

1**MEANING OF LAW****Notes**

Have you ever felt the necessity of ‘Law’ in your day to day life? Have you seen any one being booked by the Traffic Police for Violating traffic rules? Do you feel the necessity of a birth certificate when a child is born? After death, do you know the importance of a death certificate? In fact, Law affects all aspects of our life. It rules us from cradle to grave. It protects us right from the mother’s womb to our education, service, marriage and other important events of life. Law plays an important role in our daily life, right from buying a newspaper or a bottle of milk or any other big or small item necessary for our life. Law is so important for our life that it becomes necessary to understand various aspects of law viz. What are the sources of Law, what are the kinds of Law and finally its application for the best use of our society.

**OBJECTIVES**

After studying this lesson, you will be able to:

- understand and define the term ‘Law’;
- make a broad classification of ‘Law’;
- identify the various sources of ‘Law’; and
- appreciate the role of Indian Legal System, Judiciary, legal professionals and Civil Society in the enforcement of Law and administration of Justice.

1.1 MEANING AND DEFINITION OF LAW

‘Law’ signifies a rule applied indiscriminately to all actions. It is a notional pattern of conduct to which actions do or ought to conform. ‘Law’ is a large body of rules and regulations, based mainly on general principles of justice, fair play and convenience and which have been worked out by governmental bodies to regulate human activities. In broader sense, ‘Law’ denotes the whole process by which organized society, through government bodies and personnel



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(Law-makers, Courts, Tribunals, Law Enforcement Agencies and Executive, Penal and corrective Institutions etc.) attempt to apply rules and regulations to establish and maintain peaceful and orderly relations amongst the people in the society.

The idea of 'Law' as guide to human conduct is as old as the existence of the civilized society. The relevance of law to human behavior has become so intimate today that every person has his or her own conception about its nature which is influenced, of course, by his/her own perspective. Not surprisingly the search for an agreed definition of 'Law' has been an endless journey.

There have been conflicting and divergent views of jurists regarding the nature, concept, basis and functions of Law. 'Law' has been regarded as a divinely ordained rule or a tradition of the old customs or recorded wisdom of the wise men or philosophically discovered system of principles which expresses the nature of things or as a body of ascertainties and declaration of an eternal and immutable moral code, or as a body of agreements of men/women in politically organized society, or as a reflection of divine reason or as a body of commands of the sovereign, or as a body of rules discovered by human experience, or as a body of rules developed through juristic writings and judicial decisions or as a body of rules imposed on men/women in society by the dominant class, or as a body of rules in terms of economic and social goals of the individuals.

Therefore, Law can be defined firstly - by its basis in nature, reason, religion or ethics, secondly - by its sources like customs, precedent and legislation, thirdly - by its effect on the life of the society, fourthly - by the method of its formal expression or authoritative application, fifthly - by the ends that it seeks to achieve.

Although, there is no general definition of Law which includes all the aspects of Law yet for a general understanding, some of the important definitions are as follows:

Aristotle It (perfect law) is inherent in the nature of man/woman and can be discovered through reason. It is immutable, universal and capable of growth.

Austin Austin says "Law is the command of Sovereign." Rules laid down by political superiors to political inferiors. In other words, body of command by a sovereign member or members of an independent society wherein the author of law is supreme.

Paton According to Paton "Law consists of a body of rules which are seen to operate as binding rules in the community by means

of which sufficient compliance with the rules may be secured to enable the set of rules to be seen as binding.”

A.V. Dicey In the words of A. V. Dicey, “Law is the reflection of Public opinion.”

Ihreading Ihreading defines Law as “the form of the gurantee of the conditions of life, of society, assured by State’s power of Constraints.”

Salmond According to Salmond, “Law is body of Principles recognised and applied by the State in the Administratiion of Justice” i.e. principles recognized and applied by the State in the administration of justice.

Kelsen Norms of human behaviour or pure theory of law which provides that Law is pyramid of norms which has its genesis from on ground norm e.g. Constitution of India.

Savigny Law is a matter of unconscious growth within the community and can only be understood in its historical perspective. [Savigny’s Volksgiest Theory of Law means will of the people.]

Roscoe Pound “Law is a social control through systematic application of force in a politically organised society?” An instrument to satisfy the maximum wants in a society with the minimum of friction and waste.

**Notes**

INTEXT QUESTIONS 1.1

1. Define the term ‘Law’?
2. Name the five basis on which Law can be generally described.
3. Pick up and write any of the two definitions of Law given in this lesson which you like most.

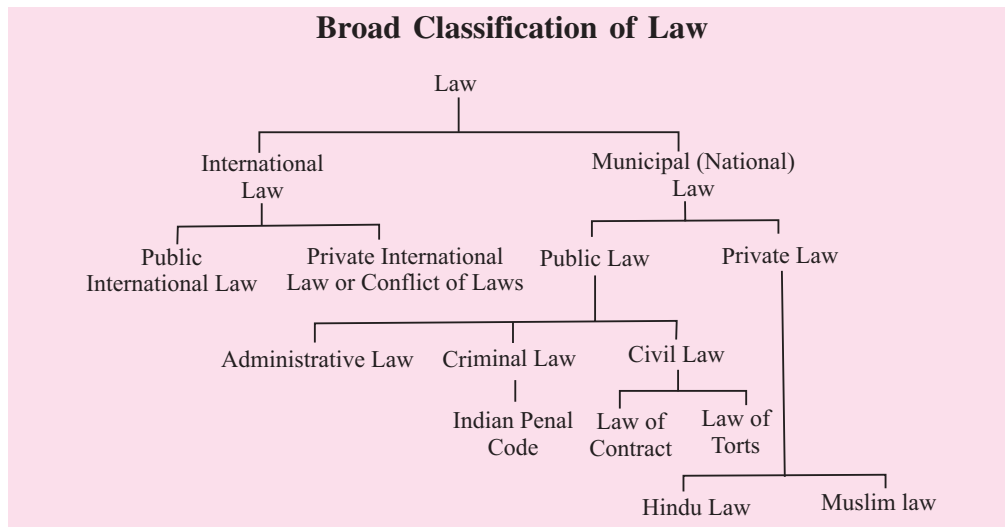
1.2 CLASSIFICATION OF LAW

For a proper and logical understanding of Law, its classification becomes necessary. It helps in understanding the principles and logical structure of the legal order. It makes clear the inter-relation of rules and their effect on each other and it also helps in arranging the rules in a concise and systematic way.

The broad classification of law may be as follows:



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Primarily, ‘Law’ may broadly be divided into two classes:

1. International Law:

International Law is a branch of law which consists of rules which regulate relations between States or Nations *inter se*. In other words International Law is a body of customary and conventional rules which are considered to be legally binding by civilized Nations in their intercourse with each other. International Law is mainly based on Treaties between civilized Nations.

International law may be divided as follows:

(a) Public International Law

It is that body of rules which governs the conduct and relations of State with other States. For example the extradition treaty between two states to bring back the fugitives.

(b) Private International Law

It means those rules and principles according to which the cases having foreign elements are decided. For example if a contract is entered into in India between an Indian and a Pakistan citizen, which is to be performed in Ceylon, then the rules and regulations on which the rights and liabilities of the parties would be determined is known as ‘Private International Law’

2. Municipal Law or National Law:

Municipal Law is that branch of Law, which is applied within a State. It can be divided into two classes.

(a) Public Law :

It regulates the organization and functioning of the State and determines the relations of the State with its subjects. It may be divided into three classes:

i. Constitutional Law:

Constitutional Law is the basic or fundamental law of the State. It is a law which determines the nature of State and the structure of the Government. It is superior to the ordinary law of the land because ordinary law derives its authority and force from the Constitutional Law.

ii. Administrative Law:

This law deals with the structure, powers and functions of the organs of administration; the limits of their power; the methods and procedure followed by them in exercise of their power; the methods by which their powers are controlled, including remedies available to a person against them when his/her rights are infringed by their operation.

iii. Criminal Law:

It defines offences and prescribes punishment for them. Its aim is the prevention of and punishment for offences because in civilized societies, 'crime' is considered to be a wrong not against the individual but against the society.

(b) Private Law:

This branch of law regulates and governs the relations of citizens with each other. It includes Personal Law e.g. Hindu Law and Muslim Law.

Apart from these kinds of law, there are some other varieties of law as follows:

Natural or Moral Law

Natural Law is based upon the principle of right and wrong. It embodies the principles of Natural Justice.

Conventional Law

Conventional Law means any rule or system of rules agreed upon by persons for regulation of their conduct towards each other. For example, Indian Contract Act, 1872 deals with the rules on making agreements.

Customary Law

Any rule of action which is actually observed by men/women when a Custom is firmly established, is enforced by the State as law because of its general approval by the people.

Civil Law

The Law enforced by the State is called Civil Law. The force of State is the sanction behind this Law. Civil Law is essentially territorial in nature as it applies within the territory of the State concerned.



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Substantive Law

Substantive Law deals with rights and obligations of the individuals against the State and prescribes the offences and punishments for the commission of such offences. For example, India Penal Code, 1860 contains 511 Sections on various offences and corresponding punishments for those offences.

Procedural Law

It deals with the practice and procedure having its objective to facilitate the administration of justice. It is a process necessary to be undertaken for enforcement of the legal rights and liabilities of the litigating parties by a Court of Law. For example, the Criminal Procedure Code, 1973 enshrines the procedures to be followed to inflict punishment on the wrongdoer.



INTEXT QUESTIONS 1.2

1. Make out a distinction between Public and Private Law.
2. Distinguish between Substantive and Procedural Law.
3. Describe the main objective of Criminal Law.

1.3 SOURCES OF LAW

For a complete understanding of the concept of Law it is necessary to understand the sources of law. Source, literally means a point, from which anything emerges, rises or emanates. The expression 'source of law', therefore, means the source from where rules of human conduct came into existence and derive legal force of binding character. Broadly, sources of law can be divided as follows:

1. Custom:

'Custom' is the oldest and most important source of Law. 'Custom' is an embodiment of those principles which have commended themselves to the natural conscience as principles of justice and public utility. 'Customs' originate in frequent repetition of the same act, and therefore, denotes rules of habitual conduct within a community. Uniformity of conduct in like circumstances is, thus, the hallmark of the 'Custom'.

Essentials of a Custom

To be valid source of Law, a customary practice must fulfil some requirements, of which following are the most important:

- a. **Antiquity:** A 'Custom' to be recognized as a law must be proved to be in existence from time immemorial or from long time period.

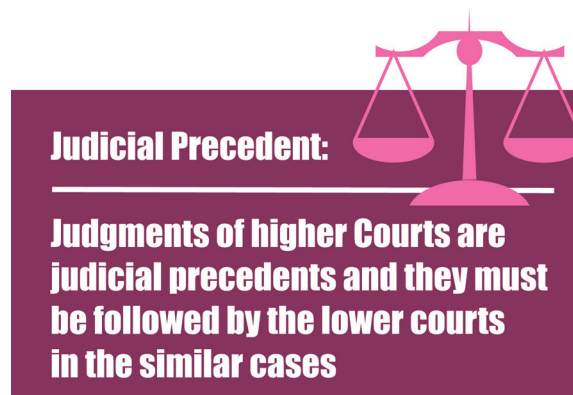
- b. Continuance:** The second essential of a 'Custom' is that it must have been in practice continuously.
- c. Reasonableness:** A 'Custom' should not be unreasonable, i.e., it must be reasonable in its application to the circumstances of the individual cases. It must not be otherwise imprudent, harsh or inconvenient.
- d. Obligatory Character:** The 'Custom' must have obligatory force. It must have been supported by the general public opinion and enjoyed as a matter of right.
- e. Certainty:** A 'Custom' must be certain. A 'Custom' which is vague or indefinite cannot be recognized.
- f. Consistency:** Customary rules should show a consistency in observance of a practice. If a practice has not been consistently followed it cannot attain the status of a 'Custom'.
- g. Conformity with Statutory Law and Public Policy:** A 'Custom' should be in conformity with a Statute Law and public policy.



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2. Judicial Precedent

'Precedent' signifies a set pattern upon which future conduct may be based. It may be an earlier event, decision or action followed in parallel circumstances later. A 'Judicial Precedent' is an independent source of Law. '*Stare Decisis*' is a Latin word which denotes 'to stand by past decision or precedents and not to disturb the settled points'. Precedent or *stare decisis* denote employment of past judicial decisions as a guide for making of future ones for lower courts in hierarchy.



A 'Judicial Precedent' or '*stare decisis*' has a binding force for the subsequent cases. It is not the whole judgment that is to be binding. In other words every statement made by the judge in an earlier decision is not binding in future case. Only those statements in an earlier decision which may be said to constitute the reason for the decision or '*ratio decidendi*' of that case are binding as matter of general principle, in subsequent cases. '*ratio decidendi*' is the general principle which is deduced in a case. It is the rule of law upon which the decision is founded and it is authoritative in nature.



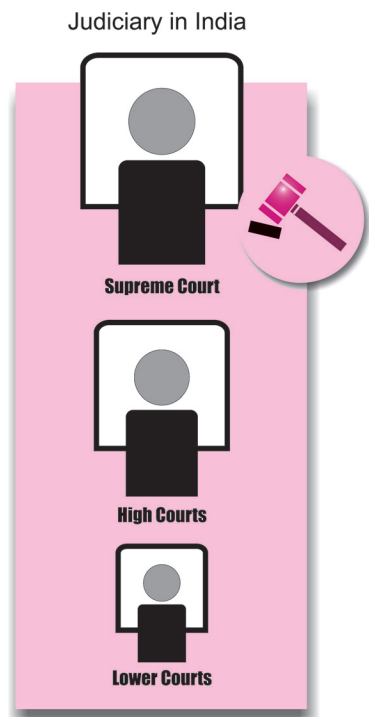
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Apart from ‘*ratio decidendi*’, a judgment may contain observations not precisely relevant to the issue before the Court. These may be the observations upon the broader aspects of law or answer to the hypothetical questions raised by judges or counsels in the course of hearing. Such observations are ‘*obiter dicta*’ and without any binding authority, in so far as these are not essential to the decision reached.

3. Legislation

‘Legislation’ is a deliberate process of legal evolution which consists in the formulation of norms of human conduct in a set form through a prescribed procedure by agencies designated by the Constitution. ‘Legislation’ means to make rules for human conduct.

The term ‘Legislation’ is derived from the word ‘*legis*’ meaning ‘law and *latum*’ which means to make or set. Thus, the word ‘legislation’ means making of law. It is a source of Law which consists in declaration of legal rules by competent authority. ‘Legislation’ includes every expression of the will of the legislature, whether making law or not.



Single unified system of Judiciary in India



INTEXT QUESTIONS 1.3

1. Identify the different sources of ‘Law’.
2. Define ‘Custom’ and also identify the essentials of a valid ‘Custom’
3. Define the term ‘Legislation’.

1.4 ROLE OF LEGAL SYSTEM JUDICIARY, LEGAL PROFESSIONALS AND CIVIL SOCIETY IN THE ENFORCEMENT OF LAW AND THE ADMINISTRATION OF JUSTICE

When society came into existence there was hardly any rule which could regulate the behaviour of the people constituting the society. It was lawlessness,

barbarism and chaos everywhere. In the process of civilization and growth of society, there was the need of a system which could regulate the human behaviour and minimize the friction among them on the basis of set principles of justice and fair play. Many tools were developed for development and betterment of the society. The role of these tools is described as follows:

Role of Legal System:

A Legal System is a set of legal principles and norms to protect and promote a secure living to its people in a society. In this way, it plays an important role by recognizing rights and prescribing duties for the people and also by providing the way to enforce these rights and duties.

To enforce these rights and duties, the Legal System considers the socio-economic and political conditions in the society and makes its own goal and then makes a set of rules or principles and laws which help the society to achieve its identified goals.

Judges:

The Judges, who are the crusaders of Justice are independent of both Executive and Legislature in a Democratic set up. Therefore, they are the persons who administer justice without fear or favour. They adjudicate the matters before them after proper inquiry in accordance with just, fair and reasonable principles of law to provide justice.

Advocates:

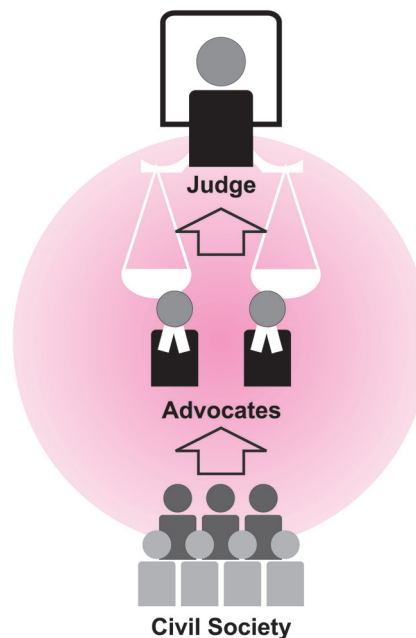
Advocates are the key functionaries assisting the judges in the administration of justice. They are the officers of the Court and are constituted into an independent profession under the Advocates Act, 1961. Without the expert assistance of the advocates or lawyer on either side of a dispute, judges will find it difficult to find the truth on disputed facts in issue and interpretation of law.

Civil Society:

In democracy, 'we the people' i.e. citizens and their particular groups play pivotal role in good governance. They create 'Pressure Groups' for seeking attention of the legislature and the government, For example several movements



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led by Mahatma Gandhi during the freedom struggle. People's effective participation brings transparency, accountability and responsiveness in the government.



INTEXT QUESTIONS 1.4

1. What is the importance of Constitution?
2. How does Civil Society helps in bringing good-governance?
3. Analyse the role of Advocates in the administration of Justice.
4. Discuss briefly the role of Judges in the adminstration of Justice.



WHAT YOU HAVE LEARNT

- 'Law' is a large body of Rules and Regulations based mainly on general principles of justice and fair play to regulate human conduct & behaviour.
- Broadly, 'Law' may be classified into International Law and Municipal (National) Law which can be further divided into Public and Private Law and then Substantive and Procedural law.
- For a complete understanding of 'Law', it is necessary to know the Sources from where it comes. Broadly speaking, Customs, Judicial Precedents and Legislation are the Sources, from where Law emerges.
- With the passage of time, society develops tools to regulate human conduct and behavior which can minimize friction and lawlessness in the society. Legal system, Constitution, Courts, Personnel of Law particularly judges, advocates, Civil Society play a very important role to enforce the rights and duties of the citizens. It also prevents lawlessness, friction and corruption in the society.



TERMINAL EXERCISES

1. Define the term 'Law'.
2. Identify the various Sources of Law.
3. Identify the different kinds of Law.
4. Describe 'Judicial Precedent',
5. Explain the difference between '*ratio decidendi*' and '*obiter dicta*'.
6. Explain the 'Doctrine of *stare decisis*'.

7. Analyse the role of 'Judges' in the administration of Justice.
8. Explain the role of Advocates in the administration of Justice.
9. Describe the role of Civil Society in good governance.

9. Match the Correct option.

A	B
(a) Fundamental Law of the land (b) Law deals with offences and punishments (c) To stand by past decision. (d) Body of Rules which governs the conduct and relation of state with others	



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Project

One day visit a Court of Law which is nearest to your residence and try to understand the components of a Legal System present there.

Sl.No	Components of Legal System	Observation
1.	Role of Constitution	
2.	Role of judges	
3.	Role of Advocates	



ANSWER TO INTEXT QUESTIONS

1.1

1. 'Law' is a large body of rules, regulations and principles, based mainly on general principles of justice, equity and fair play and convenience which has been worked out by Governmental bodies to regulate human activities.
2. These are the following five bases on which Law can be defined:
 1. It has basis in nature, reason, religion or ethics.
 2. By its sources like Custom, Precedent and Legislation.
 3. By its effect on the life of society.
 4. By the method of its formal expression or authoritative application.
 5. By the ends that it seeks to achieve.
3. Any two definition of Law:-
 - (1) Salmond – "Principles recognized and applied by the State in the administration of justice."



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- (2) Roscoe Pound – “Law is a Social control through systematic application of force in a politically organised Society.” An instrument to satisfy the maximum wants in a society with the minimum of friction and waste.

1.2

1. **‘Public Law’** regulates the organization and functioning of the State and determines the relationship of the State with its subjects whereas Private Law regulates and governs the relationship of citizens with each other.
2. **‘Substantive Law’** deals with rights and obligations of the individuals whereas Procedural Law deals with practice and procedure having its objective to facilitate the administration of justice.
3. The main objective of ‘Criminal Law’ is to prevent crime and to punish the wrongdoer.

1.3

1. Mainly there are three different Sources of Law.
 1. Customs;
 2. Precedent; and
 3. Legislation.
2. ‘Custom’ is the oldest and an important source of Law. It is embodiment of those principles which have commended themselves to the natural conscience as principle of natural justice and public utility.

The essentials of a ‘Custom’ are :

- (i) Antiquity;
 - (ii) Continuity;
 - (iii) Reasonableness;
 - (iv) Obligatory Character;
 - (v) Certainty;
 - (vi) Consistency; and
 - (vii) Conformity with statutory Law and Public Policy.
3. Legislation means to make law. It includes every expression of the will of the Legislature.

1.4

1. ‘Constitution’ is a fundamental document which covers policy aspiration of people in a given society. It covers rights and duties of the subjects of the

nation on the basis of equality, justice and fairness. It is a document which also provides for powers and responsibilities of the government.

2. The Civil Society members create pressure for seeking attention of legislature and executive branch of the Government. Their participation brings transparency, accountability and responsiveness in the Government and in this way they help in bringing good governance.
3. Advocates are the key functionaries assisting the Judges in the administration of Justice. They are the officers of the Court and are constituted into an independent profession under the Advocates Act, 1961. Without the expert assistance of the Advocates on either side of a dispute, Judges will find it difficult to find the truth on disputed facts in issue and interpretation of Law.
4. The Judges, who are the crusaders of Justice, are independent of both Executive and Legislature in a Democratic set up like India. Therefore, they are the persons who administer Justice before them after proper inquiry in accordance with Just, fair and reasonable principles of Law to provide Justice.



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