

JURISPRUDENCE

KINDS OF LAW---

Introduction:

The phrase law has been derived from the Teutonic phrase Lag which means that specific. The law may be described as a specific rule of demeanour and human relations. It additionally approaches a uniform rule of conduct that's applicable equally to all the human beings of the state. The law prescribes and regulates well-known situations of human pastime inside the kingdom. In simple phrases, the law is a specific energy of the country. Under the header law, there has been covered kinds of law which get applied according to the different cases being prevalent.

Kinds of law

General law

General Law has been described as that part of the law which applies to all persons as equal without any discrimination and is not limited to a particular locality, rather is applicable to the whole of the territory in the country. It is the ordinary law of land and law of the realm. It has been categorized as:-

Statute law

Equity law

Common law

Special law

In the words of Salmond special laws are so special and exceptional in their nature, sources or application that it is convenient to treat them as standing outside the general and ordinary law. The court of justice normally takes notice of the general law of the land unless some special law is pleaded. Salmond has mentioned 6 forms of special law-

Local law- it is that body of law which has its applicability on certain parts of the state and throughout its territory. Such law may either be a local customary law or locally enacted law. Foreign law- also known as private international law or foreign law which consists of the body of

rules for determining questions of jurisdictions and questions as to the selection of appropriate law, under civil cases having a foreign element.

Martial law- the law which is proclaimed at the time of turmoil as supplementing the ordinary law of the land which is insufficient to meet the extra strain and requirements created by reason of internal disturbances.

Conventional law- it originates in agreement and is the law for those who have agreed to be bound by it.

Autonomic law- the law being enforced by the state and is set by the sovereign himself. Whereas, the law established by private persons or organizations to which the sovereign power lends its sanction or authority is autonomic law.

Prize law- it relates to that portion of the international law which relates to the determination of the legality of the captures of ships and cargoes at sea in the time of war. This law is enforceable by the municipal courts of the country.

Salmond's classification of kinds of law-

1. Imperative law – it means any positive law or rules of conduct or behaviour imposed by any ruler, legislature, state, institutions or body of persons. It is a precept or rule of action imposed upon men by some authority which enforces obedience to it. The rules of positive morality, public opinion, rules of organizations and associations form a part of it. If a person commits a breach of imperative law he will have to undergo some sufferings which are known as the sanction. For e.g. the state applies physical force as the sanction, but a club or any other organization resorts to fine or expulsion when a member makes a breach of a rule.

The chief exponent of this kind of law is Austin and according to him, positive law is a command which obliges a person or persons to a course of conduct.

2. Physical or Scientific law – in the words of Salmond the law prevalent under it are expressions of the uniformities of nature and general principles expressing the regularity and harmony observable in the activities and operations of the universe. It governs the growth of bodies, the law of gravitation, and the law governing the planetary motion. It signifies those uniformities and regularities which are observable in nature as the law of heat and light.

3. **Natural law**- the law which is based on religious and moral principles and presents the picture of law as ideal or what the law ought to be. The natural law has been true for all times and at all places and whose origin could be traced out from ancient times. It emanates from virtue. Its supreme sanction is the perfect conscience or the righteous moral sense of the man. No physical force, punishment or restraint is necessary. His own self is the sanction of the *jus naturae*.

4. **Conventional law** – a law which is based on conventions i.e., something arising out of an agreement between parties or the rules made by any institutions. The rules under it are for regulating the conduct of members of a particular body, institutions or business. The law derives its validity from the agreement between the parties concerned.

5. **Customary law** – the laws under it comprises of reasonable customs and usages observed as a right from immemorial antiquity by a particular family or a society as a whole. Salmond stated that by customary law here we mean any rule of action which is actually observed by men and any rule which is the expression of some actual uniformity of voluntary action. The laws under it are the well-recognized customs which has stood the test of time and which are reasonable.

6. **Practical or Technical law** – it imports the rule of technique or art to be followed in a particular occupation to procure the successful or desired result. Thus, we have the rules of art, sculpture, photography, engraving, music etc. it basically covers those rules which are necessary for the attainment of certain ends.

7. **International law** – it is an aggregate of rules and regulations recognized and accepted by civilized states in their relations with each other. It has been considered as one of the most important branches of law. It has been divided into two parts where one part consists of those rules which are uniform and universal in their application. While the other part consists of those rules which are operative only between parties agreed to them.

8. **Civil law** – the term civil itself denotes the law of land. Salmond stated civil law as “the law of land or the law of the state, the law of the lawyers and law courts.” It is the law of the realm and has variously been named as municipal law, positive law or natural law.

The civil law has been classified into two sub-heads:-

A. Private law

The law which is more concerned with that of an individual than the public as a whole. It regulates and governs the relation of citizens to each other. The state acts as an arbiter to settle the disputes between individuals and the society through its judicial organs. The private civil law deals with matters such as contracts, insurance, carriage, freight, damages for personal injuries, civil wrongs, agency, bailment, sales of goods, partnership, regulations of companies, insolvency, arbitration, negotiable instruments, transfer of property etc.

In the classification of private law, there is great difficulty, as different jurists have given different classifications. A very general classification is as follows:-

- The law of persons
- The law of property
- The law of obligations
- The conflict of laws

B. Public law

It is such part of the civil law which deals with the constitution and working of the state, the functioning of its various departments, the relation between the state and its citizens. The public law determines and regulates the organization and functioning of the state and determines the relation of the state with its subject.

It has been divided into 3 classes:-

Constitutional law

Dicey says constitutional law includes all rules which directly or indirectly affect the distribution or exercise of the sovereign power of the state. It elaborates the concept of how the executive, the legislature and the judiciary are to function. The law which determines the structure of the state, the allocation of powers, the law that determines the rights and liberties of the subject

guaranteed under the constitution, as also the obligation of the citizens in consonance with the maintenance of the solidarity of the state. The constitutional has been above and superior to the ordinary law of the land.

It is the fundamental law of a state which contains the principles on which government is founded. It regulates the division of sovereign powers and directs to person each of these powers as to be entrusted and the manner of its exercise.

Keith in his Constitutional law observes that it is the part of the constitutional law to examine the organs by which these functions are carried out, their inter-relations, and the position of the members of the community in relation to these organs and the functions of the state.

2. Administrative law

It contains the laws and rules concerning the administration of the executive departments of the state. It deals with the structure, powers, and functions of the organs of the administration, the limits of their powers, the methods and procedures followed by them in exercising their powers and functions. It also provides legal remedies to a person whose right has been infringed by their exercising of the power of regulation of administration. It covers the legislative and judicial powers of the executive.

According to Dicey, the Administrative law determines the constitution and relation of those organs of society which are charged with the care of those social interests which are the object of public administration and the relation of the administrative authorities towards the citizens of the state.

3. Criminal law

It has been defined as a body of specific and definite rules regarding human conduct and behaviour which has been promulgated by political authority, which applies uniformly to all members of all classes of people which the rules refer and are enforced by punishment administered by the state. The characteristics of criminal law are as follows-

Politicality– it is a necessary element in the criminal law. The rules made by the state only can be said to be criminal law when the violations of such rules are criminal in nature and are punishable.

Specificity- it generally gives a strict definition of a specific act. Acts of a nuisance, conspiracy, official misfeasance etc.

Uniformity- the criminal law maintains the principle of justice and without being bias, it imposes charges of punishment as per one's crime. The uniformity denotes the process of enforcement of the law which is to be administered without the status of the person committing the crime.

Penal Sanction-It is said that penal sanction is the essential element of the definition of criminal

law. The criminal law originated as an agency of social control. It originated in torts or wrongs to individuals. The object of criminal law is punishment and not compensation. While compensation could be allotted as per the nature of the offence and is granted in the form of penalty.

Mens Rea has been defined as one of the essential element to be present in an act to constitute punishment. The criminal law deals with the laws relating to crimes, the procedure in criminal courts and the dealing with offenders. And also deals with the rules and regulations concerning prisons and the treatment of prisoners.

In a civilized society, crime is considered to be a wrong not only to the individual but to the society also. Therefore, the state initiates the proceedings against the offender. And this is why the criminal law has been considered as a branch of public law.