

Welcome students, this session is on administrative law and the module is on the Rule of law in England, in the USA and in India.

In this module I would be discussing A.V. Dicey's concept of Rule of Law in England. And to study this, we will have to go through the French administrative law and then we'll go to see the impact of rule of law in England, in the USA and also in India.

At the end of the session you would be able to learn Professor Dicey's rule of law in the political backdrop that existed then and will also be able to connect the conceptual objection to rule of law and factually analyze whether rule of law is in fact opposed to administrative law. Or is it the other way around? And then we would also explore the wider meaning of rule of law in a welfare state.

Rule of law in England - To study this, Firstly, the concept of rule of law. To understand that we have to go back to Droit administratif in France and the impact of rule of law on administrative law. We would analyze whether Dicey was factually correct, and then we would go to see where the rule of law and administrative law are opposed to one another or supportive to each other.

Professor A.V. Dicey in his work, The Law of the Constitution, explained rule of law by saying that it is the absolute supremacy of regular law. It excludes the existence of arbitrariness and even wide discretionary powers on the government is excluded by rule of law. Professor Dicey propounded this doctrine as a conceptual opposition to the French administrative law. The French administrative law is referred to as droit administratif.

In France there were two sets of courts. Whenever there's a dispute between an individual and another individual, the matter would be settled by an ordinary court, When there is a dispute which an individual has against the administration. The matter had to go to a special court called the Administrative Court. The highest administrative court in France at that time was referred to as a Conseil d'Etat. And in case there is any dispute regarding jurisdiction between an ordinary court and the Conseil d'Etat, The separate tribunal was established for that. And that was called Tribunal De conflits.

The three principles of Professor A.V. Dicey must be understood keeping in mind droit administratif as well. First of all, Professor Dicey said rule of law means supremacy of law. Here the idea is that law shall rule and not men. In French droit administratif, lot of discretionary powers were conferred on administrative authorities and they used to make rules. So when Dicey said supremacy of law and law shall rule and not men, Dicey was in fact pointing towards France and telling that in France there is no supremacy of law. There, law was not ruling, but men were ruling Secondly. Rule of law means equality before law. That is, everyone is equal before the ordinary law administered by the ordinary courts. Again, Dicey's objective was to point fingers at droit administratif, wherein two separate sets of courts existed. And Thirdly, Dicey propounded rule of law in the sense of absence of arbitrary power.

And according to him, wherever there is discretion, there is room for arbitrariness. And whenever discretionary authority is vested with a government officer, it means that there is chance for the

government officer to be arbitrary. Rule of law impacted administrative law severely in England because rule of law blocked the progress of administrative law in England.

In England they embraced rule of law and they said what we need in England is rule of law and we don't want administrative law in England because rule of law stands for absence of arbitrariness. On the contrary, according to Dicey, administrative law deals with giving very wide powers to the government which would mean that, Administrative law would be prompting the government to commit arbitrary actions as well. Therefore, in England they thought that rule of law was opposed to administrative law. And in England, what they needed was rule of law and definitely not administrative law. This impacted the growth and progress of administrative law in England.

Now we have to see whether Dicey was factually correct.

Point number one equality before law.

Was it really equality before law in England? Because we all know that the Crown enjoyed a lot of privileges in England. Even a suit could not be filed against the King, until the Crown Proceedings Act was passed in 1947.

Secondly, supremacy of law - Government officials did make rules over there. Without delegated legislation and rulemaking power on the side of the government authority, the system could not run as in any other country in England also. So when supremacy of law was being projected by Professor Dicey, it was conveniently forgotten that rulemaking used to happen in England also by the administrative officers.

Thirdly, absence of arbitrariness. Now arbitrariness according to Dicey would be equivalent to discretionary powers. And in England also many local boards and other authorities enjoyed discretionary powers. So the question is also whether there was administrative law in England at the time? And Dicey said there was no administrative law in England. Dicey was factually incorrect because there were many special tribunals where administrative authorities exercised both rulemaking powers, as also quasi judicial powers, indicating that it is not only the ordinary courts and it is not just the Parliament making laws for the country, but also the administrative authorities making rules. It is not only the courts taking decisions in matters, but also the quasi judicial authorities.

Dicey finally admitted at some point of time that there is administrative law in England. This was following the judgments in *Ridge and Dalrymple* in 1911 and 1915. In these cases, as you can see, the authorities involved are the Local Government Board and the Board of Education. Both authorities were exercising quasi judicial powers, and this was evident from the judgment in these two cases.

Now coming to what is a real impact of administrative law and rule of law, are they opposed to one another as Dicey said or is it in some other way.

We can understand clearly that rule of law stands for absence of arbitrariness and you must recollect that administrative law stands for controlling the exercise of powers by the government. Keeping the government within limits is the very purpose of administrative law. Therefore, administrative law also stands for absence of arbitrariness on the side of government authorities and therefore both rule of law as

also administrative law stand for fairness in administration. So in fact both of them nurture each other rather than opposing one another.

When it comes to the USA, there is supremacy of the constitution denoting that the constitution imposes limitations on the government which is referred to as constitutionalism and judicial supremacy exist. These are indicated that rule of law is embraced into the US system.

As for this, India is concerned it has been held in a number of judgments including *India Nehru Gandhi versus Raj Narayan* that rule of law is part of the basic structure of our Constitution. The underlying principle in Article 14 is towards rule of law and it was also held in *EP. Royappa versus State of Tamil Nadu* that equality principle is something more than mere concept of equality. It would mean absence of arbitrariness and that's what's referred to as a new concept of equality.

But then we should also see what is a modern concept of rule of law. In 1959 in Delhi, there was a meeting of the International Commission of Jurists and they came out with a report which is now known as the Delhi Declaration. In this declaration, it was pointed out that rule of law in a welfare state or the modern concept of rule of law is not just about going by point one, two and three, but much more than that. Rule of law denotes that each and every individual should be able to live in a situation which guarantees the right to dignity of the individual. For this, the living conditions - Political, economic, social, educational, and cultural conditions must be made possible by the government. And to secure all of these independence of judiciary is a must, and so is an effective government.

These other references for you.

Thank you.