

INTRODUCTION TO LAW

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IMPOTANT QUESTIONS

- WHY LAW?
- WHAT IS LAW ?
- HOW LAW OPERATES?
- WHAT IS THE BASIS FOR LAW?
- WHAT IS THE NATURE OF LAW?
- WHAT ARE THE SOURCES OF LAW?

Module on Introduction to Law

- Module is Part of General Principles of Law--
- The module will give a grounding in the key skills necessary for undertaking legal studies, including an understanding of judicial reasoning and precedent, statutory Laws
- Objectives and learning outcomes of the module:
- To equip the participants the basic knowledge of the core concepts and analytical skills
- To develop the capacity to present and evaluate arguments on the basis of rules and principles
- To be able to evaluate the appropriateness of different approaches to solving legal problems
- To have the ability and capacity to take-up more complex study in the field of law



WHY LAW?

- *‘ignorantia juris neminem excusat’* i.e. Ignorance of Law is no excuse. This is one of the most fundamental principles of law which has been followed since time immemorial.
- The law is required for any society because it serves as a norm of conduct for citizens.
- It provide for proper guidelines and orders and keeps the society running. Without law there would be chaos and it would be survival of the fittest.
- It acts as a guideline to what is accepted in society. Without it there would be conflicts between social groups and communities.
- Awareness of your legal rights and duties: Very Essential for non-legal professionals also.

Why Law?

- Laws are generally based on common sense, e.g., Don't drive drunk, and respect others and their belongings and the like.
- Law protects victims and punishes wrong doers .
- Law Protects Individual Rights ad Liberties, It Provides a framework and rules to help resolve disputes, It Sets Standards and Law help societies to maintain order
- Law is Set of Legal rights and Remedies.
- AIM of study: to familiarize the course participants about understanding of the fundamental concepts and principles of law and also develop an in-depth base on the functioning of law in government, society and our lives.

Significance of Law

- Knowledge of law helps to understand their own rights and obligations as a responsible citizen of a country and a member of the global community.
- Every action of ours is governed by a code of conduct, be it moral or legal; direct or indirect.
- Law is a system of rules which regulates human conduct in the society.
- Legal systems are often based on moral, legal, ethical or religious principles and are enforced by the police and criminal justice systems such as the courts.
- Therefore, knowledge about the practical aspects of law is as important as knowledge about theory and principles of law

Significance of Law

- One of the most important functions of law in any society is to provide stability, predictability and continuity .
- If any society is to service, its citizens must be able to determine what is legally right and legally wrong.
- They must know what sanctions will be imposed on them if they commit wrongful acts.
- If they suffer harm as a result of others wrongful acts they must know how they can seek compensation.
- By setting forth the rights, obligations and privileges of its citizens, the law enables individuals to go about their business with confidence and a certain degree of predictability.

Nicholas J Bride four primary reasons to study law.

- **First is to sharpen your mind;** training in law is great help you learn how to think carefully, imaginatively and sensibly. Even though the law touches most aspects of our lives, it gives critical thinking about important issues, challenging your beliefs and improving your tolerance for uncertainty
- **The second is Rhetoric;** the art of persuading someone to adopt a particular point of view by speaking and writing effectively.
- **Thirdly,** it helps you form your own views and ideas as to what sort of society we should live in and puts you in a good position to provide an informed contribution to shaping the future of our society.
- **And Lastly,** the skills and knowledge that one acquire in law invaluable for a range of different careers. Training of law gives not only the skills to be a successful lawyer but also a successful producer, politician, manager, journalist, diplomat, or police officer;
- Knowledge of Law equips for almost any profession that requires intellectual strength combined with a practical approach to the world.

LAW IN EVERYDAY LIFE

- Law impacts on every human activity undertaken within society. Imagine going to work in the morning.
- Decide whether you wish to drive or take the train. If you drive, the road rules will help you get to your office safely. If you take the train, the contract you make by buying a ticket will oblige the rail company to take you there.
- **Step in a bus!!!** The law is there. You have entered into a contract to pay the fare to your destination. **The bus is involved in an accident.** The law is ready to determine who is responsible for the injury you sustained and What kind of Compensation you will get.
- When you get to your office, your employment contract (or some statute) will determine what you do and how much you get paid. Imagine just about any activity, and you will find law in attendance – sometimes helping, sometimes hindering.
- Law is very essential that every person should be aware about the general principles of law for a number of reasons like improved understanding of public affairs and having awareness on our rights and duties.

LAW IN EVERYDAY LIFE

- Your job, your home, your relationships, your very life – and your death, all – and more – are managed, controlled, and directed by the law.
- That sway We say Law from Womb to Tomb and Cradle to Grave and Birth to Death
- Hence Law affects everything, and studying it gives you the freedom to develop your interest in almost anything, from geopolitics in international law to medicine in tort law and offers the opportunity to develop a range of skills and explore many aspects of human life.
- It gives you the chance to sharpen your mind, strengthen your understanding, and deepen your experience across the full range of humanities and social sciences.
- Further there are numerous myths and wrong notions about law which a non-legal professional should clarify and have a thorough understanding of its fundamental operations.

THE PURPOSE & FUNCTION OF LAW?

- To enforce morality
- Maintains social control
- Protects public order
- To resolve disputes
- Protects certainty of systems
- Brings out justice in society
- To protect citizens' from the government
- To protect minorities from majorities
- Setting standards of conduct behavior
- To structure the government (e.g. Constitution)
- To resolve disputes peacefully, civilized

DEFINITION OF LAW

- Law is a social science and grows and develops with the growth and development of society.
- New developments in society creates new problems and law is required to deal with those problems.
- In order to keep pace with society , the definition and scope of law must continue to change.
- Law may be defined as a body of rules, created by the state, binding within its jurisdiction and enforced with the authority of the state through the use of sanctions
- A set of rules and procedures usually intended to regulate some aspect of society
- Law is a system of rules and guidelines which are enforced through social institutions to govern behavior, wherever possible.
- Law provides rules and it tells us what we can and cannot do
- It shapes politics, economics and society in numerous ways and serves as a social mediator of relations between people.

Dr. V. Balakista Reddy

DEFINITION OF LAW Cont.

- The meaning of law has been defined by various jurists.
- No unanimity of opinion regarding the true definition of law.
- The reason for lack of unanimity is because it viewed and deal by different jurists at different times and from different points of view of nature, source, function and purpose of law, to meet the needs of some given period of legal development.
- For the purpose of clarity and better understanding of the nature and meaning of law, we may classify the various definitions into five broad classes:
- Idealistic, Positivistic, Historical, Sociological, and Realistic.

(a) Idealistic Definition of law:

- Under this class fall most of the ancient definitions given by Roman and other ancient Jurists.
- **Ulpine** defined Law as “the art or science of what is equitable and good.”
- Cicero said that Law is “the highest reason implanted in nature.”
- Justinian’s Digest defines Law as “the standard of what is just and unjust.”
- In all these definitions, propounded by **Romans**, “justice” is the main and guiding element of law.
- **Ancient Hindu** view was that ‘law’ is the command of God and not of any political sovereign. Everybody including the ruler, is bound to obey it. Thus, ‘law’ is a part of “Dharma”. The idea of “justice” is always present in Hindu concept of law.
- **Salmond**- Law is body of principles recognised by State and applied by it in administration of justice
- **Vinogradoff** described Law as “a set of rules imposed and enforced by society with regard to the attribution and exercise of power over persons and things.”

Justice and Dharma

- What is Justice? Fairness and Moral rightness.
 - A scheme or system of law in which every person receives his/her/its due from the system, including all rights, both natural and legal.
 - *dharma* designates human behaviours considered necessary for order of things in the universe, principles that prevent chaos, behaviours and action necessary to all life in nature, society, family as well as at the individual level
- *Hinduism* : an individual's duty fulfilled by observance of custom or law
- *Hinduism & Buddhism* : the basic principles of cosmic or individual existence : divine law : conformity to one's duty and nature

(b) Positivistic Definition of Law:

- According to Austin, “Law is the aggregate of rules set by man as politically superior, or sovereign, to men as political subject.”
- In other words, law is the “command of the sovereign”. It obliges a certain course of conduct or imposes a duty and is backed by a sanction. Thus, the command, duty and sanction are the three elements of law.
- **Kelsen** gave a ‘pure theory of law’. According to him, law is a ‘normative science’. The legal norms are ‘Ought’ norms as distinct from ‘Is’ norms of physical and natural sciences. Law does not attempt to describe what actually occurs but only prescribes certain rules.
- The science of law to Kelson is the knowledge of hierarchy of normative relations. All norms derive their power from the ultimate norm called Grund norm.

(c) Historical Definition of Law:

- **Savigny's** theory of law can be summarised as follows:
- Law is a matter of unconscious and organic growth. Therefore, law is found and not made.
- Law is not universal in its nature. Like language, it varies with people and age.
- Custom not only precedes legislation but it is superior to it.
- Law should always conform to the popular consciousness.
- Legislation is the last stage of law making, and, therefore, the lawyer or the jurist is more important than the legislator.
- According to **Sir Henry Maine**, "The word 'law' has come down to us in close association with two notions, the notion of order and the notion of force".

(d) Sociological Definition of Law:

- **Duguit** defines law as “essentially and exclusively as social fact.”
- **Ihering** defines law as “the form of the guarantee of the conditions of life of society, assured by State’s power of constraint”.
- There are three essentials of this definition. First, in this definition law is treated as only one means of social control. Second, law is to serve social purpose. Third, it is coercive in character.
- **Roscoe Pound** analysed the term “law” in the 20th century background as predominantly an instrument of social engineering in which conflicting pulls of political philosophy, economic interests and ethical values constantly struggled for recognition against background of history, tradition and legal technique.
- Pound thinks of law as a social institution to satisfy social wants – the claims and demands and expectations involved in the existence of civilised society by giving effect to as much as may be satisfied or such claims given effect by ordering of human conduct through politically organised society.

(e) Realist Definition of Law:

- Realists define law in terms of judicial process.
- According to **Holmes**, "Law is a statement of the circumstances in which public force will be brought to bear upon through courts."
- According to Cardozo, "A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law."
- From the above definitions, it follows that law is nothing but a mechanism of regulating the human conduct in society so that the harmonious co-operation of its members increases and thereby avoid the ruin by co-ordinating the divergent conflicting interests of individuals and of society which would, in its turn, enhance the potentialities and viability of the society as a whole.

Definitions

- Jurists have defined law differently from different point of views.
- For Scientists- Laws are Proven Conclusions of Experiments
- For Socialists Law is a Societal Application and Acceptance by Society
- It has been called 'Dharma' in Hindu jurisprudence and 'Hukum' in Islamic system.
- Romans called it Jus & in Germany and France it is called as Recht and Droit respectively.
- Blockstone: law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kind of actions irrespective of gender, caste, language, race, birth, colour, and etc.
- Salmonds : the body of principles recognized and applied by the state in the administration of justice.

characteristics of law

- Whatever definition of law chosen, there exists a set of rules or “general standards of conduct, established and enforced by government officials.”
- Law consists of
 - ♦ Norms (standards of behavior)
 - ♦ Regularly enforced by coercion
 - ♦ By persons authorized by society
 - ♦ As stipulated by courts of law

characteristics of law Cont..

- To summarise, following are the main characteristics of law and a definition to become universal one, must incorporate all these elements:
- Law pre-supposes a State.
- The State makes or authorizes to make, or recognises or sanctions rules which are called law.
- For the rules to be effective, there are sanctions behind them.
- These rules (called laws) are made to serve some purpose. The purpose may be a social purpose, or it may be simply to serve some personal ends of a despot.
- Laws are made effective:
 - by requiring damages to be paid for an injury due to disobedience;
 - by requiring one to complete an obligation he has failed to perform;
 - by preventing disobedience; or
 - by administering some form of punishment.

Rules and Regulations

- Rules are guidelines for appropriate behaviour.
- Rules are needed because situations involving more than one person usually require rules to regulate and control them.
- A law is a rule needed to govern an action; a rule that is established by government for the members of its society to follow and obey.
- A law is not just an ordinary rule. Laws are mandatory, rules may be optional.
- What is Regulations?
- Regulation is an authoritative direction to bring about and maintain order in society.

How are Rules and Laws different?

- A law, however, is a special kind of rule; it is a legal rule.
- Laws apply to all members of society and are usually made and enforced by the government and supporting agencies.
- There is a formal system of procedures for the enforcement of laws. They are generally enforceable in a court, whereas rules are usually not.
- If a citizen breaks or violates a law, a system of remedies and punishments is in place to deal with the offender.
- Laws are needed in every society or country to promote and keep order. Without order, anarchy or chaos develops and in the midst of anarchy society falls apart because nothing can be accomplished.
- Are all Laws Rules? Yes.
- All laws are rules, but all rules are not necessarily laws.

SCHOOLS OF LAW (NATURE)

- Philosophical school or Natural law
- Analytical School
- Historical School
- Sociological School
- Realist School

PHILOSOPHICAL SCHOOL OR NATURAL LAW

- **Chief Exponents: Grotius (1583-1645), Immanuel Kant (1724-1804) and Hegel (1770-1831).**
- To them, the law is the product of human reason and its purpose is to elevate and ennoble human personality
- Law neither as the arbitrary command of a ruler nor as the creation of historical necessity.
- It seeks to investigate the purpose for which a particular law has been enacted.

ANALYTICAL SCHOOL

- **Chief Exponents:** Bentham and Austin.
- It is also called the positivist school of jurisprudence because it considers law as it is and not as it ought to be.
- **John Austin** is the father of Analytical School.
- Austin's viewpoint is based on two principles:
 - Law is the command of the sovereign.
 - Force is the essence of law. (i.e. what cannot be enforced is not a law)
- This theory was bitterly criticized in the 19th century by the Pluralists and the sociological jurists.

HISTORICAL SCHOOL

- Law is an outcome of a long historical development of the society because it originates from the social custom, conventions religious principles, economic needs and relations of the people.
- **Savigny** is regarded as the founder of the historical school. He has given the **Volksgeist theory**. It says the law is based upon the general will or free will of common people.
- **Sir Henry Maine** – other exponent.

SOCIOLOGICAL SCHOOL

- **Chief Exponents: Montesquieu, Auguste Comte, Herbert Spencer, Duguit and Rosco Pound are the notable jurists of this school.**
- Law is a social function, an expression of human society concerning the external relations of its individual members.
- The exponents of this school lay greater stress on the functional aspect of law rather than its abstract contents. They regard the law as a social institution essentially inter-linked with their disciplines bearing direct impact on the society.

REALIST SCHOOL

- **Chief Exponents: Oliver Holmes, K. N Llewellyn.**
- Legal realism implies that judicial decisions must conform to socio-economic factors and questions of policy and values.
- In **America** we have the Realist School of jurisprudence. This school fortifies sociological jurisprudence and recognises law as the result of social influences and conditions, and regards it as judicial decisions.

KINDS OF LAW

- Common Law and Civil Law
- Public Law and Private Law
- Civil Law and criminal Law
- Substantive and procedural
- Codified & un codified
- International & municipal
- Territorial v. Personal
- Primary and secondary
- Secular and Personal
- Supreme and ordinary/organic etc.

Common Law and Civil Law

- **Common Law** and **Civil Law** are terms used to describe legal systems
- Common Law is used to describe legal systems based on the English legal system. These are usually countries which were once part of the British Empire
- Case law and the courts are most important source of law
- Civil Law is used to describe legal systems which are based on old Roman Law (from the Roman Empire in what is now Italy) eg: France, Germany
- Consists of a legal code of general principles which is the source of law

Private Law and Public Law

- Private Law and Public Law are concerned with relationships
- Private Law deals with the relationships between ordinary people in everyday transactions. That includes you and me, as well as businesses and companies
- Private Law that affects matters between individuals (whether people, groups of people or companies)
- Contract, Family, Tort, Property law etc.,
- Public Law deals with the relationships between government organisations and ordinary citizens
 - also between different government organisations
- Public Law includes constitutional law, administrative law, and criminal law

Civil Law and Criminal Law

- Civil law deals with the relationships between individual citizens
- Its purpose is to settle arguments between individuals
- It helps people to find remedies--it doesn't really punish people
- Civil Law includes all Private Law and some Public Law
- Criminal Law deals with rules created by the State which forbid certain behaviour. These are "crimes"
- Criminal Law punishes people--it does not provide remedies
- Criminal Law is usually what people think of when they think about "The Law"
- Criminal Law is part of Public Law
- A very important difference between criminal law and civil law relates to court cases
- In a criminal case, the prosecutors (ie the State) must prove their case **beyond reasonable doubt**
- In a civil case, the parties only have to prove their case **on the balance of probabilities**

Substantive and Procedural Law

- substantive law defines legal rights—the law defines the legal relationship between the citizen and the state, and among citizens themselves (e.g., contracts, property, torts, will criminal law)
- procedural law establishes the methods of enforcing legal rights
 - governs the conduct of cases in court
 - protects against arbitrary government actions
 - the central idea is due process of law

Adversarial & Inquisitorial System

Adversarial System

- The adversarial system (or adversary system) is a legal system where two advocates represent their parties' positions before an impartial person or group of people, usually a Judge who attempt to determine the truth of the case.
- Thus, in adversarial method of justice system the central figure is lawyer as great amount burden is rest upon the lawyer to collect evidence and frame the case properly and convince the judge.

Inquisitorial System:

- the inquisitorial System has a judge (or a group of judges who work together) whose task is to investigate the case.

Remedies under Law

a. Indian Constitution:

- Writ of Habeas Corpus,
- Writ of Quo Warranto,
- Writ of Mandamus,
- Writ of Certiorari,
- Writ of Prohibition.

b. Specific Relief Act:

- Specific performance
- Injunction
- Declaration
- Recovery of possession
- Cancellation
- Recession

Remedies under Law Cont..

c. Remedies under Civil Law:

- Damages: General & Special
- Maintenance
- Mesne profits:
- Grant of succession certificate.

d. Remedies under Criminal Law:

- Death
- Imprisonment for life
- Simple and Rigorous Imprisonment
- Forfeiture of property;
- Fine.
- Court can also award compensation.

SOURCES OF LAW

- **WHERE DOES LAW COME FROM?** Sources of law mean the sources from where law or the binding rules of human conduct originate. In other words, law is derived from sources.
- **CLASSIFICATION OF SOURCES:** Salmond, an English Jurist, has classified sources of law into the following categories:
- Formal Sources of Law: These are the sources from which law derives its force and validity. Law enacted by the State or Sovereign falls into this category.
- Material Sources of Law: It refers to the material of law. In simple words, it is all about the matter from where the laws are derived. Customs fall in this category of law.
- Contemporary legal Systems divide sources into three main categories
 - Custom
 - Judicial Precedent
 - Legislation

CUSTOM AS A SOURCE OF LAW

- Custom can simply be explained as those long established practices or unwritten rules which have acquired binding or obligatory character.
- Custom and Usage
- Essentials of a valid custom
- **Antiquity:** In order to be legally valid customs should have been in existence for a long time, even beyond human memor. The only condition is that those should have been in practice since time immemorial.
- **Continuous:** A custom to be valid should have been in continuous practice. It must have been enjoyed without any kind of interruption. Long intervals and disrupted practice of a custom raise doubts about the validity of the same.
- **Exercised as a matter of right:** Custom must be enjoyed openly and with the knowledge of the community. It should not have been practised secretly. A custom must be proved to be a matter of right. A mere doubtful exercise of a right is not sufficient to a claim as a valid custom.

- **Reasonableness:** A custom must conform to the norms of justice and public utility. A custom, to be valid, should be based on rationality and reason. If a custom is likely to cause more inconvenience and mischief than convenience, such a custom will not be valid.
- **Morality:** A custom which is immoral or opposed to public policy cannot be a valid custom. Courts have declared many customs as invalid as they were practised for immoral purpose or were opposed to public policy.
- **Status with regard to:** In any modern State, when a new legislation is enacted, it is generally preferred to the custom. Therefore, it is imperative that a custom must not be opposed or contrary to legislation. Many customs have been abrogated by laws enacted by the legislative bodies in India.
- Importance of custom as a source of law in India.

JUDICIAL PRECEDENT AS A SOURCE OF LAW

- Judicial Precedent refers to previously decided judgments of the superior courts, such as the High Courts and the Supreme Court, which judges are bound to follow. This binding character of the previously decided cases – based on hierarchy of courts.
- **DOCTRINE OF PRECEDENT IN INDIA - A BRITISH LEGACY:**
- Pre – Independence: According to Section 212 of the Government of India Act, 1919, the law laid down by Federal Court and any judgment of the Privy Council was binding on all courts of British India.
- Post-Independence: Supreme Court (SC) became the supreme judicial authority and a streamlined system of courts was established.
- **Supreme Court**: Binding on all courts in India Not bound by its own decisions, or decisions of PC or Federal Court - AIR 1991 SC 2176
- **High Courts**: Binding on all courts within its own jurisdiction Only persuasive value for courts outside its own jurisdiction. In case of conflict with decision of same court and bench of equal strength, referred to a higher bench. Decisions of PC and federal court are binding as long as they do not conflict with decisions of SC.
- **Lower Courts**: Bound to follow decisions of higher courts in its own state, in preference to High Courts of other states.

■ **Judicial decisions can be divided into following two parts:**

- **Ratio decidendi** (Reason of Decision): 'Ratio decidendi' refers to the binding part of a judgment. 'Ratio decidendi' literally means reasons for the decision. It is considered as the general principle which is deduced by the courts from the facts of a particular case. It becomes generally binding on the lower courts in future cases involving similar questions of law.
 - **Obiter dicta** (Said by the way): An 'obiter dictum' refers to parts of judicial decisions which are general observations of the judge and do not have any binding authority. However, obiter of a higher judiciary is given due consideration by lower courts and has persuasive value.
- Having considered the various aspects of the precedent i.e. ratio and obiter, it is clear that the system of precedent is based on the hierarchy of courts.

LEGISLATION AS A SOURCE OF LAW

- In modern times, legislation is considered as the most important source of law.
- The term 'legislation' is derived from the Latin word *legis* which means 'law' and *latum* which means "to make" or "set". Therefore, the word 'legislation' means the 'making of law'.
- **Kinds of Legislation:**
 - **Supreme Legislation:** When the laws are directly enacted by the sovereign, it is considered as supreme legislation. One of the features of Supreme legislation is that, no other authority except the sovereign itself can control or check it.
 - **Subordinate Legislation:** Subordinate legislation is a legislation which is made by any authority which is subordinate to the supreme or sovereign authority. It is enacted under the delegated authority of the sovereign. The origin, validity, existence and continuance of such legislation totally depends on the will of the sovereign authority

■ Classification of Subordinate legislation:

- (a) Autonomous Law:** When a group of individuals recognized or incorporated under the law as an autonomous body, is conferred with the power to make rules and regulation, the laws made by such body fall under autonomous law. For instance, laws made by the bodies like Universities, incorporated companies etc. fall in this category of legislation.
- (b) Judicial Rules:** In some countries, judiciary is conferred with the power to make rules for their administrative procedures. For instance, under the Constitution of India, the Supreme Court and High Courts have been conferred with such kinds of power to regulate procedure and administration.
- (c) Local laws:** In some countries, local bodies are recognized and conferred with the law-making powers. They are entitled to make bye-laws in their respective jurisdictions. In India, local bodies like Panchayats and Municipal Corporations have been recognized by the Constitution through the 73rd and 74th Constitutional amendments.
- (d) Colonial Law:** Laws made by colonial countries for their colonies or the countries controlled by them are known as colonial laws. For a long time, India was governed by the laws passed by the British Parliament. **This kind of law is losing its importance and may not be recognized as a kind of legislation.**
- (e) Laws made by the Executive:** Laws are supposed to be enacted by the sovereign and the sovereignty may be vested in one authority or it may be distributed among the various organs of the State. In most of the modern States, sovereignty is generally divided among the three organs of the State and the prime responsibility of law-making vests with the legislature. However, the legislature delegates some of its law-making powers to executive.

Indian Legal System

- Indian law refers to the system of law which operates in India.
- It is largely based on English common law. Various Acts introduced by the British are still in effect in modified form today.
- Much of contemporary Indian law shows substantial European and American influence.
- **History of Indian law**
- Ancient India represented a distinct tradition of law.
- India had an historically independent school of legal theory and practice.
- The *Arthashastra*, dating from 400 BC, and the *Manusmriti*, from 100 AD, were influential treatises in India.
- Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia.

Source of Law

■ **Primary Source:**

- a. The primary source of law is in the enactments passed by the Parliament or the State Legislatures.
- b. The President and the Governor have limited powers to issue ordinances.
- c. These ordinances lapse six weeks from the re-assembly of the Parliament or the State Legislature.

■ **Secondary Source:**

- a. Secondary source of law is the judgments of the Supreme Court, High Courts and some of the specialised Tribunals.
- b. The Constitution provides that the law declared by the Supreme Court shall be binding on all courts within India.

Constitution of India

- Background
- The Constitution of every country has certain special features because the historical background ,social, economic and political conditions influence the making of the constitution.
- All these factors have contributed in the making of the Constitution of India
- Constitution of India is the supreme law of India.
- It lays down the framework defining fundamental political principles, establishing the structure, procedures, powers and duties, of the government and spells out the fundamental rights, directive principles and duties of citizens.
- Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January 1950.
- The Date 26 January was chosen to commemorate the declaration of independence of 1930.

What is Constitution?

- The Constitution is the Basic law of the land. All other laws have to conform to the Constitution. The constitution contains laws concerning the government and its relations with the people.
- A constitution is concerned with 2 main aspects:-
- The relation between the different levels of government and
- Between the government and the citizens.
- A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.
- These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single collection or set of legal documents, those documents may be said to comprise a written constitution.

Why We Need Constitution?

- We need a constitution to govern a country properly.
- The constitution defines the nature of political system of a country.
- sometimes we feel strongly about an issue that might go against our larger interests and the constitution helps us guard against this.
- All the 3 organs of government (executive, legislature and judiciary) functions within the constitution. All the 3 organs of government, including ordinary citizens, derive their power and authority (i.e. Fundamental Right) from the constitution. If they act against it, it is unconstitutional and unlawful.
- So constitution is required to have authoritative allocation of power and function, and also to restrict them within its limit.

Why We Need Constitution Cont..

- To perform following Functions we need Constitution-
- The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.
- The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted.
- The third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may ever trespass them.
- The fourth function of a constitution is to enable the government to fulfill the separations of a society and create conditions for a just society.

Uniqueness of Indian Constitution

- The Constitution of India is the longest in the world. Originally it had 395 Articles divided into 22 parts and 8 Schedules. A number of amendments (more than 100), passed since its enforcement in 1950, have also become a part of the Constitution.
- Today it has 448 Articles divided into 24 parts and 12 Schedules. The constitution of USA has 7 Articles, of China 138, Japanese 103, and Canadian 107 Articles. LONGEST CONSTITUTION
- Whether a constitution is rigid or flexible depends on the nature of amendments. Some provisions of our Constitution can be amended by the Parliament with simple majority. The amendment of most other provisions of the constitution requires a special majority in both houses of the parliament.
- There are some other provisions of constitution which cannot be amended by the parliament alone. These different amendment procedures make our constitution partly flexible and rigid. A RIGID YET FLEXIBLE CONSTITUTION

Preamble to the Constitution of India

- These are the opening words of the preamble to the Indian Constitution
- “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
- JUSTICE, social, economic and political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and of opportunity;
- and to promote among them all
- FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
- IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Criminal law

- Indian Penal Code (IPC) provides a penal code for all of India including Jammu and Kashmir, where it was renamed the Ranbir Penal Code (RPC) but now no more special applicable to JK after repealing of Art. 370
- The code applies to any offence committed by an Indian Citizen anywhere and on any Indian registered ship or aircraft.
- Indian Penal Code came into force in 1862 (during the British Raj) and is regularly amended, such as to include section 498-A.

CRIMINAL PROCEDURE CODE

- Plea Bargaining in Criminal Cases
- Plea bargaining is introduced in India by Criminal Law (Amendment) Act, 2005.
- This affects cases in which the maximum punishment is imprisonment for seven years.
- However, offenses affecting the socio-economic condition of the country and offenses committed against a woman or a child below the age of fourteen are excluded.

Civil Procedure Code

- The Civil Procedure Code (C.P.C.) regulate the functioning of Civil courts.
- It lays down the:
 - Procedure of filing the civil case.
 - Powers of court to pass various orders.
 - Court fees and stamps involved in filing of case.
 - Rights of the parties to case (plaintiff & defendant)
 - Jurisdiction & parameters of civil courts functioning.
 - Specific rules for proceedings of a case.
 - Right of Appeals, review or reference.

CIVIL PROCEDURE CODE, 1908 Recent Developments

- MEDIATION & CONCILIATION ENCOURAGED
- NUMBER OF ADJOURNMENTS-3
- SERVICE OF SUMMONS BY OTHER MEANS
- EVIDENCE BY WAY OF AFFIDAVITS
- TIME LIMIT TO PRONOUNCE JUDGEMENTS

Thank you