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*Research Article*

# Rule of Law in India: A Critical Analysis of the Indian Legal Frame Work

**Dr. Vivek Kumar**
Assistant Professor, R.K.A Law College, Begusarai, Bihar, India

**Corresponding Author:** * Dr. Vivek Kumar

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## Abstract

This paper examines the meaning, development, and theoretical foundations of the rule of law, with particular emphasis on the contributions of Sir Edward Coke and A. V. Dicey. The constitutional basis of this principle in India is analysed, particularly in the context of the Preamble and Articles 14, 21, 32, and 226 of the Indian Constitution.

This paper focuses on the role of the judiciary in developing and strengthening the rule of law through historically significant judicial decisions. These include landmark decisions such as Kesavananda Bharati v. State of Kerala, ADM Jabalpur v. Shivkant Shukla, and Maneka Gandhi v. Union of India. The study also analyses recent criminal law reforms and judicial interventions aimed at strengthening procedural fairness and constitutional accountability.

The paper argues that the mere existence of legal provisions is not sufficient for the true establishment of the rule of law, but rather their fair, transparent, and effective implementation is essential. Finally, it concludes that an independent judiciary, accountable institutions, easy access to justice, and respect for constitutional values are essential for strengthening the rule of law and maintaining democratic governance in India.

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## 1. INTRODUCTION

It is a universally accepted fact without any doubt that the rule of law is highly valuable elements of a just and democratic society. This means that all individuals, from the lowest to the highest, are subject to the law. This principle checks the arbitrary rule of government and ensures that power is exercised within the limits prescribed by law. In a country like India, with vast diversity, a large population with different religion as well as caste, and complex socio-political conditions, the rule of law occupies a crucial place in the constitutional system and the organization of governance. It is not only a legal concept but also a philosophical guiding principle that guides the spirit of democracy in the country. "Dharmo Rakshati Rakshitah" means "Dharma protects those who protect the Dharma." In the current context, this means that the law protects those who protect the law. This statement beautifully expresses the essence of the Rule of Law. The concept of the rule of law is the foundation on which the present democratic system is built and which continuous efforts are made to maintain. The term "rule of law" is believed to be derived from the French phrase "La Principe de Legalite," which means "Principle of Legality." It refers to a system of governance that is based on the principle of law rather than individuals. In other words, it implies the rule of laws, regulations, and other legal rules. Simply put, the rule of law means that law is supreme.

### 1.1 MEANING AND DEFINITION OF RULE OF LAW

The concept of the rule of law is not one that can be fully summarized in a fixed number of words. Many eminent academics, jurists, institutions, and scholars have attempted to define the rule of law. They are: -

Professor William Wade, a renowned scholar of administrative law, defined the rule of law by saying, "The rule of law requires that the government should be subject to the law rather than the law subject to the government."

According to Black's Law Dictionary, a renound legal dictionary "Rule of Law is the supremacy of law in which decisions are made based on well-established principles or laws, with no discretionary involvement in the application of such principles or laws."

The United Nations Secretary-General described the rule of law in the following words, "The rule of law is a principle of governance under which all individuals, institutions, and bodies, including the State, whether public or private, are accountable to publicly promulgated, equally enforced, and independently adjudicated laws. These laws are consistent with international human rights norms and standards."

Lord Denning, in Gouriet v. Union of Post Office Workers (1978), stated that the law of the country is supreme and no individual can dominate it. No matter how much power or prestige an individual possesses, the law of the country will prevail, and the supremacy of the law will prevail under all circumstances.

Renowned sociologist and political scientist Max Weber defined the rule of law as, "It is the concept of legitimate authority based on the rule of law, rather than on the idea of rule by individuals."

Despite the numerous definitions of the rule of law, it cannot be denied that each of the above definitions is incomplete in itself. These definitions contain numerous shortcomings and ambiguities.

#### 1.1.1 FORMAL AND SUBSTANTIVE VIEW

The concept of the rule of law can be broadly understood in two major forms, the Formal Rule of Law and the Substantive Rule of Law. The rule of formal law primarily focuses on how laws are made, promulgated, and enforced and the rule of substantive law also emphasizes the content of laws, their fairness, impartiality, the protection of human rights, and the safeguarding of fundamental freedoms.

#### 1.1.2 RULE BY LAW AND RULE OF LAW

Rule by Law and Rule of Law are two distinct concepts. Rule by Law refers to a system in which the government uses law as a means to achieve its objectives. In such a situation, law may be used to enforce the objectives of power rather than to control power but the rule of law is based on the principle that every individual and institution, including the government, is subject to the law. In this context, the powers of government are limited by law, and no individual or authority is above the law. Thus, the rule of law seeks to ensure justice, equality, and accountability while controlling arbitrary power.

#### 1.1.3 MEANING OF THE RULE OF LAW

The rule of law refers to a system, process, institution, practice, or norm that ensures equality before the law for all citizens, establishes a system of governance free from arbitrariness, and generally prevents the arbitrary exercise of power. The rule of law implies that everyone, including those in power, their representatives, and ordinary citizens, must obey the law. If a person violates the law, regardless of their social status, caste, religion, sect, or other characteristics, they should be prosecuted in accordance with the provisions of the relevant Constitution and applicable law, and if found guilty, they should be punished.

#### 1.1.4 CHARACTERISTICS OF THE RULE OF LAW

The principle of the rule of law includes several important characteristics, which are detailed below:

- Prohibition of arbitrary action
- Independent and impartial judicial process
- Prohibition of punishment without violation of law
- Equality before the law
- The foundation of a democratic system

The rule of law is a fundamental foundation of most democratic countries in the world because of its broad application. It has been an important part of most judicial systems around the world. It helps control the powers of the government, protect the rights of citizens, and establish a just system.


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### 1.1.5 BASIC PRINCIPLES OF THE RULE OF LAW

The principle of the rule of law encompasses several fundamental principles. Some of the most important principles are as follows:

- Supremacy of law
- Prohibition of arbitrary desires and caprice
- Protection against arbitrariness
- Equality before the law and equal protection of the laws
- Principle of speedy justice
- Fair process and equal treatment
- Absence of arbitrary and discretionary decisions

The absence of arbitrary and arbitrary discretionary decisions is a fundamental element of the rule of law. This principle ensures that power is exercised in accordance with legal rules and established procedures rather than personal desires.

- Exercise of powers within legal limits

Certain powers are granted to individuals with special authority. When exercising such powers, it is essential to observe the limitations and restrictions set by law. No authority can exercise its powers in violation of legal limits.

- Protection against autocratic actions of the executive

The law provides citizens with protection and justice against any tyrannical or authoritarian actions by the executive. Thus, the rule of law establishes a check on the powers of the executive.

## 1.2 EVOLUTION OF THE RULE OF LAW

Many Greek philosophers, such as Aristotle, Plato, and Cicero, are considered early proponents of the principle of the rule of law. For example, Plato, in his book Complete Works of Plato, defended the rule of law, writing "The collapse of the state is not far where the law is made subjective to the authorities but the states where the law is considered supreme all the blessings of the god fall on such a state and it flourishes through all times." According to the famous Greek scholar Aristotle, "The rule of law is a system of rules that are inherent in the natural order of the social structure existing in society."

The origins of the rule of law can be traced back to the thirteenth century AD. During the reign of King Henry III in this century, Judge Henry de Bracton, while hearing a case and said, "The king is not supreme. He is subject to almighty God and the law. The king is subject to the law because it is the law that made him king." This statement clarifies the idea that even state power is not above the law and that the king's powers are controlled by law.

### 1.2.1 RULE OF LAW AND SIR EDWARD COKE

Sir Edward Coke is credited with propounding the concept of the rule of law in modern times. He reaffirmed the views of Judge Henry de Bracton, stating that the king should be subject to God and the law. He also reaffirmed the supremacy of law over the executive's sense of superiority. According to Sir Edward Coke, the rule of law requires the following elements:

#### 1.2.1.1 ABSENCE OF ARBITRARY POWERS

The government should not have arbitrary powers nor should it be allowed to exercise its powers arbitrarily. All government actions should be in accordance with the limits and procedures prescribed by law.

#### 1.2.1.2 PROPER PROCEDURE FOR IMPOSING PUNISHMENT

Coke clarified the proper legal procedure for imposing punishment. According to him, under the rule of law, no person should be punished unless they have violated the law. He further clarified that punishment for such a violation can only be imposed if the violation is duly established and proven in accordance with due process of law in the competent courts of the country. These principles laid the foundation for the development of the concept of the rule of law.

### 1.2.2 CRITICISMS OF COKE'S THEORY OF RULE OF LAW

Coke's theory initiated the theoretical development of the concept of the rule of law, but it also faced some criticism. Thomas Hobbes strongly criticized this theory.

Hobbes criticized Coke's theory of common law, pointing to the subjectivity and uncertainty of artificial reason. Hobbes saw this theory as based on artificial logic. While Coke considered reason to be the fundamental foundation of his theory, Hobbes believed that the concept of reason was specifically understood by jurists and lawmakers. According to him, this logic was more evident in legal maxims and axioms than in practical application. Thus, Hobbes's criticism raised the question of whether the rule of law should be based solely on judicial reasoning and common law, or whether it should also be based on clear, definite, and practical legal rules.

### 1.2.3 RULE OF LAW AND ALBERT VENN DICEY

This concept i.e. rule of law was further developed by Albert Venn Dicey, a renowned constitutional jurist from England. He wrote "Introduction to the Study of the Law of the Constitution," which elaborately discusses the concept of the rule of law. This book by A.V. Dicey is considered one of the important works that clarifies the concept of the rule of law and its true meaning. In this book, he also discussed issues related to the exercise of powers by various organs of government in accordance with the provisions of the Constitution. A.V. Dicey propounded three major principles of the rule of law which are important foundations of the modern constitutional and democratic system, which are as follows:

- Supremacy of law
- Equality before the law, and
- Primacy of the spirit of the law

#### 1.2.3.1 SUPREMACY OF LAW

The supremacy of law is Dicey's first formulation of the theory of the rule of law. It states that the law is above all individuals, including those who make, administer, or enforce laws. In Dicey's words, the rule of law is based on the absolute


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supremacy of laws, as opposed to the autocratic power exercised by the government. In short, a person can be punished only for a specific violation of the law, and not for any other reason. The state cannot prosecute a person solely on the basis of its unilateral and arbitrary will. A person can only be punished according to the prevailing and duly established law.

Dicey claimed that where the supremacy of law is established, there should be no room for individual discretion. In his view, discretion is associated with arbitrariness. According to Dicey, whenever a decision is made based on individual discretion, there is a substantial potential for the fundamental freedoms of individuals to be undermined by arbitrary and discretionary control by the state.

#### 1.2.3.2 EQUALITY BEFORE LAW

Equality before law is the second proposition of Dicey's theory of the rule of law. According to it, every person, regardless of their social status or position, is subject to the jurisdiction of the general laws of the country and the ordinary courts, not any special court. In Dicey's view, special courts that acquire jurisdiction under special laws pose a threat to the values of equality. Consequently, he believed that all individuals should be subject to the same code of rules and values and should face legal challenges before the same ordinary civil courts.

In Dicey's view, special courts that acquire jurisdiction under special laws pose a threat to the values of equality. Consequently, he believed that all individuals should be subject to the same code of rules and values and should face legal challenges before the same ordinary civil courts. The fundamental purpose of this principle is to ensure that no individual is exempted from the general application of the law solely on the basis of their position, status, or social status. Thus, equality before the law is an essential foundation of the rule of law.

#### 1.2.3.3 THE PREDOMINANCE OF THE LEGAL SPIRIT

The predominance of the legal spirit is the third proposition of Dicey's theory of the rule of law. According to Dicey, maintaining the effectiveness of the rule of law requires an enforcement institution, which he saw in the system of courts.

He believed that courts are the institutions that truly enforce the rule of law. Therefore, they must be free from bias and external interference. Thus, the independence of the judiciary is a crucial component for the effective functioning of the rule of law. Dicey asserted that the ultimate protectors of individuals' fundamental rights are the institutions of law and the courts, rather than a codified constitution. In his view, citizens' rights receive real and effective protection through the courts. Dicey's theory of the rule of law has been criticized from many perspectives, but the core idea he propounded is that the source of authority is law, and that authority must be exercised in accordance with the law. Simply put, the primary objectives of Dicey's theory of the rule of law are to eliminate arbitrary and discretionary decision-making by those in authority, to prevent the abuse of power, to ensure equal treatment under the law, and to provide legal protection to fundamental rights. These values remain relevant and important in every constitutional democracy even today.

### 1.2.4 CRITICISM OF DICEY'S THEORY OF RULE OF LAW

The following are the major criticisms of Dicey's theory of the rule of law:

#### 1.2.4.1 NEGLECTING THE IMPORTANCE OF CODIFICATION OF LAWS

Dicey neglected the importance of codification of laws. Codification of laws is crucial for ensuring individual rights because it brings certainty to the law. Codified rules are clearer and more precise and therefore can be effectively enforced. Codification helps citizens understand their rights and obligations and helps clarify the powers and limits of administrative officials.

#### 1.2.4.2 MISUNDERSTANDING THE CONCEPT OF DROIT ADMINISTRATION

Dicey misunderstood the concept of Droit Administratif. Droit Administratif refers to the system of rules that regulate the administration or the relations between administrative authorities and private citizens. According to Dicey, the purpose of this system was primarily to protect government officials. However, in some aspects, this system was more effective in controlling the administration than the system of common law. Thus, a major basis for Dicey's criticism is that he did not give sufficient importance to the independent nature of administrative law and its role in holding administrative officials accountable.

## 2.0 RULE OF LAW IN THE UK, USA AND INDIA

### 2.1 RULE OF LAW IN UK

The development of the rule of law in England began with the signing of the Magna Carta, by King John in 1215. When the Magna Carta was signed in 1215, the monarchical system of government in England accepted the principle of subjection to the law. Thus, the law gained supreme importance. Articles 39 and 40 of the Magna Carta of 1215 ensured that no free person could be imprisoned or deprived of his property on any basis other than the lawful judgment of his peers or the law of the land. Thus, the Magna Carta provided an important historical foundation for establishing control over state power and protecting individual rights.

#### 2.1.1 FROM CHARTER TO CONSTITUTIONAL PRINCIPLE

The principle of the rule of law in England took on a new form when differences arose between Parliament and the monarchy in the competition for greater powers. Both Parliament and the king struggled to establish supreme authority. From a peace agreement between the feudal class to becoming an established constitutional principle, the rule of law evolved through the


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conflicts between the Crown and Parliament in the seventeenth century. The Glorious Revolution of 1688 reinforced the principle that the king could not rule without Parliament or suspend laws at will.

In case of Entick v. Carrington in 1765 proved to be a significant milestone in the development of the rule of law. In this case, government officials entered a man's home on the basis of a general warrant and seized his documents.

The court declared the search illegal because no statute or legal rule authorized such action. This decision established that the prerogative powers of the monarch and the government are subject to the law of the land. It also clarified that government officials cannot enter a person's private premises without legal authority. Thus, this decision strengthened the principle of legal control over government power and the protection of citizens' private life and property.

### 2.1.2 PARLIAMENTARY CONFIRMATION

The British Parliament has also strengthened the principle of the rule of law through legislative provisions.

The British Parliament has also strengthened the principle of the rule of law through legislative provisions. The Constitutional Reform Act 2005 formally recognized the principle of the rule of law. This Act stated that the provisions of the Act do not adversely affect the existing constitutional principle of the rule of law. Thus, the rule of law is established as an important constitutional principle in the UK, playing a vital role in keeping government powers within legal limits and protecting the rights of citizens.

## 2.2 RULE OF LAW IN THE UNITED STATES OF AMERICA

The rule of law in the United States is an accepted constitutional concept, under which all American citizens, institutions, authorities, and bodies are accountable to publicly declared laws. These laws apply equally to all individuals and are enforced on an equal basis. The adjudication process must be independent and impartial. Furthermore, all laws must be consistent with international human rights principles. In the United States, courts play a vital role in upholding the principles of the rule of law. These principles often help protect minority communities from discrimination under the country's laws. The U.S. Constitution places great importance on equality before the law. This principle ensures that every individual has access to legal protection and is not subject to arbitrary or discriminatory treatment.

The principle of the rule of law in the United States is credited to Thomas Paine, one of the leading thinkers of the American Revolution. In 1776, Paine proposed a theory that stated that in any sovereign nation, law should reign supreme, rather than the king. As a sovereign nation, the United States recognizes the supreme law. The core of this idea is that no individual, not even those holding the highest political office, should be above the law. Thus, the supremacy of law in the United States is a key foundation of democratic governance, constitutional limits, and the protection of civil rights.

### 2.2.1 RULE OF LAW AND THE US CONSTITUTION

The rule of law, federalism, and the doctrine of separation of powers are at the core of the US Constitution. In addition to these fundamental features, several other elements also contribute to the US Constitution. These are:

#### 2.2.1.1 THE PEOPLE'S GOVERNMENT

First, the US Constitution receives legitimacy and legal recognition from the people when it serves their interests and provides them with fundamental rights and liberties. Thus, the primary basis for the US Constitution's legitimacy is the consent of the people and the protection of their rights.

#### 2.2.1.2 POLITICAL RESPONSIBILITY

According to the US Constitution, the US government is politically responsible to its citizens and the various states. This responsibility is exercised through a system of checks and balances and accountability. Its purpose is to ensure that the government exercises its powers responsibly.

#### 2.2.1.3 LIMITED GOVERNMENT

According to the US Constitution, the nature of government is limited. The political and legal constraints imposed on the government through the Constitution prevent it from acting unlawfully, ambiguously, or arbitrarily towards citizens. Under this principle, the government can exercise its powers only within the limits set by the Constitution and law.

#### 2.2.1.4 DIVISION OF POWERS

According to the US Constitution, establishing a limited government requires a clear demarcation and distribution of government powers. This objective is achieved through the division and separation of powers among the various branches of government. Under this system, the legislature, executive, and judiciary are assigned distinct roles and responsibilities, so that excessive power is not concentrated in any one branch.

#### 2.2.1.5 BILL OF RIGHTS

The US Constitution is also viewed as a bill of rights because its purpose is to provide and protect the fundamental rights of citizens. Additionally, it attempts to maintain a system of checks and balances on the actions of the federal government and prevent undue government interference in the exercise of citizens' rights.

## 2.3 RULE OF LAW IN INDIA

The rule of law is a fundamental principle of any constitutional government. It establishes the supremacy of law over every individual and institution, including the government. This principle ensures that administration is conducted in accordance with codified law, and not based on the personal whims or caprices of the ruling authority. In the Indian context, the rule of law has both philosophical and constitutional roots. It has evolved from India's colonial legal tradition and the constitutional order established after independence. The Indian Constitution has provided an important constitutional


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foundation for the rule of law through the supremacy of law, equality before the law, protection of fundamental rights, and judicial review.

### 2.3.1 CONSTITUTIONAL BASIS OF RULE OF LAW IN INDIA

The Indian Constitution is the supreme source of law and the primary foundation of the rule of law. Many provisions of the Constitution directly or indirectly embody this principle. The main provisions are as follows:

#### 2.3.1.1 PREAMBLE OF THE CONSTITUTION

The Preamble of the Indian Constitution declares India a sovereign, socialist, secular, democratic republic and expresses its resolve to ensure justice, liberty, equality, and fraternity to all citizens. These ideals express the fundamental spirit of the rule of law. Establishing justice and equality, protecting liberties, and promoting fraternity among citizens are important objectives of the rule of law.

#### 2.3.1.2 ARTICLE 14

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws. It ensures that state actions are not arbitrary and that all persons in similar circumstances are treated equally. Under this article, no person is above the law. Every action of the state must be subject to constitutional limitations. Thus, Article 14 is a key constitutional foundation of the rule of law in India.

#### 2.3.1.3 ARTICLE 21

Article 21 of the Indian Constitution protects the right to life and personal liberty. According to it, no person shall be deprived of his or her life or personal liberty except according to procedure established by law.

The Supreme Court has broadly interpreted Article 21, recognizing important rights such as the right to live with dignity, the right to privacy, the right to legal aid, and the right to a fair trial. These judicial interpretations have broadened the scope of the rule of law and helped ensure that actions by the state to restrict individual liberty are just, reasonable, and lawful.

#### 2.3.1.4 ARTICLES 32 AND 226

Articles 32 and 226 of the Indian Constitution provide individuals the right to approach the Supreme Court and High Courts, respectively, for the enforcement of their fundamental rights. Article 32 grants individuals the right to approach the Supreme Court for the enforcement of fundamental rights, while Article 226 empowers High Courts to issue writs for the enforcement of fundamental rights as well as for the protection of other legal rights.

#### 2.3.1.5 DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy are enshrined in Part IV of the Indian Constitution. Although these principles are generally not directly enforceable by the courts, they nevertheless guide the state towards establishing social and economic justice. Social and economic justice are integral elements of the substantive rule of law. The objective of these principles is to establish a social order in which citizens have equal opportunities and social and economic inequalities are reduced. Thus, the Directive Principles of State Policy do not limit the rule of law to mere formal legal equality, but instead link it to the concept of social justice and a welfare state.

#### 2.3.1.6 JUDICIAL INTERPRETATION AND THE BASIC STRUCTURE DOCTRINE

The judiciary has played a crucial role in establishing the rule of law as an immutable constitutional feature of the Indian constitutional system. The Basic Structure Doctrine was propounded by the Supreme Court in the landmark 1973 decision of Kesavananda Bharati v. State of Kerala. According to this doctrine, Parliament has the power to amend the Constitution, but it cannot use this power to destroy or alter the basic structure of the Constitution. The rule of law is considered one of the important elements of the basic structure of the Constitution.

Additionally, in cases such as Indira Nehru Gandhi v. Raj Narain (1975) and I.R. Coelho v. State of Tamil Nadu (2007), the Supreme Court reaffirmed the importance of the basic structure doctrine when reviewing the constitutional validity of constitutional amendments and legislative provisions. These decisions strengthened the principle that constitutional amendments that violate the rule of law and other fundamental features of the Constitution can be subjected to judicial review and declared unconstitutional if they violate the basic structure. Thus, judicial review and the basic structure doctrine are important means of protecting the supremacy of law and constitutional limits in the Indian Constitution.

#### 2.3.1.7 SEPARATION OF POWERS

Although the principle of separation of powers is not explicitly defined in the Indian Constitution, the division of powers between the legislature, executive, and judiciary is an essential element of the Indian constitutional system. This principle prevents excessive centralization of power and establishes a system of checks and balances between the various organs of government. The primary function of the legislature is to enact laws, the executive's function is to implement them, and the judiciary's function is to interpret laws and administer justice. Although the functions of these organs are somewhat interrelated and interact, it is essential to maintain institutional balance between them.

The separation of powers helps ensure that no organ exceeds its constitutional limits. Thus, this principle checks arbitrary power, protects the rights of citizens, and plays a vital role in ensuring the effectiveness of the rule of law in India.

### 2.3.2 EXCEPTIONS TO THE RULE OF LAW IN INDIA

While the Indian Constitution broadly recognizes the principle of the rule of law, certain individuals and institutions are granted special immunities based on the nature of their


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positions and functions. These provisions are viewed as special exceptions within the constitutional framework rather than a blanket denial of the rule of law.

#### 2.3.2.1 IMMUNITIES TO THE PRESIDENT AND GOVERNORS

Article 361 of the Indian Constitution grants certain constitutional immunities to the President and the Governors of the States. The key provisions of this article are as follows:

- Immunity from criminal proceedings during term of office.
- Immunity from process of arrest and imprisonment.
- Immunity from responsibility to courts for official acts.

The President or the Governor of a State shall not be liable to any court for anything done or claimed to have been done in connection with the exercise and discharge of the powers and duties of their office.

- Civil proceedings in respect of acts done in their personal capacity.

Civil proceedings may be initiated against the President or the Governor of a State in respect of any act done or alleged to have been done in their personal capacity, but a period of two months must elapse after written notice has been given to the President or Governor concerned before such proceedings can be initiated.

#### 2.3.2.2 IMMUNITY TO FOREIGN DIPLOMATS

The Vienna Convention on Diplomatic Relations of 1961 provides for various privileges and immunities granted to diplomatic envoys and representatives. These immunities are intended to assist diplomats in the independent and effective discharge of their official functions. Diplomatic immunity is an important principle of international law, under which diplomatic representatives are protected, within prescribed limits, from certain judicial and other proceedings.

#### 2.3.2.3 SPECIAL PROVISIONS RELATING TO JUDGES OF THE SUPREME COURT AND HIGH COURTS

Special provisions have been made in the Constitution to protect the independence and impartiality of judges of the Supreme Court and High Courts. Article 121 of the Indian Constitution prohibits discussion in Parliament on the conduct of a judge of the Supreme Court or a High Court in the discharge of his or her judicial duties. However, such discussion is permitted when a motion for the removal of a judge is considered. This provision aims to protect the independence of the judiciary and prevent undue political interference in judicial work.

## 3. CHALLENGES IN IMPLEMENTATION OF RULE OF LAW IN INDIA

The Indian Constitution firmly enshrines the principles of the rule of law. The practical implementation of these principles falls short of the expected standards due to numerous inconsistencies and systemic problems. These problems are not limited to structural and institutional limitations but also arise from socio-political processes that impact the equitable and impartial enforcement of law. The gap between constitutional ideals and their practical implementation results in problems such as legal uncertainty, inequality before the law, and a lack of public trust in institutions of governance.

- Judicial delays and backlogs
- Misuse of laws and arbitrary state power
- Political interference in institutions
- Corruption and lack of accountability
- Inequality before the law

Article 14 of the Indian Constitution guarantees equality before the law but in practice, discrimination based on class, caste, and gender impacts law enforcement and judicial processes. Individuals with political influence and connections sometimes find opportunities to escape legal action due to collusion, delays in investigations, or weak prosecution. In contrast, people from poor and marginalized communities often face harsh treatment. This includes arrests without sufficient grounds, torture in custody, and the lack of access to effective legal remedies. Uneven enforcement of the law creates selective justice and deepens social inequalities. Such circumstances undermine the fundamental tenet of the rule of law, equal and impartial justice for all individuals.

- Inaccessibility of justice

Access to justice remains a widespread problem in rural and less developed areas. The main barriers are:

i. Geographical distance from courts and legal aid centers and their location in remote areas.
ii. Lack of information regarding legal rights and judicial processes.
iii. Cultural and linguistic differences, due to which individuals feel alienated from the formal legal system.
iv. The financial cost of legal services, which remains beyond the reach of most people.

Although legal aid is available through institutions like the National Legal Services Authority (NALSA), its limited scope and inadequate availability make it difficult to empower vulnerable sections of society to the desired level.

- Weak enforcement of judicial orders

Despite progressive or reformative decisions by the judiciary, the executive's enforcement of these decisions is uneven. Some of the major challenges in this context include:

i. Disregard of judicial orders, especially those deemed to be contrary to state interests.
ii. Disobedience to court orders and difficulties in ensuring their compliance.
iii. Occasional disregard of judicial orders by state officials and institutions, thereby undermining the effectiveness of the judiciary. Such disobedience weakens the system of checks and balances and hinders the effective enforcement of citizens' rights and available legal remedies.

- Lack of police reforms

India's police system still largely operates within the framework of the colonial-era Police Act, 1861. Despite repeated recommendations by institutions like the National Police Commission, the process of police reforms has been slow and


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fragmented. Problems such as the use of force, custodial torture, and biased investigations persist. Political interference in the appointments, postings, and transfers of police officers undermines their autonomy. Efforts to modernize the police and promote community policing have been limited and have not been widespread.

## 4. JUDICIAL INTERPRETATION AND DEVELOPMENT OF THE RULE OF LAW IN INDIA

The rule of law was not explicitly mentioned in the Indian Constitution. However, in the case of ADM Jabalpur v. Union of India (1976), this principle was considered and its validity was questioned. The main question before the Court was whether the rule of law existed in the Constitution beyond Article 21. This question arose when the rights granted under Articles 14, 21, and 22 were suspended during the declaration of Emergency. The majority decision answered this question in the negative. However, Justice H.R. Khanna, in his dissenting opinion, stated that, "Even in the absence of Article 21 in the Constitution, the state has no power to deprive a person of his life and liberty without the authority of law. 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 importance of the rule of law lies in controlling the powers exercised by government authorities. The scope of our legal system is wide and diverse. Therefore, it is essential to maintain checks and balances on administrative actions that directly or indirectly affect the rights of individuals guaranteed by the Constitution.

In Som Raj v. State of Haryana (1990), the Court acknowledged the existence of the rule of law and considered the absence of arbitrary power as an important aspect of it. To maintain effective standards of checks and balances on the actions of administrative authorities, In Union of India v. Raghubir Singh (1989), the Court considered the independence of the judiciary and the supremacy of the courts as important elements of the rule of law. Additionally, the rule of law also implies that a prescribed procedure must be followed when exercising powers affecting citizens' rights. Actions contrary to due process of law may be considered a violation of law. Article 21 makes it clear that when a citizen's right to life and personal liberty is violated, "procedure established by law" must be followed.

In Commissioner of Punjab v. Om Prakash (1969), the Court held that the rule of law is a fundamental feature of the Indian Constitution. If an administrative action fails to meet this standard, it can be struck down if the aggrieved person brings the matter before the court.

The most significant case in Indian judicial history regarding the development of the rule of law in India was Kesavananda Bharati v. State of Kerala (1973). In this case, the rule of law was held to be part of the basic structure of the Constitution, which must be protected under all circumstances. This provided a permanent constitutional basis for Dicey's principle of the rule of law in the Indian legal system. In Sukhdev v. Bhagatram (1975), Justice Mathew expressed the view that if the executive were to be vested with arbitrary powers in a democratic system, it could lead to the collapse of the country's system, as governance would become motivated by personal interests.

The rule of law in India is a widely accepted principle that has evolved over time. Its objective is to strike a balance between administrative and executive actions and the violation of individual rights. The rule of law is rooted in the principles of law, morality, and justice, as it is a fundamental element of democracy and the legitimacy of competent authorities. It helps prevent conflict and maintain control over the protection of human rights. However, the rule of law in India has not been adequately enforced due to numerous scandals and irregularities that have surfaced in the past decade. These incidents point to the misuse of administrative powers and actions, and the resulting violation of the rule of law. The need for the rule of law in any country cannot be denied. Therefore, it is essential to consider its development and protection along with the progress of the nation.

### 4.1 ORIGINS OF DUE PROCESS AND PROCEDURE ESTABLISHED BY LAW

For clarity, it is necessary to understand the origins and meaning of the concepts of Due Process and Procedure Established by Law as used in the Constitutions of India and the United States. The Fifth Amendment to the United States Constitution provides, among other things, that "no person shall be deprived of his life, liberty or property, without due process of law". In India, provisions related to this concept are included in Article 21.

### 4.2 MAJOR COMPONENTS OF DUE PROCESS

Due Process has two major components. First one is Procedural Due Process and second one is Substantive Due Process.

#### 4.2.1 PROCEDURAL DUE PROCESS

Procedural due process requires adherence to a fair procedure, which includes providing information and an opportunity to be heard to the person concerned.

#### 4.2.2 SUBSTANTIVE DUE PROCESS

Substantive due process, examines the justness of the content and fundamental elements of the law.

### 4.3 PROCEDURE ESTABLISHED BY LAW

Procedure established by law refers to a procedure prescribed in an Act or by state law. Three key conditions can be established in this regard:

- A law must exist to justify interference with a person's life or personal liberty.
- The law must be valid.
- The procedure prescribed in the law must be strictly followed.


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### 4.4 PROCEDURE ESTABLISHED BY LAW AFTER 1978 IS EQUIVALENT TO DUE PROCESS OF LAW

The Fifth Amendment to the US Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. The concept of due process empowers courts to determine the reasonableness of both substantive and procedural provisions of law. Article 21 of the Indian Constitution states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." The Constitution of India does not explicitly mention the term Due Process.

First, this was a significant omission, as the effectiveness of the concept of procedural due process stems largely from the word "Due."

Second, the words "Due Process of Law" were mentioned in the Draft Constitution, but these words were later removed and replaced with the current expression "Procedure Established by Law." This was significant evidence that the Constituent Assembly did not intend to implement the American concept of procedural due process in India. Its primary objective was to avoid the uncertainties associated with the concept of Due Process in America. In America, judicial decisions regarding the reasonableness of a law were not uniform. The concept of "reasonable" varied according to the judge, the law, the time, and the subject matter. A strict literal interpretation of procedure established by law gives the legislature greater authority. This can result in laws that are not fair from a liberal democratic perspective.

#### 4.4.1 DIFFERENCE BETWEEN DUE PROCESS OF LAW AND PROCEDURE ESTABLISHED BY LAW

The key difference between Due Process of Law and Procedure Established by Law is that in the American system, a law must meet the standards of liberal democracy. In India, on the other hand, Procedure Established by Law is interpreted to mean that a duly enacted law can be valid, even if it does not conform to the principles of justice and equality. In A.K. Gopalan v. Union of India, the Court held that Procedure Established by Law refers to any procedure prescribed by the Indian legislature. This decision established two key principles regarding Article 21.

- Articles 19, 21, and 22 were considered separate and independent from each other. Article 19 would not apply to a law affecting personal liberty covered by Article 21.
- A law affecting life or personal liberty cannot be declared unconstitutional merely on the ground that it fails to comply with the principles of natural justice or due process.

However, after 1978, the judiciary in India adopted a liberal interpretation and attempted to give "procedure established by law" the same meaning as "due process of law" in the context of protecting individual rights. In the case of Maneka Gandhi v. Union of India (1978), the Supreme Court ruled that "procedure established by law" within the meaning of Article 21 must be reasonable, just, and fair and must not be arbitrary, fictitious, or oppressive. Otherwise, it cannot be considered a procedure in the true sense and the requirements of Article 21 would not be met. This decision had a multifaceted impact on the development of constitutional law in India.

The brief facts of this case are that Maneka Gandhi's passport was confiscated at the airport under Section 10(3)(c) of the Passport Act, 1967. Upon inquiry, she was informed that the Government of India had decided to confiscate her passport in the public interest. The following key findings emerged from this case.

First, Section 10(3)(c) of the Passport Act was held to violate Article 14 of the Constitution because it grants vague and unlimited powers to passport authorities. In the case of E.P. Royappa v. State of Tamil Nadu & Another (1973), it was held that Article 14 is one of the fundamental pillars of the Indian Constitution and its interpretation cannot be limited to a narrow and rigid approach. Therefore, Article 14 should be interpreted as broadly as possible, including examining the reasonableness and arbitrariness of the provisions of the law.

Second, in this case, the principle of Audi Alteram Partem, which means hearing the other party, was violated. This rule plays a crucial role in determining the constitutionality and fairness of any process.

Maneka Gandhi was not informed of the reasons for the seizure of her passport. This was unfair, as every individual has the right to know the grounds for executive action against them. Furthermore, she was not given an opportunity to present her case before the authorities.

Third, the denial of the right to travel abroad by the passport authorities without providing any reason violated Article 21 of the Indian Constitution. The action, which affected the freedom to travel abroad, was arbitrary and unreasonable, as it affected the freedom of personal liberty. The Court held that the question was not merely one of procedure, but also of the substantive due process of law, i.e., the fairness of the substance of the law.

The Supreme Court's decision in the Maneka Gandhi case marked a significant shift in judicial interpretation and jurisprudence, resulting in a comprehensive transformation of constitutional law. Following this decision, the expression "procedure established by law" used in Article 21 of the Indian Constitution acquired almost the same significance as the concept of "due process of law" in the US Constitution.

### 4.5 POST MANEKA GANDHI JUDGEMENT

The concept of Article 21, which had lain dormant for nearly three decades, received renewed vitality through the Supreme Court's famous Maneka Gandhi decision. Subsequently, Article 21 began to evolve as the Indian version of the American concept of due process. It became the basis for many fundamental rights and procedural safeguards for citizens.

It is now established that Article 21 provides a positive right to life and personal liberty. The word "life" used in Article 21 does not mean mere animal existence, but a life with dignity. This principle was also accepted in the Francis Coralie case. The procedure for depriving a person of his life and personal liberty must be reasonable, fair, and just. The 44th Amendment


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of the Constitution was made in 1978, and through an amendment to Article 359, it was provided that the operation of Articles 20 and 21 cannot be suspended even during a declaration of emergency.

In the case of A.K. Bindal v. Union of India (2003), it was held that a person can be deprived of his life and personal liberty only in accordance with the procedure established by law, and not otherwise.

Thus, the above brief discussion of Article 21 makes it clear that its interpretation is multifaceted. Any arbitrary, capricious, or irrational action by the State that deprives a person of his or her life or personal liberty would be contrary to Article 21 of the Indian Constitution. The Supreme Court clarified in Kartar Singh v. State of Punjab (1994) that the procedure required under Article 21 must be fair, just, and equitable, and not arbitrary, capricious, or oppressive. The expression "procedure established by law" encompasses both substantive law and procedural law. If a procedure does not meet these essential characteristics, it cannot be considered a procedure in the true sense of the word under Article 21.

## 5. RECENT DEVELOPMENTS AND REFORMS IN THE IMPLEMENTATION OF RULE OF LAW IN INDIA

In the current scenario, the concept of the rule of law propounded by Dicey is not fully accepted. The modern concept of the rule of law is broader and sets an ideal for any government to achieve. The modern concept of the rule of law was formulated by the International Commission of Jurists in 1959, also known as the Delhi Declaration. It was later reaffirmed in Lagos in 1961. According to the modern concept, the rule of law means the following:

### 5.1 PROTECTION OF THE DIGNITY OF THE INDIVIDUAL

In a free society, the functions of government should be conducted in such a way that the dignity of every human being as an individual is protected.

### 5.2 EFFECTIVE GOVERNANCE

The government must be able to maintain law and order.

### 5.3 DUE PROCESS AND FAIR JUSTICE

No person should be arrested without legal authority. Everyone should have access to legal aid, a public hearing, a fair trial, and the presumption of innocence.

### 5.4 INDEPENDENT JUDICIARY

The judiciary must be independent so that it can deliver justice without undue interference. In recent years, India has undertaken significant legal and institutional reforms aimed at strengthening the rule of law. These initiatives aim to modernize the legal framework, enhance the efficiency of judicial procedures, and ensure equal and impartial access to justice.

Thus, the rule of law in the modern sense ensures a system in which the expression of political interests is encouraged and criticism of the government is not only permitted but also accepted as a positive and important aspect of a democratic system. The following are the major developments under this:

### OVERHAUL OF CRIMINAL LAWS

In July 2024, India implemented three new laws to replace colonial-era criminal laws: -

- The Indian Penal Code, 2023 (Bharatiya Nyaya Sanhita-BNS): This replaced the Indian Penal Code. It sets out new definitions and categories of crimes.
- The Bharatiya Nagarik Suraksha Sanhita (BNSS): This replaced the Code of Criminal Procedure. It seeks to streamline judicial processes and expedite the disposal of cases.
- The Indian Evidence Act, 2023: This replaced the Indian Evidence Act. It updated the rules of evidence to reflect modern circumstances. These reforms aim to free the criminal justice system from colonial influences, improve procedural effectiveness, and uphold human rights standards.

In a landmark judgment delivered in November 2024, the Supreme Court criticized the practice of demolishing houses without following due process. This practice is commonly referred to as "Bulldozer Justice."

## 6. CONCLUSION

The rule of law is the cornerstone of a democratic and constitutional system. It ensures that the exercise of government power is subject to legal limits and that the rights and liberties of individuals are protected from arbitrary actions. The historical evolution of the rule of law, from the ideas of ancient Greek philosophers to the contributions of Sir Edward Coke and A. V. Dicey and its modern constitutional form, reflects the vital importance of controlling arbitrary power and building a just legal system.

The rule of law in India derives its strength from the constitutional framework, particularly the Preamble and Articles 14, 21, 32, and 226 of the Constitution. The judiciary has played a key role in developing and preserving this principle through landmark decisions such as Kesavananda Bharati v. State of Kerala, Indira Nehru Gandhi v. Raj Narain, Maneka Gandhi v. Union of India, and A.D.M. Jabalpur v. Shivkant Shukla. These judicial developments have reinforced the concept that government action must be authorized by law and that every process affecting life and personal liberty must meet standards of fairness, reasonableness, and justice.

The practical implementation of the rule of law in India faces several serious challenges. Judicial delays and mounting backlogs, uneven enforcement of laws, corruption, political interference in public institutions, inadequate police reforms, limited access to legal aid, and arbitrary use of state powers create a wide gap between constitutional ideals and their actual realization. These challenges particularly adversely impact economically weaker sections and other disadvantaged groups, undermining public confidence in the justice delivery system.


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The mere presence of constitutional safeguards and independent institutions cannot ensure the effective enforcement of the rule of law unless these systems function with fairness, transparency, and efficiency.

In conclusion, the rule of law is essential for the survival and meaningful functioning of Indian democracy. Its true success cannot be judged merely by the existence of laws or constitutional provisions, but by whether laws are impartially enforced, individuals' rights are effectively protected, public authorities are held accountable, and justice is accessible to every individual, regardless of social status, economic prosperity, caste, religion, or gender. The ultimate objective should be to transform the rule of law not just into a constitutional promise but into a reality in the lives of all citizens. Only through the consistent and impartial application of the law, the protection of human dignity, and the prohibition of arbitrary rule can India strengthen its constitutional democracy and establish a more just, equitable, and accountable society.

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**3. Landmark Judicial Decisions**

The names and citations of the judicial decisions were not included in the supplied text. Please provide the list of cases to format them in Vancouver style.

| Case | Citation | Relevance |
|---|---|---|
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| Indira Nehru Gandhi v. Raj Narain (1975) | 1975 Supp SCC 1 | Rule of law and free and fair elections |
| ADM Jabalpur v. Shivkant Shukla (1976) | (1976) 2 SCC 521 | Personal liberty during the Emergency; a major constitutional failure later repudiated |
| Maneka Gandhi v. Union of India (1978) | (1978) 1 SCC 248 | Fair, just, and reasonable procedure under Article 21 |
| Hussainara Khatoon v. State of Bihar (1979) | (1980) 1 SCC 81 | Speedy trial and access to justice |
| Minerva Mills Ltd. v. Union of India (1980) | (1980) 3 SCC 625 | Limited amending power and constitutional balance |
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**About the Author**



**Dr. Vivek Kumar** is an Assistant Professor at R.K.A. Law College, Begusarai, Bihar. He has qualified the UGC-NET with JRF and SRF in Law and possesses a strong academic background with research expertise in contemporary legal issues. His research work has been published in reputed journals indexed in Scopus, UGC-CARE, and other peer-reviewed publications. His areas of academic interest and teaching expertise include Constitutional Law, Criminal Law, Family Law, Cyber Law, Banking Law, and other emerging fields of legal studies. He is committed to legal research, academic excellence, and the advancement of legal education.


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