**RULE OF LAW AND CRIMINAL JUSTICE SYSTEM IN INDIA**

Rule of law is a dynamic concept propounded by A.V. Dicey. The idea has been developed from the French phrase ‘ la principle de legalite,’ which means a Government based on the principles of law and not of men. At its most basic, the rule of law is the principle that everyone should be subject to the same law. As Wade says that the rule of law requires the government should be subject to law, rather than the law subject to the government. It abhors arbitrary governmental rule or action, and seeks to provide citizens with some basic protections by requiring the government to act according to the law. It collates the rules which are based on the principles of freedom, equality, non-discrimination, fraternity, accountability and non-arbitrariness and is certain, regular and predictable.

The concept of Rule of Law is of old origin. Edward Coke is said to be the originator of this concept, when he said that the King must be under God and Law. This was against the age-old belief that the ‘King can do no wrong’ and that the King makes the law and therefore is above the law. In India, the concept can be traced to the Upanishads, which provide that “Law is the King of Kings. It is more powerful than they (Kings). There is nothing higher than law.”

Professor A.V. Dicey developed this concept in the course of time and expounded the concept of Rule of Law in his treatise, Law of the Constitution.

Rule of Law is amply imbibed in the Constitution of India. It runs as a golden thread through the fabric of Indian Constitution.

Several provisions in the Indian Constitution apparently promote the idea of Rule of Law.

**Absence of arbitrary power**, the first principle of Rule of Law, can be traced from the following provisions of the Constitution of India:

1. ***Right to Equality under Article 14 of the Indian constitution***

Includes rights against arbitrary use of power by thegovernment. Supreme Court Maneka Gandhi v Union of India (AIR 1978 SC 597) held that Article 14 embodies a guarantee against arbitrariness. Equality is antithetical to arbitrariness and any government action that is unreasonable or arbitrary denies equality, and is void. Article 14 not only strikes at arbitrariness in executive or administrative action but also legislative action .Therefore, Article 14 imposes an obligation on the government to act in a just, fair and reasonable manner.

1. ***Right to life and personal liberty under Article 21***

requires the government to act justly, fairly and reasonably in matters of life and liberty.

1. ***Article 245 read with Seventh Schedule of the Indian Constitution***

deals with distribution of legislative power between Centre and State. This Constitutional scheme prescribes three lists such as Central List, State list, and Concurrent list. Under this scheme, Central Government can pass law only on subjects mentioned in Central list, State government can pass law only on State list and both Centre and State governments can pass a law on the Concurrent list.

**Equality before law**, the second principle of Rule of Law, can be traced from the following provisions of the Constitution of India:

1) ***The Preamble of the Constitution of*** India intended to secure equality of status and opportunity.

2) ***Articles 14 to 18 in Part III of the Indian Constitution*** guarantee the fundamental right of equality.

* ***Article 14*** provides for equality in general and states that every person is equal before the law and State shall provide equal protection to all persons.
* **Article 15** prohibits the State from discriminating against its citizens on grounds of race, religion, caste, sex, and place of birth.
* **Article 16** guarantees all citizens equality of opportunity.
* **Article 17** prohibits the practice of untouchability.
* **Article18** prohibits titles.

In several cases the Supreme Court held that Right to Equality is a Basic Structure of the Constitution and could not be abridged or amended. Even though Article 14 confers equality as a Fundamental Right, it does not mean absolute equality. Equality means equality among equals and like must be treated alike.

Therefore, special treatment for different people is not a violation of Article 14. For example, reservations for backward classes, different tax slabs on the basis of income is not against equality. Similarly, different courts to deal with different cases do not violate equality as the special courts are also under the supervisory jurisdiction of the ordinary courts.

**Supremacy of the law**, the third principle of Rule of Law, is well recognised the Indian Constitution under Articles 13, 32, and 226.

**1) Article 13** expressly provides for judicial review over the legislations passed by the by legislature. Under this Article, no law, made before or after the enactment of our Constitution, should violate Part III of the Constitution. Any such law would be void. This protection was extended even to the rules, regulation, executive orders and customs having force of law.

**2) Article 32** confers writ jurisdiction on the Supreme Court under which the court has power to issue any order or grant any relief for violation of Fundamental Rights. This jurisdiction of the Supreme Court cannot be restricted, except according to the provisions of the Constitution. Right to approach the Supreme Court under Article 32 itself is a Fundamental Right.

**3) Article 226** confers similar jurisdiction on High Courts. High Courts can exercise writ jurisdiction.

Any law restricting the jurisdiction of the court under Articles 32 and 226 would be null and void.

Within the criminal law, the rule of law is generally associated with the right to a fair trial, the presumption of innocence, the rule against double jeopardy, the requirements of habeas corpus and the principle of legal equality. Criminal Justice System is an apparatus that is employed by the government to enforce standards of conduct required by the Rule of Law from the people subject to authority. The major components of the Criminal justice System are Police, Prosecutor, Judiciary and Prisons. The sub-systems like Prosecution and Defence Counsel have remained by and lay less knower agencies of the Criminal Justice System. The basic purpose of the Criminal Justice System is to provide every possible protection to the person and property of the people and to bring the law breakers to the book. In other words, the underlying principle of the Criminal Justice System is to provide justice to both the criminal as well as the victim. Every society is committed to orderliness, peace and justice there exist elements in each and every society who create law and order problems. Criminal Justice System in the ancient India was governed by ‘dharma’ as law of dharma propounded in Vedas was considered supreme in the ancient India. The right to punish the offender rested with the king. The ancient Hindu Law did not expressly distinguish between crime and the civil wrong, but the King with the progress and development of the society started making laws and regulations in the light of prevailing local customs and usages. The changes in the system were very slow but gradual.

The task of ‘prevention and control of crime’ mainly belongs to the Criminal Justice System and in general involves the process of arrest, trial, conviction,sentencing, punishment/treatment and finally rehabilitation. The basic parameters are laid down by the legislature in the form of law. The main components of the Criminal Justice System are Police, judiciary and Correctional Institutions. The legislature is also an important component of the Criminal Justice System, as all the laws emanate from the floor of the legislature. The courts interpret the laws and police is the executing agency.

Each component has no doubt a distinct role, but all the components are inter- connected with each other . The **police** is the first agency to get information about the Criminal incident and pursuant to it undertakes investigation of the crime, the **prosecution** is the second in line as it scrutinise the charge sheet of the police, the **judiciary** takes cognizance of the crime and adjudicates the allegation of crime as per rules of substantive and procedural law. The rrectional agencies like prisons and protection come at the end. The functioning of the key functionaries in each component has a direct bearing upon the functioning of the other components. They are inter-dependant upon each other and influence each other’s functioning.

**1) The Police:** The Police being the entry point in the Criminal Justice System and is expected to perform the all embracing function of investigation of crime that involves gathering material evidence from the scene of crime interrogation of witness, recording of confessions and statements before Magistrate arrest search and seizure seeking remand and release on bail etc, in addition to maintenance of law and order, therefore, the entire burnt is mainly on the police personnel. The Malimath Committee on Criminal Justice Reform (2003) has reposed strong faith on the police that according to the MCR is best shield against growing criminalization in the society, including terrorism.

**2) The prosecution:** The prosecution has the obligation of fair disclosure which means the prosecution should place before the court all factors even including that which is in favour of the accused. The purpose of production of the accused within 24 hours of his assert, the production of FIR (First Information Report) in the magistrate court, the submission of final report to the magistrate etc. signify that though investigation is done by the police, it is to be under the surveillance of the magistrate that various measures are taken.

**3) The judiciary:** One of the cardinal principles of criminal law is that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent court. Justice requires that no one be punished without a fair trial and judicial officers play their part in ensuring the same.

Judges play a crucial role in the day-to-day implementation of victims’ rights. Judges, after all, control the courtroom and make rulings that will affect the court’s observance of victims’ rights to be present, notified, and heard. At the same time, judges have an obligation to ensure that the criminal justice process is impartial and fair, and many judges feel constrained about giving what they consider to be “special treatment” to crime victims.

In ***Sheela Barse vs State of Maharashtra (1983) 2 SCC 96***, it was held by the Hon’ble Supreme Court that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of section section 54. In this case, High court directed magistrates to ask the arrested person as to whether he has any complaint of torture or maltreatment in police custody.

Further, in ***Hussainara Khatoon V Case (1980) 1 SCC 108*** it was held that it is the duty of the magistrate to inform the accused that he has a right to be released on bail on expiry of statutory period of 90 or 60 days as the case may be. Suffice is to say that magistrates are the best persons to oversee that the accused is not denied his rights.

**1) The prison:** Prison institutions are one of the three main constituents of the criminal justice system. It is known as the “tail end”of Criminal Justice System. In recent times there has been considerable change in social perception towards the prisoners. The prisons are no longer regarded as places for punishment only. They are now being considered as reformatories. The major problems residing the Indian Prison Administration are huge pendency of cases along with the inordinate delay in disposal of criminal cases on one hand and the wide range of conviction in cases involving petty offences on the other, leading to overpopulation in prisons.