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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided 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

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COMPARATIVE ANALYSIS OF RULE OF LAW IN INDIA, U.S.A AND UK

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ABSTRACT

Rule of law refers to the concept where no individual or person is above the law. India, United States of America and the United Kingdom follow the principles of rule of law. This paper contains a comparative study between the application of rule of law in these three nations. I have taken into consideration the application of rule of law in India, United States and United Kingdom. It also contains the application of rule of law in the governance of the three nations. The principles of rule of law stand against arbitrariness and are embedded in the constitution written and unwritten. It was originated by Sir Edward Coke and was further developed by A.V Dicey. This paper further includes the provisions of rule of law in the Constitution of the nations. I believe that the judiciary of the three nations has played an important role in developing the concept of rule of law. This concept has been constantly upheld by the judiciary. I claim, that it has been crucial in the development of the judiciary and the society of all the three nations, but there is a need of more efficient application of rule of law in the judicial process. Furthermore, this paper also discusses about the separation of power in the three nations. I consider that regardless, the provisions of separation of powers have been constituted in the framework of administration of these three nations, they are not been followed strictly. Still, flexibility prevails in the application of separation of powers in these nations. The concept of rule of law is an essential part of a welfare state and hence, shall be applied in every country effectively. The principles of rule of law reflect the demand for an equitable society. They bring with themselves prosperity, execution of human rights and dignified lives for all.

Keywords:- Rule of Law, India USA and UK, Separation of Power, Judiciary, constitution.

Introduction

Rule of law means that law is supreme. The term rule of law is derived from the French term 'La Principe de Legalite', which means principle of legality. According to rule of law, the government has to govern by the principles of law. No person or state shall be governed by arbitrary powers of man. Rule of law stands against the concept of arbitrariness. Rule of law was introduced by Sir Edward Coke. He was the Chief Justice in James I's reign and he was the originator of the concept of rule of law. He was the first to introduce something that was above the king. He stated that God and law must stay above the king. It was further developed by A.V Dicey, through his book 'Law and the Constitution'. This book was published in 1885. This book also talks about democracy, people's right and separation of powers among other things.¹

Meaning of Rule of Law

The term Rule of Law means, no person is above the law it is Law that rules all.

- Every person is subjected to the jurisdiction of ordinary courts of Law, irrespective of his or position.
- Every official from the Prime Minister Down to the Constable, is under the same responsibility for every act done without legal justification as any other citizen.
- Secondly, Rule of Law also requires that no person should be subjected to harsh, Uncivilized and Arbitrary treatment.

Research Objective

- Determination the application of Rule of Law in India, United Kingdom and United States.
- Formulate a comparative study on the application of law in the three nations

Scope of Study

- This paper includes analysis of application of rule of law in India, United Kingdom and the United States. The analysis includes the application of rule of law in the governance, constitution and the judicial process. Separation of power is also an extension of the

¹ C.K TAKWANI, LECTURES ON ADMINISTRATIVE LAW 20, (EBC 2019).

concept of rule of law. This paper also includes a comparative study of the application of law in the three nations.

Three Components of Rule of Law,

According to prof. Dicey, Rule of Law has three meaning, which also called three principles of prof. Dicey.

1- Supremacy of Law

- According to the first principle, Prof. Dicey stated that Rule of Law means the absolute supremacy.it means that no one is above the Law
- A. v Dicey states that, Rule means there should be lacking of arbitrariness or wide discretionary power.
- A man may be punished for a breach of Law, but he cannot be punished for anything else.
- The Rule of Law requires that the Government should be subject to the Law, rather than the Law subject to the Government.
- According to this doctrine, no man can be arrested, punished or be lawfully made to suffer In body or goods except by due process of law and for a breach of Law.

2- Equality before law

- The principle is based on a famous maxim, however high you may be, Law is above you and All are equal Before Law.
- According to Prof. Dicey, there must be equality before the Law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law courts.
- This principle states that everyone is equal in the eye of Law and emphasizes that everyone, including the Government, irrespective of rank shall be subject to the same law and courts.
- He criticised the French legal system of Droit administrative in which there were distinct administrative tribunal for deciding cases between the officials of the state and the citizens.

3-The predominance of legal spirit

- This means that law should be according to justice that is to be delivered. Dicey stated that constitution is not a source for the rights of the individual but rather is a result of these rights. He said that these rights should be provided by the judiciary

JUDGE-MADE CONSTITUTION

- Prof. Dicey stated that in many countries' rights such as Right to personal liberty, freedom from arrest, freedom to hold public meeting etc. Are guaranteed by a written Constitution.
- According to him, documentary guarantee of such rights is not enough.
- He emphasized the role of the courts of Law as guarantors of liberty and suggested that the rights would be secured more adequately if they were enforceable in the courts of law than by mere declaration of those rights in a document.
- For instance, in England there is no written Constitution and such rights are the result of judicial decisions.

World Justice Project Rule of Law Index

World Justice Project (WJP) is an international civil society that provides data on the application of rule of law in the world.

Denmark, Norway, and Finland were the countries with the highest rule of law scores according to the WJP Rule of Law Index rankings in 2020. Countries have shown to slowly decline rather than improve the rule of law score, for the third year running. There has been a continuous decline. DR Congo, Cambodia, and Venezuela were the countries that had the lowest overall rule of law scores. They have remained unchanged from 2019².

RULE OF LAW IN INDIA

- Rule of law had its roots in India, since the ancient times. The rule of Dharma prevailed in the form of Dharma Shastras or Neeti Shastras and even the King was under the Rule of Dharma³.
- India included Rule of Law, by the influence of its application in England. The provisions of rule of law are embedded in the Constitution of India, which is the Grundnorm of the country. The Constitution is the Supreme power of the state and no person is above the supreme power.

² WORLD JUSTICE PROJECT, <https://www.worldjusticeproject.org/rule-of-law-index/> (last visited July 07, 2021)

³ KRISHAN KESHAV, ADMINISTRATIVE LAW 19 (Singhal Law Publishing 2019).

- Article 13(1) provides that any law that is formulated and goes against the provisions of the Constitution will be held void⁴.
- Justice, liberty, fraternity and equality are some provisions that are provided in the preamble of the Constitution that reflects the provisions of rule of law.
- Article 21 provides for the right to life that includes the right to live a dignified life, which is a provision of rule of law⁵.
- Part III of the Constitution includes the provisions of rule of law and provides guarantee towards protection of fundamental rights. Article 14 provides for equality before the eyes of law. It states that every person is equal in the eyes of law.
- To make fundamental rights enforceable, the Constitution provides Article 32, Article 226 and Article 227.
- Constitution of India contains provisions that regarding independence of judiciary, executive and legislature. Parliament and all state legislatures are elected by democratic process. The provisions of judicial review are also provided by the constitution. The judiciary has played an important role in development of rule of law in India.

Some of the cases that reflect this importance are as follows:

Case Study: -

1. **Kesavananda Bharati v. State of Kerala:** In this case, some pieces of land of the petitioner were coming under the Government's acquired land. The question in this case was whether the judiciary has the power to amend the Constitution. It was held that judiciary has the power to amend the Constitution for the welfare of the people. It was held that rule of law is the basic structure of the Constitution⁶.
2. **Indira Nehru Gandhi Vs. RajNarain**⁷: In this case, after Indira Gandhi Nehru won the elections, it was found out that she won the elections by unfair means and therefore the High Court of Allahabad held that she cannot contest in elections for six years. Soon after that emergency was imposed in the nation. Constitutionality

⁴ TRATIVE LAW 19 (Singhal Law Publishing 2019).

⁵ INDIA CONST. art. 21.

⁶ Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461.

⁷ Indira Nehru Gandhi Vs. Raj Narain AIR 1975 SC 2299

of Article 329A was in question. The court held the Article 329A unconstitutional and held that Article 14 cannot be violated by any person.

3. **Maneka Gandhi v. Union of India, 1978:** In this case, petitioner's passport was seized in the interest of general public. The petitioner then filed case in the court and the link between Article 14, 21 and 19 was in question. The SC widened the scope of Article 21 and said no person shall be deprived of the said right. Also, procedures have to meet the criterion fixed by the above three articles, to be held valid⁸.

RULE OF LAW IN UNITED STATE AMERICA

The American Constitution, which is written and federal democratic in spirit, is based on the Rule of law. It provides for separation of powers with check and balances which are its heart and soul. One of the fundamental processes in the America to determine the validity of law is Judicial Review.

In USA, the judiciary can check the actions of Congress and the action of the President, if it is contrary to the Constitution, then the judiciary can declare it null and void. The Constitution of the USA does not provide express provisions for Judicial Review but it is implicitly incorporated in the Art. III and IV. According to the Bernard Schwartz "The decision on the question of constitutionality of a legislative Act is the essence of the judicial power under the Constitution of America⁹."

Justice Frankfurter in *Gobitiz*¹⁰ case laid down that "Judicial review is a limitation on popular government and is a part of the Constitutional scheme of America." The concept of judicial review has its foundation on the doctrine that the Constitution is the Supreme law. The main objectives of Judicial Review in USA are as follows:

- To declare the laws unconstitutional if they are contrary to the Constitution.
- To defend the valid laws which are challenged to be unconstitutional
- To protect and uphold the Supremacy of the Constitution by interpreting its provisions.
- To save the legislative functions of Congress being encroached by other departments of the Government.
- To check the action of Congress and the State Legislature for them delegating the essential legislative functions to the executives or to check Congress from delegating its legislative function to the State Legislatures.

⁸ Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621

⁹ BERNARD SCHWARTZ, THE POWERS OF GOVERNMENT 19 (2nd ed., The Macmillan Company, 1963)

¹⁰ *Gobitiz* 310 U.S. 586, 600 (1940).

CASE STUDY: -

1. **Dr. Bonham's case** is said to be great heritage to the American system of judicial review. According to Willis "Dr. Bonham's case was soon repudiated in England, but the doctrine announced in Coke's dictum found fertile soil in the United States and sprouted into such a vigorous growth that it was applied by the US Supreme Court in the decisions of cases coming before it." But, in *United States v. Tale Todd*¹¹ it was decided by the Supreme Court of USA that Act of Congress was unconstitutional.
2. **Hylton v. United States**¹², Chief Justice Chase observed that "it is necessary for me to determine whether the court constitutionally possesses the power to declare an Act of the Congress void on the ground of its being contrary to and in violation of the Constitution, but if the courts has such powers, I am free to declare it but in a clear case."
3. **Marbury v. Madison 1803**¹³ In this case, When President John Adams did not win a second term in the 1801 Presidential Election, he utilized the last days of his administration to make a substantial number of political arrangements. At the point when the new president (Thomas Jefferson) took office, he told his Secretary of State (James Madison), not to convey the official printed material to the administration authorities who had been named by Adams. In this way the administration authorities, including William Marbury, were denied their new employments. William Marbury filed petition in the U.S. Supreme Court for a writ of mandamus, to compel Madison to convey the commission.

RULE OF LAW IN UK

United Kingdom is one of the countries that has adopted rule of law in its governance. It does not have a written constitution, but the concept of rule of law, legislation and judiciary is embedded in its unwritten constitution. Rule of law has gradually developed in the United Kingdom.

In United Kingdom, when laws are made for a purpose then that purpose must be carried on. If someone violates those laws, then he should be punished for the same. The principle of equality is also carried on due to the application of rule of law. Every person is equal in the eyes of law. They are subjected to equal and just treatment.

¹¹ *United States vs. Tale Todd*, 77 U.S. 617, 12 (1794)

¹² *Hylton vs. United States*, 3 U.S. 171, 32 (1796).

¹³ *Marbury vs. Madison*, 5 U.S. 137, 12 (1803)

AV Dicey, who first outlined the rule of law and parliamentary sovereignty, believed that equality before the law was extremely important and that officials should be dealt with by the same court as the ordinary citizen, demonstrating to the general masses that the government was not being unjustly lenient on an official¹⁴. All laws must be passed with fairness and justice.

The provisions also state that no person can be held or punished for the crimes that they have not committed. Therefore, no person can be mistreated in the name of law. Rule of law was effective to check the powers of the administrative authorities. It kept the administrative actions in limit¹⁵.

CASE STUDY: -

1. In, **R v. Secretary of State for Transport**¹⁶, it was observed by the Court that “by relying upon the direct effect of Community law, the individual may be able to challenge national measures and can declare them unlawful. Further, it was observed that all national measures can be subject to judicial review on the grounds of incompatibility with Community law, i.e. primary legislation, secondary regulations and administrative decisions.”
2. In, **Les Verts v. European Parliament**¹⁷, it was held that “the European Union is a community based on the Rule of law, in as much as neither its member states nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional character.”

Comparative Analysis

- United Kingdom does not have a written constitution, but the concept of rule of law is embedded in the working of its governance. In India, the Constitution does not have a provision directly stating rule of law, but many provisions of the Constitution reflect the concept of rule of law. In the Constitution of U.S., Article IV reflect rule of law that states that the Constitution is the Supreme Power of the land.

¹⁴Nicola Laver, The rule of law in the UK, INBRIEF (July 07, 2021), <https://www.inbrief.co.uk/legal-system/therule-of>

¹⁵ Varsha, Rule of India &UK, LEGAL SERVICE INDIA (July 07, 2021), <http://www.legalserviceindia.com/article/I457-Rule-of-Law-in-India-&-UK.html>.

¹⁶ R v. Secretary of State for Transport, 2 A.C. 85, 34 (1990).

¹⁷ Les Verts vs. European Parliament, 1 E.C.R 1339 (1986).

- The concept of separation of powers is provided in the Constitution of India. The executive, the legislature and the judiciary enjoy separate powers. But, in practice, the application of separation of powers is not rigid. In Unites States, there is strict system of separation of powers between the three bodies of the Govt. But in reality, interference in working between the different bodies does take place, therefore the rule of separation of powers is flexible. In the United Kingdom as well, separation of powers is not applicable strictly. The parliament can interfere in the working of the judiciary.
- Certain provisions of rule of law like equality, fraternity, liberty and justice are embedded in the Constitution and governance of India, United States and United Kingdom. In India, the Preamble contains these provisions. In the United States, the constitution contains these provisions. The judiciary has also played an important in developing the concept of rule of law in India, U.K. and U.S.
- Rule of law in U.K was applied to curb the arbitrariness and restrict the unlimited powers of the King and for the advancement of the society. In India, rule of law was applied for the welfare of the state and to strengthen the democratic principles of the state. In the United States as well, the rule of law was adopted for the betterment of the state and to curb inconsistency in the governance.

Analysis

Rule of law is a necessary concept for the welfare of the societies. India, United Kingdom and United States have adopted rule of law into their constitutions- written or unwritten. The judiciary ¹⁸has also incorporated the concept of rule of law in its proceedings, for the public good and justice.

Conclusion

The framers of the constitution of India and USA, understood the importance of the rule of law in a democratic setup and therefore, added the provisions of rule of law in their respective constitutions. United Kingdom, also has adopted the rule of law in its governance. The judicial system of all the three nations addresses rule of law and has passed many landmark judgements considering the provisions of rule of law. All these three nations practice separation of powers as well.



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