

Independence of Judiciary: An Epitome of ‘Rule of Law’ in India

Yash Mittal*

Scholar,

Institute of Law, Nirma University, Ahmedabad, Gujarat, India

Abstract

The concept of rule of law primarily means that the state is governed not by the ruler or the nominated representatives but by the rule of law. The Constitution of India is a prime example to be governed by the rule of law, where the Constitution is the supreme law and all the pillars of the democracy, i.e., legislature, executive and judiciary derive their authority from the Constitution. Rule of law plays a vital role in a democratic country like India, as the rule of law protects citizens from the arbitrary actions of the state and protects their basic rights. Indian judiciary, recognized for its impartiality, independence, and justice-oriented approach, has played a significant role in maintaining rule of law in India, by protecting the rights of the citizens and upholding the constitutional values against the licentious actions of the executive and legislature. But today the independence of the judiciary is under attack with rising interference of the government in its working, the returning of Supreme Court Collegium advice for appointment of judges by the government, which the government under the Constitution has the duty to accept, is expositing stubborn and bellicose attitude of the government. Hence, this study expostulated the underlying importance of judiciary in maintaining rule of law through the recent altercation between the judiciary and the government over the appointment of judges in higher judiciary.

Keywords: Constitution of India, Democracy, National Judicial Appointment Commission, Rule of Law, Supreme Court

***Author for Correspondence** E-mail: 16bal124@nirmauni.ac.in

INTRODUCTION

Dwight D. Eisenhower (Ex-U.S. President) once said, “The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.” His statement greatly emphasizes upon the momentousness of the rule of law, as one of the primary principles that are indicative of foundational wellbeing of any state. Derived from the Latin phrase *La Legalite*, the phrase rule of law connotes *government on principles of law and not of men* [1], which means the governance should be exercised upon the maxim of law and not according to the testament of the men. It is believed that the state where the rule of law is protected and promoted is also taken to be a state where people are assured of their basic rights. Respecting the rule of law, brings allegiance among citizens and conversely, ignoring the rule of law illustrates the totalitarian, waywardly nation where race, wealth, gender, and power are the most recognized values, thus ignoring the rule of law would lead to a snobbish society [2].

The acquaintance of the “rule of law” bases from many traditions and continents and is intertwined with the evolution of the history of law itself. The rule of law alone cannot exist without a transparent legal system, the other main components of which are [3] *firstly*, a clear set of laws that are freely and easily accessible to all; *secondly*, a strong enforcement structure; and *thirdly*, an independent judiciary and a legal profession to protect citizens against the arbitrary use of power by the state, individuals or any other organization.

For maintaining rule of law and building a just society, the Indian judiciary has always received considerable respect from the people of this country. As an institution, the judiciary has encapsulated hopes and desires of each countryman to protect themselves from the injustices of the state with the pursuit of creating a good society. Judges hold a societal perception as being unprejudiced and neutral, which is the judiciary’s greatest strength. More

precisely it is the people's confidence in the judiciary which can be attributed as the real source of its strength. Today, the judiciary occupies a transcendence position among other organs of the state because of the public faith and satisfactory cognition for the institution. Hence, an existence of an independent judiciary is indispensable for ending lawless society, and thus establishing a society which is governed by the rule of law [4].

RULE OF LAW IN A DEMOCRACY

Democracy thrives upon the rule of law and incidentally all institutions and people in the setup are touched by the rule of law. The impact of law upon the daily lives of individuals today is of such significance that men and women not only accept its pervasiveness but also look to the law when seeking means to improve the quality of their lives. The social and economic progress achieved by the deepening of democracy in many societies has been shaped by their efforts to successfully protect the rule of law [5].

The absence of anarchy and transforming into a democratic form of government highlights the need for an orderly society, thus signifying the rule of law. The rule of law represents a code of conduct and self-discipline, which a nation speaking through its representatives, adopts for itself and enforces through the machinery of courts. Democracy entails the supremacy of the rule of law; it contains essential safeguards against arbitrariness and provides effective machinery for redressal of grievances. Thus, there appears to be a close relation between democracy, liberty and rule of law. They are indeed the faces of all liberal societies. Survival of each one of them is essential for the survival of others. The demise of one would prove fatal for the other two [6].

The quest of civilized democratic societies is symbolized by the rule of law. It is the prevalence of the rule of law that no official can detain a person unless there is legislative authority for such action. A police commissioner cannot ban a meeting, the staging of a play or the screening of a movie by passing a departmental order, based on a circular that has no legislative sanction. The absence of rule of law results in executive arbitrariness and the emergence of police raj [7].

In order to respond to the injustices, enforcement of rule of law and the efforts to protect it are shaped by several factors that will enhance the capacity of the legal system to establish a just, fair and reasonable society. A fundamental re-examination of the approaches is required to enforce the rule of law [8]. Otherwise, rule of law would become an instrument of oppression and give legitimacy to the enacting of laws, grossly violative of basic human rights, as happened under the Nazi and Apartheid regime. It is also significant to expound the scourge of terrorism which India is a victim of since the past several years. The anti-terror laws are too formulated with no such provision of violating human rights, but fake encounters or killing of suspected terrorists without prior hearing in the absolute discretion of executive is destructive to the rule of law [9]. Therefore, urgent steps need to be taken to establish rule of law in India, without which our fundamental credentials as a democracy will be undermined.

RULE OF LAW AND THE CONSTITUTION

In Indian Constitution, rule of law has been adopted under the preamble where the ideals of justice, liberty and equality are enshrined. The Constitution has been made the supreme law of the country and other laws are required to be in conformity with the Constitution. Nonetheless, the courts have the onus to declare any law invalid, which is found in violation of any provision of the Constitution.

In India, the meaning of rule of law has been much expanded and applied differently in different cases by the judiciary. It is regarded as a basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by the Parliament [10]. The principle of natural justice is also considered as the basic corollary of rule of law. The Supreme Court of India has held that in order to satisfy a challenge under article 14, the impugned state act must not only be non-discriminatory, but also be immune from arbitrariness, unreasonableness or unfairness and consonant with public interest. In *A.D.M. Jabalpur v Shivkant Shukla* [11], the question before the apex court was, whether there was any rule of

law in India apart from Article 21 of the Indian Constitution. The court by majority held that there is no rule of law other than the constitutional rule of law. However, Justice Khanna dissented with the above view. He rightly said, *“Even in the absence of Article 21 of the Constitution, the State has no power to deprive a person of his life or liberty without the authority of law.”*

Similarly, in *K.T. Plantation Pvt. Ltd. v. State of Karnataka* [12], the Supreme Court while explaining the rule of law held as follows:

“The rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine the rule of law resulting in arbitrariness, unreasonableness, etc., but such violations may not undermine the rule of law to invalidate a statute. Violation must be of such a serious nature as undermines the very basic structure of the Constitution and the democratic principles of India. But once the court finds a statute undermines the rule of law which has the status of a constitutional principle like the basic structure, the said grounds are also available and not vice versa. Any law which in the opinion of the court is not just, fair and reasonable is not a ground to strike down a statute because such an approach would always be subjective not the will of the people because there is always a presumption of constitutionality for a statute.

“The rule of law as a principle is not an absolute means of achieving equity, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. The rule of law as an overarching principle can be applied by the constitutional courts, in the rarest of rare cases and the courts can undo laws, which are tyrannical, violate the basic structure of the Constitution and norms of law and justice.”

JUDICIARY AND RULE OF LAW

Dr. Barrack in his book *The Judge in a Democracy* has eloquently described the role and functions of a judge:

“As a judge, I do not have a political platform. I am not a political person. Right and left,

religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government-legislative and executive, which give expression to democracy. Between those two branches are connecting bridges and checks and balances. I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial.”

The courts are bestowed upon with the duty to protect, deliberate and acknowledge the individual rights of the people with the continuing effort of upholding the constitutional beliefs of a democratic country. However, an indispensable function of the courts, which has now been put at test, more particularly since the twentieth century, is its role as the arbiter of disputes between the state and the citizen [13]. The purpose of the courts as arbiter of disputes between the state and the citizen highlights the importance of the independence of the courts as an extremely powerful constitutional body, which carries a heavy onus to provide proper checks and balances in the system of governance.

Under the constitutional scheme, the final interpreter of the law is the court, not the legislature or the executive. Judicial independence is, therefore, central to democracy because it is the judiciary which helps the realization of the rule of law and protection of human rights. The concept of independence is a complex one which subsumes in it concepts like impartiality, accountability, efficiency and respect for other institutions of governance [14]. Judicial independence and judicial supremacy work together to guarantee that the rule of law will not be eroded by the political pressures in existence at any particular point in time. By removing the ultimate interpretation of

constitutional provisions from elected officials, the principle of judicial supremacy reduces the likelihood that basic legal protections will fall victim to the passions of the moment [15].

The principle of judicial independence is particularly under attack today. The theme of the independent judiciary is the epitome for maintaining rule of law in the democratic country like ours, which have been emphasized time and again by the courts. The collegium system is the only system by which judges' appointment is done; the system came into existence from the Second Judges Case. After the 2014 General Election, the present government swiftly passed the 99th Amendment to the Constitution, which introduced National Judicial Appointment Commission (NJAC) with only one dissenting vote; this unanimity in Parliament shows the restlessness of the political class to wrest back the power of appointments to the political executive, although the Supreme Court in Fourth Judges case had struck down the NJAC and kept the appointment procedure of the judges *in situ*.

As the law stands, it is not the prerogative of the government to appoint judges; the government must make those appointments which are recommended by the Supreme Court Collegium. No doubt the government is unhappy and is critical of the judgment in Fourth Judges case, the story is quite apparent when more than 140 recommendations are in the pipeline and are struck by either the government or the collegiums. The government is duty bound to make the appointments that are recommended by the collegiums, and not making it would be a serious abdication of its duty. As per the Department of Justice record, on the 1st March 2018, there are 406 vacancies in various High Courts of India, i.e., about 38%, which shows the formidable situation of the judiciary, bringing judicial process to a standstill. The non-appointment of the judges as recommended by the collegiums is the betrayal to the oath of office taken by the government to preserve and protect the Constitution. The stubborn attitude of the government while sitting over the names of the

judges is afflicting a severe wound on the independence of the judiciary [16].

Judiciary's independence is attributed by the conduct of the judges as they cannot allow any political ideology or economic theory to influence their decisions. Their primary duty is to uphold without fear and favor the laws which are formulated in consonance with the constitutional principles. But unfortunately, today, as a matter of political expediency, governments tend to knowingly violate the rule of law and the Constitution and pass on the buck to the courts to strike down the unconstitutional provisions. With this, it becomes easy for the government to blame the courts for striking down the unconstitutional provisions, which is not a good trend [17].

The issue of judicial independence is important to all of us, and we have an obligation to stand up for the principle of judicial independence to preserve the rule of law. It is up to the legal profession, teachers and lawyers to fill that gap, and to support and explain the role and significance of an independent judiciary. Unless we are prepared to defend the principle of judicial independence when it is under attack, the principle of judicial independence will not be available when we most need it [18].

CONCLUSION

Indian judiciary, which is well regarded domestically and internationally for its regenerative role in interpreting various provisions of the Constitution, has also shown remarkable contribution in promoting social, economic and political justice to all the sections of society. The role of courts as '*Guardian of Justice*' exemplifies judiciary's effort to make access to justice even for a poor man and promoting genuine judicial interventions to uphold the rule of law and ensure justice to the society at large.

It is also important to understand that no country can be called as developed until it secures justice to each and every section of society. It is not only the responsibility of political leaders to work for achieving justice, but it is also the duty of fellow citizens to assist their countrymen in securing justice in the society.

At last, I would like to end with the quote of Abraham Lincoln, who said:
“If you once forfeit the confidence of your fellow citizens, you can never regain their respect and esteem. It is true that you can fool the people some of the time and some of the people all the time, but you cannot fool all the people all the time.”

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