

SUBJECT: POLITICAL SCIENCE II

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MODULE: V: Laws, Rights and Duties

TOPIC: Meaning, Definition and Sources of Law

LAW

State is sovereign. Sovereignty is its exclusive and most important element. It is the supreme power of the state over all its people and territories. The State exercises its sovereign power through its laws. The Government of the State is basically machinery for making and enforcing laws.

Each law is a formulated will of the state. It is backed by the sovereign power of the State. It is a command of the State (sovereign) backed by its coercive power. Every violation of law is punished by the State. It is through its laws that the State carries out its all functions.

I. Meaning and Definition:

The word 'Law' has been derived from the Teutonic word 'Lag, which means 'definite'. On this basis Law can be defined as a definite rule of conduct and human relations. It also means a uniform rule of conduct which is applicable equally to all the people of the State. Law prescribes and regulates general conditions of human activity in the state.

- **Austin-** "Law is the command of the sovereign." "It is the command of the superior to an inferior and force is the sanction behind Law."
- **Holland-** "A Law is a general rule of external behaviour enforced by a sovereign political authority."

In simple words, Law is a definite rule of behaviour 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.

II. Sources 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.

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. 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.

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.

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.

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.

Reference:

<http://www.yourarticlelibrary.com/essay/law-essay/law-meaning-features-sources-and-types-of-law/40363>