

## sources of law

### **Introduction:**

The “law” is made up of many different parts having numerous sources. Such as Federal and State constitutions, state and federal statutes, court opinions etc. There are many different sources of law in society.

Some written in the constitution of a state and some will be passed by the legislature (usually a parliament or congress).

Source basically mean origin/dawn/creation of something i.e., the binding principles / rules governing the human conduct.

The term sources of law have been used in different senses by different writers and different views have been expressed from time to time, sometimes it has been used in the sense of sovereign and sometimes it is used to denote the causes of law.

Such sources may be international, national, regional or religious.

### **Definitions of Law:**

**According to Salmond;** “Law is a body of principles recognized and applied by the state in the administration of justice”.

**According to Austin;** “A body of rules fixed and enforced by a sovereign political authority”.

### **Meaning:**

The term sources of law have been used in different senses by different writers by different viewers. Sometimes the term is used in the sense of sovereign and sometimes as a matter of which law is composed. And is also used origin of law.

### **Definition of Source:**

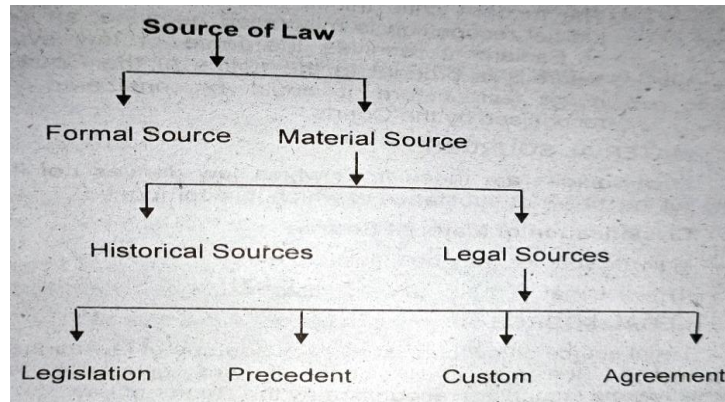
**Oppenheim defines source of law as** “the name for a historical fact out of which the rules of conduct came into existence and acquire legal force”.

### **Interpretation of sources of law:**

According to black’s law dictionary law:

Something (constitution, treaty, statute or custom) that provides authority for legislation and for judicial decisions are point of origin for law.

### **Classification of sources of law:**



Salmond, an English Jurist, has classified sources of law into the following categories:

### **1. Formal Sources of Law:**

These are the sources from which law derives its force and validity. A law enacted by the State or Sovereign falls into this category.

According to Salmond:

The view of Salmond about the sources of law was popular and still has recognized widely. According to him there are two senses of “sources of law” in which it is used. It may either show the ultimate power behind the law or it may tell us what is contained in the law.

### **2. Material Sources of Law:**

It refers to the material of law. In simple words, it is all about the matter from where the laws are derived. As the word “material” suggests, material sources deal with the substance, element or component of material of the law. Customs fall in this category of law.

#### Classification of material sources:

Legal sources

Historical sources

#### **2.(B) Legal sources:**

Legal sources of law are those sources which are the instruments or organs of the state by which legal rules are created. Legal sources of law are authoritative and are allowed by the courts.

These are some legal rights:

Legislation

Precedent

Custom

**a) Legislation:**

Legislation is derived from the Latin word “legis” meaning “law” and “latus” meaning “to make” or “set”. Hence legislation means “making of law”. Legislation is that source of law which consists in the declaration of legal rules by a competent authority. Legislature is the direct source of law. Legislature frames new laws, amends the old laws and cancels existing laws in all countries. In modern times this is the most important source of law making. The term legislature means any form of law making.

**Types of Legislation:**

There are mainly two types of legislation –

- Supreme legislation
- Subordinate legislation.

**b) Precedent:**

The judgments passed by some of the learned jurists became another significant source of law. Precedent means, the judgment or decision of the court cited (mentioned) as a right of implied legal principle or past judicial decisions. When there is no legislature on particular point which arises in changing conditions, the judges depend on their own sense of right and wrong and decide the disputes. Such decisions become authority or guide for subsequent cases of a similar nature and they are called precedents. Precedent is more flexible than legislation and custom. It is always ready to be, used. Precedent is otherwise called case law judicial decision judge made law it is the sources of law. It enjoyed a high authority precedent plays a vital role when law is unwritten English common law is based on precedent.

**Types of Judicial Precedents:**

There are mainly four types of judicial precedents:

- Original precedents.
- Declaratory precedents
- Authoritative precedent
- Persuasive precedent.

**c) Customs:**

Custom signifies the habits and practices of the people. However, all customs are not sources of law but which are accepted and recognized by law become legal customs.

Custom is the oldest and important source of law. According to Holland, Custom is the course of conduct that is commonly observed. It exists as established usage; it is nothing but usage and habits. Custom means uniformity of conduct of people which is followed by any part of community or whole community. It can be described as the cultural idea that defines the regular pattern or behavior, which is considered a characteristic of the judgment of right and wrong as the idea of justice and public utilities

#### **d) Agreements:**

Principles by which two or more people bound in modification (change) of the ordinary law, due to an agreement arrives between them. An agreement is also an essential source of law as it gives rise to conventional law. An Agreement is the state of being in accord (understand) of conformity such as to agree to the details of a transaction. An agreement may be defined as the expression by two or more persons communicated to each other of a common intention to affect the legal relations.

In general terms, an agreement is two persons agreeing about something. It is what we call a 'meeting of minds.' But in jurisprudence, an agreement has a more definite meaning. It is actually one of the essential steps of a contract. When one of the parties accepts the offer made by the other party, then both parties are in agreement.

So, an agreement between two parties creates mutual obligations. And such obligations are enforceable by law. Typically, an agreement involves some exchange of goods or money or services or some combination of them. It alters (amends) the rights and obligations of both parties involved. So, an agreement is an essential aspect of any contract.

#### **e) Treaties:**

Treaty is an agreement, protocol, covenant, convention, pact, or exchange of letters between two or more countries formally approved and signed by the leaders. Treaties may be on political, social or economic matters and a rule of civil law may be overridden by a treaty or convention.

**Examples:** The Simla Pact 1972, between Pakistan and India aimed at normalization of relationship between two countries.

The new Geneva Convention 1977 signed by hundreds of countries, defining racial segregation (separation) as war crime.

### **3.(B) Historical sources:**

The historical sources consist of the works of the ancient lawyers and thinkers. Historical Sources of Law helps us to know the historical significance and the need for such development of law. It is the religious belief, local customs, opinion of jurists and historical development. There are two types of historical sources of law, namely, Religion and Morality.

#### **Conclusion:**