

# Rule of Law: Indian Scenario

**Purnendu Sekhar Ray**

Assistant Professor, Department in History, Bhargar Mahavidyalaya (CU)

## Abstract

The terminology 'Rule of Law' (hereinafter RoL) is a phrase which is commonly used whenever law is being studied. According to the RoL, it is essential that everyone should be governed by the laws rather than ruler's decision taken arbitrarily. Historically, it was always the part of the society however, it slowly started to seem clear from 1215 England. It didn't have any core definition however, one of the very known definition was by the Dicey gave the 3 principles of RoL, well it still faces some criticism. It can also be identified in ancient period on the name of 'Dharma'. For the easy flow of RoL judiciary plays an important role with various judgements. This article is attempted to study about the RoL in Indian scenario. It focuses on the definition, essence of RoL in ancient India, thin and thick theory of RoL etc. this paper presents the WJP index data of India comparing the five consecutive years. Indian courts have been a face of judicial activism for increased RoL scope via many provisions in constitution. Even after so many efforts the judiciary, the establishment of the RoL is not full proof in India. Hence, the concerned authorities like the judiciary, parliament, the law commission and certain other authorities need to take the certain steps to present smooth implementation of the RoL to ensure its true sense enforcement.

**Keywords:** RoL, Judiciary, Dicey Concept, WJP RoL Index, Thin & Thick theory

## Introduction

**In theory, practice and theory are the same, but in practice they are different.**

**- Larry McVoy<sup>1</sup>**

The passage of Constitution is on November 26, 1949 and the officialization of the Republic on January 26, 1950 brought the India breaks the colonial rule after approx. 200 years. In 1947 India gains independence and for making the final text of constitution, constituent assembly takes another 2 years. The passage of the Indian Constitution and subsequent establishment of Republic is very much devastating event in history of India. The factors in the conclusion: India become democratic, equal rights were given to all Indians, fundamental rights were included into the Indian Constitution, the RoL should prevail in India.

The RoL entails not only some basic needs for how the legal rules must be applied in society, however, it also implies some essence about the character and contents of the legal rules. In specific, laws must be universal in application, clear and open, simple in form, and known by all. Furthermore, legal needs should be in such manner that public can follow them; it should not lead to unreasonable, behavioural or cognitive orders on public to follow. Hence, the law must be stable and contain certain needs that people can

<sup>1</sup> Quotefancy, available at- <https://quotefancy.com/quote/1737564/Larry-McVoy-In-theory-practice-and-theory-are-the-same-but-in-practice-they-are-different> (last visited on 12,Nov.2022)

consult before doing, and legal duty shouldn't be imposed retrospectively. In spite of these general functions, although, there never been a generally adapted or systematic form of the RoL. The aim that legal rules should granted in productive ways of directing and limiting the function of public officials can be explain in various ways; such ways are specifically evident in period of time and over various polities.

Upendra Baxi analysis, "The Indian RoL stands here normatively conceived not just as a sword against State domination and violation and historic civil society norms and practices but also as a shield empowering an encyclopaedic regime of 'progressive' state intervention in the life of civil society."<sup>2</sup>

This article is attempted to study about the RoL. It focuses on the meaning and definition of RoL given by different authors & different- different moulded version. Identifying the root of the principle universally and the traces from the ancient Indian society, dicey concept, comparison of WJP RoL index from year 2017-18 to 2022 by the measurable factor, analysing the case study where judicial activism have seen. The study has shown that the definition of RoL is very much contested one, no universally accepted definition exists. Many authors give different theory of RoL i.e., thin and thick theory. Historically, it was always the part of the society however, it slowly started seem clear from 1215 England. During 18<sup>th</sup> century dicey gave the 3 principles of RoL, well it also has identified that there are some traces of RoL in ancient period on the name of dharma. RoL is not clearly provided in constitution however it has pronounced as important part by court through several judgements.

## Meaning & Definition

"In democracy of 21<sup>st</sup> century the RoL is the umbrella term which related to all aspect of governance, public policy, and law. It is quite connected with equality, human freedoms and justice. Economic prosperity to maintaining the dignity of human is the issue of RoL. As the rule of people is called democracy the RoL can be termed as nomocracy (from the Greek nomos (law) and kratos (power or rule))"<sup>3</sup>

In general, the RoL means that the law making, the relationships between legal standards, and their enforcement are regulated via law, so that not anyone including the highest officials are above the law. A "legal constraint on the ruler" means that the government equally concerned towards laws as the citizens are. The related concept is that the phrase "equality before the law", which says that no "legal person" has any benefits that is not applicable to all, and also no person should have privileges by legal detentions. Furthermore, the applicability and assessment of laws by different officials of government must be non-partial and constant in all equal cases, conducted recklessly without regard to status, class, or relative power among the litigants.

The meaning of RoL is always thoughted to be too clear and understandable to admit it as a statutory definition. It can even see that RoL call on many times by judges in their judgements However, they don't explain about what the phrase means. There are many authors who questioned the value and meaning of RoL The Joseph Raz has commented on the "tendency to use the RoL as shorthand description of

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<sup>2</sup> Upendra Baxi, "Rule of Law in India: theory and practice.", "Asian Discourses of RoL: Theories and Implementation of RoL in Twelve Asian Countries, France and the US, London and New York" (Routledge 2004).

<sup>3</sup> Ram Krishna Timalsena, *The RoL and Its Development: A Bird Eye View*, 1(1) APF Command and Staff College J. 1, 1-5 (2018).

the positive aspects of any given political system.”<sup>4</sup> John Finnis has defined the RoL as “The name commonly given to the state of affairs in which a legal system is in good shape”.<sup>5</sup> Judith Shklar has concluded that the phrase may have becoming meaningless because of general over-use and ideological abuse: “It may well have become just another one of those self-congratulatory rhetorical device that grace the public utterance of Anglo-American politicians. No intellectual effort needs therefore be wasted on this bit of ruling-class chatter.”<sup>6</sup> Jeremy Waldron, commenting on “Bush v. Gore”,<sup>7</sup> in which the “RoL was invoked on both sides, recognised a widespread impression that utterance of those magic words meant little more than ‘Hooray for our side!’”<sup>8</sup> Brian Tamanaha has described the RoL as “exceedingly elusive notion” which rises to the “rampant divergence of understandings and analogous to the notion of the Good” means that “everyone is for it, but have contrasting convictions about what it is.”<sup>9</sup> Lord Bingham identified the core principle of the RoL as being: that “all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts.”<sup>10</sup> They were scarcely not aware about that in 1885 the exposition of RoL first propounded by Dicey had “attracted considerable controversy over the years which had elapsed since then.”<sup>11</sup> So, “it seems unlikely that the meaning of the existing constitutional principle was thought so clear as to obviate the need for definition.”<sup>12</sup>

### Historic Background

Concept of RoL: - “Latin appearance for the RoL is ‘La Legalite’. RoL is rather the same as the U.S expression ‘due process of Law’ which means government on principles of law and not of the men; law must truly rule and that justice should overcome. It means comportment of legal chronicles according to the conventional principles and rules safeguarding distinct and group rights.”<sup>13</sup>

### Origin from England:

RoL concept first arises in 1215 in England however, this has traced its roots more before of this period during the Roman Law. When Kourad II, the Holy Roman Sovereign by his ruling on 18-5-1027 A.D. acknowledged that no lord in his empire shall be underprivileged of his land but by the laws of his Empire and by the decision of his aristocracies. In England Sovereign John Lackland in Magna Carta of 1225

<sup>4</sup> JOSEPH RAZ, THE RULE OF LAW AND ITS VIRTUE in *The Authority of Law: Essays on Law and Morality* 210 (Oxford 1979).

<sup>5</sup> John Finnis, *Natural Law and Natural Rights* 270 (Oxford 1980).

<sup>6</sup> JUDITH N SHKLAR, POLITICAL THEORY AND THE RULE OF LAW in *The rule of law: Ideal or ideology* 1 (Toronto 1987).

<sup>7</sup> *Bush v. Gore*, 531 US 98 (2000).

<sup>8</sup> JEREMY WALDRON, IS THE ROL AN ESSENTIALLY CONTESTED CONCEPT (IN FLORIDA)? in *The RoL and the Separation of Powers* 119 (Aldershot 2005).

<sup>9</sup> Brian Z Tamanaha, *The History and Elements of the rule of law*, SG J. Leg. 232, 232–247 (2012).

<sup>10</sup> Lord Bingham, *The Rule of law*, 66 The Cambridge L. J. 67, 67–85. (2007).

<sup>11</sup> A. V. DICEY & E. C. S WADE, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION*, (10<sup>th</sup> ed. 1985).

<sup>12</sup> *Supra* note 10.

<sup>13</sup> V. D. KULSHRESHTRA & SUMEET MALIK, *LANDMARKS IN INDIAN LEGAL & CONSTITUTIONAL HISTORY* 410, (11<sup>th</sup> ed. 2016).

acknowledged that "No free man shall be taken or detained or diseased or evacuated or in some way devastated, nor will we go upon him nor will we send for him, excluding underneath a lawful judgment of his generations and by the law of the land". In the reign of Henry III this was redeveloped by Coke and in 1354 it was declared that "no man shall be put out of land or tenement, nor taken, nor restrained, nor dispossessed, nor put to death without being brought to answer without due process of law".<sup>14</sup> Thus, the concept arose in the Middle Ages, based on realisation that there is various law related to fundamental that even governments cannot change. This concept connects with natural laws. In 17th century, the England goes through a clash between the king, court and parliament, and the triumph of the court and parliament gave rise to the concept that king is not above the law and he is subjected towards the power of God and law.

In 1885, the notion of the RoL in America was almost similar to that of "due process" as it embraced a wide range of idea of justice, whether legislated or natural, just or unjust, benevolent or cruel. According, to the principles of natural justice here, the word "due" means a fair and reasonable trial. The thought of RoL is so firm, basic and accepted universally that now it can't be undo from society.

Lord Edward was the one who coined the term RoL from French phrase 'la principe de legalite' which means "principle of legality", he held that law is supreme and king should be under the God. In simpler way, he meant that there's an absence of arbitrary power by government.

### Dicey Concept:

Explained by Dicey, in 'Law of the Constitution' it means "that all men are identical before the law, whether they be officials or not (except the Queen), so that the acts of officials in carrying out the behests of the executive Government are cognoscible by the regular Courts and judged by the normal law, as including any special influences, privileges and exemptions attributed to the Crown by the prerogative or statute. So far as offences are concerned. An offender will not be punished except for a breach of the regular law, and in the regular Courts: There is here an absence of the workout of arbitrary power. Further the essential rights of the citizens are rooted in the regular law, and not upon any special 'constitutional guarantees'".<sup>15</sup>

Dicey given the 3 meanings of RoL doctrine: Supremacy of law, Equality before law and prevalence of legal spirit. The concept of RoL thus includes the following three ideas:

- i. Nonappearance of arbitrary power
- ii. Equivalence before Law
- iii. Individual Liberties protection.

From these ideas he given the theory i.e., "No man is punishable except for a distinct breach of law established in the ordinary legal manner before the ordinary court"<sup>16</sup>.

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<sup>14</sup> *Id*, at 410.

<sup>15</sup> John Burke, Osborn's concise law dictionary 297 (6<sup>th</sup> ed 1976).

<sup>16</sup> *Supra* note 11.

### **Rol in Ancient India:**

According to Dharma Shastra in early India what succeeded was the "Rule of Dharma". The idea of Rule of Dharma is broader in its implications than what we recognize by the expression RoL or due process of law. Dharma comprised within its ambit not only what was just and legal but what was moral and natural as unstated in Neeti Shashtras. Before the origin of the state (Rajya) and creation of Kingship, there was an ideal stateless society but on account of important, powerful and rapacious people, wickedness increased. Fall in standard of behaviour gave birth to a system of legal accounts for implementation of rights and penalty of wrongs. And the King who was selected did this task. From this arose Rajya dharma, that is, the law laying down the powers, duties and tasks of the king. Side by side courts with their powers, functions and technique as part of Dharma were established. And this marks the commencement of legal and constitutional history of India.<sup>17</sup>

The word Dharma meant duty, law and righteousness, Rol in India originated from here. In Ancient India dharma has comes around the various topic and the glimpse also has been described in many works such as, shanti parv, Mahabharata, manusmriti, Vasishta, Vishnu etc. In ancient Indian society, no one was above the dharma just like RoL no one is above law, here dharma is law. It sustained the life of individual, society and world. Manusmriti stressed its meticulous observance that, "Dharma defends those who defend it. Those who destroy dharma get destroyed."<sup>18</sup> According to the ram jois the rajya is a term used as in context of dharma, it means dharam rajya and law is RoL and not the religion. "Dharma means Raja Dharma evolved by the Society through ages and it is requisite both on the King, the ruler, and the people, the ruled. That the King was not the fountain of law and was not above law depicts that law was held in great esteem."<sup>19</sup> As Vasishta expressed, rules of natural justice similar to those that exist today were in trend at the time. They were "(a) no conclusion should be taken singly, (b) the business of deciding arguments should be performed- (i) on the dias, (ii) in the open, (iii) without bias, (iv) by giving reasons for findings, and (v) after hearing both the parties."<sup>20</sup>

Even before the term comes in to existence by Edward cork and dicey the RoL has been the part of Indian society on the name of dharma. No one was above dharma and it was a sign of righteousness and truth which means that it was free from arbitrariness.

### **RoL in Indian Constitution:**

The concept of RoL can observed in Indian Constitution from: Firstly, preamble that announces the standards of equality, justice, liberty and fraternity; Secondly, part III about fundamental rights which restricts on law-making power of parliament here, art.14-18 is Right to Equality, Freedom rights from art 19-22, Art 23 & 24 Right against manipulation, right to autonomy of conviction from Art 25-28, Art 29 and 30 Cultural and educational rights, Art 32 & 226 Right to enforce fundamental rights. There's also a restriction on these rights during the emergency; Thirdly, Part IV is Directive Principles of State Policy which guarantees

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<sup>17</sup> M. RAMA JOIS, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA: ANCIENT LEGAL, JUDICIAL AND CONSTITUTIONAL SYSTEM 8-9 (2<sup>nd</sup> ed. 2022).

<sup>18</sup> Manusmriti, VIII-15.

<sup>19</sup> *Supra* note 17.

<sup>20</sup> J.S. VARDACHARI, HINDU JUDICIAL SYSTEM 52 (1946).

protection of equal liberties to an individual considered as a part of the community and state are eligible to pass any measures to strengthening them. Lastly, Judicial review is one of the essential derivatives of RoL which protects the constitutional principles & also play role in check & balance

## Thin And Thick Theory of RoL

There are many explanations for RoL theory. Whereas, there are two author who explained the theory in very fine way Judhit shklar discussed the 2 archytype of RoL i.e., Aristotlean archetype and the Montesquieu archetype. While, Brian Tamanaha divides the theory of RoL into 2 catagories: thin and thick also known as formal and substantive respectively.<sup>21</sup>

“The formal and functional theories are further classified as follows:”<sup>22</sup>

### Tamanaha’s Rol Classifications

Thinner ----->-----> Thicker

#### FORMAL

TYPES: 1. RULE-BY-LAW 2. FORMAL AUTHORITY 3. DEMOCRACY + LEGALITY

law as  
government  
instrument

general  
prospective,  
clear, certain

consent  
determines  
content of law.

#### SUBSTANTIVE VERSIONS:

4. INDIVIDUAL  
RIGHTS

5. RIGHT OF  
DIGNITY  
AND/OR  
JUSTICE

6. SOCIAL  
WELFARE  
AND/OR  
JUSTICE

anatomy,  
privacy,  
contract,  
property

substantive  
welfare,  
equality,  
preservation of  
community

Widely, thin theory of RoL gives instrumental features, which every legal system must consist to work effectively in the law system, it doesn’t matter about which part of society (capitalist or socialist, liberal or theocratic, democratic or non-democratic society) the legal system is.

Feature for the thin/formal theory of RoL are: “all laws must be commonly appropriate; the laws must be strong, stable and forthcoming; the laws must be compulsory and fairly applied; the process of production

<sup>21</sup> *Supra* note 9.

<sup>22</sup> *Ibid*.

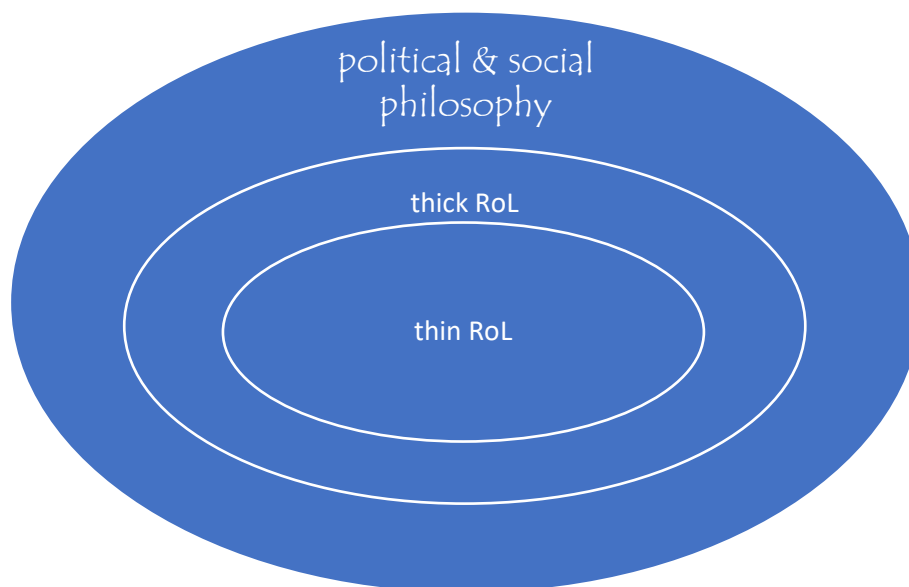


and enforcing laws should be pure; the laws must be judiciously satisfactory to a majority of the population; and the organizations making and imposing laws should also be administered by the laws.”<sup>23</sup>

It consists of some limited normative grounds. It includes: “ensuring stability, and stopping chaos and the Hobbesian war of all in contradiction of all; securing administration in agreement with law by preventive randomness on the part of the administration; enhancing obviousness, which allows people to plan their businesses and hence endorses both individual autonomy and economic expansion; providing a fair instrument for the determination of disputes; and bolstering the legitimacy of the government.”<sup>24</sup>

Substantive/Thick theory of RoL is nothing but the addition to the basic element of thin theory i.e., incorporate fundamentals. such as: “forms of political morality such as specific economic preparations (free-market entrepreneurship, central preparation or other diversities of capitalism); forms of government (democratic, socialist, soft authoritarian); and beginnings of human rights (libertarian, classical liberal, social welfare liberal, other values, etc.).”<sup>25</sup>

The author identified that even when it seems that thin and thick theory is distinct from each other in practice, all the legal system of RoL consists some specific economic, political, cultural or social circumstance. In term of concentric circles one can understand more clearly about the relation between the thin RoL, thick RoL and the broader context.



“The lowest circle contains the core fundamentals of a thin RoL, which is implanted within a thick RoL beginning or context. The thick conception is in turn part of a wider social and political attitude that discourses a range of matters beyond those connecting to the legal system and RoL.”<sup>26</sup>

Thin concept of RoL address “the way in which the law was broadcasted, the clearness of the subsequent norm and the chronological length of the indorsed norm. Formal outsets do not however seek to pass decision upon the actual satisfied of the law itself. They are not troubled whether the law is in any sense

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

a good law or a bad law, providing that the formal precepts of the RoL are met. Functional origins of the RoL seek to go outside this. They accept that the RoL has the formal qualities declared above, but they wish to take the doctrine further.”<sup>27</sup>

Some of the thick rights are said to be derived from, the RoL. “The perception is used as the substance for these rights, which are then used to differentiate amongst good laws, which obey with such rights, and bad laws, which do not.<sup>21</sup> In other words, formal philosophies focused on the proper sources and form of legality, while applicable concepts also include requirements about the content of the law (usually that it must be in consonance with justice or moral principles). While this dissimilarity is educational, it should not be taken as strict—the formal versions have functional insinuations and the functional versions incorporate formal requirements.”<sup>28</sup>

### **WJP of RoL index (2017-18 to 2022)**

“Effective RoL reduces corruption, combats poverty and disease, and protects people from injustices large and small. It is the foundation for communities of justice, opportunity, and peace—underpinning development, accountable government, and respect for fundamental rights. Traditionally, the RoL has been viewed as the domain of lawyers and judges. However, everyday issues of safety, rights, justice, and governance affect us all; everyone is a stakeholder in the RoL.”<sup>29</sup>

“The World Justice Project (WJP) is an independent, multidisciplinary organization working create knowledge, build awareness, and stimulate action to advance the RoL worldwide.”<sup>30</sup> “It was founded by William H. Neukom and William C. Hubbard in 2006 as a presidential initiative of the American Bar Association and with the support of 21 partners.”<sup>31</sup> This index is attempted to find the common grounds and functions that form the RoL. “The adherence to these factors by the legal systems of different countries are then measured by a combination of qualitative and quantitative parameters to arrive at a RoL index which ranks the different countries.”<sup>32</sup> It only find and lists the factors which seems important and essential in all countries, despites the nature of the government or ideology however, it doesn’t differentiate the thick and thin theory of RoL.

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<sup>27</sup> HARISH NARASAPPA, RULE OF LAW: QUEST FOR REASON 47 (Oxford university press, 2018).

<sup>28</sup> *Ibid.*

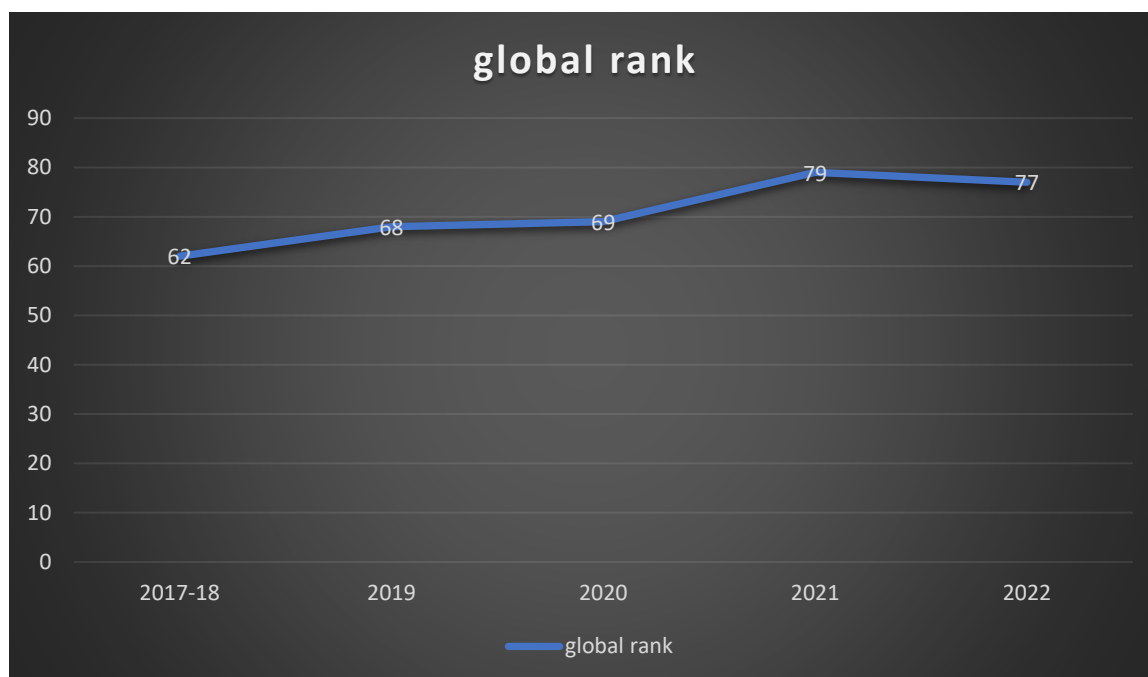
<sup>29</sup> WJP Rule of Law Index, [WJP Rule of Law Index \(worldjusticeproject.org\)](http://worldjusticeproject.org) (last visited on Nov. 27, 2022).

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*





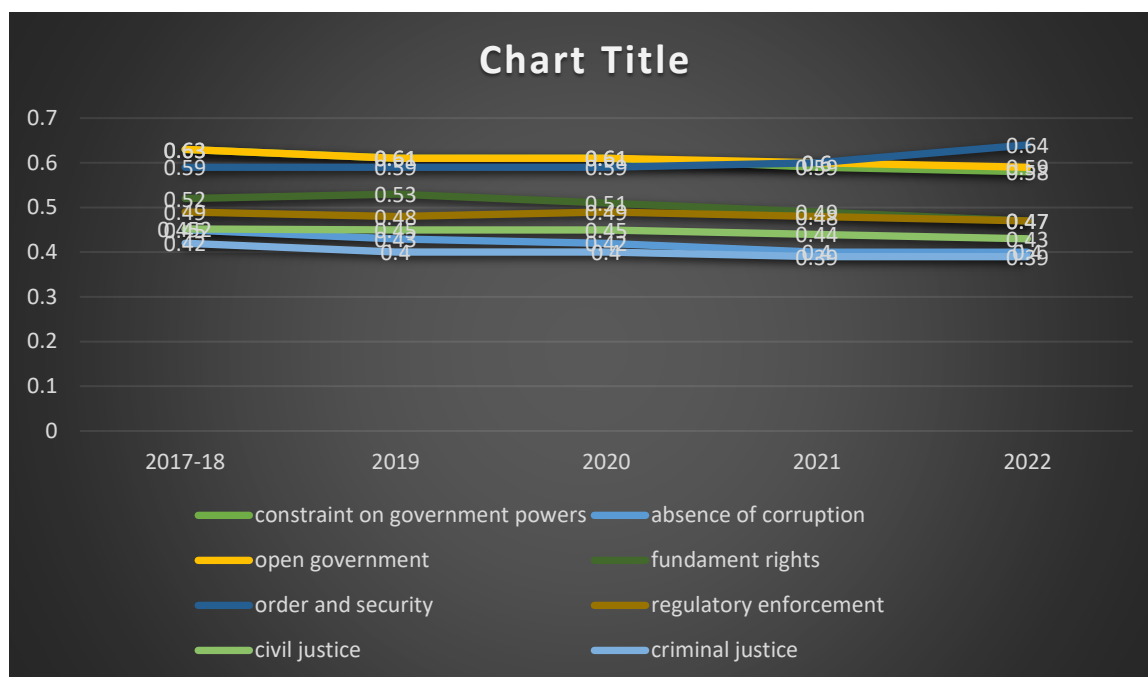
(Figure 1)

The figure 1 illustrate about the India's global rank from year 2017 to 2022 of WJP RoL Index. Overall, the global rank of India in WJP decreased over the period given. The highest rank can be seen in year 2017-18 i.e., 62<sup>nd</sup>. Till the year 2020, rank decreased steadily by 3 to 5 steps however, in 2021 the rank declined by 10 ranks (79<sup>th</sup> rank). In year 2022 it rose significantly and acquire 77<sup>th</sup> rank in WJP RoL index. According to WJP the four primary 'universal' factors as comprising the RoL:

1. The government and its administrators and managers as well as entities and private entities are answerable under the law.
2. The laws are clear, publicised, stable and just, functional evenly and protect important rights, counting the sanctuary of persons and property.
3. The process by which the laws are indorsed, administered and enforced is reachable, fair and well-organized.
4. Justice is transported timely by knowledgeable, ethical, and self-governing governments and neutrals who are of satisfactory number, have adequate capitals, and reflect the makeup of the communities they serve.”<sup>33</sup>

The Index gives organized data into 8 factors that includes the concept of the RoL: Absence of Corruption, Constraints on Government Power, Fundamental Rights, Regulatory Enforcement, Order and Security, Open Government, Criminal Justice, and Civil Justice. There's one more factor of RoL i.e., informal justice which plays big role in countries and the jurisdictions where formal legalities are ineffective or weak. However, it didn't include in the framework of WJP because of the complexities and difficulties to measure exactly the fairness and effectiveness this makes the cross-country assessments challenging.

<sup>33</sup> *Ibid.*



(Figure 2)

Figure 2 is about the factor score of WJP eight factors of RoL of 5 consecutive years i.e., from 2017-18 to 2022.

In the given 5 year all factor score infatuated a lot and initially decreased till 2022 however, only order and security factor score increased till 2022 i.e., 0.64. It can be said that over the years Adherence to the RoL is went weaker although, only order and security factor goes stronger. A simple reading of these factors determines that they are not overly controlled by the limitations of the thin theories and consist certain characteristics that perform as the part of thick theories. India is consecutively ranked at the last half of the list. There's not much growth in RoL establishment in India.

## Theory & Practise

Theoretically, concept of RoL is very much fine and reviting. Here, the theory and concept are way simpler and straight going that it didn't feel there's can be any loopholes however, looking towards the practice of RoL shows the almost failure of RoL in various areas.

“Three primary explanations are recognized for this weakening. First, the indiscriminating use of the phrase RoL, ascending from a lack of clear sympathetic, has made it mean dissimilar things to dissimilar people, or everything to everyone, thereby making it useless unless it is reassembled properly.<sup>21</sup> Second, the advent of the social self-governing state, where the state provides many social and economic welfare measures, has meant the decline or death of the RoL. Dicey rights that the RoL declined severely in the 20th century and points to the late 18<sup>th</sup> and 19th century Western civilisations as the era in which the RoL flourished, attributing this decline mainly to the introduction of various welfare measures by the state. Third, the influence of political and social values, together with the use of purposive reasoning in the determination of disputes by the judiciary has made the law nothing but a contest of political and social choices interesting the important geographies of the RoL.”<sup>34</sup>

<sup>34</sup> *Supra* note 27.

The fundamental principle of the RoL is that every person, even if she/he is a criminal, is eligible for the basic human rights and due process. Theoretically, encounter killings are the total decline of such due process which forms the important part of RoL. In practical world there's many cases where can see a denial of RoL such as, Vikas Dubey encounter, Priyanka reddy rapist encounter etc. all this type of cases shows the darker side of RoL which proves that establishment of proper RoL still needed.

While talking about the darker side of RoL the ADM Jabalpur case<sup>35</sup> is leading case where this principle was rejected. Here, the majority judges couldn't able to take stand and assumed that law supremacy is the supremacy of law of land not the supremacy of RoL which is the constitutional spirit.

As mentioned earlier, RoL is not expressly provided under the Indian Constitution but supreme court in several judgement has been strongly marked It as the essential part of the Constitution some of them are as under:

“**Kesavananda Bharati vs. the State of Kerala** in 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.”<sup>36</sup>

“**Indira Nehru Gandhi vs. Raj Narain**, the court held that RoL is also part of the basic structure and in the list RoL was also added and it means that no amendment can be done in RoL.”<sup>37</sup>

“**The State of Bihar vs. Sonabati Kumari**, it is an integral part of RoL that all the authority within the State including executive government should be bound to obey the rules.”<sup>38</sup>

“In case of **Bachan Singh vs. the State of Punjab**, popularly known as “**Death Penalty Case**” the RoL 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 RoL.”<sup>39</sup>

“In case of **Som Raj vs. State of Haryana**, that absence of arbitrary power is absolute motive of the principle of RoL upon which directly the whole Constitution is dependent”<sup>40</sup>

## Conclusion

Principle of RoL is the heart of the Democracy and constitution which is indispensable to any political and legal system. It follows the flow of equality, non-arbitrariness and fairness. The RoL in India is seen to be one of the failures to perpetually utilise reason for the law making, implementation and interpretation. It was seen able that the idea of the RoL was not fully reliable. In Indian constitution it can be seen that only two rules of dacey is accepted the last rule is not because it totally suspended the administrative function. In India, RoL concept of A.V.Dacey is not said to be followed strictly as there are certain exceptions provided under the constitution of India such as- Existence of wide discretionary power to the executive, Immunities and privileges. RoL has taken up on administrative powers and trivialize them with their measures. In Indian society, the RoL has not achieved its aimed results. Some cases where the upholding of the RoL and bringing

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<sup>35</sup> ADM Jabalpur v. Shivkant Shukla (1976) 2 SCC 521.

<sup>36</sup> Kesavananda Bharati vs. the State of Kerala, AIR 1973 SC 1461.

<sup>37</sup> Indira Nehru Gandhi vs. Raj Narain, AIR 1975 SC 865.

<sup>38</sup> State of Bihar vs. Rani Sonabati Kumari, AIR 1961 SC 221.

<sup>39</sup> Bachan Singh vs. the State of Punjab, AIR 1980 SC 898.

<sup>40</sup> Som Raj vs. State of Haryana, AIR 1990 SC 1176.

justice can be clearly seen in the creation of new avenues for seeking redress for violation of human rights through the filing of PIL lawsuits. In the practical world theory and practise cannot be seen same it always differs in nature what we can identify by the theory and practise of RoL in India.