

THE MEANING OF THE RULE OF LAW IN ENGLAND

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In England the classic statement of the rule of law comes from Dicey in three distinct conceptions. The rule of law in Dicey's view means in the first place that the rule of the country is supreme over all persons, public or private and no one can be penalised for conduct not definitely forbidden by the law, so, it likewise excludes the existence of arbitrary power as under totalitarian regime (supremacy of law). The rule of law secondly involves the idea that all persons, as well as official authorities, under the British Constitution are subject to the same law, *i. e.*, to the ordinary laws and the courts of the country (equality before law). Finally, the rule of law is interpreted to mean that the general rules of the British Constitution in English law are determined by the rights of individuals which are the ultimate source of legal authority vested in the state (general rules of the constitutional law are result of the ordinary law of the land).

There is now some controversy as to whether the rule of law ought to be accepted as an essential principle of the British Constitution. Moreover, Dicey's doctrine has been chiefly criticised with regard to the notion of equality before law and the topic of Administrative Law. One of the chief critics has been Jennings who attacks Dicey's views, for his analysis over-stresses the importance of individual rights and that the constitution depends on the law is unjustified. Goodhard states that if parliament were absolute as asserted by Dicey, than there would be no difference between acts of parliament and orders of a despot. The essence of the rule of law according to Goodhard is that public officers are governed by law which limits their powers. Wade points out that Dicey's work for long threw a chilly shadow over Administrative Law and that he

was mistaken in denouncing the French administration system.

During the recent years the conception of governmental activity has transformed and the administrative system developed in England. In practice, the means of delegated legislation, the statute of the house of commons, party discipline and whip divisions enabled the executive supreme, rather than the parliament. A noticeable tendency to increase the jurisdiction has been observed, where the administrative jurisdiction and tribunals are so varied in composition, method, functions and procedure that a satisfactory formal classification is almost impossible. Wade points out that within the disorderly increasing of discretionary powers and the jurisdiction of the administrative structure, the rule of law requires that the government should be subject to law rather than the law to the government. Undoubtedly, this ideal is to be seen especially in administrative law, where the main question is how executive power can be controlled by law. The judicial control of the executive and the administrative authorities with ultra-vires doctrine, and the principles of abuse of power, reasonableness and natural justice seems to be inefficacious. On the other hand the static doctrine and the abstract term rule of law is deficient regarding to the fact that the law itself cannot rule in the sense that it is the ultimate authority, and as a given status quo which stabilized and perpetuated in a legal system. As Harvey and Bather asks, what then are the safe-guards protecting the British people against oppressive authority and how can the political sovereignty be obtained? If we are looking for automatic devices the answer is simply 'none'. But by interpreting the static understanding of rule of law into a dynamic meaning we can arrive at a certain point.

The rule of law should not be understood as a given status quo which is stabilized and perpetuated in a legal system. Social forces in a phenomenon of social life arise against the status quo demanding the change or transformation of the society. If the doctrine of rule of law is to be understood as perpetuation of the status quo the conflict will start with the courts who act as agents and defenders of the status quo and social forces. Morgenthau points out that, the tension between the status quo of feudalism and the desire for change of middle classes expressed itself in the rivalry between courts and Parliament in nineteenth-century Britain. Change won out and the courts became the defenders of the new status quo.

Thus, in England the meaning of rule of law does not mean as keeping the status quo, or only protecting the British people against oppressive governments. The doctrine involves the political sovereignty in a dynamic behaviour.

In England the public opinion is able to express itself freely. Although British people remain mostly indifferent for violent and sudden changes, arising against the status quo for a peaceful change does not mean enmity or a breach of the rule of law principle. On the contrary the public opinion has the opportunity and the right to express every judgement or belief against or for the status quo. Here, the political and social institutions as well as the political consciousness of the British people plays the most important role.

The elections reflect different ideas. The political parties and social institutions capture the request, desiderata and demands of the ideas and provide channels for the presentation in the British parliament. The parliament as a sponge forms or institutes the voices of the public opinion. Legislative, judicial and executive powers in England are the organs and means for the requests of the public opinion and thus they are controlled by the public opinion and institutions. The ultimate safeguard for fundamental rights and freedom then is to be found in the acceptance of the principle of the rule of law in its dynamic understanding as a guide to conduct any political and social institutions in a position to effect and influence the legislative and executive powers.

The consciousness and the comprehension of the British people is the most important factor to protect their fundamental rights and freedoms against the arbitrary and oppressive governments. The rule of law is an instrument for a balance amongst the government, individual and consensus of the British people, and a principle to canalize the public opinion to the parliament, where within these means the rights and freedoms are protected.

Without political sovereignty and consciousness of the citizen of their fundamental rights and freedoms, neither the rule of law nor any other constitutional principle can guarantee a freedom in the realm against oppressive and arbitrary governments. It is the citizens who are the machinery of the evolution of the society.