

The Concept of Rule of Law with Special Reference to Democracy

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Abstract: *Democracy is a system of government in which a country's political leaders are chosen by the people in regular, free, and fair elections. In a democracy, people have a choice between different candidates and parties who want the power to govern. The people can criticize and replace their elected leaders and representatives if they do not perform well. The rule of law and democracy are interlinked and mutually reinforcing and they belong to the universal and indivisible core values and principles of the Constitution of India. In democratic system the government responsible to the interests and needs of the greatest number of citizens is strictly associated with the capacity of democratic institutions and processes to bolster the dimensions of rights, equality and accountability. Democracy is a system of rule by laws, not individuals. In a democracy, the rule of law protects the rights of citizens, maintains order, and limits the power of government. All citizens are equal under the law. No one can be discriminated against on the basis of their race, religion, caste, sex, place of birth, ethnic group, or gender. No one may be arrested, imprisoned, or exiled arbitrarily. No one may be denied their freedom without a fair and public hearing by an impartial court. No one may be taxed or prosecuted except by a law established in advance. No one is above the law, not even a king or an elected president. The law is fairly, impartially, and consistently enforced, by courts that are independent of the other branches of government.*

Keywords: -Democracy, government, rule of law, citizens.

I. INTRODUCTION

Democracy is not a government; it is a way of thinking, a responsibility. In a democracy there is no corruption in power because it is a transparent system: the governing doctrine states that citizens have the right to access the documents and proceedings of the government, which allows for effective public oversight. Like a sculptor, democracy grows with its work and appreciates its art. Democracy means at the most basic level, it is a type of government or political system ruled by citizens, people who are members of a society. In a democracy, citizens hold some level of power and authority, and they participate actively in the political, or decision-making, process of their government. It is two type namely;

i) Direct democracy

At first, your club is quite small, only about a dozen people. You can easily meet together to discuss club issues, create rules, or by-laws, for your organization, and vote on various proposals about how to spend money or which activities to enjoy together. Everyone has an equal chance to propose topics for discussion, and everyone can voice an opinion.

Everyone also can vote yes or no on each proposal. The majority of votes wins, and those in the minority ought to accept the decision of the majority in good grace, even if they don't particularly like it. This is direct democracy in action - every member of the society participates directly in the political process.

ii) Representative Democracy

What happens if your club grows? You've advertised, promoted your club through social media, and sent messages to all your friends to get them to join, and it worked! Pretty soon your club has over 100 members, too many to meet together at one time or to give everyone a chance to contribute to a discussion.

You decide that it's time to create a core group of people who can manage the club on behalf of all the members, who will still have a say in club business and activities, but now more indirectly by voting for club officers (president, vice president, secretary, and treasurer) and a five-member board of directors. This is a representative democracy - the members of a society vote for leaders to represent them in the decisions and actions of the political process.

Rule of law

The term 'Rule of law' is a phrase that is very commonly used whenever law is being studied. It is derived from the French phrase 'la principe de legalite' which means the 'principal of legality'. It refers to 'a government based on principles of law and not of men'. In other words, the concept of 'la Principe de legalite' is opposed to arbitrary powers. 'Rule of Law' as defined by Dicey, means "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative, or even wide discretionary authority on the part of the government."¹

¹Dicey, A.V., The Law Of The Constitution 198 (8th Ed.)

The concept of rule of law is a very dynamic concept, capable of interpretations to enable the successful working of a democracy. In simple terms, Rule of Law is the restriction on the arbitrary exercise of power by subordinating it to well-defined and established laws. Law should govern the nation and not the arbitrary decisions by individuals. Thus, Rule of Law embodies the doctrine of supremacy of law.

Origin of Rule of Law

Rule of Law is as old as civilisation. Times and society have changed the perceptions of various authors resulting in different and varied definitions and approaches to Rule of Law. Many accounts of the rule of law identify its origins to classical Greek thought, quoting passages from Plato and Aristotle. Greek ideas with respect to the rule of law are therefore best understood in the form of exemplary models, providing inspiration and authority for later periods.² The Roman contribution to the rule of law tradition was negative as well as positive, with the negative tradition being of much greater consequence.³

The Germanic customary law proposition that the king is under the law has been widely identified as an independent source of the rule of law in the medieval period.⁴ The Magna Carta, 1215 although it stands on its own as a historical event with reverberating consequences in the rule of law tradition, epitomized a third Medieval root of the rule of the law- the effort of nobles to use law to restrain kings.⁵ Then came the Liberalist and Federalist approaches to Rule of Law. Locke's design involved a limited delegation of power, for some purposes, from individuals to the government, revocable by them if the government failed to meet its obligations. He specified a separation of powers between legislature and executive – though not a separate judiciary – to assure that the government acts according to duly enacted standing laws.⁶

In this backdrop, following Montesquieu's approach, in the year 1885, A.V. Dicey on observing the UK model laid down three principles to be arising out of Rule of Law.⁷

- i) Supremacy of Law;
- ii) Equality before the law;
- iii) Predominance of Legal Spirit.

In France, Dicey observed that the government officials exercised wide discretionary powers and if there was any dispute between a government official and a private individual, it was tried not by an ordinary court but by a special administrative court. The law applicable in that case was not ordinary law but a special law developed by the administrative court. From this, Dicey concluded that this system spelt the negation of the concept of rule of law. He felt that this was against the principle of equality before the law. He also stated that all English are bound by the Rule of Law and there is no external mechanism required to regulate them. Therefore, he concluded that there was no administrative law in England.⁸

The primary feature of rule of law, thus, is absence of arbitrary powers on the part of the governmental authorities and ensuring equality before law. But in fact the Rule of Law has conceptually transformed over a period of time. On this behalf, it may be of use to refer to the conference which was organized by the International Commission of Jurist in New Delhi in January, 1959. The idea of the Rule of Law as a modern form of law of nature, was formulated in this conference known as Delhi Declaration. It defined, broadly, that rule of law means to protect the individual from arbitrary Government and to enable to enjoy the dignity of man. This Delhi Declaration further stated the function of the legislature in a free society under the rule of law is to create and maintain the condition which will uphold as an individual. Another aspect of the rule of law is the existence of effective Government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society. The most important aspect of the rule of law, as per this Declaration, is an independent judiciary. In Nutshell, the 'Rule of Law' which is a fine sonorous phrase, is dynamic and ever expanding and can be put alongside the brotherhood of man, Human Rights and human dignity. About the modern Rule of Law, Professor Garner observed:

"The concept in its modern dress meets a need that has been felt throughout the history of civilization, law is not sufficient in itself and it must serve some purpose. Man is a social animal, but to live in society he has had to fashion for himself and in his own interest the law and other instruments of government, and as a consequence those must to some extent limit his personal liberties. The problem is how to control those instruments of government in accordance with the Rule of Law and in the interest of the governed."

² ibid

³ Cicero, THE REPUBLIC AND THE LAWS, translated by Niall Rudd (Oxford: Oxford Univ. Press 1998), The Republic, Book Two, 48, p. 50

⁴ Kern, KINGSHIP AND LAW IN THE MIDDLE AGES, p. 182.

⁵ William H. Dunham, "MAGNA CARTA AND BRITISH CONSTITUTIONALISM," in The Great Charter, Introduction by Erwin N. Griswold (New York: Pantheon 1965) p. 26

⁶ Locke, SECOND TREATISE OF GOVERNMENT, p. 47 (ss. 88–89); p. 65–66 (ss. 123–24).

⁷ Ibid 1

⁸ Jain & Jain, PRINCIPLES OF ADMINISTRATIVE LAW, 2013 (6th Ed.)

As the independent judiciary is pre-requisite of the rule of law and the role of Judge in a democratic society is to bring about the realization of the rule of law, it is for this reason that Courts are empowered to refuse to enforce a statute because it grants wide discretionary or arbitrary power. The rule of law also leads to the conclusion that the final interpreter of the law should be the court and not the legislature or the executive. The doctrine of purposive interpretation is based on the rich aspect of the rule of law.

II. RELATION BETWEEN DEMOCRACY AND RULE OF LAW IN INDIA

At this juncture, question arises as to what is democracy? Conceptually, it has two bases. The first is the sovereignty of the people. In that sense, sovereignty is exercised in free election wherein the people choose their representatives, who in turn represent their views. This aspect of democracy is manifests itself in majority rule. However, second normative base of the democracy is 'substantive or Liberal democracy'. It is equally, and under certain circumstances more important than the first base. In this sense, democracy has its own internal morality based on the dignity and equality of all human beings. The substantive requirement of democracy is based on such fundamental values and tolerance, food faith, justice, reasonableness and public order. Thus, two limbs of this substantive democracy would be (i) dignity and equality of all human beings & (ii) good governance. The aforesaid two bases of the democracy are to be balances. Democracy is not just the law of rules and legislative supremacy; it is a multidimensional concept. Whereas it recognizes the power of the majority, and at the same time it also highlights the limitations on that very power. Power of the majority commands legislative supremacy, while liberal democracy enshrines supremacy of values, principles, and human rights. In case of an internal conflict, the formal and substantive elements of democracy must be balanced to protect the essence of each of these aspects. As the final arbiter in the matter of dispute, it becomes the duty of the Courts to achieve this balance. The basic spirit of our Constitution is to provide each and every person of the nation equal opportunity to grow as a human being, irrespective of race, caste, religion, community and social status. Granville Austin while analyzing the functioning of Indian Constitution in first 50 years had described three distinguished strands of Indian Constitution; (i) protecting national unity and integrity, (ii) establishing the institution and spirit of democracy; and (iii) fostering social reforms. The strands are mutually dependent and inextricably intertwined in what he elegantly describes as "a seamless web" And there cannot be social reforms till it is ensured that each and every citizen of this country is able to exploit his/her potentials to the maximum. The Constitution, although drafted by the Constituent Assembly, was meant for the people of India and that is why it is given by the people to themselves as expressed in the opening words "We the People". What is the most important gift to the common person given by this Constitution is "fundamental rights" which may be called Human Rights as well.

Speaking for the vision of our founding fathers, in *State of Karnataka v. Rangnatha Reddy*⁹ the Court speaking through Justice Krishna Iyer observed:

"The social philosophy of the constitution shapes creative judicial vision and orientation. Our nation has, as its dynamic doctrine, economic democracy sans which political democracy is chimerical. We say so because our Constitution, in Parts III and IV and elsewhere, inculcates such a value system, and the debate in this case puts precisely this soul in peril.... Our thesis is that the dialectics of social justice should not be missed if the synthesis of Parts III and Part IV is to influence State action and court pronouncements. Constitutional problems cannot be studied in a sociocultural vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process the new equity-loaded legality. A Judge is a social scientist in his role as constitutional invigilator and fails functionally if he forgets this dimension of his complex duties."

In *Dattatraya Govind Mahajan vs. State of Maharashtra*¹⁰ he observed; "Our Constitution is a trust with destiny, preamble with lustrous solemnity in the words 'Justice- Social, economic and political.' The three great branches of Government, as creatures of the Constitution, must remember this promise in their fundamental role and forget it at their peril, for to do so will be a betrayal of those high values and goals which this nation set for itself in its objective Resolution and whose elaborate summation appears in Part IV of the Paramount Parchment. The history of our country's struggle for independence was the story of a battle between the forces of socio-economic exploitation and the masses of deprived people of varying degrees and the Constitution sets the new sights of the nation... Once we grasp the dharma of the Constitution, the new orientation of the karma of adjudication becomes clear. Our founding fathers, aware of our social realities, forged our fighting faith and integrating justice in its social, economic and political aspects. While contemplating the meaning of the Articles of the Organic Law, the Supreme Court shall not disown Social Justice"

In *National Human Rights Commission vs. State of Arunachal Pradesh*¹¹ This Court observed: "We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and

⁹ (AIR 1978 SC 215),

¹⁰ (AIR 1997 SC 915)

¹¹ (AIR 1996 SC 1234)

certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws.”

The description of rule of law constitutionalism and liberal democracy in modern era, as outlined above, would clearly show not only close connection but overlap thereof. These are intertwined concepts. Foundation of liberal democracy is the constitutionalism with rule of law as its important pillar. Likewise, an ideal constitution will have the provisions for vibrant and substantive democracy with inherent features predicted on rule of law that ensures absence of arbitrary powers on the part of the authorities, equality of law and human rights. An ideal constitution, in its scheme would also have provisions of separation of powers with independent judiciary as well as good governance. Ultimately, in the scheme of the Constitution, judiciary is assigned the role of upholding the rule of law and while doing so, it is to protect the democracy as well as Constitution. It is in this sense, curiously, whereas rule of law draws sustenance from substantive democracy and a vibrant constitution and then forms the role of protecting the rule of law and democracy.

III. CONCLUSION

When addressing the rule of law and democracy nexus, a fundamental distinction has to be drawn between "rule by law", whereby law is an instrument of government and government is considered above the law, and "rule of law", which implies that everyone in society is bound by the law, including the government. Essentially, constitutional limits on power, a key feature of democracy, require adherence to the rule of law.