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HEIRARCHY OF SOURCE

“INTRODUCTION”

The term Law is in itself very diversified. Throughout today's world, an efficient system of law for the proper functioning of social life and human nature is important. It is important that everyone knows the law of the country so that they can prevent any unethical actions. “The word 'Rule' derives from the Teutonic phrase 'Lag,' which means Specific.”

In the language of the layman, "the set of laws that a nation or society accepts as governing the actions of its members and which can be implemented by penalties," the word law has several meanings. "Law is the body of concepts which the government accepts and applies in the administration of justice," explains the renowned lawyer Salmond.

It is very important to recognize that the law of each country comes from the sources, and understand and study about the source of law before you reach any philosophy of law. One needs to learn about what the origins of law are.

1. Legislation

The term "regulation" derives from the Latin terms "law" meaning "policy" and "latum," meaning creating. Primary source is the legislation in India, the legislation has a broad variety of uses, and it is used for control, authorisation and approval, prescribing, punishing, awarding, authorizing or limiting funding. The parliament is structured into the form of legislative legislation, existing rules, abrogation and substituting the ancient law system. The procedure for this is laid down in the Indian Constitution.

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As one of the origins of law, legislation is also further divided into two parts:

Supreme law: it is the parent law which comes from the nation's sovereign power. This cannot be repealed, suspended or enforced by other statutory authorities.

Secondary law: subordinate legislation for its legitimacy and life relies on the supreme law.

2. Customs

Custom has been mentioned in the landmark case of Tanistry¹.

Customs is considered as an important practice which shall be performed by a group or in a group. It is one of India's most significant and ancient source of law. Customary laws according to "Roscoe Pound" include:

- "Law formulated by customs of famous motion
- Law formulated through judicial choice
- Law formulated with the aid of doctrinal writings and clinical discussions for legal standards
- Ingredients of customs as one of the sources of law in India:
 - Antiquity
 - Continuous
 - Obligatory in nature
 - Consistency
 - Reasonability
 - Peaceful Enjoyment
 - Certainty"

3. Judicial Precedents.

Judicial precedents are the doctrine of 'stare judgment,' simply through obedience and reliance on earlier judgements reached by the courts; i.e. when the high court rules on a specific case and the lower court is facing a similar situation, the lower court considers the

¹ 30 ER 516

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case similarly and passes its verdict as the high court. The High Court is the one who sets a precedent for the Lower Court and it is bound to obey the Lower Court.

In valid reasons, the higher seat has the power to overrule the judgment of the lower court. In Union of India Vs K.S. Subramaniam² the judgment of the high court bench was taken in this case, whether there is a discrepancy between the two benches of the same court.

4. Justice

The principle is only enforced when the judges believe that the legislation is insufficient, obsolete or unjust. In such cases, judges use their common sense to give judgments based on “equity, good faith, fairness and justice”.

5. Conventional Law / International Treaties / Conventions.

When globalization emerged, the need for world countries to communicate with each other increased, ensuring that countries in the world are expected to be bound by a set of rules. Via treaties, agreements etc., these laws are made and harmonized by the United Nations. Countries listed under UN must recognize and obey the laws or regulations set down by the organisation and must also enact legislation in compliance with the rules. Global agreements also have a major role to play in creating new legislation or making changes or amendments in the laws that already prevail.

Therefore, both of the above mentioned sources give us the detailed analysis of issues relating to source of law. These resources play a vital role in various judicial reforms and judgments.

“RESEARCH QUESTIONS”

1. Explain the Hierarchy of the source in our legal system? State case Laws.
2. What are the National and International source of law?
3. Explain the hierarchy of Courts in India.
4. “What are the main sources of law in primitive society”?

“RESEARCH OBJECTIVES”

² AIR 1976 SC 2435

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- To study the hierarchy of source.
- To study the functioning of Indian judiciary.
- To study principles of statutes with the help of case laws.
- To gain knowledge about national and international source of law.
- To understand the importance of source of Law.

“RESEARCH METHODOLOGY”

This research article is broadly based on doctrinal research. This method involves the use of secondary sources while a non-doctrinal would involve surveys for extracting information. Critically analyzing the Hierarchy of source wherein the importance of National and International source and also the case laws and precedents and how the judiciary functions in a hierarchical manner made it suitable to refer the books and articles making it a doctrinal research. Some articles, news articles, publications, journals have been used for extensive research. Major landmark cases addressed by the Supreme Court of India are also discussed in this research work.

Some articles, news articles, publications, journals have been used for extensive research. Major landmark cases addressed by the “Supreme Court of India” have also been discussed in this research article. Various research articles of renowned authors have helped me complete my research work. SCC online guided me in gathering information regarding various hierarchical source. Major Source of information has been gathered from various websites, various news articles such as the economic times and the Hindu has helped me in gathering information regarding the International source of Law.

1. Explain the Hierarchy of the source in our legal system? State case Laws.

The source of the legislation must be understood in order to provide a rational and thorough understanding of the laws. Sources in law shall imply the sources from which the law or the binding laws of human conduct derive. In other terms, the rule falls from the root. Lawyers have various theories regarding the origins and origin of law as they do about the philosophy of law. Since the term 'rule' has multiple meanings, lawyers view law references from a variety of viewpoints. For example, Austin sees sovereign rule as a source of law, whereas Savigny and Henry Maine regard tradition as the most significant source of law. Natural law school recognises existence and human purpose as the

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foundation of law, whereas religious scriptures are used as origins of law in theologians. While there are separate arguments and counterclaims about the origins of legislation, it is clear that the law has originated from common sources in nearly all cultures.

The Supreme Court (SC) has been the highest judicial authority and has created a streamlined judicial structure.

1) “Supreme Court: Binding on all courts in India Not bound by its own decisions, or decisions of PC or Federal Court³”

2) “High Courts: Binding on all courts within its own jurisdiction Only persuasive value for courts outside its own jurisdiction. In case of conflict with decision of same court and bench of equal strength, referred to a higher bench. Decisions of PC and federal court are binding as long as they do not conflict with decisions of SC.”

3) “Lower Courts: Bound to follow decisions of higher courts in its own state, in preference to High Courts of other states.”

The origins of law, as defined by the English lawyer, are as follows: systematic sources of law: these are the roots of the truth and force of law. This description includes a law enacted by the State or by the Sovereign. Legal materials: applies to the material of the law. It's all from where the legislation comes from, in simple words. This area of legislation applies to customs. However, once we look at the existing legislative frameworks and examine them, it can be observed that most legal processes are regulated by the rules. During the same period, customs often play a major role in the legal structure of a country. Judiciary judgments are legally binding in certain nations.

“On the basis of the above discussion, three major sources of law can be identified in any modern society are as follows”:

- i. “Custom”
- ii. “Judicial precedent”
- iii. “Legislation”

In valid reasons, the higher seat has the power to overrule the judgment of the lower court. In “Union of India Vs K.S. Subramaniam⁴” the judgment of the high court bench

³ AIR 1991 SC 2176

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was taken in this case, whether there is a discrepancy between the two benches of the same court.

Saptapadi is an example of customs as a “source of law”. It is the most important rite of a Hindu marriage ceremony. The word, Saptapadi means "Seven steps". “After tying the Mangalsutra, the newly-wed couple take seven steps around the holy fire, which is called Saptapadi. The customary practice of Saptapadi has been incorporated in Section 7 of the Hindu Marriage Act, 1955.”

Democracy brought about in post-colonial India was the winds of reform and ideological transition. In the field of regulatory progress, this transition was indeed very noticeable. The key drivers of the legislation have been the recently adopted Constitution and Values developed in Independent India. Every social reform is now based on the Basic Rights Directive and the State Policies Directive. In compliance with Article 372, after Independence, the Constitution accepted pre-constitutional rules. Nevertheless, calls were raised from various sources to review the colonial laws in a new way. The First Law Commission of India was the government, under the chairmanship of Mr. MC Setalvad, responding to the feelings of the Indian masses. Since then, 20 Commissions of Law have been established. By 2012, up to 243 reports had been forwarded by the Law Commissions. In 2013, the government created the Twentieth Law Commission, led by Justice D. K. Jain. It is due to last until 2015 for the Twentieth Law Committee.

2. What are the National and International source of law?

“The main sources of law are the following”:

- “**The Constitution of India.** This is the supreme source of law.”
- “**Statutes.** Statutes are enacted by the Parliament or the state legislatures. At local level, subordinate delegated legislation (such as rules, regulations and bye-laws) is passed by local authorities (such as government departments, municipal corporations, municipalities and *gram panchayat*).”
- “**Customary law.** In certain aspects, local customs and conventions (usually religious in nature) that are not against any statute or morality are also applicable.”

⁴ AIR 1976 SC 2435

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- “**Judicial decisions.** While technically not law, judicial decisions of superior courts like the Supreme Court of India and High Courts are another important legal source, and have precedential value.”

Sources of foreign law (such as a treaty or convention concluded by India) can usually be enforced in India if ratified and adopted into Indian law. “In certain cases, customary international rules and norms may be applied without formal ratification for the sake of justice and where the international law concerned does not infringe Indian law. Where there is a difference between constitutional law and foreign law, domestic law can take precedence. Indian courts periodically study and enforce international legal norms and decisions of other countries (mostly common law) when grappling with civil, economic, environmental, governance and contractual problems”.

3. Explain the hierarchy of Courts in India.

“Under the Indian judicial system, certain traditional courts have been specifically tasked to deal with certain areas of law. District Courts usually have courts formed under specific statutes, such as”:

- “Family courts to deal with issues relating to marriage, inheritance, guardianship of minors and maintenance.”
- “The Special Court of Central Bureau of Investigation to deal with cases of corruption and bribery.”
- “Some High Courts and District Courts, which house commercial courts which deal only with commercial matters of specified value, including matters relating to arbitration.”

“With the socialist aim of making legal remedies accessible and affordable to all, the Indian judicial system has constituted *Lok Adalats* and *Gram Panchayats* at the village level. These bodies apply traditional or customary laws and primarily work towards settling local disputes by using alternative dispute resolution mechanisms.”

The Indian judiciary is a single integrated system. The Indian Constitution separates the Indian judiciary into higher courts (the Supreme Court and the Circuit Courts) and secondary courts (the lower courts under the jurisdiction of the High Court).

“The Supreme Court of India is the country's highest court and is located in New Delhi. It is chaired by the Chief Justice of India. There are 24 Supreme Courts all around the country. - State has one Supreme Court, although some High Courts have authority over a variety of

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countries and parts of the country. For eg, the High Court of Guwahati exercises power over the countries of Assam, Nagaland, Mizoram and Arunachal Pradesh, all of which are situated in the north-eastern part of India. States are further subdivided into districts, each with its own Circuit Court, for administrative convenience. With the exception of a few states, the District Court shall have the initial experience in both civil and criminal cases.” The regulatory system also involves and interacts with courts and commissions set up by relevant legislation.

The rulings of the Supreme Court of India are binding precedents for all Indian courts, courts and tribunals. Similarly, the judgments of the Supreme Court are binding on all subordinate judges, officers and courts in India before the verdict of a different Supreme Court is contrary. When a verdict is reached by another High Court in contrast, the opinion of the Court of a higher judge normally prevails. Decisions of the Circuit Court shall not be binding on any other court.

4. “What are the main sources of law in primitive society”?

1. Social Customs.

There are many origins of law among primitive people. Common tradition is the most important source. Indeed, it is not a mistake to claim that the rules of primitive culture arise from social customs. Man has fought against nature both for his own survival and for the satisfaction of his own wishes.

In this war, certain human action, although others are shown to be positive, is counter-productive. He has continuously given up bad behaviours and adopted useful ones. Thus, those who have behaved well in civil life are considered good men, and others who work in the same way are regarded as bad people.

2. Orders of Chieftain.

Generally, every primitive society has a social system. In certain social organisations, the Leader assumes the highest position and rules the members of the society. This Leader has enough power, but he cannot do anything against the will of the tribe as a whole. In other cases, the law is the rule of the chieftain, and every man and woman must obey it.

3. Public opinion.

“Public opinion in a primitive society is very efficacious. An individual can even be punished in doing something against the public opinion. In this way, it is this public opinion which controls the actions of men and women in the form of law.”

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4. Religion.

“Religion is also part of life in primitive societies. The compliance of the rules and regulations connected with the names of deities is as compulsory as that of law and generally none dares to disobey them.”

5. Panchayats.

Some tribes have social panchayats that rule the people of a business and resolve their mutual dispute. The agreement of the Panchayat is considered a law and the criminal is punished for disobeying it. This punishment is always in the form of a feast to be given to the entire community, and as long as the perpetrator does not deliver the feast, the people of his clan will forget it.

Social customs, main orders, moral norms, panchayat splits, etc. are also the foundation of law in primitive societies.

“REVIEW OF LITERATURE”

1. “Essential Source of Law functioning in India, By Rohini Das Gupta.”

The author has critically mentioned about the importance of law. It is considered necessary because the person who disobeys them in society is ignored. The system for punishing customs infringements is gradually evolving. The author stated that “the term source of law may sometimes refer to the sovereign or to the seat of power from which the law derives its validity”.

2. “Sources of law in primitive society, By Sukesh Dey.”

The author has made his detailed analysis about social customs. It is considered necessary because the person who disobeys them in society is ignored. The system for punishing customs infringements is gradually evolving.

3. “Sources of law, By Mayank Shekhar”

The author has made his detailed analysis about how to interpret any law. “It is necessary to understand the source of the law and that’s why a number of jurists, thinkers and legal theorists have paid a great deal of attention to the subject of sources of law. Legislation is the most widely accepted legal source.”

4. “Principle sources of Indian law, By Ayushi Nagpal.”

The author has made his detailed analysis regarding the Indian judicial system. The critical analysis of the hierarchical system of the judiciary system of India has been

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explained and how all the sources are connected has also been examined by the author.

5. “Hierarchy of sources of Law, By Aswini Ramesh.”

The author has made his detailed analysis about Legislation, Customs, Judicial Precedents, Justice and Convention Law. The author has made his detailed analysis about how to interpret any law. It is necessary to understand the source of the law and that’s why a number of jurists, thinkers and legal theorists have paid a great deal of attention to the subject of sources of law. Legislation is the most widely accepted legal source. The author has critically analyzed all these sources and also mentioned the derivations given by Salmond.

“CONCLUSION”

The Indian judiciary is a single integrated system. The Indian Constitution distinguishes the Indian judiciary from the higher courts (Supreme and Middle Courts) and the inferior courts (including the lower courts controlled by the High Courts).

The Supreme Court of India is the country's highest court and is located in New Delhi. It is chaired by the Chief Justice of India. “There are 24 Supreme Courts all around the country. - State has one Supreme Court, although some High Courts have authority over a variety of countries and parts of the country. For eg, the High Court of Guwahati exercises power over the countries of Assam, Nagaland, Mizoram and Arunachal Pradesh, all of which are situated in the north-eastern part of India.” States are further subdivided into districts, each with its own Circuit Court, for administrative convenience. With the exception of a few states, the District Court shall have the initial experience in both civil and criminal cases. The regulatory system also involves and interacts with courts and commissions set up by relevant legislation.

“SOURCE”

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