

**A STUDY ON THE IMPORTANCE AND APPLICABILITY OF RULE OF LAW IN  
INDIA WITH REFERENCE TO THE CASE - ADM JABALPUR v. SHIVKANT  
SHUKLA**

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**Abstract:**

The concept of Rule of Law is that the state is governed by the law and not by the ruler or the nominated representatives of the people. The Constitution of India intended that India be a country governed by the rule of law and it be lead by the law of the country. 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 aim of the study is to understand the application of rule of law in India and to analyse the application of rule of law in UK in comparison with India. The researcher has tried to study if rule of law in reality delivers justice or not.

This paper begins with an introduction to Dicey's three pillars on what and which a Government is based on and how the Indian Constitution fulfils these three requirements. In the second part of the paper, the theoretical and practical application of this rule of law in India has been discussed. The significance of rule of law has also been thoroughly analysed. The last part of the study deals with the case - ADM Jabalpur v. Shivkant Shukla. In this case, the court has dealt about rule of law and its application in India. The current position has also been dealt.

The research depends on Secondary data. It has been collected from books, journals, case laws, articles and online sources to provide a comprehensive and a holistic article.

**Keywords:** Supremacy of Law; Judiciary; Justice; Legal Spirit; Governance;

**Introduction:**

The concept of Rule of law is a fairly old concept. Its origin can be traced back to the Ancient Romans during the formation of the first republic. Chanakya, an Indian philosopher has also spoken about the rule of law theory in his own way. He has always maintained that the King should be governed by the word of law. In 350 BC, it has been discussed by ancient Greek philosophers such as Plato and Aristotle. Plato has written: "Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state"<sup>1</sup>. Similarly, Aristotle has also accepted that law should rule. He states that "law should govern and those in power should be servants of the laws."<sup>2</sup> It has since been widely spoken about by few medieval thinkers in Europe such as Hobbes, Locke and Rousseau by the social contract theory.

The term 'Rule of Law' has been derived from a French phrase 'la principe de legalite'. This literally means 'the principle of legality'. It refers to a government which is completely based on the principles of law. It does not depend on men for the running of the State.

This concept officially originated during the reign of King James I by Sir Edward Coke who was the Chief Justice at that time. Sir Edward Coke held the belief that the God and the Law are supreme and the King is also governed by the law. He firmly maintained that the supremacy of law cannot be disputed. The executive cannot above the law as there is nothing greater than the law.

Rule of law was developed further by Albert Venn Dicey. He wrote about it in his book, *The 'Law of the Constitution'*<sup>3</sup>. His theory is the most popular one. He has clearly stated that the government should be run by the principles law and not by men.<sup>4</sup>

Rule of law has been one of the basic principles of the English Constitution. It has been incorporated in the Constitution of U.S.A as well as India. It is entire basis of Administrative Law.

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<sup>1</sup> Theresa Man Ling Lee, *Politics and Truth: Political Theory and the Postmodernist Challenge* (SUNY Press, 1997) 31.

<sup>2</sup> Nicolas K. Laos, *Foundations of Cultural Diplomacy: Politics Among Cultures and the Moral Autonomy of Man* (Algora Publishing, 2011) 190.

<sup>3</sup> Albert Venn Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (London: Macmillan, 1885).

<sup>4</sup> *ibid.*

The aim of the study is to understand the application of rule of law in India and to analyse the application of rule of law in UK in comparison with India. The researcher has tried to study if rule of law in reality delivers justice or not. Also the practicality of rule of law are also deeply discussed.

### Review of Literature:

1. *Principles of Administrative Law*<sup>5</sup> (Jain and Jain) - In this book, the author stresses on the importance of rule of law and that it ensures ensures protection of rights of people. According to him, fairness and transparency are essential to implement rule of law in India.
2. *Rule of Law in India*<sup>6</sup> (Sharma)- In this journal, the author feels that Rule of law generally functions only when there are adequate checks and balances. During the time of emergency, there were no checks on the executive and hence, there was a gross violation of fundamental rights. The three organs of the government must be checked by each other. No organ should be given complete power.
3. *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*<sup>7</sup> (Dicey 2008)- This book is one of the earliest one on rule of law by A.V. Dicey. It is a revised edition with an introduction from the editor. In this book, Dicey has spoken about the three elements of rule of law and how they play a major role.
4. *Nature of The Indian Legal System*<sup>8</sup> (Deshpande 2006)- This book is revised by Thomas Paul. It was originally written by V. S. Deshpande, former Chief Justice of Bombay. In this book, the author has clearly elucidated on the nature of the legal system in India and how the makers of the Indian Constitution intended that law be the supreme and no one is above law.
5. *Politics and Truth: Political Theory and the Postmodernist Challenge*<sup>9</sup> (Lee) - in this book, focus is placed on the postmodernist challenge to Enlightenment ideals. The notion of truth in politics has been given importance. The author tries to find answers to the

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<sup>5</sup> Mahabir Prashad Jain, and Srimandir Nath Jain. *M.P. Jain & S.N. Jain : Principles of Administrative Law*. (1986).

<sup>6</sup> Sharda Girijesh Sharma. *Rule of Law in India*. (SSRN Electronic Journal, 2009).

<sup>7</sup> Albert Venn Dicey. *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*. edited by Richard VandeWetering. (Indianapolis: Liberty Fund, 2008).

<sup>8</sup> V. S. Deshpande. *Nature of The Indian Legal System*. (Universal Law Publishing Co. Pvt. Ltd, 2<sup>nd</sup> revised ed., 2006).

<sup>9</sup> Theresa Man Ling Lee. *Politics and Truth: Political Theory and the Postmodernist Challenge*. (SUNY Press, 1997).

question - whether truth is power? He has also followed Aristotle's ideas on rule of law and has deeply analysed it.

6. *Foundations of Cultural Diplomacy: Politics Among Cultures and the Moral Autonomy of Man*<sup>10</sup> (Laos) - The author has given a new angle or way of thinking about diplomacy, politics and culture. He has tried a different approach towards international relations theory and the concept of power. He has based it on philosophical arguments about reality, history and freedom. He has analysed lot of debatable topics with respect to politics and rule of law.
7. *The Rule of Law*<sup>11</sup> (Shapiro)- The book is divided into four parts. The author has elucidated on the actual meaning of rule of law and its connect with democracy. He analyses if the restrictions on rule of law are also rational. He has also studied if rule of law is desirable in the modern scenario and to what extent should it be applicable. The conflicts between liberalism and rule of law have also been considered.
8. *The Rule of Law*<sup>12</sup> (Bingham)- The author feels that 'rule of law' is a phrase that is frequently used but hardly examined and understood. He maintains that rule of law is not a mere theory but is highly essential for the development of a fair and just society. It is the road for a responsible government. He briefly elucidates the historical origins of this doctrine. He has also examined the threat from international terrorism and how it disrupts rule of law and its application.
9. *Comparative Analysis of Rule of Law in UK & India*<sup>13</sup> (Rajora)- In this journal, the author has given careful focus to the origin of rule of law in England and traced back its origin to Upanishads in India. She has compared the modern existing concept rule of law in India with the one existing in England. She concludes by stating that rule of law is a dynamic concept and there cannot be any fixed method in its implementation.
10. *Rule of Law in a Free Society*<sup>14</sup> (Madhava Menon) - This book has clearly explained the modern Indian society and how relevant the rule of law theory is today. The problems that threaten to supersede rule of law have also been analysed. Corruption and terrorism

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<sup>10</sup> Nicolas K Laos. *Foundations of Cultural Diplomacy: Politics Among Cultures and the Moral Autonomy of Man*. (Algora Publishing, 2011).

<sup>11</sup> Ian Shapiro. *The Rule of Law*. (NYU: Press, 1995).

<sup>12</sup> Tom Bingham. *The Rule of Law*. (UK: Penguin, 2011).

<sup>13</sup> Varsha Mansingh Rajora. *Comparative Analysis of Rule of Law in UK & India*. (SSRN Electronic Journal, 2010).

<sup>14</sup> N. R. Madhava Menon. *Rule of Law in a Free Society*. (USA: Oxford University Press, 2008).

pose as challenges in the implementation of this theory. This book is based on the lectures organized by the Nehru Centre, Mumbai to reassess the concept rule of law in the Indian society.

11. *Nurturing Constitutional Culture of India around 'Rule of Law'*<sup>15</sup> (Dansana)- The author focuses on the cultural aspects of India and how it can pave the way to mould the constitutional nature of rule of law. The idea is that the fundamental rules of the society are the product of personal as well as collective experiences of components of socio-political society. The author states that 'Rule of Law' is the edifice of Indian constitutional polity hence, it is imperative to understand the same and employ it in the country in its spirit.
12. *The Authority of Law: Essays on Law and Morality*<sup>16</sup> (Raz)- This is classic collection of essays which was first published in 1979. The author begins by laying his focus on what constitutes law with regards to morality and the concept of authority. He further gives a detailed explanation of the nature of law and legal systems. The last part of the book questions if the citizen is under any moral obligation to obey the law or if he has the right to dissent.
13. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*<sup>17</sup> (Hussain)- The author studies about the uses of a range of emergency powers, like the suspension of habeas corpus and the usage of military tribunals. His study largely focuses on the aspects of British colonialism in India to understand how it influenced India in shaping up the emergency laws.
14. *Law, Authority, and Colonial Rule*<sup>18</sup> (Otter and den Otter)- This chapter of the book 'India and the British Empire' by Douglas M. Peers and Nandini Gooptu examines the law and empire that existed in colonial India. It also explores the tensions that were present between a bold civilizing ideology of imperial law, and a much more cautious

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<sup>15</sup> Prayas Dansana. *Nurturing Constitutional Culture of India around 'Rule of Law'*. (SSRN Electronic Journal, 2009).

<sup>16</sup> Joseph Raz. *The Authority of Law: Essays on Law and Morality*. (Oxford University Press on Demand, 2009).

<sup>17</sup> Nasser Hussain. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. (University of Michigan Press, 2009).

<sup>18</sup> Sandra den Otter. "Law, Authority, and Colonial Rule." *India and the British Empire*. (Oxford Scholarship Online, 2012) 168–90.

imperium which sought to preserve the communities, and its traditions. It used the rule of law to consolidate its dominance and stifle dissent.

15. *Rule of Law in India: A Quest for Reason*<sup>19</sup> (Narasappa)- The author tries to understand the difference in the theory of rule of law and its practical application. The stark difference between the two have been analysed by the author. In the last part of the book, the challenges to the concepts of equality and certainty have been examined with which the status of rule of law has been valuated.

### **Objectives:**

1. To understand the application of rule of law in India.
2. To analyse the application of rule of law in UK in comparison with India.
3. To study if rule of law delivers justice.

### **Hypothesis:**

Rule of law is the pathway to deliver justice in India.

### **Research Methodology:**

A doctrinal study. The researcher has depended on secondary data like commentaries, books, treatises, articles, notes, comments and other writings have been utilized to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

### **Rule of Law in England:**

The rule of law in England rests on the three principles of A. V. Dicey. The three principles given by him are (i) absence of arbitrary power, (ii) equality before the law and lastly, (iii) predominance of legal spirit.

In England, the doctrine of rule of law was applied in few cases. If a man is wrongfully arrested by the police, then he can file a suit for the damages against them. In this case, the police

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<sup>19</sup> Harish Narasappa. *Rule of Law in India: A Quest for Reason*. (USA: Oxford University Press, 2018).

are considered as private individuals. In *Wilkes v. Wood*<sup>20</sup>, the Court held that an action for damages for trespass was maintainable, even if the suit was in pursuance of the order passed by the minister.

In another leading case, *Entick v. Carrington*<sup>21</sup>, a publisher's house was completely ransacked by the king's messengers. They were sent by the Secretary of the State. In an action for trespass, compensation was given to the publisher as damages. In the same matter, if a man's land is compulsorily acquired under an illegal order, then he can bring an action for trespass against any person who attempts to execute the said order and hence, disturbs his possession.

#### **Theoretical Application of Rule of law in India:**

India has adopted the Common law justice system which is based on the rule of law. The makers of the Indian Constitution for India to be governed by the rule of law. It means that the Constitution will be the supreme with no one above the constitution. According to Article 13(1)<sup>22</sup> of the Constitution, if any law is violative of the Constitution, then it will be declared invalid. Article 21<sup>23</sup> of the Constitution further provides that no one will be deprived of their life or liberty. This provides a check against arbitrary action.

Article 14<sup>24</sup> of the Constitution offers further protection by clearly stating that there should be equality before law and there should be no discrimination on any grounds. Through these provisions, the Constitution fulfils all the requirements of Dicey's theory. Thus, theoretically speaking, India has upheld the supremacy of law and adhered to the principles put forth by A.V. Dicey.

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<sup>20</sup> 1763 19 St Tr 1153.

<sup>21</sup> 1765 19 St Tr 1030.

<sup>22</sup> Art. 13(1): All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

<sup>23</sup> Art. 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>24</sup> Art. 14: Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

### **Habeas Corpus case: A Discreditable Step in upholding Rule of Law:**

In *A D M Jabalpur v. Shivkant Shukla*<sup>25 26</sup>, the question came before the Court was ‘if there was any rule of law in India apart from Article 21 of the Constitution’. This came up when dealing with the suspension of Articles 14, 21 and 22 during the proclamation of an emergency.<sup>27</sup> The majority answer of the 5 Judge bench was negative in this case. In their majority opinion, the Constitution was supreme and it was irrelevant if a certain individual right predated the Constitution.<sup>28</sup> This judgement has been severely criticised for not upholding the spirit of law. The Supreme Court was widely censured for giving an erroneous judgement.

However Justice H.R. Khanna dissented from the majority view. He was appreciated for his opinion. He observed the following:

*“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.”*<sup>29</sup>

Though this case was nullified by the 44th constitutional amendment, no official reversal of judgement was done until recently, in the case - *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.*<sup>30 31</sup>. This is a landmark judgement which is considered as the hallmark

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<sup>25</sup> AIR 1967 SC 1207.

<sup>26</sup> The President of India had declared an emergency on the ground of internal disturbance according to Article 352 of the Constitution. Articles 14, 21 and 22 were unconditionally suspended. The affected parties challenged their detention under Sec. 3 of the Maintenance of Internal Security Act and moved to the High Courts for issuance of a Habeas Corpus writ. The common grounds for questioning the detention orders were violation of Article 21 and the malafide nature of the orders. All the High Courts (nine) to whom the appeals were made ruled that judicial scrutiny of prevention orders under the Act was within judicial purview. Appealing such decisions, the Union government appealed on one of the cases in which such a decision was made, to the Hon’ble Supreme Court. The Court had to decide whether a writ petition under Article 226 to enforce Article 21 in case of a detention order under Maintenance of Internal Security Act (hereinafter, the Act) was maintainable and if yes, then what was to be the extent and scope of judicial scrutiny in such an appeal.

<sup>27</sup> Vidit Mehra. *Case Comment on ADM Jabalpur v. Shivkant Shukla*. (Journal of Legal Studies and Research, 2017).

<sup>28</sup> Aviral Virk. *42 Years On, Son Overrules His Father’s Supreme Court Ruling*. (The Quint: India, 2017).

<sup>29</sup> *A D M Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207, para 154.

<sup>30</sup> W.P. (CIVIL) NO 494 OF 2012.

<sup>31</sup> The nine-judge bench of the Supreme Court unanimously held that privacy is a constitutionally protected right which not only emerges from the guarantee of life and personal liberty in Article 21 of the constitution, but also



of democracy. The dissent of Justice H. R. Khanna was also upheld by the Bench. Thus, after this case, the theoretical formulation of Dicey on the Rule of Law holds much greater force than in 1976.

### **Rule of Law and Indian Judiciary:**

Generally, the Indian Judiciary has supported the rule of law and has strived to practically implement. It believes that no law that violates the basic structure of the Constitution should be in place.

In *Chief Settlement Commissioner, Rehabilitation Dept, Punjab v. Om Prakash*<sup>32</sup>, the Supreme Court observed that the rule of law means the authority of law to test and check all the administrative action and to ensure that no aggrieved party is denied justice. If the administrative or executive action is violative of the Constitution, then they will be set aside as soon as it brought into the notice of the judiciary.

In *Satvant Singh Sawhney v. D Ramarathanana*<sup>33</sup>, the Supreme Court has clearly held that any executive action operating to the prejudice of any person should be supported by some legislative authority.

In *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.*<sup>34</sup> a Constitution Bench in this case held that rule of equality is mandatory in public employment. It is the basic feature of our constitution and that any court will not have the power to uphold any order which is violative of Article 14 of the Constitution read with Article 16.

Lastly, in *Kesavananda Bharati v. State of Kerala*<sup>35</sup>, the Court has held that the Rule of Law is an integral part of the basic structure of the constitution. Hence, it cannot be amended by any Act of the Parliament. This clearly affirms the supremacy of law over the authority of men.

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arises in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III of the Indian constitution.

<sup>32</sup> 1969 AIR 33.

<sup>33</sup> AIR 1967 SC 1836, para 33.

<sup>34</sup> AIR 2006 SC 1806.

<sup>35</sup> AIR 1973 SC 1461.

**Practical Application of Rule of Law in India:**

The general criticism is that rule of law is merely in theory and has no practical application in India. This is partially true because corruption runs rampant in the country. India continues to be ranked among Most Corrupt Countries in the world based on the Corruption Perception Index released by Transparency International.<sup>36</sup>

In addition to corruption, the other problem is the existence of old and obsolete laws in India. The 'sunset clause'<sup>37</sup> is not followed in India. According to the Indian Independence Act, all the laws that existed before the independence would continue to be in practice unless the Parliament explicitly revoked it. In one way, this was considered helpful as it laid a firm basis for India after independence when the country was still grappling to build itself, but it also leads to ambiguity and confusion in the present situation. Law is dynamic, it has to adapt and change according to the changing times. This also causes problems in interpreting the same.

It is also pertinent to note that the constitution has provided redressal mechanism against any tyrannical provisions. One of the most important factors that help in maintaining the supremacy of law is the judiciary. The judiciary has time and again stepped in to ensure that justice is maintained as already elucidated.

**Conclusion and Suggestions:**

Rule of law is a concept that is quite impossible to be fully implemented in any country. It is a model concept that holds that the law should be held above everyone. But the problem exists in the fact that the man makes laws, man ensures that the law is followed and it is again man who gives a redressal mechanism in case of violation. Law is sometimes controlled by executive. But Rule of Law can be partially implemented and if done, it is definitely the pathway to the justice. This proves the hypothesis.

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<sup>36</sup> Ronak D. Desai. *India Continues To Rank Among Most Corrupt Countries In The World*. (Forbes, Mar. 07, 2018), available at <https://www.forbes.com/sites/ronakdesai/2018/03/07/india-continues-to-be-one-of-the-most-corrupt-countries-in-the-world/#3b3857d679c6>.

<sup>37</sup> In public policy, a sunset provision or clause is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

That being said, the founding fathers of India have very successfully established a country that would follow the letter of the law and implement the Rule of Law. The Indian Constitution has provided adequate mechanisms to ensure that the Rule of Law is practiced.

The efficiency of the courts is essential in the holding of rule of law. Independence of Judiciary largely facilitates this. Judicial Activism is one of the modern weapons that the courts are resorting to. This is to ensure that there are no laws that violate the fundamental rights of the citizen. Human rights is also being given more importance. The Court is developing techniques by which it can force the government not only to submit to the law but also to create conditions where people can develop capacities to exercise their rights properly and meaningfully. The accountability and transparency of the Government must be increased to ensure that democracy prevails.

To encourage additional country-specific development, the World Bank and the International Monetary Fund (IMF) began providing financial assistance on the condition that the rule of law be implemented. By conditioning funds on the establishment of the rule of law, it also reduces corruption to a certain extent which acts as a barrier to the economic development of any country. This ensures that there is an overall sustainable development.

Rule of law is usually believed to be a modern concept which is got as the gift of democracy. The reality is that good governance brings in democracy which in turn ensure that there is rule of law.

Focus should be on the loopholes to rule of law and in eradication of anything that threatens to weaken the rule of law, like terrorism. It is also equally responsible for the citizens and media to fulfill their duties and roles to ensure the maintenance of rule of law.

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