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RULE OF LAW: IN THE CONTEXT OF THE INDIAN COURTS

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ABSTRACT

The rule of law is a fundamental concept that refers to the principle that everyone, including governments and individuals, is subject to and must obey the law. It implies that the law is supreme, and no one is above it. The rule of law ensures that all people are equal before the law and have access to justice. The rule of law is essential for a functioning and just society, as it provides predictability, stability, and consistency in legal decision-making. It also protects against arbitrary and unjust actions by those in positions of power, ensuring that they are accountable to the law and the people they serve.

The rule of law is a complex and multifaceted concept that includes a wide range of legal principles, such as due process, legal certainty, and equality before the law. It is an essential component of democratic governance and a key foundation of human rights and the protection of individual freedoms.

While the rule of law is often aspired to, it is not always achieved. It requires a commitment from governments, legal systems, and individuals to uphold the principles of justice, fairness, and equality. It is a continuous process that requires vigilance, transparency, and accountability to ensure that the law is applied equally and fairly to all members of society.

INTRODUCTION

The rule of law is a fundamental principle that underpins the modern legal system. It ensures that laws are applied equally to all individuals, regardless of their social status, wealth, or political power. The concept of the rule of law

has been the subject of extensive academic research, legal debate, and political discourse. This paper aims to provide a comprehensive overview of the rule of law, including its definition, historical evolution, and contemporary challenges.

Human rights should be promoted and safeguarded in a fair and equitable manner by something as **fundamental and ubiquitous as the rule of law, according to the UN Vienna Declaration of 1993, which said that "human rights are universal, indivisible, interdependent, and linked."** The most recent incident involving the mobster Vikas Dubey has prompted discussion about the rule of law and called into question the use of force by official institutions. There have been complaints from all throughout the country, particularly from the opposition, that such an act is contrary to the rule of law and the fundamentals of the law. It becomes vital in the modern context, where incidents like confrontations and mob lynching have started to become evident to people. This article's focus is on what the term "rule of law" means and how it has changed over time to fit with the current situation to demonstrate the significance of the rule of law in such circumstances.

DEFINITION

The rule of law is a principle that asserts that no one is above the law, and that all individuals and institutions are subject to the same laws and legal procedures. The rule of law has several components, including the following:

- **Equality before the law:** All individuals are equal before the law, and no one is above the law.
- **Legal certainty:** Laws are clear, predictable, and applied consistently.
- **Due process:** All individuals have the right to a fair and impartial legal process, including the right to a fair trial and the presumption of innocence.
- **Accountability:** All individuals and institutions, including government officials, are accountable to the law and can be held responsible for their actions.

HISTORICAL EVOLUTION

The rule of law has its roots in ancient civilizations, such as the Mesopotamian and Egyptian empires, which had well-developed legal systems. The concept was later developed in ancient Greece and Rome, where the law was seen as a fundamental tool for maintaining social order and protecting individual rights.

During the middle Ages, the rule of law was subordinated to the power of monarchs and other rulers. However, the Renaissance and Enlightenment periods saw a resurgence of interest in the rule of law, as thinkers such as John Locke and Montesquieu argued that the law should be based on reason and applied equally to all individuals.

The modern concept of the rule of law emerged in the 19th century, with the development of constitutional law and the establishment of independent judiciaries. The rule of law was enshrined in several international treaties, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Greek thinkers like Aristotle, Plato, and Cicero are regarded as the original proponents of the notion of the rule of law. For instance, **Plato wrote in his book "Complete Works of Plato" that states where the law is made subject to the authorities will soon collapse**, but states where the law is deemed paramount will get all of god's blessings and prosper throughout all ages. When King **John of England signed the Magna Carta in 1215, the**

rule of law in England allegedly began to exist. By signing the Magna Carta, the English Monarchs agreed to submit to the law and recognise the supremacy of the law. After the dispute between the parliament and monarchy or king arose, the doctrine of the rule of law in England underwent a new examination. In this war, the royal and the parliament were vying for supremacy. The parliament won the resolution to this dispute. Parliament began enacting laws to curb and restrict the monarchy's power once it gained supremacy over it. As a result, executive bodies in England are now governed by the laws of the parliament.

The concept of the rule of law was originally established in the United States of America (U.S.A.) in 1776 by the constitutional lawyers known as Paine. He holds the opinion that because America is a free country, it regards the law as king, as it should in every other free country. The eminent English constitutional lawyer named Dicey furthered the concepts of the Rule of law.

CONTEMPRARY CHALLENGES

Despite its importance, the rule of law faces several challenges in the contemporary world. These challenges include the following:

- **Corruption:** Corruption undermines the rule of law by allowing individuals and institutions to avoid accountability and manipulate legal processes.
- **Authoritarianism:** Authoritarian governments often use the law as a tool of repression, rather than as a means of protecting individual rights.
- **Terrorism:** Terrorism poses a challenge to the rule of law by creating a climate of fear and encouraging governments to adopt draconian measures that violate individual rights.
- **Globalization:** Globalization has created new challenges for the rule of law, such as the need to regulate international trade and commerce, protect

intellectual property rights, and address transnational crime.

RULE OF LAW INDIAN CONSTITUTION

Although the Indian courts have used this phrase in many of their rulings, the phrase "rule of law" does not have a definite definition in the Indian constitution. The adage "The King can do no wrong" is untrue in India since all public authorities are subject to the same laws and the district of ordinary law courts. The Indian Constitution is supreme over the judicial system, the legislature, and the executive branch. These three governmental entities must conduct themselves in accordance with the values outlined in the constitution.

The rule of law is included into many of the Indian constitution's sections. For instance, the Preamble to the Indian Constitution expresses the goal of promoting equality, liberty, and justice. Equal protection under the law and equality before the law are guaranteed by Article 14. No one should be denied equality before the law and equal protection of the law by the state, according to this clause. **These phrases from Article 14 have the clear meaning that the rule of law is supreme and that there is no room for arbitrary action because everyone is subject to it.** The fundamental necessity of the Rule of Law is that everyone is treated fairly and impartially by the law.

In the **Maneka Gandhi v. Union of India**⁵⁰ decision, the Supreme Court said unequivocally that Article 14 prevents state acts from being taken arbitrarily and requires justice and equity in treatment. Arbitrariness is prohibited under the rule of law, which is a fundamental aspect of the Indian Constitution. Arbitrariness undermines the Rule of Law wherever it exists. The inclusion of protective discrimination as a measure of guaranteeing equality among equals in Articles **15, 16, and 23** **elevated the idea of equality even further.**

⁵⁰ This is taken in reference with the case law <https://indiankanoon.org/docfragment/1766147/?formInput=personal%20liberty>

Another illustration that supported the concept of the Rule of Law in India is Article 13 of the Indian Constitution. If rules, regulations, bye-laws, and ordinances violate India's constitution, they can be declared invalid under Article 13 of the Indian Constitution. The Rule of Law has been recognised by the Supreme Court as a fundamental aspect of the Constitution in **Keshavananda Bharti v. State of Kerala**.⁵¹ Although the Supreme Court supported the Parliament's right to amend every article of the Constitution in this case, it also placed restrictions on that right by stating that it cannot be used to change the Constitution's fundamental principles.

Basic rights are unalienable and universal. Only a state that upholds the Rule of Law can protect such basic rights. The Indian Constitution's Section III guarantees fundamental rights. These Basic Rights are protected by **Articles 32 and 226 of the Constitution and cannot be repealed.** Every law must comply with the Indian Constitution, which is regarded as the highest law in the country. Any statute that violates a provision of the Constitution, particularly one pertaining to fundamental rights, shall be ruled invalid. In addition to justice and equality, one of the fundamental principles of the Rule of Law is liberty. In accordance with Article **21 of the Constitution, everyone has the fundamental right to life and individual freedom.** This Article holds that no one may be deprived of their life or freedom other than in accordance with the legal process, making the law supreme. This privilege also ensures that no one may be prosecuted for any other crime than breaking the law that was in effect when the offence was committed. The Indian Constitution clearly recognises the concepts of double jeopardy and self-incrimination.

INDIAN CASE LAWS

- **Gopalan v. State v. A.K.**⁵²

⁵¹ This is taken in the reference with the case law <https://indiankanoon.org/doc/257876/>

⁵² This is taken in reference <https://indiankanoon.org/doc/1857950/>

The detention order issued during the emergency was contested in this case, also known as the Habeas Corpus case, on the grounds that it violated the fundamental principles of the rule of law, a feature of the Indian Constitution. The Supreme Court was asked to rule on whether India has any other legal system other than that outlined in Article 21 of the Constitution. While Justice Khanna issued a dissenting judgement in the case, the main bench rendered a decision that was negative.

He noted that the Rule of Law is recognised in every civilised culture and is seen as a sign of social freedom. He added that the Rule of Law is the essential mechanism for maintaining the equilibrium between personal freedom and public order. Therefore, he believed that even in the absence of a provision like Article 21 in the Indian Constitution, the state lacked the right to rob a person of their life and freedom without a court's permission.

➤ ***A.K Karpiak V Union of India***⁵³

Supreme Court on the question whether the principle of natural justice can be followed in administrative function held **that every instrumentality of the state is bound by the doctrine of rule of law and is charged with the duty of discharging** their functions in a just, fair, and reasonable manner, which forms the basic principle of Rule of Law without which the concept of Rule of Law has no validity. The rule of law is applicable to the entire field of the administration as every organ of the state is regulated by the rule of law.

➤ **Sambamurthy v. Andhra Pradesh state**⁵⁴

The Indian Constitution's fundamental principles of the rule of law were affirmed in this decision by the Supreme Court. This court heard a challenge to Clause 5 of Article 371-D, which gave the government the authority to change or revoke the administrative tribunal's decision.

Clause 5 of Article 371-D was declared unlawful by Chief Justice Bhagwati in this judgement on the grounds of the doctrine of basic structure.

He said that Article 5 is unconstitutional because it violates the fundamental framework of the Constitution, which is the rule of law. According to the constitution, courts have the authority to conduct judicial reviews, which is one of the principles of the rule of law, to make sure that the executive branch and other authorities are abiding by the law. Any attempt of this nature would be extra vires and contrary to the Rule of Law.

CONCLUSION

The rule of law is a fundamental principle that is essential for maintaining a just and stable society. It ensures that laws are applied equally to all individuals and institutions, and that everyone is held accountable for their actions. Despite the challenges it faces, the rule of law remains a cornerstone of the modern legal system and a vital safeguard for individual rights and freedoms

⁵³ This is taken in reference as <https://indiankanoon.org/doc/639803/>

⁵⁴ This is taken in the reference as <https://indiankanoon.org/doc/954195/>