



“बेटी बचाओ, बेटी पढ़ाओ”

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR
FACULTY OF LAW & MANAGEMENT

Department of Law

Faculty Name : **JV'n Tanushi Sahni** (Assistant Professor)
Program : LLB – I Semester / I Year
Course Name : JURISPRUDENCE
Session No. & Name : 1.1 Nature of Law (Name of the Session)

Academic Day starts with –

- Greeting with saying ‘**Namaste**’ by joining Hands together following by 2-3 Minutes Happy session, Celebrating birthday of any student of respective class and **National Anthem**.

Lecture Starts with-

- Topic to be discussed today- Today We will discuss about Nature and Source of Law
- Lesson deliverance (ICT, Diagrams & Live Example)-
 - PPT (10 Slides)
 - Diagrams

Introduction & Brief Discussion about the Nature and Source of Law

Now when nobody agrees as to what 'law' is, we can't expect a uniform answer as to the sources of law, different schools have different answers.

But there must be some general consensus on something? That was a trick question, actually there is no consensus.

But I found Salmond's classification here the most wholesome, Salmond defined sources of law into two major categories i.e. Formal and Material sources

FORMAL SOURCES

The formal sources law also be called the Actual or ultimate Sources of law. According to Sir John Salmond, "sources" is that from which a rule of law derives its force and validity.

MATERIAL SOURCES

Material sources define the content of law. Salmond classified Material sources into two categories

Historical Sources - Only have persuasive value, evolved through time. (ex. Theories given by jurists)

Legal Sources - *These are the actual rules of functioning of the society and the organs of the state, they can be classified as Legislation, Precedent, Custom and Agreement*

Legislation

Legis means 'law' and **Latum** mean 'to make/put/set'

Legislation means making or setting the law. It is majorly of two types:

Supreme Legislation : which proceeds from the sovereign power in the State. It cannot be repealed, annulled or controlled by any other legislative authority (In India Constitution is a Supreme Legislation)

Subordinate Legislation: which proceeds from any authority other than the sovereign power. (Legislature makes these laws mainly). There are various kinds of Subordinate legislation like Delegated Legislation, Judicial Legislation, Municipal Legislations, Autonomous legislation etc

Precedent

Stare decisis: The legal principle which requires judges to abide by and respect the precedents laid down by similar prior decisions. The Latin maxim, *Stare decisis et non quieta movere* which means, “to stand by decisions and not disturb the undisturbed” forms the basis of this legal principle. The objective of this principle is to not disturb already settled matters to allow for continuity.

Precedents should be Constitutive and not abrogative which means that judicial precedent can make a law or add to a law but cannot alter the law.

Blackstone “*judges only declare law; no new law is created by the judges*”

Custom

A custom to have force of law should have the following characteristics.

- Reasonability – Should not be against morality or public policy
- Certainty – Should not be vague.
- Continuity – Should be immemorial and enjoyed peacefully in past.
- Conformation with existing law.

Legal Customs – They have the force of law *prio vigore* (of or by its own force independently). Custom for being legal custom should be Certain and absolute. It is negative in its operation, which means that, if the custom is not followed, certain desired consequences would not take place.

Legal Customs could be General or local.

Conventional Customs - According to Salmond, 'A conventional custom is one whose authority is conditional on its acceptance and incorporation in agreement between the parties to be bound by it.'

Agreement: When two or parties promise each other to abide by certain terms and conditions (Governed by Contract Law)

- **University Library Reference-**
Text Book on Jurisprudence and Legal Theory –V D Mahajan
- **Suggestions to secure good marks to answer in exam-**
Understand the basic concepts of the jurisprudence and also focus on the philosophy of law.
- **Explain answer with key point answers**
Sources of Law – Precedent , Custom . Legislation
- **Questions to check understanding level of students-**
What is the term used that are prevailing from ancient time till now ?
- **Small Discussion About Next Topic-**
Definition of Jurisprudence
- **Academic Day ends with-**
National song ' Vande Mataram'