

General Principles of Law

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Law – Definition & Meaning

- Codified Common Sense
- the collection of rules imposed by authority
- legal document setting forth rules governing a particular kind of activity
- the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.
- all the rules of conduct established and enforced by the authority, legislation, or custom of a given community, state, or other group or any one of such rules

Law – Definition & Meaning

- As expressed in Rig Veda "Law is the king of kings, far more powerful and right than they, by whose aid, even the weak may prevail over the strong"
- John Locke rightly said when he observed that, "Every Law is a veritable freedom ...the ends of Law is not to abolish or restrain but to preserve and enlarge freedom".
- Main characteristics of law :
 - ✓ Law pre-supposes a State
 - ✓ The State makes or authorizes to make, or recognises orsanctions rules which are called law.
 - ✓ For the rules to be effective, there are sanctions behind them.
 - ✓ Laws are made to serve some purpose – (social purpose, or simply to serve some personal ends of a despot)

Law in Jurisprudence

- **Austin** – Law is the command of sovereign enforceable by sanctions
- **Salmond**- Law is body of principles recognised by State and applied by it in administration of justice
- **Roscoe Pound**- It is a tool of social engineering
- **Kelsen** gave a 'pure theory of law- law is a 'normative science'. The legal norms are 'Ought' norms as distinct from 'Is' norms of physical and natural sciences.
- **Savigny** traces the origin in Volkgeist (general consciousness of the people)
- **Holmes**, "Law is a statement of the circumstances in which public force will be brought to bear upon through courts."

Kinds of Law

- Codified & uncoded
- International & Municipal
- Substantive and procedural
- Civil and criminal
- Secular and Personal
- Supreme and ordinary/organic
etc

Civil Law

- Civil- a member of a *civitas* or *free political community*; natural or proper to a *citizen*. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.
- The word is derived from the Latin *civilis*, a citizen
- In law, it has various significations. In contradistinction to *barbarous or savage*, it indicates a state of society reduced to order and regular government. In contradistinction to *criminal*, it indicates the private rights and remedies of men. It is also used in contradistinction to *military, ecclesiastical, natural, or foreign.*,
- A prisoner's statutory obligation to pay for his keep and maintenance is civil.

Civil Law

- CIVIL ACTION-An action wherein an issue is presented for trial formed by averments of complaint and denials of answer or replication to new matter
- an adversary proceeding for declaration, enforcement, or protection of a right, or redress, or prevention of a wrong,
- Every action other than a criminal action
- Both actions at law and actions in equity.
- In the Civil Law - A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil.

Criminal Law

- Criminal law - the body of law that deals with crime and the legal punishment of criminal offenses
- the main object - to punish the wrongdoer ; to deter him & others from committing same or similar crimes, to reform him if possible, and to satisfy the public sense that wrongdoing ought to meet with retribution.
- in criminal law the cases are filed by the government
- in criminal law the guilt of the accused needs to be proved beyond a reasonable doubt

Sources of Law

- Legislation – Constitution, Statutes, Rules etc
- Custom- practice (s) passed on by one generation to the next- ancient, certain, uniform, not opposed to public policy & continuous
- Precedent- authoritative & persuasive-ratio decidendi & obiter dicta
- Personal Law e.g., Hindu and Mohammedan Law, *etc.*

General Principles of Law

- Rule of Law
- Separation of Powers
- *Ubi jus ibi remedium*
- *Ignorantia facti excusat-ignorantia juris non excusat*
- *Volenti non fit injuria* (damage suffered by consent is not a cause of action)
- *Res ipsa loquitur* (the thing speaks for itself)

General Principles of Law

- *Actus non facit reum nisi mens sit rea*
(the intent and the act both concur to constitute the crime)
- *Nemo debet bis vexari pro una et eadem causa* (it is a rule of law that a man shall not be twice vexed for one and the same)
- “**Fiat juastitia ruat coelum**” — let justice be done, though the heaven should fall.
- Principles of Natural Justice

Principles of Natural Justice

- Rules not generally embodied & not fixed by any code
- Have been developed to secure justice and to prevent miscarriage of justice
- Based on the maxim - *Justice should not only be done but should manifestly be seen to be done*
- Encompass Rule against bias & Rule of fair hearing
- Applicable to administrative and quasi-judicial proceedings

Rule against Bias

- Originates from maxim- *Nemo debet esse judex in propria sua causa* (no man can be a judge in his own cause)
- The rule disqualifies a person from deciding a dispute in which he has- **pecuniary bias; personal bias; or bias relating to subject matter**
- Includes **pre-conceived notion bias**
- **Instances:** personal bias -*A.K.Kraipak v.UoI AIR 1970 SC 150*; pecuniary bias- *Dimes v. Grand Junction Canal & Co [1852,H. of Lords]*- the decision of LC in favour of the Canal company-quashed by H.of Lords since he was a shareholder in the co. See *Jeejeebhoy v.Asst.Collector of Thana AIR 1965 SC 1096* Js Gajendragadkar reconstituted the Bench for hearing a case on the ground that he was a member of the cooperative society for which the land in dispute was acquired.
- Bias relating to subject matter – *Gullapalli Nageswara Rao v.APSRTC 1959,SC* – scheme for nationalization of motor transport notified by State Govt.- quashed since the Secretary who initiated scheme and who heard objections was the same
- Bias – No need of actual/real likelihood
- Even reasonable likelihood is a vitiating factor

Rule of Fair Hearing

- Based on the maxim – *Audi alteram partem* (no man shall be condemned unheard) – hear the other side
- Popular as **Rule of fair hearing**
- **Ingredients** – notice, right to disclosure of evidence, right to legal representation, right to produce evidence, opportunity to rebut and cross examine, one who decides must hear & reasoned decision, Post decisional hearing
- **Effect of non-observance:** renders the decision void. In exceptional cases – post decisional hearing can be given

Exclusion of Natural Justice

- May be express or implied
- By statutory provisions – eg: urgent land acquisition
- By constitutional provisions – eg: second proviso to Art.311(2)
- In case of legislative acts
- Exclusion in public interest
- In case urgency/necessity
- In case of impracticability
- In case of confidentiality
- In case of academic adjudication etc

Operative tools of law

- Rights and Duties (Meaning and kinds)
- Remedies under Law (*Ubi jus ibi remedium*-Constitutional remedies-legal remedies –civil and criminal etc)
- Constitutional Remedies- Under Articles 32,226 etc of the Constitution
- Civil Remedies- Injunctions, Declaration, Recovery of Property, Attachment of property etc
- Criminal Remedies-Sentencing and Compensation
- Remedies under Special Laws- Personal laws, consumer law, IPR laws etc

Conclusion

- Thank You