

DICEY'S THEORY of Rule of Law consists¹ of three main principles:

1. Absence of Arbitrary Power or Supremacy of Law: As per Dicey Rule of law means the absolute supremacy of law and 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the courts of the land. Dicey was of the view that all individuals whether if he is a common man or government authority are bound to obey the law. He is of the view that no man can be punished for any thing else than a breach of law which is already established. And also that the alleged offence is required to be proved before the ordinary courts in accordance with ordinary procedure.

2. Equality before Law: As per Dicey Rule of law, in the second principle, means the equality of law or equal subjection of all classes of people to the ordinary law of the land which is administered by the ordinary law courts. In this sense rule of law conveys that no man is above the law. Even the Government Officials are under a duty to obey the same law and there can be no other special courts for dealing specifically with their matters.

3. Constitution is the result of the ordinary law of the land: As per Dicey , in many countries rights such as right to personal liberty, freedom, arrest etc. are provided by the written Constitution of a Country. But in England these rights are a result of the judicial decisions that have arisen due to the conflict between the parties. The constitution is not the source but the consequence of the rights of the individuals.

1 Ardhendu

But this principle of Dicey is not applicable in India as in India we consider the Constitution to be the basic ground work of laws from which all other laws are derived.

COMPONENTS OF RULE OF LAW: Rule of Law is a dynamic concept but it is somewhat difficult to define. Every person has its own way of defining rule of law some think it to be the supremacy of law; some think it to be the principles like clarity, universality, stability etc. Due to all these reasons certain ingredients of Rule of Law have been identified and all which need to exist for the concept of Rule of Law to survive.

Common ingredients of Rule of Law are:

- a government bound by and ruled by law
- equality before the law
- the establishment of law and order;
- the efficient and predictable application of justice; and
- the protection of human rights.

Today Dicey's theory of rule of law cannot be accepted in its totality. The modern concept of the rule of law is fairly wide and therefore sets up an ideal for any government to achieve. This concept was developed by the International Commission of Jurists. Known as Delhi Declaration, 1959 which was latter on confirmed at logos in 1961. According to this formulation-

“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 creation of certain political, social, economical, educational and cultural conditions which are essential to the full development of his personality”.

According to Davis, there are seven principal meanings of the term “Rule of law: (1) law and order; (2) fixed rules; (3) elimination of discretion; (4) due process of law or fairness; (5) natural law or observance of the principles of natural justice; (6) preference for judges and ordinary courts of law to executive authorities and administrative tribunals; and (7) Judicial review of administrative actions. So finally it may correctly be said that rule of law does not mean and cannot mean any government under any law. It means the rule by a democratic law-a law which is passed in a democratically elected parliament after adequate debate and discussion. Likewise, Sir Ivor Jennings says –

“In proper sense rule of law implies a democratic system, a constitutional government where criticism of the government is not only permissible but also a positive merit and where parties based on competing politics or interests are not only allowed but encouraged. Where this exist the other consequences of rule of law must follow”.