

General Principles of Law

Prof.(Dr). G.B.Reddy
University College of Law
Osmania University
Hyderabad-7
gbredlaw@gmail.com

Law – Definition & Meaning

- Codified Common Sense
- Collection of rules imposed by authority
- Legal document setting forth rules governing a particular kind of activity
- Principles and regulations whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.
- All the rules of conduct established and enforced by the authority, legislation, or custom of given community, state, or other group or any one of such rules
- "Law is the king of kings, far more powerful and right than they, by whose aid, even the weak may prevail over the strong"-Rig Veda
- "Every Law is a veritable freedom ...the ends of Law is not to abolish or restrain but to preserve and enlarge freedom" John Locke

Law in Jurisprudence

- Austin — ‘Law is the command of sovereign enforceable by sanctions’
- Salmond- ‘Law is body of principles recognised by State and applied by it in administration of justice’
- Roscoe Pound- ‘It is a tool of social engineering’
- Kelsen in his ‘pure theory of law- ‘law is a ‘normative science’. The legal norms are ‘Ought’ norms as distinct from ‘Is’ norms of physical and natural sciences’.
- Savigny traces the origin in Volkgeist (general consciousness of the people)
- Holmes, “Law is a statement of the circumstances in which public force will be brought to bear upon through courts.”

Kinds of Law

- Codified & Un-codified
- International & Municipal
- **Public Law** (Constitutional, Administrative, Criminal etc) and **Private Law** (Contract, Torts, Property, Trusts and family etc)
- Common Law and Equity
- Substantive and Procedural
- Civil and Criminal
- Secular and Personal
- Supreme and Ordinary/Organic
- Enacted Law and Customary
- Primary and Secondary etc

Civil Law

- **Civil**- a member of a *civitas* or *free political community*; natural or proper to a *citizen*. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.
- ‘Civil’ - derived from the Latin *civilis*, a citizen
- Used in contradistinction to *barbarous or savage*, it indicates a state of society reduced to order and regular government.
- In **contradistinction to criminal**, it indicates the private rights and remedies of men.
- It is also used in contradistinction to *military, ecclesiastical, natural, or foreign*.

Civil Law

- Civil Action-An action wherein an issue is presented for trial formed by averments of complaint and denials of answer or replication to new matter (Plaint v. Written Statement)
- Adversary proceeding for declaration, enforcement, or protection of a right, or redress, or prevention of a wrong,
- Every action other than a criminal action
- Denotes both actions at law and actions in equity.
- In Civil Law - A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil
- Civil dispute - Suit of civil nature (S.9,CPC)

Criminal Law

- Criminal law - body of law that deals with crime and legal punishment of criminal offenses
- Main object - to punish the wrongdoer ; to deter him & others from committing same or similar crimes, to reform him if possible, and to satisfy public sense that wrongdoing ought to meet with retribution.
- In criminal law - cases are filed by government & guilt of accused needs to be proved beyond reasonable doubt
- State- plays role of *parens patriae* ("parent of the nation" = "parent of the fatherland" = monarch/authority- regarded as legal protector of citizens unable to protect themselves)
- Role of State in Prevention, Detection, Investigation, Prosecution and Correction of crime/criminal

Sources of Law

- Legislation – Constitution, Statutes, Rules etc
- Custom- practice (s) passed on by one generation to the next- ancient, certain, uniform, not opposed to public policy & continuous [honour killing , rule of primogeniture, pious obligation etc]
- Precedent- Authoritative (Art.141) & Persuasive (Foreign Judgments and of Coequal Benches etc) - *ratio decidendi* & *obiter dicta*
- Personal Law e.g., Hindu and Mohammedan Law - *based mostly on religious practices and rituals*

General Principles of Law

- Principle- an element of a discipline/a value /an instrument - an abstract rule applicable to particular concrete instances.
- **Rule of Law** —*Rex Lex to Lex Rex- Supremacy of Law & Predominance of Legal spirit ,Equality before Law, Absence of wide and unguided discretion ...*
- **Separation of Powers**- Checks and Balances-Art.50- Structural and functional aspects
- *Ubi jus ibi remedium* (where there is a right there is a remedy)
- *Ignorantia facti excusat-ignorantia juris non excusat* (ignorance of fact is an excuse but ignorance of law is not an excuse)
- *Volenti non fit injuria* (damage suffered by consent is not a cause of action)
- *Res ipsa loquitur* (the thing speaks for itself)

General Principles of Law

- *Actus non facit reum nisi mens sit rea*
(the intent and the act both concur to constitute the crime)
- *Nemo debet bis vexari pro una et eadem causa* (it is a rule of law that a man shall not be twice vexed for one and the same)
- **“Fiat juastitia ruat coelum”** — (let justice be done, though the heaven should fall.
- Laches- *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent)-Delay defeats equity.
- Good faith-
- Res judicata- *Interest Reipublicae Ut Sit Finis Litium* - interest of the state that there should be an end to litigation & *Res Judicata Pro Veritate Accipitur* — a judicial decision must be accepted as correct.
- Impartiality of judges

- *Actio personalis moritur cum persona*-personal right of action dies with the person
- *Deminimis lex non curat* – judges will not sit in judgment over extremely minor transgressions of law
- *Qui facit per alium facit per se*- one who acts through others acts for himself
- *Respondent superior*- let the master answer
- *Injuria sine damno*- injury without legal damage (Gloucester Grammar School case)
- *Damnum sine injuria*- damage without injury (Ashby v. White)
- *Nemo debet bis vexari pro una et eadem causa* – It means no man shall be punished twice for the same offence
- *Salus populi est suprema lex*- The welfare of the people shall be the supreme law

Operative tools of law

- Rights and Duties (Meaning and kinds)
- Remedies under Law (*Ubi jus ibi remedium*-Constitutional remedies-legal remedies –civil and criminal etc)
- Constitutional Remedies- Under Articles 32,226 etc of the Constitution
- Civil Remedies- Injunctions, Declaration, Recovery of Property, Attachment of property etc
- Criminal Remedies-Sentencing and Compensation
- Remedies under Special Laws- Personal laws, consumer law, IPR laws etc

Principles of Natural Justice

- Rules not generally embodied & not fixed by any code
- Have been developed to secure justice and to prevent miscarriage of justice
- Based on the maxim - *Justice should not only be done but should manifestly be seen to be done*
- Encompass Rule against bias & Rule of fair hearing
- Applicable to administrative and quasi-judicial proceedings

Rule against Bias

- Originates from maxim- *Nemo debet esse iudex in propria sua causa* (no man can be a judge in his own cause)
- The rule disqualifies a person from deciding a dispute in which he has- **pecuniary bias; personal bias; or bias relating to subject matter**
- Includes **pre-conceived notion bias**
- **Instances: personal bias** -*A.K.Kraipak v.UoI AIR 1970 SC 150*; **pecuniary bias**- *Dimes v. Grand Junction Canal & Co [1852,H. of Lords]*- the decision of LC in favour of the Canal company-quashed by H.of Lords since he was a shareholder in the co. See *Jeejeebhoy v.Asst.Collector of Thana AIR 1965 SC 1096* Js Gajendragadkar reconstituted the Bench for hearing a case on the ground that he was a member of the cooperative society for which the land in dispute was acquired.
- **Bias relating to subject matter** – *Gullapalli Nageswara Rao v.APSRTC 1959,SC* – scheme for nationalization of motor transport notified by State Govt.-quashed since the Secretary who initiated scheme and who heard objections was the same
- **Bias** – No need of actual/real likelihood
- Even reasonable likelihood is a vitiating factor

Rule of Fair Hearing

- Based on the maxim – *Audi alteram partem* (no man shall be condemned unheard) – hear the other side
- Popular as **Rule of fair hearing**
- **Ingredients** – notice, right to disclosure of evidence, right to legal representation, right to produce evidence, opportunity to rebut and cross examine, one who decides must hear & reasoned decision, Post decisional hearing
- **Effect of non-observance:** renders the decision void. In exceptional cases – post decisional hearing can be given

Exclusion of Natural Justice

- May be express or implied
- By statutory provisions – eg: urgent land acquisition
- By constitutional provisions – eg: second proviso to Art.311(2)
- In case of legislative acts
- Exclusion in public interest
- In case urgency/ **necessity**
- In case of impracticability
- In case of confidentiality
- In case of academic adjudication etc

Conclusion

- Thank You