

Classification of Law and Sources of Law

Before we come to the classification of law, let us understand what law actually is from the broadest definition of law as given by Baron De Montesquieu. In his book, Spirit of the law, he defines law in the following words: "Laws in the wider possible connotations are any necessary relation arising from a thing in nature. In this sense, all beings have their laws; the Deity his laws, the material world its laws, the intelligence superior to man its laws, the beasts their laws, man his law..."

It is, therefore, noted that law is neither unique nor universal. There can be a set of law for beings in the nature and another set of law for human beings. Since law can be seen from multiple perspectives, we may divide or classify the law in its broadest sense in the following categories:

1. Eternal Law
 2. Divine Law
 3. Natural Law
 4. Human or Positive Law
- 1. Eternal Law:** Nothing is eternal in the universe, so how can there be eternal laws. Well, there are eternal laws that have been in existence from infinite past and will continue to exist forever because these laws are based on eternal principles. For instance, law of gravity is an eternal law. It doesn't matter whether there is earth or not, the law of gravity exists eternally. All the laws of physics would probably fall under the category of eternal law.
- 2. Divine Law:** The source of divine law is God. Different religions seek the command of the highest being as the guide to direct the human affairs. Divine Law is referred to as laws made by a deity to govern the affairs of man. A good example of divine law can be found in Islamic law as postulated in the Q'uran. These laws are said to be given by God to the Prophet Muhammed in order to guide the affairs of man. The logic behind the use of divine law stems from the fact that God, accepted as all knowing and all wise, is in the best position to make laws for the use of mankind.
- 3. Natural Law:** In the legal sense, natural law can be said to be law as espoused by the natural law theorists. This law is said to be the law that is innate in all mankind and can be deduced through the use of reason. For example, it is accepted in all cultures that murder is wrong and should be punished.
- 4. Positive or Human Law:** Positive Law can also be regarded as human law. These are laws made by man in order to guide the conduct of members of the society. They are laws made by persons given the authority to do so either directly or indirectly by the society. Legal positivism doesn't concern itself with morals. Once a law has been enacted by persons in authority, it is valid.

Examples of positivist law include the **1999 Constitution, Company and Allied Matters Act, Banks and Other**

Financial Institutions Act and a host of others enacted by man.

CLASSIFICATIONS OF LAW

1. Public and Private Law
 2. Civil Law and Criminal Law
 3. Substantive and Procedural Law
 4. Municipal and International Law
 5. Written and Unwritten Law
 6. Common Law and Equity
- 1. Public and Private Law:** Public Law deals with the relationship between states and other states, between the state and its citizens. The public law establishes relationship between two parties, a higher one and a lower one where in the state is the higher party and the citizens are the lower party. Some of the laws that come under the public law include International law, criminal law, administrative law and the constitutional law. Private law on the other hand deals with the relationship between private citizens. Some of the examples of private law includes the law of contract, the law of torts, the law of trust etc.
- 2. Civil Law and Criminal Law:** Civil law takes into account the concerns of the civilians. In other words the civil law includes all laws that deal with the relationship between citizens. It addresses the violation of the rights of citizens and provides remedial measures if their rights are breached. Civil law includes family law, the law of torts, the law of contract etc. The criminal law on the other hand exclusively focuses on addressing crime and criminal behaviour. The criminal law defines crime and punishes the violation of crime. According acts that harm the society are considered criminal. The Indian Penal Code is an example of criminal law.
- 3. Substantive and Procedural Law:** Substantive law and procedural law should not be separated. In fact, they work together to ensure that the appropriate laws are applied whether in criminal or civil cases. Together, these two laws ensure that the proper procedures are followed to bring a case to trial.

SUBSTANTIVE LAW

Substantive law consists of written statutory rules passed by legislature that govern how people behave. These rules, or laws, define crimes and set forth punishment. They also define our rights and responsibilities as citizens. There are elements of substantive law in both criminal and civil law.

Substantive law is used to determine whether a crime or tort has been committed, define what charges may apply and decide whether the evidence supports the charges. Let's say a person is caught drunk driving. Substantive law says that it is a crime punishable by a term in prison.

The substance of charges, or elements of a crime or tort, must be carefully evaluated to determine whether a crime or tort really exists. In other words, specific facts need to be proven true in order to convict somebody of a crime or a tort.

PROCEDURAL LAW

Procedural law governs the mechanics of how a legal case flows, including steps to process a case. Procedural law adheres to due process which every citizen has a right to.

Due process refers to the legal rights owed to a person in criminal and civil actions. It is one of our constitutional rights and guarantees the right to life, liberty and the pursuit of happiness. Everyone has the right to life, liberty and the security of person.' Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." In India, once the person has been arrested, he must be informed about the cause of arrest and should not be kept under arrest for more than 24 hours before being presented to the magistrate.

For example, in our drunk driving case, substantive law proved that the person was drunk while driving a vehicle. The police were within their rights to make the arrest, but due process requires that the person must be aware of all charges within 72 hours of his or her arrest.

4. Municipal/Domestic and International Law: Municipal law or the domestic law is the law of the land. It operates in the country where the law is framed. For instance, the Constitutional law of India is a domestic law that applies to the Indian citizens.

International law, on the other hand, is the law between countries. It regulates the relationship between different independent countries and is usually in the form of treaties, international customs etc. Examples of International law include the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

In principle, international law operates only at the international level and not within domestic legal systems—a perspective consistent with positivism, which recognizes international law and municipal law as distinct and independent systems. Conversely, advocates of natural law maintain that municipal and international law form a single legal system, an approach sometimes referred to as monism. Such a system, according to monists, may arise either out of a unified ethical approach emphasizing universal human rights or out of a formalistic, hierarchical approach positing the existence of one fundamental norm underpinning both international law and municipal law.

5. Written and Unwritten Law: A law would not be regarded as written just because it is written down in a document. Written laws are those laws that have been validly enacted by the legislature of a country. Unwritten laws, on the other hand, are those laws that are not enacted

by the legislature. They include both customary and case law. Customary Law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on the fact that it is not enacted by the legislature.

An example of this is the good neighbour principle established in the case of *Donoghue vs. Stevenson*. The principle posits that manufacturers of products should take utmost care in their manufacturing activities to ensure that the consumption of their product doesn't result in harm to the consumer. This principle is not enacted in a statute but is a case law which is applicable in many countries in the world.

6. Common Law and Equity: In the legal sense, the term common law means the law developed by the old common law courts of the King's Bench, the Courts of Common Pleas and the Courts of Exchequer.

The English common law is regarded as such because it is law common to all parts of England. It grew over time from the practices, customs and way of life of the people. It is largely unwritten. The first common law judge was the King himself. People who had disputes usually brought them to the King to settle them.

However, due to matters of state, the king didn't have time to settle all cases. As a result of this, the king appointed members of his court who were to settle disputes in his stead. These judges had the authority of the king and any disobedience to them was treated as disobedience to the king and punishment was swift.

These different judges travelled the length and breadth of the realm to settle disputes. When they got to a particular location, they applied the customary law in that location in order to settle disputes. Regularly, these different itinerant judges would come together to compare the different customary laws they encountered on their travels.

They discarded customs that were thought to be insensible and accepted those which were sensible. This led to the conglomeration of different customs which were then applied all through the realm. This then metamorphosed into the common law of England.

SOURCES OF LAW

To have a clear and complete understanding of law, it is essential to understand the sources of law. 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. Jurists have different views on the origin and sources of law, as they have regarding the definition of law. As the term 'law' has several meanings, legal experts approach the sources of law from various angles. For instance, Austin considers sovereign as the source of law while Savigny and Henry Maine consider custom as the most important source of law. Natural law school considers nature and human reason as the source of law, while theologians consider the religious scripts as sources of law. Although there are various claims and counter claims regarding the sources of law, it is true that in almost all societies, law has been derived from similar 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. A 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.

On the basis of the above discussion, three major sources of law can be identified in any modern society are as follows:

- i. Custom
- ii. Judicial precedent
- iii. Legislation

(I) CUSTOM AS A SOURCE OF LAW

A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for a very long time, but it must also be supported by the opinion of the general public and morality. However, every custom need not become law. For example, the Hindu Marriages Act, 1955 prohibits marriages which are within the prohibited degrees of relationship. However, the Act still permits marriages within the prohibited degree of relationship if there is a proven custom within a certain community. Custom can simply be explained as those long established practices or unwritten rules which have acquired binding or obligatory character. In ancient societies, custom was considered as one of the most important sources of law; In fact it was considered as the real source of law. With the passage of time and the advent of modern civilization, the importance of custom as a source of law diminished and other sources such as judicial precedents and legislation gained importance.

Saptapadi is an example of customs as a source of law. It is the most important rite of a Hindu marriage ceremony. The word, Saptapadi means "Seven steps". After tying the Mangalsutra, the newly-wed couple take seven steps around the holy fire, which is called Saptapadi. The customary practice of Saptapadi has been incorporated in Section 7 of the Hindu Marriage Act, 1955.

Kinds of customs

Customs can be broadly divided into two classes:

- (i) **Customs without sanction:** These kinds of customs are non-obligatory in nature and are followed because of public opinion.
- (ii) **Customs with sanction:** These customs are binding in nature and are enforced by the State. These customs may further be divided into the following categories:
 - (a) **Legal Custom:** Legal custom is a custom whose authority is absolute; it possesses the force of law. It is recognized and enforced by the courts. Legal custom may be further classified into the following two types:
 - (i) **General Customs:** These types of customs prevail throughout the territory of the State.
 - (ii) **Local Customs:** Local customs are applicable to a part of the State, or a particular region of the country.
 - (b) **Conventional Customs:** Conventional customs are binding on the parties to an agreement. When two or more persons enter into an agreement related to a trade, it is presumed in law that they make the contract in accordance with established convention or usage of that trade. For instance an agreement between landlord and tenant

regarding the payment of the rent will be governed by convention prevailing in this regard.

ESSENTIALS OF A VALID CUSTOM

The jurists and courts have laid down some essential tests for customs to be recognized as valid sources of law. These tests are summarized as follows:

Antiquity: In order to be legally valid customs should have been in existence for a long time, even beyond human memory. In England, the year 1189 i.e. the reign of Richard I King of England has been fixed for the determination of validity of customs. However, in India there is no such time limit for deciding the antiquity of the customs. 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. Bombay High Court in the case of Mathura Naikon v. Esu Naekin, ((1880) ILR 4 Bom 545) held that, the custom of adopting a girl for immoral purposes is illegal.

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. For instance, the customary practice of child marriage has been declared as an offence. Similarly, adoption laws have been changed by legislation in India.

CUSTOM AS A SOURCE OF LAW IN INDIA

Custom was the most important source of law in ancient India. Even the British initially adopted the policy of non-intervention in personal matters of Hindus and Muslims. The British courts, in particular, the Privy Council, in cases such as Mohammad Ibrahim v. Shaik Ibrahim, (AIR 1922 PC 59) observed and underlined the importance of custom in moulding the law. At the same time, it is important to note that customs were not uniform or universal throughout the country. Some regions of the country had their own customs and usages. These variances in customs were also considered a hindrance in the integration of various communities of the country.

Hindu Personal Laws that have been codified are as follows:

Hindu Personal Laws

- (a) Hindu Marriage Act, 1955
- (b) Hindu Succession Act, 1956,
- (c) Hindu Minority and Guardianship Act, 1956 and
- (d) Hindu Adoptions and Maintenance Act, 1956

(II) JUDICIAL PRECEDENT AS A SOURCE OF LAW

In simple words, 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 is important, considering the hierarchy of the courts established by the legal systems of a particular country. In the case of India, this hierarchy has been established by the Constitution of India.

DOCTRINE OF PRECEDENT IN INDIA

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. Hence, Privy Council was supreme judicial authority - AIR 1925 PC 272.

Post-independence

Supreme Court (SC) became the supreme judicial authority and a streamlined system of courts was established.

(1) 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 2)

(2) 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.

(3) 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:

(I) **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.

(II) **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. Therefore, it becomes important to understand the hierarchy of courts in order to understand precedent.

(III) 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

The kinds of legislation can be explained as follows:

- (i) **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.
- (ii) **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. Subordinate legislation further can be classified into the following types:-
 - (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. The rules and bye-laws enacted by them are examples of local laws.
 - (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. However, as most countries of the world have gained independence from the colonial powers, this legislation 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. The three organs of the State namely legislature, executive and judiciary are vested with three different functions.

EXERCISE

- Which of the following is not one of the class or category of law?
(a) Divine Law (b) Natural Law
(c) Practical Law (d) Positive Law
- Law of gravity is an example of which law?
(a) Eternal law (b) Divine Law
(c) Natural Law (d) Positive Law
- Which among the following is an example of divine law?
(a) The law in the constitution
(b) The law in Quran
(c) The law in Sharia
(d) All the above
- Who said, "Laws in the wider possible connotations are any necessary relation arising from a thing in nature. In this sense, all beings have their laws; the Deity his laws, the material world its laws, the intelligence superior to man its laws, the beasts their laws, man his law..."
(a) Baron De Montesquieu (b) Henry Maine
(c) HLA Hart (d) Charlemagne
- What is the difference between natural law and divine law?
(a) Natural law is innate, divine law is not
(b) Divine law is innate, natural law is not
(c) Both natural law and divine law is the same, there is no difference.
(d) Neither natural law nor divine law is innate.
- Which of the following statements is incorrect about positive laws?
(a) Positive law can be regarded as human laws
(b) These laws are made by man
(c) These laws are made by man but inspired by divine source
(d) It doesn't concern itself with morals
- Which is incorrect about public law?
(a) Public law deals with states and citizens
(b) Public law establishes relations between two equal parties
(c) Public law establishes relations between a higher and a lower party
(d) Constitutional law is an example of public law
- Which among the following is an example of private law?
(a) Criminal law (b) International law
(c) Law of contract (d) None of the above
- Which of the following statement is incorrect about the civil law?
(a) It concerns civilians only
(b) It concerns with everything including crimes by civilians
(c) It concerns with the rights of civilians
(d) All the above
- Which of the following is/are important element/s of criminal law?
(a) Proof beyond reasonable doubts
(b) Simple proof
(c) Reasonable proof
(d) Balance of probabilities
- The burden of proof does not shift in which of the following?
(a) Criminal law (b) Civil law
(c) Both (d) None
- Identify the correct statement.
(a) Substantive law and procedural law should not be separated
(b) Substantive law and procedural law should be separated
(c) Substantive and procedural law are important only in criminal law.
(d) Substantive and procedural law are important only in civil law.
- Which statement about substantive law is correct?
(a) There are elements of substantive law in both criminal and civil law.
(b) There are elements of substantive law only in criminal law
(c) There are elements of substantive law only in civil law
(d) Substantive law is absent in both criminal and civil law
- If you sue a neighbour for cutting down a tree and letting it land on your house, it is an example of which kind of case?
(a) Criminal case (b) Constitutional case
(c) Tort case (d) Contract case
- In the case of a person caught driving while intoxicated; a few things would have to be proven. Identify.
(a) The person was driving the vehicle
(b) The person acted in ways that gave the police a reason to believe he or she was intoxicated
(c) The person was over the legal limit per a field sobriety and/or Breathalyzer test
(d) All of the above.
- Due process refers to which of the following?
(a) The legal rights owed to a person in criminal and civil actions
(b) The legal rights owed to a person in criminal actions only
(c) The legal rights owed to a person in civil actions only
(d) The correct process
- Advocates of which form of law maintain that municipal and international law form a single legal system?
(a) Positivism (b) Natural Law
(c) Divine Law (d) Pragmatic Law
- What is a written law?
(a) Laws that are written down in a document
(b) Laws validly enacted by the legislature
(c) Laws which are written but more importantly enacted
(d) Laws written but waiting to be enacted

19. Unwritten laws unlike the written laws
 (a) are not enacted
 (b) are not written
 (c) are enacted but not written
 (d) None of the above
20. Identify the correct statement.
 (a) Customary and case laws are generally written laws
 (b) Customary and case laws are generally not written laws.
 (c) Customary law is written but the case law is unwritten
 (d) Customary law is unwritten but the case law is written
21. Which among the following cannot be considered as a source of law?
 (a) Custom (b) Judicial precedent
 (c) Divine command (d) Legislation
22. Identify the most appropriate statement.
 (a) Custom can be law
 (b) Custom cannot be law
 (c) Custom is the main source of law according to savigny
 (d) None of the above
23. Why Austin opposed custom as law?
 (a) Because it is not the will of the people.
 (b) Because custom comes from the past which cannot be accepted in the present
 (c) Because it is not the will of the sovereign
 (d) Because it is not rational
24. Obiter dicta can be which of the following?
 (a) Obiter dicta are observations but have a binding authority
 (b) Obiter dicta are observations but do not have a binding authority
 (c) The binding nature of obiter dicta varies from case to case
 (d) Obiter dicta can be binding only in Supreme Court decisions
25. What is meant by autonomous laws?
 (a) Laws made by parliament
 (b) Laws made by the judiciary
 (c) Laws made by the Presidential ordinances
 (d) Laws made by autonomous bodies
26. **Legal Principle:** Justice should not only be done, but also seen to be done. **[CLAT 2018]**
Facts: L, an honest Lawyer had 200 shares in Company X. Later, L was elevated to the High Court as a Judge and had to deal with Company matters. A dispute between Company X and its creditors came before L for decision. Which among the following proposition is true?
 (a) L, as an honest person will definitely judge the matter on the merits only. So, the principle cannot apply.
 (b) A judge cannot excuse himself from taking up a case posted before him by the Court Registry.
 (c) L, should refrain from hearing the matter as he holds shares of the Company X.
 (d) Since, L has only 200 shares he has no substantial interest in the company and hence can decide the matter.
27. **LEGAL PRINCIPLE :** Clause (1) of Article 15 of the Constitution of India prohibits the State from discriminating between citizens on the ground only of religion, race, caste, sex, place of birth or any of them.

FACTUAL SITUATION : The admission Rules of an Engineering College located in XYZ State of India provided that no capitation fee shall be charged from the residents of the XYZ State but the non-residents shall be required to pay capitation fee. Whether the Rules are violative of Article 15 (1) of the Constitution ?

DECISION:

- (a) yes, because Article 15(1) prohibits discrimination between citizens on the ground only of religion, race, caste, Sex, place of birth or any of them.
 (b) yes, because Article 15(1) prohibits discrimination on the basis of place of birth which impliedly includes place of residence.
 (c) yes, because Article 15 (1) prohibits discrimination between citizens on the ground only of religion, race, caste, sex, place of birth and the provision suffers from causes omissus and "place of residence" is inadvertently omitted.
 (d) No, because Article 15 (1) does not prohibit discrimination based on the place of residence.

28. **LEGAL PRINCIPLE :** In the employer - employee relationship, the employer is held liable for all the wrongs committed by his employees in the course of employment.

FACTUAL SITUATION : David was employed as a Driver in ABC & Co over the past 15 years and has been appreciated by the General Manager for his hard work and sincerity. He has been rewarded by the company for his accident free record. David's younger brother wanted to join the same company as a driver. He obtained a Learner's Licence, joined a Driving School and was learning driving during the last three months. He was on the verge of completion of the training and appear for the Driving test. He wanted to have more practice before the test and requested his brother David for using the Company's car for two days. David also allowed him to use the office car for the practice. While he was practising driving, a truck came from the wrong side, hit the company's car driven by David's brother, which in turn hit a pedestrian and injured him. The pedestrian sues the company for damages.

DECISION :

- (a) The Company is not liable as it was driven by David's brother
 (b) The Company is liable as David allowed his brother to drive the car
 (c) David's brother is personally liable
 (d) The Company can shift the responsibility on to the truck driver

29. **LEGAL PRINCIPLE :** No person shall be deprived of his life or personal liberty except according to procedure established by law and Civil Courts have coercive powers to compel attendance of witness only within its local territory.

FACTUAL SITUATION : Puchu, a resident of Faridabad was summoned by the Delhi High Court as a witness in a civil case regarding wrongful possession of immovable property filed by Amu against Kichu. He refused to appear before the court due to his office job. He was prosecuted by the court, is he liable ?

DECISION :

- (a) He is not liable because he is not the resident of Delhi.
- (b) He is not liable because he has fundamental right under Article 21 of personal liberty.
- (c) He is liable because he is called as a witness in a civil trial and it is a procedure established by law.
- (d) He is not liable because he has no interest in the suit property.

30. **LEGAL PRINCIPLE :** Article 19(1) (g) of the Constitution of India guarantees to all citizens the right to practice any profession, or to carry on any trade, occupation and business but Article 19 (6) empowers the State to impose reasonable restrictions on this right in the interest of public.

FACTUAL SITUATION : Having experienced acute shortage of labour for agricultural purpose due to engagement of agricultural labourer in manufacture of Bidis, the state Government enacted a law to prohibit such engagement of agricultural labour in the manufacture of Bidis. Whether the law violates the constitutional provisions ?

DECISION :

- (a) No, because the law is a reasonable restriction in the interest of public as if labourers would not be available for agricultural purposes there can be shortage of food grains and wastage of crops.
- (b) No, because Bidis are harmful for health of people so any law preventing people from engaging in manufacture of Bidis is in the interest of public.
- (c) Yes, because the law imposes an unreasonable restriction as it indirectly makes the two sectors (manufacture of Bidis and agriculture) alternative options for the labourers where as some people would like to work in both of these.
- (d) Yes, because the object sought to be achieved by this law is to keep sufficient labour supply for agricultural purpose, which could have been easily achieved by restraining the employment of agricultural labour in Bidi manufacturing during the agricultural season only. Absolute restriction amounts to withdrawal of the right. Hence, the law is unconstitutional.

31. **LEGAL PRINCIPLE :** According to Article 20 (1) of the Constitution, no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

FACTUAL SITUATION : 'P' was charged with an offence punishable with imprisonment for a term of one year. The Magistrate convicted him and awarded him a punishment of one year imprisonment. While 'P' was undergoing the sentence, the law under which 'P' was convicted came to be amended and the punishment for the offence of which 'P' was convicted was reduced to six months. The defense filed

an application to the Magistrate for review of sentence and to commute it to six months. Can the application be allowed?

DECISION :

- (a) No, because penal laws only have prospective application.
- (b) No, because a penal statute cannot be given retrospective effect.
- (c) No, since at the time of coming into force of the amended law, 'p' was already suffering the sentence and had not completed the full term. Hence his case should not be dealt under the new law.
- (d) Yes, because retrospective application of criminal law if it is beneficial to the accused is not against Article 20(1) of the constitution.

32. **Legal Principle:** A product cannot be sold in shops to consumers after its date of expiry.

Fact Situation: Lata, while shopping, notices that the milk packets on the shelves are due for expiry on that day. She objects to this to the shopkeeper, saying that since she was there to buy milk for the next day, keeping the milk on its date of expiry was against the law.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Lata is right and the shopkeeper should take the milk packets off his shelves.
- (b) The shopkeeper should not sell the milk packets after the date of expiry is over.
- (c) The shopkeeper must remove the milk packets from the shelves and keep it refrigerated.
- (d) Milk is not a product and hence the principle is not applicable in this case.

33. **Legal Principle :** Article 19(1) (d) of the Constitution of India guarantees to all citizens the right to move freely throughout the territory of India. But at the same time, Article 19(5) empowers the State to impose reasonable restrictions on the freedom of movement on the ground of interest of general public.

Factual Situation: Wearing of helmet is made compulsory for all two-wheeler riders by a law enacted by the State. The constitutionality of the law is questioned before the High Court on the ground that it violates Article 19(1)(d) of the petitioner. Will the petitioner succeed ?

Decision:

- (a) Yes, because the restriction is not reasonable and no interest of general public is protected by this law.
- (b) No, because the restriction is reasonable as it intends to protect interest of general public by preventing loss of lives of citizen of India.
- (c) Yes, because freedom of movement is a fundamental right of every citizen of India and the State cannot take it away by way of legislation but has to amend the constitution to take away the fundamental rights.
- (d) No, because the freedom of movement will not be violated by the impugned legislation

Hints & Solutions

1. (c) We may divide or classify the law in its broadest sense in the following categories: Eternal Law, Divine Law, Natural Law, Human or Positive Law
2. (a) law of gravity is an eternal law. It doesn't matter whether there is earth or not, the law of gravity exists eternally. All the laws of physics would probably fall under the category of eternal law.
3. (b) A good example of divine law can be found in Islamic law as postulated in the Q'uran. These laws are said to be given by God to the Prophet Muhammed in order to guide the affairs of man.
4. (a) Baron De Montesquieu in his book, Spirit of the law, defines law in these words.
5. (a) Natural law is said to be the law that is innate in all mankind and can be deduced through the use of reason.
6. (c) According to Professor HLA Hart, a positivist, "Law is a command and there is no necessary connection between law and morals or law as it is (*lex lata*) and law as it ought to be (*de lege ferenda*)."
7. (b) The public law establishes relationship between two parties, a higher one and a lower one where in the state is the higher party and the citizens are the lower party.
8. (c) Some of the examples of private law includes the law of contract, the law of torts, the law of trust etc.
9. (b) Crime and criminal behavior is dealt by criminal law, not civil law.
10. (a) In order to establish criminal offense, the judiciary takes into account the notion of proof beyond reasonable doubts.
11. (a) In order to establish criminal offense, the judiciary takes into account the notion of proof beyond reasonable doubts. In addition, the burden of proof does not shift.
12. (a) Substantive law and procedural law should not be separated. In fact, they work together to ensure that the appropriate laws are applied whether in criminal or civil cases.
13. (a) Substantive law consists of written statutory rules passed by legislature that govern how people behave. These rules, or laws, define crimes and set forth punishment. They also define our rights and responsibilities as citizens. There are elements of substantive law in both criminal and civil law.
14. (c) Civil law deals with tort, or actions that aren't necessarily illegal but can be proven to be damaging in some way. For example, if you sue a neighbour for cutting down a tree and letting it land on your house, that would be a civil case dealing with tort rather than a criminal case dealing with crime.
15. (d) The case can be made only when these three facts are proven.
16. (a) Due process refers to the legal rights owed to a person in criminal and civil actions. It is one of our constitutional rights and guarantees the right to life, liberty and the pursuit of happiness.
17. (b) advocates of natural law maintain that municipal and international law form a single legal system, an approach sometimes referred to as monism.
18. (c) A law would not be regarded as written just because it is written down in a document. Written laws are those laws that have been validly enacted by the legislature of a country
19. (a) Unwritten laws are those laws that are not enacted by the legislature.
20. (b) Unwritten laws include both customary and case law. Customary Law as part of its basic characteristic is generally unwritten. Case law, though written down in a documentary format, would be regarded as unwritten law based on the fact that it is not enacted by the legislature.
21. (c) A modern society recognizes only three sources of law: custom, judicial precedent and legislation.
22. (c) Jurists like Savigny consider custom as the main source of law. According to him the real source of law is the will of the people and not the will of the sovereign. The will of the people has always been reflected in the custom and traditions of the society. Custom is hence a main source of law.
23. (c) Jurists such as Austin opposed custom as law because it did not originate from the will of the sovereign.
24. (b) 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.
25. (d) 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
26. (c) It is famous for its precedence in establishing the principle that the mere appearance of bias is sufficient to overturn a judicial decision. It also brought into common parlance the oft-quoted aphorism "Not only must Justice be done; it must also be seen to be done. Considering L might be an honest person and he might hear it without bias, his share might be insignificant still legally he should not preside over the case. Thus, option (c) is correct.

27. (d) No, because Article 15(1) does not prohibit discrimination based on the place of residence. There can be no religion, race, caste, sex, place of birth based discrimination according to Section 15 (1). It does not include place of residence.
28. (b) The company is liable as David allowed his brother to drive the car. The car belonged to the Company and David was the Company employee. David allowed his brother to drive the Company car. David being the employe makes the Company liable as the Company (employer) is responsible for all the wrongs (accident) committed by David (employee) during the course of employment (driving the company car)
29. (a) He is not liable because he is not the resident of Delhi. Puchu was a resident of Faridabad and refused to appear at the Delhi High Court. The Delhi High Court cannot use coercive powers to compel Puchu's attendance as a witness because Puchu being a Faridabad resident which is outside the local territory of the Delhi High Court.
30. (d) Yes, because the object sought to be achieved by this law is to keep sufficient labour supply for agricultural purpose, which could have been easily achieved by restraining the employment of agricultural labour in Bidi manufacturing during the agricultural season only. Absolute restriction amounts to withdrawal of the right. Hence, the law is unconstitutional. The absolute restriction of agricultural labour in the Bidis manufacture was unconstitutional. Only reasonable restriction to Article 19(1)(g) is permissible.
31. (d) Yes, because retrospective application of criminal law if it is beneficial to the accused is not against Article 20(1) of the Constitution. The rule of beneficial construction requires that ex-post facto law should be applied to reduce the rigorous sentence of the previous law on the same subject. Such a law is not affected by Article 20(1). The principle is based upon the legal maxim "Salus Populi Est Suprema Lex" which means the welfare of the people is the supreme for the law. It is inspired by principles of justice, equity and good conscience. In T. Baral Vs. Henry An Hoe a complaint was lodged against the respondent under Sec. 16(1)(a) on August 16, 1975 for having committed an offence punishable under sec.16(1)(a) read with sec.7 of the Prevention of Food Adulteration Act as amended by the amending Act of 1973. On the date of the commission of the alleged offence i.e. on 16th August 1975, the law in force in the State of West Bengal was the Amendment Act which provided that such an offence would be punishable with imprisonment for life.

On 1st April, 1976 enacted the Prevention of Food Adulteration (Amendment) Act, 1976 which reduced the maximum punishment of life imprisonment as provided by the West Bengal Amendment Act to 3 years imprisonment. The question for determination was whether the pending proceedings would be governed by the procedure under sec.16-A as inserted by Central Amendment Act 34 of 1976. The High Court held that the West Bengal Amendment would be deemed to have been obliterated because of the central amendment. Confirming the decision of the Supreme Court held:

"Nothing really turns on the language of Section 16(1)(a) because the Central Amendment Act has not created a new offence thereby but dealt with the same offence. It is only retroactive criminal legislation that is prohibited under Article 20(1). It is quite clear that in so far as the central amendment Act creates new offences of enhances punishment for a particular type of offence no person shall be convicted by such ex-post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But in so far as the Central amendment Act reduces the punishment for an offence punishable under section 16(1) (a) of the Act, there is no reasons why the accused should not have the benefit of such reduced punishment.

The rule of beneficial construction requires that even ex-post facto law of such a type should be applied to mitigate the rigour of the law. This principle is based both on sound reason and common sense. This finds support in a passage that "A retrospective Statute is different from an ex-post facto statute".

32. (b) Legal principle guiding the case states that goods cannot be sold after the expiry date and the facts of the case mention that the milk was about to expire and hasn't expired as yet . Hence he is legally bound to remove the milk from the shelf only once it has expired thus, option (b) is correct that is the shopkeeper cannot sell the milk packets after the date of expiry is over.
33. (b) No, because the restriction is reasonable as it intends to protect interest of general public by preventing loss of lives of citizen of India. Even though Article 19(1)(d) guarantees the free movement to all citizens throughout the country, wearing of helmet is made compulsory for all two- wheelers is constitutional as this restriction is reasonable in favour of the interest of the public in order to prevent injury and loss of life of its citizens. Freedom of movement is not violated by the implanted legislation. (Thakur Bharatsingh vs State Of Madhya Pradesh And Anr. AIR 1964 MP 175, 1964 CriLJ 160)