



IMPORTANCE OF REESTABLISHING RULE OF LAW

The **rule of law** is a legal maxim according to which no one is immune to the law. It is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power. The meaning of the rule of law can vary between different nations and different legal traditions. Generally, it can be understood as the law which restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. The rule of law is not limited to some institutions of a country, but to the entire working system of government that people appoint to dispense justice or govern them. Generally, the doctrine of the rule of law dictates that government must be conducted according to law and also it respects people as equals and allows to organize lives, plan the future, and resolve disputes in a rational way. Dicey identified three essential elements which were indicative of the rule of law:

- (1). Absence of arbitrary power;
- (2). Equality before the law;
- (3). The constitution is a result of the ordinary law of the land.

American legal scholar, Lon Fuller identified eight elements of law which has been recognized as necessary for a society in order to establish rule of law. According to Lon Fuller,

Laws must exist and those laws should be obeyed by all, including government officials. Laws must be published. Laws must be prospective in nature, so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct was passed. Laws should be written with reasonable clarity to avoid unfair enforcement. Law must avoid contradictions. Law must not command the impossible. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed and Official action should be consistent with the declared rule. Governments are often compelled to prioritize one goal over another to resolve conflicts in a way that reflects society. So these eight elements which has identified by Lon Fuller, are actually difficult to implement in the real, practical world. For an example making too many detailed and specific laws may make the legal system too rigid. Inflexibility could cause the courts of a country to neglect the human element of each particular case. As an answer to this question the societies should prepare to balance the different objectives listed above according to the situation.

The rule of law, however, extends beyond mere regulations and is also shaped by the institutional constraints. One such institutional constraint is the existence of an independent judiciary; another is promoting transparent governance. Without rules and laws, any system becomes arbitrary and anarchic, and laws and government services would be selectively implemented and dispensed.

The executive presidential system as envisaged by the 1978 Constitution in Sri Lanka placed the executive president above the law. It is a question whether the provision of article 35 as well as many provisions of the Constitution is an attempt to displace the framework of the rule of law and to give power to act without following the basic norms of the rule of law. If we draw the attention to the civil service in Sri Lanka, by taking over the functions of the Civil Service Commission by the cabinet, came the problem of the politicization of the civil service. The independence of civil service was seriously damaged by direct cabinet interference into the workings of the civil service.



Independence of the judiciary stems from the notion of the separation of powers, whereby the executive, legislature and the judiciary form three separate branches of government, which can constitute a system of checks and balances aimed at preventing abuses of power. This separation and consequent independence is key to the judiciary's effective functioning and upholding of the rule of law and human rights. Without the rule of law, there can be no realization of human rights. The role of the judiciary in any society must be to protect human rights by way of due process and effective remedies. This role cannot be fulfilled unless the judicial mechanism is functioning independently, with its decisions based solely on the basis of legal principles and impartial reasoning. The Constitution of 1978 shifted power very much in favour of the executive president, to the detriment of the parliament and the judiciary. Though the constitution theoretically accepts the separation of powers, in actual fact the type of power arrangement it contains relegates the judiciary, including the Supreme Court, to a lesser position. Judicial impartiality is another aspect of judicial independence; while judicial independence requires that the judiciary be able to function effectively without undue interference from political or other agencies, judicial impartiality requires the judiciary to base their decisions on facts and in accordance with the law. Judges should thereby not have any preconceptions regarding issues they are deciding upon, nor should they favour either of the parties to the dispute. This includes the arbitrary use of contempt of court proceedings. The judiciary's inability to respond to widespread criticism is demoralizing both the profession and the country's citizens. As a result, people are increasingly seeking to resolve their grievances from outside the law, and so crime is on the increase.

Without this independence, it is impossible for the judiciary in any country to function as it is meant to. If it does not function in this manner, there is no hope for the rule of law to flourish, and instead violence and impunity will be rife. Furthermore, if citizens do not have faith in their judicial institutions, they themselves will seek other ways of obtaining justice, which may in turn lead to more violence. It is for this reason that it is as crucial for the judiciary to be seen as being independent as it is for it to actually be so. During the last few years there had been widespread violations of human rights in Sri Lanka too, most of which had been related to the involuntary removals of persons and the disappearance of persons taken into custody and abducted by others. This is true in respect of other violations such as torture, abductions, unethical religious conversions, extra judicial killings, deaths in custody and the total number of persons who have died as a result of the ethnic conflict, long delays in criminal trials, violence against women, discrimination, child abuses, child labour and also sexual offences. While disappearances have now been minimized, other violations such as torture and extra judicial killings continue with impunity. The political climate in the country coupled with the absence of adequate resources and skills, stand in the way of violations being effectively dealt with and the escalation of crime being checked.

Rule of Law and Development

The rule of law promotes economic development. Multilateral institutions such as the World Bank and many policymakers throughout the world believe this idea. Modern economic development often comes with the introduction of a market economy, or an economy based on private enterprise that does not rely on government-planned production. The market economy brings buyers and sellers to the market for complex transactions. Due to globalization, people in the market economy can come from many different parts of the world. Law is important to the market economy, because it is the common basis on which parties can make agreements, it provides parties with confidence that disputes can be resolved efficiently and fairly. For this reason, the predictability and order that the rule of law promotes in substantive laws is viewed as the stabilizing force behind much economic development and also the rule of law also serves as an important assurance of social rights and government accountability. So as a developing country it is needed to identify the importance of establishing rule of law in Sri Lanka.



Reestablishment of the rule of law

Reestablishment of the rule of law is needed when the rule of law has been lost, and collapsed. It would thus be useful to ask to which extent of this loss is. Any establishment of the rule of law must mean the acceptance of the supremacy of law above all other considerations. There cannot be selective acceptance of some laws and rejection of others, and nor can there be arbitrary decisions regarding who should select the law to be followed.

Equality before the law is a primary component of societies governed by the rule of law. Without this supremacy and equality, law becomes irrelevant. If demoralization and disappointment has created 'a wish' to allow law enforcement agencies to ignore or violate the law, then the real arena for the fight of the reestablishment of the rule of law is public opinion itself. All efforts to reestablish the rule of law must convince the public that the critical examination of the problem is serious enough to allow for an effective remedy. Yet another exercise of mere commentary on certain aspects or obstacles regarding the collapse of the rule of law will do little to address the problem or change public opinion.

We can see nowadays many developing countries have prioritized their policy agendas to promote the rule of law. An important rule-of-law reform goal is to build the legal rules. For an example, many of the investment laws which were passed in developing countries were to liberalize the existing investment regime in the developing country by offering clear and broad legal protection for all types of investments.

The efficiency of the courts is another important component in rule-of-law reforms as the existence of a judiciary is a fundamental aspect of the rule of law. Specially for developing countries that are further along in the reform process, more structural reforms that strengthen court capacity, independence, and transparency are needed. To increase independence of the courts, the government can provide them with funding that will allow them to make their own financial and administrative decisions. Furthermore, for countries that have already established these structural reforms, to encourage the adoption of the rule of law, court performance should be evaluated on a periodic basis. Independence, accountability, efficiency, access, affordability, alternative dispute resolution mechanisms, and the quality of professionals are some of the characteristics that may provide an accurate measurement of the success of the system. By giving funds on the establishment of the rule of law, the World Bank and the IMF also hope to reduce corruption, which undermines economic development by scaring away investors.

The state of the rule of law had deteriorated significantly in Sri Lanka. Of particular concern is the widespread perception that the judiciary and the other responsible authorities and institutions are not independent. This has led to a rapid decline of public confidence in judicial and administration processes. Discretion of the executive, over judicial appointments makes the judiciary susceptible to executive interference and jeopardizes its independence. The current procedures for the disciplining and removal of judges are in urgent need of review. In particular, the Judicial Services Commission does not have adequate safeguards to ensure the transparency and independence of its decision-making process and is not able to guarantee a fair hearing for judges and judicial officers under investigation.

With regard to the media, it appears that Sinhala, Tamil and English language journalists have little room within the Sri Lankan media for dissenting viewpoints on sensitive and important issues. To benefit from an independent, pluralistic media unwanted interferences and controls should be stopped.



If we draw the attention to the Australian legal system it is based on a fundamental belief in the rule of law, justice and the independence of the judiciary. All people are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials. Principles such as procedural fairness, judicial precedent and the separation of powers are fundamental to Australia's legal system. All people Australians and non-Australians alike are treated equally before the law, the Australian legal system is based on the concept of the rule of law.

The Sri Lankan Government should take meaningful steps to re-establish the rule of law for all Sri Lankans. Particular measures would include,

- 1) Re-establishment of the Constitutional Council in accordance with the 17th Amendment to the Constitution.
- 2) Ensuring critical independent oversight of the proper functioning of Sri Lanka's key institutions including the Judicial Services Commission
- 3) Ensuring the independence of the Election Commission,
- 4) Depoliticizing the judiciary (independent oversight of appointments of superior court judges with nominations being made or approved by the Constitutional Council , an accountable and a transparent system for the appointment, transfer, dismissal or retirement of judges at all levels , create an independent judicial environment)
- 5) ending the routine practice of torture and human rights violations.
- 6) ensure the security of people in the country, protection of human rights , protect the legal profession from outside pressure.

Conclusion

The Rule of law is a viable and dynamic concept and like many other concepts, it has no any exact definition. The rule of law is more than just a set of rules, it is also a matter of policymaking and institutional development.

The concept of rule of law does not merely mean formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

Despite its inconsistencies and weaknesses, Rule of Law still embodies so much of the results of that disposition as we can collectively impose. Without it one cannot live; only with it one can ensure the future which by right is ours. When the rule of law fails, hopes of the people fails. To prevent the degeneration of a society or a country, what is required is the 'Rule of Law'. So it is essential to take meaningful steps to re-establish the rule of law for all Sri Lankans.

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