



RULE OF LAW IN INDIA; A MYTH OR REALITY

Ashutosh Kumar Pandey

Ph.D. Research Scholar, Faculty of Law, University of Lucknow

ABSTRACT

The Rule of Law is a fundamental principle of constitutional governance that requires governmental power to be exercised in accordance with established legal principles and without arbitrariness. Although the expression “Rule of Law” is not expressly mentioned in the Constitution of India, its principles are reflected in several constitutional provisions and have been recognized and developed through judicial decisions. This paper examines the concept of Rule of Law in the Indian constitutional framework with particular reference to A.V. Dicey’s three postulates—supremacy of law, equality before law, and predominance of legal spirit. It analyses the constitutional provisions relating to Articles 13, 14, 15, 20, 21, 32, 226 and 265 and examines the role of the judiciary in protecting constitutional rights and limiting arbitrary exercise of governmental power. The paper further discusses significant judicial decisions, including *A.K. Kraipak v. Union of India*, *ADM Jabalpur v. Shivakant Shukla*, *Bachan Singh v. State of Punjab*, and *Indira Nehru Gandhi v. Raj Narain*, to examine the development of the Rule of Law in India. The study also considers the gap between the theoretical recognition and practical realization of the Rule of Law, particularly in relation to equality, access to justice, human rights, and criminal justice administration. It concludes that the Indian constitutional system provides substantial institutional and legal mechanisms for maintaining the Rule of Law, although its effective realization depends upon fair, reasonable and non-arbitrary exercise and enforcement of public power.

Article History:

Received Date: 06/04/2026

Revised Date: 08/05/2026

Accepted Date: 14/06/2026

Published Date: 21/07/2026

Keywords:

Rule of Law; Indian Constitution;
Dicey; Constitutionalism; Judicial
Review; Fundamental Rights;
Equality before Law; Judiciary;
Access to Justice; Good
Governance

INTRODUCTION

“The bedrock of the 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

In order to know the ‘Rule of Law’, it needs to be firstly understood that the State is neither governed by the ruler nor the elected representatives of the people but by the law. The expression ‘Rule of Law’ has not been used in the Constitution of India but it is a noticeable point that this term is often used by the judiciary in its judgments. In various judgments, the Constitutional Courts have declared the ‘Rule of Law’ to be the ‘Basic Structure of the Constitution of India’, henceforth it can’t be amended even by the Constitutional amendment by the legislature and it is inherent in the Constitution of India. ‘Rule of Law’ is often seen as an integral part of good governance.

The expression ‘Rule of Law’ means the idea of righteousness which refers to a government based on principles of law and not arbitrary rules created by men. Thus in this sense, the concept of ‘Rule of Law’ is against the exercise of arbitrary powers. The ‘Rule of Law’ signifies that, no person should be deprived of his rights and liberties due to arbitrary actions of the governmental organs. In other words, governance by the government must be within the framework of recognized rules and principles which not only confers powers on the government but must also restrict and control the discretionary powers conferred on the governmental organs. The concept of ‘Rule of Law’ is not against the conferring of discretionary powers upon the government but emphasizes upon checking out the manner of exercise of such powers.

Rule of law also ensures that every person irrespective of his status in the society is subject to same laws of the land. In simple words, whether the person is a private individual or a public servant, he is safeguarded by and is subject to the same laws of the land. In the words of Sir A.V. Dicey, “every official right from the Prime Minister down to constable or a Collector of taxes is under the same responsibility for every act done without legal justification as any other citizen”. ‘Rule of law’ makes it obligatory that, no person shall be subjected to maltreatment even when the object is to maintain the law and order situation by the government.

The term ‘Rule of Law’ can be used in both idealistic or normative sense, as well as in functional or practical sense. A society may be clothed with the ‘Rule of Law’ in idealistic or normative sense but may not be so in reality or functional sense of the term. Therefore, practical or realist or functional approach to rule of law is articulated over the normative or idealistic approach of ‘Rule of Law’. By merely putting the concept of ‘Rule of Law’ in books, we cannot be rest assured that ‘Rule of Law’ has actually been established. Theoretically incorporating ‘Rule of Law’ is different then practically assuring the ‘Rule of Law’. In the idealistic or normative sense, the concept of ‘Rule of Law’ represents a code of ethics to be followed in the exercise of powers by governmental organs, the basic object of which is that governmental organs do not act arbitrarily and prevent misuse of powers by them. Thus, the concept of ‘Rule of Law’ represents that values and ethics be complied with and also connotes that the actions of the government be just and reasonable. All exercise of powers by governmental organs, be it of executive, legislative or judicial nature must depend on this ideal for its validity. Consequently, it can be inferred that it is the ‘rule of law’ which enables that, the law be construed in true sense and in the true spirit of the Constitution of India. In simple words, laws must not only be enacted but it must be ensured that it is just, fair and reasonable.

2. Dicey’s Rule of law :- The expression ‘Rule of Law’ was given eminence by Sir A.V. Dicey. According to him, ‘rule of law’ is one of the integral postulates of the English legal system. He attributed following three postulates of the ‘Doctrine of Rule of Law’ :-

- 1-Supremacy of Law
- 2-Equality before Law
- 3-Predominance of Legal Spirit

2.1- Supremacy of Law :- It means, the complete supremacy of law as opposed to the arbitrary

power of the governmental organs. In other words, Dicey here means to say that there should not be conferred discretionary powers in the hands of government officials and that they must work through known and established law, rules and regulations. Dicey claimed, “wherever there is discretion, there is room for the arbitrariness and that in a republic, discretionary authority on the part of government means insecurity of legal freedom on the part of its subjects”. In simple words, he means to say that if discretion is given to the government officials then there is always a possibility that they may act arbitrarily, consequently the rights of the ordinary people may get affected. It is rightly said that ‘Power corrupts and absolute power corrupts absolutely’, henceforth, it can be inferred that ‘Rule of Law’ does not oppose conferring of powers on governmental organs through laws but it does favors a mechanism to be developed which can control the discretionary powers and actions of governmental organs in exercise of such powers thereof.

2.2- Equality before Law :- It means that all persons irrespective of their status in the society are equal in the eyes of law. Dicey says that there must be equality before the law and all persons should be subject to the same law of the land administered by the ordinary law courts in India. According to him, Courts are supreme throughout the state. Being of the view that all persons are equal and are subject to the same law of the land administered by the courts, Dicey criticized the legal system of France i.e. ‘Droit Administratif’ in which there were separate administrative tribunals for deciding the disputes between the State officials and the citizens. In his view, exemption of civil servants from the jurisdiction of the ordinary courts of law and providing that their dispute be adjudicated by special tribunals (Administrative Tribunals) was an antithesis of equality and thus against the ‘Rule of Law’.

2.3- Predominance of Legal Spirit :- Elaborating upon the third postulate of his ‘Doctrine of Rule of Law’, Sir Dicey says that the general provisions of the Constitution are the result of adjudication of disputes by the courts in England. In many countries, rights are guaranteed by a written Constitution, but in England it is not so. The rights in England are the result of judicial verdicts in the disputes that arose between the parties. The Constitution of India is not the source rather its provisions are the consequence of the adjudication of the rights of the individuals by the courts. In this way the ‘Rule of Law’ postulates judicial supremacy.

The first and second postulate of the ‘Rule of Law’ as given by Sir Dicey applies to Indian legal system but the third postulate does not apply to the legal system of India because in India, the source of rights of Individuals is the provisions of the ‘Constitution of India’ itself and all other laws in force in India, also derive its validity from the ‘Constitution of India’. Henceforth, the ‘Constitution of India’ is the supreme law of the land in India, and the provisions of all other laws must be in consistent to the provisions of the ‘Constitution of India’.

3. Rule of law in India :- Rule of Law is not a new concept in India. Its origin can be found in ‘Upanishads’, ‘Dharmashastras’ and also in the epics like ‘Ramayana’ and ‘Mahabharata’. Classical Hindu law laid down a great emphasis on the ‘Rule of Law’. As stated in the ‘Dharmashastras’, law was above everyone including the king. Some of the important rules based on ‘Dharmashastras’ were:

- (i)- No decision shall be given by hearing a person singly, rather both parties to a cause must be heard.
- (ii)- The judges (King) must not have any interest in the cause.
- (iii)- The king must pronounce the judgment and give reasons for the findings.

So, here we can see that principles of natural justice and reasoned decision had importance not only today but also in our epics and ‘Dharmashastras’.

India is a nation with vibrant democracy. Governance of such complex and diverse nation has always been challenging. ‘Rule of Law’ is one of the basis of modern democracies which often comes into question when its application in Indian prospect is analyzed. India was ranked 79th out of 139 countries in the ‘World Justice Project (WJP) Rule of Law Index 2021’. This highlights the challenges to India’s governance in particular and democratic structure in general. Despite all constraints, ‘Rule of Law’ has played a major role in developing the Indian democracy. The framers

of the 'Constitution of India' adopted the concept of 'Rule of Law' from England.

In India, the Constitution is considered to be supreme meaning thereby that no one is above it. 'Constitution of India' is supreme to the three organs of the government, i.e. Executive, Legislature and Judiciary. The Executive, Legislature and the Judiciary derives its power from the Constitution. The Preamble to the Constitution of India clearly envisages the principles of the 'Rule of Law' in it. Justice, Liberty and Equality are envisaged in the preamble to the Constitution of India. Part-III of the Constitution expands on these concepts and makes them enforceable.

Preamble to the Constitution of India talks about, We the People of India to have adopted, enacted and to have given to ourselves this Constitution which indirectly connotes the concept of SWARAJ. SWARAJ is to be achieved by securing Justice, Liberty and Fraternity. The concept of SWARAJ seeks to eliminate or atleast to minimize the maladministration, corruption, discrimination, nepotism, favoritism, arbitrariness, unreasonableness and unfairness. SWARAJ is necessary if the 'Rule of Law' is to be implemented in reality.

3.1- Constitutional Provisions and other statutory provisions depicting 'Rule of Law':- 'Rule of Law' in India means that all governmental actions must be in conformity to the provisions of the Constitution. Most of the provisions of the 'Constitution of India' including the Part-III of the 'Constitution of India' which contains the Fundamental Rights depicts that 'Rule of Law' is contained and has been envisaged under the provisions of the Constitution. But some certain provisions depicting the same have been mentioned below :-

3.1.1.- Article 13 :- Article 13(1) declares that all laws which were in force in the territory of India just before the commencement of this Constitution shall be void to the extent to which they are inconsistent with the provisions of the Part-III of the Constitution. In simple words, it means that all laws which were in operation before the commencement of the Constitution of India i.e. 26th January 1950, shall if they are not in conformity to the provisions of Constitution of India be void to the extent they are not in conformity to the provisions of the Constitution of India. Article 13(2) provides that State shall not make any law which infringes or takes away the Fundamental Rights guaranteed under Part-III of the Constitution and any law made which is inconsistent with such rights shall to the extent of inconsistency be void. Here, it is a noticeable point that when the law is made by the legislature or is a subordinate legislation which happens to be in contravention to the Fundamental Rights than in such situation, the law shall not be ipso facto void rather judiciary in exercise of the power of Judicial Review, can examine such law and it may declare the entire law or the provisions in contravention thereof to be unconstitutional and henceforth null and void. Article 13(3) gives the term 'law' a very broad connotation meaning thereby that the term 'law' includes any ordinance, order, by-law, rules, regulations, notifications, customs or usages having the force of law. Thus, it becomes clear that not only the legislative enactment by the legislature, but anything mentioned above can be challenged as intruding or taking away the Fundamental Rights. The analysis of the provisions of Article-13 read with Article-32 and Article-226 reveals that the third postulate of 'Rule of Law' as given by Sir Dicey i.e. Judicial Supremacy has been adopted and accepted under this Article of the Constitution of India.

3.1.2- Article-14 :- 'Equality before Law' is a postulate of 'Rule of Law' as given by Sir Dicey which has been accepted and envisaged under Article-14 of the 'Constitution of India'. The maxim 'king can do no wrong' has no application in India. The government and public authorities are also subject to the same laws and are under the jurisdiction of ordinary courts of law. However there is an exception to it that for filing a suit against government or any public servant, i.e. two months prior notice needs to be given under section-80 of 'Code of Civil Procedure,1908 (5 of 1908)' prior to institution of suit.

3.1.3- Article-15 :- Article-15 of the Constitution of India provides that state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. This is an extension of the postulate 'Equality before Law'.

3.1.4-Article-20(1) :- Article-20(1) provides that, no person shall be convicted of an offense except for the violation of a law, which is in force at the time of the commission of the act charged as an offense, and shall not be subjected to a penalty greater than that which might have been inflicted under the law which is in force at the time of the commission of the offense. In simple words, Firstly, no person shall be found guilty of an offense which is not specifically laid down in some criminal prohibition established prior to the date when the offense is alleged to have been committed. Secondly, a person can be imposed with the penalty which is provided in a law that is in force at the time of commission of the offense alleged to have been committed and not by the enhanced penalty prescribed after the commission of the offense.

3.1.5- Article-21 :- Article 21 of the 'Constitution of India' provides that any person shall not be deprived of his life and personal liberty except according to procedure established by law. Article-21 requires that following conditions must be fulfilled before depriving a person of his life and personal liberty:-

- (i)- There must be a valid law under the provisions of which person has been arrested or detained.
- (ii)- Law must provide the procedure.
- (iii)- The procedure must be just, fair and reasonable.
- (iv)- The law must also satisfy the requirements of Article-14.

3.1.6- Article 32 and Article- 226 :- Whenever Fundamental Rights of a person conferred under part-III of the Constitution of India is violated by any act of State, than the concerned person whose Fundamental Rights have been violated can approach the apex court i.e. Supreme Court of India under Article-32 or concerned High Court under Article-226 for the purpose of issuing writs or seeking any order, direction, etc. by the Supreme Court or High Court as the case may be. However, it is a noticeable point that if a person is illegally arrested and detained not only by Police but even by a private person, the Writ of 'Habeas Corpus' may be issued by the High Court or Supreme Court of India. If a law is made by the legislature which infringes the Fundamental Rights guaranteed under Part-III of the Constitution of India, than the Supreme Court or High Court in exercise of the power of judicial review may declare the entire law or any of its provisions to be unconstitutional, if the law is found to be abridging or taking away the Fundamental Rights. The power of judicial review is exercised by the Supreme Court or High Courts to preserve the 'Rule of Law'.

3.1.7- Article-265 :- Article-265 of the Constitution of India provides that any tax shall not be levied or collected except by the authority of law. In simple words, no tax shall be imposed or levied unless a formal legislation of the legislature provides for the same.

3.1.8- Section 225 to Section-265 of Code of Criminal Procedure, 1973 (02 of 1974) :- Under section-225 to section-265 of 'Code of Criminal Procedure (02 of 1974)', provisions for fair trial has been mentioned therein. Session trial, Warrant trial, Summon trial and Summary trial has been discussed under these sections. The presumption of innocence of the accused is well established principle of criminal law. It is the duty of the prosecution to prove the guilt of the accused beyond all reasonable doubts.

3.2- Role of Judiciary in upholding the 'Rule of Law' :- 'Rule of Law' is opposite of arbitrariness. 'Rule of Law' is now a accepted norm of all societies. Rule of Law helps in maintaining a balance between two opposite notions of 'individual liberty' and 'public order'. Reconciliation between the human rights and the requirement of public interest has become a dire necessity of society in the current scenario. Such harmonization is only possible by existence of independent courts which can hold the balance between the citizens and the State and can compel the government to act in conformity to the provisions of the Constitution, thereby upholding the 'Rule of Law'. Judicial activism is a valorous enterprise which is seen as a part of the efforts of the Supreme Court of India and High Courts of different states of India to establish Rule of Law society which postulates that no

matter how high a person may be, the law is always above him. In simple words, it is immaterial as to whether a person holds a high reputation in society or no reputation, he is subject to the same law of the land. The following cases will show how the High courts and Supreme Court have played an important role in upholding the rule of law in the society :-

3.2.1- A.K. Kraipak v. Union of India [AIR 1970 SC 150] :- In this case facts were that, for the first time Indian forest Services was created for which selection of officers was to be done. It was decided by the authorities concerned that along with the open candidates, departmental candidates (officers who are already working in the forest department) shall also be considered for the selection of officers in Indian Forest services. One, Naqishbund who was working as Chief Conservator of Forests, was a candidate appearing before the selection Board and was also one of the members of the selection Board. Though he did not took part in the decision of the Board as to his selection, when his name was called but was considered and approved for the final selection in the list of selected candidates. Supreme Court held that likelihood of bias can't be ruled out, for the mere presence of the candidate in the selection Board as a member is sufficient enough to adversely influence the judgment of the other members of the selection Board, hence selection done is in violation of the Principles of Natural Justice and is not in conformity to the 'Rule of Law'. Supreme Court observed that 'Rule of Law' runs inherently through every provision of the Constitution and indisputably and undoubtedly constitutes one of its basic features, which requires that every governmental organ of the State must act within the confines of the powers conferred upon it by the Constitution of India and the laws enacted by the legislature. The Rule of Law runs through entire functioning of the Judiciary, Executive and Legislature.

3.2.2- ADM Jabalpur v. Shivakant Shukla or Habeas Corpus Case [AIR 1976 SC 1207]:- In this case , the Supreme Court the question before Supreme Court was that, whether the third postulate of Sir Dicey's Rule of Law was an integral and fundamental part of the concept of the Indian Rule of Law or not ?. In simple words the question before the Supreme Court was that whether there was any 'Rule of Law' in India apart from or in the absence of Article-21 of the Constitution of India.

In brief, the facts of this case were that on 25th June 1975, Emergency was proclaimed by Mrs. Indira Gandhi's government on account of "internal disturbances". By order of the President under Article-359, enforcement of Articles-14, 19 and 21 was suspended. On the night of 25th June 1975 and thereafter, large no. of persons (majorly leaders of opposite parties) were detained under 'Maintenance of Internal Security Act, 1971' (MISA). Many of them were not even informed of the grounds as to why they were detained. Some of them filed Writ petitions in different high courts for the issue of Writ of Habeas Corpus and for their release. When those petitions came up before the High Courts for hearing, the government raised preliminary objections as to the maintainability of such petitions on the ground that in asking for release by writ of Habeas Corpus, the petitioners (detenus) were in substance claiming that they had been deprived of their personal liberty, and such plea was available to them only under Article-21 of the Constitution and since enforcement of Article-21 was suspended by Presidential order, the petitions were liable to be dismissed by the Courts. The High Courts held that notwithstanding the order of President suspending the enforcement of Fundamental Rights under Articles 14,19 and 21, the High Court could examine whether an order of detention was in accordance with the provisions of the 'Maintenance of Internal Security Act, 1971' (MISA) or whether the order was malafide or was made on the basis of relevant materials by which the detaining authority could have satisfied that such order by the President was necessary.

The governments of the States concerned (e.g. the Madhya Pradesh Government through Additional District Magistrate, Jabalpur) and the Government of India filed appeals in the Supreme Court against the decisions of the different High Courts. The case was heard by a five-judge Constitutional bench consisting of Ray CJ, Khanna J., Beg J., Y.V. Chandrachud J. and Bhagwati J. It was contended by the petitioners (detenuess) that writ petition for issue of Habeas Corpus Writ can be entertained even if Presidential order under Article-359(1) was made because Article-21 was not the

sole repository in the case of Personal Liberty. The Supreme Court however rejected this argument of the detenus and held by 4:1 majority that Article-21 was the sole repository of the right to life and personal liberty. The moment the right to move any Court for enforcement of Article-21 was suspended, no one could move to any court for redressal. Article 21 is our 'Rule of Law' regarding life and liberty. No other rule of law can have separate existence as a distinct right.

Khanna J. however did not agree with the majority view of the Bench. In a powerful dissent, his Lordship observed :

"The principle that no one shall be deprived of his liberty and life without the authority of law was not the gift of the Constitution rather it is a necessary corollary of the concept relating to the sanctity of life and liberty. The right to life and liberty existing and was in force even before the commencement of the Constitution of India. Even in the absence of Article-21 of the Constitution (enforcement suspended), the State has got no power to deprive a person of his life and liberty without the authority of law or by any arbitrary action. This is the essential postulate and basic assumption of 'Rule of Law' and not of men in all civilized nations. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning."

The analysis of this judgment reveals that the majority view is not a good law rather the dissenting opinion by Khanna J. is more appropriate, fair and reasonable. After the judgment of this case, the 44th Constitutional amendment was done in 1978. Now the current position is that Articles 20 and 21 cannot be suspended even during the Proclamation of Emergency. Consequently, a person will be entitled to challenge the validity of his detention even during the operation of emergency.

3.2.3- *Bachan Singh v. State of Punjab [AIR 1982 SC 1336]* :- Supreme Court observed in this case that 'Rule of Law' runs through the entire fabric of the Constitution of India and indeed forms integral part of the Basic Structure of the Constitution. Law in the context of the 'Rule of Law' does not mean any law enacted by the legislative authorities however arbitrary or despotic it may be, what is necessary is that law must not be arbitrary or irrational and it must satisfy the test of reason.

3.2.4- *Indira Nehru Gandhi v. Raj Narain [AIR 1975 SC 2299]* :- The Supreme Court declared clause (4) of Article 329-A of Constitution of India as unconstitutional which was inserted by Constitution (Thirty-Ninth Amendment) Act, 1975 to immunize the election dispute to the office of then Prime Minister, Smt. Indira Gandhi from any kind of Judicial Review i.e. it was ousting the power of judicial review of Supreme Court and High Courts. Ray C.J., held that since the validation of the Prime Minister's election was not in accordance to any law, therefore it offends the Rule of Law and therefore it also violates the Basic Structure of the Constitution. According to Mathew J., the said clause violated the Rule of law which postulates the pervasiveness of the spirit of law, throughout the whole range of government in the sense of excluding arbitrary, official action in any sphere. Beg J., observed that jurisdiction of Supreme Court or High Court to try or hear a case on merits cannot be taken away without offending the Basic Structure of the Constitution and the basic postulates of the Rule of Law and of justice within a politically democratic Constitutional structure.

4- Ground Reality of Rule of Law in Democracy :-

'Rule of Law' has to prevail over all priorities and it has been made absolutely clear by the constitutional provisions and through the judgments of Constitutional courts that there shall be no discrimination. Article-14 provides for the 'Equality before Law and equal protection of Law' and thus incorporates the first postulate of 'Rule of Law' as given by Sir A.V. Dicey. But the most painful question which comes to my mind is, whether there is 'Rule of Law' in true sense?, Do we think that by merely incorporating the concept of rule of law in law books, we become rest assured that rule of law has been established? My humble submission is that theoretically incorporating 'Rule of Law' is totally different then practically assuring the 'Rule of Law'. In our well developed and well advanced Indian democracy, there are people who are socially and economically strong enough

to get the full advantage of rule of law or whenever there appears that rule of law is creating any problem to them, then they never hesitate in manipulating the rule of law to their advantage. Our present social system has allowed developing a category of “privileged elite class” who are politically and economically so powerful that the rule of law has no meaning for them. They twist the law according to their sweet will in the manner they are convenient with. On the other hand in the same society, there exists a “deprived class”, who are in majority in the society, but unfortunately they are neither socially nor economically capable, they do not have access to the rule of law therefore they are denied, equality before law and equal protection of laws in real sense. It is in no way just and fair that theoretically, they are equal in the eyes of law but when it comes to the plank of reality, then it is seen that the system does not make any sincere effort to ensure them an equal accessibility to the legal machinery. Thus, on the basis of the above, it can be inferred that equality in India is not prevalent in the definite or material sense. This often generates a view that ‘Rule of Law’ is nothing other than a instrument of the privileged class to maintain the status quo in the society. The general accord is that the status quo far from being neutral, serves to protect the privileged class at the detriment of the deprived class.

The people who are socially weak, the people who are economically weak and above all, the people who are educationally weak, can they actually think of justice ? They do not know the ABC of the law and their legal rights. In case their legal rights are violated like daily earners or labor community, Are they financially in a position to fight for their rights in the courts of law? Majority of the laws are protecting the rights of the labors working in the organized sector but what about the plight of the labors working in the unorganized sectors? There are people still weaker who are living below the poverty line. They do not have enough means even to survive themselves. Admittedly the system provides for legal aid. But honestly speaking, how many of them are able to get the legal aid in true sense to get their rights enforced. They are not able to get the equal protection of laws because of their poor economic conditions. ‘Rule of Law’ fails to provide them justice since they are not able to reach to it.

At first sight, it appears that the ‘Rule of Law’ and the respect for basic human rights and human dignity prevails but there exists notable human rights abuses, despite the existence of substantial constitutional and statutory safeguards. Most of these abuses are generated by serious social tensions and deficient or lacking policing methods. Serious human rights abuses includes extra-judicial executions i.e. killing other than in pursuance of capital punishment by courts, other political killings, excessive custodial torture by Police, use of excessive force by security and Police forces. Arbitrary arrest, continued detention without the authority of law, deaths of suspects in Police custody, long delays in criminal trials which have resulted in failure of ‘Rule of Law’.

Despite all the development that the Indian democracy has undergone, the analysis reveals that ‘Rule of Law’ does exist in India but not ‘strictu sensu’ i.e. not in strict sense. We often see that law has been made by due process but it becomes subject to the convenience of public and they subscribe to or accept it only when such law is in line with their sense of right and wrong and is in consonance with the ideologies that they believe. Law must not only be made by due process but legislature should also give a thought to justness, fairness and reasonableness of the law. Though the concept of Rule of Law has all the merits or advantages but the only negative concept is that, if respect towards law degenerates into a rigidity of legalism, it is extremely injurious to the nation. If a law has been made by due process but it is not just, fair and reasonable then strict implementation and enforcement of such laws will lead to injustice thereby defeating the concept of ‘Rule of Law’.

5- Conclusion and Suggestions :-

Despite all the critics discussed above, nevertheless we may say that by and large the Indian legal system provides all the machinery necessary for the development and maintenance of the ‘Rule of Law’. In recent years, the Supreme Court has held in many cases that the ‘Right to Information’ is a Fundamental Right under Article-19(1)(a) of the Constitution of India. This is a step forward in the direction to establish the ‘Rule of Law’ by ensuring the transparency and accountability of the governmental organs. Under Public Interest Litigations (PIL), anyone having sufficient interest in the subject-matter of the dispute, even though he himself is not an aggrieved party, may approach the

court (social action litigations). Such measures have greatly strengthened the 'Rule of Law' by protecting the liberties of the individual. Thus, the 'Rule of Law' is not a myth but a reality in the Indian Legal System.

The framers of the Constitution of India have envisaged the 'Rule of Law' not expressly in the Constitution but inherently in the provisions of the Constitution of India. The three wings of the government i.e. Executive, Legislature and Judiciary work towards upholding the 'Rule of Law' through the system of checks and balances upon each other. The analysis of last fifty years reveals that, the Judiciary has worked very efficiently in establishing and upholding the Rule of Law. The public and the government have also supported by obeying the laws that are enacted by the legislature on the part of the public and enacting fair, just and reasonable laws on the part of the government. However, it can't be denied that there have been instances in the past, when the public has resorted to violence and other illegal methods of expressing their anguish against an Act of Parliament or any judicial pronouncement where the principle of 'Rule of Law' has just become a *de jure* concept while in *de facto* the 'Rule of Men' has prevailed. From the above discussion, it is clear that the 'Supremacy of Law' is the aim, provided the law is just, fair and reasonable and the 'Rule of Law' is the tool to achieve the 'Supremacy of Law'.

For a criminal justice system to be in conformity to the 'Rule of Law', it is necessary, that the authority of a Judge or Magistrate is joined at several stages by lawfulness and sincere efforts of the actions of Police Officers, Prosecutors, Defense Advocates, and so on as well as by the higher courts and the Prison authorities or any other officer acting in pursuance of the Judgment. If any person involved in the criminal justice administration system is not performing efficiently and with full responsibility then there is always a possibility that 'Rule of Law' is defeated.

The Supreme Court has time and again reiterated the importance of 'Rule of Law' in the Indian democracy. Recently, while hearing a case related to 'Hate Speech', all the Police Chiefs of all the States and Union Territories were directed by order to register FIRs suo moto against people who are making 'Hate Speeches' irrespective of the status of the person making such speeches belonging to any religion, caste or community. This is clearly a step forward by the Supreme Court in upholding and strengthening the 'Rule of Law'. The Supreme Court has also further ordered that erring officials not complying with such order about registering FIR and investigating, they shall be liable to action for contempt of court. This shows the pro-active approach of Supreme Court towards implementation of its orders thereby upholding the essence of 'Rule of Law'. Hence, it can't be said that 'Rule of Law' is a myth in the Indian Legal System, rather it's a reality that 'Rule of Law' exists in the Indian system of Democracy and all possible steps are being taken towards ensuring that 'Rule of Law' prevails always and all the time in every part of the country.

The Supreme Court has expanded the horizon of Article 21 by doing its broader interpretation and including in its ambit, right to bail, right to speedy trial, right against custodial torture by Police, right to free legal-aid, etc. and most importantly the right to live with human dignity. It has also propounded new Doctrines such as Public Trust Doctrine, Polluter Pay Principle, Doctrine of Promissory Estoppel, Doctrine of Absolute Liability, etc. and also issued guidelines in cases where no legislation was existing upon the subject e.g. guidelines to prevent the sexual harassment of women at work place. The vast jurisprudence developed by Supreme Court under Article-21 is to ensure that State is bound by its welfare functions and also to ensure that basic human rights of the persons are not abridged or taken away by tyrant hands.

Legislature (Parliament or State Legislatures) must ensure before making any law that it is not against the provisions of the Constitution, against the public policy or against the humanity. The Legislature must also from time to time keep a watch on the social changes and scientific advancements so that the laws enacted by it meet the demands of the time. The Executive must also abstain from implementing laws which are against the Principles of natural Justice or against the public policy or humanity. The Judiciary also must exercise the power of Judicial Review with great care and caution. This is the Doctrine of self-control whereby all organs of the government try to do their part of the function efficiently without interfering into the domain of the other thereby upholding the 'Rule of Law'.

Ours is a Government of laws and not government of Men. But the paradox is that laws and the

Constitution are written in words. The words do not speak unless human life is breathed in it. In simple words, law remains dead letters until and unless it is implemented and enforced by the persons in Judiciary and Executive. Now, the question arises that do we have persons in the Legislature, Executive and Judiciary who are eager to provide services to common people of the country or do they have only stanch inclination to govern the people by winning the election by hook or by crook and remain in power by using machineries, agencies of the government and block the rationale thinking of the common man by misleading through the print or electronic media? Thus, while dealing with rule of law, we should keep in mind the important remark of Dr. Bhim Rao Ambedkar that “Fundamentals of Constitution and the working of the Constitution are two different things. Constitution when written does not breathe. It comes to life and begins to grow only when human elements get together and work. A good Constitution may turn out to be bad because those who are called to effectuate it, happened to be a bad lot.” Thus it is our prime responsibility that we must exercise our voting right and power in democracy with great care and caution. It is only then that we can think of a better rule of law society to live in.

The term ‘Rule of Law’ has not been expressly mentioned in the Constitution of India, rather it is inherent in the provisions of the Constitution. It is hereby suggested to the Parliament to add the expression by amending the Constitution either under Article-14 or under Article-21 or at any other place which the Parliament deems appropriate. To uphold the ‘Rule of Law’ in India it is also suggested to device a measure to avoid the lingering on of cases and to ensure speedy justice delivery as it has been rightly said that “Justice must not only be done but it must appear to be have been done” and “Justice delayed is justice denied”.

References

1. Dr. J.J.R. Upadhyaya, Administrative Law (Central Law Agency, Prayagraj, 11th edn., 2019)
2. C.K. Takwani, Lectures on Administrative Law (EBC Publication, Delhi, 6th edn. 2017)
3. I.P. Massey, Administrative Law (EBC Publication, Delhi, 9th edn.2017)
4. Dr. Ashok K. Jain, Administrative Law (Ascent Publications, Delhi, 2nd edn., 2017)
5. P. Ishwara Bhat, Law & Social Transformation (EBC Publication, Delhi, 1st edn.2009)
6. Dr. G.P. Tripathi, Constitutional Law-New Challenges (Central Law Publications, Prayagraj, 2nd edn., 2018)
7. Dr. G.P. Tripathi, Judicial Process, (Central Law Publications, Prayagraj, 2nd edn., 2018)
8. Rule of Law in India- An Analysis, available at : <https://blog.ipleaders.in/rule-of-law-india-analysis/> (last visited on April 26, 2023)
9. Rule of Law-A Reflection on We the People and Beyond, available at : <https://www.legalserviceindia.com/article/l459-Rule-of-law.html> (last visited on April 27, 2023)
10. Justice H.R. Khanna : A Great Defender of Rule of Law, Human Rights & Dignity, available at: <https://www.livelaw.in/columns/justice-h-r-khanna-great-defender-of-rule-of-law-human-rights-and-dignity-192832> (last visited on April 28, 2023)
11. If Rule of Law is Not Present in any Nation Anarchy Reigns : Justice N.V. Ramanna, available at : <https://www.livelaw.in/top-stories/if-rule-of-law-is-not-present-in-any-nation-anarchy-reigns-chief-justice-nv-ramana-188399> (last visited on April 28, 2023)
12. Rule of Law in India : Mounica Kasturi, available at : <https://www.lawctopus.com/academike/rule-of-law-in-india-2/> (last visited on April 25, 2023)
13. All About the Rule of Law with Caselaws :Soumyadeep Das, available at : <https://strictlylegal.in/rule-of-law/> (last visited on April 24, 2023)
14. Rule of Law in India : Gurpreet Kaur Dutta, available at : <https://blog.finology.in/Legal-news/rule-of-law-in-india> (last visited on April 24, 2023)
15. Rule of Law : Shubham Mongia, available at : <https://www.legalserviceindia.com/legal/article-719-rule-of-law.html> (last visited on April 23, 2023)
16. The Concept of Rule of Law and its Applicability in India : Srishti Saini, available at : <https://lawbhoomi.com/rule-of-law-and-its-applicability-in-india/> (last visited on April 23, 2023)
17. Explained : Rule of Law, available at : <https://lexforti.com/legal-news/rule-of-law-administrative/> (last visited on April 22, 2023)

18. Tanya Sharma, "Rule of Law: A Detailed Analysis", 8 International Journal of Creative Research Thoughts 1142-1150 (2020)
19. Kevin M. Stack, "An Administrative Jurisprudence: The Rule of Law in the Administrative State", 115 Columbia Law Review, available at : <https://columbialawreview.org/content/an-administrative-jurisprudence-the-rule-of-law-in-the-administrative-state-2/> (last visited on April 22, 2023)
20. Rule of Law in Administrative Law : P.V. Kavilikatta, available at : https://www.academia.edu/36283903/RULE_OF_LAW_IN_ADMINISTRATIVE_LAW (last visited on April 22, 2023)
21. Rule of Law by Dicey : Chintu Jain, available at : https://lc2.du.ac.in/DATA/Presentation%20on%20Rule%20of%20Law_Chintu%20Jain.pdf (last visited on April 22, 2023)
22. The Custom of Rule of Law in India, available at : <https://www.dhyeyaias.com/current-affairs/articles/the-custom-of-rule-of-law-in-india> (last visited on April 22, 2023)
23. Rule of Law: A Far Cry in Indian Democracy, available at : https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2209129 (last visited on April 22, 2023)
24. Utkarsh Anand, "File Hate Speech Cases Even if No Complaint", The Hindustan Times, Lucknow, Apr.29, 2023.