Sources of Law: Custom, Practice, Tradition, Rituals, and Judicial Decisions

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INTRODUCTION

Law is a set of rules created and enforced by social or governmental institutions to regulate behavior. The universally accepted definition of law has been a subject of long-standing debate among scholars. Generally, the definition of law is seen as the rules of conduct developed by society or government within a specific area. Law follows certain customs, practices, and traditions to deal with crimes, trade, social relations, property, finance, etc. Law is regulated and enforced by the authorities responsible for it (https://en.wikipedia.org/wiki/Sources_of_law; Gupta and Sharma, 2002).

According to Leon Dugin, law is essentially and specifically a social fact. Rudolf von Duhring believes that law is a form of guaranteeing the conditions of social life, assured by the coercive power of the state. Thus, both scholars view law as a tool of social control and believe that law serves the purposes of society. For this, the nature of law can be described as binding (Doshi and Jain, 1998).

According to Benjamin Nathan Cardozo, "Law is a principle or rule of conduct that justifies a prediction with reasonable certainty, and if its authority is challenged, it is enforced by the courts. This is the principle or rule of law."

Meaning and Definition of Law:
1. According to Lucy Meyer, law refers to the rules created by a higher authority. In her definition, "higher authority" could refer to the government, judiciary, or a Panchayat in a primitive society. This definition is complex and helps define the laws of primitive societies as well.
2. According to Hobbes, law is a social rule, the violation of which entitles a group to either threaten or actually use physical force, a privilege recognized by society. In Hobbes' definition, physical force can be used in the enforcement of law. This definition applies to both primitive laws and statutory laws.
3. The definition by MacIver and Page states that "Law is a system of rules that are recognized by the courts of the state, interpreted by the courts, and enforced according to specific circumstances." Being sociologists, they describe law in the context of modern, complex societies, where governments and courts exist.

From the definitions above, it is clear that law helps regulate human behavior. It aids in fostering cooperation between members of society and assists in resolving conflicts and disputes. Laws can generally be classified into criminal law, civil law, and administrative law.

The findings also line up with Kumawat (2019); Rawat (2002) and Sharma(1999).

Sources of Law:

In India, the primary sources of law are the Constitution, legislation, bills, customary law, and judicial decisions. Laws are made by the Parliament, State

Legislatures, and Union Territories' Assemblies. In addition, there are various subsidiary laws, which are considered subordinate laws, made by the central and state governments, as well as local authorities like municipal corporations, gram panchayats, and other authorities. These subsidiary laws are enacted under the authorization of Parliament or the State Legislature.

The decisions of the High Court and the Supreme Court are also primary sources of law. The rulings of the Supreme Court are binding on all courts in India. Local customs and traditions, as long as they do not conflict with laws, morality, or ethics, are also recognized by the courts.

Sources of International Law:
1. Customs
2. Treaties
3. General principles of law
4. Judicial decisions
5. Writings of publicists
6. International comity

Law is the formal tool for social control, backed by power, and its violation may lead to a specified punishment. It is the most important means for regulating collective life. Its primary function is to inform individuals of their rights and duties. Hence, laws define penalties for socially undesirable actions and ensure those who violate the law are punished accordingly.

Laws are not the same in all societies. In primitive societies, they are unwritten or customary, while in developed and civilized societies, they are codified. However, even unwritten laws can be as effective as written laws. Ross considers law the most specialized and explicit tool for social control, which society itself enforces.

Types of Laws:
1. **Primitive Law**: Primitive law refers to the legal system found in simple and illiterate tribal communities. These laws are not codified in formal rules but are based on customs and traditions considered divine. In such societies, there may be no formal judiciary, or if present, it may be rudimentary. Individuals comply with rules out of fear of divine consequences and hold themselves accountable for breaking them.
2. **Personal Law**: Personal law is the legal system that governs personal matters like property, relationships, and individual rights. It does not concern public law cases.
3. **Repressive Law**: Emile Durkheim discussed two types of societal organization: mechanical and organic societies. He linked repressive laws to mechanical societies. The purpose of repressive laws is to prevent actions seen as threatening to the collective consciousness. These laws are not about compensating for the harm caused by crimes but about maintaining moral balance and deterring further crime. In short, repressive laws curb individual desires.
4. **Customary Law**: Customary law is a middle form between tradition and formal law. Modern complex laws evolved from customary laws. These laws do not have a legislative or judicial body to enforce them, and they characterize societies lacking formal political systems.
5. **Customs**: Customs are accepted and widely acknowledged behavioral norms in a society. These rules guide individuals on what they should do, not necessarily what they need to do. Unlike traditions, customs are less rigid. Violating customs does not lead to societal exclusion or severe punishment but rather to mild ridicule or satire. Customs emerge from repeated behaviors and, when adopted by a group, transform into tradition.
6. **Tradition**: Tradition refers to practices based on values and norms that are tied to the past. It involves behavior passed down from previous generations. The term 'tradition' denotes behaviors, beliefs, and practices viewed as integral to society, ensuring continuity over time.
7. **Rituals**: Rituals refer to socially sanctioned practices that, over time, have become institutionalized as customs. They represent the cultural legacy handed down from earlier generations, particularly in the context of social life. Societies have different customs depending on region, and rituals evolve from these customs, being deeply rooted in historical and cultural context.

Judicial Decisions:
Judicial decisions are the process by which judges decide cases based on precedent, following the principle of "stare decisions" (to stand by what has been decided).

Judicial decisions are a fundamental aspect of the legal system and play an important role in interpreting the law and resolving disputes.

In conclusion, the primary sources of law in India include the Constitution, legislation, judicial decisions, and customary law in the form of customs, traditions, rituals, and social practices. In primitive societies, traditional law predominates, whereas in modern societies, laws are mostly based on written statutes. However, both traditional and modern laws coexist in society, with respect for customs and rituals seen alongside formal legal systems.

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