

Postgraduate Diploma in Cyber Laws (2020-2021)

Directorate of Distance Education,

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Introduction to Law (Mr. Sidharth Chauhan, Assistant Professor, NALSAR)

November 26, 2020 (10 am – 11:30 am)

1. Meaning and Sources of Law

- What is our understanding of the concept of ‘law’?
- If it is a tool of social control, is it distinct from other systems such as organised religion, markets or governmental structures?
- Does our understanding of law depend on cultural particularities or is there a universal conception of law?
- What are the basic features of a modern legal system?
- What are the acknowledged sources of law?
- What is our perception of lawyers and the legal system as shaped by their representations in popular culture?
- Whether legal reasoning is different from the methods of reasoning/knowledge creation used in other disciplines? If so, what are the distinctive features of this field of knowledge? Where do we situate the study of law in the larger universe of the humanities and the social sciences?

In a general sense, the field of legal philosophy (or ‘jurisprudence’) principally asks two foundational questions:

- Firstly, what is the nature of law? Can it be derived from a determinable set of authoritative sources or is there an inherent fluidity in what serves as the basis of law?
- Secondly, what methods should be adopted to interpret and apply the presumptive sources of law (customs, legislation and judicial decisions) when disputes arise as to their meaning?

The answers to these questions have evolved distinctively in different legal traditions. Apart from formal processes of legal change such as the enactment of legislation by elected bodies, the framing of administrative rules and the pronouncement of judicial decisions, there are other factors that contribute to the same such as customs, institutional structures and scholarship.

The ‘natural law tradition’ suggests that the validity of official sources of law should be derived from norms established by higher sources, which could range from religious beliefs to humanist moral reasoning and ethics. With the evolution of liberal democratic institutions, there was considerable disputation of this view since it seems to enable a high degree of subjectivity in addressing specific disputes.

In response, some other scholars framed the position of ‘legal positivism’ which describes official

sources of law as part of a self-validating system that ultimately relies on ideas of political authority. This approach situates the formal study of law as an autonomous discipline and pursues the objectives of clarity and predictability in the eyes of the participants in a legal system. There are internal disagreements among those who subscribe to these two positions.

Legal scholarship in the 20th century emphasized a third strand, namely 'Legal Realism', which treats official sources of law as derivatives of human behaviour. In this view, disputes about the meaning of rules cannot be addressed without understanding the background and motivations of the individuals (as well as institutions) who are involved in creating, interpreting and enforcing them. As opposed to the legal positivists, this approach firmly situates the study of law in the larger realm of the humanities and the social sciences. Contemporary legal scholarship has extended the key ideas of 'Legal Realism' to highlight problems that arise when legitimate interests are excluded while creating law as well as when the interpretation and enforcement of laws have a discriminatory impact. We study distinctive approaches to legal philosophy under the framework of 'Critical Legal Studies' (CLS) which has further sub-divisions such as 'Feminist Legal Theory' and 'Critical Race Studies' to name a few.

2. Hierarchy & Composition of the Indian Judiciary

- We must ask whether the modern Indian legal system faces a crisis of legitimacy on account of the colonial origins of its most significant institutions and codes?
- How do the citizens of independent India perceive the position of the formal legal system in their lives?
- Have we worked out a convenient balance between the formal and informal methods of dispute settlement available to them?
- Does this compel us to seriously engage with the idea of 'Legal Pluralism'?

We should also try to understand the key characteristics of the significant legal traditions in the world (Civil Law Systems, Common Law Systems, Islamic Legal Systems and Indigenous Traditions) and ask whether such classifications have any utility in the postcolonial context.

2. (a) Civil Courts Structure and Procedures

Ranks in Subordinate Judiciary:

- Civil Judge (Junior Division)
- Civil Judge (Senior Division)
- District Judge

Jurisdiction in civil suits is usually based on the location of the affected parties and the pecuniary value of the dispute. Civil Suits usually include disputes about control over real estate, management of finances, performance of contractual duties/services, professional negligence, disputes within the family, disputes involving business forms and other forms of wrongdoing. Complications arise when commercial transactions involve parties located in multiple places. Especially difficult to determine jurisdiction in the context of disputes related to online transactions.

Higher Judiciary:

- High Courts

Regular First Appeals – S. 96,

Regular Second Appeals – S. 100,

Reference – S. 113,

Review – S. 114,

Revision – S. 115,

Inherent powers of a Civil Court – S. 151,

all provided under Code of Civil Procedure 1908,

Writ Petitions under Art. 226, 227 of the Constitution of India).

- Supreme Court of India (Appeals in Civil Cases – Art. 133, Special Leave Petitions – Art. 136, Writ Petitions – Art. 32, Original Jurisdiction – Art. 131)

2.(b)Criminal Court Structure and Procedures

Ranks in Subordinate Judiciary:

- Judicial Magistrate First Class (JMFC)
- Chief Judicial Magistrate (CJM) / Chief Metropolitan Magistrate (CMM)
- Sessions Judge

Jurisdiction in criminal cases is usually based on where the crime took place and/or location of the affected parties. It is also based on the gravity/seriousness of the offence and the prescribed punishments. Details about the jurisdiction of different levels of criminal courts can be found in the Schedule to the Code of Criminal Procedure 1973. Complications about jurisdiction arise in criminal cases related to online transactions. Consider the occurrence of offences mentioned in the Indian Penal Code 1860 such as Obscenity (Section 292), Insult to Religion (Section 295A), Criminal Defamation (Section 499) or even those covered by special laws such as Copyright Act 1957, Indecent Representation of Women Act 1986 and Information Technology Act 2000 to take a few examples.

Criminal Justice Process consists of three stages – (i) Investigation by State Police/Special Agencies, (ii) Trial before Courts and (iii) Punishment/Correction.

Higher Judiciary:

High Courts:

Appeal against Conviction – S. 374(4),

Appeal against Acquittal – S. 417,

Appeal against Sentence – S. 377,

Criminal Revision – S. 397.

All provided under the Code of Criminal Procedure, 1973,

Writ Petitions under Art. 226, 227 of the Constitution of India.

Supreme Court of India (Appeals in Criminal Cases – Art. 134, Mandatory Review in Death Penalty

cases, Special Leave Petitions – Art. 136, Writ Petitions – Art. 32)

2(c) Role of Special Courts and Tribunals

Examples include Labour Courts, Family Courts, Motor Vehicles Accident Claims Tribunals, Rent Controller Courts, Land Acquisition Collectors, Administrative Tribunals (Central & State Level), Debt Recovery Tribunals (DRTs), Securities Appellate Tribunal (SAT), National Company Law Tribunal (NCLT/NCLAT) and Competition Appellate Tribunal (COMPAT) among others.

Presumptive benefits of specialised knowledge and efficient settlement of disputes, but there is a trade-off with desired standards of judicial expertise and independence from the Executive Branch.

3. Alternate Dispute Resolution (ADR) Methods

(a) Commercial Arbitration

(b) Conciliation, Negotiation, Mediation

(c) Ombudsman ('Lokpal'/ 'Lokayukta' offices – origins in Scandinavian countries)

Section 89 of the Code of Civil Procedure 1908 (inserted in 2002), provides for Court-Annexed forms of ADR. In recent years, newer methods of Online Dispute Resolution (ODR) have emerged. They are specialised services provided by private parties.

Suggested Books:

- H.L.A. Hart, *The Concept of Law* (Clarendon Press, 1961).
- Frederick Schauer, *Thinking Like A Lawyer: A New Introduction to Legal Reasoning* (Harvard University Press, 2009).
- M.P. Singh & Niraj Kumar, *The Indian Legal System* (Oxford University Press, 2019).
