



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: Ms. Anjali Dixit

Assistant Professor

Lecture-22



Lecture 22: Legislation as a Source of Law

Legislation as a Source of Law

The term “Legislation” is derived from two Latin words, ‘legis’ meaning ‘law’ and ‘latum’ meaning ‘to make’. Etymologically, legislation means the making or the setting of law. It may be defined as the promulgation of legal rules by an authority which has the power to do so. According to Gray, legislation means “the formal utterances of the legislative organs of the society.” According to Austin: “There can be no law without a legislative act.” The view of the analytical school is that typical law is a statute and legislation is the normal process of law-making. The exponents of this school do not approve of this usurpation of the legislative functions by the judiciary. They also do not admit the claim of custom to be considered as a source of law. The view of the historical school is that legislation is the least creative of the sources of law. To quote James Carter: “It is not possible to make law by legislative action. Its utmost power is to offer a reward or threaten a punishment as a consequence of particular conduct and thus furnish an additional motive to influence conduct.

When such power is exerted to reinforce custom and prevent violations of it, it may be effectual and rules or commands thus enacted are properly called law; but if aimed against established custom they will be ineffectual. Law not only cannot be directly made by human action, but cannot be abrogated or changed by such action.” According to this view, legislation has no independent creative role at all. It’s only custom spontaneously developed by the people.

Legislation and Custom

- a. The existence and authority of legislation is de jure, whereas the existence of custom is de facto.
- b. The authority of legislation lies in the express will of the state. Customs are generally based on the will of the people. They have only an implied authority of the state.
- c. Legislation is the advanced method of legal development and is the characteristic mark of mature legal systems. Customs have their sway mainly in the primitive society. With the advancement of civilization, either they are abrogated or embodied in legislation.

d. Generally, customs deal with relationship between man and man. Legislation always brings into picture, the State.

e. Legislation is considered to be a superior and more authoritative source of law than customs.

Legislation and Precedent

a. In precedents, rules and principles are laid down by inductive method. In legislation, the deductive method is resorted to. The Courts take rules from the statute and apply it to particular areas.

b. Legislation has abrogative power. Constructive power is there in precedents.

c. Statute law is definite, brief, clear and easily understandable. Therefore, in form it is superior to precedent. In precedent, to know principles and rules one will have to look into the details of the case.

d. Legislation is general and comprehensive. Precedent has none of those merits.

e. Statute can make rules for future cases which may arise, in other words, a statute can lay down beforehand. A precedent can lay down a rule when a case comes before it. Thus, its emergence depends on litigation.

f. The very aim of the legislation is to make law. The main purpose of the precedents is to interpret and to apply the law.

g. Legislation is prospective and retrospective in nature. Precedents are only prospective in nature.

Superiority between Legislation and Case Law

It depends on the definition of law. –

Whether precedent is superior to legislation or legislation is superior to precedent is a controversial question. It, more or less, depends on as to how one defines law- puts the legislature, or the courts in the centre of legal system.

Analytical Jurists. –

Analytical jurists as Austin and Bentham contend that legislation is always superior to precedent. A statute is made after due deliberation and not in the haste in which a judge disposes his cases. Other grounds have also been given in support of the superiority of statute. It is certain, clear, comprehensive, and easily assessable. It passes through the scrutiny of a great number of

men before it becomes law. The case law is the result of the whim of certain individuals. A planned progress of society is possibly only through statute law.

The other view; Salmond; Gray. –

The supporters of case law have also presented weighty grounds in support of their contention. They say that it causes an organic development of law, and can easily adapt law to the changing conditions. The matters which receive so much calm and patient consideration in court cannot receive the same by busy legislatures. Case law is more practical because it is laid down after a careful study of facts and the various circumstances, whereas the statute law is of an abstract and rigid nature.

Legislation and Jurist Law

Points of distinction between the two. –

Legislation is, sometimes, compared with the jurist law, or the legal principles enunciated in juristic writings. There are a number of points of distinction between the two: First, the legal principles laid down in juristic writings are of a very general and abstract nature while in statute they are concrete, precise and specific. Second, the statute law possesses a positive sanction from the sovereign authority of the state, whereas there is no such sanction behind the jurist law.

Relationship between the two. –

The statute law is greatly helped by the jurist law. Sometimes, the latter ushers the former and the legal principles enunciated by jurists are embodied in the statute law.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	The term “Legislation” is derived from two Latin words, ‘legis’ meaning ‘law’	True	False
2.	Words ‘latum’ meaning ‘to make	True	False
3.	legislation means “the formal utterances of the legislative organs of the society	True	False
4.	There can be no law without a legislative act	True	False
5.	Law not only cannot be directly made by human action, but cannot be abrogated or changed by such action	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a), 5-(a)