

RULE OF LAW

Alok Kumar Yadav, Assistant Professor, Dept of Law, SRT Campus
HNBGU Tehri Garhwal Uttarakhand

Abstract

Rule of Law embodies the doctrine of supremacy of law. It is basic and fundamental necessity for a disciplined and organized society. If a government acts according to the principle of rule of law then individual liberty and right can be protected in better way. The principle implicit in the rule of law that executive must act under the law, and not by its own decree or fiat, is still a cardinal principle of the common law system. The executive is regarded as not having any inherent powers of its own but all its powers flow and emanate from the law, a principle which plays such a vital role in all democratic countries of to-day.

Key words: Rule of Law, Principle, Liberty, Right etc.

The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.

Dwight D. Eisenhower

The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing.

Caroline Kennedy

Introduction

The concept of Rule of Law is that the state is governed, not by the ruler or the nominated representatives of the people but by the law. A country that enshrines the rule of law would be one where in the Grundnorm¹ of the country, or the basic and core law from which all other law derives its authority is the supreme authority of the state. The monarch or the representatives of the republic are governed by the laws derived out of the Grundnorm and their powers are limited by the law. The King is not the law but the law is king.² The term 'rule of

¹ 'Kelsen's Theory of Grundnorm', Mridushri Swarup
<<http://manupatra.com/roundup/330/Articles/Article%201.pdf>

² "Common Sense", Thomas Paine < <http://www.gutenberg.org/files/147/147-h/147-h.htm>

law' is nowhere defined in the Indian Constitution. We can find that the term is though used frequently by the Indian courts in their judgments. For instance, an online search of the Supreme Court's reportable judgments delivered between 1 January 1950 and 1 January 2010 resulted in 1,299 hits of the term 'rule of law'.³ There is no doubt that the rule of law pervades the Constitution as an underlying principle. In fact, the Supreme Court has declared the rule of law to be one of the 'basic features' of the Constitution⁴, so this principle cannot be taken away even by a constitutional amendment. As this Country Report will outline, the Indian conception of the rule of law is both formal and substantive. It is also seen as an integral part of good governance. Questions are though raised as to the extent to which the constitutional promise of the rule of law matches with actual situation in India.

The rule of law requires that people should be governed by accepted rules, rather than by the arbitrary decisions of rulers. These rules should be general and abstract, known and certain, and apply equally to all individuals. Constitutional governments are based on a previous commitment to freedom under the rule of law. The essential attribute of constitutionalism is a legal limitation on government. Under constitutionalism, rulers are not above the law, government power is divided with laws enacted by one body and administered by another, and an independent judiciary exists to ensure laws are administered objectively. An efficient and effective constitution allows government to function to protect the lives and liberties of citizens without violating the rights of some to provide gains to others.

Concept of Rule of Law

The concept of Rule of law is of old origin and is an ancient ideal. It was discussed by ancient Greek philosophers such as Plato and Aristotle around 350 BC. Plato wrote: "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".

³ see <http://judis.nic.in/supremecourt/chejudis.asp>

⁴ *Indira Nehru Gandhi v Raj Narain*, AIR 1975 SC 2295; *SP Gupta v Union of India*, AIR 1982 SC 149

Likewise, Aristotle also endorsed the concept of Rule of law by writing that “law should govern and those who are in power should be servants of the laws.”⁵

The phrase ‘Rule of Law’ is derived from the French phrase ‘la principe de legalite’ (the principle of legality) which refers to a government based on principles of law and not of men.⁶ Rule of law is one of the basic principles of the English Constitution and the doctrine is accepted in the Constitution of U.S.A and India as well. The entire basis of Administrative Law is the doctrine of the rule of law.⁷ Legal historians have amply demonstrated the intrinsic linkage between legal developments and the historical settings in which they take place. The concept of the Rule of Law is no exception. It is grounded in the ideas of justice, fairness, and inclusiveness discussed by Aristotle; in the rules of war addressed in the ancient Indian epics Mahabharatha and Ramayana; in the foundations of religious thought such as the Ten Commandments and the Dharma Chakra; and in seminal historical documents such as the Magna Carta, which embodied the principle that government itself is bound to abide by the law. Since then, philosophers and jurists from all corners of the world have molded the philosophical underpinnings and judicial content of the Rule of Law. Today, the Rule of Law is the foundation of good governance. This requires adherence to constitutional supremacy, recognition that government and the governed are equal before the law, acknowledgment that government itself is limited by the law and cannot engage in any arbitrary exercise of power, and recognition that individuals are endowed with certain inalienable rights that cannot be denied even by legitimately constituted governments.

Today, the Rule of Law is comprised of an intricate chain of fundamental ideas, which include equality before the law; equal treatment before the law for government and the governed; the independence of the judiciary; transparency, consistency, and accountability in the administration of law; and the notions of equity, justice and fairness. Like all chains, the Rule of Law is only as strong as its weakest link.

Meaning of Rule of Law:

⁵ <http://www.lawteacher.net/free-law-essays/constitutional-law/introduction-concept-of-rule-law-essays.php#ftn1>(accessed on 21/10/2015)

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⁷ Ibid

The term 'Rule of Law' is taken from England. It means that no man is above the law and that every person is subject to the jurisdiction of ordinary courts of law, irrespective of his rank and position. 'Rule of Law' requires that no person should be subjected to harsh, uncivilized or arbitrary treatment. Rule of law is associated with the word 'law' which means that man or a society must not govern by a man or ruler but rather than they must be govern by Law. In other words we can say that law means law of land which is defined under Article 13 of Indian Constitution. Rules mean law rules. Since, there is no physical existence of law so law means government based on principle. It means all the acts of government should be reasonable and according to law.

The expression "rule of law" explains a state of affairs in which everything must be done according to law. It is a state of affairs in which there are legal barriers to governmental arbitrariness and there are available legal safeguards for the protection of the individuals. In simple words, it is the reverse of tyranny, the antithesis of the rule of anarchy and fear.⁸

According to Oxford Advance Learner's Dictionary, rule of law means the situation in which all the citizens as well as the state are ruled by the law. According to Black's Law Dictionary "rule of law" means legal principles of day to day application, approved by the governing bodies or authorities and expressed in the form of logical proposition.

Sir Edward Coke, the Chief Justice in James I's Reign was the originator of this concept. In a battle against the King, he maintained successfully that the King should be under God and the Law, and he established the supremacy of the law.⁹ Prof. A.V Dicey developed this principle of Coke. In 1885 he gave following three postulates of the rule of law in his classic book 'Law and the Constitution'.

According to Prof. Dicey, rule of law has three means or we can say three principles which are must be followed so that there will be supremacy of rule of law.

The three principles are:

1. Supremacy of law;

⁸ Ex-Attorney General Mr. Mannigham Buller, quoted in S. Rajagopalan, Administrative Law, 1970

⁹ Takwani C.K, "Lectures on Administrative Law" Third Edition Reprinted, 2004, pp17, Eastern Book Company, Lko

2. Equality before Law; and
3. Predominance of Legal Spirit.

1. Supremacy of Law

According to the first principle, A. V Dicey states that rule of law means there should be lacking of arbitrariness or wide discretionary power. In other words every act will be controlled by law. According to Dicey the English men were ruled by the law and law alone. In the words of Dicey, “Wherever there is discretion, there is room for arbitrariness and that in a republic no less than under a monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects.”¹⁰ As Wade¹¹ says the rule of law requires that the Government should be subject to the law, rather than the law subject to the Government. The rule of law requires both citizens and governments to be subject to known and standing laws. The supremacy of law also requires generality in the law. This principle is a further development of the principle of equality before the law. Laws should not be made in respect of particular persons. As Dicey postulated, the rule of law presupposes the absence of wide discretionary authority in the rulers, so that they cannot make their own laws but must govern according to the established laws. Those laws ought not to be too easily changeable. Stable laws are a prerequisite of the certainty and confidence which form an essential part of individual freedom and security. Therefore, laws ought to be rooted in moral principles, which cannot be achieved if they are framed in too detailed a manner.¹²

2. Equality before Law

The attribute of “Rule of Law” Dicey stated was “equality before the law and equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts.”¹³ The second principle emphasizes everyone, including the government, irrespective of rank, shall be subject to the same law and courts. This element is interpreted to be misguided and facing bundle of criticisms. In fact, by reason of maintaining the law and order in the society, there are actually exceptions such as the Crown, police, Members of Parliament. The Crown may

¹⁰ The Law and the Constitution, 1915

¹¹ Administrative Law, 1994, pp. 34-36

¹² <http://www.ourcivilisation.com/cooray/btof/chap181.htm>(Accessed on 22/10/2015)

¹³ The Law and the Constitution, 1915

exercise prerogative powers which may defeat the rights of individuals. The police have powers over and above the citizen. Members of Parliament have immunity from the law of defamation.

Prof. Dicey states that, there must be equality before the law or equal subjection of all classes to the ordinary law of the land. He criticised the French legal system of *droit Administrative* in which there were separate administrative tribunals for deciding the cases of State Officials and citizens separately.

3. Predominance of Legal Spirit

The Third meaning of the rule of law is that the general principles of the constitution are the result of juridical decisions determining the rights of private persons in particular cases brought before the Court.

Dicey states that many constitutions of the states (countries) guarantee their citizens certain rights (fundamental or human or basic rights) such as right to personal liberty, freedom from arrest etc. According to him documentary guarantee of such rights is not enough. Such rights can be made available to the citizens only when they are properly enforceable in the Courts of law, For Instance, in England there is no written constitution and such rights are the result of judicial decision.

Application of the Doctrine in England: Though, there is no written constitution, the rule of law is applied in concrete cases. In England, the Courts are the guarantors of the individual rights. Rule of law establishes an effective control over the executive and administrative power.

The view of Dicey as to the meaning of the Rule of Law has been subject of much criticism. The whole criticism may be summed up as follows. Dicey has opposed the system of providing the discretionary power to the administration. In his opinion providing the discretionary power means creating the room for arbitrariness, which may create as serious threat to individual freedom. Now days it has been clear that providing the discretion to the administration is inevitable. The opinion of the Dicey, thus, appears to be outdated as it restricts the Government

action and fails to take note of the changed conception of the Government of the State. Dicey has failed to distinguish discretionary powers from the arbitrary powers. Arbitrary power may be taken as against the concept of Rule of Law. In modern times in all the countries including England, America and India, the discretionary powers are conferred on the Government. The present trend is that discretionary power is given to the Government or administrative authorities, but the statute which provides it to the Government or the administrative officers lays down some guidelines or principles according to which the discretionary power is to be exercised. The administrative law is much concerned with the control of the discretionary power of the administration. It is engaged in finding out the new ways and means of the control of the administrative discretion. According to Dicey the rule of law requires that every person should be subject to the ordinary courts of the country. Dicey has claimed that there is no separate law and separate court for the trial of the Government servants in England. He criticised the system of *droit administrative* which is prevailing in France. In France there are two types of courts Administrative Court and Ordinary Civil Courts. The disputes between the citizens and the Administration are decided by the Administrative courts while the other cases, (i.e. the disputes between the citizens) are decided by the Civil Court. Dicey was very critical to the separation for deciding the disputes between the administration and the citizens According to Dicey the Rule of Law requires equal subjection of all persons to the ordinary law of the country and absence of special privileges for person including the administrative authority. This proportion of Dicey does not appear to be correct even in England. Several persons enjoy some privileges and immunities. For example, Judges enjoy immunities from suit in respect of their acts done in discharge of their official function. Besides, Public Authorities Protection Act, 1893, has provided special protection to the official. Foreign diplomats enjoy immunity before the Court. Further, the rules of 'public interest privilege may afford officials some protection against orders for discovery of documents in litigation.' Thus, the meaning of rule of law taken by Dicey cannot be taken to be completely satisfactory. Third meaning given to the rule of law by Dicey that the constitution is the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts is based on the peculiar character of the Constitution of Great Britain. In spite of the above shortcomings in the definition of rule of law by Dicey, he must be praised for drawing the attention of the scholars and authorities towards the need of controlling the discretionary powers of the administration. He developed a philosophy to control

the Government and Officers and to keep them within their powers. The rule of law established by him requires that every action of the administration must be backed by law or must have been done in accordance with law. The role of Dicey in the development and establishment of the concept of fair justice cannot be denied. The concept of rule of law, in modern age, does not oppose the practice of conferring discretionary powers upon the government but on the other hand emphasizing on spelling out the manner of their exercise. It also ensures that every man is bound by the ordinary laws of the land whether he be private citizens or a public officer; that private rights are safeguarded by the ordinary laws of the land¹⁴. Thus the rule of law signifies that nobody is deprived of his rights and liberties by an administrative action; that the administrative authorities perform their functions according to law and not arbitrarily; that the law of the land are not unconstitutional and oppressive; that the supremacy of courts is upheld and judicial control of administrative action is fully secured.

Modern concept of Rule of Law

The modern concept of the Rule of Law is fairly wide and, therefore, sets up an idea for government to achieve. This concept was developed by the International Commission of Jurists, known as Delhi Declaration, 1959, which was later on confirmed at Lagos in 1961.

According to this concept, Rule of Law implies that the functions of government in a free society should be so exercised as to create conditions in which *the dignity of man as an individual is upheld*. For it not only recognition of certain civil or political, social, economical, educational and cultural conditions which are essential to the full development of his personality but the modern concept of rule of law is to create those circumstances in which the dignity of man can be protected. The modern concept of rule of law is to make government so effective that it can protect individual liberty.

As the object of rule of law is to protect individual liberty then to fulfill this object it can be taken many meanings. K.C Davis gives seven principles or meanings of the term rule of law.

1. Law and order
2. Fixed rule

¹⁴ See Journal of the Indian law Institute, 1958-59, pp. 31-32)

3. Due process of law or fairness
4. Observance of principle of natural justice
5. Elimination of discretionary power
6. Preference for Judges and Ordinary courts
7. Judicial Review of administrative actions.

Rule of Law under Indian Constitution:

Rule of law has played a great role to develop Indian democracy. When Indian constitution was framed they had two options e.g. USA & England. They adopted some provisions from USA and some from England. Our constitutional founder fathers adopted the Rule of Law from England and incorporated so many provisions in Indian constitution. Indian Constitution is supreme no one is above Indian constitution. All three organs follow constitution if any organ does something in violation of the constitution all such acts will be ultra vires. The preamble of The Constitution also tells about Rule of Law. Part- III and all fundamental Rights come under the Rule of Law, which are enforceable by Law. If these are violated we can go to the Supreme Court and High court under Article 32 & 226. The term Law includes all orders, rules, regulations, bylaws, notices and customs. It expects that all these will be according to Constitutional provisions if they will be against, under article-13 they will be declared unconstitutional and void. In the Constitution of India guaranteed certain rights which can be enforced by the courts. At this juncture, we may consider the position prevailing in India as regards the third principle of Dicey's doctrine of Rule of Law, i.e., predominant of legal spirit. Until this principle was being considered in the context of interpreting the provisions of the Constitutions.¹⁵ In our Constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court.¹⁶ The doctrine of Rule of Law has been adopted in Constitution of India. The principles of Rule of Law i.e. justice, equality and liberty are enriched in the Constitution of India. The Constitution of India is above all the laws implemented in Indian Territory and any

¹⁵ A.K. Gopalan v. State of Madras, A.I.R.1950 S.C.27.

¹⁶ Chief settlement Commissioner, Punjab v. Om Prakash, A.I.R.1969 S.C.33

law made by the central government or by the state government must be in confirmation with the Constitution of India. If any law made by the legislation under the jurisdiction of India which is against the mandates of the constitution, the law would be void. The constitution of India guarantees equality before the law, as an aspect of the rule of law, under Article-14.

Under Article 32, the Supreme Court has power to issue writs in the nature of Habeas Corpus, mandamus, prohibition, quo warrantor and certiorari. It is also given power of judicial review to prevent any ultra vires law, to preserve 'Rule of Law' Article 15 and 16 of right to equality and Article 19, 20 and 21 in form of right to life and liberty are provisions of our constitution to this affect.

In India, no one has very arbitrary power, except the powers given by the law. The constitution is the Supreme Court law of the land and even the government derives its authority from it. This effectuates the supremacy of law.

Everyone, in India are subject to same laws, without any discrimination, court takes into account no rank or condition

However, the president and the governors (under Article 361) are given special exemptions. Armed forces personnels are treated by armed laws, officials are given same immunities etc. But these provisions do not negate the effectiveness of the rule of law in India, because their provisions are also made by laws, under various provisions of the constitution. From a poor person to the president, be it a police constable or a collector, are treated by law.

Thus, the Indian constitution effectively applies the rule of law. The Supreme Court in the case of India Nehru, Gandhiji vs. Raj Narain - 1975 held that the rule of law embodied in Article 14 is the 'basic structure' of the Indian constitution and hence it cannot be destroyed even by an amendment of the constitution under Article 368 of the constitution.

Rule of Law and Indian Judiciary

Fundamental rights enshrined in part III of the constitution is a restriction on the law making power of the Indian Parliament. It includes freedom of speech, expression, association, movement, residence, property, profession and personal liberty. In its broader sense the Constitution itself prescribes the basic legal system of the country. To guarantee and promote

fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on rule of law. The popular habeas corpus case, ADM Jabalpur v. Shivakant Shukla is one of the most important cases when it comes to rule of law. In this case, the question before the court was ‘whether there was any rule of law in India apart from Article 21’. This was in context of suspension of enforcement of Articles 14, 21 and 22 during the proclamation of an emergency. The answer of the majority of the bench was in negative for the question of law. However Justice H.R. Khanna dissented from the majority opinion and observed that “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...”

Applied to the powers of the government, this requires that every government authority which does some act which would otherwise be a wrong (such as taking a man’s land), or which infringes a man’s liberty (as by refusing him planning permission), must be able to justify its action as authorized by law -and in nearly every case this will mean authorized directly or indirectly by Act of Parliament.

The secondary meaning of rule of law is that the government should be conducted within a framework of recognized rules and principles which restrict discretionary powers. The Supreme Court observed in *Som Raj v. State of Haryana* that the absence of arbitrary power is the primary postulate of Rule of Law upon which the whole constitutional edifice is dependant. Discretion being exercised without any rule is a concept which is antithesis of the concept. The third meaning of rule of law highlights the independence of the judiciary and the supremacy of courts. It is rightly reiterated by the Supreme Court in the case *Union of India v. Raghbir Singh* that it is not a matter of doubt that a considerable degree that governs the lives of the people and regulates the State functions flows from the decision of the superior courts.

Although, complete absence of discretionary powers, or absence of inequality are not possible in this administrative age, yet the concept of rule of law has been developed and is prevalent in common law countries such as India. The rule of law has provided a sort of touchstone to judge and test the administrative law prevailing in the country at a given time. Rule of law,

traditionally denotes the absence of arbitrary powers, and hence one can denounce the increase of arbitrary or discretionary powers of the administration and advocate controlling it through procedures and other means. Rule of law for that matter is also associated with supremacy of courts. Therefore, in the ultimate analysis, courts should have the power to control the administrative action and any overt diminution of that power is to be criticized. The principle implicit in the rule of law that the executive must act under the law and not by its own fiat is still a cardinal principle of the common law system, which is being followed by India.

In the common law system the executive is regarded as not having any inherent powers of its own, but all its powers flow and emanate from the law. It is one of the vital principles playing an important role in democratic countries like India. There is a thin line between judicial review and judicial activism. Rule of law serves as the basis of judicial review of administrative action. The judiciary sees to it that the executive keeps itself within the limits of law and does not overstep the same. Thus, judicial activism is kept into check. However there are instances in India where judiciary has tried to infringe upon the territory of the executive and the legislature. A recent example of this would be the present reservation scenario for the other backward classes. The judiciary propagated that the creamy layer should be excluded from the benefits of the reservation policy, whereas the legislature and the executive were against it.

As mentioned before Dicey's theory of rule of law has been adopted and incorporated in the Indian Constitution. The three arms judiciary, legislature and executive work in accordance with each other. The public can approach the high courts as well as the Supreme Court in case of violation of their fundamental rights. If the power with the executive or the legislature is abused in any sorts, its malafide action can be quashed by the ordinary courts of law. This can be said so since it becomes an opposition to the due process of law. Rule of law also implies a certain procedure of law to be followed. Anything out of the purview of the relevant law can be termed as ultra vires.

No person shall be deprived of his life or personal liberties except according to procedure established by law or of his property save by authority of law. The government officials and the government itself is not above the law. In India the concept is that of equality before the law and equal protection of laws. Any legal wrong committed by any person would be punished in a similar pattern. The law adjudicated in the ordinary courts of law applies to all the people with

equal force and bindingness. In public service also the doctrine of equality is accepted. The suits for breach of contract etc against the state government officials, public servants can be filed in the ordinary courts of law by the public.

In Chief settlement Commr; Punjab v. Om Prakash, it was observed by the supreme court that, “In our constitutional system, the central and most characteristic feature is the concept of rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the matter into notice.”

In India, the meaning of rule of law has been much expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by Parliament. The ideals of constitution; liberty, equality and fraternity have been enshrined in the preamble. Constitution makes the supreme law of the land and every law enacted should be in conformity to it. Any violation makes the law ultra vires.

In *Keshvanad Bharti Vs. Union of India*, the Supreme Court enunciated the rule of law as one of the most important aspects of the doctrine of basic structure. In *Menaka Gandhi vs. Union of India*, the Supreme Court declared that Article 14 strikes against arbitrariness. In *Indira Nehru Gandhi Vs. Raj Narayan*, Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid since it abridges the basic structure of the Constitution. In the case of *Binani Zinc Limited Vs. Kerala State Electricity Board and Ors*(2009) Justice S B sinha declare that “It is now a well settled principle of law that the rule of law inter alia postulates that all laws would be prospective subject of course to enactment an express provision or intendment to the contrary.” In the case of *Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil* the ratio laid down was “If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant, it is the duty of the courts to appreciate the evidence and construe the law in a manner which would sub serve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical

values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates.”

In the case of *Sukhdev v. Bhagatram Mathew* J. declared that “Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his “Road to Serfdom” and “Constitution of liberty” or the exposition set-forth by Harry Jones in his “The Rule of Law and the Welfare State”, there is, as pointed out by Mathew, J., in his article on “The Welfare State, Rule of Law and Natural Justice” in “Democracy, Equality and Freedom,” “substantial agreement is in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found”. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes not difference whether the exercise of the power involves affection of some right or denial of some privilege.” In *Secretary, State of Karnataka and Ors. v. Umadevi and Ors* a Constitution Bench of this Court has laid down the law in the following terms: “Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.”

In the case of *Amlan Jyoti Borooh Vs.State of Assam*, it was held by S B Sinha that: “Equity must not be equated with compassion. Equitable principles must emanate from facts which by themselves are unusual and peculiar. A balance has to be struck and the Court must be cautious to ensure that its endeavour to do equity does not amount to judicial benevolence or acquiescence of established violation of fundamental rights and the principles of Rule of law.” Moreover, In the case of *Bachan Singh v. state of punjab* Singh Justice Bhagwati has emphasized that rule of law excludes arbitrariness and unreasonableness. To ensure this, he has suggested that it is necessary to have a democratic legislature to make laws, but its power should not be

unfettered, and that there should be an independent judiciary to protect the citizens against the excesses of executive and legislative power.

In addition to this in *P. Sambamurthy v. State of Andhra Pradesh* the SC has declared a provision authorizing the executive to interfere with tribunal justice as unconstitutional characterizing it as “violative of the rule of law which is clearly a basic and essential feature of the constitution”. Yet another case is of *Yusuf Khan v. Manohar Joshi* in which the SC laid down the proposition that it is the duty of the state to preserve and protect the law and the constitution and that it cannot permit any violent act which may negate the rule of law.

Hence, it is quiet evident that the concept of rule of law is gaining importance and attention and judicial efforts are made to make it stronger.

Conclusion & Suggestions

On a brief overview of the above discussion we can say that Supremacy of Law Is the Aim, Rule of Law Is the Best Tool to Achieve This Aim. The Court is also making efforts to link Rule of Law with Human Rights of the people. The court is evolving strategy by which it can force the government not only submit to law but also create conditions where people can develop capacities to enjoy their rights in proper and meaningful way. It is the responsibility of the public administration for effective implementation of Rule of Law on constitutional commands which effectuate fairly the objective standards laid down by law.¹⁷ Every government servant holding public power is as a trustee of the society and accountable for due effect national goals.¹⁸ Although all the merits are unhurt in the concept of the Rule of Law, the only Negative aspects of the concept is that respect for law degenerates into rigidity of legalism which is injurious to the nation.¹⁹ The Hon’ble Supreme Court in number of cases through its decision established Judicial Authority and developed the Principle of Judicial Review which cannot be amended, curtailed or removed. Our Constitution adopted the three principle of Rule of Law i.e. Equality before Law, Exclusion of Arbitrariness & Supremacy of judiciary. In the modern era the discretionary powers is provided to the authorities for running the society but some time these power are misused by the authorities which effects and destroys the basic principles of the

¹⁷ State of Punjab V. G.S.Gill, (1997)6SCC129

¹⁸ Supdt. Engineer, Public Health U.T. Chandigarh V. Kuldeep Singh, (1997)9 SCC 199

¹⁹ Dr. J.J.R.Upadhaya, Administrative Law, Page no. 36

society. If some reasonable restriction, regulations and norms are created in exercise of such powers, these powers will efficiently and effectively regulate the society. The Dicey concept “Rule of Law” is adopted by our constitution, and this concept resulted into the success of our judicial system. In the modern era the use of Discretionary power by the authorities is a need. The discretionary power is against the Doctrine of Rule of Law. The balance between the two is to be made and this can be done when the judiciary controls the misuse of discretionary power by the Administration. The rule of harmonious Construction to remove the imbalance between “Rule of law” & “Discretionary Power” should be applied.

The rule of law in the Indian society has not achieved the intended results is that the deeply entrenched values of constitutionalism or abiding by the Constitution of India have not taken roots in the society. Corruptions, Terrorism etc. are all antithesis to Rule of Law. In recent times, common law traditions, the Constitution of India, and the perseverant role of the judiciary have contributed to the development of rule of law. But on occasions we have slipped back into government by will only to return sadder and wiser to the rule of law when hard facts of human nature demonstrated the selfishness and egotism of man and the truth of the dictum that power corrupts and absolute power corrupts absolutely. A few examples of how our judicial system has upheld the rule of law and ensured justice is clearly seen in the creation of new avenues seeking remedies for human rights violations through PIL pleas and promotion of genuine interventions by the judiciary in the areas of bonded and child labour, prostitution, clean and healthy environment etc. but on the darker side there have been violations of fundamental rights as well. For e.g. The discrimination of eunuchs based on their class and gender makes the community one of the most disempowered groups in Indian society Eunuchs might have an accepted place in Indian society, but it is a place pretty much at the bottom of the social heap – making them not just a sexual but also a highly deprived social minority. The recent example is of the Singur incident a Division Bench of the High Court comprising Hon’ble Chief Justice S S Nijjar and Hon’ble Justice Pinaki Chandra Ghosh also took suo moto note of the incident.

Sir Edward Coke, the Chief Justice of King James I’s reign was the originator of this concept. He maintained that the King should be under God and the Law and he established the supremacy of the law against the executive and that there is nothing higher than law.