
RULE OF LAW AS THE PILLAR OF CONSTITUTIONAL GOVERNANCE IN INDIA: A DOCTRINAL ANALYSIS

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ABSTRACT

Rule of law is one of the most important pillars of a constitutional democracy. This paper provides a theoretical study of rule of law along with its emergence not just since the time of A. V. Dicey but long before from the 17th century when Sir Edward Coke used the concept for the first time. In today's scenario, rule of law exists in many ways if not explicitly then even implicitly engraved within the soul of the constitution of India. Many articles like 13, 14, 32, 226 along with the preamble itself adheres to the concept of rule of law. Not just the constitution itself, but the guardian and protector of the constitution, that is, the judiciary, has given many judgements upholding and instilling the supremacy of the concept of rule of law in India. Despite of this, neither the judicial interpretations nor the concept of rule of law itself is free of limitations. This paper leads to an insightful review of the concept of rule of law and its evolving standing since the 17th century.

Introduction:

Rule of law is a cornerstone principle of a constitutional democratic state which ensures the supremacy of law, accountability, and justice. According to the United Nations, it refers to the principle of governance of persons, institutions and states ensuring transparency, accountability, fair application of law, separation of powers equality before law, supremacy of law & prevention of arbitrariness.¹

Thus, in layman's terms, rule of law refers to the supremacy of law over everyone including the citizens, government, and the state itself. Shri Lal Bahadur Shastri observed on the importance of rule of law that “the rule of law must be respected with the aim of maintaining and further strengthening our basic democratic system.”² Rule of law maintains a balance between the state and its powers and responsibilities & an individual's rights and duties.

Rule of law ensures that governance is free from arbitrary actions and discrimination. It not only protects the rights and privileges of the citizens but also instills legal as well as moral restraints on the exercise of the powers of the government. Constitutional governance refers to the the government's authority being limited by the supreme constitution and the law. Rule of law is an essential feature of constitutional governance as main objective of constitutional governance i.e., supremacy of the constitution and law is ensured by the principle of rule of law. It ensures that the laws and the constitution are not just theoretical, but they are actually instilled in governance.

Evolution of Rule of Law:

The concept of rule of law can be traced back to the ancient times of the roman when the first republic was formed.³ It can also be impliedly observed in the works of Chanakya who supported that the king should be subject to the word of law.³ It can also be seen developing since and through the Magna Carta 1215 which limited the powers of the king John.⁴ It was

¹ United Nations, “what is the rule of law,” UN Rule of Law <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (last visited on Oct. 16, 2025).

² Lloyd Law College, Rule of Law in Constitution, Lloyd Law College Blog, <https://www.lloydlawcollege.edu.in/blog/rule-of-law-in-constitution.html> (last visited on Oct. 16, 2025). ³ Jain, Chintu. Rule of Law by Dicey: Presentation by Ms. Chintu Jain, Law Centre–II, Delhi University (pdf), https://lc2.du.ac.in/DATA/Presentation%20on%20Rule%20of%20Law_Chintu%20Jain.pdf. (Last visited on Oct. 17, 2025).

³ Ibid

⁴ Rule of Law – SG 01: Rule of law (PDF)”, MCRHRDI,

similarly seen in the English bill of rights 1689 with provisions for limited government, due process, and rule of law. Rule of law was also based on the french principle of “*la principe de legalite*” having its roots in the 1789 declaration of the rights of Man and the citizen in France which gave it the constitutional recognition in France. It was during the time of the French Revolution when thinkers like Montesquieu and Cesare Beccaria studies the principle.

It’s a widespread belief and understanding that rule of law as a principle was originated and developed by A. V. Dicey but in reality, even though the most groundbreaking observations and principles on rule of law were given by Dicey, but the concept originated and the term was first used way before in the early 17th century by Sir Edward Coke who were the Chief Justice in England.

Sir Coke came up with the term and principle of rule of law standing against the arbitrariness of the King who was King James-I during his term in England. He originated the term to establish the supremacy of law over the king's executive powers. He not only talked about the supremacy of law over of the king but also the supremacy of God prevailing over him.⁵ He observed and stated that the king shall be subject to supremacy of law and God and his powers be limited with the same regard.

Sir Coke observed that rule of law also means the absence of the arbitrary processes in the government powers and responsibilities. He stated that punishments should not be at the discretion of the king and his executive powers, but it shall only be given when there is a breach of law which is established in the courts of law.

Thus, coke’s theory of rule of law is based on two concepts;

- i. The absence of arbitrary powers exercised by the government and the state.
- ii. That no man should be punished by the king and his discretion, but the breach of law shall be established by the ordinary courts of law.

After Sir Coke originated the concept of rule of law, then came a constitutional theorist and

<https://www.mcrhrdi.gov.in/crashcourse/presentations/SG%2001-%20Rule%20of%20law.pdf> (Last visited on Oct. 17, 2025).

⁵ “Rule of Law – UPSC Notes”, BYJU’S Free IAS Prep, <https://byjus.com/free-ias-prep/rule-of-lawupscnotes/#:~:text=One%20of%20the%20very%20basic,published%20in%20the%20year%201885.> (Last visited on Oct. 17, 2025).

British lawyer, Albert Venn Dicey.

A.V. Dicey's theory of Rule of Law:

A.V. Dicey wrote a book in 1885, "The Law of the Constitution" in which he developed the modern concept of Rule of Law as we know it today.⁶ He in his theory emphasised on the fact that rule of law applies to everyone equally whether they are citizens or government officials and that rule of law is different from administrative justice.

A.V. Dicey defined rule of law in his book as, "the rule of law means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government."⁸ He propounded the theory of rule of law on the basis of three main principles or pillars:

- i. Supremacy of Law- The first and foremost pillar of rule of law is the supremacy of law above all. It puts on the same pedestal the citizens, the government officials, the government itself, and the state. It emphasises on the authority of law and it being above everyone with no other higher authority existing. Supremacy of law also focuses on the prevention of arbitrariness and discretionary powers of the government and government officials.⁷
- ii. Equality before Law- the second pillar talks about the principle of equality. It states that everyone is equal before the supreme authority of law, that the citizens, government officials and the state itself shall be treated equally and be subjected to the same laws with transparency and accountability. There shall exist no difference between officials of the government and non-officials, rich and the poor and minorities and majorities.⁸ Everyone shall be subjected to the same flexible as well as same rigid

⁶ Lloyd Law College, Rule of Law in Constitution, Lloyd Law College Blog, <https://www.lloydlawcollege.edu.in/blog/rule-of-law-in-constitution.html> (last visited on Oct. 20, 2025). ⁸ Jain, Chintu. Rule of Law by Dicey: Presentation by Ms. Chintu Jain, Law Centre-II, Delhi University (pdf), https://lc2.du.ac.in/DATA/Presentation%20on%20Rule%20of%20Law_Chintu%20Jain.pdf. (Last visited on Oct. 20, 2025).

⁷ Prateek Sharma & Vinnie Sharma, System of Governance: With Essence of Constitution (2023) (book), available at <https://www.amazon.in/SYSTEM-GOVERNANCE-constitution-PrateekSharmaeBook/dp/B0BZK418LV> (Last visited on Oct. 20, 2025).

⁸ Prevalence of the Rule of Law, Drishti Judiciary, <https://www.drishtijudiciary.com/to-thepoint/ttpconstitution-of-india/prevalence-of-the-rule-of-law> (Last visited on Oct. 20, 2025).

rules and regulations as the law suggests without any exceptions. It emphasises on the fact that law shall not be discriminate and shall disregard wealth, status and political powers.⁹

iii. Predominance of the Legal Spirit- third and the last pillar of the theory of rule of law by Dicey talks about the predominance or the supreme importance of legal principles and values which are guided and guarded by an impartial authority, i.e., the independent judiciary. It talks about the importance of upholding and instilling legal principles followed and accepted since ancient times and their interpretations, implementation, and enforcement by the independent judiciary. Impartial judges free from impartiality and an independent judiciary are the main protagonists of this principle.¹⁰

Today, Dicey's theory of rule of law as propounded by him in his book in 1885 is what we call the modern concept of rule of law followed in almost all the democracies in the world.

Rule of Law under the Constitution of India:

While the constitution was being drafted back in the late 1940s, the framers of the constitution were very aware of the existing essential principles required to run a successful democracy and they were as much adamant to instill them into the constitution that they were trusted with to frame. Rule of law turned out to be one of the leading principles incorporated in the Indian constitution. Since Indian constitution was majorly influenced by England as well as to a large extent, the US, the framers of the constitution felt the right pressure and need to give appropriate attention and importance to the principle of rule of law since the concept originated in England and was highly respected and enforced in these countries.

Under the Indian constitution, rule of law can be observed in many aspects like the preamble, Part III of the constitution i.e., the fundamental rights, judicial review, directive principles of state policy, basic structure doctrine, and last but not the least the principle of universal adult

⁹ Prateek Sharma & Vinnie Sharma, *System of Governance: With Essence of Constitution* (2023) (book), available at <https://www.amazon.in/SYSTEM-GOVERNANCE-constitution-PrateekSharmaeBook/dp/B0BZK418LV> (Last visited on Oct. 20, 2025).

¹⁰ Prevalence of the Rule of Law, Drishti Judiciary, <https://www.drishtijudiciary.com/to-thepoint/ttpconstitution-of-india/prevalence-of-the-rule-of-law> (Last visited on Oct. 23, 2025).

franchise.¹¹

The framers of the constitution began with incorporating the principle right from the beginning itself i.e., in the preamble. The preamble emphasises on the concepts of equality, liberty, justice, equity and freedom which directly and indirectly points towards the principle of rule of law and can be found as being enforceable later under part III. The constitution ensures that all the three organs of the government i.e., the legislature, executive & the judiciary, are distinct and still connected through separation of powers, but what it also focuses on is that these organs do not act arbitrarily and discretionarily and that they are subject to the supreme law of the constitution and are bound to act accordingly.

Then the doctrine of judicial review can also be seen very prominently in the constitution. It is quite literally a weapon used to ensure the prevention of arbitrary actions by the organs of the government. It ensures that everyone has the right to approach an independent judiciary when there is a breach of their rights especially by the organs of the government acting arbitrarily not adhering to the supremacy of the constitution. The doctrine of judicial review is what ensures the first and foremost pillar of the theory of rule of law given by Dicey i.e., the supremacy of law. It emphasises on protecting the supremacy of law and the constitution in the governance of the nation ensuring every person, including the government officials and the government itself is subject to the supremacy of law.

Similarly, Article 32 of the constitution ensures independence of the judiciary and provides for constitutional remedies for when there has been a violation of rights due to arbitrary actions. It provides the Supreme Court with the power to issue writs of habeas corpus, mandamus, quo warranto, prohibition, and certiorari. Similar powers are given to the high court under articles 226 and 227 of the constitution.¹²

Talking about the most important part of the Indian constitution, the part III i.e., the fundamental rights most amazingly demonstrate the inclusion and incorporation of the principle of rule of law in the constitution. Article 13 establishes the supremacy of law by first defining what law is and then clearly laying down that any law, rule, or regulation which maybe

¹¹ Rule of Law – SG 01: Rule of law (PDF)", MCRHRDI, <https://www.mcrrdi.gov.in/crashcourse/presentations/SG%2001-%20Rule%20of%20law.pdf> (Last visited on Oct. 23, 2025).

¹² Lloyd Law College, Rule of Law in Constitution, Lloyd Law College Blog, <https://www.lloydlawcollege.edu.in/blog/rule-of-law-in-constitution.html> (last visited on Oct. 23, 2025).

inconsistent with the constitution which is the supreme law of the land shall be void.¹³

Article 14 expressly lays down the second pillar of Dicey's theory of rule of law i.e., equality before law.¹⁶ The article also includes within its provision not just equality before law but also equal protection of laws.¹⁴ It emphasises on the second pillar being of such importance that it was incorporated as a separate article in the Indian constitution. It ensures equality and non-discrimination no matter what the wealth, status or political power of a person is.

Thus, the constitution of India is majorly based on the principle of rule of law as it can be found incorporated directly and impliedly all along the constitution from the beginning in the preamble to various articles. It can also be found in the doctrine of separation of powers, independent judiciary, many constitutional watchdogs like CAG and CEC, and even many other independent institutions.¹⁵

Role of Judiciary in upholding Rule of Law:

The independent judiciary in India has been ensured by the supreme law of the land, our constitution to ensure that it is capable of ensuring the supremacy of law and the constitution while instilling principles of rule of law, separation of powers, equity and justice. The courts have interpreted the constitution dynamically and ensured that the constitutional provisions change their interpretation and not the intention of the framers according to the changing times and needs of the society. The courts have, over the years, emphasised on the importance of rule of law in governance especially through the constitution and how it can not be overlooked let alone be ignored.

The development and interpretation of rule of law over the years by our hon'ble judiciary may be traced through many judicial precedents;

The developments started negatively with the case of *A.K. Gopalan v. State of Madras (1950)*, where the court restricted the operation of article 21 while interpreting the Preventive

¹³ India Const. art. 13. ¹⁶ India Const. art. 14.

¹⁴ Prevalence of the Rule of Law, Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/ttpconstitution-of-india/prevalence-of-the-rule-of-law> (Last visited on Oct. 23, 2025).

¹⁵ Rule of Law – SG 01: Rule of law (PDF)", MCRHRDI, <https://www.mcrrdi.gov.in/crashcourse/presentations/SG%2001-%20Rule%20of%20law.pdf> (Last visited on Oct. 23, 2025).

Detention Act of 1950, holding the supremacy of the legislature above individual liberty along with negating the need for due process of law included within the understanding of procedure established by law.¹⁶

The *I.C. Golaknath and Ors. V. State of Punjab (1967)* held for the first time that the parliament is not above the supreme law of the land, the constitution and it can amend the fundamental rights. It established the first pillar of rule of law, i.e., it held that the parliament is not above law and is subject to the judicial review.¹⁷

Then came a judgement which shed a ray of hope that the court may have started understanding the importance of the principle of rule of law. It was *A.K. Kraipak v. Union of India (1970)*, where the Supreme Court held that for a welfare state like India, it is inevitable that the organs of the state shall be controlled and regulated by the principle of rule of law.¹⁸

Then came the most important landmark judgement of Indian judiciary, *Keshavananda Bharti v. State of Kerala (1973)* which laid down the basic structure doctrine of the Indian constitution and held that any amendment shall be struck down if it is in contrary to the basic structure of the constitution and great emphasis was implied on rule of law.¹⁹

The same was also upheld in the case of *Indira Gandhi v. Raj Narain (1975)*, the court decided that the basic features of the constitution are vast and it shall include within its ambit rule of law.²⁰

The above judgement was one of the reasons of the declaration of emergency in India in 1975 and it brought about a landmark judgement which negated to the core the importance that was established by the courts with such emphasis in the past years. The case of *ADM Jabalpur v. Shivkant Shukla (1976)* focused on the tension and conflict between the judicial powers and the executive powers. The Supreme Court held with a majority opinion that fundamental rights including article 20 and 21 could be suspended during the emergency, gravely weakening the established importance of the principle of rule of law in our constitution.²¹

Then came *Maneka Gandhi v. Union of India (1978)*, where the court with the intent to clarify

¹⁶ A.K. Gopalan v. State of Madras (1950) AIR 1950 SC 27.

¹⁷ I.C. Golaknath and Ors. v. State of Punjab (1967) AIR 1643.

¹⁸ A.K. Kraipak v. Union of India (1970) 2 SCC 262.

¹⁹ Kesavananda Bharati Sripadagalvaru v. State of Kerala (1973) 4 SCC 225.

²⁰ Indira Gandhi v. Raj Narain (1975) (2) SCC 159.

²¹ Additional District Magistrate, Jabalpur v. Shivkant Shukla (1976) (2) SCC 521.

the usage, importance and relation of rule of law and article 14 of the Indian constitution stated that article 14 prevents arbitrariness and ensures equality before law and fairness as it based on the guiding principle of rule of law and thus it cannot be overreached or violated in any circumstances.²²

In *Minerva Mills Ltd. and Ors. v. Union of India and Ors. (1980)*, the court reinforced the concept of basic structure of the constitution limiting amending powers of parliament and upholding the importance of judicial review. The court upheld the supremacy of the constitution and struck down a part of the 42nd amendment.²³

In the case of *Bachan Singh v. State of Punjab (1980)*, the court observed that there are 3 basic assumptions about rule of law; firstly, that there must be an independent judiciary for the protection of the rights of the citizens from violation of their rights due to arbitrary actions of the legislature and the executive, secondly, even with the legislature having been elected democratically it shall not be vested with unfettered legislative powers, and lastly, that the democratically elected legislature shall be responsible for law making.²⁴

Then came another judgement understood widely as a landmark one for the establishment of the rule of law as a basic structure. In *I.R. Coelho v. State of Tamil Nadu (2007)*, the Supreme Court specifically emphasised on the importance of the concept of rule of law and held that the principle of rule of law is a part of the basic structure of the Indian constitution and it cannot be amended even through a constitutional amendment. The essence of the case lies in the observation that invalid and inconsistent laws cannot be given protection by including them within the ambit of the ninth schedule.²⁵

Another case came thereafter which dealt with the of naxalism in Chhattisgarh. In *Nandini Sundar & Ors. v. State of Chhattisgarh (2011)*, the court dealt with the executive supporting Salwa Judum which was a group of youths who, in the name of checking on naxalism in the state would always be carrying arms to combat with the naxalites in the guise of quelling naxalism. The court held that this executive action if supporting this act was completely against rule of law. The court questioned the executive action in the matter and directed them to rectify

²² Maneka Gandhi v. Union of India is (1978) 1 SCC 248.

²³ Minerva Mills Ltd. and Ors. v. Union of India and Ors. (1980) AIR 1980 SC 1789.

²⁴ Bachan Singh v. State of Punjab (1980) 2 SCC 684.

²⁵ I.R. Coelho (Dead) by Lrs. V. State of Tamil Nadu (2007) 2 SCC 1.

their action in accordance with the principle of rule of law.²⁶

Thus, the courts though started with not respecting much the principle of rule of law and its constitutional importance in governance but thereafter started interpreting the principle with utmost care and attention. Along the years the principle became not just a recognised essential feature but a part of the basic structure of the Indian constitution.

Limitations and Challenges to the implementation of Rule of Law for Governance:

Oliver Goldsmith stated, “law grind the poor and rich men rule the law.”²⁷ As much as the principle of rule of law holds importance in constitutional governance, it poses a number of challenges as well as have been criticised due to many limitations engraved in its working;

- The principle which is seen as being the one of the most important features of the basic structure of the constitution still has exceptions to its implementation and working; firstly, the president and the governors of the state are provided with some immunities under article 361 against them being answerable to courts, arrest, criminal proceedings and limited civil proceedings, secondly, similar immunities and certain privileges have also been provided to foreign diplomats as well as judges of the supreme court and high courts in India.²⁸
- The second pillar of rule of law i.e., equality before law is interpreted differently as from how Dicey explained. Dicey meant to keep everyone at the same pedestal with no different in treatment and powers but under the Indian governance equality before law means that everyone is subjected to the same laws but there is still some exceptions and differing powers for different groups. For instances, though a layman citizen and police officer are subject to the same laws of the constitution, but a police officer has much more powers and immunities.²⁹

²⁶ Nandini Sundar & Ors. v. State of Chattisgarh (2011) 7 SCC 547.

²⁷ Rule of Law – SG 01: Rule of law (PDF), MCRHRDI, <https://www.mcrrdi.gov.in/crashcourse/presentations/SG%2001-%20Rule%20of%20law.pdf> (Last visited on Oct. 27, 2025).

²⁸ Prevalence of the Rule of Law, Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/tpconstitution-of-india/prevalence-of-the-rule-of-law> (Last visited on Oct. 27, 2025).

²⁹ “Rule of Law – UPSC Notes”, BYJU’S Free IAS Prep, <https://byjus.com/free-ias-prep/rule-of-lawupscnotes/#:~:text=One%20of%20the%20very%20basic,published%20in%20the%20year%201885.> (Last visited on Oct. 28, 2025).

- Rule of law though speaks for equality and fairness, but it does not stop the constitution of India from making special laws and giving certain privileges to certain groups like the armed forces being governed by special military laws.
- A challenge that seems inevitable in Indian governance is appropriate and sufficient safeguards against corruption.

These challenges pose great difficulty in the effective implementation of the principle of rule of law in Indian governance system. But despite of all these, the principle still holds utmost importance for the Indian constitutional governance system.

Conclusion:

The principle of rule of law as developed by A.V. Dicey has evolved so much over the years that it has become a cornerstone feature of the Indian constitutional governance. Rule of law in the Indian democratic system of governance ensures for the citizens not just equality, justice and fairness but also protects individual rights from arbitrary action of the organs of the government. As much is rule of law enshrined in the constitution of India, the constitution itself cannot survive for long with the principle due to the fact that the principle of rule of law is what ensures and established the supremacy of the law and holds the constitution as the supreme law of the land. The framers of the constitution were cautious enough to understand the importance of the principle of rule of law for a democratic country like India that they were framing laws for; they established a governance system which the world thought was impossible to make at the time, a governance system not just following but based on rule of law.