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# Rule of Law and Criminal Justice System in India

**RULE OF LAW**

The Rule of Law is a sword against the state domination.It plays an important role in administrative law. Its provides protection to people against arbitrary of administrative authorities. The “expression Rule of Law” is derived from French phrase “law principle de legalite i.e. of government based on principle of law

**EDWARD COKE is said the originator of this concept .**Rule of Lawis intended to ensure that a government exercises its authority 10farely, and it is crucial to securing liberty and justice for the people of its country. The Rule of Law signifies that nobody is deprived of its rights and liberties by an administrative action**.**

**In India , Rule of Law is included in article 21, which states “Right to life and personal liberty”.**

Many political scientists have given their accounts on Rule of Law.
The most celebrated work on it by **Prof. A.V. Dicey .**According to him,”**wherever there is distretion, there is room for arbitartyness**”. According to Dicey, “Rule of Law means that no person is punishable or can be lawfully made to suffer in body or goods except for distinct breach of law and no man is above the law.” He further gave 3 subrules of the above definition

1. Supremacy of law
2. Equality before law
3. Predominace of legal spirit

**In Indian context,**

In Indian Constitution the term Rule of Law is absent. It is included in Article 21. Rule of Law is directly linked to the stability and progress of a country. The seriousness of the issues in ROL is apparent as can be seen in different cases. To cite one, a Muslim got beaten up by the people of his own community suspecting pork in 2019. Although the Emergency of 1975 is the biggest example which made people realize about the significance of Rule of Law. According to the World Justice Project’s report, India ranked 69th among 193 countries. India has never ranked even in top 50 countries.

##  The Rule of Law & Constitution of India

* Constitution is supreme than the three wings of it namely legislature, executive and judiciary.
* Article 14 & 21 of the Indian Constitution has Rule of Law.
* If any of the Fundamental Rights is being curtailed of any citizen, then the citizen has Right to Constitutional Remedies guaranteed in Article 32 and 226.
* We also witness in the Preamble which talks about Equality of Status and opportunity.

##  The Exceptions in Indian Constitution

1. President & Governors: They have special provisions granted to them under Article 361, 361(2), 361(3), 361(4).
2. Immunity to Foreign Diplomats: The immunity is given to

the diplomats by Vienna Convention on Diplomatic Relations 1961 and Vienna Convention on Consular Relations 1963.

1. Supreme Court and High Court Judges: Immunity guaranteed in Article 121, which restricts the discussion on the conduct of such judges in Parliament.
2. Few Laws of Land:-
3. Maintenance of Internal Security Act (MISA) 1971
4. National Security Act (NSA) 1980

Both of these laws take away the Writ of Habeas Corpus from the citizens.

##  Basic Principles of Rule of Law

* Law is supreme, no one and nothing is above the law
* Impartial and Independent judiciary
* Speedy Trial
* Fair and Just Judiciary
* No person shall be made to suffer unless he breaches the law
* No arbitrary use of power
* Equality before law and Equal protection of law

##  Cases regarding Rule of Law

1. Keshavnanda Bharti VS State of Kerala 1973
2. Maneka Gandhi VS Union of India case 1978
3. Indira Gandhi VS Raj Narayan Case 1975
4. ADM Jabalpur VS Shivakant case 1977

##  Rule of law and Democracy

The Preamble of our Constitution affirms that our country is a constitutional democracy. A rule of “of the people, by the people, for the people”. According to Merriam Webster’s dictionary, democracy is rule of the majority. In simple words, Rule of law means that the govt. officials and citizens will be bound and abide by the same set of laws. Yet in 1975 something unexpected happened that led to the questioning of ROL. On 25th June 1975 when emergency was imposed by the Indira Gandhi govt., the fundamental rights of all the citizens were suspended. People were detained without knowing the grounds of their arrest and without even being heard and not even entitled to explain themselves. The Writ of Habeas Corpus was suspended. Thousands of people were arrested. In this case, according to Dicey’s subrule people would look up to the courts to protect their fundamental right claiming that their Fundamental Right guaranteed in Article 21 of the constitution is violated. The Supreme Court during this time held the judgement that ‘during an emergency, Article 21 of the constitution will be suspended and that means that Rule of Law also stood suspended.’

This judgement was settled by the 44th Amendment Act 1978. The judiciary has played a very important role in guarding rule of law and constitution. The best example to this is when the Supreme Court recognized that Right to Privacy is a fundamental right under the constitution. Another example would be when Supreme Court struck down Section 377 giving LGBTQ community the much deserved dignity and liberty which Supreme Court recognized upholding the Rule of Law.

**Now the question arises how do we uphold this constitutional value?**

The first thing would be to ensure that our courts continue to protect our fundamental rights. But its not only upon courts. It is also upon citizens to be informed, to make good choices and to uphold the basic constitutional ethos and democratic institutions. So in the end, it gets clear that a democracy is not the rule of majority but the Rule of Law.

**CRIMINAL JUSTICE SYSTEM IN INDIA**

* Criminal Justice is a system of practices and organization used by national and social government, directing at maintaining social contract to deter and for controlling and sanctioning those who violate criminal penalties.
* Every country’s constitution enforces certain laws for purpose of maintaining order and protecting the society from the crimes.

Britishers enacted and implemented several laws in India. After independence, we retained some laws like IPC, CrPC, IEA.

The Criminal laws stresses on punishment to the offender who breaches the law. This Law is further divided into:

Substantial law Procedural law

1. **Indian Penal Code**

IPC of 1862 is a substantial law. It defines an offence and what is the punishment of an offence. IPC was established in 1860 by Lord Thomas Mcaulay. Indian Penal Code has classified over 300 offences with their punishments. For ex; IPC 44 is injury, IPC 45 is life and IPC 46 is death.

1. **Code of Criminal Procedure**

CrPC is a procedural law which deals with the proper procedure to be taken by the governmental organisations while pursuing a case. CrPC was introduced in 1861 but then it was revoked and reenacted in 1973 and came in force in 1974. For ex; Section 41-54 of CrPC deals with arrest of a person, Section 125-128 is order for maintenance of wives, parents and children.

**Some objectives of CrPC** include preventing occurrence of crime, punishing the criminals, rehabilitation of criminals, maintaining law and order in the society etc.

Indian Penal Code and Code of Criminal Procedure are still prevalent in India with minimal amendments made to them.

## RELATIONSHIP BETWEEN RULE OF LAW AND CRIMINAL JUSTICE SYSTEM

Those accused of breaking the law also have some human rights. The law ensures that even the offenders are treated humanely. Whereas the Criminal Justice System deals with the rights, procedures and practices for the person who has committed crime.

**Police :** Primary responsibility of police is to protect life, liberty and property of citizens. They have important duties assigned as

1. responsibilities to them. Some of its duties are maintenance of law and order, investigation of offences and etc.

**2. Incarceration:** The latest data on prisoners released by the **National Crime Records Bureau** sshows that Dalits, Tribals and Muslims continue to be in incarceration numbers disproportionate to their share in population unlike general category and OBCs. Today the incarceration rate in our country is 33 per 1,00,000 citizens. It is comparable to that of Russia, Belarus and Bermuda.

1. **Capital Punishment:** According to Section 367(5) of CrPC 1898, for offences where death penalty was an option the court required to give state the reasons why court has not imposed death penalty and if accused has done something whose punishment is death but court sentences him some other punishment, then also the court is required to tell the state why the so has been done. But in 1955, the Indian Parliament repealed Section 367(5) of CrPC 1898. Death penalty was no longer a norm and courts did not need special reasons for why they were not imposing the capital punishment where it has been prescribed. Supreme court upheld the constitutional validity of death penalty in “rarest of rare” cases. This was done in case Rajendra Prasad VS State of UP.
2. **Fairness in Trial and Sentencing:**  The right to fair trial is norm of Rule of Law and as well as International Human Rights Law. The formal account of this concept has been in Human Rights in **Universal Declaration of Human Rights (UNDHR).** The various rights of arrested person includes presumption of innocence, knowledge of accusation, speedy Trial, Double jeopardy, Independent and Impartial judges, Aid of counsel, Public hearing etc.

 **CONCLUSION**

The Rule of Law signifies that nobody is deprived of his rights and liberties by an administrative action. The Criminal Justice system adopted by Indian Judiciary very much conforms to doctrine of Rule Of Law. Besides this, The Indian Judiciary is also playing a role of balancing different elements (speedy trials, legal aid etc) through its landmark judgements.

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