**SOURCES OF LAWS AND LAW- MAKING POWERS**

**LAW**

Societies have laws to protect people from the actions of other people. Everybody in any society cannot have absolute freedom, as one person exercised that freedom, it would trample upon somebody else’s freedom. There must be punishments to make people obey the laws of society. The main reason that many people obey the law is that they may be punished, if they break it.

There are many different sources of law in any society. Some laws will be written in the country’s constitution; others will be passed by the legislature (usually a parliament or congress ), others will come from long- standing social customs.

SOURCES OF INDIAN LAW

The main sources of modern Indian law may be divided into:

1. Primary sources
2. Secondary sources

The primary sources of Indian law are:

1. Customs or customary law
2. Judicial decisions or precedents ( stare decisis)
3. Statutes or legislation
4. Personal law, e.g. Hindu and Mohammedan laws etc.

The secondary sources of Indian Law are:

1. English law (common law, equity, law merchant, and statute law)
2. Justice, equity, and good conscience.

PRIMARY SOURCES OF INDIAN LAW

1. Customs: customs have played an important role in making the law and are also known as customary law. According to keeton, customary law ,’ is defined as “ those rules of human action, established by usuage and regarded as legally binding by those to whom the rules are applicable, which are adopted by the courts and applied as source of the law because they are generally followed by the political society as a whole or by some part of it”. In simple words, it is a generally observed course of conduct by people on a particular matter. When a particular course of conduct is followed repeatedly, it becomes a custom. As customary law is unwritten, it is sometimes called jus non-scriptum, contrasted with jus scriptum legislation.
2. Judicial decisions or precedents: judicial precedents are another important source of law. The term “precedents” means some set pattern guiding future conduct. In the judicial filed, it means the guidance or authority of past decisions of the courts for future cases. Judicial precedents are only decisions that lay some rile or principle. Judicial precedents are an essential source of law. The principles of law are expressed first time in court decisions become precedents to be followed as law in deciding problems and cases identical to them in the future. The rule that a court decisions becomes a precedents to be followed in similar cases is known as the doctrine of stare decisis. The literal meaning of this phrase is “stand by the decision”. The decision of the supreme court absolutely bind all courts in India. Article 141 of the constitution of India provides that the law declared by the Supreme court shall be binding on all courts within the territory of India. “all courts” means courts other than the Supreme Court.
3. Statutes or legislations: the statutes or the statutory law or the legislation is the main source of the law. This law is created by legislation such as parliament. In India, the constitution empowers the parliament and state legislatures to promulgate law for the guidance or conduct of persons to whom the statue is, expressly or by implication, made applicable. It is sometimes called “enacted law” as it is brought into existence by getting acts passed by the legislative body. It is called Statute law because it is the writ of the state and is in written form (jus scriptum).

Legislation: the term legislation has been derived from the latin terms legis, ‘law, and latum, meaning ‘to make’. Thus legislation refers to the making of a law.

Different authors defines legislation as:

1. According to Salmong,” legislation is that source of law which is composed within the decalartion of prison regulations by using an able authority”
2. According to Horace gray,” regulation way the formal utterance of the legislative organs of the society”.
3. According to john Austin,” there may be no law without a legislative act.

The law is set of commands issued by the sovereign authority. This command is known as a law, and the process of making a law is known as legislation.

1. Personal law: in many cases, the courts are required to apply the personal law of the parties where any statutory law or custom does not cover the point at issue. Thus, in certain matters, we follow the personal laws of Hindus, Mohammedans, and Christians.

SECONDARY SOURCES OF INDIAN LAW

It is only when the courts do not find a provision on a particular problem in the primary sources of Indian law that may look to subsidiary sources such as English Law. The secondary sources of Indian Law are English Law and justice, equity, and good conscience.

Justice, equity, and good conscience:

They are the guiding forces behind most of the statutes in our country and the court’s decisions. Especially, where the law is silent on any point, or there is some lacuna in a statute, the principles of equity are helpful to the judges, who often exercises their discretion on equitable consideration. The frequent use of terms such as “good faith” and “public policy” in statutes and by the judges in their judgments is based on principles of equity.

LAW MAKING POWER OF THE EXECUTIVE IN INDIA

In India, laws are formulated at the central level by the parliament and at the state level by legislative assemblies and councils.

PEOCEDURE OF THE LAW MAKING:

The process of enacting a new law can be broadly divided into four steps:

Step 1: the need for a new law or an amendment to an existing legislation is identified. This may be done by the government or by the citizen groups who can raise public awareness regarding the need for the law.

Step 2: the concerned ministry drafts a text of the proposed law called a “bill”. The bill is circulated to other relevant ministries for input. Comments from the public on the proposed drafty may also be invited. Following this, the draft is revised to incorporate such inputs and was then whetted by the law ministry. It is then presented to the cabinet for approval.

Step 3: after the cabinet approves the bill, it is introduced in parliament. Under the Indian Political system, the parliament is the central legislative (or law- making) body. Every bill goes through three reading in both houses before it becomes an act.

1. During the first reading the bill is introduced in parliament. The introduction of a bill may be opposed, and the matter may be put to vote in the house. In the august 2009, the law minister withdrew the motion to introduce the judges (disclosure of assets and liabilities) bill as many MPs opposed it on grounds that it violated the constitution.
2. After a bill has been introduced, the presiding officer of the concerned house(speaker in case of the lok sabha, chairman in case of rajya sabha) may refer the bill to the concerned department related standing committee for examination.
3. The standing committee considers the broad objectives and the specific clauses of the bill referred to it and may invite public comments on a bill. For example, the standing committee on science and technology, environment and forests ahs invited suggestions on the civil liability for nuclear damage bill, 2010.
4. Bills that come under the admit of a number of different ministries may be referred to a joint committee.
5. The committee then submits its recommendations to parliament in the form of a report.
6. In the second reading (consideration), the bill is scrutinized thoroughly. Each clause of the bill is discussed on the floor of the house and may be accepted, amended or rejected.
7. During the third reading(passing), the house votes on the redrafted bill.
8. During the second reading, the government, or any MP, may introduce amendments to the bill, some of which may be based on recommendations of the standing committee. However, the government is not bound to accept the committee’s recommendations.

Step 4: after both houses of parliament pass a bill, it is presented to the president for assent. She has the right to seek information and clarification about the bill and may return it to parliament for reconsideration. ( this may be done once. If both the houses pass the bill again, the president has to assent.)

Step 5: after the president gives assent, the bill is notified as an act. Subsequently, the bill is brought into force, and the rules and regulations to implement the act are framed by the concerned ministry and tabled in parliament.