

LL.B. (Hons.) (Second Year) IIIrd Semester

Paper - I

Subject – Jurisprudence - I

Unit – IV: Sources of Law

Topic: Legislation

Research Assignment submitted as a Requirement for Ph.D. Course Work

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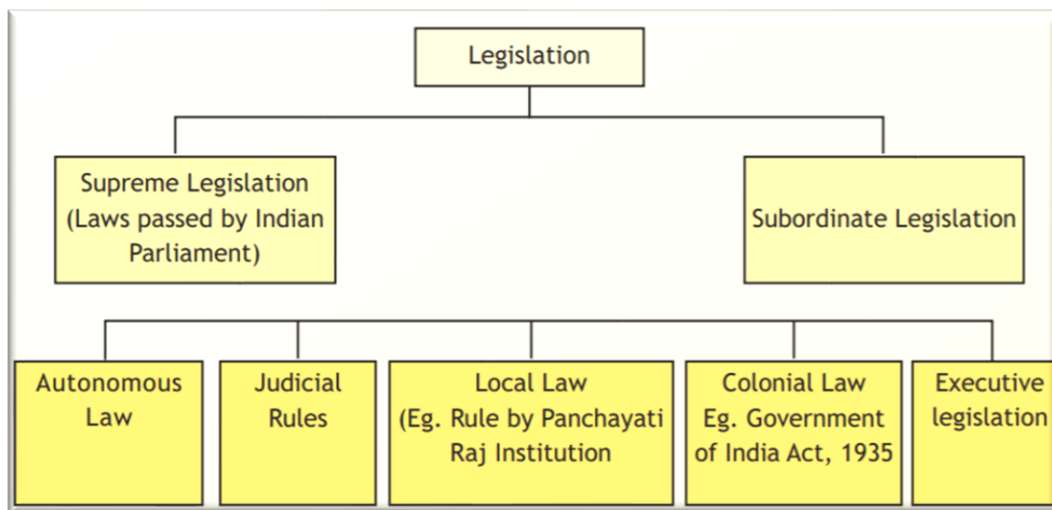
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• Legislation as a Source of Law:

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'. The importance of legislation as a source of law can be measured from the fact that it is backed by the authority of the sovereign, and it is directly enacted and recognised by the State. The expression 'legislation' has been used in various senses. It includes every method of lawmaking. In the strict sense, it means laws enacted by the sovereign or any other person or institution authorised by him.

Kinds of Legislation:

The chart below explains the types of legislation:



1. **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. The laws enacted by the British Parliament fall in this category, as the British Parliament is considered as sovereign. The law enacted by the Indian Parliament also falls in the same category. However, in India, powers of the Parliament are regulated and controlled by the Constitution, through the laws enacted by it are not under the control of any other legislative body.
2. **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:

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- 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, the 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. The prime responsibility of lawmaking vests with the legislature, while the executive is vested with the responsibility to implement the laws enacted by the legislature. However, the legislature delegates some of its law-making powers to executive organs which are also termed delegated legislation.

Delegated legislation is also a class of subordinate legislation. In welfare and modern states, the amount of legislation has increased manifold and it is not possible for legislative bodies to go through all the details of the law. Therefore, it deals with only a fundamental part of the legislation and wide discretion has been given to the executive to fill the gaps. This increasing tendency of delegated legislation has been criticized. However, delegated legislation is resorted to, on account of reasons like paucity of time, technicalities of law and emergency. Therefore, delegated legislation is sometimes considered as a necessary evil.

Advantages of legislation are as follows:

- a. Abrogative Power:** It can change or annul old law; which control isn't controlled by different sources.
- b. Effectiveness:** It separates the elements of making law and overseeing it between the Legislature and the legal executive.
- c. Declaration:** it gives that principles of law will be known before they are authorized.
- d. Reliance on Accidental Legislation:** Legislation is independent and emerges out of as the authoritative source of law it need not hold up until the original case of legislation.
- e. Unrivalled in Form:** It is predominant in structure, brief, clear, effectively available and understandable as against case law, which is an increase of sense in a considerable amount of pointless issue **Demerits of Legislation:**

There is no source of law which is perfect and totally complete in its form and sense, some lacunas and loopholes could be easily found in every source of law which is as follows in the case of legislation.

- a. Unbending nature:** Law in the legislation is inflexible though the law in the precedents is versatile and adaptable.
- b. In view of Hypothesis: Legislation, for the most part, continues on speculative certainties,** by considering the existing environment and surrounding in which the established law is frequently observed to be blemished in its application to the mindboggling issues emerging in genuine life though piece-scratches develop out of the commonsense exigencies and convenience.
- c. An excessive amount of Importance to the Wordings:** Legislation appends a lot of significance to its wordings. Thus, if the articulation is faulty, the law in itself gets effectively turned. In the precedents, the wording matters close to nothing as there is a genuine introduction which performs separate checks on the applicability of precedent as a source of law. Same goes with the customary law as well.

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