



**INTERNATIONAL JOURNAL OF NOVEL RESEARCH
AND DEVELOPMENT (IJNRD) | IJNRD.ORG**
An International Open Access, Peer-reviewed, Refereed Journal

The Globalized ‘Rule of Law’: A Study COVER LETTER FOR PAPER

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ABSTRACT

The ‘Rule of Law’ as a concept has broader aspects & meanings, which keep on evolving & growing with globalization. It is a kind of mechanism or process or practice or a norm that contributes in maintaining the equality of all citizens before the law and also to ensure an orderly & just society. Most of the countries in the world follow the philosophy of rule of law by imbibing the principles & concepts, even the constitution of India follows the same principles of rule of law as mentioned under Article 14. The literal meaning of the term ‘rule of law’ means not the rule of men but the rule of law and also that all the citizens & institutions of a country are accountable to the same laws. The concept of the ‘rule of law’ has been further dealt with & elaborated in the paper. This paper dwells upon the philosophy of a famous jurist A.V Dicey as it is said that he popularized the expression ‘the rule of law’ of modern times. The paper also focuses on the changes or developments caused by globalization affecting the ‘rule of law’ and how this concept keeps evolving or developing in this changing world.

INTRODUCTION*Pranjal Apurva¹ & Ayushi Tiwari²*

‘Globalization could be the answer to many of the world’s seemingly intractable problems. But this requires strong democratic foundations based on a political will to ensure equity and justice.’³ It is the famous statement given by *Sharan Burrow* in which he tends to explain the scope of Globalization. Globalization is a vast concept and many other concepts come within its preview as it affects the normal day to day working of the individual as well as society. It is an accepted principle that society should keep developing with the change in living condition and law should also keep evolving at the same pace. The rule of law is the well-known principle under administrative law that has its origination from England and was later accepted by India. To understand how the rule of law is affecting the globalizing world we need to look at the primitive concept of the Rule of law that was developed by Sir Edward Coke who was the Chief Justice in James. The term ‘Rule of law’ was originated from the French phrase ‘La Principe de Legality’ which in actual means that such government which is based on the principle of law, not of man. The basic meaning of Rule of Law is that no one is above the law and it should be followed by every human being in the same sense without any exception to it. In a narrower sense, the rule of law implies that government authority may only be exercised following the written laws, which were adopted through an established procedure. The principle of Rule of Law is intended to be a safeguard against arbitrary actions of the government authorities. The originator of the concept of Rule of Law i.e., Sir Edward Coke said that the king that rules the state must be under God and the law; this implies that the law is supreme and even King is bound to follow that law.

Later in India, the concept of Rule of Law emerged & can be traced back to the Upanishads where it was contended that Law is King of King. The concept of Rule of Law is a corelative to the concept of equality before law for all round evaluation of healthy social order⁴ which is mentioned under *Article 14* of the Indian Constitution. Further, with time the Credit of development of Rule of Law goes to *A.V Dicey* in his book “Introduction to the Study of the Law of the Constitution”⁵ that was published in 1885 where he discussed the rule of law in detail.

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³Sharan Burrow, Globalization, Yes, but Be Sure to Focus on People, International Herald Tribune, (Jan. 16, 2023), <https://www.nytimes.com/2000/09/13/opinion/IHT-globalization-yes-but-be-sure-to-focus-on-people.html>.

⁴ Dalmia Cement (Bharat) Ltd. V. Union of India, (1996) 10 SCC 104.

⁵ A.V. Dicey, Introduction to the Study of the Law of the Constitution, (Dicey, Albert Venn, 1835- 1922).

CONCEPT OF RULE OF LAW BY A.V DICEY

The three basic principles under Rule of law according to A.V Dicey is

- **The supremacy of law or Absence of Arbitrary Power-** Dicey believed that whether he is a common person or a governmental body, all people are expected to follow the law. He assumes that no one should be prosecuted for anything other than an already proven violation of the law and also that, under ordinary procedure, the suspected offence must be proven before ordinary courts.
 - **Equality before Law-** In this context, the rule of law means that no entity should be above the law. And public officials should comply with the same rule, so no other special courts can deal directly with their issues.
 - **The predominance of Legal Spirit-** According to Dicey, rights like that of the right to personal liberty, freedom, arrest, etc. are granted by the written Constitution of a nation in many nations. In England, however, these privileges are the result of judicial rulings which have emerged as a result of the disagreement between both the parties. The Constitution is not the root, but the product of individual rights.
- With passage of time, the concept of Rule of law also kept evolving and different people from different part of society have their own view with respect to rule of law. The rule of law cannot be kept constraint into four walls as it needs to evolve with the time.

EVOLUTION OF RULE OF LAW WITH GLOBALIZING WORLD

When examining how the rule of law changed during this colonial interaction, *Henry Maines* said that the historical division ‘from status to contract’ serves as a useful lens. The rule of law that was developed by the A.V Dicey and Sir Edward Coke has gone rapid evolution with the change in global perspective and evolution of law. The principle that there should be a rule of law not man has gained significance all over the world when people have realized that it is the essence for the effective administration of the society. The rule of law is considered as the basic feature of the Indian constitution. In the case of *Indira Nehru Gandhi V Rajnarayan*⁶, the court considered certain principle under the basic structure and *Justice DY Chandrachud* listed out four points which are to be considered as the basic structure and Rule of law was one of them, this led to the development that basic structure to the constitution cannot be amended by the Parliament so Rule of law became the inherent part of the constitution. The scope of rule of law at an international level further kept evolving and certain factor was set up to measure the Rule of the law of a certain country that is-

- **Constraints on Government Powers-** Under this the extent to which the person one who governs the system is bound by law is looked into to understand what sort of rule of law is being prevailed in the society. With the changing society, it is becoming essential that the ruler have to abide the law and same can also be seen by how judicial decision is been implemented in the society, the check on the government power by judiciary.

⁶ *Indira Gandhi Nehru V. Raj Narayan* (1975 AIR 865, 1975 SCR (3) 333).

- **Absence of Corruption-** In the era where people are running behind the money and corruption is on the peak there must be no corruption in the society to have the rule of law implemented effectively. So, we can say that less the corruption better the implementation of rule of law.
- **Open Government or transparency-** the transparency in the working of government increases the accountability of government to the people one who have elected them into power, so the more the transparency in the government working the more effective rule of law will prevail. Right to information act 2005 fosters the principle of rule of law in India.
- **Protection of the fundamental right of the people-** The Fundamental right are considered as the basic right of the individual and its obligation of the government to implement the Fundamental right more effectively, the sustainability of the fundamental right which needs to be provided to the individual according to UDHR will represent the implementation of Rule of law in the society.
- **Order and Security-** Rule of law generally represent the rule of constitution and rule set up by the government so if the same is being followed by the state it will lead to the prevalence of law and order in the society at the same time it will also create the sense to security in the society, so these two factors are taken into consideration while analyzing the rule of law.
- **Regulatory Enforcement-** this implies that whether the regulatory policy that is set up for the effective running of the society are being followed by the people. The degree to which enforcement to this regulatory help to measure the applicability of rule of law in the society.
- **Civil Justice-** whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system that are prevalent in the society help us to look at the degree of implication of rule of law in that society. The globalizing world has more implication of property and concept such as private property is fostering so it is normal that which people are living in the same society there will be dispute relation the civil matter so if the civil justice system is capable enough to resolve this type of dispute that will represent the rule of law.
- **Criminal Justice-** Same as the civil justice the criminal justice also play a crucial role in determining the rule of law. The rapid increase in the criminal activity in the society and transforming the nature of Human being into more brutal increase the significance of the Criminal Justice and any failure in the criminal justice system or its effectiveness will ultimately lead to much instability in the society and there will be not Rule of law.

So, this is the factory as of present scenario in a global world that helps us to measure the Rule of law and with the change in trend in the coming time, there can be another factor that can be taken into consideration to measure Rule of law. So, the society that fulfils all the criteria that are mentioned above will have the maximum existence of rule of law. There has been an active role of the judiciary to maintain the rule of law in the society and this role is often rendered with the help of Judicial review that leads to Precedent and dissent in the set up in the society. This precedent and dissent often help to understand the law and provide guidance to the society at large. We know that the precedent is now considered as the source of law. Role of judiciary in the modern society cannot be denied and

under Indian constitution Art, 32 is considered as heart and soul which means that the writ jurisdiction and judicial review that help in preserving the law and order in the society.

ROLE OF PRINCIPLE OF JUDICIAL PRECEDENT & DISSENT IN EVOLUTION OF RULE OF LAW

The country is having democracy with three pillar that is executive, legislative and Judiciary. All these three pillars of democracy have their own role in the system with separation of power. Each pillar having the role of its own and it is considered that they will not interfere with the role of others and to keep them working according to law the power to review the working of this is assigned to the Supreme courts and High court where they can keep a check on the power and this led to the emergence of judicial precedent and dissent.

In the diverse society such as India where people with different culture and religion live together, there is much possibility that there may arise difference in opinion in the society and the administrative decision that is taken need to be according to the law that prevails, so the role of the court and judicial precedent is to let the acts according to the rule that is set by the law. The court while deciding take several factors to decide the case and the precedent that is set up by the court is important as such decision reflects the essence that is behind the law and what was the intention of the legislature while setting that law.

Various cases in Indian history have landmark precedent and set an example for the foreign country as well some of them are basic structure case (Kesavananda Bharati) case where the court came up with the doctrine of basic structure and this is followed even today, So this also helps in maintaining the basic essence of the constitution. The role of precedent was recognized by the court in the case of *Union of India Vs. Raghubir Singh* where court specifically said that "The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part daily affairs and, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court.⁷ In this case the court recognizes that the judicial precedent not only maintains the consistency in the judgement of the courts but also guide the working of society in day to day affair. In the case of *Commissioner of Income Tax Vs. M/s Sun Engineering Works Private Limited*⁸ the court said that when the court while doing its duty under the maintain the rule of law in the society have to take into consideration the judicial decision given by the court and the true principle laid down before it. Under the Indian constitution Art 141 says that the decision given by the supreme court is Binding on the other court as well as supreme court itself and if the same required to be overruled the higher judges bench need to decide the same, so this practice of judicial precedent can be termed as the constitutional morality. Some other famous precedent that is rendered by the supreme court was in the case of Maneka Gandhi V Raj Narayan where the court said that Art 21 that have procedure established by law also include the due process of law and that was the turning point when

⁷ UOI v Raghubir Singh (AIR 1989 SC 1933).

⁸ Commissioner of Income Tax Vs. M/s Sun Engineering Works Private Limited 1992 Supp 1 SCR 732 a.

Indian Constitution scope was expanded and the enhanced way of rule of law adopted. The due process identification led to the enhancement of the scope of judicial review which let the court to ensure the prevalence of law and order in the society. Judgement such *Kharak Singh v. Union of India*⁹ and *Govind v. State of M. P*¹⁰ in which supreme court said that Right to privacy is the fundamental right and later the same was retreated by a nine-judge bench of the Supreme Court in the case of *KS Puttuswamy v. Union of India*¹¹.

Not only the Precedent plays an important role in the development of society and Rule of law but the dissent also plays a major role in the development and evolution of law. Some of the famous dissents that are in the Indian constitutional history such as Fazil Ali in the case of *AK Gopalan case*¹² where he interpreted the procedure established by law include a fair and reasonable procedure although at that time his judgment was not taken into consideration a later court in the case of *Rustom Cavasjee Cooper v. Union of India*¹³ court accepted his view and take into consideration. Further, in the case of Maneka Gandhi, the court adopted his view and accepted that procedure established by law include the due process clause. The other famous dissent judgement was given by H.R Khanna in the case of ADM Jabalpur case where the majority held that during the emergency the Right to life will also be remain suspended however justice Khanna was of the view that Art 21 is derived from the law not the creation of the constitution and if this is suspended it will lead to no right left up with the people. This dissent judgement cost him the position of Chief Justice of India. In 2017 Justice DY Chandrachud who wrote the judgment of case *K.S. Puttaswamy v. UOI*¹⁴ almost rejected the judgement of *ADM Jabalpur case*¹⁵ and adopted the view given by Justice Khanna. Further, the case of *Kharak Singh v State of UP*¹⁶ where majority denied the view that right to privacy is the fundamental right, Justice Subbo Rao, in his dissenting view broaden the scope of the personal liberty and said that Right to privacy is the fundamental Right and later in a recent judgement of Supreme court *K.S Puttaswamy v UOI*¹⁷ court adopted the view of Justice Rao and said that the Right to privacy is the fundamental right. These are the example where we can see that even dissent view also plays an important role in framing rule and enhancement of our society that are leading the society towards Rule of law. Art 145(3) of the constitution specifically mentions that the judge is free to write the opposite view than that is of majority. We must also pay emphasis on the dissent opinion of Justice Indu Malhotra where she presenting his view against the Majority said that the practice of Sabrimala temple is correct and she went forward to justify her stand. So, it not just that the majority judgment plays an important role but minority view is also taken into consideration.

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⁹ Kharak Singh v. Union of India 1963 AIR 1295.

¹⁰ Govind v. State of M. P 1975 AIR 1378.

¹¹ KS Puttuswamy v. Union of India ((2017) 10 SCC 1).

¹² AK Gopalan Vs. State of Madras AIR 1950 SC 27.

¹³ Rustom Cavasjee Cooper v. Union of India AIR 1970 SC 564.

¹⁴ Supra 9.

¹⁵ ADM Jabalpur Vs. Shivkant Shukla 1976 AIR 1207, 1976 SCR 172

¹⁶ Supra 7.

¹⁷ Supra 12.

CONCLUSION

The concept of rule of law that was evolved by A.V Dicey and Sir Edward Coke has gone through many changes when we see it in the current prospective. The changes in the Rule of law are affected by the political condition of the society. The role of customary law and convention cannot be denied when we talk about the evolution in the concept of Rule of law. With the evolution of time the prospect of human life is changing and with this change it is necessary that the concept of Rule of law should also change as this will help to maintain the law and order in the society. In the present political condition, the states are not just accountable to the people of their country but also to the international organization such as United Nation who is working with aim to ensure Rule of law and justice in the society, so now the time has gone when states can hide their affair under the preview of sovereignty in order to escape from their liability. The major role of judiciary cannot be denied when we talk about the evolution of Rule of law as in various places courts have come up to landmark judgment that have enhanced the Rule of law. Although in India the rule of law is one of the basic structures under the constitution but there is no certain definition that can restrain it and with the passage of time it will keep on evolving with time.

The rule of law has not produced the desired consequences in Indian society. A few instances when our judicial system protected the rule of law and ensured justice include the development of new channels for seeking redress for human rights breaches through the filing of PIL complaints. So, there is need rule of law should be evolved so as to make sure that it is properly implemented as it is essence of the constitution of India.

