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RULE OF LAW: Dr.Mononita Kundu Das, Professor of Law, LBSNAA

1. The rule of law is the legal principle that law should govern a nation, as opposed to being governed by arbitrary decisions of individual government officials.
2. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behavior, including behavior of government officials.
3. The phrase can be traced back to 16th century England, and it 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".
4. Rule of law implies that every citizen is subject to the law, including law makers themselves.
5. In this sense, it stands in contrast to an autocracy, collective leadership, dictatorship, or oligarchy where the rulers are held above the law.
6. Lack of the rule of law can be found in both democracies and dictatorships, for example because of neglect or ignorance of the law, and the rule of law is more apt to decay if a government has insufficient corrective mechanisms for restoring it.
7. Government based upon the rule of law is called nomocracy-(A political system under the sovereignty of rational laws and civic rights).
8. Rule of Law depicts-Transparency, Predictability, Stability, Enforceability/Accountability and Procedure Established by Law.
9. **What is the Rule of Law?**
 - a. The government and its officials and agents as well as individuals and private entities are accountable under the law
 - b. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
 - c. The process by which the laws are enacted , administered, and enforced is accessible, fair, and efficient.
 - d. Justice is delivered timely by competent , ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the community they serve.
 - e. These are four universal principles of Rule of Law
10. **Factors which measure how rule of law is experienced by ordinary people**
Constraints on Government Powers, Absence of Corruption, Open Government , Fundamental Rights, Order and Security, Regulatory Enforcement , Civil Justice, Criminal Justice, Informal Justice

11. Open Government represents- Transparency, Participation and Collaboration.

12. Fundamental Rights

- É Equal treatment and absence of discrimination
- É Right to life and security of persons is effectively guaranteed
- É Freedom of belief and religion is effectively guaranteed
- É Freedom of assembly and association is effectively guaranteed

13. Regulatory Enforcement

- a. Government regulations are effectively enforced
- b. Government regulations are applied and enforced without improper influence
- c. Administrative proceedings are conducted without unreasonable delay
- d. Procedure established by law is respected in administrative proceedings
- e. The Government does not expropriate without adequate compensation

14. The term 'rule of law' is not used in the Indian Constitution anywhere.

- “ Though used frequently by the Indian courts in their judgments.
- “ The Supreme Court has declared the rule of law to be one of the 'basic features' of the Constitution (*Indira Nehru Gandhi v Raj Narain, AIR 1975 SC 2295; SP Gupta v Union of India, AIR 1982 SC 149*), so this principle cannot be taken away even by a constitutional amendment.
- “ The Indian conception of the rule of law is both formal and substantive. It is also seen as an integral part of good governance.
- “ Three broad aspects of the rule of law.

First, the rule of law as a check on governmental powers-by requiring that laws are clear, predictable, and prospective.

Second, the rule of law as an embodiment of protecting people's human rights.

Third, judicial review of legislative and executive actions by an independent judiciary.

15. On a brief overview of the constitutional provisions and judicial decisions, it can be safely concluded that the Indian Constitution enshrines the rule of law as a fundamental governance principle, though the term is not mentioned expressly in the text of the Constitution. There are several challenges that pose threat to building a society based on robust rule of law framework. Continued socio-economic inequalities (despite affirmative active provisions and programmes), large population, pervasive corruption (including in judiciary), judicial delays, law and order problems in view of regionalism are matters of serious concern. Despite these challenges, there is no doubt about the constitutional mandate or government's commitment to establishing a rule of law society.