



RULE OF LAW IN A FREE SOCIETY (2008) By. N.R. Madhava Menon, Oxford University Press. YMCA Library Building, Jai Singh Road, New Delhi 110001. Pp. 199. Price Rs. 495/-.

RULE OF law is not merely to safeguard and advance civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and human dignity may be realized.¹ Any democratic institution would appreciate the significance of the rule of law though they may not be able to figure out how it is structured in the scheme of governance. The notion of rule of law exists in the minds of citizens and is reflected in their approach towards the state and its institutions. Intermittent set backs and aberrations in observance of the principle of rule of law generally do not affect the public who are collectively committed to organizing themselves under the law and legal institutions. The working of the Indian democracy within the scheme of the Constitution has long been the focus of approbation around the world. While clearly demarcated institutions of democratic governance have been established under the Constitution of India, the rule of law appears not to have taken root in the country. This is the reason why people on certain occasions show an aversion to the government by means of breaking law and order, resorting to unlawful protest and obstructing the functioning of state and its institutions. These instances of dissent are based on issues such as inefficiency, waste, corruption and more recently, terrorism posing ostensibly insoluble harms to the country's democratic set up. Here comes the imperative position of the Supreme Court in protecting and preserving the constitutionally guaranteed rights of citizens while keeping a watch on the activities of other two functionaries of the government.

The endeavour of N.R. Madhava Menon to bring out a book by compiling the deliberations that took place in a forum organized by the Nehru Centre, Mumbai to reassess the rule of law experiment undertaken by the Indian republic is really commendable. What makes the work remarkable is that it is a collection of articles written by eleven distinguished persons including, eminent jurists and reputed scholars analyzing different dimensions of the rule of law in a free society. This unique anthology provides an overview of the concept and relevance of rule of law today, the institutions charged with upholding it, and the threats before it.

1. International Commission of Jurists (1959).



The book is divided into three parts. The first part dealing with the concept and relevance of rule of law, starts with an article by the eminent jurist Soli Sorabjee titled “Rule of Law: Its Ambit and Dimension”. According to the author the issue is essentially of ‘state power and the legitimacy of its exercise’. The article is concise, beautifully describing how in a democratic society rule of law plays a vital role in determining the limits within which the different organs of the state are supposed to function. Similarly P. Chidambaram’s “Citizen and the Rule of Law” traces the evolution of democratic governance and rule of law in India. The author contends, “Absent democracy, there is no Rule of Law”. However, democracy by itself does not assure rule of law because the latter presupposes the existence of representative democracy, liberty and equality in varying degrees. He also gives a vivid picture about the necessity of balancing the powers and interests amidst the vast diverse population in India and the interrelation amongst political parties, electoral system and rule of law. It is certain that this will contribute to the wisdom of ordinary folk in supporting the need for a civil society based on the rule of law. Likewise “Rule of Law –The Sieges Within” by Goolam E. Vahanvati also examines in detail the reasons for limitations on governmental power and the inter-relationship between the three wings of government under the Constitution.² The rule of law being the basic tenet in the administration of powers by these organs, the study expounds the major causes of dilution of the principle of rule of law. It would have definitely added to the same foundation had there been an analysis of the nature and scope of the functions of administrative authorities in detail.

Some of the attempts made to elaborate upon the rule of law in a free society stand out like “The Constitution of India and Rule of Law” by K T Thomas, which eulogizes the role of judiciary as the saviour of the Constitution and the importance of the power of judicial review conferred upon the judiciary as part of the basic structure of the Constitution.³ Given the non-democratic function of the political parties and the undefined privileges of legislative assemblies, the author argues that constitutional amendment may be necessary to preserve the rule of law.

In part II of the book dealing with rule of law and institutions of the state, the editor has also contributed a striking essay on “Constitutional Institutions and the Maintenance of Rule of law”. He analyses the role of

2. The author discusses the intra-institutional factors and inter-institutional tussles affecting the relationship among the three constitutional organs, viz., the executive, legislature and the judiciary.

3. Author cites the example of *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 to state that it was an instance wherein the Supreme court had saved Indian Republic from the executive attempt to grab the power to change or twist or even mutilate the supreme authority of the republic of India, viz. the Constitution of India.



the legislature, executive and the judiciary in relation to the maintenance of rule of law under a democratic, federal polity and a written Constitution. He gives a skeptical appreciation of the accomplishments in the constitutional governance in the light of distortions and setbacks to the principle of rule of law in the event of widespread corruption has also been highlighted. It is worth noticing that the article “Executive Authority and the Rule of Law” by V. K. Saraf has set down the characteristics of a legal system and the role of the institutions within that system in upholding the rule of law. Instances of politician-bureaucrat nexus resulting sometimes in the administrator following the dictates of the politicians by overlooking the rules have also been highlighted with a view to suggest the possible solutions to correct the system with the help of active support of the civil society. The piece on “Rule of Law and Inter-State Relations” by J. S. Verma elucidates the basic features of federalism and the structural safeguards giving shape to the separation of powers and judicial review through an independent judiciary. While examining the centre-state relations in terms of legislation, finance, executive and administrative relations as well as resolution of disputes, the essay gives a critical summary of constitutional provisions on Indian federalism. Former Chief Justice of India, and Chairman of the National Commission on the Review of Working of the Constitution, M.N. Venkatachaliah’s contribution on the topic “Rule of Law and the Judiciary” is a well articulated expansion of the premise that the primary concern of the rule of law is to civilize public power and control its abuse. He has brilliantly analysed the debate on parliamentary supremacy *vis-a-vis* judicial review and how democracy and rule of law are integral to the culture of constitutionalism.

Part III highlighting threats to rule of law opens with a chapter on “Corruption and the Rule of Law” by the former Chief Vigilance Commissioner N. Vittal. He traces the origin and roots of corruption in electoral politics and the present untoward development of criminals getting into the legislatures and as a consequence law-breakers becoming the lawmakers at the cost of public wealth. According to him, it is at the level of implementation of law that the corruption leads to subversion of rule of law. He also points out the need for an effective mechanism to implement rule of law to help the state assume legitimacy. “The essay on terrorism and Rule of Law” by Prakash Singh presents the salient features of international terrorism and gives an overview of the legislative responses through anti-terrorist laws in the US, UK, France and India. It also examines the prospects of ICC⁴ to contain the menace of terrorism. The author also points out the need for India to come up with effective steps to curb this danger as has been done in Europe and America. He also urges the need to strike a balance between the security concerns and the human rights

4. International Criminal Court created by the Rome Statute in 2002.



considerations. Under the topic, “International Law and the Rule of Law,” B.S. Chimni propounds the theory of a new international rule of law evolved in the process of globalisation, codifying the interests of an emerging transnational capitalist class and makes a plea to transform it to a just international rule of law. His recommendations on the strategies⁵ to make the rule of law in the international sphere to serve the cause of justice for the developed and the developing countries would definitely contribute in maintaining peace and harmony at the international level.

It is appreciable that the editor has brought out a book on an issue of current importance particularly in the Indian context. The cover page is beautifully designed and the preface contributes in understanding the theme of the book. It is worth noting that the book is a meticulously edited piece and the effort taken by the editor in this regard deserves special admiration. Another important feature is that the editorial notes given at the beginning of each chapter are well drafted and precise to the point giving a clear idea to the readers as to what is the focus of study in each chapter. It is hoped that the academia, jurist and the legal professionals would certainly find this book a highly useful one.

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5. ILO Report, *A Fair Globalisation: Creating Opportunities for All* (2004).

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