

UNIT 1

THE RULE OF LAW

Rule of law is a legal maxim that suggests that governmental decisions be made by applying known principles. The phrase can be traced back to 17th century and was popularized in the 19th century by British jurist A. V. Dicey. The concept was familiar to ancient philosophers such as Aristotle, who wrote "Law should govern". Rule of law implies that every citizen is subject to the law. It stands in contrast to the idea that the ruler is above the law, for example by divine right.

Despite wide use by politicians, judges and academics, the rule of law has been described as "an exceedingly elusive notion" giving rise to a "rampant divergence of understandings ... everyone is for it but have contrasting convictions about what it is."

At least two principal conceptions of the rule of law can be identified: a formalist or "thin" and a substantive or "thick" definition of the rule of law. Formalist definitions of the rule of law do not make a judgment about the "justness" of law itself, but define specific procedural attributes that a legal framework must have in order to be in compliance with the rule of law. Substantive conceptions of the rule of law go beyond this and include certain substantive rights that are said to be based on, or derived from, the rule of law.

Different people have different interpretations about exactly what "rule of law" means. According to political theorist Judith N. Shklar, "the phrase 'the Rule of Law' has become meaningless thanks to ideological abuse and general over-use", but nevertheless this phrase has in the past had specific and important meanings. Among

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modern legal theorists, most views on this subject fall into three general categories: the formal (or "thin") approach, the substantive (or "thick") approach, and the functional approach.

The "formal" interpretation is more widespread than the "substantive" interpretation. Formalists hold that the law must be prospective, well-known, and have characteristics of generality, equality, and certainty. Other than that, the formal view contains no requirements as to the content of the law. This formal approach allows laws that protect democracy and individual rights, but recognizes the existence of "rule of law" in countries that do not necessarily have such laws protecting democracy or individual rights.

The substantive interpretation holds that the rule of law intrinsically protects some or all individual rights.

The functional interpretation of the term "rule of law", consistent with the traditional English meaning, contrasts the "rule of law" with the "rule of man." According to the functional view, a society in which government officers have a great deal of discretion has a low degree of "rule of law", whereas a society in which government officers have little discretion has a high degree of "rule of law". The rule of law is thus somewhat at odds with flexibility, even when flexibility may be preferable.

The ancient concept of rule *of* law can be distinguished from rule *by* law, according to political science professor Li Shuguang: "The difference....is that, under the rule of law, the law is preminent and can serve as a check against the abuse of power. Under rule by law, the law is a mere tool for a government, that suppresses in a legalistic fashion." (Adapted from *Wikipedia*)

I. LANGUAGE FOCUS

1. VOCABULARY

to be subject to: to be in a position or in circumstances that place one under the power or authority of another or others;

elusive: (adj.) tending to elude capture, perception, comprehension, or memory; difficult to define or describe;

rampant: (adj.) occurring without restraint and frequently, widely, or menacingly;

to be in compliance with: to act according to certain accepted standards;

prospective: (adj.) that which is applicable to the future; it is used in opposition to retrospective;

to suppress: (vb. tr.) to put down by force or authority;

2. SYNONYMS

maxim (n.)	= principle
to imply (vb.)	= to indicate
legalistic (adj.)	= strict
to govern (vb.)	= to rule
justness (n.)	= fairness
formal (adj.)	= conventional
framework (n.)	= system

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intrinsically (adv.) = essentially
officer (n.) = office holder
functional (adj.) = practical

3. ANTONYMS

to protect ≠ to threaten
individual ≠ collective
compliance ≠ defiance
widespread ≠ confined
equality ≠ inequality
certainty ≠ uncertainty
to allow ≠ to deny
discretion ≠ constraint
preeminent ≠ unimportant

4. MATCH THE FOLLOWING WORDS WITH THEIR RIGHT DEFINITIONS:

1. jurist	a. the doctrine that monarchs derive their right to rule directly from God and are accountable only to God;
2. legalistic	b. improper use of authority by someone who has that authority because he or she holds a public office;
3. rights	c. that form of government in which the sovereign power is exercised by the people in a body;
4. contract	d. possessing the same rights, and being liable to the same duties;

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5. discretion	e. a judge or legal scholar; an individual who is versed or skilled in law;
6. abuse of power	f. according to the letter of the law, by the strict letter of the law, chapter and verse of, conforming precisely to the law;
7. democracy	g. the power of a judge, public official or a private party (under authority given by contract, trust or will) to make decisions on various matters based on his/her opinion within general legal guidelines;
8. procedural	h. the collection of entitlements which a person may have and which are protected by the government and the courts, or under an agreement (contract);
9. divine right	i. relating to court practice and procedure as opposed to the principles of law;
10. equality	j. an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration

1.; 2.; 3.; 4.; 5.; 6.; 7.; 8.; 9.; 10.;

5. FIND THE ENGLISH EQUIVALENTS FOR THE FOLLOWING WORDS AND EXPRESSIONS:

a se deosebi de teoretician în conformitate
a se încadra într-o categorie

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conținut, cuprins	răspândit
discernământ	conducător
prospective	cețățean cerință
	concordant cu
abordare	a susține, a afirma vag

II. FILL IN THE BLANKS WITH THE APPROPRIATE WORDS:

1. Under the rule of law, the law is _____ and can serve as a check against the abuse of power. Under rule by law, the law is a mere _____ for a government, that suppresses in a legalistic fashion."
2. The substantive interpretation holds that the rule of law _____ protects some or all individual rights.
3. Rule of law implies that every citizen is _____ to the law.
4. According to political _____ Judith N. Shklar, "the phrase 'the Rule of Law' has become meaningless.
5. A society in which government officers have a great deal of _____ has a low degree of "rule of law".
6. The _____ interpretation is more widespread than the _____ interpretation.
7. Rule of law is a legal _____ that suggests that governmental decisions be made by applying known principles.

(subject, maxim, formal, intrinsically, discretion, preeminent, tool, theorist, substantive)

III. COMPREHENSION SESSION

1. ANSWER THE FOLLOWING QUESTIONS:

1. What does the rule of law ensure?
2. Why is the rule of law difficult to define?
3. What are the main interpretations of the rule of law and how do they differ from one another?
4. Why would the phrase “the rule of law” be considered meaningless?
5. What are the characteristics that the rule of law must have, according to the formalist view?
6. Why is the rule of law at odds with flexibility?
7. In your own words, can you describe the difference between “rule *of* law” and “rule *by* law”?

2. TELL WHETHER THE FOLLOWING STATEMENTS ARE TRUE OR FALSE:

1. In order to achieve the rule of law, formalists believe that the law must be prospective and well-known.
2. According to rule of law, no one is above the law, except for the ruler.
3. The formalist conception of the rule of law is specific in regards to the justness of law.
4. There are three main interpretations of the rule of law: the formal, the substantive and the functional.
5. In the substantive interpretation, the rule of law includes protection of the individual’s rights.
6. A high degree of rule of law entails a great deal of discretion on the part of government officers.

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3. MULTIPLE CHOICE

Choose the right statement of the four possibilities below:

According to the formalist definition of the rule of law:

- a. the law must always be fair.
- b. the law must be retrospective.