

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Rule of Law

Notes by- **INDRA BHUSHAN SINGH**

Date:- 13/08/2020

Development

Rule of law was developed by a British jurist Albert Venn Dicey in his book called “The Law of the Constitution” 1885. In this book, he develops this concept and he identifies 3 principles while establishing the rule of law.

According to Albert Venn Dicey rule of law first meaning is “*No man is punishable except for a Distinct breach of Law*” established in the ordinary legal manner before the ordinary court. The government or any high-class authority cannot punish any individual on the personal ground till the time an individual has committed an offence and if the offence is committed then proper procedure and trial will be conducted and in case the final verdict is that the offence is committed then physical or economic punishment will be given to the accused person. This clearly indicates that even if 100 criminals are not arrested is ok rather than punishing one innocent person.

No man is above the law” every man, whether he is from a higher rank or whatever his position is subjected to ordinary law under the jurisdiction of the ordinary court. No man will be deprived from his personal property until the time he has breached any law established by the ordinary court. [*Article 14 of The Constitution of India*](#) also talk about that “Every Man is equal before the law, no one is above”.

Constitutional rights are the source of a judicial decision it means that the source of rights is not the constitution but the rules or law enforcement by the court. The British constitution is the result of judicial result and all the rights are given under the Constitution is decided and framed from some or the other judicial decisions.

The principle of Rule of law is accepted by Article 14 of the Constitution and it has 2 main rule that no man is above the law and no man is punishable except for a breach of law and the last rule given above is not accepted by our constitution. So, the first and second rule applies to the constitution but the third rule of dicey is not accepted by our Indian system. All rules passed by the legislature must be within the provision of the Constitution and if any law is made which encroached any of the provisions of the constitution then it will be declared as void by the Supreme Court.

Basic Principles of Rule of Law

1. Law is supreme and nobody is above the law.
2. All the things should be done according to a law not as per whim.
3. No person should be suffered except for the breach of law.
4. Absence of arbitrary is the soul of the rule of law.
5. Equality before the law and equal protection of the law.
6. Speedy trial.
7. The fair and just procedure should be conducted.
8. Independent and impartial judiciary.

Kesavananda Bharati vs. the State of Kerala under this case the principle of Basic Structure was propounded and it was said that any part of the Constitution can be amended without disturbing the basic structure of it.

Indira Nehru Gandhi vs. Raj Narain, the court held that rule of law is also part of the basic structure and in the list rule of law was also added and it means that no amendment can be done in rule of law.

The *State of Bihar vs. Sonawati Kumari*, it is an integral part of Rule of law that all the authority within the State including executive government should be bound to obey the rules.

In case of *Bachan Singh vs. the State of Punjab*, popularly known as “***Death Penalty Case***” the rule of law is free from arbitrary action if anywhere any action is done with arbitrary power then it will be considered as the denial of the concept of Rule of Law.

In case of *Som Raj vs. State of Haryana*, that absence of arbitrary power is absolute motive of the principle of rule of law upon which directly the whole Constitution is dependent.