

Concept of Law

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Introduction

- ▶ **State is Sovereign. It is supreme power of the state**
- ▶ **The government of the state is basically machinery for making and Enforcing laws**
- ▶ **Each law is a formulated will of the state**
- ▶ **Every violation of law is punished by the state**
- ▶ **State carries out its all functions through law**

Meaning and Definitions of Law

- ▶ The word 'Law' has been derived from the Teutonic word 'Lag, which means 'definite'
- ▶ In this way Law can be defined as a definite rule of conduct and human relations
- ▶ Law regulates general conditions of human activity in the state
- ▶ Law in terms of social order
- ▶ Law in terms of elements of state
- ▶ Law in terms of justice



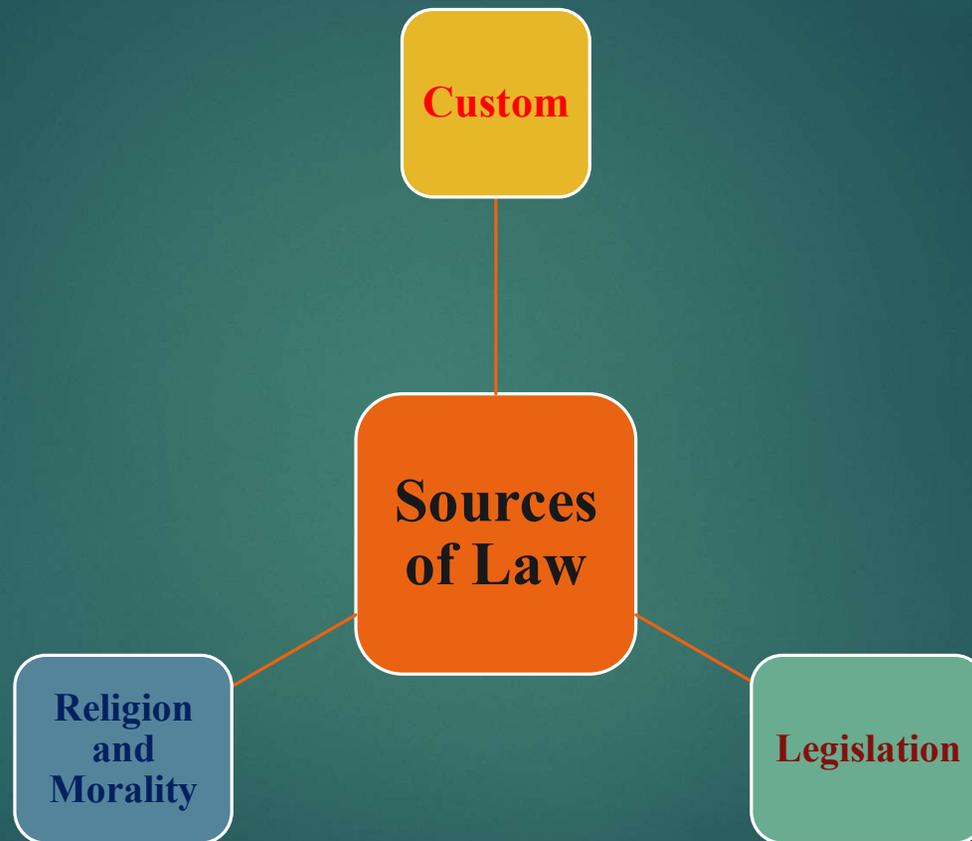
Definitions of Law

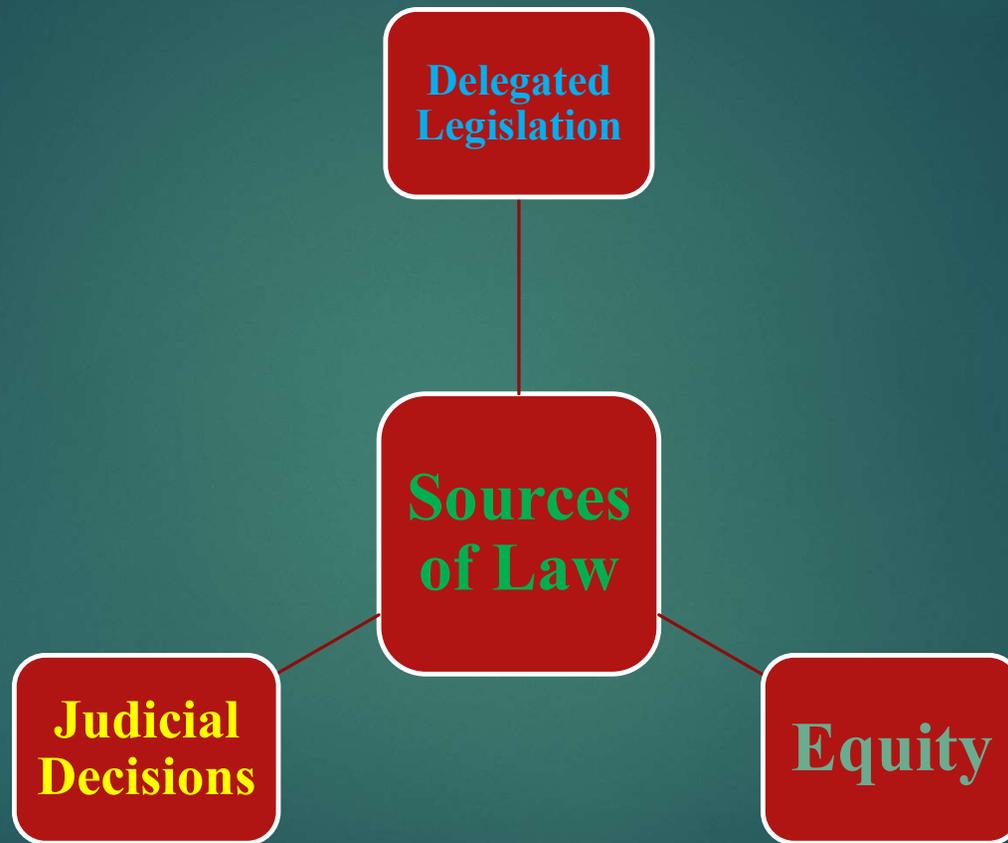
- ▶ **“Law is the command of the sovereign .” “It is the command of the superior to an inferior and force is the sanction behind law.”—Austin**
- ▶ **“A Law is a general rule of external behavior enforced by a sovereign political authority”—Holland**
- ▶ **Law is an instrument of social engineering- to maximize the fulfillment of interest of the community, provide smooth running of the machinery of society.----Roscoe Pound**

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- ▶ In simple words, Law is a definite rule of behavior which is backed by the sovereign power of the State.
 - ▶ It is a general rule of human conduct in society which is made and enforced by the government' Each Law is a binding and authoritative rule or value or decision.
 - ▶ Its every violation is punished by the state.

Features Of Law

- ▶ Law is a general rule of human behavior in the state.
- ▶ Law is definite and it is the formulated will of the state.
- ▶ State always acts through Law. Laws are made and enforced by the government of the state.
- ▶ Law creates binding and authoritative values or decisions for all the people of state.
- ▶ Sovereignty of state is the basis of law and its binding character.
- ▶ Law is backed by the coercive power of the state.
- ▶ Punishments are also prescribed by Law.
- ▶ The courts settle all disputes among the people on the basis of law.





1. Custom:

- ▶ Custom has been one of the oldest sources of law. In ancient times, social relations gave rise to several usages, traditions and customs. These were used to settle and decide disputes among the people.
- ▶ Customs were practiced habitually and violations of customs were disapproved and punished by the society.
- ▶ Initially social institutions began working on the basis of several accepted customs.

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- ▶ Gradually, the State emerged as the organised political institution of the people having the responsibility to maintain peace, law and order; naturally, it also began acting by making and enforcing rules based upon customs and traditions.
 - ▶ In fact, most of the laws had their birth when the State began converting the customs into authoritative and binding rules.
 - ▶ Custom has been indeed a rich source of Law.

2. Religion and Morality:

- ▶ Religion and religious codes appeared naturally in every society when human beings began observing, enjoying and fearing natural forces. These were accepted as superior heavenly forces (Gods and Goddesses) and worshiped.
- ▶ Religion then started regulating the behaviour of people and began invoking “Godly sanction”, “fear of hell”, and “possible fruits of heaven”, for enforcing the religious codes. It compelled the people to accept and obey religious codes. Several religions came forward to formulate and prescribe definite codes of conduct. The rules of morality also appeared in society. These defined what was good & what was bad, what was right and what was wrong.

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- ▶ The religious and moral codes of a society provided to the State the necessary material for regulating the actions of the people.
 - ▶ The State converted several moral and religious rules into its laws.
 - ▶ Hence Religion and Morality have also been important sources of Law.

3. Legislation:

- ▶ since the emergence of legislatures in 13th century, legislation has emerged as the chief source of Law.
- ▶ Traditionally, the State depended upon customs and the decrees or orders of the King for regulating the behaviour of the people.
- ▶ Later on, the legislature emerged as an organ of the government.
- ▶ It began transforming the customary rules of behaviour into definite and enacted rules of behaviour of the people.

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- ▶ The King, as the sovereign, started giving these his approval. Soon legislation emerged as the chief source of law and the legislature got recognition as the Legal Sovereign i.e. law-making organ of the State.
 - ▶ In contemporary times, legislation has come to be the most potent, prolific and direct source of law.
 - ▶ It has come to be recognized as the chief means for the formulation of the will of the State into binding rules.

4. Delegated Legislation:

- ▶ Because of several pressing reasons like paucity of time, lack of expertise and increased demand for law-making, the legislature of a State finds it essential to delegate some of its law-making powers to the executive.
- ▶ The executive then makes laws/rules under this system.
- ▶ It is known as Delegated Legislation. Currently, Delegated Legislation has come to be a big source of Law.
- ▶ However, Delegated Legislation always works under the superior law-making power of the Legislature.

4. Judicial Decisions:

- ▶ In contemporary times, Judicial Decision has come to be an important source of Law.
- ▶ It is the responsibility of the courts to interpret and apply laws to specific cases.
- ▶ The courts settle the disputes of the people in cases that come before them. The decisions of the courts – the judicial decisions, are binding on the parties to the case.
- ▶ These also get accepted as laws for future cases. But not all judicial decisions are laws.

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- ▶ Only the judicial decisions given by the apex court or the courts which stand recognized as the Courts of Record, (like the Supreme Court and High Courts of India) are recognized and used as laws proper.
 - ▶ Lower Courts can settle their cases on the basis of such judicial decisions.

5. Equity:

- ▶ Equity means fairness and sense of justice. It is also a source of Law. For deciding cases, the judges interpret and apply laws to the specific cases.
- ▶ But laws cannot fully fit in each case and these can be silent in some respects.
- ▶ In all such cases, the judges depend on equity and act in accordance with their sense of fair play and justice.
- ▶ Equity is used to provide relief to the aggrieved parties and such decisions perform the function of laying down rules for the future.
- ▶ As such equity acts as a source of law.

6. Scientific Commentaries:

- ▶ The works of eminent jurists always include scientific commentaries on the Constitution and the laws of each state.
- ▶ These are used by the courts for determining the meaning of law.
- ▶ It helps the courts to interpret and apply laws.
- ▶ The jurists not only discuss and explain the existing law but also suggest the future possible rules of behaviour.
- ▶ They also highlight the weaknesses of the existing laws as well as the ways to overcome these. Interpretations given by them help the judges to interpret and apply Laws to specific cases.

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- ▶ The works of jurists like, Blackstone, Dicey, Wade, Phillips, Seeravai, B.Pi. Rau, D.D. Basu and others have been always held in high esteem by the judges in India. Scientific commentaries jurists always help the development and evolution of law.
 - ▶ Hence these also constitute a source of law.
 - ▶ Thus, Law has several sources. However, in contemporary times law-making by the legislature constitutes the chief source of Law.









Types of Law

▶ Broadly speaking there are **two** types of Law:

1. **National Law-** The body of rules which regulates the actions of the people in society and it is backed by the coercive power of the state.
2. **International Law-** It is the body of rules which guides and directs the behavior of the states in international relations. It is backed by their willingness and consent that the states obey rules if International Law.

National Law

▶ It stands classified into several kinds.

1 Constitutional Law

2 Ordinary Law

Constitutional Law

- ▶ It is the supreme law of the country
- ▶ It stands written in the constitution of the state
- ▶ It lays down the organization, powers, functions and inter-relationship of the three organs of government
- ▶ All law making power in the state is done on the basis of powers granted by the constitutional law.

Ordinary Law

- ▶ It is also called the national law or the municipal law.
- ▶ It is made by the government and it determines and regulates the conduct and behavior of the people.
- ▶ It lays down relations among the people and their associations, organizations, groups and institutions.
- ▶ It is classified into **two** parts:
 - ▶ 1 Private Law
 - ▶ 2 Public Law

Private Law

- ▶ It regulates the relations among individuals.
- ▶ It lays down rules regarding the conduct of the individual in society and his relations with other persons.
- ▶ It guarantees the enjoyment of his rights
- ▶ It is through this law the state acts as the arbiter of disputes between any two individuals or their groups.

Public Law

- ▶ It regulates the relations between the individual and the state
- ▶ It is made and enforced by the state on behalf of the community.
- ▶ It further classifieds into **General Law** and **Administrative Law**

General Law

- ▶ It lays down the relations between the private citizens(Non-officials or member of the civil service) and the state.
- ▶ It applies to all the citizens in their relations with the state.

Administrative Law

- ▶ It lays down the rules governing the exercise of the constitutional authority which stands delegated by the constitution of the state to all the organs of government
- ▶ It also governs the relations between the civil servants and the public and lays down the relations between the civil servants and the state.
- ▶ In **India , Britain and USA** the same courts administer both the General Law and Administrative Law.