



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Privileged Communication and Defamation

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Received 23 July 2022; Accepted 21 August 2022; Published 23 August 2022

Privileged Communication can be studied under the Evidence Act, 1872. It is referred to as the classified information related to the conversations or the interactions between the parties of a formally recognized connection. The content of these interactions is not to be disclosed and should always remain confidential & even the law cannot force its disclosure. The disclosure of the contents of the privileged conversations comes with legal actions. Some common examples of confidential communications are between the doctor/therapist and the patient or attorney-client or dilettante and the priest and reporters and their sources. There are a few exceptions to this as well where one can rebut the privileged communication. Defamation, on the other hand, is both a civil and criminal wrong. Defamation is the legal term for the act of making false remarks about a person to a third party that harms that person's reputation. It can further be understood with its two subcategories, i.e., Libel and Slander. Libel is the act of defaming someone by written words, visual images, or other visual symbols in a print or electronic medium. Speaking lies is known as slander. Although the concept of defamation originated in English law, it was recognized in prehistoric and medieval societies as well. For instance, insulting chanting was punished by death under Roman law (see capital punishment). The punishment for insults under early English and Germanic law was to have the offender's tongue amputated. The Constitution's Article 19 grants its citizens a number of liberties. However, the reasonable exemption to the freedom of speech and expression guaranteed by Article 19(1) has been imposed by Article 19(2). (a). Among the exceptions include contempt of court, slander, and incitement to commit a crime.

Keywords: *libel, defamation, confidential, privileged communication, disclosure.*

INTRODUCTION

Rule of Law refers to the application of the law, not the application of men, as the title suggests. *Le principal de legality*, or the principle of legality, is the French phrase from which the English phrase "Rule of Law" is derived. According to the rule of law, everyone and every group within a nation, state, or society must abide by the same set of laws. Ancient Greece, notably the thought of Aristotle, is where the Rule of Law first emerged. Aristotle debated whether having the finest laws or the best leader to lead is preferable in his book *Politics*. He discovered the benefits and drawbacks of both governance approaches when researching this subject. However, he concluded that because laws were well-thought-out and could be enforced in the majority of circumstances, they were appropriate for most communities. The best laws should therefore be used to govern people.

The Rule of Law should be adhered to in current times, according to several nations worldwide. As a result, nobody in the US-not even the president is exempt from the rule of law. Federal courts in the United States believe that businesses and other organisations must maintain the Rule of Law. In addition, the courts have ruled that everyone must obey laws that can be found in the public domain and are decided impartially. International human rights norms should also be followed as laws should be applied fairly and consistently. A clear method for settling disputes between residents in whatever size community is provided by the Rule of Law in modern civilizations, which also brings stability. Aristotle asserted that "The rule of law is better than that of any individual," implying that the law must be upheld by all members of society, including the monarch. In a society, everyone (including both private citizens and public officials) must abide by the law, and it must be done in a fair and just manner. This is what is meant by the rule of law. The goal of the rule of law is to safeguard against arbitrary government. It serves as the cornerstone of a free society.

IDEA OF THE RULE OF LAW

Although there is no definition of "Rule of Law" in the Indian Constitution, the Indian judiciary frequently uses this in judgments. As one of the fundamental elements of the

Constitution, the rule of law has been proclaimed by the Supreme Court to remain unaffected by constitutional amendments. Good governance is seen to depend heavily on the rule of law.¹In accordance with the rule of law, it is essential that the people be ruled by acknowledged laws rather than by rulings that are made at the whim of the authorities. For this reason, it is crucial to remember that any regulations set should be inclusive of everyone, universal and abstract, understood and certain.

The concept of the rule of law is credited to Sir Edward Coke, the Chief Justice under King James I. The concept of the rule of law is not new, Greek philosophers like Plato and Aristotle discussed the concept of the rule of law around 350 BC. According to Plato, "where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if a law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state." Law should rule, according to Aristotle, and those in positions of power should be subordinate.²The rule of law doctrine is the cornerstone of administrative law. Aristotle highlighted how the principles of justice, fairness, and inclusivity serve as the foundation for the understanding of the rule of law. Today it covers a complex web of essential principles, including uniformity, transparency, and accountability in administrative law, as well as equality before the law, equal treatment under the law for the government, and judicial independence.

RULE OF LAW IN INDIAN CONCEPT

Although the Indian courts have used this phrase in many of their rulings, In the Indian constitution the term "rule of law" is not defined in any specific way. The adage "The King can do no wrong" is untrue in India, since all public authorities are subject to the same laws and the jurisdiction of ordinary law courts. The Indian Constitution is supreme over the judicial,

¹ Christopher Cobly 'What does the rule of law men' (*Find Law*, 21 May 2019) <<https://www.findlaw.com/legalblogs/law-and-life/what-does-the-rule-of-law-really-mean/>> accessed 06 July 2022

² Shubha Mongia, 'Rule of Law' (*Legal Service India*, 13 May 2019) <<https://www.legalserviceindia.com/legal/article-719-rule-of-law.html>> accessed 06 July 2022

legislative, and executive branches. These three governmental bodies are required to act in a way that upholds the principles specified in the constitution. The Indian constitution contained many clauses that mention the rule of law. For instance, the Indian constitution expresses the desire to promote equality, liberty, and justice. The adage "The King can do no wrong" is untrue in India, since all public authorities are subject to the same laws and the jurisdiction of ordinary law courts. The Indian Constitution is supreme over the judicial system, the legislature, and the executive branch. These three governmental bodies are required to act in a way that upholds the principles specified in the constitution.

Many of the sections in the Indian constitution include references to the rule of law. The Preamble of the Indian Constitution, for instance, expresses the goal of achieving equality, liberty, and justice. Equal protection under the law is guaranteed by Article 14³ as well as equality before the law. According to this, no one shall be denied equality before the law or equal protection under the law by the state. These phrases, which are included in Article 14, directly imply that everyone is subject to the rule of law and that no one is free to act arbitrarily. The fundamental precondition of the Rule of Law is that everyone is treated equally and without bias. In the *Maneka Gandhi v Union of India*⁴ decision, the Supreme Court said unequivocally that Article 14 prevents state acts from being taken arbitrarily and guarantees fairness and equity in treatment.⁵ An essential element of the Indian constitution is the rule of law, which forbids arbitrary behaviour. Arbitrariness denies the rule of law. The addition of protective discrimination as a measure of guaranteeing equality among equals in Articles 15, 16, and 23⁶ enhanced the ideal of equality even more.⁷ Another illustration that supported the concept of the Rule of Law in India is Article 13⁸ of the Indian Constitution. If rules, regulations, bye-laws, and ordinances violate India's constitution, they can be declared invalid under Article 13 of the Indian Constitution. The Rule of Law has been recognised by

³ Constitution of India, 1950, art.14

⁴ *Maneka Gandhi v Union of India* (1978), AIR 597

⁵ Bhavani Kumar, 'Rule of Law in India' (*Academike*, 16 March 2019)

<<https://www.lawctopus.com/academike/rule-of-law-in-india>> accessed 06 July 2022

⁶ Constitution of India, 1950, art.15, art.16, and art.23

⁷ *Ibid*

⁸ Constitution of India, 1950, art.13

the Supreme Court as a fundamental aspect of the Constitution in *Keshavananda Bharti v State of Kerala*⁹. Although the Supreme Court supported the Parliament's right to amend every article of the Constitution, in this case, it also placed restrictions on that right by stating that it cannot be used to change the Constitution's fundamental principles. Universal and unalienable rights are fundamental rights. These fundamental rights can only be protected by a stage that upholds the rule of law. The fundamental right is mentioned in part III of the constitution. These Fundamental Rights are protected by Constitutional Articles 32 and 226¹⁰ and cannot be repealed.

The Indian Constitution is the highest law of the land, and all other laws must be in accordance with it. Any statute that contravenes a constitutional provision, especially one pertaining to fundamental rights, shall be ruled invalid. Liberty is one of the core principles of the Rule of Law, along with justice and equality. Article 21¹¹ of the Constitution guarantees the basic rights to life and freedom. All other laws must be in compliance with the Indian constitution, which is regarded as the supreme law of the land. Any statute that contravenes a constitutional provision, especially one pertaining to fundamental rights, shall be ruled invalid. Along with justice and equality, liberty is one of the Fundamental tenants of the rule of law.

Article 21 of the Constitution guarantees the fundamental rights to life and individual freedom. This Article holds that no individual may be deprived of their life or liberty unless doing so follows a legal process, making the law supreme. Additionally, such a right ensures that no one will be found guilty unless they commit a crime that was against the law at the time. The Indian Constitution is the highest law of the land, and all other laws must be in accordance with it. Any statute that contravenes a constitutional provision, especially one pertaining to fundamental rights, shall be ruled invalid. Liberty is one of the core principles of the Rule of Law, along with justice and equality. Article 21 of the Constitution guarantees the fundamental rights to life and individual freedom. This Article holds that no individual may

⁹ *Keshavananda Bharti v State of Kerala* (1973) Writ Petition (Civil) No. 135/1970

¹⁰ Constitution of India, 1950, art.32 and art.226

¹¹ Constitution of India, 1950, art.21

be deprived of their life or liberty unless doing so follows a legal process, making the law supreme. Additionally, such a right ensures that no one will be found guilty unless they commit a crime that was against the law at the time.

Article 19¹² of the Constitution, which grants a number of individual freedoms, is another provision that upholds the fundamentals of the rule of law because it stipulates that such freedoms may only be restricted under circumstances where doing so would be reasonable and would be permitted under Articles 14, 19, and 21¹³ of the Constitution. These three articles are known as the "golden triangle articles" because they are so important to the Indian constitution. The Supreme Court ruled in *E.P. Royappa v State of Tamil Nadu & Another*¹⁴ that all conditions outlined in Articles 14, 19, and 21 must be met by the state in order for it to justify its action of restricting a fundamental right.

CONCLUSION

Judicial review is a key rule of law derivation. The cornerstone of the rule of law is judicial review. It not only defends constitutional values but also verifies the legitimacy of administrative activities. Every action taken by the state bureaucracy is subject to judicial review, and the courts will decide whether or not it was reasonable. It was obvious that there were some flaws in the concept of the Rule of Law. Various nations have embraced the idea of the rule of law as a guardian of the constitution. It has taken control of administrative powers and understated them with its measures. According to the principles of the rule of law, the government creates laws or situations that do not violate anyone's right to dignity.

¹² Constitution of India, 1950, art.19

¹³ Constitution of India, 1950, art.14, art.19, and art.21

¹⁴ *E.P. Royappa v State of Tamil Nadu & Another* (1974), AIR 555