



RULE OF LAW

AND

CRIMINAL JUSTICE
SYSTEM
OF INDIA



EVOLUTION OF RULE OF LAW



- The rule of Law is the product of centuries of struggle of the people for the recognition of their inherent right. The concept of Rule of Law is of old origin and is an ancient idea.
- It was discussed by ancient Greek philosophers such as **Plato and Aristotle** around 350 BC.
- Plato wrote "where the law is subject to some other authority and has none of its own, the collapse of the state in my view, is not far off; but the law is the master of the government and the government is its slave, then the situation is full of promise and the men enjoy all the blessings of the gods shower on a state".
This Photo by Unknown Author is licensed under [CC BY-SA](#)
- Likewise, Aristotle also endorsed the concept of Rule of Law by writing that "*the law should be the final sovereign*".
- The phrase of 'Rule of Law' is derived from the French phrase '*la principe de legalité*' (the principle of legality) which refers to the government based on principles of law and not of men.
- Rule of law is one of the basic principle of English constitutions and the doctrine is accepted in the constitution of U.S.A and India as well. The entire basis of administration Laws in the doctrine of the rule of law.

MEANING OF RULE OF LAW

- ❖ It does not have a particular term or definition to define it but it does not mean that we can't define it.
- ❖ The Rule of Law is a principle under which all persons, institutions, and entities are accountable to laws that are : publicly promulgated : equally enforced : independently adjudicated.
- ❖ In Political Science it is the *legal principle that law govern a nation* as opposed to being governed by arbitrary decision of individual government officials.



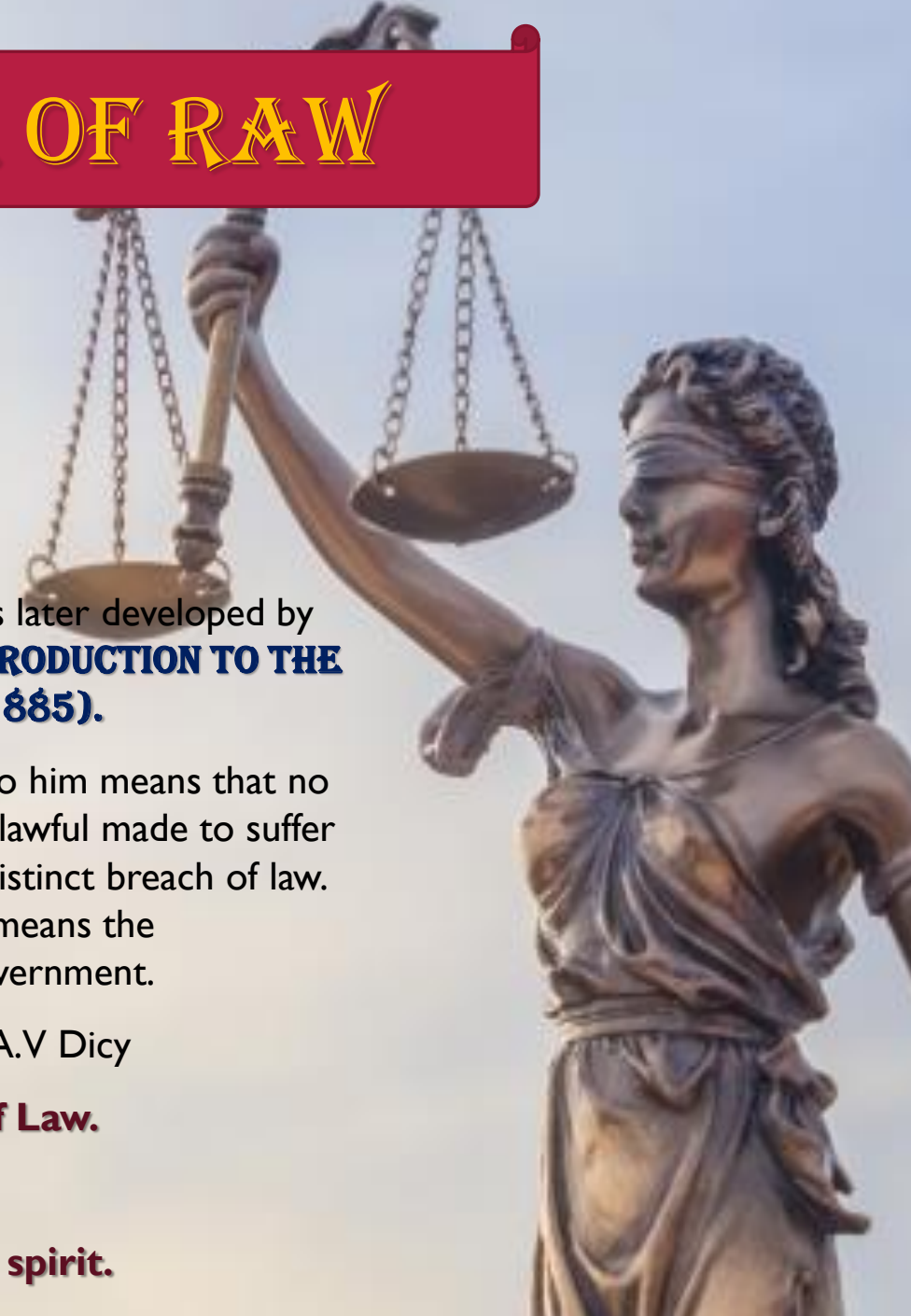
COMPONENTS OF RULE OF LAW

• EDWARD COKE

- The Rule of Law was first originated by sir Edward Coke, the chief justice in England at the time of king James I.
- Coke was the first to criticise the maxims of divine concept.
- He strongly believe that king should also be under rule of law

• A.V DICY

- The rule of law doctrine was later developed by A.V DICY, in his book, a **INTRODUCTION TO THE LAW OF CONSTITUTION (1885)**.
- the Rule of Law according to him means that no man is punishable or can be lawful made to suffer in body of good aspect for distinct breach of law. The term Rule of Law thus, means the paramountcy of law over government.
- The principles proposed by A.V Dicy
 - **1. Absolute supremacy of Law.**
 - **2. Equality before Law.**
 - **3. Predominance of legal spirit.**



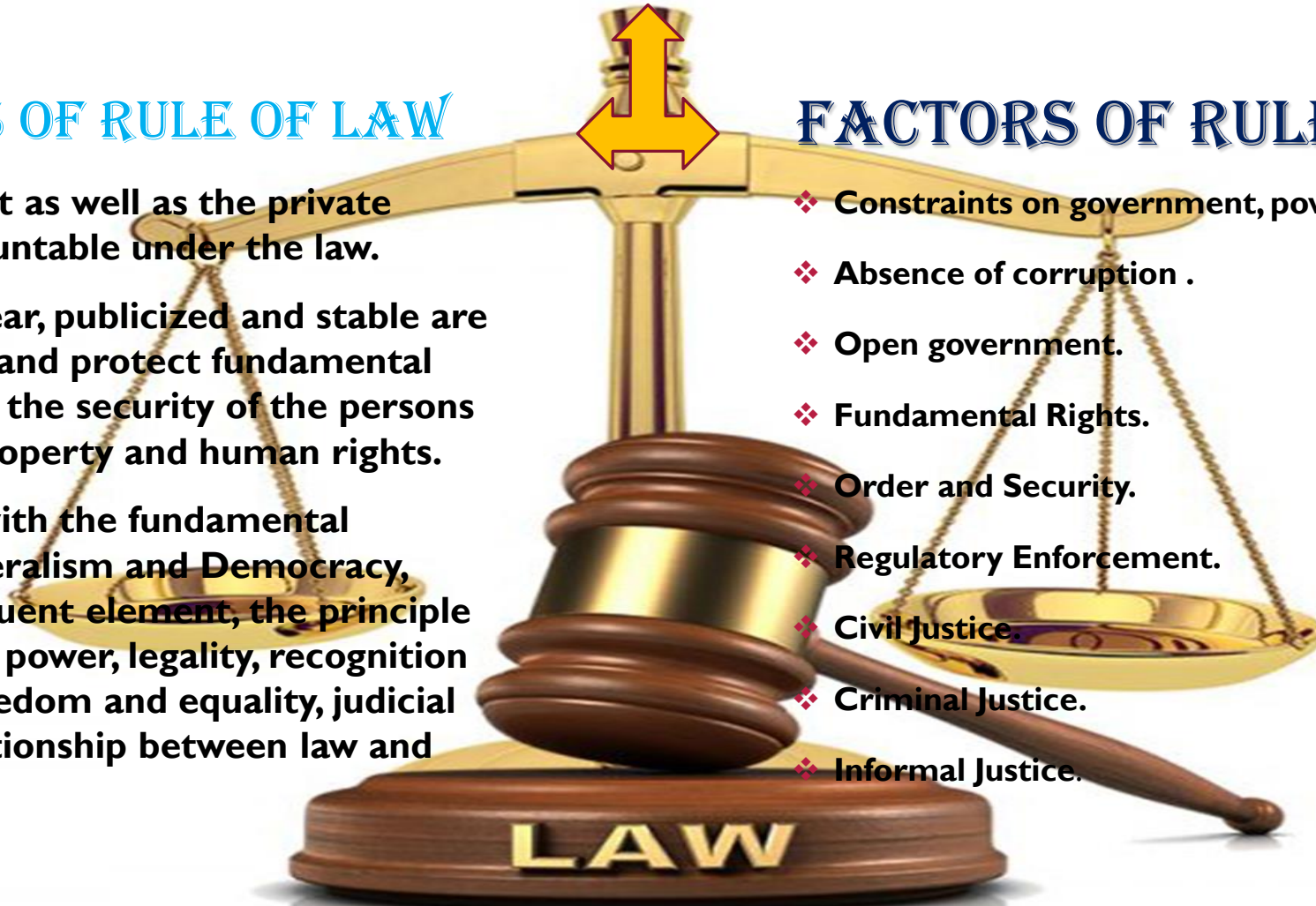
PRINCIPLES AND FACTORS OF RULE OF LAW

PRINCIPLES OF RULE OF LAW

- The government as well as the private sector are accountable under the law.
- The laws are clear, publicized and stable are applied evenly ; and protect fundamental rights, including the security of the persons and contrast, property and human rights.
- It is identified with the fundamental principle of Liberalism and Democracy, citing as constituent element, the principle of separation of power, legality, recognition of individual freedom and equality, judicial review and relationship between law and morality.

FACTORS OF RULE OF LAW

- ❖ Constraints on government, power.
- ❖ Absence of corruption .
- ❖ Open government.
- ❖ Fundamental Rights.
- ❖ Order and Security.
- ❖ Regulatory Enforcement.
- ❖ Civil Justice.
- ❖ Criminal Justice.
- ❖ Informal Justice.



CASES RELATED TO RULE OF LAW AND ARTICLES IN THE INDIAN CONSTITUTION

- IN the case of **MANEKA GANDHI V. UNION OF INDIA**. The honorable supreme court established the Rule of Law that no person can be deprived of his life and personal liberty except procedure established by law under **Article – 21** of the Indian constitution.
- In the case of **ADM JABALPUR V. SHIVAKANT SHUKALA** is one of the most important case when it comes to rule of law. In this case the quotient before the court was ‘weather there was any rule of law in India apart from Article – 21’. This was in the context of supervision of enforcement of **Article – 14, 21 and 22** during the proclamation of an emergency. The answer of the majority of bench was in negative for the quotient of law. However **Justice H.R Khanna** dissented from the majority opinion and observed that ‘Even in absence of Article -21, the state has got no power to deprive a person from his life and liberty without the authority of law.
- In the landmark case of **KESHAVANADA BHARTI V. STATE OF KERALA, AIR 1973** the Supreme Court says that Rule of law is the part of basic structure doctrine of the Indian constitution as comes under part 3 of the constitution, means they are justiciable in nature.
- Important Articles – **13(1) (2), A- 19, A-20, A-21, A-22(1), A-38, A-39(A).**

WHAT IF RULE OF LAW WAS NOT THERE ?

1. It is an important part of democracy so, if it is not there democracy will not survive.
2. Then there will be 'Rule of Forest' (Jungle Raj) which means the one who is powerful will dominate and exploit the weak and enjoy all the benefits.
3. This leads to the feeling of hate and dissatisfaction in the weaker sections of the society which is not good in long run for any society development.
4. The society could not operate if there would be no rules and regulations regarding environment , safety, development etc. disputes could not be resolved and crimes would be committed on a large scale and there would be no punishment or rehabilitation.

LIMITATIONS OF RULE OF LAW

- **Delegated Legislation:** The grant of the discretionary powers to the government officials to enable them to perform their duties effectively can be used against the citizens.
- **Diplomatic immunity:** Ambassadors and diplomats cannot be sued and prosecuted in countries when they are serving and they are treated as above the law of host country, rather than they can be repatriated.
- **Existence of Administrative Tribunals or special courts:** These courts and tribunals use special procedures that are not observed in civil courts. This makes justice obtained not to be in consonance with the rule of law.
- **Special Privileges :** There are some certain individuals that are immune against the law of the country. Such people include the President and the Vice President, Governors, members of the Parliament (National Assembly) and some other high ranking govt. officials, Judges are immune from law while adjudicating in the court. This is to make them to carry out their duty without fear or favour.
- **State of Emergency and War :** During such condition govt. have discretionary powers, which it can use in a wrong manner to deprive citizens from their fundamental rights, example Indira Gandhi govt. during the period of 1975 emergency

REFORMS NEEDED WITHIN THE CONTEXT OF RULE OF LAW



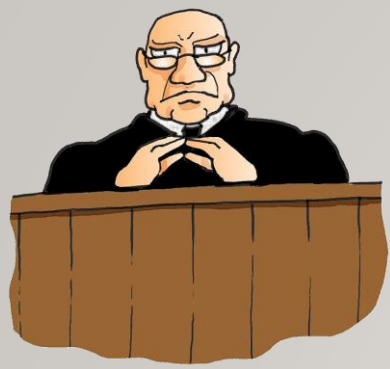
- ❖ 1. Review/Repeal of obsolete law : 1. Identify laws which are no longer needed or relevant and can be immediately repealed.
- ❖ 2. Identify laws which are not in harmony with the existing climate of economic liberalization and need change and also identify laws which needed amendments.
- ❖ Law and Poverty : 1. Examine the laws which affect the poor and carry out post-audit for socio-economic legislations.
- ❖ 2. Take all such measures as may be necessary to harness law and legal process in the service of poor.
- ❖ Keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure : 1. Simplification of procedure to reduce and estimate technicalities and devices for delay so that it operates not as an end in itself but as a means of achieving justice.
- ❖ 2. Improvement of standards of all concerned with the administration of justice.
- ❖ Examine the *existing laws in the light of DPSP policy* and to suggest ways of improvement to attain objectives set out in the preamble of the constitution.





C R I M I N A L J U S T I C E

SYSTEM IN INDIA



WHAT IS CRIMINAL JUSTICE AND WHY IT IS IMPORTANT

- Criminal Justice is the delivery of justice to those who have committed crimes. It refers to the structure, functioning and decision processes of agencies that deal with crime prevention and investigation prosecution and punishment and correction, it is a loose confederation of agencies that perform different and independent funded and manage authorities. It deals with many things to maintain Rule of Law as **criminal justice is one of the major component of Rule of Law.**
- Criminal Justice evaluates the criminal justice system. An effective criminal justice system is a key aspect of the Rule of Law as it constitutes the conventional mechanism to redress grievances and bring action against individual for offences against society.
- Effective Criminal Justice are capable of investigating and adjudicating criminal offences successfully and in a timely manner.
- Though a system that is impartial and non discriminatory and is free of corruption and improper govt. influence, all while insuring that the rights of both victims and the accused are effectively protected. The delivery of effective criminal justice system also necessitates correctional system that effectively reduce the criminal behaviour.
- Accordingly an assessment of the delivery of criminal justice should take into consideration the entire system including the ;
- **The Police**
- **The lawyers**
- **The Prosecutors**
- **The Judges**
- **Prison officers**



CODES OF CRIMINAL JUSTICE SYSTEM

- IPC (Indian Penal Code) was enacted in 1860, is the official criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law.
- Indian Evidence Act came into effect in 1872,
- CrPC (Code of Criminal Procedure) is a new and progressive code with fair trial came in 1973.
- The ministry, in consultation with the Bureau of Police Research and Development (BPR&D), is considering amendments to the IPC, CrPC and Evidence Act, as the current provisions of CrPC give the state victim and the accused the right to appeal against law courts judgements before high court, in order to avoid any miscarriage of Justice.
- However, this clause led to inordinate delays in certain cases like **2012 'Nirbhaya gang-rape and Murder'** where the convict are using legal remedies to seek relief from capital punishment.

DENOMINATORS WHICH CONFORMS CRIMINAL JUSTICE SYSTEM OF INDIA TO THE DOCTRINE OF RULE OF LAW

- 1 Incarceration
- 2 Capital punishment
- 3 Prohibition on double Jeopardy
- 4 Fairness in trial and Sentencing
- 5 Speedy Trial (Expeditious Trial)
- 6 Fair and Just Procedure
- 7 Independent, Impartial and Competent Judges
- 8 Adversary Trial system
- 9 Presumption of Innocence
- 10 Venue of Trial and Public Hearing
- 11 Knowledge of the Accusation
- 12 Trial in the Presence of Accused
- 13 Evidence to be taken in the presence of the Accused
- 14 Cross-Examination Prosecution Witnesses
- 15 Aid of Councils (A – 22 CLAUSE I)
- 16 Police
- 17 Compensation to Victims of Crime
- 18 Prison Condition and Rehabilitation of offender

Objectives

1. To prevent the occurrence of crime.
2. to punish the transgressors & the criminals.
3. To maintain law and order and deter the offenders from committing any criminal act in future.



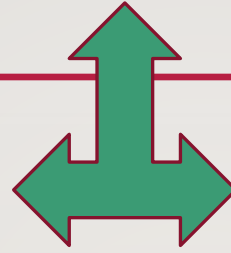
DIFFERENCE BETWEEN INDIA AND OTHER SYSTEMS

INDIA

India has followed British system of Rule of Law but this does not mean that we are not aware of this concept, in India this can be traced to **UPANISHAD**. Even after following their concept, still taking in consideration the vast diversity of our country, we differ in many terms from them like;

Under A-14 of the Indian Constitution India grants its citizens both '**Equality before law**' and '**Equal Protection of law**'.

We have mix of both Rigid and Flexible system and in India Supremacy of law can not be alter by any one as we follow the principle of '**LEX - REX MEANS LAW IS THE KING OF KINGS.**



US, UK, FRANCE AND OTHERS

- America follow **Doctrine of Separation of Power** among the three organs of the govt. (Very Rigid and Strict), America gives their citizens '**Equal Protection Of Law**'.

England has 'Rule of Law' which is followed by most of the countries, which is most crucial component of their legal system (Dicy's rule of law) but as they didn't had any written constitution the system is very flexible, easy to amend and they provide their citizens '**Equality Before Law**'.

In countries like England and U.K etc. cases can be found of altering Rule of Law.

A -14 OF THE INDIAN CONSTITUTION GRANTS 'EQUALITY BEFORE LAW & EQUAL PROTECTION OF LAW'

EQUALITY BEFORE LAW MEANS THERE WILL BE NO DISCRIMINATION ON THE BASIS OF STATUS OR POSITION.

- For example if two person committed the same crime (murder) both are adults and done it with an intention and knows the consequences of their action then the punishment given will be same (death sentence under section 302 IPC), there should not be any discrimination on the basis of caste, religion, gender etc.



EQUAL PROTECTION OF LAW IS NOT TALKING ABOUT EQUAL APPLICATION OF LAW BUT EQUAL EFFECT OF LAW, WHICH ,MEANS REASONABLE DISCRIMINATION IS ALLOWED UNDER THIS PRINCIPLE.

- In this case suppose there are two people one is an adult who committed murder intentionally and a child who accidently did the same crime (murder), he does not have intention behind that and even didn't know the consequences so, what do you think in this case should we give the same punishment to both (death sentence under section 302 of IPC)
- No, this is considered unjust because the effects are not same so we will discriminate here on reasonable rounds, that is what this principle states.



RULE OF LAW AND CRIMINAL JUSTICE SYSTEM OF INDIA

CRITICISM

- The criminal justice system of India is a several decades old system, based on the system **established by the British in India during Raj**.
- The system more or less remains the same, without any major changes. IPS, R.K Raghavan in his World Factbook of Criminal Justice system says :“In sum, the criminal justice system in India is a legacy of British system”.
- If we talk about today's reality in India it increasingly **reflect the idea of 'Power' rather than 'Justice'**.
- 'Extra – Judicial Killings' or 'fake Encounters' which is the ugly reality of our system and can be seen in the recent cases of encounters done by Police.
- In **recent rape and murder case of a young veterinarian in Hyderabad** has revived the debate on the Right to Kill, (fake encounters) by police as they encountered the 4 accused, earlier these encounters used to be criticised by the public and media. But in new and resurgent India we have started celebrating this instant and brutal form of Justice.
- And there are many other issues as well **like corruption , non accountability, non transparency, hierarchy in the bureaucracy, insensitive nature of the authorities.**

REFORMS

- Methods should be taken to control corruption in system.
- Accountability of Police and Bureaucracy should be monitored effectively.
- **Amendments in the IPS & CrPC** should be made to meet the needs of the modern society.
- Public and Media should not support such encounters by the police as they are giving the police discriminatory powers indirectly which would affect the society in long run, **Rule of Law must not alter by any authority.**
- Huge undertrial and biasness on **the basis of caste, religion and gender in criminal justice system should not have any place.**

CONCLUSION

On this note I would like to conclude that IN INDIA RULE OF LAW is the Supreme means no one is above the law. We follow the policy of '**LAX-RAX**' means "**LAW IS THE KING OF KINGS**".

Here is a quote given by *Abraham Lincoln* which must be considered by every govt. of the world "if you once forfeit the confidence of your fellow citizens, you can never regain their respect and esteem, it is true that you can fool the people some of the times and some of the people all the times but you can not fool all the people all the time".

THANK YOU

PRIYA