with themselves prosperity, execution of human rights and dignified lives for all.

1.1 INTRODUCTION

Rule of law means that law is supreme. The term rule of law is derived from the French term 'La Principe de Legalite', which means principle of legality. According to rule of law, the government has to govern by the principles of law. No person or state shall be governed by arbitrary powers of man. Rule of law stands against the concept of arbitrariness.

Rule of law was introduced by Sir Edward Coke. He was the Chief Justice in James I's reign and he was the originator of the concept of rule of law. He was the first to introduce something that was above the king. He stated that God and law must stay above the king.

It was further developed by A.V. Dicey, through his book 'Law and the Constitution'. This book was published in 1885. This book also talks about democracy, people's right and separation of powers among other things.¹

1.1.1 Research Objectives

1. Determine the application of rule of law in India, United Kingdom and United States
2. Formulate a comparative study on the application of rule of law in the three nations.

1.1.2 Scope of Study

This paper includes analysis of application of rule of law in India, United Kingdom and the United States. The analysis includes the application of rule of law in the governance, constitution and the judicial process. Separation of power is also an extension of the concept of rule of law. This paper also includes a comparative study of the application of law in the three nations.

1.2 Three components of Rule of Law

Rule of law has three components according to Dicey. These components are:

1. **Supremacy of Law:** Supremacy of law means that no person shall stand above the law. Law is applied to each and every man. Punishment is to be given to the person who breaks the law. It stands against arbitrariness.
2. **Equality before law:** No person shall be treated differently in the eyes of law and no person is above the law. So, every person shall be equally subjected to law. Equality before law states that same and equal law will be applied to everyone.

¹ C.K TAKWANI, LECTURES ON ADMINISTRATIVE LAW 20, (EBC 2019).

3. The predominance of legal spirit: This means that law should be according to justice that is to be delivered. Dicey stated that constitution is not a source for the rights of the individual but rather is a result of these rights. He said that these rights should be provided by the judiciary.

1.3 World Justice Project Rule of Law Index

World Justice Project (WJP) is an international civil society that provides data on the application of rule of law in the world.

Denmark, Norway, and Finland were the countries with the highest rule of law scores according to the *WJP Rule of Law Index* rankings in 2020. Countries have shown to slowly decline rather than improve the rule of law score, for the third year running. There has been a continuous decline. DR Congo, Cambodia, and Venezuela were the countries that had the lowest overall rule of law scores. They have remained unchanged from 2019.²

1.4 Rule of Law in India

Rule of law had its roots in India, since the ancient times. The rule of *Dharma* prevailed in the form of *Dharma Shastras* or *Neeti Shastras* and even the King was under the Rule of *Dharma*.³

India included Rule of Law, by the influence of its application in England. The provisions of rule of law are embedded in the Constitution of India, which is the *Grundnorm* of the country. The Constitution is the Supreme power of the state and no person is above the supreme power.

Article 13(1) provides that any law that is formulated and goes against the provisions of the Constitution will be held void.⁴

Justice, liberty, fraternity and equality are some provisions that are provided in the preamble of the Constitution that reflects the provisions of rule of law.

Article 21 provides for the right to life that includes the right to live a dignified life, which is a provision of rule of law.⁵

² WORLD JUSTICE PROJECT, <https://www.worldjusticeproject.org/rule-of-law-index/> (last visited July 07, 2021).

³ KRISHAN KESHAV, ADMINISTRATIVE LAW 19 (Singhal Law Publishing 2019).

⁴ INDIA CONST. art. 13 cl. (1).

⁵ INDIA CONST. art. 21.

Part III of the Constitution includes the provisions of rule of law and provides guarantee towards protection of fundamental rights.

Article 14 provides for equality before the eyes of law. It states that every person is equal in the eyes of law.⁶

To make fundamental rights enforceable, the Constitution provides Article 32,⁷ Article 226⁸ and Article 227⁹.

Constitution of India contains provisions that regarding independence of judiciary, executive and legislature. Parliament and all state legislatures are elected by democratic process. The provisions of judicial review are also provided by the constitution.¹⁰

The judiciary has played an important role in development of rule of law in India. Some of the cases that reflect this importance are as follows:

1. *ADM Jabalpur v. Shivkant Shukla*¹¹: In this case, due to the imposition of emergency, fundamental rights were taken away. They were Article 14, 21 and 22. The issue raised was whether only Article 21 protects life and liberty of people. The court held that only Article 21 does not protect life and liberty. It further held that Art. 21 loses procedural power during imposition of emergency, but still has a substantive power.
2. *Indira Nehru Gandhi Vs. Raj Narain*¹²: In this case, after Indira Gandhi Nehru won the elections, it was found out that she won the elections by unfair means and therefore the High Court of Allahabad held that she cannot contest in elections for six years. Soon after that emergency was imposed in the nation. Constitutionality of Article 329A was in question. The court held the Article 329A unconstitutional and held that Article 14 cannot be violated by any person.
3. *Maneka Gandhi v. Union of India, 1978*¹³: In this case, petitioner's passport was seized in the interest of general public. The petitioner then filed case in the court and the link between Article 14, 21 and 19 was in question. The SC widened the scope of Article

⁶ INDIA CONST. art. 14.

⁷ INDIA CONST. art. 32.

⁸ INDIA CONST. art. 226.

⁹ INDIA CONST. art. 227.

¹⁰ KRISHAN KESHAV, ADMINISTRATIVE LAW 20 (Singhal Law Publishing 2019).

¹¹ *ADM Jabalpur v. Shivkant Shukla* (1976) 2 SCC 521.

¹² *Indira Nehru Gandhi Vs. Raj Narain* AIR 1975 SC 2299.

¹³ *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621.

21 and said no person shall be deprived of the said right. Also, procedures have to meet the criterion fixed by the above three articles, to be held valid.

4. *Kesavananda Bharati v. State of Kerala*¹⁴: In this case, some pieces of land of the petitioner were coming under the Government's acquired land. The question in this case was whether the judiciary has the power to amend the Constitution. It was held that judiciary has the power to amend the Constitution for the welfare of the people. It was held that rule of law is the basic structure of the Constitution.

Other important decisions have been taken by the judiciary, by considering rule of law. In the case of *Hussainara Khatoon V. State of Bihar*¹⁵, the concept of speedy trial was held. In the case of *Sunil Batra V. Delhi Administration*¹⁶, the concept of freedom from tortures of jails was held. In *People's Union for Democratic Rights V. Union of India*,¹⁷ the concept of minimum wages was held. The concept of rehabilitation of bonded labourers was held in the case of *Bandhua Mukti Morcha V. Union of India*¹⁸. The concept of compensation of unlawful detention was held in the case of *Rudal Shah V. State of Bihar*.¹⁹

1.5 Rule of Law in United Kingdom

United Kingdom is one of the countries that has adopted rule of law in its governance. It does not have a written constitution, but the concept of rule of law, legislation and judiciary is embedded in its unwritten constitution. Rule of law has gradually developed in the United Kingdom.

In United Kingdom, when laws are made for a purpose then that purpose must be carried on. If someone violates those laws, then he should be punished for the same. The principle of equality is also carried on due to the application of rule of law. Every person is equal in the eyes of law. They are subjected to equal and just treatment. AV Dicey, who first outlined the rule of law and parliamentary sovereignty, believed that equality before the law was extremely important and that officials should be dealt with by the same court as the ordinary citizen, demonstrating to the general masses that the government was not being unjustly lenient on an

¹⁴ *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461.

¹⁵ *Hussainara Khatoon V. State of Bihar*, AIR 1979 SC 1360.

¹⁶ *Sunil Batra V. Delhi Administration*, AIR 1982 SC 1473.

¹⁷ *People's Union for Democratic Rights V. Union of India*, AIR 1982 SC 1473.

¹⁸ *Bandhua Mukti Morcha V. Union of India*, AIR 1984 SC 802.

¹⁹ *Rudal Shah V. State of Bihar*, AIR 1983 SC 1086.

official.²⁰ All laws must be passed with fairness and justice. The provisions also state that no person can be held or punished for the crimes that they have not committed. Therefore, no person can be mistreated in the name of law. Rule of law was effective to check the powers of the administrative authorities. It kept the administrative actions in limit.²¹

In the case of *Wilkes v. wood*²², it was held that the accused will be held liable for trespass and will be liable to pay for damages, even if the order was from a minister. In the case of *Entick v. Carrington*²³, the victim was granted compensation for trespass, even though the trespassing and ransacking was due to the King's order. The fundamental right of a person was upheld. In the case of *R v Rimmington*²⁴, it was held that no person should be held liable for something that he/she did not commit. In the case of *Sharma v Brown-Antoine*²⁵, it was held that criminal law should be applied to all individuals. No one should be exempted from this law.

1.6 Rule of Law in the United States

Rule of Law has been imbedded in the Constitution of United States. The Constitution is the supreme law of land. Article IV²⁶ of the Constitution conforms that the Constitution is the supreme law of the nation. All the laws that are to be made should be made according to the Constitution and its provisions. No person, not even the President is above the Constitution. The functioning of the Government is done with accordance of the Constitution and no action of the Government shall violate it. The Constitution provides for equality among the society. It is guaranteed under the Fourteenth Amendment. Every citizen is treated equally and is seen equally by the eyes of law. Laws are to be made with fairness and without discrimination among the people. The U.S. Constitution provides rights to its citizens for their protection and betterment.

The structure of Government of the United States also follows the principles of separation powers, which is an extension of rule of law. The function of the legislative body (Congress) is to make laws. The function of the executive body which includes the President, Cabinet, and other agencies, is to enforce laws. The function of the judicial body which includes federal

²⁰ Nicola Laver, *The rule of law in the UK*, INBRIEF (July 07, 2021), <https://www.inbrief.co.uk/legal-system/the-rule-of-law/>.

²¹ Varsha, *Rule of India & UK*, LEGAL SERVICE INDIA (July 07, 2021), <http://www.legalserviceindia.com/article/l457-Rule-of-Law-in-India-&-UK.html>.

²² *Wilkes v. wood*, 1763 19 St Tr 1153.

²³ *Entick v. Carrington*, 1765 19 St Tr 1030.

²⁴ *R v Rimmington*, [2006] 1 Cr App R 17, [2006] 2 All ER 257.

²⁵ *Sharma v Brown-Antoine*, [2006] UKPC 57; [2007] 1 WLR 780 (TT).

²⁶ U.S. CONST. amend. IV.

courts, including the U.S. Supreme Court, is to interpret laws and resolve disputes.²⁷ The Supreme Court of the United States was formed to be a watchdog of the Constitution so that it can guard the law and point out violations of the law by the public office holders and other members of the government.²⁸

In the case of *Marbury v. Madison*,²⁹ it was held that any law that violates the Constitution will be struck down. This case established the provision of judicial review in the United States. In *Church of the Lukumi-Babalu Aye, Inc. v. City of Hialeah*,³⁰ it was held that the local laws were violating the rights of the people under First Amendment. It was held that these clauses are in violation of the provisions of the Constitution and shall be struck down. In the case of *Plyler v. Doe*³¹, it was held that denying education to the children of immigrants, who are not documented is against the Fourteenth Amendment to the U.S Constitution. Therefore, it was held that this practice violates the Constitution and should be brought down. In the case of *Brown v. Board of Education*³², it was held that segregating children on the basis of race was against the Fourteenth Amendment to the U.S Constitution. The court ruled that this practice violated the equal protection clause and this segregation should not be permitted.

1.7 Comparative Analysis

United Kingdom does not have a written constitution, but the concept of rule of law is embedded in the working of its governance. In India, the Constitution does not have a provision directly stating rule of law, but many provisions of the Constitution reflect the concept of rule of law. In the Constitution of U.S., Article IV reflect rule of law that states that the Constitution is the Supreme Power of the land.

The concept of separation of powers is provided in the Constitution of India. The executive, the legislature and the judiciary enjoy separate powers. But, in practice, the application of separation of powers is not rigid. In Unites States, there is strict system of separation of powers between the three bodies of the Govt. But in reality, interference in working between the different bodies does take place, therefore the rule of separation of powers is flexible. In the

²⁷ AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/public_education/resources/rule-of-law/rule-of-law-in-american-life--a-long-and-intentional-tradition/ (last visited July 07, 2021).

²⁸ James McCellan, *Rule of Law & US Constitutionalism*, ONLINE LIBRARY OF LIBERTY, <https://oll.libertyfund.org/page/rule-of-law-us-constitutionalism>.

²⁹ *Marbury v. Madison*, 5 U.S. 137.

³⁰ *Church of the Lukumi-Babalu Aye, Inc. v. City of Hialeah* 508 U.S. 520 (1993).

³¹ *Plyler v. Doe* 457 U.S. 202 (1982).

³² *Brown v. Board of Education* 347 U.S. 483 (1954).

United Kingdom as well, separation of powers is not applicable strictly. The parliament can interfere in the working of the judiciary.

Certain provisions of rule of law like equality, fraternity, liberty and justice are embedded in the Constitution and governance of India, United States and United Kingdom. In India, the Preamble contains these provisions. In the United States, the constitution contains these provisions. The judiciary has also played an important in developing the concept of rule of law in India, U.K. and U.S.

Rule of law in U.K was applied to curb the arbitrariness and restrict the unlimited powers of the King and for the advancement of the society. In India, rule of law was applied for the welfare of the state and to strengthen the democratic principles of the state. In the United States as well, the rule of law was adopted for the betterment of the state and to curb inconsistency in the governance.

1.8 Analysis

Rule of law is a necessary concept for the welfare of the societies. India, United Kingdom and United States have adopted rule of law into their constitutions- written or unwritten. All the three nations follow the concept of separation of powers. It is not being followed strictly, but there is flexibility in the system. The judiciary has also incorporated the concept of rule of law in its proceedings, for the public good and justice.

1.9 Conclusion

The framers of the constitution of India and USA, understood the importance of the rule of law in a democratic setup and therefore, added the provisions of rule of law in their respective constitutions. United Kingdom, also has adopted the rule of law in its governance. The judicial system of all the three nations addresses rule of law and has passed many landmark judgements considering the provisions of rule of law. All these three nations practice separation of powers as well.

1.10 Suggestions

All nations shall make laws and policies with regards to the constitution, keeping in mind the welfare of the people and the state. The judiciary shall efficiently apply the concept of rule of law in imparting justice to the people, to secure fairness in the society. The nations should try to separate powers between the judiciary, executive and the legislature.

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