

Rule of Law & Constitutional Governance

-Dr.G.B.Reddy

Faculty, Department of Law

Osmania University,Hyderabad-500 007

E-Mail:gbredlaw@gmail.com

Rule of Law

- Rule of law is the supreme manifestation of human civilization and culture
- Derived from the French phrase 'la principe de legalite' which means the 'principal of legality'
- Sometimes called "the supremacy of law", provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application
- Of old origin. It is an ancient ideal, and was discussed by Ancient Greek philosophers such as Plato and Aristotle around 350 BC.

- In UK, Sir Edward Coke is said to be the originator of this concept, when he said that the king must be under the god and law
- Later, Prof. Albert Venn Dicey developed this concept - Dicey's concept of the rule of law contemplated the absence of wide powers in the hands of governmental officials. According to him, wherever there is discretion, there is room for arbitrariness.

Dicey's formulation of the concept of Rule of law – the three principles

- 1. Absence of discretionary power in the hands of the governmental officials. By this Dicey implies that justice must be done through known principles. Discretion implies absence of rules, hence in every exercise of discretion there is room for arbitrariness
(Supremacy of law)

- **2. No person should be made to suffer in body or deprived of his property except for a breach of law established in the ordinary legal manner before the ordinary courts of land.** In this sense, the rule of law implies:
 - a) Absence of special privileges for a government official or any other person
 - b) All the persons irrespective of status must be subjected to the ordinary courts of the land.
 - c) Everyone should be governed by the law passed by the ordinary legislative organs of the state.
- **(equality of law)**

- 3. The rights of the people must flow from the customs and traditions of the people recognized by the courts in the administration of justice

[role of judiciary in enforcing individual rights and personal freedoms irrespective of their inclusion in a written constitution]

Attributes of Rule of Law in 21st Century

- As regards individual liberty - state should not pass discriminatory laws, should not place undue restrictions on individual freedoms, adequate safeguards against abuse of power & effective maintenance of law and order
- As regards criminal administration - due criminal process, no arrest without the authority of law, presumption of innocence, legal aid, public trial and fair hearing
- As regards judicial process - independence of judiciary, independent legal provision and standards of professional ethics

- Criticism and Support of Dicean Concept
- Position in UK then (King can do no wrong etc)
- Undue emphasis on judiciary
- Assumption that there was no Administrative law in UK

Rule of Law in India & in Indian Constitution

- Art.14 - Right to Equality
- Art.21 - Fairness, Justice and Reasonableness

THANK YOU