**Rule of Law and Modern Administrative Law: An Analysis**

**RULE OF LAW: DICEY’S PRINCIPLES**

*"The King himself ought not to be subject to man, but subject to God and the law, because the law makes him King”:* **Lord Chief Justice Coke quoting Bracton said in the case of Proclamations (1610) 77 ER 1352**[[1]](#footnote-1)

Rule of law is classical principle of administrative law. As a matter of fact, this principle was one of the principles that acted as impediment development of Administrative Law principles. The irony further is that the rule of law is now an important part of modern Administrative Law. Whereas the rule of law is still the one of the very important principles regulating in common law countries and common law derived countries modern laws has denied some of the important parts of rule of law as proposed by Dicey at the start of 19th Century.

Dicey defined rule of Law as the *“absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of prerogatives or even wide discretionary power on the part of government”*.[[2]](#footnote-2) Dicey asserted that wherever there is discretion, there is room for arbitrariness which leads to legal insecurity of citizens.

Other aspect of Dicey’s Rule of Law is equality before law or equal subjection of ordinary law to all class of people by ordinary court. Whereas he asserted that the French Droit Administrative is a bad law where there are separate tribunals for different matters, he further insisted that England hadn’t any of similar or same system existed.[[3]](#footnote-3)

The later view of Dicey about the equality and dominance of law over arbitrariness set standard of most civilized Constitutions of world. However, the later views on droit administrative impaired the development of Administrative law at very early stage where it required a support. The Administrative Law was, for almost all the time, including Dicey’s dominion, was present, but, was never recognized as it should have been for a neat and satisfactory development in common law countries.

The presence of Administrative Law and its inevitable nature is clear by the recognition of some of the scholar’s contemporary to Dicey. Maitland was one of those scholars who have recognized the presence of Administrative Law in England.[[4]](#footnote-4) It is also evident that the presence of Administrative Law was substantial but was ignored by Dicey in his early era. The famous case of ***Board of Education v. Rice***[[5]](#footnote-5) and ***Local Government Board v. Arlidge***[[6]](#footnote-6) affirmed the practice of Administrative Law in England. It is evident that it is after this case that Dicey realized the presence of Administrative Law in a positive form. He however maintained that the presence of Droit Administrative in England is no body’s case and that rule of law must be preserved.

The rule of law, as propounded by Dicey has its own advantages and disadvantages. Apart from setting the base for all common law country, it has also provided the base for Administrative law principles are set. It is a method by executive in general and government in particular is kept in control against the misuse of wide power vested in them. It also eliminates unreasoned discretion, bias and arbitrariness in governance that emanates from wide power of executive. Moreover, the rule of law gives supremacy of Courts over all other functionaries of State. This leads to the further curbing where government can’t be judge in his own cause.

Dicey’s submission of rule of law has its disadvantages as well. Where the Dicey’s rule of law eliminated presence of arbitrary power in government, it also eliminated the “wide discretionary” power from the government. The protest of Dicey in presence of wide discretionary power in government would lead to the failure of policies and implementation of law as required apart from bad assessment before the formulation of policy. The biggest mistrust being the efficacy of judiciary in managing affairs of the state in the Dicey’s Rule of Law.

**DEVELOPMENT OF RULE OF LAW IN BRITAIN**

The Rule of law, in UK, was developed over the centuries as a brake on arbitrary power. The modern concept of Rule of law owes much to the great battles between the English kings and their subjects, the struggle for supremacy between parliament and Stuart kings, and finally the war between the British Empire and its American Colonies.[[7]](#footnote-7)

**THE GREAT CHARTER: MAGNA CARTA**

On June 15, 1215 in the meadows of Runnymede, King John and his rebellious barons agreed to the great charter known as Magna Carta. The great charter was the first significant written instrument limiting the power of the king and confining him to what the barons regarded as good governance. These promises were a bargain between the king and the feudal lords dictated by the force of arms.

Winston Churchill, in his History of English-Speaking peoples, writes about the glorious legend of the charter of an Englishman’s liberties.

*“The original Articles of the barons on which Magna Carta is bases exist today in the British Museum. In the next hundred years it was reissued 38 times, at first with a few substantial alterations but retaining its original Characteristics”.[[8]](#footnote-8)*

He concludes,

*“Now for the first time the king himself is bound by the law. The root principle was destined to survive across the generations and raise paramount long after the feudal background of 1215 had faded in the past. The charter became in the process of time an enduring witness that the power of the crown was not absolute…. And when in subsequent ages the state swollen with its own authority, has attempted to ride roughshod over the rights and liberties of the subject it is to this doctrine that appeal has again and again been made, and never, as yet, without success…..There is a law which is above the king and which even he must not break. This reaffirmation of a supreme law and its expression in a general charter is a great work of Magna Carta; and this alone justifies the respect in which men have held it”.[[9]](#footnote-9)*

**DICEY’S CONCEPT OF RULE OF LAW IN ENGLAND**

Dicey developed the stuffing of his theory by chirping from a foggy England into a sunny France.[[10]](#footnote-10) In France, Dicey observed that the government officials exercised wide discretionary powers and if there was any dispute between a government official and private individual it was tried not by an ordinary court but by a special administrative court.[[11]](#footnote-11) The law applicable in that case was not ordinary law but a special law developed by the administrative court. From this Dicey concluded that this system spelt the negation of the concept of rule of law which is secret of Englishman’s liberty. Therefore, dicey concluded that there was no administrative law in England.[[12]](#footnote-12)

In England, the doctrine of rule of law was applied in concrete cases. If a man is wrongfully arrested by the police, he can file a suit for damages against them as if the police were private individuals. In Wilkes v. wood it was held that an action for damages for trespass was maintainable even if the action complained of was taken in pursuance of the order of the minister.[[13]](#footnote-13) In the leading case of ***Entick v. Carrington***[[14]](#footnote-14) a publisher’s house was ransacked by the king’s messengers sent by the secretary of state. In an action for trespass, 300 were awarded to the publisher as damages. In the same matter, if a man’s land is compulsorily acquired under an illegal order, he can bring an action for trespass against any person who tries to disturb his possession or attempts to execute the said order.[[15]](#footnote-15)

Dicey’s formulation of the concept of Rule of law, which according to him forms the basis of the English constitutional law, contains 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.
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:
3. Absence of special privileges for a government official or any other person
4. all the persons irrespective of status must be subjected to the ordinary courts of the land.
5. Everyone should be governed by the law passed by the ordinary legislative organs of the state.
6. The rights of the people must flow from the customs and traditions of the people recognized by the courts in the administration of justice

Dicey’s thesis has its own advantage and merits. The doctrine of rule of law proved to be effective and powerful weapon in keeping administrative authorities within their limits[[16]](#footnote-16). It served as a touchstone to test all administrative actions. The broad principle of rule of law was accepted by almost all legal systems as a constitutional safeguard.[[17]](#footnote-17)

The first principle (Supremacy of law) recognizes a cardinal rule of democracy that every government must be subject to law and not law subject to the government. It rightly opposed arbitrary and unfettered discretion to the governmental authorities, which has tendency to interfere with rights of citizens.

The second principle (equality of law) is equally important in a system wedded to democratic polity. It is based on the well-known maxim *“however high you may be, law is above you”* and *“all are equal before the law”*

The third principle puts emphasis on the role of judiciary in enforcing individual rights and personal freedoms irrespective of their inclusion in a written constitution.[[18]](#footnote-18) Dicey feared that mere declaration of such rights in any statute would be futile if they could not be enforced.[[19]](#footnote-19) He was right when he said that a statute can be amended and fundamental rights can be abrogated.[[20]](#footnote-20) We have witnessed such a situation during emergency in 1975 and realized that in absence of strong and powerful judiciary, written constitution is meaningless.

Dicey never spoke of equality under the rule of law as rigid. He was not blind to inequalities glaring inequalities in the British legal system, not to the contradictions involved in the supremacy of the parliament and the guarantees of equality of all classes to the ordinary law administered by the courts.[[21]](#footnote-21) His dislike of the French system of administrative tribunals was the most vulnerable in his enunciation. Dicey’s antagonism was based on his supposition that law meant fixed rules, and administration involved exercise of discretion not controlled or guided by rules. His dislike of exercise of discretionary authority, if literally understood, may appear illogical, for in every decision, judicial or administrative, there is vast field of discretion.[[22]](#footnote-22) Administration of justice is not a mechanical process inexorably leading to a set result from a given set of facts. It involves a large area of discretion. It would be a perversion of true quality of justice to attribute to the adjudicator or judge of a mechanical approach.[[23]](#footnote-23) There is again no reason to suppose that an administrative authority exercising power vested by law does not do justice merely because have has discretion in formulating his line of action.

Dicey contrasted law with administrative action and discretion, and asserted that Rule of law means absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, the existence of arbitrariness, of prerogative or of wide discretionary authority of the government.[[24]](#footnote-24) Even in those days discretion as they exercised it now. But what Dicey probably criticized was exercise of discretionary powers not supported by law. He was not wrong in asserting that in Britain the court was not powerless to grant relief, in respect of affairs and disputes in which the government and its servants were concerned, but in France the administrative tribunal alone could grant relief.

1. KRISTY J HOOD, Conflicts of Law within The U.K, Oxford University Press, 2007 [↑](#footnote-ref-1)
2. The Law of Constitution, pg 198; [↑](#footnote-ref-2)
3. M.P JAIN, S.N. JAIN, Principles of Administrative Law, Wadhwa Nagpur, 5th Ed.; [↑](#footnote-ref-3)
4. Maitland, Constitutional History of Britain, 1908, pg .501; [↑](#footnote-ref-4)
5. 1911 AC 179; [↑](#footnote-ref-5)
6. 1915 AC 129; [↑](#footnote-ref-6)
7. HARRY W JONES, The Rule Of Law And Welfare State,58 Col LR 143 1958 [↑](#footnote-ref-7)
8. WINSTON CHURCHILL, A History Of English Speaking Peoples, 1957; [↑](#footnote-ref-8)
9. Ibid pg 97; [↑](#footnote-ref-9)
10. Mohd. Awal Hussain Mullah, The Rule of Law in Bangladesh, The University of Rajshni Press; [↑](#footnote-ref-10)
11. Ibid pg 13; [↑](#footnote-ref-11)
12. Supra Note (7); [↑](#footnote-ref-12)
13. KRISTY J HOOD, Conflicts of Law within the U.K, Oxford University Press, 2007; [↑](#footnote-ref-13)
14. 1765, EWHC KB J98; [↑](#footnote-ref-14)
15. Ibid pg 209; [↑](#footnote-ref-15)
16. CECILL CARR, Conquering English Administrative Law (1941); [↑](#footnote-ref-16)
17. Yusuf Khan vs Manohar Joshi 1999 SCC (Cri) 577; [↑](#footnote-ref-17)
18. Ibid pg 598; [↑](#footnote-ref-18)
19. Ibid; [↑](#footnote-ref-19)
20. Supra Note (2); [↑](#footnote-ref-20)
21. Ibid; [↑](#footnote-ref-21)
22. Ibid; [↑](#footnote-ref-22)
23. GRIFFITH & STREET, Principles of Administrative Law, 2(1973) Pg 110; [↑](#footnote-ref-23)
24. KETTON , The Passing Of Parliament, 56-63 (1954); [↑](#footnote-ref-24)