

Democracy and Rule of Law

It is an old dictum of Political Science that the State comes into being for life (for the protection of life) but it exists for good life (welfare of the people). The justification for the continued existence of a State is its ability to provide all the rights and freedoms that would ensure a happy healthy and prosperous life

Edmund Burke once said “To make a government requires no great prudence. Settle the seat of Power, teach obedience and the work is done, to give freedom is still easier. It is not necessary to guide; it only requires letting go the rein. But to form a free government that is to temper together the opposite elements of liberty and restraint in one consistent framework requires much thought and deep reflection. Democracy is that form of government, which tempers freedom with restraint.”

Even in the Middle Ages, British authors held the view that the king himself ought to be subject to man but subject to God and Law because the law made him the king. We are all familiar with the progressive devolution of power from the crown to Parliament and the position of the Crown in the British Constitution.

The Phrase “Rule of Law” means and implies that in a Democratic system, it is the law that is Supreme and not the organs government namely the Legislature, Executive and the Judiciary.

The British Parliament is traditionally called Supreme. Its laws cannot be set aside by the Judiciary. But latterly law has imposed limitations on Parliament in regard, certain matters relating to Scotland and adherence to the European convention on Human Rights.

The Constitution of India provides elaborately for the powers of the Union and the States and the respective legislatures are empowered to legislate. But they are subject to relevant laws applicable to them. They may have power to amend the statute but they then become subject to the amended law. Besides, any law passed by the Parliament or State Legislature violate of the Constitution of India is liable to set aside by the appropriate Courts. Thus the legislature in India is subject to law governing them.

The Executive both Union and State have enormous power. They are necessary, to govern a country of this size and magnitude. This does not empower them to act arbitrarily or dissimilarly in the exercise of their powers. Any deprivation of fundamental rights or life and liberty cannot be committed except accordingly to law governing it. The police can arrest or detain any person only in accordance with law. For instance, Art - 21 of the constitution protects life and liberty. Courts in India will not tolerate doing a little wrong to do a great good. The law must prevail over all other considerations.

The International Congress of Jurists held in New Delhi in 1959, issued a Delhi Declaration on Rule of Law in a free society according to which Rule of Law implies *inter alia*.

1. a right to responsible and representative governments
2. Certain minimum standards or principles embodied in the Universal Declaration of Human Rights.
3. Freedom of religious belief
4. Association etc.

These are expressions of noble sentiments but the phrase “Rule of Law” implies the subordination of the arms of a State namely Legislature, the Executive and the Judiciary to the relevant law applicable to each of them. Rule of Law, equally implies that the citizen should voluntarily comply with the law. If, 80% of the people observe the law and 20% violate it, the State can maintain law and order and there will be a peaceful society.

If, on the other hand the proportion is reversed and only 20% observe the law and 80% violate it, there will be chaos and no society at all. Democracy functions effectively where a large percentage of people observe the laws. In others there is only a semblance of democracy.

The judiciary in India had even in the British days earned the regard and respect of the people of India. They rendered justice between man and man fairly and impartially.

There were complaints of bias when the dispute was between the citizen and the government. But by and large the judiciary was respected.

Eminent jurists like Shri K.M. Munshi and Alladi Krishnaswami Iyer saw to it sufficient safeguards and provided in the Constitution to ensure the independence of the judiciary in the discharge of its functions without “fear or favour and affection or ill will”.

In the memorable words of Magna Carta

“To none shall we delay

To none shall we deny land

To none shall be sell justice”

The impartiality of judiciary had been reiterated.

The judiciary has wide powers to interpret the law. The Supreme Court of India has freely used this power to protect and expand the Fundamental Rights and Judicial remedy of the citizen. This has been welcomed generally by the public with enthusiasm.

The right of the judiciary to make law by the process of interpretation of Statutes is well recognized in all jurisprudence. This right is not unfettered. It is also subject to the Rule of Law relating to interpretation of statutes. These canons of interpretation have been made binding by judicial decisions.

For instance, Art-124, provides that in the appointment of judges of the Supreme Court of India, “always be consulted”. Likewise, Art - 217, the appointment of the judges of High Courts “shall be made in consultation with the Chief Justice of India” Art – 222 provides that a judge may be transferred from one High Court to any other High Court after “consultation with the Chief Justice of India. The Supreme Court, however, in *Advocates on Record Association Vs Union of India* decided that not mere “Consultation” but “Concurrence” of the Chief Justice of India was necessary.

It is an accepted principle of Jurisprudence affirmed repeatedly by the Supreme Court “that if a words used in a Statute are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act”.

May be the realities of life needed such interpretation but from a strictly jurist point of view it will be case of accepting Bassanier’s plea “to do a great good do a little wrong”.

To sum up: Rule of Law is Supreme in a Democracy. In fact, Democracy is Rule of Law and Rule of Law is Democracy. All organs of government, the Legislature, the Executive and the Judiciary and all Citizens must abide by temporal and spiritual rules of law. It is the road to harmony and peace in the world.