

RAM RAJYA – ENVISIONING A WELFARE STATE RULED OVER BY RULE OF LAW

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ABSTRACT

The concept of state has evolved over the years. But what hasn't changed, is the fact that the state is formed by the people, and for the people. The notion of Rule of Law embodies the doctrine of Supremacy of Law over anybody else. It is the very necessity of a disciplined society. The idea behind the concept is that the ruler is not the Law, but the Law is the ruler. The constitution framers of India envisaged India to be a nation governed by the Rule of Law. And thus, utmost importance should be attributed to the well-being of people, giving birth to the concept of 'Welfare state'. But is it really achievable? Or will it always remain 'Utopia?' This article examines in detail, the concept of Welfare state, its various models, and the establishment of Welfare State through Rule of Law. The author also talks about what provisions are existent in India, if we were to achieve the status of a Welfare state, and whether it is actually possible.

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INTRODUCTION

'In a world divided by differences of nationality, race, colour, religion and wealth, the rule of law is one of the greatest unifying factors, perhaps the greatest, the nearest we are likely to approach to a universal secular religion', says Lord Bingham an eminent British Judge.

Just as how atoms are the building blocks of any matter, ethics and morals are the blocks upon which any society is pillared. In a time when humanity has hit an all-time low, when the ethics are draining, and morality is barely left, the need for Ram Rajya is strongly felt. For any state to function the way it is supposed to and to do so efficiently, it becomes imperative for the rule of law to exist. Rule of Law plays a pivotal role in safeguarding human rights, ensuring the welfare of a state's subject, and to maintain the law and order in society.

If we go by history and look for a man who is the torch-bearer of ethics, humanity, and morality, the name of Lord Ram would top the chart. Being the highest pillar of faith, our beliefs and faith are strongly vested in Lord Ram. He is the epitome of ideal characteristics. In the modern world,

we are drifting apart into pieces. Taking a smaller picture and considering different states, unity and acceptance are barely left. People are fighting against each other in the name of their Gods, massacring in the name of their religion. In such a grim scenario, only the principles established by Lord Ram can rescue us from further downfall, and guide us through the darkness towards the light to establish a state of prosperity.

UTOPIA – A WELFARE STATE

What comes to your mind when you hear the term ‘Welfare State’? A Welfare State is basically a concept wherein a state plays a pivotal role in protecting and promoting the well-being of its citizens. It is based upon the principles of equality of opportunity, equitable distribution of wealth, and public responsibility, for those who are unable to avail themselves of the minimal provisions for a good life¹.

The model that we generally assume when we hear of the term ‘Welfare State’, is of a Government that is ruled by Law and which would look not only after the well-being of its citizens, but also after everything that is needed to ensure its subjects develop not only intellectually, but also morally and spiritually. If we talk of a welfare state in a wider perspective, it would broadly classify the welfare state into two - First, wherein the welfare state is universal, that is to say, that it provides its provisions to every subject, and the second, wherein the welfare state is selective and would only look after the ones who are in dire need.

Different sociologists have tried explaining the term in their own words. One such Danish Sociologist, Gosta Andersen, identified three kinds of Welfare State in his book ‘The Three Worlds of Welfare Capitalism’. The three kinds of Welfare State are characterized by a specific regime. The first kind of welfare state that Andersen talks about, is of Liberal Regime. It is characterized by modest and means-tested assistance, targeted at low-income recipients. The second kind of a welfare state is that of a Conservative Regime, typically shaped by traditional family values and tends to encourage family-based dynamics. In this model of regime, the State would only interfere when the family’s capacity is exhausted. And, the third and last kind of welfare state that Andersen

¹ Britannica, <https://www.britannica.com/topic/welfare-state>

mentions, is that of the Social Democratic Regime². Whereas, a political scientist, Bo Rothstein has classified the Welfare State in two more simple ways: Universal and Non-Universal. According to him, in a non-universal welfare state, the state is selective and routes resources to those who are in need. In such a state, the government usually exercises tight control over the bureaucracy to determine the eligibility of such assistance. Whereas, in a universal welfare state, the state distributes welfare to all of its people³.

THE FOUNDATION STONE

Although A.V. Dicey is credited for popularising the concept of Rule of Law in the modern day and age⁴, its conception can be traced back to the olden days of many ancient civilisations like that of Rome, Greece, India and Mesopotamia⁵.

In the Ancient Greek Civilisation, the people of then times regarded the best form of government to be the one that is rules by the best men⁶. Plato, an Athenian philosopher, advocated for an authoritarian style of government ruled by an ideal king, who was above the law.⁷ Aristotle, another Greek Philosopher rejected the idea of Plato and opposed the officials to wield more power than the law itself⁸. Aristotle advocated the rule of law and contended – *It is more proper that law should govern than any one of the citizens; upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servant of the laws.*

In the year 1945, The Sapru Committee, convened by TejBahadurSapru, a well-renowned lawyer, published a long 343 paged report that contained detailed expositions on various aspects of the constitutional aspirations of India. The report had a section on fundamental rights in which the committee recommended to divide the rights into justiciable and non-justiciable rights. Those non-justiciable rights went on to be known as the ‘Directive Principles of State Policy’. The fact that

²Esping-Andersen, Gøsta (1990). *The three worlds of welfare capitalism*.

³ Bo Rothstein, *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State* (Cambridge University Press, 1998), pp. 18–27.

⁴ Bingham, Thomas. *The Rule of Law*, p. 3 (Penguin 2010).

⁵ Black, Anthony. *A World History of Ancient Political Thought* (Oxford University Press 2009). ISBN 0-19-928169-

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⁶David Clarke, "The many meanings of the rule of law" in KanishkaJayasuriya, ed., *Law, Capitalism and Power in Asia*

⁴ Ibid.

⁵ Ibid.

the preamble of the Constitution of India envisages India to be a Socialist state bears evidence that India was, always, meant to be a Welfare State.

The framers of the Indian Constitution have envisaged establishing India as a welfare state. So much so, that they even provided us with a roadmap to help us in establishing such a state. The roadmap, which we know as the 'Directive Principles of State Policy', was included to guide the State towards establishing a regime of social and economic democracy. The notion behind enumerating those directive principles was to create a 'Welfare State'. Dr Bhimrao Ambedkar, the father of the Indian Constitution, said that the directive principles are 'novel features' of the Constitution. Those principles guide the State as to what should be done to achieve the aimed regime.

ORIGIN OF THE RULE OF LAW

It has been talked of time and again by the then thinkers such as Locke, Hobbs, and others. The expression 'Rule of Law' is derived from the phrase '*La Principe de Legalite*' which literally translates to the 'Principle of Legality'.⁹ In simpler words, rule of law may be referred to as the government based upon the principles of law and not of men. Its core principle is that the Law is supreme and is above every individual, even the ruler. JOURNAL

Various jurists and theorists have given different meanings to the rule of law. Some believe that the rule of law has formal characteristics, that the law must be publicly promulgated whilst some theorists believe that the rule of law entails protection of human rights. Sir Edward Coke, an English Barrister is said to be the one who propounded the concept of Rule of Law. He said that the king must be under God and Law and thus vindicating the supremacy of law over the pretensions of the rulers¹⁰.

⁹Alexandru Stoian, Teodora Drăghici, The Principle Of Legality, Principle Of Public Law, <https://www.degruyter.com/downloadpdf/j/kbo.2015.21.issue-2/kbo-2015-0087/kbo-2015-0087.pdf>

¹⁰David Chan Smith, Sir Edward Coke and the Development of the Rule of Law, Fifteen Eighty Four: Perspectives from the Cambridge University Press, <http://www.cambridgeblog.org/2015/01/sir-edward-coke/>

A.V. Dicey, in his book 'Introduction to the Law of Constitution', stated that 'no man is punishable or can be lawfully made to suffer in body or goods except for distinct breach of law and no man is above law.'¹¹ Rule of Law thus may mean the paramountcy of law over the ruler.

A.V. Dicey propounded three meanings to the Rule of Law:

- Equality before the Law

Dicey was of the opinion that no man is above the law. No matter if a person is rich or poor, black or white, official or non-official, majority or minority, every person is equal before the law.

- Absolute supremacy of Law

The rule of law ensures that the ruler doesn't act arbitrarily or in contravention to the law. The law is supreme and the ruler derives its power from law.

- Legal Spirit

Dicey opined that rule of law is predominated by legal spirit and that the constitutional law derives its authority from the essence of law. As per Dicey, the rights pertaining to personal liberty, freedom, etc. are guaranteed to the subjects by the written constitution of the country they live in. However, in England, those rights were a result of the precedents and customs.

This principle of Dicey doesn't seem to be applicable in the Indian context since we consider the Constitution of India to be the supreme law from which other laws derive their power.

RULE OF LAW AND RULE BY LAW

Rule of Law and Rule by Law; both of these expressions might seem analogous but truth be told, they vary to a great extent. Where on one hand, the Rule of Law refers to the supremacy of law and that the Law is above all, Rule by Law connotes the instrumental usage of law as a tool to peddle a political discourse.

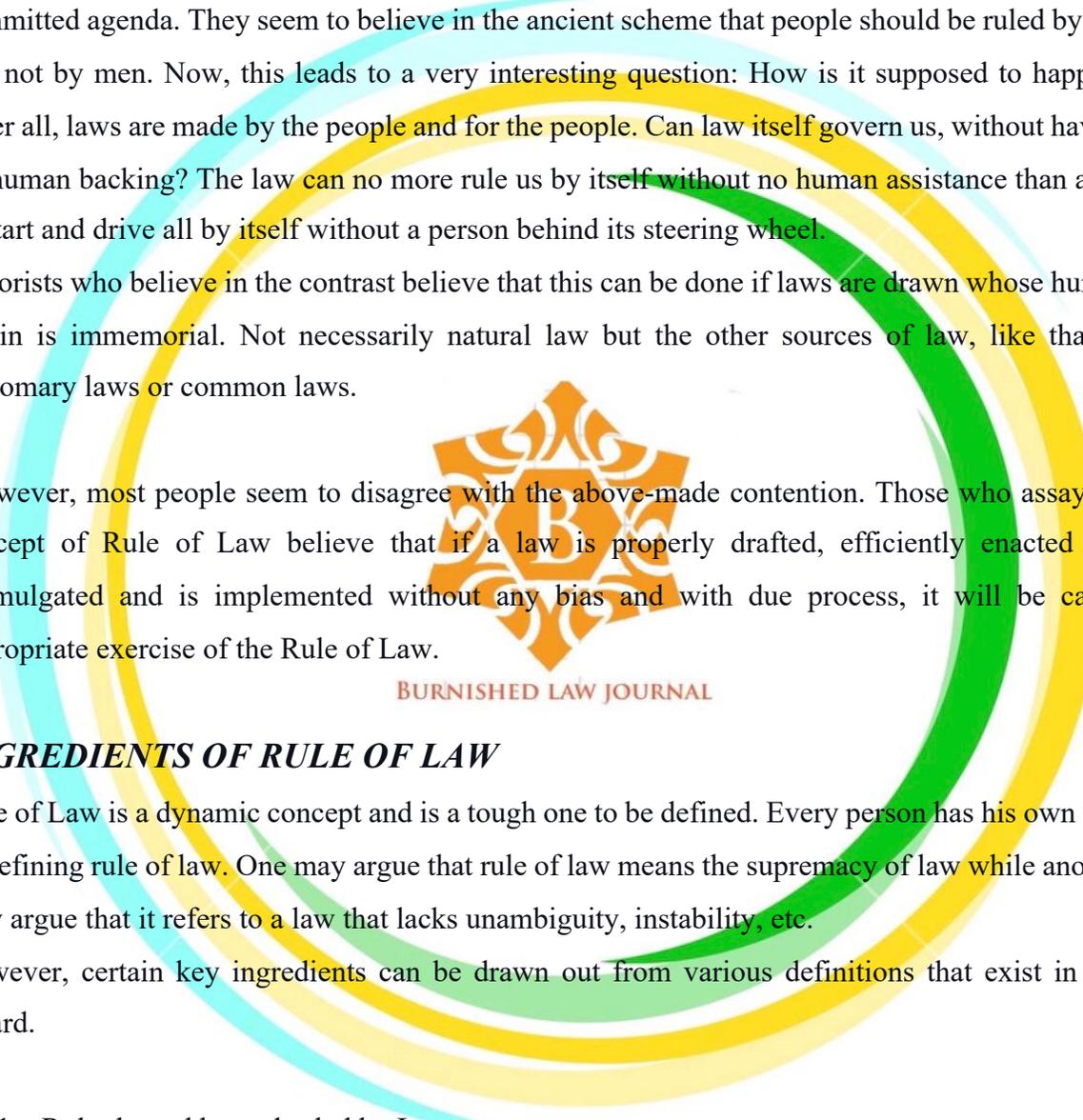
¹¹Rajesh Kumar, Supremacy of law is the aim, rule of law is the best tool to achieve this aim: analysis and critically examine the scope of rule of law in India, Scholarly research Journal for Humanity Science and English Language, https://issuu.com/dr.yashpalnetragaonkar/docs/8._rajesh_kumar

However, the difference might not be that unequivocal. The expression 'Rule by Law' appears to suggest the ruler to rule its subjects by way of law and that the ruler accepts the principle of legality.

Theorists who believe in the contrast between Rule of Law and Rule by Law seem to have a committed agenda. They seem to believe in the ancient scheme that people should be ruled by law and not by men. Now, this leads to a very interesting question: How is it supposed to happen? After all, laws are made by the people and for the people. Can law itself govern us, without having no human backing? The law can no more rule us by itself without no human assistance than a car to start and drive all by itself without a person behind its steering wheel.

Theorists who believe in the contrast believe that this can be done if laws are drawn whose human origin is immemorial. Not necessarily natural law but the other sources of law, like that of customary laws or common laws.

However, most people seem to disagree with the above-made contention. Those who assay the concept of Rule of Law believe that if a law is properly drafted, efficiently enacted and promulgated and is implemented without any bias and with due process, it will be called appropriate exercise of the Rule of Law.



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INGREDIENTS OF RULE OF LAW

Rule of Law is a dynamic concept and is a tough one to be defined. Every person has his own way of defining rule of law. One may argue that rule of law means the supremacy of law while another may argue that it refers to a law that lacks unambiguity, instability, etc.

However, certain key ingredients can be drawn out from various definitions that exist in this regard.

1. Ruler bound by and ruled by Law
2. Equality before Law
3. Law and Order
4. Safeguarding Human Rights
5. Upholding the essence of Justice

PRESENT DAY CONCEPT OF RULE OF LAW

Dicey's version of the rule of law cannot be considered as applicable in the present-day world in its totality. The whole present-day conception of rule of law is somewhat wide and ideal. The concept has been developed and adopted by the International Commission of Jurists who met in New Delhi in the year 1959. Popularly known as the Delhi Declaration of 1959, the declaration formulates that *'The rule of law implies that the functions of the government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld. This dignity requires not only the recognition of certain civil or political rights but also the creation of certain political, social, economical, educational, and cultural conditions which are essential to the full development of his personality.'*

RULE OF LAW IN MAJOR WORLD DEMOCRACIES

UNITED KINGDOM

The concept of Rule of Law in the United Kingdom was developed over the course of time acting as an impediment to the arbitrary power of the ruler. The Rule of law in the United Kingdom owes its development to the battles between the Rulers and their subjects and the war between British and the Americans. The concept of Rule of Law in the United Kingdom dates back to 1215 when King John of England signed the Magna Carta. The drafting of Magna Carta was a significant milestone in the Governance System of the United Kingdom as it was the first step towards limiting the arbitrary powers of the Ruler and confining him in the chains of Law. The Rule of Law is one of the oldest common law principles of Governance in the United Kingdom.

The modern day welfare state in the United Kingdom started with the liberal reforms in the years 1904-1914 under the then Prime Minister H.H. Asquith¹². These reforms paved way for the welfare state in the United Kingdom and introduced pension schemes, education policies, labour protection, etc¹³.

¹² Francis G. Castles; et al. (2010). The Oxford Handbook of the Welfare State. Oxford Handbooks Online. p. 67. ISBN 9780199579396

¹³Derek Fraser, *The evolution of the British welfare state: a history of social policy since the Industrial Revolution* (1973)

UNITED STATES OF AMERICA

In the United States of America, the concept of Rule of Law was introduced way back in the year 1776 by the then Constitutional Attorneys. They were of the view that in a free nation like America, the Rule of Law should be placed at the highest stand. The American Governance System does not follow any simple majority rule. There are certain principles or notions that are majorly agreed upon by the subjects such as the Bill of Rights. The Bill of Rights was passed because the concepts of freedom, equality, due process of law were deemed so important that except constitutional amendment, no majority government can change them. The concept of welfare state developed fairly in the era of 1930s¹⁴. The concept was introduced in the United States by an American Sociologist Lester Ward, also known as the 'Father of the modern Welfare State'. His work influenced many progressive thinkers such as Theodore Roosevelt, Thomas Dewey, and others.

INDIA – A WELFARE STATE?

The concept and the doctrine of Law were not known in the olden days of Indian civilisation. In India, right from the primers of Hinduism – the Vedas, Upanishads to the greatest epics of Ramayana and Mahabharata, all delivered the same message – Law is above the Ruler. Later on, Chanakya espouses the theory of rule of law, stating that the ruler should be ruled by the word of law. The idea of establishing a welfare state in India was first put forward by the Mauryan Emperor, Ashoka in the 3rd century BCE. He envisioned a state that would be governed by Dharma, the righteous path. Despite conflicting records of his character, Ashoka is said to have adopted a welfare policy for his state. He ensured equality in his state¹⁵, forbade the killing of animals¹⁶, and looked after the welfare of his subjects¹⁷.

The Constitution of India, also known as the bag of borrowings, borrowed its justice delivery system from Britain, which is based upon the concept of Rule of Law. Dicey maintained that the theory of rule of law and natural law would be sufficient to ensure and keep a check upon the government so that they do not act arbitrarily. India also happens to follow the Natural Law theory, still there are proper formal and written laws in place to ensure compliance to the law.

¹⁴ Walter I. Trattner (2007). From Poor Law to Welfare State, 6th Edition: A History of Social Welfare in America. Free Press. p. 15. ISBN 9781416593188

¹⁵ Edicts of Ashoka.

¹⁶ Thakur, Upendra (1989). Studies in Indian History Issue 35 of Chaukhambha oriental research studies

¹⁷ Romila Thapar (2003). The Penguin History of Early India: From the Origins to AD 1300. Penguin UK. p. 592

The Constitution of India clearly intended for India to be a nation ruled by the Rule of Law. The Constitution of India is considered to be the supreme law of the nation and every organ of the nation derives its authority from the constitution. Article 13 of the constitution ensures that the legislature does not act arbitrarily and promulgate a law that does not fall in conformity with the constitution or the rule of law.

Article 14 ensures that every citizen of India is treated equally and that no person is discriminated against on the basis of their religion, sex, caste, etc. Article 21 provides that no person shall be deprived of his life or liberty except according to the procedures established by law. These provisions happen to fulfil every requirement of Dicey's definition of the Rule of Law.

In the much-celebrated case of ADM Jabalpur v. Shivkanth Shukla¹⁸, the Supreme Court further strengthened the mechanism of rule of law. Though the majority of the bench opined against the question that whether there was any rule of law in India apart from Article 21 of the Indian Constitution, Justice Khanna dissented and observed that 'even in the absence of Article 21, the state has no power to deprive a person of his life and liberty without the authority of law. Rule of law is now the accepted norm of all civilized states.'

In the case of State of Karnataka and Ors. V. Umadevi and Ors.¹⁹, the Constitution Bench laid down the law in the following terms - *Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.*

In yet another significant and much-celebrated case of Kesavananda Bharti v. State of Kerala²⁰, the Supreme Court held that the rule of law is an essential ingredient of the basic structure of the constitution and cannot be amended by any act of the legislature.

CONCLUSION

Rule of Law can be rightfully considered as one unifying secular religion in the world. In a world where state-sponsored and state-supported civil unrest has become a norm and where some nations

¹⁸ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

¹⁹ State of Karnataka and Ors. v. Umadevi and Ors, AIR 2000 SC 1806.

²⁰KesavanandaBharati v. State of Kerala, (1973) 4 SCC 225.

publicly flout human rights and violate human values, India has accomplished to be a nation that follows the word of law and believes in the Rule of Law. The Constitution of India has provided its subjects with enough mechanisms to ensure that the rule of law is followed. India has been practicing the very notion of rule of law since its early days. Even after India got its independence, the concept of rule of law was kept at the highest pedestal. Numerous attempts have been made to demean the pillars of the Constitution and to sabotage the rule of law in India, but the Supreme Court of India have always stood up and stayed steady and helped maintaining the rule of Law. Lord Krishna very rightly said that Law is *Dharma*. And, India has successfully accomplished to be a nation that follows the Rule of Law by upholding the motto – *Yato Dharma Stato Jaya*.



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