

Rule of Law: Principles and Practices

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Outlines

- Concept development
- Meaning and implications
- Pre-condition of the rule of law
- Approaches o rule of law
- Dichotomy
- conclusion

Concept Development

- Rule (law) of Law(rule) - Rule of conduct- (predate recorded history)
- The rule of law is better than that of any individual –Aristotle- concept evolved distinct from rule of man
- King, should be under God- Justice Coke
- Government of law, not of man- legalism
- Modern time – rule based government- through out the world

Impetus

- Societal utilities/advancing social welfare- **law and development discourse**
- vagueness or ambiguity

Meaning and Implications

- rule by law *sine qua non*
- Rule of law vs. Rule by law
- under the rule by law the law serves as a tool for the government
- under the rule of law the law is prominent, can check against abuse of power,
- a system of governance based on non-arbitrary rules as opposed to one based on the power and whim of an absolute ruler; **Government based on the principles of law**

- According to Prof. Dicey, rules of law contains three principles or it has three meanings as stated below:
 - Supremacy of law, lack of arbitrariness- the power of the government is limited
 - Equality before Law – No special treatment for different people
 - Predominance of Legal Spirit i.e. constitution as a general principle of law

- Hence, rule of law vis-à-vis Rule by good law
- On the flip side, bad law exists if;
 - Ruler wishes are unconstrained
 - Does not treat like cases alike
 - It is unpredictable

- [Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies” \(2004](#)
- a principle of governance in which all persons, institutions and entities, public and private, including the State itself, **are accountable to laws**
- that are **publicly promulgated, *equally enforced* and independently adjudicated,**
- and which are consistent with **international human rights norms and standards.**
- It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

Pre-condition of the rule of law

- Existence of law –written and issued with due process
- Generality (universality and equal application),
- Addressing need- regulate populace behaviour
- publicity(everyone informed),
- prospectivity,
- clarity (easy to follow)
- logical consistency, feasibility,
- Acceptance of law- do not reflect personal values or belief
- Stability but set of procedure to change

An alternative to the **formal approach to the rule of law is one that looks to substantive outcomes such as "justice" or "fairness."** Sense of justice
!!! Impartiality (More law less justice ??)

- Constitutionalism
- Due process of law
- Separation of power
- Independence of judiciary
- Judicial review

Approaches on Rule of Law

Three major approaches in defining Rule of Law

- **A Formal Approach** : i.e. L Fuller requirement of good law
- **A Functional Approach**: How well the law and legal system constraint government discretion and how well make it decision predictable
- **A Substantive Approach** : less concerned with formal rules , concerned with substantive outcomes of legal system. i.e. justice and fairness-
building of rule of law state not rule of state law

Dichotomy on Rule of Law

- formal concept *law in book* (lawyers law)

vs.

operational part *law in action* (Iyer)

- Flexibility is expected in law as to adapt the situation, i.e. *reasonableness*

vs.

officials infidelity to law and legal system and arbitrariness which makes unattainable rule of law ideal

- No community fully achieves the ideal of the rule of law. Content of the ideal seem to make it *necessarily* unattainable

- Ambiguity cause failure to adequately theorize the concept and vice versa
- Empowering state

vs.

protection of rights of people (Democracy dilemma)

Conclusion

- Rule of law is rooted in the thoughtful integration of seminal thought
- Rule of law is like a recipe, which does not guarantee a good meal but set procedures to make a legitimate, if not good, law prepare.
- **Political framework which creates a culture that creates respect for and feel confident about legal system**

Many Thanks !