

ANALYZING ‘RULE OF LAW’ THROUGH THE LENS OF GLOBALIZATION; IT’S CHALLENGES AND OPPORTUNITIES.

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ABSTRACT

Analysis of globalization and its effects frequently include the possibilities of the rule of law in the constitution of india both domestically and globally. The practical and theoretical significance of rule of law analysis has increased in the global age due to efforts by international organizations like the United Nations and the World Bank to enhance laws and legal systems worldwide. The symposium’s articles add to the current discussion over the role of international and national law in the age of globalization.

KEYWORDS - Globalization , Rule of Law , Constitution of India , United Nation , World Bank , National and International .

INTRODUCTION

To run any democratic setup requires some basic principles, rules, and regulations on which it can strengthen its foothold. The ‘rule of law’ in itself is an old concept. Its scope expanded over time, requiring the support of courts, advocates, and government authorities to preserve it. The fundamental tenet of the “rule of law” is that only the law is supreme, regardless of any higher authority. To investigate many facets of the concept of the “rule of law,” it is imperative to comprehend it within a global framework. In a world that is becoming more and more interconnected, one of the most affected by this change is the rule of law, and there are, of course, both problems and the solutions offered by globalization. This implies that there is democracy means

democratization of a country's legal system. Globalization impacts the legal mechanisms of any law system. In the first place, it calls for the such challenges as the protection of the principles of the rule of law from the impacts of democracy, pluralism, and international law. However, there are certain spheres of reform which globalization can provide towards the promotion of the rule of law. One of the greatest barriers towards achieving such objectives is lack of internalization of the above dynamics as fundamental principles of law. This investigation focuses on the relationship between globalization and the rule of law, where the latter is seen from both the negative perspective in terms of constraining factors and a positive one as an opportunity for reform. The rule of law is perhaps one of the most critical principles underpinning the existence of any fair, just, and orderly society. It guarantees that laws are applied consistently and that all persons or bodies, including the government, are subject to the law. However, it is often these factors, in an age of globalization, that exercise a double-edged sword on the rule of law

MEANING OF 'RULE OF LAW'

In the context of governance, the idea of the "rule of law" is not new. Its history begins in the Roman Empire and continues until the Indian administration of the 'Gupt' era, when scholars such as Chanakya argued that the law superseded the king. The term "la principede legalite," which suggests the concept of legality, was first used by Sir Edward Coke. Later, in his book 'The Law and the Constitution', published in 1885, A.V. Dicey solidified the idea of the rule of law. The premise that "a government should be based on principles of law and not of men" forms the basis of his understanding. A.V. Dicey's theory related to the rule of law is based on three important principles that are:

Supremacy of Law: Dicey was of the view that no individual is above the law, it is a law which is supreme and it has to be. Even the body through which the law is executed is below the same law. In such a fashion law places checks and balances on the governmental authority. It leaves no scope for the arbitrariness.

Equality before the law: This principle ensures that there shouldn't be any

discrimination in the eye of the law among its subjects. Law formulated shouldn't only be fair but it should also be operated fairly. Everyone is equal in the eye of the law.

The predominance of Legal Spirit: Dicey was of the view that there should be an independent judiciary to ensure the rule of law. He maintained that through judicial decision only rights and liberties should be guaranteed. Dicey stated that *“the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequences, of the rights of individuals, as defined and enforced by the courts.”*

The British constitution is unwritten largely but it reflects Dicey's idea of the rule of law in its practice. Its application in the Common law system was in a very solid manner, in *Wilkes v. Wood*,¹ Here court held that an action for damages for trespass was maintainable even if the action complained of was taken in pursuance of the order of the Minister. Similarly, in the case of *Entick v. Carrington*,² Tenet of 'rule of law' was observed and held that if land or property of a person is illegally acquired he can bring an action for trespass against the same.

Dicey's principles have their advantages. It acts as a safeguard to preserve and protect the rights of citizens. As the first rule weed out the arbitrariness of administrative or governmental action, the second tenet strengthens the democratic setup keeping the law above all, even if some elected reaches to top it has to act and abide by the law. The third principle lays down protection of individual rights from any executive or legislative actions, judicial review may come under this ambit which is wide in its sphere.

According to the World Justice Project³, The rule of law is a durable system of laws, institutions, norms, and community commitment that delivers: Accountability, Just law, Open Government, and Accessible justice. Further, it lays down that: “Effective rule of law reduces corruption, combats pover-

1 (1763) 19 St Tr 1153: 98 ER 489

2 (1765) 19 St Tr 1029: 95 ER 807

3 See, <https://worldjusticeproject.org/about-us/overview/what-rule-law> , last visited on 01/02/2021

ty and disease, and protects people from injustices large and small. It is the foundation for communities of justice, opportunity, and peace—underpinning development, accountable government, and respect for fundamental rights. Traditionally, the rule of law has been viewed as the domain of lawyers and judges. But everyday issues of safety, rights, justice, and governance affect us all; everyone is a stakeholder in the rule of law.”

Till now it is clear that the rule of law is not limited to a particular nation. It has become a global practice. Developed countries like United States, U.K., Germany and many more has incorporated this idea into their legal system. International organization have not remained untouched from this idea. United Nations, IMF, UNHRC and various bodies have come up with many international charters, rules, regulation which reflects the idea of ‘rule of law’. If we take it from an Indian perspective ‘rule of law’ is established through various provisions of the Constitution. Judicial decisions of Indian Supreme Court have also constantly reaffirmed it.

‘RULE OF LAW’ UNDER CONSTITUTION OF INDIA

As the Indian legal system is based on the Common Legal system reflection of the ‘rule of law’ in it was inevitable. Though there is no express provision for the ‘rule of law’ in the Constitution its spirit exists in our Constitution. The preamble of the Indian Constitution lays down the values that need to be preserved, which include justice, liberty, and equality. This is the very first hidden impression of the ‘rule of law’. Then part III of the Constitution provides Fundamental rights here Article 14 talks about equality before the law and equal protection of the law Article 21 of the Constitution requires that personal liberty shall never be curtailed beyond the procedure established by law, thereafter separation of power into three organs of government. Through various provisions spirit of the ‘rule of law’ is infused in the Indian Constitution.

In the same sense, the Apex Court of Country has established the said principle through judicial pronouncements. Famously known as the *Habe-*

as *Corpus case*, in *A D M Jabalpur v. Shivkanth Shukla*,⁴ Supreme Court confronted with the question ‘whether there was any rule of law in India apart from Article 21’, while majority negatively answered this but Khanna J., did not agree with majority and observed that: “Even in absence of Article 21 in the Constitution, the state has got 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...Rule of Law is now the accepted norm of all civilized societies.” Similarly, in the case of *Indira Nehru Gandhi v Raj Narain*⁵, the Supreme Court of India has established that the ‘rule of law’ is embodied in Indian Constitution. In the case of *National Legal Services Authority v. Union of India*,⁶ the Court affirmed that “the court must protect his rich concept of rule of law.” In *Chief Settlement Commr; Punjab v. Om Prakash*⁷, it was observed by the Supreme Court that, “In our constitutional system, the central and most characteristic feature is the concept of rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the matter to notice.” *Kesavananda Bharati v. State of Kerala*,⁸ the Supreme Court held that the rule of law is an essential part of the basic structure of the constitution and as such cannot be amended by any Act of Parliament, thereby showing how the law is superior to all other authority of men.

RULE OF LAW IN A GLOBALIZING WORLD

Globalization has led to the development of international legal standards that influence national legal systems. These include: International treaties and conventions, such as the International Covenant on Civil and Political Rights (ICCPR), set standards for human rights that countries are expected to uphold. Organizations like the World Trade Organization (WTO) establish rules for

4 AIR 1976 SC 1207

5 AIR 1975, 2299

6 WRIT PETITION (CIVIL) NO.604 OF 2013

7 AIR 1969, 33

8 AIR 1973 SC 1461

international trade, requiring member states to align their domestic laws with global standards. International agreements, such as the Paris Agreement, set global standards for environmental protection and climate change mitigation.

Rule of law is not cabined to the arena particularly involving judges and lawyers, it is expanding in a fashion which plays a vital role in policy making and developmental schemes. United Nations has in its various charters and resolutions infused the idea of the 'rule of law'. United Nations in its *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels*⁹ has stressed on the fact that "the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger, and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law, and for this reason, we are convinced that this interrelationship should be considered in the post-2015 international development agenda." Similarly, *The Rio +20 Conference on Sustainable Development*¹⁰ in June 2012 recognized the role of the rule of law in development. In the Outcome Document, which was adopted by the UN General Assembly in September 2012, participating states "acknowledge that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger." The above two documents clearly show that the rule of law there in the field for a wide range of stakeholders to eradicate poverty, develop economic policies or be inclusive growth of various strata of society.

9 Louis-Alexandre Berg and Deval Desai, Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda. Page 27

10 Louis-Alexandre Berg and Deval Desai, Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda. Page 27

*The UN Commission on Legal Empowerment of the Poor*¹¹ shows how the rule of law ensures legal aid and services to the marginalized section of society. In its report, it points out that “the rule of law is not a mere adornment to development; it is a vital source of progress. It creates an environment in which the full spectrum of human creativity can flourish, and prosperity can be built.” A similar instance is taken by India where free legal services are provided to the downtrodden people. It is also established that when a person is not in a position to go to court for a writ petition even in that case a letter will be given the shape of writ. In the same sense, legal services are provided to those who cannot file PILs in SC, in those cases court will treat a single piece letter as the application of PIL and proceed in that way, also Supreme Court can take suo-moto cognizance through any news article or paper. This development somewhere holds the rule of law at its core and empowers the subjects legally. *The European Union* underlines the founding principles which is, “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities” (Treaty of Lisbon, Art. 1a).

In the contemporary landscape characterized by globalization, the focus of the global community has progressively shifted towards the repercussions of the international rule of law on individuals. At this juncture in the evolution of the international system, the traditional conception of the rule of law pertaining exclusively to inter-state relations is insufficient to encapsulate the comprehensive nature of the international rule of law. The paramount significance of the rule of law as it pertains to individuals must be recognized within the new framework of the international community—where there exists a pressing necessity to uphold certain immutable principles of justice and human dignity, concurrently safeguarding the rights of individuals on an international scale. Indeed, international law has evolved to such a degree that it has facilitated a transformation in the international legal framework, moving away from the strictly state-centric paradigm that previously dominated it. This

11 Louis-Alexandre Berg and Deval Desai, Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda. Page 27

shift is most conspicuous in the swift proliferation and rising significance of humanitarian law and human rights law.¹²

HUMAN RIGHTS CONVENTIONS:

There are various conventions in which the idea of ‘rule of law’ is infused. Some of it are, *Universal Declaration of Human Rights (1948)*; *International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights (1966)*; *International Convention on the Elimination of All Forms of Racial Discrimination*; *Convention on the Elimination of All Forms of Discrimination against Women*; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; *Convention on the Rights of the Child*. The legalization of state conduct in the realm of international relations significantly contributes to the reinforcement of the international public order by achieving a delicate equilibrium between the national interests of individual states and the collective interests of the global community. This legalization consequently imposes limitations on the autonomy of sovereign states to engage in arbitrary actions, particularly in light of “asymmetries in [state] power and the potential for political abuse that such asymmetries entail.” The development and fortification of a rule-based framework for state conduct enhance the predictability of their interactions and serve to deter unilateral or capricious actions by states. Furthermore, it has introduced into the international legal framework substantive regulations pertaining to human rights that are grounded in the principles of justice and fundamental human values transcending the territorial confines of states. Additionally, this evolution has positioned the individual at the core of the international legal system, recognizing them as a subject of international law endowed with rights that are acknowledged on a global scale.¹³

12 Owada, Hisashi, *The Rule of Law in a Globalizing World—An Asian Perspective*, for more see, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1072&context=law_globalstudies, last accessed on 21/04/2024

13 Owada, Hisashi, *The Rule of Law in a Globalizing World—An Asian Perspective*, see, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1072&context=law_globalstudies last accessed on 21/04/2024

CHALLENGES TO THE RULE OF LAW IN ERA OF GLOBALIZATON

Sovereignty vs. International Norms

Finding ways to reconcile sovereignty and international law nurtures challenges. Potent forces shape demands for compliance in the states with the set norms, however, these poses significant challenges especially when the norms and the attitudes towards domestic laws intersect. This has been the case in fields such as human rights, environmental issues and trade law. The problem is resolving this contradiction - retaining the legal autonomy of each country while working towards unity.

Legal Pluralism

The presence of different laws is not always appealing because assuming power begets more and more opposing laws within one level will have a danger of discrepancies. For examples, what governs these people may be international protocols, federal statutes or domestic laws making most situation too complex and confounding. It can lead to misinterpretation of laws on the part of the citizens as well as within the implementing agencies. Harmonization of the law as well as collaboration should be efficient to tackle these kinds of problems.

Transnational Crime

Advancement of technology has facilitated the trend of globalization where other illegal acts like human trafficking, drug dealing and computer crimes have transpired. These crimes often have cross border elements which customarily make national action very herculean. Working together with political willingness and framework abilities, these bills can be addressed. Bodies such as INTERPOL and other International Laws must be undertaken in order so that some functions may not affect another.

OPPORTUNITIES TO ENHANCE THE RULE OF LAW IN GLOBALISING WORLD

Legal Reforms

International interdependence, brought about by globalization, has its benefits and one such benefit is the potential enhancement of the levels of law reform as well as the capacity building in third world countries. Legal systems can be amended by getting assistance, both financial and technical, from the international community including the United Nations and the World Bank among others through government's associations with international organizations and NGOs. This may contribute to the building of legal institutions. that a Progress and Security in the Economies

Economic Growth and Equality

Single investment law can lead to economic development and stability of a country. This is possible because such countries have a high predictability and a strong 'rule of law' encouraging investments. Such investment can spark creation of jobs, enhance the economy and spur growth. Countries are in a position to foster development by having sound legal principles by creating a predictable environment for long term investments.

Enhanced Legal Education and Training

Globalization has also made it possible for the knowledge and skills in the area of law to be shared. Legal specialists can take part in training courses, international conferences, and seminars. Such enlightenment helps to raise the level of legal education and increase legal practitioners. Judges, lawyers and law enforcement officers trained in international best practices can better navigate the complexities of globalization and enhance the rule of law in their countries.

Technology and Innovation

The role of technology in the improvement of legal processes is paramount.

For instance, usage of electronic case management systems may facilitate efficiency in courts, cut down time wasted in courts and increase the openness of the courts. E-dispute resolution options are additional efficient avenues which should be utilized especially in countries where conventional non-vector outside the present context, legal mechanisms are deficient.

Global Advocacy

Governing International Organizations: The International Criminal Court, the United Nations Human Rights Council and other regional Organizations play an important role in lobbying for enhanced legal and accountability standards. Political lobbies as well can help to uphold international legal standards and address political crimes concerns.

Civil Society: Raising the rule of the law campaign supporters can also include crowd and civil societies, most important non-government organizations. They can create legal awareness, lobbying and campaign for causes and accountability from the political authorities. Through campaigns, reports, and legal actions, these organizations can effect positive changes in the status of the rule of law and governance within the public domain.

CONCLUSION

‘Rule of law’ has evolved with time and found its space in every liberal democracy. It is not limited to a particular nation; it is accepted as a global practice. United Nations through its various conventions and charters has incorporated this principle and signatories to it are obliged to observe the ‘rule of law’. Precedents which are consistence and certain also play an important role in developing law with time, but with change in society, precedents may also vary. Dissent in judicial verdict unearthed and helps in to look hidden picture. Dissenting opinions of judgment have become a view of the majority at a later point in time in many cases which helps in developing the law and society. To remove arbitrariness existence of the ‘rule of law’ is important. The problem of the relationship between the rule of law and globalization is complicated and carries many dimensions. However, as daunting as such

problems may be, there are equally exciting possibilities offered for augmenting the rule of law in every corner of the planet. The rule of law can be upheld as the world conducts its activities of seeking international collaboration, enhancing the quality of justice, rationalizing the law systems, and advocating for human rights, amidst the challenges posed by globalization.

