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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ACCOUNTABILITY OF POLITICAL LEADERSHIP UNDER THE PHRASAL WORLD OF 'RULE OF LAW'— INDIAN PERSPECTIVE.

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Abstract

A legal system is composed of laws that establish our rights, responsibilities, as well as remedies, in addition to institutional mechanisms that facilitate the enforcement and implementation of these laws. This includes the judiciary, the police, and the administrative mechanism. Constitution of India is fundamental law of land, and our constitutional values regulate content and operation of our legal system. The principle "rule of law" is essential, as well as its application in Indian context is predominantly important.¹

“When the Rule of Law disappears, we are ruled by the whims of men”-Tiffany Madison
Term "Rule of Law" is obtained from French phrase "la principe de legalite" (principle of legality), which signifies government that is established on the principles of law rather than those of men.² Consequently, Rule of Law is characterized by absence of arbitrary government power and promotion of equality in protection and punishment.

Rule of Law can be interpreted and implemented in two distinct ways, i.e.

- 1) Formalistic/Narrowsense³
- 2) Ideological/Widersense⁴

In formalistic sense, Rule of Law ensures that law should prevail over government officials, and that government should be subject to law. Rule of Law is conventionally stated and unstated as formalistic application of principle of equality, supremacy of the Judiciary, and adequate control over governmental power. However, Rule of Law is considerably more significant in developing and underdeveloped nations than in these. All of these actions contribute to establishing a fair democratic order by improving quality of life and ensuring as

a fine and healthy living environment. Consequently, Rule of Law's broader connotation becomes significant.

A moral code that regulates exercise of governmental power within its ideological framework is known as Rule of Law. An ethical code of this nature is predicated on principles of respect for human rights and liability. Public official sought to beheld accountable for their actions. Deviating from concept of Rule of Law would be inevitable for a government that neglects to uphold and advance human rights.

Here's a breakdown of the Indian perspective

• **Supremacy of Law:**

- Core idea is that no one is above the law, regardless of their position or power. This principle is deeply entrenched in Indian legal system.
- Implication is that law is supreme authority and that all individuals and institutions must comply with it.

• **Equality Before the Law:**

- Principle of equality before law is enshrined in Article 14 of Indian Constitution, which guarantees that all citizens are treated consistently under the legal system.
- This aims to prevent arbitrary favoritism and ensure fair treatment for everyone.

• **Rule of Law as a Basic Structure:**

- Indian SC has declared rule of law to be a "basic feature" of Constitution. This suggests that it is not susceptible to abolition or modification, irrespective of the implementation of constitutional amendments.

• **Constitutional Foundation:**

- Indian Constitution itself provides base for rule of law. Articles like 13, 14, 19, and 21 play crucial roles in upholding these principles.
- Judiciary is essential in the interpretation and enforcement of these constitutional provisions.

• **Judicial Review:**

- Judicial review is a power that Indian judiciary possesses, which allows it to invalidate laws or executive actions that violate the Constitution. This serves as a vital check on the other branches of government.

- **Access to Justice:**

- Rule of law fundamentally depends on all individuals' right to access justice. This encompasses legal representation and access to courts.

SC recognized Rule of Law as Constitution's fundamental characteristic in **Kesavananda Bharati v. State of Kerala (1973)**.

In **Maneka Gandhi v. Union of India (1978)**, the SC explicitly stated that Article 14 guarantees fairness and equality in treatment and prohibits arbitrariness in state actions.

Case Laws

ADM Jabalpur v. Shivkant Shukla (1976)

It is also called as a "**Habeas Corpus case.**" In terms of rule of law, it is one of most important cases.

Hon'ble Court was inquired whether India possesses a rule of law beyond **Article 21** of Indian Constitution.⁵

DC Wadhwa v. State of Bihar (1986)

South Carolina invoked **rule of law to condemn the state government** for frequently employing its ordinance-making authority as a substitute for legislation passed by the legislature.

Court determined that **there-promulgation of ordinances was unconstitutional, as it was a colorable exercise of power by executive for a period of one to 14 yrs without the need for legislation.**⁶

Exceptionsto 'Rule of Law'

- Articles 361, 361(2), 361(3), and 361(4) of Indian Constitution **grant some immunity to President and Governors.** Article 361 stipulates that:
 - (1) **President, Governor, or Rajpramukh of a State shall not be held accountable to any court for exercise and performance of powers and duties of their office,**

or for any act done or purported to be done by the misconnection with exercise and performance of those powers and responsibilities.⁷

- (2) During their term of office, **no criminal proceedings shall be initiated or maintained against President or Governor of a state** in any court.⁸
- (3) During term of office of **the President or the Governor of a State, no court shall issue a process for their arrest or imprisonment.**
- (4) In order to address any act performed or purportedly performed by President or Governor of a State in his personal capacity, **whether before or after he assumed his office as President or Governor of the State, any civil proceedings in which relief is claimed against him** must be initiated in any court during his term of office. Procedures will be initiated **until expiration of two months from date of written notice being delivered to President or Governor**, as applicable, or left at their office. Notice must include nature of the proceedings, cause of action, the description, the name and place of residence of the party initiating the proceedings, and relief individual claims.⁹

Immunity to Foreign Diplomats¹⁰

Provisions regarding diverse immunities and privileges that diplomatic envoys or agents are granted are provided in the **Vienna Convention of 1961.**

Article 121 of Indian Constitution, which grants immunity to **SC and High Court judges**, restricts Parliament's discussion of their conduct.

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