

SOURCES OF LAW

1. “Justice, Equity and Good Conscience” is the main Secondary Sources of Indian Law. Explain it. **DEC 2020 (5 MARKS)**

Ans:

- (i) The Indian legal system is based on both primary and secondary sources of law. Primary sources include customs, judicial precedents, statutes, and personal law. Where no written law, custom, or personal law is available, courts use secondary sources to serve justice such as the principle of justice, equity and good conscience.
- (ii) This concept was first introduced in Impey’s regulations which stated that whenever there is an issue of which no relief provided under any law and neither the same is covered in any custom, then in such cases the Indian courts may apply the principle of justice, equity and good conscience.
- (iii) The supreme court has also stated that in the event of any dispute which is not covered under any rule of Hindu law, then the courts have the authority to decide the dispute as per the principle of equity justice and good conscience.
- (iv) The principle owes it’s origin to the beginning of the British administration of justice in India and the charters of several high courts directed that when a law is silent on a matter, then the same has to be decided by applying this principle.

2. Natural law says that certain rights are inherent by virtue of human nature and can be understood universally through human reason. Explain. AUG 2021 (5 MARKS)

Ans:

- (i) Natural law is based on the idea that certain rights are inherent which comes into existence universally and for the humans, for instance, the law of the nature.
- (ii) It says that such rights can be understood universally by using human reason. In other words, every person has the ability to recognize what is just, fair, and moral without needing a written law.
- (iii) Natural law has 4 theories:
 - (a) Ancient theory: Roman philosophers like Ulpian defined law as “the art or science of what is equitable and good”, while Justinian’s Digest defined law as “the standard of what is just and unjust. ”Greek philosophers like Heraclitus identified three main features of natural law destiny, reason, and order.
 - (b) Medieval theory: their idea of law is theological i.e. law laws are the commands of the god and to comply with the same is ‘dharma’, which means law is a part of dharma.
 - (c) Renaissance theory: this theory was known for its rationalism and was considered more secular, political and was found upon human reasons.
 - (d) Modern theory rejects all the previous theories.
- (iv) The importance of natural law is that it provides a moral foundation for man-made laws. If any law goes against basic human rights or reason, it cannot be considered just.

3. What are the essential conditions of a valid custom? Discuss. Explain any four. AUG 2021 (4 MARKS)

OR

“All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts”. Discuss the essential tests for customs to be recognized as valid sources of law. DEC 2021 (8 MARKS)

OR

What are the essential requisites of a valid custom to be legal and binding? DEC 2023 (5 MARKS)

Ans:

- (i) A custom is one of the oldest sources of law. When a particular way of doing something proved more convenient than others and was repeated over time, it gradually becomes a custom.
- (ii) For a custom to be legally valid and enforceable in court, it must satisfy certain conditions, some of them are as follows:
 - (a) Immemorial (antiquity): In order to be a valid custom, it must be immemorial. If its origin can be proved in recent times, it will not be accepted as valid.
 - (b) Consistent: There must be consistency among the customs which means it should not be in conflict with each other.
 - (c) Conformity with law and public morality: A custom must not be opposed to any public policy, morality or any statutory law.
 - (d) Unanimity of opinion: A custom must be universal which means the practice must not be left at the choice of individuals
 - (e) Reasonableness: It must be reasonable that is, it must be convenient to the society and must not be against the principle of justice, equity and good conscience.
 - (f) Certainty: It must not be vague and must be certain and definite.
 - (g) Compulsory observance: It must have been followed without any interruption.
 - (h) Peaceable enjoyment: Custom must have been enjoyed peaceably without any dispute in court or otherwise.

4. Define the concept of Kelsen's "Pure Theory of Law" under Analytical School. **DEC 2021 (5 MARKS)**

OR

According to Kelsen, law is a "normative science". Explain. **JUNE 2023 (4 MARKS)**

Ans:

- (i) Hans Kelsen was an Austrian jurist, who gave the Pure Theory of Law and believed that all other theories of law were impure as they were derived from various fields like religion and morality.
- (ii) According to him, law is a normative science. This means law does not describe what is but what is to be done.
 - (a) He explained that law is a system of norms arranged in a hierarchy, wherein the norms are classified into 3 heads they are as follows:
 - (b) Grundnorm: It is also known as basic norm which gives validity to all the other norms, but it's own validity is pre-supposed. For example- the constitution of india.
 - (c) Superior norm: these are the norms which derives its power from the grundnorm and governs subordinate norms. They are inferior to grundnorms but superior to subordinate norms. For example- BNS
 - (d) Subordinate norms: they are controlled by the superior norms. For example- rules made under any of the act .

5. Describe Austin's "Command Theory of Law" under analytical school. DEC 2021 (4 MARKS)

OR

According to Austin, "Law is the command of sovereign that is backed by sanction." Discuss. DEC 2023 (5 MARKS)

Ans:

- (i) John Austin was a positivist and is known for the command theory of law, he believed in understanding the law as it is without analyzing its fairness and justness.
- (ii) As per Austin 'law is the command of the sovereign and is backed by sanction.' He believed that laws are commands which imposes a duty upon a person and which if not met follows sanctions.
- (iii) There are 3 main features of its theory:
 - (a) **Command:** it is an expression of the sovereign directing another person to do or not to do something. Command requires the presence of the commander and the commanded.
 - (b) **Sovereign:** A sovereign is a person who is politically and legally superior and who receives habitual obedience from the people but he himself does not obey any other authority.
 - (c) **Sanction:** It is the consequence that follows in the event of any violation of command. The severity of the sanction is not what matters; what matters is that a sanction exists.

6. How Ratio Decidendi differs from Obiter Dicta? JUNE 2022 (4 MARKS EACH)

OR

Distinguish between Ratio Decidendi and Obiter Dicta. What are the rules governing binding force of judicial precedents? Discuss. JUNE 2023 (4 MARKS)**Ans:**

- (i) Ratio Decidendi
- (a) Ratio Decidendi refers to the legal principle or rule on which a court's decision is based. It forms the binding part of a judgment and has precedential value in future cases.
 - (b) The main principle in a judicial decision, is known as the ratio of the case, it has authoritative value and it must be followed in a similar cases.
 - (c) As per professor Good Hart, ratio is nothing more than decision made on material facts. If an issue is to be resolved on principles then the main principle on which decision has been passed is the ratio. It is upon the judge to determine which part of judgement is ratio and what amounts to obiter dicta.
- (ii) Obiter Dicta
- (a) Obiter Dicta, on the other hand, are observations or remarks made by a judge that are not essential to the decision. These are not binding, but may have persuasive value in later cases.
 - (b) It literally means “just said by the way”, the expression denotes those judicial utterances which a judge while delivering a judgement just stated it by the way.
 - (c) These statements carry the value of persuasive precedents and the judges are not bound to follow it but they may take advantage of the same.
 - (d) It is difficult to distinguish between ratio decidendi and obiter dicta and it is upon the judge to decide.
- (iii) Rules governing binding force of judicial precedents.
- (a) Supreme Court - Law declared by the SC is binding on all courts in India.
 - (b) High Courts – Decisions of a High Court are binding on all subordinate courts within its jurisdiction. Decisions of one High Court are persuasive, not binding, on another High Court.
 - (c) Benches of High Court – A smaller Bench is bound by the decision of a larger Bench.

7. Define and distinguish between declaratory and persuasive precedents. JUNE 2022 (4 MARKS)

Ans:

- (i) Declaratory precedent:
- (a) a declaratory precedent is a one which only declares an already existing law, so it is just the application of law.
 - (b) It does not create a new law but only declares and affirms what is already recognized.
 - (c) Such precedents are binding on the lower courts and have authoritative force.
 - (d) They act as a legal source of law and ensure certainty and uniformity.
 - (e) Example – A Supreme Court decision which applies an established principle becomes binding on all lower courts.
- (ii) Persuasive precedent:
- (a) Persuasive precedent is the one in which the judges are not obligated to follow but which they may take into consideration.
 - (b) Such precedents are not binding, but they carry persuasive value.
 - (c) They guide the court in cases where binding precedent is absent or unclear.
 - (d) Example – A decision of one High Court is only persuasive in another High Court, not binding.

8. The sovereign power of making law should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good. Critically examine this statement of Bentham. DEC 2022 (4 MARKS)

Ans:

- (i) Jeremy Bentham stated that law is the will of the sovereign, backed by sanction, and its purpose is to secure the maximum happiness of maximum people.
- (ii) According to him nature has put man under the command of two sovereigns, which are pain and pleasure where pleasure means the reward to obey the law and pain means punishment if the same is not obeyed.
- (iii) Sovereign is source of all laws, where sovereign is a person to whom the entire political community pays obedience.
- (iv) Thus, Bentham believed that law should not serve selfish interests but must be used by the sovereign to secure the welfare of society. His theory highlights the role of law in achieving common good, though it has certain limitations.
- (v) Thus, both during British rule and under the Supreme Court's view, courts have the duty to apply principles of justice, equity and good conscience when the law is silent, ensuring that fairness prevails and justice is not denied.

9. According to Bentham "every law may be considered in eight different aspects". Discuss. JUNE 2024 (5 MARKS)

Ans:

- (i) Jeremy Bentham stated that law is the will of the sovereign, backed by sanction, and its purpose is to secure the maximum happiness of maximum people.
- (ii) He considered law into eight different aspects:
 - (a) Sources: As per him, sovereign is source of all laws, where sovereign is a person to whom the entire political community pays obedience.
 - (b) Subject: The person and thing to which the law applies.
 - (c) Object: The goal of any law.
 - (d) Force: The motivation to obey any law.
 - (e) Aspect: There are two aspects i.e. directive and sanction where in directive means the will of the sovereign and sanction means force of the law.

- (f) Extent: Wherein direct extent means the portion of land to which the law applies and indirect extent refers to a person or a thing.
- (g) Expression: Law is the ultimate expression of the sovereign.
- (h) Remedial appendage: Remedial appendage means a group of supporting laws that guide judges to fix a wrong by giving compensation, stopping the harm, or preventing it from happening again.

10. Discuss Roscoe Pounds classification of social interest. JUNE 2024 (4 MARKS)

Ans:

- (i) Roscoe Pound, an American jurist, gave the theory of social engineering. He said law should balance competing interests to achieve maximum satisfaction with minimum friction. He classified interests into Individual, Public and Social interests.
- (ii) his classification of Social Interests is as follows:
 - (a) Social interest in general security – Society needs peace, order and safety. Laws against murder, theft, and violence protect this interest.
 - (b) Social interest in security of social institutions – Institutions like family, marriage, religion, and property must be protected for social stability.
 - (c) Social interest in general morals – Laws control immoral practices like gambling and drunkenness to protect public morality.
 - (d) Social interest in conservation of social resources – Natural resources and human resources must be conserved for society.
 - (e) Social interest in general progress – Society must move forward through economic, scientific and cultural development. Laws encourage innovation, trade, and education.

11. According to Salmond “law is the body of principles, which are recognized and applied by the State in the administration of justice. The purpose of law is the deliverance of justice to the people.” Discuss. DEC 2024 (5 MARKS)

Ans:

- (i) John Salmond was a famous jurist and a professor from New Zealand who believed that the purpose of law is the delivery of justice.
- (ii) Salmond defined law as “the body of principles recognized and applied by the state in the administration of justice.”
- (iii) He believed that the presence of state is a pre-requisite and also there must be some form of compulsion because historically it has been seen that men need some form of compulsion in order to obey the laws.
- (iv) The state uses physical force to maintain rights and prevent wrongs. Law is the tool through which justice is delivered to the people.
- (v) Thus, he viewed law not just as rules or commands, but as a means to secure justice, making justice the primary object of legal system.

12. What do you understand by the Rule of Law? Enumerate three major principles of the rule of law propounded by Dicey. DEC 2024 (4 MARKS) (OLD SYLLABUS)

Ans:

- (i) The Rule of Law means that law is supreme and no person is above the law. It ensures equality, fairness, and protection of rights in a legal system.
- (ii) Major principles of Rule of Law propounded by Dicey are as follows:
 - (a) Supremacy of Law – Law is above all. No person can be punished except for a breach of law, and such punishment must be given through proper legal procedures.
 - (b) Equality before Law – Every person, high or low, is equal before the law. There is no special privilege for any individual, including government officials.
 - (c) Predominance of Legal Spirit – The rights of individuals are protected not by a written constitution alone, but by the decisions of ordinary courts which enforce these rights.