

## **Topic: - Meaning, Nature and Functions of Law**

### **1. Introduction**

The term “Law” denotes different kinds of rules and Principles. Law is an instrument which regulates human conduct/behavior. Law means Justice, Morality, Reason, Order, and Righteous from the view point of the society. Law means Statutes, Acts, Rules, Regulations, Orders, and Ordinances from point of view of legislature. Law means Rules of court, Decrees, Judgment, Orders of courts, and Injunctions from the point of view of Judges. Therefore, Law is a broader term which includes Acts, Statutes, Rules, Regulations, Orders, Ordinances, Justice, Morality, Reason, Righteous, Rules of court, Decrees, Judgment, Orders of courts, Injunctions, Tort, Jurisprudence, Legal theory, etc.

### **2. Meaning of Law**

In old English “Lagu” i.e. law, ordinance, rule, regulation from old norse “lagu” law collective Plural of “Lag” is layer, measure, stroke ‘Literally’ something laid down or fixed.

The term law has different meanings in different Places/societies at different times (as it is subject to amendments). In Hindu religion law implies “Dharma” in Muhammedean religion (Islam) it is “Hokum” in Roman its “Jus”, in French, its “Droit” in Arabic, Alqanoon, in Persian and Turkish, its Kunoon, in Latin its “Legam” in Philipino its “Batas” in Albanian language its “Ligj” in Czech its “Zakon” in Danish its “Lor” in Dutch its “Wet” in Italian its “Legge” and in Lithuanian its “Teise” and so on. It varies from place to place in the sense adultery is an offence in India (under section 497 of the Indian penal code, 1860) while it is no offence in America. Law differs from religion to religion in the sense personal laws viz. Hindu law, Muslim law etc. differ from one another. For instance, A Muslim can have four wives living at a time, but, a Hindu can have only one wife living at a time (Monogamy). If a Hindu male marries again during the life time of first wife he is declared guilty of the offence of bigamy and is Punishable under sec. 494. The law is subject to change with the change in society and also change in the Government/legislative through the amendments/Acts.

Generally the term law is used to mean three things:

First it is used to mean “legal order”. It represents the regime of adjusting relations, and ordering conduct by the systematic application of the force of organized political society.

Secondly, law means the whole body of legal Percepts which exists in a politically organized society.

Thirdly, law is used to mean all official control in a politically organized society. This lead to actual administration of Justice as contrasted with the authoritative material for the Guidance of Judicial action. Law in its narrowest or strict sense is the civil law or the law of the land.

### **3. Definitions of law:-**

It is very difficult to define the term law. Many Jurists attempted to define the term law. For the Purpose of clarity, some of the definitions given by Jurists in different Periods are categorized as follows.

#### **(I) Idealistic Definitions:-**

Romans and other ancient Jurists defined law in its idealistic nature. Roman Justinian's defined law in the light of its idealistic nature.

- (a) Salmond:** - According to salmond “the law may be defined as the body of principles recognized and applied by the state in the administration of Justice.

**Criticism of Salmond's definition of law:-** Salmond did not define the expression Justice. Keeton says what has been considered to be just at one time has frequently not been so considered at another.

**Criticism by Dean Roscoe Pound:** - Dean Roscoe Pound has criticized the definition of Salmond as reducing law to a mass of isolated decisions and the law in that sense to be an organic whole. Further, it is criticized on the ground that Salmond's definition applies only to lax law not to Statute.

Despite criticism, Salmond's definition is considered as the workable definition.

**(b) John chipman Gray's Definition of Law:-**

According to Gray, “the Law of the State or of any organized body of men is composed of the rules which the courts, that is the judicial organ of the body lays down for the determination of legal rights and duties.

**Criticism of Gray's definition of law:-**

Gray's definition is criticized on the Ground that he is not concerned with the nature of law rather than its Purposes and Ends. Further it does not take into account the statute law.

**(ii) Positivistics definition:-**

**(a) Austin's definition of law”**

John Austin (1790-1859) An English Jurists expounded the concept of analytical positivism, making law as a command of sovereign backed by sanction. He developed logically, a structure of legal system in which he gave no Place to values, morality, idealism and Justice.

According to Austin, a law, in the strict sense is a general command of the sovereign individual or the sovereign body. Issued to those in subjectivity and enforced by the physical power of the state. According to Austin “law is aggregate of rules set by men politically superior or sovereign to men as politically subject.” Austin says, “A law is command which obliges a person or persons to a course of conduct.

**Criticism of Austin's definition of law:-**

Austin's definition of law is subjected to criticism on the ground that it ignores completely the moral and ethical aspects of law and unduly Emphasized the imperative character of law.

**(b) Holland's definition of law**

Thomas Erskine Holland, a reputed Jurist, who followed the Austin's concept and nature of law attempted to define law as law is a General rule of external human action enforced by a political sovereign. Holland also measures or defines law with preference to sovereign devoid of moral, ethical or ideal elements which are foreign to law and Jurisprudence.

**(c) John Erskine definition of law**

Law is the command of a sovereign, containing a common rule of life for his subjects and obliging them to obedience.

**(c) Hans Kelsan's definition of Law**

According to Kelsan legal order is the hierarchy of the norms, every norm derive its validity from the superior norm and finally there is highest norm known as grundnorm.

**(d) H.L.A.Hart**

According to Hart Law is the combination of primary rules of obligations and secondary rules of recognition.

**Definition of Historical school of Law**

The chief exponent of the Historical school is Von Savigny. Historical Jurisprudence examines the manner or growth of a legal system. It deals with general principles governing the origin and development of law and also the origin and development of legal conceptions and principles found in the Philosophy of law.

**Savigny's definition of law:-** Savigny says that law is not the product of direct legislation but is due to the silent growth of custom or the outcome of unformulated public or Professional opinion. He says that law not as a body of rules set by determinate authority but as rules consist partly of social habitat and partly of experience. He says law is found in the society, it is found in custom.

**Sociological school of law**

The sociological school commenced in the middle of nineteenth century, According to sociological school the common field of study of the Jurist is the

effect of law and society on each other. This approach takes law as instrument of social progress.

**(a) Ihering's Definition of law**

Ihering defines law as ‘the form of Guarantee of the conditions of life of society, assured by state’s power of constrain. He says law is a means to an end and end of the law is to serve its purpose which is social not individual.

**(b) Dean Roscoe Pound's definition of law**

Pound defines law as a social institution to satisfy social wants. He says law is a social engineering, which means that law is a instrument to balance between the competing or conflicting interests.

**(c) Dias's Definition of law**

Law consists largely of “ought” (normative) Propositions prescribing how people ought to behave the “ought” of laws are variously dictated by social, moral, economic, political and other purposes

**(IV) Realist definition of law**

It is branch of sociological school. It studies law as it is in its actual working and effects. It has been summed up by its exponent professor K. Llewellyn as “ferment”

According to Georges Guroitch the neo-realistic school represents a violent reaction against the dominantly theological and moralizing orientation of “sociological Jurisprudence”

**Holmes J.** The realist considered the law to be a part of judicial process. He says, “that the prophesies of what the courts will do, in fact and nothing more pretensions, are what I mean by law.

**4. Origin of law**

Ancient Egyptian law, dating as far back as 3000 BC had a civil code that was probably broken into twelve books it was based on the concept of Ma’at characterized by tradition rhetorical speech, social equality and impartiality by

the 22<sup>nd</sup> century BC, ur-nammu an ancient Sumerian ruler, formulated the first law code consisting of casuistic statements ("if...then...") Around 1960 BC king Hammurabi further developed Babylonian law, by codifying and inscribing it in stone. Hammurabi placed several copies of his law code throughout the kingdom of Babylon as Stelae, for the entire public to see this became known as the codex Hammurabi.

Ancient India and China represent distinct traditions of law, and had historically independent schools of legal theory and practice. The Arthashastra, dating from the 400 BC and the Manusmriti from 100 BCE were influential treatises in India, but this Hindu tradition, along with Islamic law was supplanted by the common law when India became part of British Empire. Malaysia, Brunei, Singapore and Hongkong also adopted the common law. Japan was the first country to begin modernizing its legal system along western lines by importing bits of the French but mostly the German Civil Code. Similarly traditional Chinese law gave way to westernization towards the final years of the dynasty in the form of six private law codes based mainly on the Japanese model of German law.

One of the major legal systems developed during the Middle Ages was Islamic law and jurisprudence. During the classical period of Islamic law and jurisprudence "Hawala" and institution of law was an early informal transfer system which is mentioned in text of Islamic Jurisprudence as early as the 8<sup>th</sup> century. Hawala itself later influenced the development of the "Aval" in French civil law and Avallo in Italian law. Roman law was heavily influenced by Greek teachings.

## 5. Nature of law

What is the nature of law? This question has occupied center stage Jurisprudence and philosophy of law in the modern era, and has been the central occupation of contemporary analytic Jurisprudence. This entry in the legal theory Lexicon aims to give an overview of the "what is law" debate.

Historically, the answer to the question, "what is Law" is thought to have two competing answers. The classical answer is provided by natural law theory,

which is frequently characterized as asserting that there is an essential relationship between law and morality and Justice.

The modern answer is provided by legal positivism, which as developed by John Austin, asserted that law is the command of the sovereign backed by the threat of punishment.

Contemporary debates over the nature of law focus on a revised set of positions legal positivism is represented by Analytical legal positivists, like H.L.A Hart Joseph raza and Jules Coleman.

The natural law tradition is defined by John Punis and a new position, interpretivism is represented by the work of the late Ronald Dworkin.

In some ways, the title of this lexicon entry is misleading because of focus on the “what is law” question as it has been approached by contemporary legal philosophers.

There are other important perspectives on the nature of law that focus on law's functions rather than the meaning of the concept for criteria of legal validity. For example, the sociological tradition includes important work on the nature of law by Max Weber and Niklas Lahumann. These issues are discussed by Brian Tamanaha in a very clear way.

This lexicon entry maps the territory of the “what is Law”? Controversy, and provides introductory sketches of the major positions as always, the lexicon is written for law students.

## 6. Functions of law

Ever since the down of Human civilization, mankind has had some sort of rule or that they used to Govern itself in society laws set the standard in which we should live in if we want to be part of society. Law set up rules and regulations for society so that we can freedom, gives Justice to those who were wronged, and it set up that it protects us from our own Government.

Most importantly the law also provides a mechanism to resolve disputes arising from those duties and rights and allows parties to enforce promises in a court of law (Corley and Reed 1986 P.A)

According to Corley and Reed (1986) law is a body of rules of action or conduct Prescribed by controlling authority, and having legal binding forces.

Laws are created because it helps prevent chaos from happening within the business environment and as well as society. In business law sets guide lines regarding employment regulatory, compliance, even inter office regulations.

### **7. Role of law in Business:-**

The rule of law plays an important role in the business world when setting a business it is the laws that determine what type of business it is to become, and the structure is to be formed.

Also the law sets up a reasonable expectation on how the business should operate in order to protect the business owner's interest of the Customer of that business. The rule of law not only allows people to understand what is expected of them in their personal capacities but also set forth rules for business so that they, too know what is expected of them in their dealing and transactions ( Johnson & Lalu 2014) the law protects those who work for a business. It sets Guideline of how treat your employees, equal opportunities, pay scale, hours, breaks, benefits and long with a host of other right privileges. In short the laws for business create an honest environment where consumers and business owners interest can be protected and we have ways to solve of any disputes arise. If these laws are in any ways are violated it sets up Guidelines for punishment.

### **8. Role of law in Society:-**

Without law our society would be chaotic, uncivilized mess and anarchy would reign supreme.

The role that law has in society is that it creates a norm of conducts in the society we live in laws are made to protect its citizen from harm. It sets in way that all citizens are given equal opportunity, protection from harm no matter your race, Gender, religion and social standing.

Under the law all its citizens are guaranteed equal protections. In society laws are made to promote the common good for everyone. That is sets up Guideline

for everyone in society to act in way that brings the Greater Good. Everyone acted without thinking about the Greater Good, society would revert to those days where survival of the fittest was the common sight.

We live in world where we have finite amount of resources should shared or used. Laws are made on how to manage these and how we resolve if issues arise over these resources. If know laws were in place these sources would be controlled by the strong and the wealthy.

## **Topic:Kinds of law**

### **1. Introduction**

Law is used in different senses. The use of the term “law” is made in various senses. It denotes different kinds of rules and Principles.

Blackstone says “law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of action whether, animate, rational, irrational. Thus we say the law of motion of gravitation of optics or Mechanics, as well as the law of nature and nations” it is helpful in understanding the different senses in which “law” is used in various fields of knowledge.

### **2. Kinds of law by Sir Jhon Salmond**

Sir John Salmond refers to eight kinds of law

1. Imperative law
2. Physical or scientific law
3. Natural or moral law
4. Conventional law
5. Customary law

6. Practical or technical law
7. International law, and
8. Civil law

## **1. Imperative law**

Imperative law means a rule of action imposed upon by some authority which enforces obedience to it. In other words it is a command enforced by some superior power either physically or in any other form of compulsion.

### **Kinds of Imperative law:-**

There are two kinds of imperative law, Divine or human

1. Divine laws
  2. Human laws
1. Divine laws are consists of the commands imposed by God upon men either by threats of Punishment or by hope of his blessings.
  2. Human laws are the laws by analogy

### **Sir Jhon Salmond classifies Human Laws into four sub classes**

1. Imperative law imposed and enforced by State is called “**Civil law**”
2. Imperative law imposed and enforced by members of society is “**Moral law**”
3. Those imposed and enforced by different institutions or autonomous bodies like Universities, airline companies etc they are called “**Autonomic law**”
4. Those imposed upon States by the society of States are called “ International law”

## **2. Physical or scientific law**

Physical laws are the expressions of the

1. Uniformities of nature and General Principles Expressing the
2. Regularity, and
3. Harmony observable in the activities and operations of the universe.

They are not the creation of men and cannot be changed by them. Human laws change from time to time and from country to country but physical laws are invariable forever. The uniform actions of human beings, such as law of psychology, also fall into this class they express not what man ought to do, but what they do.

## **3. Practical or Technical law:-**

It consists of Principles and rules for the attainment of certain ends e.g. laws of health, laws of architecture. These rules guide us as to what we ought to do in order to attain certain ends.

## **4. Natural or Moral law:-**

It has various other names such as, “the Moral law” “Divine law” “God Law” ‘universal or eternal law and “law of reason” etc. “by natural law is meant the principles of natural right and wrong (the Principles of natural Justice)”. Natural laws have been called

**Divine law**:- commands of God imposed upon men.

**Law of Reason** i.e. being established by that reason by which the world is Governed.

**Unwritten law**:- (as being written not an brazen tables or a pillar of stone but by the finger of nature in the hearts of people. universal or common law (being of universal validity)

**Eternal law** (being uncreated and invariable)

**Moral law** (being the expression of the Principles of morality)

## **5. Conventional law:-**

It is the body of rules agreed upon and followed by the concerned parties to regulate their mutual conduct. It is form of special law and law for the parties which can be made valid or enforced through an agreement.

A Good example of the conventional law is the International law, laws of cricket or any other game, rules of club. It has been further divided into two groups which are:-

1. Rules enforced by the parties themselves but not recognized by the State e.g. the rules of hokey
2. Rules which are recognized and enforced by the State, e.g. contract etc.

## **6. Customary law:-**

Customary laws are those rules of custom that are habitually followed by the majority of the persons subject to them in the belief of binding nature.

According to Salmond, customary law means “any rules of action which is actually observed by men (any rule which is the expression of some actual uniformity of voluntary action) “when a custom is firmly established it is enforced by the authority of the State. Custom is not law by itself but an important source of law only those customs acquired the force of law, which are recognized by the courts.

## **7. International law:-**

According to “Hughes” international law is the body of Principles and rules which civilized States consider as binding upon them in their mutual relations. “it can be as the name for the body of customary and conventional rules, which are considered legally binding by civilized States in their intercourse with each other”. According to Salmond it is considered of these rules which the sovereign States have agreed to observe in their dealings with one another.

International agreements are of two types:

They are either expressed or implied.

Express agreements are contained in treaties and conventions, while implied agreements are to be found in the custom or practice of the States. International law is of two kinds:

I: Public International law: It prevails universally all over the world.

II: Private International Law: It is enforced only between some of States.

## **8. Civil Law**

It is the law of the States regarding the land “Civil Law” according to the Salmond , is “the law of State of or the law of the land, the law of lawyers and the law of the courts”. Civil law is the positive law, or law of the land which means the law as it exists. It is backed by the force and might of the State for purposes of enforcement. Civil law differs from special law as the latter applies only in special circumstances the other term is used for the civil law is Municipal Law and national law.

## **Topic:- CLASSIFICATION OF LAW**

### **1. Introduction**

Etymological meaning of classification is “the process of putting something into category” or the basic cognitive process of arranging into classes or categories. For a proper and logical understanding of law its classification becomes necessary. As it elucidates the way of systematic logical structure of the legal order. It explicates the inter relation of rules and their effect to each other. It analysis the law that intern is helpful in codification of laws it is an arrangement of rules in a concise and systematic way.

### **2. Original and Meaning of the Classification of Law**

Notion of classification is very old. Classification was first made by Roman Jurists. The ancient Hindu Jurists also laid down eighteen titles or heads of “Vyavahara” civil law. The distinguished civil and criminal law and classified crime law under various heads.

There are two limitations in classification of law first; any classification will have only a relative value and no universal principle or rules can be laid down for it. With the onward march of time, old rule changed their nature and the field of application and new rules based on different Principles come into existence. Therefore, a new classification becomes necessary. Roman Jurist analyzed law in old times but that classification is Vague to present world.

Second, any classification made keeping in view the law of a Particular community or nation is not applicable to the law of any other Community or nation.

For Example; if one commits a breach of promise to marry, in English law, it falls under contract, but in French law it falls under delict.

So, it's not possible to discuss the classifications given by various Jurists, only a General Classification shall be given which has been adopted by most of Jurists of the modern times.

### **3. Classification of Law**

- (1) International Law, and
- (2) Municipal or National law

International law:- The Present form of international law is of recent origin some earlier Jurist were of the view that the international law is not law as it lacked many elements which law should have. Austin and his supporters were of this view. Some says international law is law and it is superior to the municipal law Kelson supports this view.

What is International Law?

The legal Process that concerns legal relations among nations is called international law. Belief and experience some form international law dates from at least the days of the Roman Empire.

The united nation is are of the Primary mechanism that articulate and create international law.

The major sources of international law are multilateral Treaties, international custom and such General Principles as are recognized by civilized nations.

According to some Jurists international law may be divided into two classes.

- (1) Public international law, and
  - (2) Private international law
- (1) Public international law is that body of rules which govern the conduct and relations of States with other, really speaking; the term international law is used for this class of law.
- (2) Private international law means those rules and Principles according to which the cases having foreign element are decided for example, if a contract is made between an Indian and Pakistani and it is to be performed the rule and Principles on which the rights and liabilities of the Parties would be determined would be called Private international law. This class of law is called “Conflict of laws” also. After knowing the field of application of this class of law, it is clear that the adjective “international” is wrongly given to it because it applies to individuals and not to States and these rules and Principles (called Private international law) vary from State to State and thus lacked uniformity. This class of law is enforced by municipal courts which administer municipal law and not international law, so, such a law does not possess the characteristics of international law.
- In modern times this class of law has gained much importance and every States has made rules for its administration. Therefore, it must be properly classified. It is submitted that it should be given the name “Conflict of Laws” and not private international law and should be treated as a branch of municipal Private law and should be classified as such.

**4. The Municipal law, Law of land, Civil law, or law applied within a State is divided into two classes:-**

- (A) PUBLIC LAW**
- (B) PRIVATE LAW**

**A) PUBLIC LAW:-** The State activities are largely regulated by Public law. It determines and regulates the organization and functioning of the State and determines the relation of the State with the subject. public law may be divided into three classes:-

- (A) Constitutional law**

- (B) Administrative law and**
- (C) Criminal law**
- (A) Constitutional law:** By constitutional law is meant that law which determines the nature of the State and the Structure of the Government. It is above and superior to the Ordinary law of the land. Constitutional law is the basic law or fundamental law of the State. The constitutional law may be written as in India or unwritten as in England. In modern times there is tendency to adopt written constitution.
- (B) Administrative Law:-** Administrative law deals with the structures powers and the functions of organs of the administration, the limits of their Powers, the methods and Procedures followed by them in exercising their powers and functions; the methods by which these power are controlled including the legal remedies available to a person against them when his rights are infringed by their operation.
- (C) Criminal law:-** Criminal law defines offences and prescribes punishment for them. Its aim is the prevention of and punishment for offences. Criminal law is necessary for the maintenance of order and peace within the State. In civilized societies crime is considered to be wrong not only against the individual (who has been wronged) but a wrong against the society. Therefore, the State initiates the proceedings against the offender, and thus it is always a party in criminal cases. This is why the criminal law is considered as a branch of public law.
- (D) Private Law: -** This branch of law regulates and governs the relations of citizens with each other. The parties in such cases are private individuals and the State through its judicial organ adjudicates the matters in dispute between them. In these cases the State takes the position of only an arbiter. But it does not mean that the State regulates all the conducts and relations of the citizens but regulates only such of them as are of public importance and these relations (which State regulates) constitute the civil rights of the citizens. The major part of municipal law consists of this branch of law but in Totalitarian States the public law regulates the major part of the social life.  
In the Classification of private law there is great difficulty. Different Jurists have given different classification, a very General classification is as follows:-

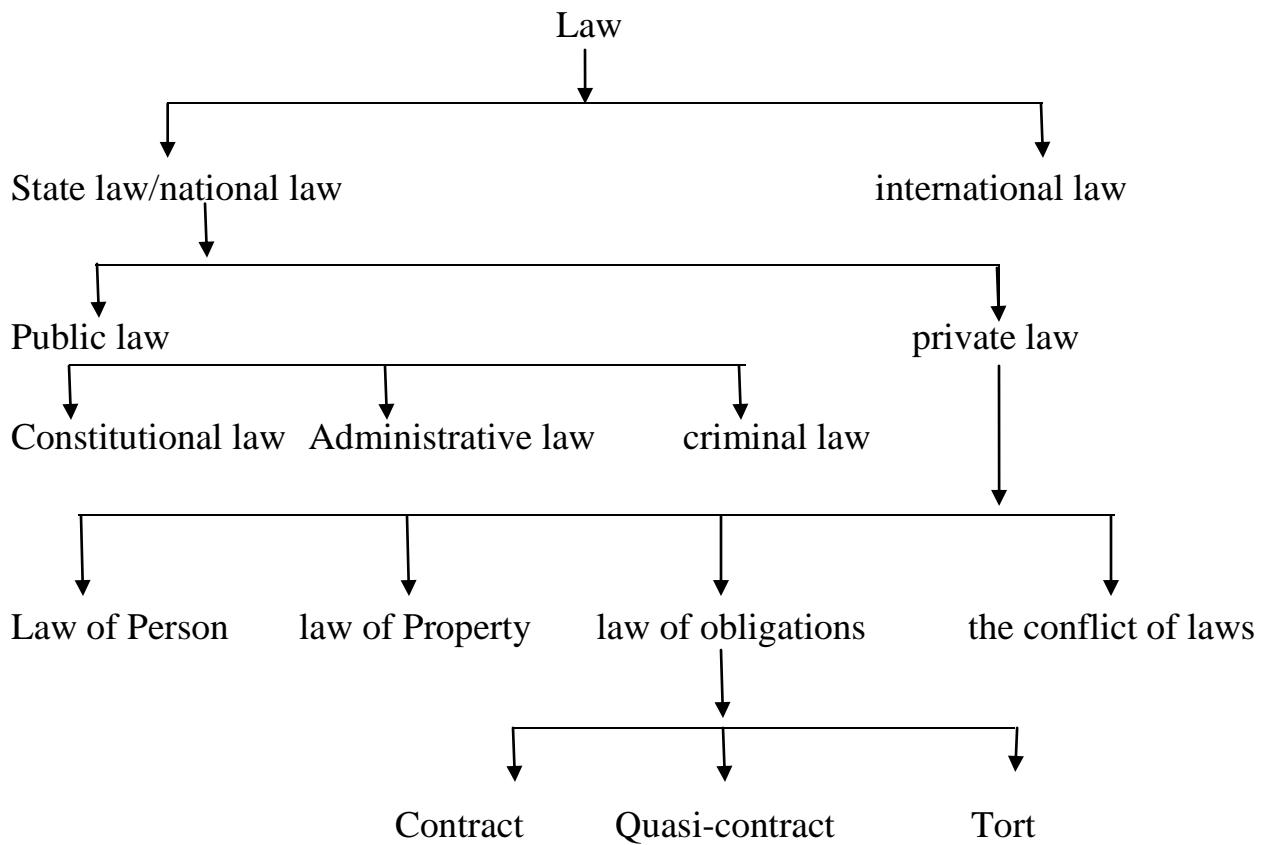
1. The law of Persons
2. The law of Property
3. The law of obligations
4. The conflict of laws

The law of obligations is divided into three classes.

- (i) Contract
- (ii) Quasi contract, and
- (iii) Tort

The classification is only substantive law. The procedural law and Evidence are also the branches of the Private law.

A chart Presenting the above classification is as below:-



## 5. Conclusion

Above classification defective: - The above classification of law has many defects. Many of the classes do not exist in many legal system at all some branches of law which has developed in recent years cannot be put under any one class exclusively.

Therefore, the above classification is neither universal nor exhaustive. Many other Jurists have made classifications based on different principles. But these too have been made keeping in view the law of a particular nation; therefore, they are not satisfactory and have no wide application.

New developments; A new classification necessary: - In modern times, new branches of law are fastly growing and developing. These laws are of such composite nature that they partake the nature and characteristics of many of branches of the law and do not fall into any one class exclusively for example we may take the commercial law. It cuts across the two branches of law i.e the law of obligation and the law of property. Similarly, industrial law also partakes the characteristics of many branches of the law.

With the change in the concept of the State and law many branches of private law have shifted and have become part of the public law. In totalitarian States this change has taken place to a considerable degree. Under these circumstances it is necessary to make a comprehensive and complete classification which might cover the recent developments of law for this purpose a very close study of the laws of various nations and various branches of law must be made.