

RULE OF LAW AND THE ROLE OF THE HIGH COURT

—Justice Deepak Gupta*

I have chosen the subject- “Rule of Law and the Role of the High Court.” I have divided my address into two parts. The first part deals with the Rule of Law and the second part will discuss on role of the High Courts.

What is Rule of Law? Aristotle, the great Greek philosopher wrote “law should govern”. What does it mean? It basically means that the citizens of a nation should be governed by law and not in accordance with the ideas and concepts of an individual or a group. Though Dicey is credited for propounding and popularizing the concept of ‘Rule of Law’ one can see the applicability of this principle in many ancient civilizations including India. Even though there may not have been democracy in ancient times, many kings governed in accordance with the principles of ‘Nyaya’ and ‘Dharma’ which also embodied the Rule of Law. However, there was no compulsion on anybody to follow any settled principles. One King may have applied the Rule of Law and may be totally just but his successor may be just the opposite. Therefore, in modern democracies especially those which have a written Constitution, the Rule of law is generally accepted to be one of the foundations of a civilized society and is incorporated in its various dimensions in the constitution.

The concept of the Rule of Law was for the first time codified in the Magna Carta which was signed on June 15, 1215.¹ King John ruled England at that time and there were many barons or noble men under him. King John and his predecessors had ruled using the principle, “*vis-et-voluntas*” which means force and will. This essentially meant that whosoever was so powerful could do as he liked. Many barons and other contemporary

* Former Judge, Supreme Court of India delivered first Apanshu Mohan Lodh Memorial Lecture at National Law University Tripura on February 2025.

1. Magna Carta, charter of English liberties granted by King John on 15 June 1215, under threat of civil war and reissued, with alterations, in 1216, 1217, and 1225. By declaring the sovereign to be subject to the rule of law and documenting the liberties held by “free men”, the Magna Carta provided the foundation for individual rights in Anglo-American jurisprudence. See Magna Carta <<https://www.britannica.com/topic/Magna-Carta>>.

thinkers at that time believed that the Monarch should rule in accordance with custom and the law. He should not act alone but should act with the assistance of a council. This led to a lot of internecine wars between the King and the Barons. The king borrowed money from the King of France and levied huge taxes to pay back the loan. The barons who were like local chieftains were up in arms against him. The Church was also involved in the conflict. When finally facing defeat, King John brokered peace and signed the Magna Carta.

The Magna Carta is an important document but for the purpose of this lecture, I am only quoting Articles 39 and 40 of the Magna Carta which read as follows:

“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way nor will we proceed with force against him or send others to do so, except by the lawful judgments of his equals or by the law of the land”.²

“To no one will we sell, to no one deny or delay rights or Justice”.³

This was the first written exposition of the Rule of Law of the undue Process of Law. Even after the Magna Carta was signed, the Monarchs were reluctant to give up their powers and there was a constant conflict between the Ruler, the Court and the Church. In 1607, King James was king of England and Edward Coke was the Chief Justice. The King believed and acted as if he had divine powers and his word was law.

Edward Coke believed that the King was also subject to law and in 1607 he said.

“the law is the golden wand and measure to try the causes of the subjects; and which protected his majesty in safety and peace”.

The King took great offence to the observation of Justice Coke and in response, Coke said “The king himself ought not to be subject to, but subject to God & the Law because the law makes him king”.

2. art 39.

3. art 40.

This was probably the first judicial intervention to uphold the rule of law. I may add that thereafter, Coke was removed by the King but he kept fighting his battle for the rule of Law which many of us do not do today.

The Rule of Law implies that every citizen is subject to the law. It stands in stark contrast to the idea that the ruler is above the law. Though the phrase 'Rule of Law' is commonly used, the concept is elusive and each person can have his own interpretation of what is the rule of law.

The essential characteristic of the rule of law are:

- (a) The supremacy of law, which means that all persons (individuals and government) are subject to law.
- (b) A concept of justice which emphasizes interpersonal adjudication, law based on standards and the importance of procedures.
- (c) Restrictions on the exercise of discretionary power.
- (d) The doctrine of judicial precedent.
- (e) Legislation should be prospective and not retrospective.
- (f) The exercise by Parliament of the legislative power and restrictions on exercise of legislative power by the executive.
- (g) An underlying moral basis for all law.
- (h) An above all, an independent and fearless Judiciary.

In my view, the concept of the Rule of Law implies that the laws must be framed in a manner that they do not impinge upon the human rights of individuals. All human beings should be treated equally. Once the law has been framed it must apply with equal vigour to each and every person. The essence of the rule of law is that every authority is subject to and governed by law. The opposing idea is a state of affairs in which the will of an individual or a group such as a political party is the governing force in society. Therefore, the very essence of the rule of law is that there is fairness under the rule of law. On the contrary there is arbitrariness when there is no rule of law.

Another important aspect of the Rule of Law is that there must be a provision for Judicial Review of administrative actions and also of legislative functions to ensure that they are not ultra vires the Constitution.

The ruler or the executive is also subject to all the laws including criminal laws. There must be separation between the executive and judicial functions. Judicial decisions must be made according to legal standards and not based on vague considerations of individual Judges. The right of every citizen to a fair trial is also an inherent part of the rule of law. All laws should be published so that each and every member of the public is aware of the contents of the law.

Another important concept of the rule of law is access to Courts and availability of judicial remedies to the citizens. Above all, each and every citizen is treated equally in a society which follows the rule of law.

I have a very simple approach to this concept of Rule of Law. In my view being members of society, we all have to follow certain norms which society lays down and these norms are also laws. When these norms are obeyed, we follow the rule of law and when we violate the laws the rule of law is violated.

As a principle of governance, the Rule of Law, like Democracy and Separation of Powers is an integral part our body politic. Anywhere, anytime, when ordinary people are given the chance to choose, the choice is the same: freedom, not tyranny, democracy, not dictatorship, the Rule of Law and not the whims and fancies of a few. The bedrock of our democracy is the Rule of Law. If there is no Rule of Law there is anarchy, corruption, subjugation and indignation. A truly free and democratic country is one where there is freedom of expression and belief. That can only be there if we are governed by the Rule of Law.

The second part of my discourse deals with the role of the High Courts in upholding the rule of law. The Preamble to our Constitution reads as thus:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

We have promised Justice, Liberty, Equality and Fraternity to our citizens. As far as I know, we are the only country in the world where the right to approach the highest court of the land for redressal on account of violation of fundamental rights is itself a fundamental right. The High Courts have also been vested with very wide powers under Article 226 of the Constitution of India. The founding parents of the Constitution wanted to ensure that the superior courts act as guardians of the rights of the people. The High Courts are there not only to decide the disputes between the parties but also to protect the rights of the people, especially when their rights are invaded by the state itself.

Rule of Law can only be there when we have Judges who can take decisions independent of political influence, media pressure or any other extraneous considerations. A free and fearless judiciary.

What do the people expect from the judiciary? Each of us has taken an oath of allegiance to the Constitution of India, which enshrines the spirit of democracy. The rule of law is the basis of a democratic system and our entire Constitution breathes the spirit of the rule of law. The Rule of Law runs like a golden thread binding our Constitution together. It is the duty of all democratic institutions to ensure that the rule of law is enforced. A greater burden lies on the High Court which is the highest Court of the State to uphold the Rule of Law and this is the most important duty which is cast upon the High Court.

The High Court not only decides disputes between citizens and citizens, the High Court also has to decide disputes between citizens and the State. It is the duty of the High Court to ensure that the rights of the citizens guaranteed, to them under our Constitution are actually enforced. It is the duty of the Judges to hold the scales of Justice even and administer the law without fear or favour, affection or ill will to the best of their knowledge, ability and judgment.

A democratic way of life is incomplete without a High Court. Rights will have no meaning if there are no remedies. The only remedy available

to the citizen in case of infringement of his rights is to approach the High Court. No halfway house can take the place of the High Court.

Our founding parents realizing the importance of the High Courts, conferred very wide powers on them under Articles 226 and 227 of the Constitution of India. Wide as they are, they must be exercised judiciously. The Judges while discharging their functions should act fearlessly, without any fear of criticism. At the same time, the Judges should also not seek popularity in the discharge of their duties.

It is the judiciary which sends blood and oxygen in the form of “Rule of Law” to every extremity of the body politic, constantly balancing individual rights with social interest and establishing at every point the relation between law and life. If Indian judiciary survives, Indian democracy survives. If the judiciary fails, it will be difficult for other democratic institutions to survive.

The teeming masses of this country repose great confidence in the judicial system. This is a great honour to the judiciary of this country. However, we cannot shut our eyes to some aberrations in the judicial system. There has to be zero tolerance towards corruption, and those who blacken the fair name of the judiciary must be dealt with mercilessly.

Having set out the theoretical part, let me now deal with the practical issues. When I came to Tripura as the first Chief Justice, there were nearly 7,600 cases pending. When I left after three years, the pendency was about 2,300. But for me, disposal of the cases is not the most important factor. It is the quality of the judgements and the reasoning given therein which is much more important.

No judge can deliver a good judgement unless the judge is ably assisted by the members of the bar. I received excellent assistance from the members of the Tripura High Court Bar. I delivered what I consider to be some of my best judgements in various fields while at Tripura. Because there was less work and more time, it was a pleasure to hear arguments at length and then decide cases. The tendency to just dispose of cases by single line orders without reasons is in my view, not in line with the Constitution. True it is, that disposal of cases is important but there can be no manner of doubt that this disposal cannot be at the cost of Justice. Litigants are human beings who come to court because they face problems. We should not treat them like mere numbers.

Judges must be humane. They must weigh the scales in such manner that the underprivileged sections of the society are not deprived of Justice. Barely 1% of the cases reach the High Court. An ordinary litigant from Tripura just cannot afford to go to the Supreme Court.

Keeping these above factors in mind, When I took over as Chief Justice of the High Court of Tripura, I felt that a greater responsibility lay upon me and my brother judges to hear the matters patiently and decide the matters with reasoned orders. The number of cases were not high. In fact, it was about 7600 when I joined and it is just about a 1000 now. Therefore, there is sufficient time at hand for the judges to decide the matters effectively. Single line, unreasoned orders have no place in our Jurisprudence. The tendency of sending litigants back to the government by treating their petitions as representations also needs to be avoided. In my more than 46 years in the legal profession, I am yet to see a case where a litigant who was sent back to the state ever gets a relief from it. The litigant has to come back to the court again after spending more money. In my view, if a petitioner is not entitled to relief, his petition should be dismissed. If he is entitled to relief, then full relief shall be given to the litigant as legally due to him regardless of the amounts or consequences involved. There is no point in sending the litigant back to those who have not been fair and just to them.

For more than 99% of the litigants in this beautiful state, the High Court of Tripura is the last available court. I am told that the number of cases in Tripura is only about 1000. This means that my brother judges have much more time to devote to hear and decide the cases. In my view, it is an important role of the High Court to inform the citizens of their legal rights. My experience is that though literacy in Tripura is high, people are not aware of their rights. This leads to lack of litigation. I have been strongly of the view that High Courts should not worry about pendency of cases especially in a state like Tripura where the number of cases is very low. When there are more cases, it reflects the faith, the public has in the High Court.

Lack of litigation only shows that there is lack of faith.

In states like Tripura, where litigation is less and the people are not fully aware of their rights, Public Interest Litigation has a very important role to play. I am not talking of Private interest litigation or Publicity Interest litigation but the Courts must be pro-active to ensure that the people of Tripura get what is due to them. As the Chief Justice, I had encouraged and entertained a large number of genuine PILs. To give a few examples, I had

issued directions that there will be no private tuitions even by teachers of private schools as it is prohibited under the Right to Education Act.

In another case the High Court took notice of a news item and found that a patient was not treated properly in the hospital. We finally found that this is a case of negligence and awarded an amount of INR 5,00,0000/- to the mother.

Another matter related to witnesses being treated with respect and being paid their diet money on the date of their appearance.

The court also took notice of the dismal condition of public toilets, lack of public transport, the condition of the Courts, prisons, roads etc. and pendency of cases and other issues of public interest which improved the life of people.

There was no private interest or publicity interest involved. The High Court did nothing extra ordinary. What was given to the people by way of these judgements was what was their right and what was due to them under the Constitution.

For my wife Punam and me, our 3 years in Tripura were some of the best years of our lives. We did not have to rush back to Shimla on every holiday, because we enjoyed Tripura, its people, its culture and its food to the fullest. For me, it was never a punishment post. In return, we both got complete love, affection and devotion not only from people with whom we were directly in touch but also whose lives I had touched through my Judicial interventions.

Recently, a few months back, I had gone for a walk in Nehru Park in Delhi About 4 young well-built men approached me prudently. I was also equally wary. Then one of them said “Aap Deepak Gupta hain?” I replied yes. Then they said that they were policeman from Tripura who had come to Delhi for some work and were staying in Tripura House. More than 8 years after I left Tripura, they said “Aapko Tripura ke log aaj bhi bahaut yaad karte hain”. For me, this is the greatest reward, that I could ever get as Chief Justice of this state.