

Sources of Law

① Nature & Meaning of Law = Described by Various jurists + No unanimity
↓
Different Nature + Purpose + Source

② Rule of Law = Mandatory (Affirmative) + Prohibitive (Negative) + Permissive (Neither require nor forbid)
Tax Weapon Vote

③ Sources of Law Primary = Judicial Precedents + Customs + Statutes + Personal Laws
Secondary = Justice Equity & good conscience + Sources of English Law

④ Judicial Precedents = Guidance or Authority derived from past decisions of the Court for future cases.

SC
↓
141
Binding Value

HC
↓
225
Binding & Persuasive Value

Kind of Judicial Precedents

Authoritative + Persuasive + Original + Declaratory

⑤ Doctrines related to Precedents

Stare & Decies = Stand by things decided + Adhere to decisions + Not to unsettle things + Court will look upto past similar issues to guide decisions
+ Past Judgement obliges future judges
+ Doctrine that obliges Court to look to precedent while making their decisions

Ratio Decidendi = Rationale behind decision + Judge's reason for coming to decision (+) Legal rule or section (+) used by judge to determine final decision
Court uses Political + Social + Legal Principles with reasoning

Obiter Dicta = Said by the way + Casual Opinion of Judges + No authoritative form + Persuasive in nature
+ Judicial Utterances in the Course of delivering a judgement which were not necessary for the decisions.

⑥ Customs = With or Without sanction
Obligatory Punishment Non-Obligatory but observed due to public pressure

Legal (by Law) Conventional (Usages) | Requisites of Valid Custom
 Local + General | Local + General | Antique + Certain + Reasonable
 + Compulsory + Unanimous
 + Peaceful + Consistent

⑦ Statutes = Supreme Legislation + Sub-ordinate Legislation

⑧ Personal Laws = HPL + MPL
 ↓ Quran
 ↓ Hadis (Mohl. Teachings)
 ↓ Ijmas (Companions opinion)
 ↓ Kiya (Comparative Analysis)
 ↓ Recollection of content handed down by Rishis
 ↓ Yajur Vedic Smritis (3) Rig Sam Atar
 ↓ Manu Narad Yajnavalkya

⑨ Justice, Equity & Good Conscience = Last resort + No Custom + No Statute + No personal Law (in India)

⑩ Sources of English Law = Common Law + Statute Law + Principle of Equity + Mercantile Law (Traders)
 ↓ Sources
 English Mercantile Law + Judicial Decisions + Indian Legislative Acts + Customs & Trade Usage
 Neither custom nor written law but dictation of Conscience.

⑪ Significance of Law = Not Static + Dynamic + Changes with req- of society.
 + Prevailing law must be in conformity with customs & aspirations of its people.
 + Law vast to transformation (Conceptual & Structural)
 + Provides Socio-Economic Justice & remove imbalances

⑫ Classification/Schools of Law

<u>Natural</u> ↓ Good or Bad Just or Unjust Law = Rules for Humans Things	<u>Positivist</u> ↓ "What Law is" ↓ Command Sovereign ↓ Austin's Theory of Law	<u>Historic</u> ↓ Law isn't made but found + Unconscious growth	<u>Realistic</u> ↓ Most sensible & practical idea ↓ Court judgements are best Law.	<u>Socio-logical</u> ↓ Law is social fact + For society + Made by Politically & Socially superior for sub-ordinate
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⑬ Austin's Theory of Law

1790 Born + European Jurist + Father of Analytical School

+ 1832 book "The Province of Jurisprudence determined" + "Sovereign

Expression of desires given by superior
 + Command + Sanction
 To control disobedience

Criticism = ~~Moral & Ethical Content~~ + ~~Customs & Habits~~ + ~~Judicial Precedents~~ + ~~International Laws~~ + Command Theory "Impactable"

⑭ Prof - HLA Hart = Analytical School + Herbert Lionel Adoffia + 1907 Born + 1961 Book "Concept of Law" + Biggest Criticizer of Austin

→ Sovereign + Exec + Judiciary
→ Legal Rules + Moral & Ethical

Gunman Theory

Law ≠ Coercion
Coercion ≠ Law
Compliance of Order out of fear ≠ Law

⑮ Bentham's Theory of Law

Sir Jeremy Bentham + Born 1748 + Book "Limits of Jurisprudence defined"

State = Pleasure ↑ - Pain ↓

Absolute Power to Legislature

Aim of Law = Security + Equity

Criticism = ~~Customs~~ + ~~Judicial Precedents~~ + Happiness Theory Wrong + Command & Titles

Bentham (1748)

Austin (1790)

Hart (1907)

8 Different Aspects of Bentham Theory

Source + Subject + Object + Extent + Aspect + Force + Remedial + Expression
↓ ↓ ↓ ↓ ↓ ↓ ↓ ↓
Sovereign Person or Things Goal Position of Land (May or Shall) Subsidary Laws Will of Sovereign

only motivation

⑯ Roscoe Pound Theory

Born 1870 + American Scholar + Socio-logical School + Dual Theories

Social Engineering is an attempt to control human conduct by using Law. (Social Engineering + Social Interest)

"Lawmaker acts as a Social Engineer by attempting to solve problems in society by using law as a tool."

Law → Society
Social Engineers → Fix

Social Engineering is based on the theory that laws are created to shape the society & regulate people's behaviour.

Law belongs to land

Criticism = Interest Pre Exist Law + Jud > Leg + No distinction among Indiv, Social & Public interest.
(False) (False)
+ No formula for valuation of interest.

⑰ Hans Kelsen's Pure Theory of Law

Born 1881 + Australian Philosopher + Positivist + Law is Primary norm which stipulates sanction +

But also firm believer of Normative "Theft"

(shall) Command (can) Authorize (may) Permit

Acc to Kelsen "An acceptable Theory of Law must be pure i.e. Logical, Self supporting & not dependant upon extra legal values i.e. Socio-logical, Political, Economic & historical influence of law".

Subjective & Objective Meaning

External Manifestation of Human Conduct

Legal meaning of Human Conduct

"Every Law has a ground norm"

→ Parliamentary Discussions

Bill passed

→ President Sign

New Law enacted.

Criticism - Difficult to trace ground norm

+ How to analyse effectiveness of ground norm

+ Int Law > National Law
↓
Unrealistic.

⑮ Salmond Theory = John William Salmond + New Zealand + Judge S.C.

1902 Book = Theory or Jurisprudence of Law.

"Law is the body of Principles which are recognized & applied by State in the administration of Justice"

State = Court + Govt

Law = Civil Law ⇒ Law of Land ⇒ Law of State

Jurisprudence is the study of knowledge of laws recognized by State.

Generic Specific

① Customs X

③ Not all Laws provide justice

Criticism = Narrow & Ltd.

② Int Laws X

④ There can be objectives other than justice.

⑰ Jurisprudence

① Jurisprudence ≠ Law

② Juris ≠ Legal Theories

③ Law reasoning Theories

Study + Investigⁿ → Jurisprudence

④ No perfect defⁿ of law.

⑤ Study of fundamental principles or Philosophies of law laid down by Different jurists.

⑱

Importance of Jurisprudence

① Educational Value (Necessity to become lawyer)

② Eye & Grammar of Law

③ Help lawyers to study criminal mind.

④ Study of Human Mind — Will
Punishment
Public Fear