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Introduction

A fundamental tenet of the Rule of Law asserts that any executive action likely to prejudice any individual must be supported by legislative authority. This principle finds resonance in the historic case of Entick v Carrington from 1765. In this case, King's messengers unlawfully entered Entick's home and seized his papers under warrants issued by the Secretary of State.

However, the Secretary of State admitted lacking specific legal authority to issue such warrants, arguing instead for the necessity to safeguard state interests, a claim dismissed by the Court. The ruling established that governmental actions require explicit legal backing, rejecting claims of state necessity. Consequently, the warrants were deemed illegal, allowing Entick to sue for trespass.

This principle was reaffirmed in 1931 by Lord Atkin in the renowned case of Eshugbayi Eleko, asserting that no executive member can infringe upon a British subject's liberty or property without legal justification before a Court of Justice. While the Privy Council's opinion didn't explicitly mention the Rule of Law, it laid the groundwork for its future development.

When John Adams famously proclaimed, "a government of laws and not of men," he underscored the necessity for laws of general applicability to govern people's conduct, rather than individual whims. The significance of the Rule of Law in safeguarding fundamental liberties is poignantly illustrated in a tale attributed to Voltaire.

Despite being imprisoned in France for a piece of writing he neither authored nor endorsed, Voltaire found solace in the rule of law upon escaping to London, where he remarked on the freedom afforded by governance under law, not arbitrary rule.

In Robert Bolt's play "A Man for all Seasons," a dialogue between Sir Thomas More, his daughter Margaret, and son-in-law Roper epitomises the adherence to legality even in the face of personal beliefs. More's unwavering commitment to legal principles, despite familial pressure to act against

an individual deemed evil, underscores the importance of abiding by the law, even when it conflicts with personal convictions.

Joseph P. Lash recounts an illuminating anecdote about US Supreme Court Justice Felix Frankfurter's reaction to Bolt's play. Frankfurter's affirmation of More's stance encapsulates the quintessence of the Rule of Law, a message often overlooked despite its paramount importance.

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Universal Significance of the Rule of Law

It's crucial to highlight that the concept of Rule of Law transcends geographical boundaries; it's neither Western, Eastern, Northern, nor Southern but possesses a universal reach and significance.

The Rule of Law embodies the aspiration of civilised democratic societies, regardless of their orientation, to strike a balance between liberty, essential for preventing tyranny, and law, necessary for curbing licence.

As Justice Vivian Bose of the Supreme Court of India aptly expressed, the Rule of Law is "the heritage of all mankind," rooted in the belief in human rights and the dignity of individuals worldwide.

The Rule of Law serves as a powerful deterrent against executive overreach, underscoring that where law ceases, tyranny begins. Its prevalence ensures that no administrator or official can arbitrarily arrest or detain individuals without legislative backing. Similarly, public officials like Police Commissioners lack the authority to prohibit gatherings, performances, or screenings without legal basis.

Moreover, the Rule of Law safeguards against unjust deprivation of property, offering certainty and predictability in contrast to whims and arbitrary actions. This framework enables individuals to regulate their conduct against established standards, thereby evaluating the legality of official acts.

History demonstrates that the absence of the Rule of Law fosters executive abuse and arbitrariness.

Notably, the relatively modern 1996 Constitution of South Africa explicitly enshrines the supremacy of the Constitution and the Rule of Law as foundational values of the republic, reflecting the global acknowledgment of their fundamental importance.

Rule of Law in the Indian Constitution

The Indian Constitution weaves the golden thread of the Rule of Law throughout its fabric. Part III of this Constitution guarantees certain fundamental rights, akin to a Bill of Rights. For instance, Article 14 asserts: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

However, no fundamental right in the Indian Constitution is absolute; reasonable restrictions may be imposed on the exercise of these rights under Article 19, provided they are prescribed by law rather than administrative non-statutory instructions or circulars.

Therefore, freedoms such as speech, expression, and the press can only be restricted by enacted law. Similarly, Article 265 mandates that no tax can be levied or collected except by authority of law, while Article 300A stipulates that no person can be deprived of property save by authority of law.

In a landmark decision in the case of Kesavananda Bharati in April 1973, the Supreme Court of India held that even constitutional amendments can be struck down if they abrogate essential features of the Constitution, including democracy, secularism, federalism, and periodic free and fair elections. Notably, the Court recognized the Rule of Law as one such essential feature.

This was further reaffirmed in the 2007 case of I. R. Coelho v State of Tamil Nadu, where the Rule of Law was explicitly acknowledged as part of the Constitution's basic structure.

Consequently, the Rule of Law cannot be abolished even by a constitutional amendment, reflecting its elevated status in Indian constitutional jurisprudence, which isn't just theoretical but also evident in practice through the vigilant enforcement by the Indian Supreme Court.

An exemplary instance of this enforcement is seen in the invalidation of a constitutional amendment by the Supreme Court in the case of Indira Gandhi v Raj Narain in November 1995. In this case, provisions added during the Emergency period were struck down as they undermined the Rule of Law, marking a resurgence of democracy after a temporary demise during the Emergency.

Additionally, the Supreme Court has consistently upheld the Rule of Law in various instances, such as ensuring legal recourse for evictions and safeguarding the rights of both citizens and non-citizens alike.

While such enforcement may seem unusual to some and inconvenient to administrators, it underscores the price of maintaining a democratic society founded on the Rule of Law. Upholding principles, even in cases devoid of sympathy, serves as a litmus test for our commitment to democratic ideals.



Ensuring Equality Under the Rule of Law

Another fundamental aspect of the Rule of Law is its insistence on the equal application of law, thereby establishing an intrinsic connection with the principle of equality. The core principle, articulated by poet Thomas Fuller and embraced by courts, asserts that "however high you may be, the law is above you."

This signifies that individuals, regardless of their stature as Prime Ministers, Speakers, religious leaders, judges, or any other position, remain subject to the law of the land, as no one enjoys immunity from its reach in a democratic polity governed by the Rule of Law. The Indian Supreme Court has underscored that equality before the law is an indispensable corollary to the overarching concept of the Rule of Law enshrined in the Constitution.

However, a question arises when enacted laws grant discretionary powers to public officials. While once perceived as incompatible with the Rule of Law under Dicey's influence, it became evident that discretionary powers are necessary for administrative functions, particularly in implementing socio-economic welfare measures.

Nonetheless, the Rule of Law disapproves of absolute, unrestricted discretion. In its decision in Jaisinghani's case in 1967, the Indian Supreme Court emphasised that discretion conferred upon executive authorities must be circumscribed within clearly defined limits.

The Court reiterated this stance in 1975, asserting that in a lawful government, unfettered and unreviewable discretion has no place. Referring to Justice Douglas of the US Supreme Court, the Court highlighted that absolute discretion is oppressive, and the law is at its finest when it liberates individuals from the tyranny of absolute discretion.

An intriguing example showcasing the application of the Rule of Law by the Indian Supreme Court is the regulation of passports. Until 1967, there was no enacted law governing the granting or refusal of passports, leaving the matter entirely to the discretion of authorities without any legal control.

In the case of Satwant Singh in 1967, the Supreme Court ruled that the absence of any law in a matter concerning the fundamental right to travel abroad inevitably leads to arbitrariness, thus violating the Rule of Law. Consequently, the Passport Act of 1967 was enacted to regulate the issuance, refusal, revocation, and confiscation of passports, aligning with the principles of the Rule of Law.

Rule of Law: Beyond Legislation to Human Rights and Dignity

The concept of the Rule of Law extends beyond the mere enactment of laws; it encompasses the content and quality of those laws as well. While enacting laws is undoubtedly crucial, it is not sufficient in itself to fulfil the essence of the Rule of Law.

The International Commission of Jurists, at its conference in New Delhi in 1959, emphasised that the Rule of Law aims not only to safeguard civil and political rights but also to establish conditions for realising social, economic, educational, and cultural aspirations and human dignity. Therefore, the Rule of Law is a dynamic concept that encompasses all human rights, which are indivisible and interdependent.

At the heart of the matter lies the recognition that a government cannot truly be democratic or grounded in the Rule of Law without respect for the basic human rights and dignity of its people. Merely citing the existence of a law cannot justify atrocities or gross violations of human rights. A narrow, formalistic interpretation of the Rule of Law that tolerates such abuses is unacceptable. It risks legitimizing laws that grossly violate basic human rights, akin to the racially discriminatory legislation of apartheid South Africa or the infliction of torture permitted by law.

The essential link between democracy, the Rule of Law, and human rights must never be overlooked. Disregarding the Rule of Law can lead to horrific human rights violations, as witnessed in Europe under the tyrannical Nazi regime. In Nazi Germany, the problem was not the absence of laws; rather, it was the laws themselves that flagrantly violated human rights. Hence, the Universal Declaration of Human Rights of 1948 emphasises the protection of human rights by the Rule of Law.

Andrew Le Sueur and Maurice Sunkin summarise the key ideas associated with the Rule of Law, emphasising compliance with the law, rational decision-making, and protection of fundamental rights against government actions. Therefore, any law must guarantee basic human rights and

ensure their implementation through due process, overseen by an independent judiciary exercising judicial review.

Without these prerequisites, the Rule of Law would be reduced to a hollow slogan. As Lord Justice Stephen Sedley eloquently expressed, the essence of the Rule of Law lies in a safety net of human rights protected by an independent legal system. Therefore, an independent judiciary is indispensable for upholding the Rule of Law, without which democracy becomes superficial, the Rule of Law loses its meaning, and human rights become empty moral declarations.

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Nurturing a Culture of the Rule of Law

While laws are indispensable for its implementation, they alone are insufficient. Cultivating a culture that upholds and supports the Rule of Law is paramount for its effective realisation. The true bedrock upon which the Rule of Law can thrive is the voluntary embrace of its principles by the populace, making it an integral part of their everyday lives.

Hence, it is imperative to foster a Rule of Law ethos at home, in educational institutions, and throughout society. We must strive for the universalization of its fundamental tenets and continually endeavour to expand its scope, transforming it into a dynamic concept that not only restrains the exercise of official power but also promotes progressive measures to safeguard the socio-economic rights of individuals. This is not merely a legal or political imperative but a moral one for the entire world.

Why, you may ask? Justice Vivian Bose eloquently reminds us that it is because we uphold the worth and dignity of every human being. It is because, upon reflection, it is the most rational and peaceful way to coexist with our neighbours in our complex world. It is because it is the only sane approach to living in a harmonious and orderly society.