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# The Rule Of Law: A Conceptual Necessity For The Sustainability Of Democracy And Good Governance In Nigeria

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**ABSTRACT**

The concept of the Rule of Law is a doctrine of great antiquity and quite dynamic in nature, and is not capable of any exact definition. However, it does not mean that there is no agreement on the basic values which the concept represents. The Rule of Law constitutes a number of principles of a formal and procedural character, addressing the pattern in which a state is governed, it describes the supreme authority of the law over governmental actions and ordinary citizens' behaviour and suggests a situation where both the government and the governed are bound by the law, also submits to its supremacy and comply with its procedure(s). The Rule of law prohibits discriminatory, tyrannical and arbitrary rule, while it also promotes freedom, fraternity, equality, accountability, justice, equity and fairness in governance, and is certain, regular and predictable. In these articles, it is intended to portray the rule of law as a sine qua none for the sustainability of democracy and good governance.

**Keywords:** Rule of Law, Democracy, Good Governance, Sustainability, Nigeria

## 1.0 INTRODUCTION

The Rule of Law is a term that is often used but difficult to give a specific definition. It is frequently said to mean the government of law and by law, and not men, nor the Sovereign who is subject to the law under the rule of law. The implication here is that the law is supreme under the rule of law, while both the government and the governed alike are subject to the law which is supreme under the concept of the rule of law.

What does "a government of law, not men imply"? Aren't laws made by men and women in their roles as legislators? Don't men and women enforce the law as law enforcement officers or interpret the law as judges? And don't all of us choose to follow, or not to follow, the law as we go about our daily lives? How does the rule of law exist independently from the people who make it, interpret it, and live it?

The simple answer to these questions is that the rule of law cannot ever be entirely separate from the people who make up our government and our society. The rule of law is more of a governmental, political cum administrative ideology that we strive to achieve, but sometimes fail to live up to, due to power corruption and quest for totalitarianism, despotism and dictatorship in governance.

The earlier interpretations of the rule of law were derived from the theories formulated by legal philosophers, each formulation stressing the subordination of the ruler to rules of law either enacted or accepted and upheld by the community and its law. In as early as BC 350, the famous Greek philosopher Aristotle invented the term when he proclaimed that **"the rule of law is preferable to the rule of man".**[2] This first use of the term "rule of law" generated great interest among scholars, but each new couching of the expression only became a starting point for subsequent postulations. Bracton the English philosopher in the 13th century maintained that either human or divine law governs man, according to him:

> *the King has a superior, namely, God. Also the law by which he was made King…… The King must not be under man but under God and under the law,*

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[2] Aristotle, *The Politics* (c. 350 BC), Stephen Everson (trans.), (Cambridge University Press: Cambridge, 1988),
---------, *The Rhetoric* (c. 350 BC), Rhys Roberts (trans.), (Cosimo Classics Publishers: New York 2010)

> *because the law makes the King ...for there is no rex where will rules rather than lex.*[3]

The rule of law is obviously one of the ideals of our political morality and it refers to the supremacy or sovereignty of the law over both the government and the citizens alike. It also encompasses the equality of all citizens, whether in government or amongst the governed, the fundamental rights of all citizens of any given state and above all, the independency of the judicature. The Rule of Law consists of a number of principles of a formal and procedural character, addressing the way in which a community is governed. The formal principles concern the generality, clarity, publicity, stability and prospect of the norms that govern a society. The procedural principles concern the processes, by which these norms are administered, and the institutions – like courts and an independent judiciary that their administration requires. On some accounts, the Rule of Law also comprises certain substantive ideals like a presumption of innocence for ordinary citizens, human dignity, general liberty, and respect for private property rights amongst several others. But these are much more controversial, as we shall indeed see that there is a great deal of controversy about what the Rule of Law requires.

The Rule of Law is a concept in an array of ideologies that dominates liberal political morality: others include democracy, human rights, social justice, and economic freedom. The plurality of these values seems to indicate that there are multiple ways in which social and political systems can be evaluated, and these do not necessarily fit tidily together. Some legal philosophers insist, as a matter of analytic clarity, that the Rule of Law in particular must be distinguished from democracy, human rights, and social justice. They confine the focus of the Rule of Law to formal and procedural aspects of governmental institutions, without regard to the content of the policies they implement. But the point is controversial. As we shall see, some substantive accounts have been developed, which amount in effect to the integration of the Rule of Law with some of these other ideals as they are so tightly fused, and cannot be severed from each other in a practical sense. Indeed, the rule of law is the super-structure and life blood of every commendable democracy and as such, a sine qua non for the sustainability of democracy and good governance in any given state.

## 2.0 Historical Evolution of the Rule of Law

The concept of the rule of law has evolved over centuries and is inextricably linked to historical developments that have led to the gradual emergence of liberal democracies and their underlying modes of governance and legal systems. The role that law plays in society was the subject of philosophy and philosophizing in Greek and Roman antiquity. In one of his dialogues, Plato is credited with positing the idea that the government should be subservient to the law by stating thus:

> *We must not entrust the government in your state to any one because he is rich, or because he possesses any other advantage, such as strength, or stature, or again birth: but he who is most obedient to the laws of the state, he shall win the palm…. Nor the laws right which are passed for the good of particular classes and not for the good of the whole state. States which have such laws are not politics but parties, and their notions of justice are simply unmeaning ….. And when I call the rulers servants or ministers of the law, I give them this name not for the sake of novelty, but because I certainly believe that upon such service or ministry depends the well - or ill-being of the state. For that state in which the law is subject and has no authority, I perceive to be on the highway to ruin: but I see that the state in which the law is above the rulers, and the rulers are the inferiors of the law, has salvation, and every blessing which the Gods can confer.*[4]

Obviously, the rule of law is a doctrine of great antiquity across the global political tradition, and it would be difficult to understand and evaluate its modern concept without x-raying the historical heritage of the concept. The heritage of postulations about the rule of law is as hereunder concisely discussed:

### 2.1 Aristotle

The work of Aristotle on the rule of law is quite influential. Aristotle formulated the question of whether it was better to be ruled by the best man or the best laws, he approached that question

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[3] <https://en.m.wikipedia.org>wikiHenry de Bracton – Wikipedia> accessed 12th April, 2021

[4] Plato, *The Laws* (circa 360 B.C.) Plato's Laws Classics, Oxford Bibliographies.com; <https://www.britannica.com/topic/laws> accessed 12th April, 2021

realistically, nothing that it depended not only on the type of law one was considering but also on the type of regime that enacted and administered the law in question. Aristotle also maintains that law as such had certain advantages as a mode of governance; laws are laid down in general terms, well in advance of the particular cases to which they may be applied. According to Aristotle:

*Now, absolute monarchy, or the arbitrary rule of sovereign over all citizens, in a city which consists of equals, is thought by some to be quite contrary to nature;….That is why it is thought to be just that among equals everyone be ruled as well as rule, and therefore that all should have their turn…..And the rule of law, it is argued, is preferable to that of any individual. On the same principle, even if it be better for certain individuals to govern, they should be made only guardians and ministers of the law….Therefore he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire.*[5]

Aristotle contrasted the rule of law with the rule of man, to explain why the government should be subject to the law in order to prevent arbitrariness in governance and abhor the abuse of power and its corruption, he further opined thus:

*Laws, when good, should be supreme; and that the magistrate or magistrates should regulate those matters only on which the laws are unable to speak with precision owing to the difficulty of any general principle embracing all particulars. But what are good laws has not yet been clearly explained; the old difficulty remains. The goodness or badness, justice or injustice, of laws varies of necessity with the constitutions of states. This however, is clear, that the laws must be adapted to the constitutions. But if so, true forms of government will of necessity have just laws, and perverted forms of government will have unjust laws.*[6]

Both Aristotle and Plato agreed that laws must be made with the intendment of meeting the common good of the citizenry, as the duo holds the view of "common good" as the prime essence of the law in every given state, and their legal philosophy greatly influenced the then Roman jurisprudence and legal system. A remarkable reference to the above assertion is reflected in Cicero's popular opinion, wherein he affirmed that the law must be for the common good or in the overall interest of the whole community, thereby subjecting the law to the ideals of justice by stating as follows:

*For men prove by some such arguments as the following, that every law which deserves the name of a law, ought to be morally good and laudable. It is clear, say they, the laws were originally made for the security of the people, for the preservation of states, for the peace and happiness of society; and they who first framed enactments of that kind, persuaded the people that they would write and publish such laws only as should conduce to the general morality and happiness, if they would receive and obey them. And then such regulations, being thus settled and sanctioned, they justly entitled Laws. From which we may reasonably conclude, that those who made unjustifiable and pernicious enactments for the people, acted in a manner contrary to their own promises and professions, and established anything rather than laws, properly so called, since it is evident that the very signification of the word "law" comprehends the whole essence and energy of justice and equity.*[7]

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[5] Aristotle, *The Politics* (circa 360 B.C) Oxford: Clarendon Press, 1905 <https://serch.library.wisc.edu> accessed 12th April, 2021

[6] *Ibid*

[7] Cicero, *De Legibus* (circa 54-51 B.C) <https://en.m.wikipedia.org > accessed 12th April, 2021

## 2.2 John Locke

John Locke the English Philosopher who is known as the "father of liberalism", the ultimate aim of the rule of law is the defence of citizens' rights and particularly the preservation of property rights of all the members of society as much as possible. He emphasized the importance of governance through "established standing laws, promulgated and known to the People". He contrasted this with rule by "Extemporary Arbitrary Decrees". Today, the term "arbitrary" can mean many different things. Sometimes it means "oppressive". But when Locke distinguished the rule of settled standing laws from arbitrary decrees, it was not the oppressive sense of "arbitrary" that he had in mind. In Locke's context, something is arbitrary because it is extemporary: there is no notice of it; the ruler just figures it out as he goes along. It is the arbitrariness of unpredictability, not knowing what you can rely on, being subject, according to Locke, to someone's sudden thoughts, or unrestrained, and till that moment unknown, abrupt wills without having any measures set down which may moderate and justify their actions. According to him, John Locke;

*Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of Nature for, and tie themselves up under, were it not to preserve their lives, liberties, and fortunes and by stated rules of right and property to secure their peace and quiet…..Whatever form the commonwealth is under, the ruling power ought to govern by declared and received laws, and not by extemporary dictates and undetermined resolutions, for then mankind will be in a far worse condition than in the state of Nature…..For all the power the government has, being only for the good of the society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws, that both the people may know their duty, and be safe and secured within the limits of the law, and the rulers, too, kept within their due bonds*[8].

Under Locke's legal philosophy the government derived it legitimacy from popular consents and people delegate to the government the power to make, execute and enforce laws towards the common good of the state and entire citizenry. In his view, the laws are to be made by a parliament that is distinct from the executive, and enacted to enable the ordinary citizens determine the extent of their duties and rights within the ambit of the law. The judicature was however, absent in Locke's postulation.

## 2.3 The Magna Carta

Under the English system, the principle that the king was bound by the law was a prominent feature of the *Magna Carta* signed by King John in 1215. It was the product of a revolt by a group of barons, powerful noble class who supported the king in exchange for land, against the king, following their perceived attempts of the king to extract more resources from them to fund war in France. The agreement sought to place constraints on the king's powers and protect the nobles' privileges. Although King John repudiated the document soon after it was signed, the *Magna Carta* came to be confirmed and was modified by successive monarchs and parliaments on numerous occasions. Amongst its many provisions, the *Magna Carta* declared that:

*No free man shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgement of his peers or by the law of the land. To no one will we sell, to no one deny or delay right or justice.*[9]

The above provision of the Magna Carta was made to ensure that the life, liberty, dignity and property of ordinary citizens and free subjects of the king could not be arbitrarily taken away, except by the lawful judgement of the subject's peers or the law of the land had to be followed. In the circumstance, what does this ancient document have to do with the rule of law? Quite a lot. It recognizes that a person's fate should not be in the hand of the king or any head of government. It

[8] John Locke, *Two Treaties of Government* (1690) 135 – 7: John Locke & P. Laslett 2007 In lan Carter, Matthew H. Kramer & Hillel Steiner (eds.), *Freedom: A philosophical Anthology*. Balckwell. pp.93.

[9] Article 39, Magna Carta (1215)

requires that a judgement against a citizen must be in accordance with the law and justice. it further implies that every citizen is entitled to a fair trial and impartial hearing in determination of their legal rights.

**2.4 Montesquieu**

Montesquieu's work on the Rule of Law in is best known in connection with his insistence on the separation of powers particular the separation of judicial power from executive and legislative authority. The judiciary has to be able to do its work as the mouthpiece of the laws without being distracted from fresh decisions made in the course of its considerations by legislators and policy-makers. Montesquieu's views on the separation of powers had a profound effect on the American foundation, particularly in the work of James Madison, Federalist papers 47. The theory of power separation prepared the ground for the evolution of the rule of law, which is intended to prevent government's abuse of power and preserve citizens' liberty through the principles of checks and balances, which he defined as the rights of doing whatever the laws permit. In his reasoning, the legislative, executive and judicial powers should be respectively controlled by separate hands:

*When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and trying the causes of individuals.*[10]

Elsewhere in *The Spirit of the Laws*, Montesquieu developed a theory of the value of legalism. Noting that despotic government tend to have very simple laws which they administered peremptorily with little respect for procedural delicacy, Montesquieu argues that legal and procedural complexity tended to be associated with respect for people's dignity. He associated this sort of respect with a monarchy ruling by law, as opposed to despotism: In monarchies, the administering of a justice that hands down decisions not only about life and goods, but also honour, requires scrupulous inquiries. The fastidiousness of the judge grows as more issues are deposited with him, and as he pronounces upon interest. This emphasis on the value of complexity concerning the way in which complicated laws, particularly laws of property, provide hedges beneath which people can find shelter from the intrusive demands of power has continued to fascinate modern theorists of the rule of law.

It is important to note that Locke and Montesquieu' s theories greatly influenced the makers of the United State Constitution, Alexander Hamilton, John Jay and James Madison towards a representative democratic government with complex layers of divisions incorporating the vertical separations of powers between the Federal and State levels and horizontal separation of the arms of government amongst the legislature, executive and the judicature at the federal level, with further division of the legislature between the Senate and Congress. Additional safe guard were provided by empowering the courts to control the constitutionality and legitimacy of made laws via judicial review. The intendments of this complex constitutional structure is to ensure that no particular group in society could exert absolute power over the state and the governed and thereby prevent the abuse of power, as power corrupts while absolute power corrupts absolutely. Hence, the US Constitution framers wrote:

*In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit……First…..In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and*

[10] Montesquieu, *L'Esprit des Lois* (*The Spirit of the Law*) 1748: Bk. VI, ch. 1, p. 72

*separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself. Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.*[11]

**2.5 Dicey**

The very first attempt to reduce the idea of the rule of law to precise legal form was by a British constitutionalist, A.V. Dicey sometime in the nineteenth centuries. According to Dicey, the rule of law consists of three inter-related elements which he explained thus:

*That rule of law, then, which forms a fundamental principle of the constitution, has three meanings, or may be regarded from three different points of view. It means, in the first place, the absolute supremacy or predominance of regular laws as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else. It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts; the rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals; there can be with us nothing really corresponding to the administrative law (droit administrative) or the administrative tribunals (tribunaux administratifs) of France. The notion which lies at the bottom of the "administrative law" known to foreign countries is., that affairs or disputes in which the government or its servant are concerned are beyond the sphere of the civil Courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs. The "rule of law", lastly, may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the Courts; that, in short, the principles of private law have with us been by the action of the Courts and Parliament so extended as to be determine the position of the Crown and of its servant; thus the constitution is the result of the ordinary law of the land.*[12]

In effect, the supremacy of the law and the exclusion of all forms of arbitrariness, the equality of all men before the law, with equal and amenability of all citizens to the law and courts of the state, and the inherence of citizens' rights which are often stipulated in modern constitutions as fundamental human rights and their legal adherence constitute Dicey's concept of the rule of law.

Attractive as this is in the abstract, it exhibited a certain naivety so far as the legal position of state officials was concerned. Officials are and often need to be treated differently in law than the ordinary citizen: they need certain extra powers and they need to be hemmed in by extra restrictions, so that they can be held accountable for the actions they perform in the name of the community. For the ordinary person, the Rule of Law generates a presumption in favour of liberty: everything which is not expressly prohibited is permitted. But for the state and its officials, we may want to work with the contrary presumption: the state may act only under express legal authorization.

**3.1 The Contestation of the Rule of Law**

The most important demand of the Rule of Law is that people in positions of authority should exercise their power within a constraining framework of well-established public norms rather than in an arbitrary, tyrannical, or purely discretionary manner on the basis of their own preferences or ideology. It insists that the government should operate within a procedural framework of law in everything it

[11] Alexander Hamilton and James Madison and John Jay, *The Federalist Papers* (Yale University Press, 1787)

[12] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan and Co. Publishers: London 1885)

does, and that it should be accountable through law when there is a suggestion of unauthorized action by those in power.

But the Rule of Law is not just about government. It requires also that citizens should respect and comply with legal norms, even when they disagree with them. When their interests conflict with others' they should accept legal determinations of what their rights and duties are within the ambit of the law. Also, the law should be the same for everyone, so that no one is above the law, and everyone has access to legal protection. The requirement of access is particularly important, in two senses. First, law should be publicly accessible: it should be a body of norms promulgated as public knowledge so that people can study it, internalize it, figure out what it requires of them, and use it as a framework for their plans and expectations and for settling their disputes with others. Secondly, legal institutions and their procedures should be available to ordinary people to uphold their rights, settle their disputes, and protect them against abuses of public and private power. All of this in turn requires the independence of the judiciary, the accountability of government officials, the transparency of public business, and the integrity of legal procedures, with strict adherence to same by all citizens.

Beyond these generalities, it is controversial what the Rule of Law requires. This is partly because the Rule of Law is a working political idea, as much the property of ordinary citizens, lawyers, activists and politicians as of the jurists and philosophers who study it. The features that ordinary people call attention to are not necessarily the features that legal philosophers have emphasized in their academic conceptions. Legal philosophers tend to emphasize formal elements of the Rule of Law such as rule by general norms (rather than particular decrees); rule by norms laid down in advance (rather than by retrospective enactments); rule by norms that are made public (not hidden away in the closets of the administration); and rule by clear and determinate legal norms (norms whose meaning is not so vague or contestable as to leave those who are subject to them at the mercy of official discretion). But these are not necessarily what ordinary people have in mind when they call for the Rule of Law; they often have in mind the absence of corruption, the independence of the judiciary, and a presumption in favour of liberty.

Contestation about what the Rule of Law requires is partly a product of the fact that law itself comprises many things, and people privilege different aspects of a legal system. For some the common law is the epitome of legality; for others, the Rule of Law connotes the impartial application of a clearly drafted statute; for others still the Rule of Law is epitomized by a stable constitution that has been embedded for centuries in the politics of a country. When Aristotle contrasted the Rule of Law with the rule of men,[13] he ventured the opinion that "a man may be a safer ruler than the written law, but not safer than the customary law". In our own era, Hayek has been at pains to distinguish the rule of law from the rule of legislation, identifying the former with something more like the evolutionary development of the common law, less constructive and less susceptible to deliberate control than the enactment of a statute.[14] There is also continual debate about the relation between law and the mechanisms of government. For some, official discretion is incompatible with the Rule of Law; for others, it depends on how the discretion is framed and authorized. For some, the final determination of a court amounts to the Rule of Law; for others, aware of the politics of the judiciary, rule by courts (particularly a politically divided court) is as much an instance of the rule of men as the decision of any other junta or committee. Lon Fuller in his moralistic view of the rule of law concept explained that in order to act as a proper guide to behaviour, the law must be characterized by the existence of a body of rules that meets a certain number of characteristics. Although Fuller recognized that the occasional, partial or circumstantial absence of any of these criteria was unavoidable due to the fact that a balance has to be accomplished between the certainty of legal rule and the state's ability to change laws. He further stressed that the total absence of one or more criteria would result in complete failure of the law, according to him;

*Rex's bungling career as legislator and judge illustrates that the attempt to create and maintain a system of legal rules may miscarry in at least eight ways; there are in this enterprise, if you will, eight distinct routes to disaster. The first and most obvious lies in a failure to achieve rules at all, so that every issue must be decided on an ad hoc basis. The*

[13](n-2)

[14] F A Hayek, *Law, Legislation and Liberty* A New statement of the liberal principles of justice and Political Economy. (Routledge and Kegan Paul: London 1973)

*other routes are: (2) a failure to publicize, or at least to make available to the affected party, the rules he is expected to observed; (3) the abuse of retroactive legislation, which not only cannot itself guide action, but undercuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change (4) a failure to make rules understandable; (5) the enactment of contradictory rules or (6) rules that require conduct beyond the powers of the affected party; (7) introducing such frequent changes in the rules that the subject conduct cannot orient his action by them; and, finally, (8) a failure of congruence between the rules as announced and their actual administration.*[15]

The fact that the Rule of Law is a controversial idea does not stop various organizations from trying to measure its application in different societies. Groups like the World Justice Project concoct criteria and indexes of the Rule of Law, ranking the nations of the earth in this regard. Countries like Denmark, Norway, Finland, Sweden, Netherlands, Germany, New Zealand, Austria, Canada and Estonia currently rank at topmost of the Rule-of-Law league, while countries like Zimbabwe, Pakistan, Bolivia, Afghanistan, Cameroon, Congo D R, Cambodia and Venezuela are the opposite angle as the lowest rule of law compliant countries. The criteria can hardly be described as rigorous. But people in business value these rankings as part of their estimation of country risk for foreign investments. The World Justice Project Rule of Law index projects adherence measures of countries' compliance to the rule of law. The index is based on measures relating to the degree of compliance with the following principles (i) the degree to which government and their officials are accountable under the law; (ii) the laws are clear, publicised, stable and fair, and protect fundamental rights; (iii) the process for the enactment, administration and enforcement of laws are accessible, fair and efficient; and (iv) access to justice is provided by competent, ethnical and independent lawyers and judges who are sufficient in number, has adequate resources and are representative of the society they serve.

### 3.2 Rule of Law Vis-à-vis Rule by Law

Some theorists draw a distinction between the Rule of Law and what they call rule by law, they celebrate the one and disparage the other. The Rule of Law is supposed to lift law above politics. The idea is that the law should stand above every powerful person and agency in the land. Rule by law, in contrast, connotes the instrumental use of law as a tool of political power. It means that the state uses law to control its citizens but tries never to allow law to be used to control the state. Rule by law is associated with the debasement of legality by authoritarian regimes, in modern China for example.

Thomas Hobbes may be seen as a theorist of rule by law. In a society whose members disagree about property, he thought it conducive to peace for the sovereign of a society **"to make some common Rules for all men, and to declare them publiquely, by which every man may know what may be called his, what anothers.**"[16] Hobbes also thought that it would undermine peace - indeed it would undermine the very logic of sovereignty - for the ultimate law-maker to be bound by the laws he applied to his subjects.

However, the distinction may not be so clear-cut. Even rule by law seems to imply that rulers accept something like the formal discipline of legality. Unless the orders issued by the state are general, clear, prospective, public, and relatively stable, the state is not ruling by law. So this thin version of legality does still have moral significance in the respect it pays to the human need for clarity and predictability. Rule by law can be a way a government stabilizes and secures expectations, even if its use remains instrumental to the purposes of the state, it involves what Fuller called a bond of reciprocity with the purposes of those who are governed: the latter are assured that the promulgated rules are the ones that will be used to evaluate their actions.

Some jurists who maintain the contrast between the Rule of Law and rule by law have a more ambitious agenda. They take seriously the ancient idea that we might be ruled by laws and not by men. One may ask: how is that supposed to happen? After all, all law is made by people and interpreted by people and applied by people. It can no more rule us by itself, without human assistance, than a cannon can dominate us without an iron-monger to cast it and an artilleryman to load and fire it. The jurists who contrast the Rule of Law with rule by law believe they can make this work by focusing on laws whose human origins are in some way diffuse or immemorial.

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[15] L L Fuller, *The Morality of Law:* The morality that makes law possible, (Yale University press, 1964), p. 33-94

[16] Thomas Hobbes, *Common Wealth Ecclesiastical and Civil:* (Andrew Crooke and Green Dragon in St. Paul Church-yard, 1651)

We are not necessarily talking here about natural law, but perhaps about something like customary law or common law - law that is not so evidently a top-down product of powerful human law-makers. Common law grows and develops under its own steam, and need not be conceived as a device by which some identifiable humans rule over others. No doubt there is a lot of mythology in this. A more realistic view of common law identifies it with the deliberate and arbitrary rule of an entity, which Bentham called "Judge & Co"[17]. But it remains true that the human element is diffuse in this sort of system, and at any given time the law that emerges is a resultant of the work of many people rather than the intentional product of a domineering majority ruling us from the legislative centre of a state.

As we saw in the discussion of Hayek,[18] the other side of this coin is a disparagement of legislation, precisely because its enactment seems patently and undeniably to represent the rule of powerful officials. Legislation is a matter of will. The legislative process produces law simply by virtue of a bunch of people in an assembly deciding that a given law is to be produced. And this is done by the very men - powerful politicians - to whose power the Rule of Law is supposed to be an alternative.

However, most people who value the Rule of Law do not accept this approach. If a statute is properly drafted (if it is clear, intelligible and expressed in general terms) and prospectively enacted and promulgated, and if it is administered impartially and with due process - they will call this an entirely appropriate exercise under the Rule of Law. Indeed that is what many scholars mean by the Rule of Law: people being governed by measures laid down in advance in general terms and enforced equally according to the terms in which they have been publicly promulgated. The argument that it should be put aside because it does not contrast sufficiently with the rule of men seems perverse.

Nobody doubts that legislation can sometimes undermine the Rule of Law, by purporting for example to remove legal accountability from a range of official actions or to preclude the possibility of judicial review of executive action. But this is not a problem with legislation as such; this is a concern about the content of particular enactments, Rule by judges, too, can sometimes be seen as the very sort of rule by men that the Rule of Law is supposed to supersede.

In view of the current theories under consideration, Joseph Raz reasoned that the rule of law demands a certain degree of compliance, but that absolute or strict compliance with the rule of law should not be the ultimate objective of any given society: rather the rule of law should serve as a means to achieve other state's social goals, which is in consonance with Fuller's conceptions of the rule of law. Notwithstanding, he disagreed with Fuller that the rule of law is necessarily a moral good. His view is that the rule of law is a morally neutral concept which is targeted to achieve good ends, and can also be used for the realization of immoral ends, in further expression of his view on the rule of law, he opined thus:

> *Of course, conformity to the rule of law also enables the law to serve bad purposes. That does not show that it is not a virtue, just as the fact that a sharp knife can be used to harm does not show that being sharp is not a good-making characteristic for knives. At most it shows that from the point of view of the present consideration it is not a moral good. Being sharp is an inherent good-making characteristic of knives. A good knife is, among other things, a sharp knife. Similarly, conformity to the rule of law is an inherent value of laws; indeed it is their more important inherent value. It is of the essence of law to guide behaviour through rules and courts in charge of their application. Therefore, the rule of law is the specific excellence of the law.*[19]

### 3.3 Globalization of the Rule of Law

The rule of law is very fundamental in modern diplomacy and serves as a major cornerstone of modern international relations of States. It received international approval through the Laws of New Delhi and Lagos in 1959 and 1961 respective summitries, and has since expanded in scope through a variety of other bilateral, multilateral treaties and international conventions. The huge cost of the first and especially the second world

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[17] Dean Alfange Jr and Jeremy Bentham, *The Codification of Law*, 55 Cornel L, Rev. 58 (1969) available at <http://scholarship.law.cornell.edu/clr/vol55/issl/3>. accessed 13th April, 2021.

[18] (n-14)

[19] Joseph Raz, *The Authority of Law*: The Rule of Law and its Virtue (Oxford University Press, 1979), p.210

Wars in terms of human and material loss broadened the awareness of men and realization of the need to protect man from the ravages of extreme authority or power and its abuse. The Jewish experience n the days of the holocaust under Adolph Hitler's Nazi Germany Where over 6 million Jews were exterminated in Hilter's bid to erase the Jewish race, acutely heightened global desire for men to be ruled by the law in all nations. This need in turn generated collective interest in the pursuit of peace among nations through the Rule of law. It became obvious that the cost of its abuse is anarchy, utter chaos; and anarchy as demonstrated by man's experience through the years is not the burden of the singular nation or group immediately affected, but a burden which other nations and groups are also saddled with. It therefore did not come as a surprise that Article 1 of the United Nations charter stated as a UN principle, the promotion of respect for and observance of human rights and fundamental freedoms without discrimination based on race, sex, language or religion.[20]

In 1948, the committee of nations (UN) further strengthened its commitment to the Rule of law through the universal Declaration of Human Rights (hereafter called UDHR). The UDHR is a code of universally accepted standard of treatment and protection of the rights of man. Designed to guide member nations in practice and described at the time to be largely 'merely hortatory and of moral value,' its provisions have later been incorporated into domestic national legislations and regional instruments to an extent that some jurists have reasoned and correctly too, has made it part of the customary law of nations.

The concept of Rule of Law has received even wider exposition in the conventions of the International Committee of Jurists (ICJ) held in New Delhi and Lagos in 1959 and 1991 respectively. Often referred to as the laws of New Delhi and Lagos, their provision encompass the right to representative Government the willing subjection of the executive, especially over delegated legislation, to independent judicial control, an independent judiciary and in criminal processes and procedure, fair trial, bail, legal aid and the presumption of innocence. While the above instruments guarantee or preserve the rule of law in time of peace, the safety and respect for human dignity and rights are addressed in time of conflicts through other international covenants and instruments. These include the Genocide Convention of 1945 which punishes for the crime of genocide, and the Geneva Red Cross Convention of 1949 which protects combatants, who are wounded; prisoners of war - soldiers or civilians; and prohibit inter alia, wilful killing, torture and Inhuman treatment; wilful causing of grievous bodily harm, unlawful deportation, taking of hostages and the wanton destruction of property.

The present scope covered by the rule of law is thus widely broadened. In a concise form, the Rule of law now encompasses the entire idea of social justice, legal justice as tampered by natural justice and equity especially in criminal procedure where its application has also been greatly enhanced. Thus, the rights now protected by the Rule of law are greatly enlarged, and can be classified into political rights, social rights, and economic right in addition to human rights which currently constitute part of the concept.

## 4.0 The Rule of Law: A Modern Concept for Democracy and Good Governance

The modern concept of the Rule of law was given comprehensive attention by A.V Dicey of Oxford University, now regarded as the father of the concept, who in his conceptual postulations of the rule of law, basically summarized the rule in triple[21] distinct expressions as hereunder outlined:

1. The supremacy of the law and the exclusion of all forms of arbitrary and discretional exercise of authority.
2. The equality of all men before and equal amenability of all to the Law and courts of the land.
3. The inherence of the fundamental rights of man which are often enshrined in modern constitutions, as natural rights and not grants by such constitutions which together with court decisions and other legislations across time, only affirm their inherence.

However, it is important to clearly note that the independency and impartiality of the judicature is a cardinal factor of the concept of the rule of law for the modern day democracy and towards the sustainability of good governance. Accordingly, the United States Supreme Court affirmed the independency of the judicature as stated below by Justice Felix Frankfurter that "**There can be no free society without law administered**

[20] R A Wokocha, *First Semester Constitutional Law Note 4,* November, 2016

[21] (n-12)

**through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny."[22]**

In effect, the rule of law signals the supremacy of the law, before which all persons are equal and subjects and before which the rights of man are inherent by virtue of its humanness, sacrosanct and unbridgeable except in accordance with the dictates of the law and in compliance with legal procedures.

Dicey's three conceptions of the rule of law have received severe criticism from subsequent authors such as Ivor Jennings, Heuston and Davis who clearly showed that Dicey's concepts are ideals which were not completely obtainable even at his age as they are today. That equality of all and equal amenability of all to the laws and courts must admit of the numerous exceptions that abound now even as they did in Dicey's era. Finally, that while arbitrary exercise of power is neither validly supported nor supportable, elimination of all forms of discretional exercise of authority is neither possible nor desirable. It can be said that in a way these criticisms are incisive expositions which to our mind has sharpened and more clearly defined the boundaries of the Rule of Law.[23]

In his own view, Ivor Jennings, a leading Critic of Dicey's theory of the rule of law has pointed out that a wide range of discretionary powers exist today as it were in the days of Dicey,[24] thereby limiting the potency of the rule of law in practical sense.

Similarly, Davies in his own criticism against the rule as propounded by Dicey, more succinctly observed thus:

*Elimination of all discretionary power is both impossible and undesirable. The sensible goal is development of a proper balance between rule and discretion. Some circumstances call for rule some for discretion. Some mixture of one proportion and some for mixture of another proportion.[25]*

One cannot help admitting that the above criticisms of Dicey are pertinent since it is an indubitable truism that modern government as is well known, cannot be carried on at all without a host of wide discretionary powers which are granted to its functionaries by the large number of statutes annually passed by the various legislatures around the world, including constitutional immunities granted to some state of officials[26] and diplomatic immunity of diplomats and consulate officers at the realm of international diplomacy.[27] The rule of law must therefore be taken to mean, conformity with the laid down process in the conduct of the affairs of man in society, and exclusion or condemnation of everything arbitrary and not procedural in the affairs of man in society. The rule of law seeks to prevent the government and those in authority from acting ultra vires. This has been beautifully captured by Heuston in his view on the rule of law, which he expresses thus:

*Everyone, high or low must be prepared to justify his acts by a reference to some statutory or common law power which authorised him to act precisely in the way in which he claims he can act. Superior orders or state necessity are no defence to an action otherwise illegal.[28]*

This affirmation has long received judicial amplitude through a plethora of cases spread times, land and climes. The Supreme Court of India in its authoritative finality, laid down a proposition that it is the duty of the state to preserve and protect the law and the constitution and that it cannot permit any violent act which may negate the rule of law.[29]

Similarly, Justice Bhagwati of the Indian Supreme Court has emphasized that the rule of law excludes arbitrariness and unreasonableness.[30] To prevent against arbitrariness and other derogation of the sanctity of the rule of law, the Indian law Lord suggested that it is necessary to have a democratic legislature to make

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[22] *United States v. United Mine Workers*, 330 U.S. 258, (1947)

[23] (n-20)

[24] W Ivor Jennings, *The Law and the Constitution*, (5th Ed.) (University of London Press: London, 1959), p.55

[25] Kenneth Culp Davies, *Administrative Law Treatise* (2nd Ed., Vol. 1 K C Davis, 1978)

[26] Section 308, Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap. C23, LFN, 2004; *Tinubu v. IMB Securities* (2001) 16 NWLR (pt 740) 670.

[27] Article 31 (1), United Nations Convention on Diplomatic Relations, Vienna 1961; S. 1 (1); Diplomatic Immunity and Privileges Act, Cap D9, LFN, 2004

[28] R F V Heuston , *Essays in Constitutional Law*: (Stevens: London, 1964)

[29] *Yusuf Khan v. Manohor Joshi*, AIR 2000 SC 1121

[30] *Bachan Singh v. State of Punjab* (1982) 3 SCC 24

laws, but its power should not be unfettered, and that there should be an independent judicature to protect the citizens against the excesses of both executive and legislative powers.

In the locus classical case of Re; *Mohammed Olayori,* Chief Justice Taylor of Lagos State, Nigeria, protesting the arbitrary power conferred on the police and the Armed Forces pursuant to S.3(l) of the Armed Forces an Police (Special Powers) Decree of 1967 which provided for the detention of persons connected with acts prejudicial to public orders said:

*I am, as know is every member of the Bench and every right thinking and honest member of our society, against prevailing conditions of corruption and embezzlement of public funds existing in the country (Nigeria) today, but if we are to live by the rule of law; if we are to have our actions guided and restrained in certain ways for the benefit of the society in general, individual members in particular, then whatever status whatever post we hold, we must succumb to the rule of law. The alternative is anarchy and chaos, and the whole purpose of defence regulations and emergency regulations is to prevent these states of things.*[31]

The controversial case of Bello, at the wake of the Oyo state political crises and Ibadan city pandemonium throws more light on the rule of law as seen by the courts. In the case, the Prisoner charged with armed robbery was sentenced to death. Before his appeal was heard by an appellate court, he was executed by the Oyo State prisons. His dependants brought an action for the wrongful death of the prisoner. His execution before the hearing of the appeal was a negation of the Rule of Law; and the court granted damages to that effect.[32]

The Supreme Court of Nigeria in the celebrated case between Emeka Ojukwu and the Lagos State Military Governor demonstrated the efficacy of the rule of law through the dictum of Per Chukwudifor Oputa, JSC as hereunder stated:

*…In Nigeria, even under a military Government, the law is no respecter of persons, principalities, governments or powers and that the courts stand between the citizens and the government alert to see that the state or Government is bound by the law and respects the law.*[33]

By and large, Dicey's ideas are still relevant and find support in even more recent developments of the rule of law as a universal-principle with global acceptance. In modern times, the concept has been so broadened that it will not be untrue to say that today, the rule of law preserves and protect everything good and positive to the wellbeing and welfare of man in society, everything connected with due process in the conduct of the affairs of men in society and exclusion or condemnation of everything arbitrary and contrary to the due process in the affairs of men in society. Dicey lucidly captures this fact which has since become enshrined in several international legislative instruments as well as virtually every municipal constitution when he concluded that the concept translates to the fact that:

*Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials' have been brought before the courts, and made, in, their personal capacity, liable to punishment or to the payment of damages for act done in their official character but in excess of their lawful authority. (Appointed government officials and politicians, alike) ... and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person*[34]

Today, the rule of law is at the very foundation of every modern State. The touch-stone upon which the goodness arid justness of every political ideology is measured, the defender of civil liberty and social justice, the attainment, and substance of which is the most singular objective of all states and the responsibility of which is distributed across all organs of the government of modern State.

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[31]CAW/81/69 of 27th August, 1969 Lagos State High Court (unreported) (Reported in B O Iluyomade and B U Eka, *Cases and Materials on Administrative Law in Nigeria*: Obafemi Awolowo University Press (2nd Ed.) 1992.

[32] *Nasiru Bello and Ors v. AG, Oyo State* (1988) 5 NWLR (pt. 45) 828

[33] *Governor of Lagos State v. Ojukwu (*1986) 1 NWLR (pt. 18) 621.

[34] (n-12) 194

### 4.1 The Fundamental Objectives of the Rule of Law

A society of men free and at liberty to do whatsoever they please, is a society of madness, a Kingdom of rage and violence where only the strong and mighty will survive. Such a society will be in anarchy where everyone is doomed to die at the will of his stronger, it goes without saying that life in such a society will be brutish short and not worth living as insecurity will reign suzerain and men die from fear of violence, many times before their death. It would amount to a return to the old order where might is right and life based on survival of the fittest, no justice, no right, only power, raw naked power is bound to prevail.

Therefore, the rule of law was evolved on the basis that man in society must be organised, that the high and the low may find a place, right and room to live, in a world characterised by diversity of people, stature, shape, strength and desires. Men must be subject not to the whims, caprices and arbitrary will of their stronger, but of a non-discriminatory superior who has no bias nor respect for strength or weakness but treats all members of society equally, protecting the innocent and punishing the guilty or transgressor equally and commensurately. This is on the backdrop of the fact that, man proceeded society which in turn created the State, therefore both society and the State exist to better the lot of man as an instrument to protect and minister unto him in his pursuit of happiness and self-realisation. To create these two instruments, man surrendered his administrative and other powers which were gathered into a pool of authority called the State. The words of Lord Camden C.J. as stated below are instructive to the above statement:

*The great end, for which men entered into society, was to secure their properly. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole... wherein every man by common consent gives up that right, general good for the sake of Justice and the general good.*[35]

The rule of law thus arose on the basis that, such general surrender of general rights needs to be protected by an independent authority, not primarily a donor nor beneficiary of such pool of rights forming so great an authority.

The objective of the rule of law is primarily to administer the rights and burdens collected as above, among the donor members of the society, each man according to his due, worth or need. By this, we mean that the rule of law is to secure and administer justice in society. We may further identify the following as further objectives of the rule of law.

i. Prevention of arbitrary use of public power,
ii. Enforcement of equal observation of the law of society by all members without undue exception but admissive of discriminatory application and administration of such laws where the parties are unequal and the ends of justice demand so to do,
iii. Protection and preservation of the inherent rights of man in society, recognised as being residual in them or conferred by the ordinary laws of society, from abridgement or alienation.

### 4.2 Basic Requirements of the Rule of Law for Modern States Governance

The checks on democratic government via the rule of law concept is intricately woven into principles' set out for the obedience and observance of the operators of the three arms of government - the Legislature, the Executive and the Judiciary. These principles set out the terms of the rule of law for sustainable democratic governance, and most of them have now been incorporated into municipal laws of various nations, Nigeria inclusive. These principles are discussed below, under the various headings of governmental powers.

**The Legislature**

Law is understood to be an embodiment of all the rules: regulations and authoritative injunctions that guide and regulate conduct in an ordered society: Although the expression law may relate to other means of' control such as nature, science, religion or morality, our use of the expression is limited to civil law the imperative character of which is a constant of modern administration. The lot of law making in government falls on the legislature, the arm of government which is charged by "the people" of all nations through their constitution, with the responsibility of making law for the peace, order and good governance of the nation.

[35] *Entick v Carrington EWHC* J98CRB, (1765): 19 Howell's State Trials 1029: 95 ER 807 (1765)

The rule of law demands of the legislature, social responsibility, clarity, stability and vigilance in the performance of its legislative duty.

**i. Social Responsibility**

Under the rule of law, the legislator is expected to concern itself with the social function of law which focuses on the role of law in society. This bothers on creation of rules and laws for the protection of the citizenry, promotion of their welfare and equitable disbursement of the benefit and burdens of society to them in the spirit of equality. The proposition of the social theory of law has been summarised as follows:

a. That law is a means of social control
b. That the living law of society has to be sought outside the confines of formal legal material, in other words in society itself. The task of formal law makers is to keep it as nearly abreast of the living law as possible.
c. That the function of Law should be the proportion of the greatest happiness of the greatest number. The justification for having laws in, the first place, being that they are important means of ensuring the happiness of the members of the community generally. In which case the sovereign power of making laws should be used not to guarantee or protect the selfish desires of individuals, but to secure and entrench the public good. There has to be a proper balancing of individual interests with communal interests of welfare.
d. That the making, interpretation and application of laws take account of social factors.
e. That the task of the lawyers is very much like engineering and the aim of social engineering is to build an efficient structure of society such that there is satisfaction of wants with the minimum of friction and proper balancing of competing interests.

The rule of law enjoins the legislature to make laws from the view point of the social function of law, in the performance of their duty as public officers they should seek to fulfil the social objectives of legislation. They should not be preoccupied with the desire to entrench party interest, personal interest or anti-people agenda as that will amount to an improper use of their public powers and amount to a negation of the rule of law. They must also guard against recklessness as otherwise, a crookedly made law can only produce a crooked justice when interpreted and executed. When the above is borne in mind, the legislature in a Democratic government, wishing to sustain the rule of law, must ensure that law is clear, stable and orders properly guided.

**ii. Clarity**

Since one of the cardinal functions of law is to regulate and guide the conduct of men in society, it is only just and proper that the laws be prospective open and clear. Under democratic governance, the law must be expressed in concise and comprehensible language, adequately published and made to take effect from the date of its enactment or later but not in retrospect as was common place in the irresponsible misrule that was called Military Government in the recent history of Nigeria. Law should not be made to incriminate for a conduct that at the time of action amounted to no offence, this would offend both the constitution (Sec Section 33 (S)) and the African Charter on Human and People Right of 1981. For similar reasons, its meaning must be clear. An ambiguous vague or imprecise law is likely to confuse at least those who desire to be guided by the law. According to Lord Diplock, "**Absence of clarity is destructive of the rule of law: it is unfair to those who wish to preserve' the rule of law; it encourages those who wish to undermine it**"[36]

**iii. Stability**

If the law must guide the citizen in the conduct of his transactions with others, then it must be relatively stable. Laws under democratic governance should not be changed too often, if they are frequently changed, people will find it difficult to find out what the law is at any given moment and will therefore, be in constant fear that the law has changed since they last learned what it is. More important still is that people need to know the law, not only for their short term goals, but also for long term planning. Knowledge of at least the general outlines and sometimes even details of tax law and company law are

[36]*Merkur Island shipping corporation v. Langton Shaw and Lewis* (1983) Lloyd's Rep. 154

often important for business plans designed to yield profit only years later. The legislator must therefore endeavour to keep the law stable as otherwise the citizenry will be in danger of criminal conviction for new laws they may be unaware of. This is particularly so due to the fact that ignorance of the law is not a defence to an offence, be it civil or criminal.

**iv. Control of Legal Orders**

As earlier observed, a great deal of discretion is required in the running of a modern State. Since their employment is a necessity, the laws empowering those who must exercise such discretion must be made with clarity and protected with adequate general rules for the proper exercise of such discretion to ensure that their exercise conforms generally to the standards of the rule of law. Discretions arc exercised, where a public officer is empowered under a law, to make appointments, publish a legal order make rules for the smooth operation of acts of the legislature. Two kinds of general rules usually create the frame work for the enactment of particular laws, which are:

a. Those who confer the necessary powers for making valid orders; and
b. Those who impose duties, instructing the power holders how to exercise their power.

Both methods have equal importance in creating a stable framework. Hence, the requirement that much of the subordinate administrative law making should be circumscribed to conform to detailed ground rules laid down in the substantive statutes.

The rule of law in its far reaching methods will not just be satisfied by a legislative and technical conformity with ground rules. It will evoke equitable and other judicial measures to examine the substance of the legal order to ascertain whether or not it conforms with the substance intendment and spirit of the enabling law. [37] The duty of a legislature under democratic governance is onerous and must be exercised with great sense of social responsibility and within the confines of its constitutional authority if the virtue of rule of law must be realised.

**The Judiciary**

The courts are bestowed upon with duty to protect, deliberate, interpret and acknowledge citizens' rights with the continuing effort of upholding the constitutional beliefs of a democratic country, in determining the questions of law both in civil and criminal causes. This is the essence of municipal legal systems and the democratic ideal, that they institute judicial bodies charged among other things, with the duty of applying the law to cases brought before them and whose judgements and conclusions as to the legal merits of those cases are final, respected and enforced by the State. These institutions are the traditional custodians of the rule of law. In Nigeria, they include all the courts in the country from the Supreme Court to the lowest Customary Court. Oputa, JSC, once gave judicial expression to the amplitude of the modern concept of the Rule of Law and role of the judiciary when he said the rule of law presupposes[38]:

1. That the State is subject to the law.
2. That the judiciary is a necessary agency of the rule of law.
3. That government should respect the rights of individual citizens under the rule of law.
4. That to the judiciary, is assigned both by the rule of law and by our constitution, the determination of all actions and proceedings relating to matters in dispute between persons or between government or an authority and any person in Nigeria.

The judiciary being in such central and exalted position as guardian of the rule of law, is required to be independent in all sense of the word and impartial in justice administration, and operate in conformity with natural justice, equity and good conscience, and most importantly, be accessible to the aggrieved citizen if the democratic ideals of governance as demanded by the rule of law must be realised.

[37] F R A Williams v M A Majekodunmi (No. 1) (1962) 2 SCNLR p.26
[38] (n-33)

**i. Independence**

Since virtually any matter under any law is subject to possible final decision by the Courts, the rule of law requires that it is of the essence of democratic governance that the judiciary be independent in the discharge of its duties. The courts must make their decision by relying on the law and their conscience and nothing else. To do otherwise will defeat the essence of the rule of law which is to administer justice equally and independently.

Since the court deals with the entire society and all manner of people in the society, the rule of law demands that justice be done, and be manifestly seen to have be done. To ensure and secure this desired goal, the factors affecting adjudication - issues such as appointment of judicial officers, security of their tenure, remuneration working facilities, rules of procedure and other conditions of service should be designed to guarantee that they are free from extraneous pressures and are also independent of all authority save the law and their conscience, This is so because their independence is essential to the preservation of the rule of law and good governance.

**ii. Natural Justice**

Both democratic governance and the court are greatly sustained by public confidence and equally adversely affected when they lose the confidence of the public. The principles of natural justice are of immemorial antiquity and constitute a major instrument of equitable adjudication. Thus in the process of adjudication, the principle of natural justice, prescribing fair hearing, availing all parties equal opportunity to be heard, guaranteeing absence of bias in that constitution of the court or person of the judge are obviously essential for the correct application of the law[39] and consequently, to the ability of the law to guide or regulate individual actions and secure the rule of law in a conventional democracy. In so doing, the judge as a public officer must subordinate his personal interest to the interests of justice and protection of the rule of law and the democratic ideal.

**iii. Administrative Review**

Since administrative action comprising delegated legislation, quasi-judicial adjudication and quasi executive functions, is a necessary constant feature of modem statehood and governance. The rule of law demands that in democratic government, such administrative actions should be amenable to the review powers of the court. This is necessary as otherwise, administrative functionaries may proceed on an ego trip to defeat the social objectives of their empowerment. Administrative review does not of course suggest an unrestrained infraction into the functions of the legislature. It is necessary to review their conformity with the applicable legal framework and the requirements of the rule of law.

**iv. Accessibility**

Considering the central position of the courts in dispute settlement, securing and preservation of the rule of law, it is imperative that courts of law be accessible to aggrieved citizens[40] as long delays, excessive fees, and ousting of Court jurisdictions may effectively turn the best law to a dead letter and frustrate the citizens' ability to guide themselves with the law and consequently defeat the rule of law. It is pertinent here to draw attention to a most disturbing development evolved under the Military governments in Nigeria.

The reduction of the unlimited jurisdiction of the High Court raises a question as to, what interests the amendments are designed to serve, a clear case is the case of Section 251(1)(n) of the present constitution which purports to transfer all civil and criminal matters arising from oil exploration and geological surveys to the Federal High Court in exclusion to all other courts. This provision ignores the fact that there is only one Federal High Court in Port Harcourt serving the whole of Rivers State and beyond as against over 40 State High Courts. What can be deduced from the provision is that, it is designed to frustrate the oil producing peoples of Nigeria from having access to the court of law when their rights are infringed during oil and gas exploitation activities since the Federal High Courts will hardly have judicial

[39] Constitutional of the Federal Republic of Nigeria, 1999 (as amended) Section 36(1)
[40] *Ibid* S. 17(2) (e)
[41] (n-20)

hours to attend to the multiplicity of cases arising from the reckless and unlawful impunity with which the oil companies operate in the areas. The Niger Delta crisis is still not fully resolved, though it looks relatively reduced, whether it is ending or still beginning will depend on the steps Nigeria takes as a nation to ventilate grievances which the Military have for over three decades, bottled up in denial of access to Courts of law.[41] The rate of acid attacks, assassination and other self-help procedure prevalent in society are indicative of the deplorable state of the confidence the average citizen now has in his ability to access justice through the courts of laws. It should be categorically stated here that, as has been repeatedly said, those who shut the door to peaceful resolution of conflict open a flood gate to illegal underground activities and violent self-help.

**The Executive**

The executive branch of Government is the most crucial branch of government. This is because; they possess the authority and force with which the authority of the state is enforced. They are the muscle and sword with which the circumscribed supremacy of the legislature is maintained and with which the pronouncements of the courts of the judiciary arc enforced. This makes the executive a key suspect in the temptation to abuse power. The demands of the rule of law on the executive are simple, obey the law, and obey the courts and govern for the people.

**i. Obedience to the Law**

Under the regime of the rule of law, the executive must ensure that they administer the State of Nigeria in conformity with the constitution and other laws of the nation[42] (see also S.13). It must see itself as a trustee, entrusted with the people's power and pool of rights collected into the pool of state authority, and exercises its powers in compliance with the rule of law and towards the common good of the state and entire citizenry.

In equal vein, the Police a vital instrument in the administration of justice being a department under the executive, must use its powers in accordance with the rule of law. Charged primarily with the keeping of the peace, investigating offences and prosecuting suspected offenders of the law, this power must be exercised without fear or favour and without distinction between created sacred cows and expendables.

**ii. Obedience to Court Orders**

Since the greatest security in democratic governance is the government support of its citizens, the government represented by the executive arm must obey its own commandments by enforcing every subsisting order or judgement validly made by the Courts of the land. This has been consistently demanded by all the international laws and articles so far made on civil and political rights. The reason of course is that the judicature is the custodian of the rule of law, and its effectiveness is germane to civil and political liberty in society.

To do otherwise will reduce the esteem with which the citizen holds the court, the law and consequently, their civic responsibility to the state. This will consequently threaten the democratic governance which the citizens ought to be committed to its defence. Hence, the Supreme Court of Nigeria in its authoritative finality opined thus:

*Any person against whom a decision of court is given is duty bound to obey it, irrespective of whether the prison against whom the order is made is of the opinion that the order is void or preserve. He is bound to obey the order until it is set aside.*[43]

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[42] CFRN, 1999 (as amended) S. 13

[43] *Oguebego v People's Democratic Party* (2016) 4 NWLR (pt, 1503) 446

**The Society**

The preservation of the rule of law in democratic governance is not a sole responsibility of the government. The people, the donors, and the beneficiaries of the government must play a vital role in the sustenance of the rule of law. In the first place, they must observe their civic responsibilities, such as the political right to vote with seriousness, they should cast their vote at elections like perchance as they think right, not vitally concerned that their individual right must prevail, but to be prepared to concede it to the majority if they vote otherwise, as declared below in the words of Henry David Thoreau:

***"It is only expressing to men feebly your desire that it should prevail. A wise man will not leave the right to the mercy of chance nor wish it to prevail through the power of the majority."***[44]

When their government has been constituted, they must keep faith with it not sparing it when it slips off into frivolity, but compelling it through public opinion, lawful picketing and other industrial actions and constructive criticism, to ensure that its lapses are amended and that government rededicate itself to the course of governing for the common good of the people.

Society must fully utilize existing liberties and other democratic opportunities through the freedom of information,[45] engage their government by public pressure built through the exercise of responsible freedom of speech, and to persuade their government in the right conditions and enabling environment for the judiciary to operate and preserve their rights and the rule of law. It is nowhere written that citizens cannot advise their state. Therefore, under the auspices of civil society now well energized even in this country by Non-Governmental Organisations (NGOs) and other pressure groups, citizens should proffer advice to their government on the alternative, frank, open and more democratic ways to approach pending issues.

## 5.0 CONCLUSION

In my view, the concept of the Rule of Law is intended to eliminate or reduce tyrannical, totalitarian and arbitrary rule in modern governance to the barest minimum on one aspect, and to also promote, consolidate the principles of freedom, equality, accountability, justice, equity, fairness, patriotism, security, loyalty and obedience to the laws of the land and strict compliance to legal procedures by both the government and ordinary citizens in the second aspect. The both gearing towards the common good of all citizens, the security of democracy and sustainability of good governance in any given state.

In view of the aforesaid and coupled with the fact that the essence of the law is to render every citizen his due, do no injury to all manner of citizens and residents alike, and steadily enhance harmonious co-existence within the state, ensure national prosperity, defend state's international reputation and its territorial integrity. I make haste to conclude by stating that the rule of law is indispensable for the sustenance of democracy and good governance, by reaffirming the Nigeria Supreme Court affirmation as hereunder stated:

*Nigeria constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers.*[46]

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[44] Henry David Thoreau, *Civil Disobedience*, Walden: Complete Texts with *Introduction, Historical Contexts, Critical Essays,* Boston; Houghton Miffin, 2000: Thoreau Henry David, *Civil Disobedience and Other Essays*, (Dover Publications: New York, 1993)

[45] Freedom of Information Act (2011) Laws of the Federation of Nigeria

[46] *Miscellaneous Offences Tribunal v. Okorafor* (2001) 18 NWLR (Pt. 745) 310 at 327