**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.

**Source of law a small :**

Means the origins of law, i.e. the binding principles / rules governing the human conduct. Such sources may be international, national, regional or religious. It also refers to the sovereign or the state from which the laws descends its enforcement or authority. In civil law systems, one has only to look at the appropriate code or statute; but in common law systems one needs to look at legislation (primary and secondary) and at the judicial precedents

**Definitions of Law :**

* The word ‘law’ has come down to us in close association with two notions, the notion of order and the notion of force. **~ Henry Maine**
* The body of principles recognised and applied by the State in the administration of justice. **~ John**

**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:

**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.

**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**

**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**
* **Agreement**

**Legislation**

**Introduction :**

Legislation means the process of lawmaking. Legis means law and Latum mean “making”, and as a whole it means lawmaking. According to Austin, it means the making of law by a supreme or a sovereign authority which must be followed by people of every stratum of the society. Salmond defines Legislation as the process of lawmaking by a competent and able authority.

Legislation is the process of lawmaking where a competent authority is given the task of drafting and enacting the law in a state. It is also said to be a strict concept of lawmaking because there is only one body which is entrusted with the work of lawmaking and also there is no scope of any alteration as such because of codified and watertight laws which leave a very minuscule range of the amendment.

**Definitions of legislation :**

* ***According to Salmond:*** “Legislation is that source of law which comprises in the assertion of lawful standards by a competent specialist.
* ***According To Austin:*** “Legislation is the command of the sovereign or the superior authority which must be followed by the common masses backed by sanctions”.
* ***According to Gray:*** “Legislation implies the formal expression of the administrative organs of the general public.”
* ***According to Positivist School:*** “A run of the mill law is a rule and legislation is the typical source and form of lawmaking.” Most examples of this school don’t affirm that the courts additionally can figure law. They don’t concede the case of custom as a wellspring of law. Consequently, they view just legislation as the form of law.
* ***According to Historical School:*** “The legislation is the least innovative of the forms of law. The authoritative motivation behind the legislation is to give the better framework and increasingly viable the custom which is unexpectedly created by the general population.”

**Types of legislation :**

Legislation can have numerous reasons, for instance, to direct, to approve, to endorse, to give, to authorise, to allow, to proclaim, to confine and to annul. Therefore in enacting any legislation and the rule of law, the welfare of the citizens must be kept in mind and therefore, it is must be adopted in the best interests of the citizens. ***Legislation have following types :***

**Supreme legislation :**

The Supreme legislation is the legislation adopted by the sovereign intensity of the state. In this manner, some other authorities which are the organ of the state cannot control or check it. It is considered incomparable as well as lawfully powerful. An established piece of this rule can be found in Dicey’s book, ‘The Law of the Constitution”

**Sunordinate legislation :**

Subordinate legislation will be legislation by some other authority than the Supreme specialist in the state. It is made under the powers designated by the Supreme authority. Such legislation owes its reality, legitimacy, and continuation to the Supreme expert. It can be cancelled and abrogated anytime by the power of the sovereign authority and therefore, it must offer an approach to sovereign legislation. Subordinate legislation is liable to parliamentary control. Five unique types of subordinate legislation can be distinguished

***Types of subordinate legislation :***

***Colonial legislation:***

Nations which are not autonomous, and are under the control of some other state have no Supreme capacity to make law. Such countries can be in different classes such as colonies, domains, secured or trust regions and so forth. The laws made by them are subject to the Supreme legislation of the state under whose control they are. Therefore it is subordinate legislation.

**Executive Legislation**

At the point when legislative powers are delegated by the designated official to an executive, it is called executive legislation. Even though the significant capacity of the official is to execute the laws and carry on the organisation, he/she is continuously dependent on some subordinate enactment powers. Today, for all intents and purposes of each law sanctioned by the lawmaking body contains assignment statements giving law-making powers by the official to the executive in order to enhance the statutory arrangements.

**Judicial Legislation**

Powers delegated to the judicial system to make and implement their own laws to maintain transparency in the judicial system of the country. This will also ensure that there is no involvement of any other organ of the government in the governance of the judicial system of the state.

**Autonomous Legislation**

At the point when the Supreme authority gives powers upon a gathering of people to administer on the issues depended to them as a gathering, the law made by the last is known as the autonomous law and the body is known as a self-ruling body. A railway is an independent body. It makes bye-laws for the guideline of its organisation, and so on. A college is likewise a self-governing body. Even some universities in India have been granted the status of autonomous bodies

**Delegated Legislation**

Delegated(subordinate or subsidiary) Legislation alludes to those laws made by people or bodies to whom parliament has delegated law-making powers.Where Acts are made by Parliament, a Principal Act may cause arrangement for Subsidiary Legislation to be made and will to indicate who can make laws as such under that Act.Delegated Legislation can just exist in connection to an empowering or parent Act.Delegated Legislation contains the numerous regulatory subtleties essential to guarantee that the arrangements of the Act will work effectively. It might be directed by Government Departments, Local Councils or Courts.Guidelines and Statutory Rules are the most widely recognised types of Delegated Legislation. They are made by the Executive or a Minister which apply to the overall public. By-laws, and once in a while Ordinances are made by a Local Government Authority which also applies to the general population who live around there. Principle and Parent Act regularly depict methodology to be followed in Courts if there is any flaw in a delegated law.

**Judicial precedent**

**Introduction :**

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.

**Nature of judicial precedents**

They must be purely constitutive and not abrogative in nature. Hence, while a judicial decision can make a law it cannot alter it.Where there is a settled rule of law, the judge must adhere to the same.A judge cannot substitute their opinions for the established rule of law and make decisions based on what they think should be happening, should have happened or could have happened.The function of the precedent is limited to supplying the vacancies of the legal systems by filling up with new law the gaps that exist.

**Types of Judicial Precedent :**

**Declaratory and Original:**

In declaratory precedents, the mere application of a rule in a previous legal case is used. Original precedents result in the creation of new laws. Here new laws are created and applied. An example can be where we considered that the power to amend the constitution was not restricted till it was decided that limits must be placed on the same and that all laws in the Ninth Schedule henceforth must also be tested against the basic structure.

**Persuasive:**

Here the precedent is not necessarily needed to be followed. The judge will rely heavily on this case and take it into consideration. It is not directly considered as a source of law but is seen as a form of historical precedents. This is usually seen in High Courts, where the judgements in one High Court can be considered as persuasive precedents in another. This can be seen when similar cases arise in various High Courts the verdict can be made by relying upon judgments from other High Courts. They will not be binding but will be persuasive and will act in favour of the litigating party in whose favour the previous verdicts have been made.

**Authoritative precedent:**

An authoritative precedent is that in which a judge is bound to consider whether he accepts it or not. In other words, the judge has no choice. In short, whether judge approve it or not this kind of precedent must be followed

***For example,*** the decisions of the Supreme Court of Pakistan are binding on a judge of the High Court. Similarly, a decision of the High Court is binding on the lower courts. In the system of precedent, the decisions of superiors are always regarded as authoritative precedents.

Authoritative precedent is of two kinds;

* ***Absolute Precedent***
* ***Conditional Precedent***

**Absolutely authoritative:**

In these cases, the verdict that has been earlier must mandatorily be followed by the judge. Even if the judge thinks that it is a wrong judgement they are required to follow that precedent because of sheer numbers. This is usually seen in cases where the bench is smaller than the bench that decided upon the precedent that the judge is relying on. This is also possible in cases of hierarchy, where certain courts have to rely on decisions made by superior courts.

**Conditionally authoritative:**

In this case, the precedents by a general rule are considered authoritative but can be disregarded in cases of the parties appearing before the Supreme Court. The decision can also be overturned. An example can be where we considered that the power to amend the constitution was complete till it was decided that limits must be placed on the same and that all laws in the Ninth Schedule, henceforth must also be tested against the basic sstructure.

**Custom**

**Introduction :**

Ever imagined the situation when there were no codified laws, there can be several questions up to one’s mind like would it result to anarchy or how would you govern and regulate the particular class and sect? In ancient times when there were no laws, the people were governed by the customs prevalent in their particular community. Those customs were taken seriously by the community and were enforced and implemented on each and every community of that particular sect. Customs is a very authentic and binding source of law, because of the historic value they have.

**Definitions of custom :**

* ***Austin***, “custom is a standard of direct which the sovereign watch suddenly and not in the compatibility of law set by a political superior.
* ***According to Halsbury law*** “A custom is a specific principle which has existed either really or hypothetically from time immemorial and has received the power of law in a specific territory, though in spite of or not steady with the general precedent-based law of the community”.

**Types of custom :**

1. **Customs without sanction**

These are those customs which are merely non- directory. They are altogether seen because of the nearness of the general public beliefs which is contrary to the views expressed by Austin in his positivist theory.

**(b) Custom with sanctions**

These are the customs which have been implemented by the State. These customs are upheld by authorization by the different courts in their pronouncements

Types of custom with sanctions :

* **Legal custom**
* **Conventional custom**

**1.Legal Customs**

The legal customs are those whose legal authority is absolutely unequivocal. These customs work as the coupling rule of law.

***Types of legal custom :***

Legal customs are of two types.

* **Local custom.**
* **General custom.**

**Local custom :**

A local custom is that which prevails(exist) in some defined locality (area). A local custom to be valid should be sustain, reasonable, continuous, and permanent and should not be contrary (opposed) to any existing law.

**General Custom:**

A general custom is that which prevails(exist) throughout the country and constitutes one of the sources of the law of the land. There was a time when common law was considered to be the same as general custom of the kingdom followed from ancient time, but today it is not so. Now only the statute law passed by the British parliament and precedents are regarded as the sources of common law.

**2.Conventional Customs**

Conventional custom is likewise called “use”. It is a setup whose authority is contingent on its acknowledgement and the organization in the agreement between the gatherings bound by it. In basic words, a conventional custom is a contingent and condition is that it will tie on the parties just, on the off chance that it has been acknowledged and consolidated by them in their agreement.

**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.

**Treaty**

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.

**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:**

Law is a system of rules created and enforced through social or governmental institutions to regulate behavior,with its precise definition a matter of longstanding debate.It has been variously described as a science and the art of justice.State-enforced laws can be made by a group legislature or by a single legislator, resulting in statutes; by the executive through decrees and regulations; or established by judges through precedent, usually in common law jurisdictions.