

TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

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PREFACE

The study of Legal Method forms the cornerstone of every law student's journey as it provides a crucial framework for understanding the very nature and philosophy of law itself. This book has been meticulously designed to serve as a comprehensive aid for the law students, specifically aligned with the syllabus of universities by offering a multi-faceted approach to learning which goes beyond mere definitions or doctrines. Instead, it equips students with a profound understanding of how legal reasoning is structured and how it operates within the broader legal ecosystem. What distinguishes this book is its focused exploration of legal philosophy and jurisprudence, delving deeply into questions of why we study law, what law means across various schools of thought and how jurists throughout the history have interpreted its role in the society. Whether it is the Analytical School, which examines law through logical reasoning or the Historical School, which roots the law in customs and traditions, this book ensures that each concept is presented in a manner that is accessible, engaging and directly relevant to modern legal education. This book is organized in a way that facilitates not only academic mastery but also practical understanding. The discussion extends to topics such as customs, judicial precedents and the usage of law in daily life as each of them is critical to a well-rounded legal education. Students will find that the treatment of each subject is thorough, with critical analyses that sharpen their interpretative skills, while simultaneously

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encouraging them to challenge the established norms and engage in independent thought.

Furthermore, to ensure that students are fully prepared for examinations and practical scenarios alike, we have included insights into judicial reasoning, as well as discussions on landmark judgments in the Decree Dome segment of this book. This holistic approach allows for a richer learning experience, enabling the students to see the interplay between theory and practice. Additionally, visual aids such as flowcharts in the Mind Maps segment have been incorporated to simplify the complex jurisprudential concepts by making them easier to review and retain before the respective assessments. Finally, as a one-stop resource for law students, this book provides an invaluable reference for understanding key doctrines, the evolution of legal systems and the role of law in shaping the societal structures. Whether it is to navigate through the rigours of exam preparation or to cultivate a deeper appreciation for the philosophical underpinnings of law, this book offers everything a student needs to excel in the subject of Legal Method.

It is our hope that this bonafide work serves as a trusted companion in your legal studies, helping you to confidently approach the subject and apply its principles both in academic and real-world contexts.

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ॐ कृष्णाय वासुदेवाय हरये परमात्मने ।
प्रणतः क्लेशनाशाय गोविंदाय नमो नमः ॥

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- B. DECREE DOME:** Explore case law analysis with our thorough dissection of university syllabus cases, presented in a simplified and structured format to enhance your understanding of legal precedents.
- C. LAW SOLUTIONS:** Preparing for exams? Our Law Solutions module offers a complete collection of past question papers and detailed solutions, along with sample papers for new subjects. This resource helps you familiarize yourself with exam patterns and improve your problem-solving skills.
- D. MIND MAPS:** Enhance information retention and last-minute revisions with our Mind Mapping & Training Module, which features tables and flowcharts to help you efficiently grasp and memorize key concepts.

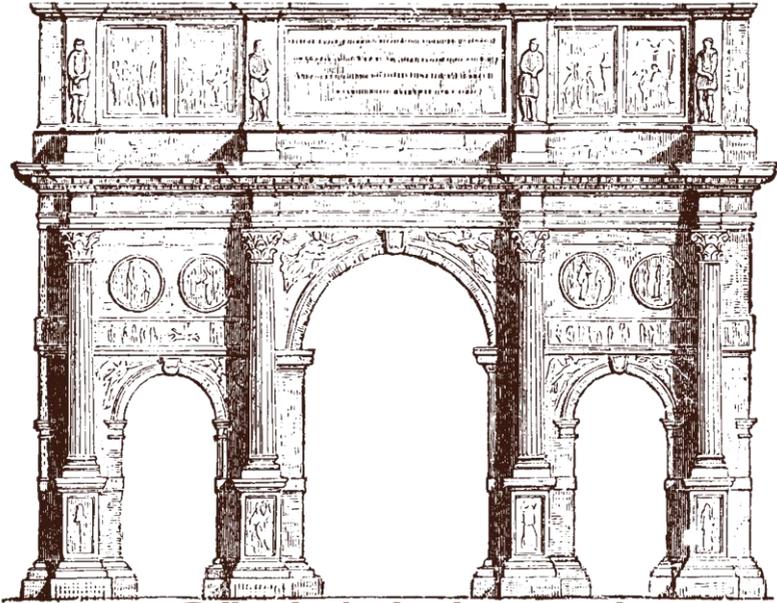
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STATUE STATION

**DELVE INTO THE INTRICACIES OF
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UNIT 1

INTRODUCTION TO LAW

1.1 DEFINITION OF LAW BY VARIOUS THINKERS

JOHN AUSTIN (1790-1859)

John Austin was a British legal philosopher and one of the most prominent proponents of analytical jurisprudence. He sought to establish a clear and concise definition of law that could be applied universally. Austin's definition of law can be summarized through his "command theory."

According to Austin, law is a command issued by a sovereign (the person or body with supreme authority in a given territory) backed by the threat of punishment or sanction. The command is a general and abstract rule that obligates certain classes of people to follow it.

Austin's definition of law has three main elements:

- a)** Command: A rule that prescribes a particular course of action or inaction, directing people to behave in a certain way.
- b)** Sovereign: A determinate and common superior, who

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is not in the habit of obedience to a like superior and receives habitual obedience from the bulk of a given society.

- c) Sanction: The possibility of punishment or penalty for noncompliance, which enforces obedience to the command.

Critics argue that Austin's definition is too narrow and fails to encompass other forms of law, such as customary or international law, which may not fit neatly into his framework.

JEREMY BENTHAM (1748-1832):

Jeremy Bentham, an English philosopher, jurist, and social reformer, was a key figure in the development of utilitarianism. His definition of law is closely related to his utilitarian views, which emphasize the pursuit of the greatest happiness for the greatest number of people.

Bentham defined law as an "assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power."

In simpler terms, Bentham's definition of law is a system of rules established by the sovereign authority to guide

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and regulate the behavior of its subjects. Bentham believed that laws should be designed to promote the overall happiness and well-being of society, and that they should be evaluated based on their ability to achieve this goal.

Bentham's definition of law has several key components:

a) Sovereign: The ultimate authority in a state, responsible for creating and enforcing laws. b) Volition: The intention or will of the sovereign, expressed through laws. c) Assemblage of signs: The written or spoken expressions of the sovereign's volition, which take the form of legal rules. d) Conduct: The behavior of individuals or classes of individuals, which the law aims to regulate.

While Bentham's definition of law has been influential, it has also faced criticism. Some argue that his utilitarian approach does not adequately address issues of justice, rights, or individual liberties.

H.L.A. HART (1907-1992)

Herbert Lionel Adolphus Hart, a British legal philosopher, made significant contributions to jurisprudence and legal theory. His most influential work, "The Concept of Law," presents a sophisticated understanding of law that moves beyond the views of earlier legal positivists like John Austin.

Hart's definition of law can be best explained through his

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concept of the "union of primary and secondary rules." He believed that a legal system consists of two types of rules:

a) Primary rules: These rules regulate the conduct of individuals within society by imposing obligations (e.g., criminal laws prohibiting theft or murder) or conferring rights (e.g., property or contract laws).

b) Secondary rules: These rules deal with the operations of the legal system itself, such as rules of recognition (which establish criteria for identifying valid laws), rules of change (which govern the process of creating or amending laws), and rules of adjudication (which guide the resolution of disputes and the interpretation of laws).

According to Hart, a functioning legal system requires both types of rules to coexist. The primary rules set the standards of behavior for individuals, while the secondary rules provide a framework for the creation, modification, and interpretation of those primary rules. This approach allows for the evolution and adaptation of the legal system in response to changing social needs and values.

Critics argue that Hart's theory, while insightful, does not fully address the role of morality in law and the complexities of legal reasoning.

FRIEDRICH CARL VON SAVIGNY (1779-1861)

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Savigny was a German jurist and a key figure in the historical school of jurisprudence. He believed that law is a reflection of the Volksgeist or "spirit of the people," and that it evolves organically over time as a result of historical and cultural factors.

According to Savigny, law is not created by the will of the sovereign or the state, as suggested by legal positivists like Austin and Bentham. Instead, law emerges from the customs, traditions, and shared values of a given society. The role of the legal system and jurists, in his view, is to discover and articulate these underlying principles, rather than to impose new rules from above.

Savigny's definition of law highlights the importance of cultural and historical context, emphasizing that legal systems should be rooted in the values and customs of the societies they govern. This approach has been influential in the development of comparative law and the study of legal systems from a historical and sociological perspective.

Critics argue that Savigny's view of law as a reflection of the Volksgeist may be overly romanticized and that it does not adequately address the role of power and politics in shaping legal systems. Moreover, his emphasis on historical and cultural continuity may make it difficult to account for necessary legal reforms and adaptations in response to changing societal needs.

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SIR HENRY MAINE (1822-1888):

Sir Henry Maine was a British jurist and legal historian, best known for his work in comparative law and legal anthropology. His book "Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas" significantly influenced the development of legal history and the study of primitive legal systems.

Maine believed that law and legal institutions evolve over time, paralleling the progress of societies. He proposed a framework for understanding the development of legal systems, which can be summarized as a progression from "status to contract."

According to Maine, early societies were organized around kinship and status relationships, in which an individual's rights and obligations were determined by their position within a family or social group (e.g., as a father, son, or clan member). In these societies, legal rules were based on custom, tradition, and religious authority, and they were often unwritten and flexible.

As societies became more complex and economically advanced, Maine argued that the focus of the law shifted from status to contract. In this phase, legal relationships became increasingly based on voluntary agreements between individuals, and legal rules became more formalized, written, and secular. The emergence of contract law and individual rights marked a shift towards a more rational and organized legal system, reflecting the increasing complexity of social and economic life.

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Maine's definition of law emphasizes the historical and evolutionary nature of legal systems, highlighting the connection between law and societal development. His work has been influential in the fields of legal history, comparative law, and anthropology, as well as in the study of customary and indigenous legal systems.

Critics argue that Maine's framework, while insightful, may be overly simplistic and deterministic, as it does not adequately account for the variations and complexities of legal systems across different cultures and historical periods. Moreover, his focus on the progression from status to contract may not fully capture the persistence of status-based legal relationships and the ongoing interplay between custom, tradition, and formal legal rules in contemporary societies.

ROSCOE POUND (1870-1964)

Roscoe Pound was an American legal scholar and one of the most prominent figures in the development of sociological jurisprudence. He sought to understand the law in terms of its social function and impact, emphasizing the need for a more flexible and responsive legal system that could better serve the needs of society. Pound's definition of law can be best understood through his concept of "social engineering."

According to Pound, law is a tool for social engineering, which he defined as "the adjustment of human relations

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and the ordering of human conduct, by means of the application of the forces and sanctions of politically organized society, so as to bring about a more satisfactory realization of claims and expectations involved in the interests of life." In other words, Pound saw law as a means of managing and resolving conflicts between the various interests and demands of individuals and groups within society.

Pound's definition of law focuses on its practical and instrumental role in shaping social outcomes, rather than on abstract legal concepts or formal structures. He believed that the primary goal of the legal system should be to strike a balance between competing interests and to promote social welfare, rather than merely enforcing a rigid set of rules or principles.

To achieve this goal, Pound advocated for a more proactive and dynamic approach to lawmaking, which took into account the changing needs and values of society. He also stressed the importance of legal education and the role of judges in interpreting and adapting the law to meet the demands of contemporary life.

Critics argue that Pound's emphasis on the social function of law may undervalue the importance of legal principles, individual rights, and the rule of law. Additionally, his vision of law as a tool for social engineering could potentially lead to an overly interventionist state, infringing upon personal freedoms and liberties.

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Nonetheless, Roscoe Pound's contributions to legal thought have had a lasting impact on the field of jurisprudence, particularly in the areas of legal realism, sociological jurisprudence, and the study of law and society.

EUGEN EHRLICH (1862-1922)

Eugen Ehrlich was an Austrian jurist and legal sociologist who made significant contributions to the development of sociological jurisprudence. He believed that the law should be studied and understood in the context of the social norms and practices that underpin it. Ehrlich's definition of law can be best understood through his concept of the "living law."

According to Ehrlich, "living law" refers to the actual norms, customs, and practices that govern people's behavior in their everyday lives, as opposed to the formal legal rules and statutes enacted by the state. He argued that the real source of law lies in the social interactions and relationships of individuals and groups, rather than in the pronouncements of legislators or judges.

Ehrlich's definition of law emphasizes the importance of social norms and informal legal institutions in shaping people's behavior and regulating social order. He believed that a complete understanding of the law requires studying not only formal legal rules but also the unwritten customs and practices that form the basis of social life.

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Critics argue that Ehrlich's focus on the living law may undervalue the importance of formal legal institutions and the role of the state in establishing and enforcing the rule of law. However, his work has had a significant impact on the fields of legal sociology, anthropology, and comparative law, as well as on the study of customary and indigenous legal systems.

LON L. FULLER (1902-1978):

Lon L. Fuller was an American legal philosopher and a prominent figure in the development of natural law theory. His definition of law can be best understood through his concept of the "internal morality of law."

Fuller argued that law has an inherent moral content that is independent of its substantive goals or the intentions of its creators. He identified eight principles, or "desiderata," which he believed are essential for a legal system to be considered valid:

- a) **Generality:** Laws should be general, applying to all people in a similar situation.
- b) **Promulgation:** Laws should be made known to the public, so that people can understand and follow them.
- c) **Non-retroactivity:** Laws should not be applied retroactively, as it would be unfair to punish people for actions that were legal at the time they were

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committed.

- d)** Clarity: Laws should be clear and unambiguous, to avoid confusion and uncertainty.
- e)** Non-contradiction: Laws should not be contradictory, as it would be impossible to obey both conflicting rules.
- f)** Possible compliance: Laws should not demand the impossible, as people cannot be expected to comply with unattainable requirements.
- g)** Stability: Laws should be relatively stable and consistent over time, to allow people to plan their actions and rely on the legal system.
- h)** Congruence: There should be a correspondence between the declared law and its actual administration by legal authorities, to ensure fairness and consistency in the application of the law.

Fuller believed that a legal system that fails to adhere to these principles is not a true legal system but rather a system of "mere coercion." His definition of law emphasizes the moral and procedural aspects of the legal system, rather than its substantive content or social function.

Critics argue that Fuller's concept of the internal morality of law may be overly formalistic and that it does not provide sufficient guidance for resolving moral or ethical dilemmas within the legal system. However, his work has

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1.2 CONCEPT OF LAW UNDER ARTICLE 13 OF THE CONSTITUTION OF INDIA

The Constitution of India is the supreme law of the land, providing the framework for the country's political, legal, and social systems. Article 13 is a critical component of the Constitution, as it deals with the protection of fundamental rights and the judicial review of laws that infringe upon these rights.

Article 13 can be divided into four main clauses:

1. Article 13(1): This clause states that any law that was in force in the territory of India before the commencement of the Constitution, which is inconsistent with the fundamental rights provided in Part III of the Constitution, shall be considered void to the extent of such inconsistency. In other words, any pre-existing law that violates fundamental rights will be declared invalid.
2. Article 13(2): This clause prohibits the State from making any law that takes away or abridges the fundamental rights provided in Part III of the Constitution. Any law made in contravention of this clause shall be considered void to the extent of the contravention. This provision ensures that the State cannot enact laws that undermine or restrict the fundamental rights of citizens.
3. Article 13(3): This clause defines the term "law" for the purposes of Article 13. According to this

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definition, "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India. This broad definition ensures that various forms of legislation and legal instruments, as well as customary practices, can be subjected to judicial review if they infringe upon fundamental rights.

4. Article 13(4): This clause empowers Parliament to make laws that amend or repeal pre-existing laws that are inconsistent with the fundamental rights provided in Part III of the Constitution. This provision ensures that the legislative branch has the authority to rectify laws that violate fundamental rights, in accordance with the requirements of Article 13.

The concept of law under Article 13 of the Constitution of India emphasizes the importance of protecting and preserving fundamental rights, as well as the role of the judiciary in reviewing and invalidating laws that infringe upon these rights. Some landmark cases related to Article 13 include:

1. **A.K. Gopalan v. State of Madras (1950):** This case was one of the first instances where the Supreme Court of India applied the provisions of Article 13. The Court held that preventive detention laws were not in violation of Article 13, as long as they followed the procedure established by law.
2. **Golak Nath v. State of Punjab (1967):** In this

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case, the Supreme Court held that the Parliament does not have the power to amend the Constitution in a way that would abridge or take away any of the fundamental rights provided in Part III, as this would violate Article 13(2).

3. **Keshavananda Bharati v. State of Kerala (1973):** The Supreme Court, in this landmark case, ruled that while Parliament has the power to amend the Constitution, it cannot alter the "basic structure" of the Constitution, which includes the fundamental rights guaranteed under Part III.

1.3 FUNCTIONS OF LAW

Law plays a vital role in regulating human behavior and maintaining order within society. The functions of law can be broadly categorized into several key areas, which are essential for a stable and just society. Here, we discuss some of the primary functions of law in detail:

a) Social Control:

One of the primary functions of law is to control and regulate human behavior by establishing rules and norms that individuals must adhere to. These rules and norms are designed to prevent harm, protect rights, and promote the common good. By imposing penalties and sanctions for non-compliance, the law helps maintain social order and deters individuals from engaging in harmful or disruptive activities.

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b) Dispute Resolution:

Conflicts and disputes are inevitable in any society, and the law provides mechanisms for resolving these disagreements in a fair and orderly manner. The legal system, including courts and other dispute resolution forums, ensures that disputes are resolved through a well-defined process based on evidence, reason, and impartiality. This function of law helps to maintain social harmony and prevent the escalation of conflicts into violence or chaos.

c) Protection of Rights and Interests:

The law safeguards the rights and interests of individuals, groups, and society at large. It protects fundamental rights, such as the right to life, liberty, and property, as well as more specific rights, such as the right to free speech, privacy, and due process. By defining and enforcing these rights, the law ensures that individuals can pursue their goals and aspirations without undue interference or harm from others.

d) Social Change and Progress:

Laws can also serve as instruments of social change and progress by reflecting and promoting the evolving values and needs of society. Legal reforms and new legislation can help address social problems, promote equality, and foster development. For example, laws that prohibit discrimination based on race, gender, or disability can help to create a more inclusive and just society. Similarly,

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environmental laws and regulations can promote sustainable development and the responsible use of natural resources.

e) Legal Education and Guidance:

The law provides a framework for individuals to understand their rights and responsibilities within society. Legal education and public awareness campaigns can help to inform citizens about the law, enabling them to make informed decisions and comply with legal requirements. This function of law promotes civic responsibility, encourages compliance with the law, and fosters a culture of respect for the rule of law.

f) Allocation of Resources and Distribution of Wealth:

Laws play a crucial role in the allocation of resources and the distribution of wealth within society. Property laws, taxation systems, and regulatory frameworks help to determine who has access to resources, how they can be used, and how wealth is distributed among different individuals and groups. By ensuring a fair and efficient allocation of resources, the law contributes to social stability, economic growth, and overall well-being.

g) Maintenance of Sovereignty and International Relations:

Laws govern the relationships between sovereign states and regulate international affairs. International laws, treaties, and agreements establish the rights and

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responsibilities of nations, regulate trade and diplomacy, and promote global cooperation on various issues, such as human rights, environmental protection, and security. This function of law helps to maintain peace, stability, and order in the international community.

1.4 LAW, JUSTICE AND MORALITY

CONCEPT OF JUSTICE AND ITS KINDS

Justice is a fundamental concept in law and morality, embodying the principles of fairness, equity, and impartiality. It is the process of applying established laws and ethical standards to ensure that individuals and society at large are treated fairly and that their rights and interests are protected. Justice can be classified into different kinds, which are briefly described below:

a) Distributive Justice

Distributive justice refers to the fair and equitable distribution of resources, wealth, and opportunities among individuals and groups in society. This form of justice is concerned with the allocation of benefits and burdens, such as income, education, healthcare, and social services, among different members of society. The concept of distributive justice is based on the principle that resources should be allocated based on criteria such as need, merit, or contribution, rather than factors such

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as social status, wealth, or power.

In the context of law, distributive justice is reflected in policies and legislation that aim to promote social and economic equality, such as progressive taxation, affirmative action, and social welfare programs.

b) Retributive Justice

Retributive justice is focused on the punishment of wrongdoers for their actions, with the aim of holding them accountable for their misconduct and deterring future wrongdoing. This form of justice is based on the principle that individuals who violate the rights of others or engage in harmful behavior should be punished in proportion to the severity of their offense.

In the legal system, retributive justice is expressed through criminal laws that define and penalize various types of misconduct, as well as through the procedures and institutions responsible for investigating, prosecuting, and punishing criminal offenders, such as the police, courts, and prisons.

c) Restorative Justice

Restorative justice is an alternative approach to dealing with crime and wrongdoing that seeks to repair the harm caused by an offense and promote healing and reconciliation among the affected parties. This form of justice emphasizes the importance of addressing the underlying causes of criminal behavior, restoring relationships, and reintegrating offenders back into

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society.

Restorative justice often involves the participation of victims, offenders, and community members in the resolution of disputes, through processes such as mediation, victim-offender conferencing, and community reparative boards. In the legal context, restorative justice principles may be incorporated into criminal sentencing, probation, and parole programs, as well as alternative dispute resolution mechanisms.

d) Procedural Justice

Procedural justice is concerned with the fairness and transparency of the processes and procedures used to make decisions, resolve disputes, and enforce the law. This form of justice emphasizes the importance of ensuring that individuals are treated with dignity, respect, and impartiality, and that their rights to due process and equal protection under the law are upheld.

In the legal system, procedural justice is reflected in the rules and principles governing the conduct of legal proceedings, such as the right to a fair trial, the presumption of innocence, the right to legal representation, and the right to appeal. Procedural justice also extends to the behavior of legal actors, such as judges, prosecutors, and law enforcement officers, who are expected to act with integrity, neutrality, and professionalism in the performance of their duties.

The concept of justice is multifaceted and encompasses

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various forms, including distributive, retributive, restorative, and procedural justice. These different aspects of justice are interconnected and serve to promote fairness, equity, and the rule of law in society. By ensuring that the principles of justice are upheld in the legal system and beyond, we can create a more just and harmonious society.

CONCEPT OF MORALITY: SOCIAL MORALITY AND CONSTITUTIONAL MORALITY

Morality refers to the principles, values, and norms that guide human behavior and determine what is right, wrong, good, or bad. It is deeply rooted in culture, religion, philosophy, and individual conscience. Morality can be broadly divided into two categories: social morality and constitutional morality.

Social Morality:

Social morality is the set of moral values, principles, and norms that are shared by a particular society or community. These values and norms are often derived from cultural traditions, religious teachings, and historical experiences, and they shape the beliefs, attitudes, and behavior of individuals within that society. Social morality serves to regulate human behavior, promote social cohesion, and maintain order and harmony within the community.

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Examples of social morality include norms and values related to family relationships, marriage, gender roles, honesty, respect, compassion, and reciprocity. Social morality may vary across different societies and cultures, reflecting the diverse beliefs, customs, and traditions that characterize human societies around the world. While social morality can provide a strong foundation for ethical behavior and decision-making, it can also be subject to change and evolution as societies adapt to new circumstances and challenges.

Constitutional Morality:

Constitutional morality refers to the principles, values, and norms that are enshrined in a country's constitution and serve as the foundation for its legal and political systems. Constitutional morality goes beyond the specific provisions and legal rules contained in the constitution, encompassing the broader ethical principles and democratic values that underlie the constitutional order.

In many countries, including India, constitutional morality includes principles such as the rule of law, separation of powers, judicial independence, fundamental rights, and equality before the law. These principles serve to protect individual rights and liberties, ensure the fair and impartial administration of justice, and promote democratic governance and accountability.

Constitutional morality plays a crucial role in guiding the

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actions and decisions of public officials, institutions, and citizens in a constitutional democracy. By adhering to the principles of constitutional morality, individuals and institutions can help to uphold the integrity of the constitutional order, protect the rights and freedoms of citizens, and promote the common good.

Social morality and constitutional morality are two distinct yet interconnected aspects of morality that play a vital role in regulating human behavior and promoting justice, fairness, and the rule of law. Social morality reflects the shared values and norms of a particular society, while constitutional morality is grounded in the principles and values enshrined in a country's constitution. Both social and constitutional morality are essential for the functioning of a just and democratic society, and they serve as important guideposts for ethical decision-making and behavior.

NEXUS BETWEEN LAW AND MORALITY

Law and morality are both systems of norms and principles that guide human behavior and shape societal values. Although they are distinct concepts, there is a significant overlap and interplay between them. The nexus between law and morality can be explored in terms of their similarities, differences, and their mutual influence on each other.

a) Similarities between Law and Morality:

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- Both law and morality serve to regulate human behavior and maintain social order. They establish norms and rules that define what is acceptable or unacceptable conduct within society.
- Law and morality both aim to protect individual rights, promote the common good, and balance the competing interests of individuals and groups within society.
- Both systems rely on sanctions and consequences to enforce compliance with their norms. In the case of law, these sanctions are usually imposed by the state through formal legal mechanisms such as courts, police, and prisons. In the case of morality, sanctions are often informal and socially enforced, such as ostracism, social disapproval, and loss of reputation.

b) Differences between Law and Morality:

- The source of authority for law and morality is different. Laws are created and enforced by the state, while moral norms are derived from cultural, religious, and philosophical beliefs, as well as individual conscience.
- Laws are generally written, codified, and subject to formal enforcement mechanisms, while moral norms are often unwritten, informal, and enforced through social pressure and self-regulation.
- Legal norms are typically more specific and concrete, while moral norms are often more abstract and open

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to interpretation. Moreover, laws are subject to change through legislative action or judicial interpretation, while moral norms evolve more gradually over time through cultural, religious, and philosophical developments.

c) Mutual Influence between Law and Morality:

- Law often draws upon moral principles and values to inform its content and objectives. Many legal rules and regulations are grounded in moral norms, such as the protection of life, liberty, and property, the prohibition of theft and violence, and the promotion of fairness and equality.
- Conversely, law can also shape morality by influencing societal attitudes and values. Legal reforms and new legislation can help to redefine moral norms and promote social change. For example, laws prohibiting discrimination, protecting the environment, or legalizing same-sex marriage can contribute to shifts in moral attitudes and beliefs.
- The relationship between law and morality is not always harmonious. There can be conflicts and tensions between legal and moral norms, such as when a law is perceived as unjust or immoral, or when moral norms are considered incompatible with the legal system. In such cases, individuals and society must grapple with the challenges of balancing legal obligations with moral convictions.

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The nexus between law and morality is complex and multifaceted, characterized by both similarities and differences, as well as mutual influence and occasional conflicts. Law and morality are intertwined systems of norms that play a crucial role in regulating human behavior, maintaining social order, and promoting justice and fairness within society. By understanding the interplay between law and morality, we can better navigate the ethical and legal dilemmas that arise in our personal and collective lives.

1.5 CLASSIFICATION OF LAWS

MUNICIPAL AND INTERNATIONAL LAW:

Laws can be broadly classified into two main categories: municipal (domestic) law and international law. Each of these categories encompasses a distinct set of legal norms, principles, and institutions that govern different aspects of human behavior and interactions. Here, we discuss the key features, differences, and relationship between municipal and international law.

Municipal (Domestic) Law:

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Municipal law, also known as domestic or national law, refers to the body of laws and regulations that govern the internal affairs of a particular country or political entity. Municipal laws are created by the legislative, executive, and judicial branches of a country's government and are enforced by state institutions such as the police, courts, and administrative agencies.

Municipal law encompasses a wide range of legal subjects and issues, including constitutional law, criminal law, civil law, administrative law, family law, and property law, among others. These laws govern various aspects of life within a country, such as individual rights and liberties, public safety and order, commerce and trade, and social welfare.

Some key features of municipal law include:

- a)** It is derived from a country's constitution, statutes, regulations, and judicial decisions.
- b)** Municipal law is primarily concerned with the rights, duties, and obligations of individuals, organizations, and institutions within a country's territory.
- c)** It is enforced by state institutions and authorities, such as police, courts, and administrative agencies.
- d)** Municipal law is subject to change and evolution through legislative action, judicial interpretation, and administrative rulemaking.

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International Law:

International law refers to the body of legal rules, principles, and norms that govern the relations between sovereign states, as well as between states and international organizations, such as the United Nations. International law is derived from a variety of sources, including treaties, customary international law, general principles of law, and judicial decisions.

International law addresses a wide range of issues and concerns, such as human rights, international trade, environmental protection, the use of force, and the peaceful resolution of disputes. It regulates the conduct of states and international organizations in their relations with one another, as well as their treatment of individuals and non-state actors, such as refugees, multinational corporations, and non-governmental organizations.

Some key features of international law include:

- a) It is derived from treaties, customary international law, general principles of law, and judicial decisions.
- b) International law primarily governs the relations between sovereign states and international organizations.
- c) Enforcement of international law relies on mechanisms such as diplomatic negotiations, arbitration, and adjudication by international courts and tribunals, as well as on the principle of reciprocity and the threat of sanctions or countermeasures by

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states.

- d) International law is subject to change and evolution through the negotiation and ratification of treaties, the development of customary international law, and the decisions of international courts and tribunals.

The Relationship between Municipal and International Law

Municipal and international law interact and influence each other in various ways. For example:

- International law can impact municipal law when a country incorporates international legal norms and obligations into its domestic legal system. This can occur through the ratification of treaties, the adoption of legislation that implements international obligations, or the interpretation of domestic laws in light of international law.
- Municipal law can also influence international law when a country's domestic legal norms and practices contribute to the formation of customary international law or general principles of law recognized by the international community.
- Conflicts can arise between municipal and international law when a country's domestic laws or actions are inconsistent with its international legal obligations. In such cases, the country may be subject

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to diplomatic pressure, legal proceedings, or sanctions by other states or international organizations.

PUBLIC AND PRIVATE LAW

Public law deals with the relationships between individuals and the state, as well as the relationships between different branches and levels of government. Private law, on the other hand, governs the relationships between private individuals and entities, such as businesses and organizations. Here, we discuss the key features, differences, and relationship between public and private law.

Public Law:

Public law encompasses the legal norms and principles that regulate the organization, powers, and functions of the state, as well as the rights and obligations of individuals in their relationship with the state. Public law covers various sub-disciplines, including constitutional law, administrative law, and criminal law.

Some key features of public law include:

- It is concerned with the structure and powers of the government and the relationship between different branches and levels of government.

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- Public law defines the rights and obligations of individuals in their interactions with the state, such as the protection of individual rights and liberties, and the duties of citizens towards the state.
- It regulates the conduct of public authorities and institutions, such as the executive, legislative, and judicial branches of government, as well as administrative agencies and public corporations.
- Public law is enforced by state institutions, such as courts, administrative tribunals, and regulatory agencies.

Private Law:

Private law, also known as civil law, deals with the legal relationships between private individuals and entities, such as businesses, organizations, and families. Private law encompasses a wide range of legal subjects and issues, including contract law, tort law, property law, family law, and inheritance law.

Some key features of private law include:

- It is primarily concerned with the rights, duties, and obligations of individuals and entities in their interactions with one another, rather than with the state.
- Private law regulates various aspects of personal and commercial relationships, such as the formation and

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enforcement of contracts, the protection of property rights, and the resolution of disputes between private parties.

- It establishes rules and principles for the determination of liability and the award of damages or other remedies in cases of breach of contract, tortious conduct, or infringement of property rights.
- Private law is enforced through civil litigation in courts, as well as through alternative dispute resolution mechanisms, such as arbitration, mediation, and negotiation.

The Relationship between Public and Private Law

Public and private law interact and overlap in various ways:

- Certain legal issues may involve both public and private law aspects, such as the regulation of commercial activities by the state, the enforcement of individual rights against private entities, or the imposition of legal duties on individuals in their interactions with one another.
- Public law can shape and influence private law by establishing the legal framework within which private relationships and transactions occur. For example, public law may define the basic principles of contract

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law, property law, or family law, which in turn govern private relationships and disputes.

- Private law can also impact public law by informing the development of legal norms and principles that apply to the state and its institutions. For example, private law concepts such as fiduciary duty or estoppel may be applied to public authorities in certain circumstances.

Public and private law are distinct yet interconnected systems of legal norms that govern different aspects of human behavior and relationships. Public law focuses on the organization, powers, and functions of the state and its relationship with individuals, while private law governs the relationships between private individuals and entities. The two systems of legal norms interact and influence each other, with public law shaping the framework within which private relationships and transactions occur, and private law informing the development of legal norms and principles that apply to the state and its institutions.

SUBSTANTIVE AND PROCEDURAL LAW

Substantive law consists of the legal rules and principles that define the rights, duties, and obligations of individuals and entities, while procedural law governs the processes and procedures by which legal disputes are resolved and rights are enforced. Here, we discuss the key

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Substantive Law:

Substantive law refers to the body of legal rules and principles that define the rights, duties, and obligations of individuals and entities in their interactions with one another and with the state. Substantive law encompasses a wide range of legal subjects and issues, including constitutional law, criminal law, contract law, tort law, property law, and family law, among others.

Some key features of substantive law include:

- It establishes the legal norms and principles that govern the behavior of individuals and entities, such as the rules of contract formation, the elements of criminal offenses, and the rights and duties of property owners.
- Substantive law defines the scope and content of individual rights and liberties, such as the right to freedom of speech, the right to privacy, or the right to due process of law.
- It determines the legal standards and criteria for the imposition of liability, the award of damages, and the granting of other remedies in cases of breach of contract, tortious conduct, or criminal offenses.
- Substantive law is subject to change and evolution through legislative action, judicial interpretation, and the development of legal norms and principles over time.

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Procedural Law:

Procedural law, also known as adjective law or the law of procedure, governs the processes and procedures by which legal disputes are resolved and rights are enforced. Procedural law covers a wide range of legal subjects and issues, including civil procedure, criminal procedure, evidence, and jurisdiction, among others.

Some key features of procedural law include:

- It establishes the rules and processes for the initiation, conduct, and resolution of legal disputes, such as the filing of lawsuits, the service of process, the taking of evidence, and the presentation of arguments in court.
- Procedural law defines the roles and responsibilities of courts, judges, lawyers, and other participants in the legal process, as well as the standards and criteria for judicial decision-making, such as the burden of proof and the rules of evidence.
- It provides for the enforcement of judgments and the execution of remedies, such as the seizure of property, the imposition of fines, or the award of damages.
- Procedural law is subject to change and evolution through legislative action, judicial interpretation, and the development of legal norms and principles over

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The Relationship between Substantive and Procedural Law

Substantive and procedural law are distinct yet interconnected systems of legal norms that play complementary roles in the regulation of human behavior and the resolution of legal disputes:

- Substantive law provides the legal framework within which individuals and entities interact and establish their rights, duties, and obligations, while procedural law governs the processes and procedures by which these rights, duties, and obligations are enforced and disputes are resolved.
- Procedural law serves to facilitate the fair, efficient, and effective administration of substantive law, by ensuring that legal disputes are resolved in a manner that is consistent with the principles of justice, due process, and the rule of law.
- The relationship between substantive and procedural law is dynamic and reciprocal, with changes in one area often leading to changes in the other.

CIVIL LAW AND CRIMINAL LAW

Civil law deals with disputes between private individuals

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or entities, whereas criminal law focuses on offenses against the state and public order. Each of these categories has distinct features, purposes, and procedures, which we will discuss below.

Civil Law:

Civil law, also known as private law, governs the relationships between private individuals and entities, such as businesses, organizations, and families. Civil law encompasses a wide range of legal subjects and issues, including contract law, tort law, property law, family law, and inheritance law, among others. The primary purpose of civil law is to regulate private relationships and transactions and to provide remedies for disputes that arise between private parties.

Some key features of civil law include:

- It is primarily concerned with the rights, duties, and obligations of individuals and entities in their interactions with one another, rather than with the state.
- Civil law provides for the resolution of disputes between private parties through litigation in civil courts or through alternative dispute resolution mechanisms, such as arbitration, mediation, or negotiation.
- The remedies available in civil law generally include

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damages, specific performance, injunctions, or declaratory relief, which are intended to compensate the injured party, enforce a legal obligation, or clarify the legal rights and obligations of the parties.

- In civil litigation, the burden of proof typically lies with the plaintiff, who must establish their case by a preponderance of the evidence or, in some instances, by clear and convincing evidence.

Criminal Law:

Criminal law is the body of law that defines and punishes offenses against the state and public order. Criminal law encompasses a wide range of legal subjects and issues, including the elements of criminal offenses, the rights of the accused, the principles of criminal liability, and the procedures for the investigation, prosecution, and punishment of crimes.

Some key features of criminal law include:

- It is concerned with offenses against the state and public order, rather than disputes between private individuals or entities.
- Criminal law provides for the investigation, prosecution, and punishment of criminal offenses by state authorities, such as police, prosecutors, and courts.
- The punishments available in criminal law may

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include imprisonment, fines, probation, community service, or other sanctions, which are intended to deter, rehabilitate, or incapacitate the offender, as well as to protect society and provide retribution for the harm caused by the offense.

- In criminal prosecutions, the burden of proof lies with the state, which must establish the guilt of the accused beyond a reasonable doubt.

The Relationship between Civil Law and Criminal Law

Civil and criminal law are distinct yet interconnected systems of legal norms that serve different purposes and regulate different aspects of human behavior:

- Civil law focuses on the resolution of disputes between private individuals and entities and the enforcement of private rights and obligations, while criminal law deals with offenses against the state and public order.
- The two systems of law have different procedural rules and standards of proof, with civil litigation typically requiring a lower burden of proof than criminal prosecutions.
- Certain legal issues may involve both civil and criminal law aspects, such as the commission of a tortious act that also constitutes a criminal offense

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(e.g., assault or fraud). In such cases, the offender may face both civil liability and criminal punishment.

Civil law and criminal law are distinct yet interconnected systems of legal norms that govern different aspects of human behavior and interactions. Civil law deals with disputes between private individuals and entities, while criminal law focuses on offenses against the state and public order. The two systems of law interact and overlap in various ways, with certain legal issues involving both civil and criminal law aspects and with each system influencing the other in different respects.

COMMON LAW AND CIVIL LAW

These two legal systems are the predominant legal traditions across the globe, with each having unique features, sources of law, and legal procedures. In this section, we discuss the key features, differences, and relationship between common law and civil law systems.

Common Law:

Common law, also known as case law or judge-made law, is a legal system that originated in England and has been adopted by many countries, especially those with a history of British colonial rule, such as the United States, Canada, Australia, and India. The common law system is characterized by its reliance on judicial precedent, the

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doctrine of stare decisis, and the adversarial nature of legal proceedings.

Some key features of common law include:

- The primary source of law in common law jurisdictions is judicial precedent, which refers to the decisions made by judges in previous cases. These decisions serve as binding authority for future cases with similar facts and legal issues.
- The doctrine of stare decisis, or the principle of following precedent, requires judges to follow the decisions of higher courts within their jurisdiction and to apply the same legal principles and reasoning to cases with similar facts and issues.
- Common law jurisdictions use an adversarial system of legal proceedings, in which opposing parties present their cases to a neutral judge or jury, who then determines the facts and applies the relevant legal principles to reach a decision.
- The common law system is flexible and adaptable, allowing judges to develop and modify legal rules and principles over time in response to changing social, economic, and technological conditions.

Civil Law:

Civil law, also known as Roman law or continental law, is a legal system that originated in continental Europe and

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has been adopted by many countries around the world, including France, Germany, Italy, Spain, and most of Latin America. The civil law system is characterized by its reliance on written codes, the inquisitorial nature of legal proceedings, and the separation of public and private law.

Some key features of civil law include:

- The primary source of law in civil law jurisdictions is written codes, such as constitutions, statutes, and regulations, which provide a comprehensive and systematic compilation of legal rules and principles.
- Civil law jurisdictions use an inquisitorial system of legal proceedings, in which a judge or panel of judges actively participates in the investigation of facts and the gathering of evidence, rather than relying solely on the presentation of evidence by opposing parties.
- The civil law system is organized around the distinction between public law, which governs the organization, powers, and functions of the state and its relationship with individuals, and private law, which governs the relationships between private individuals and entities.
- Civil law jurisdictions generally place a greater emphasis on the role of legal scholars and academics in the development and interpretation of law, as opposed to the reliance on judicial precedent in common law systems.

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The Relationship between Common Law and Civil Law

Common law and civil law are distinct yet interconnected legal systems that share certain features and principles but differ in their sources of law, legal procedures, and approaches to legal reasoning:

- Both common law and civil law systems recognize the importance of written laws, such as constitutions, statutes, and regulations, as well as unwritten legal principles and norms, such as customary law, natural law, or general principles of law.
- Common law and civil law systems differ in their reliance on judicial precedent and written codes, with common law emphasizing the role of judges in the development and interpretation of law, and civil law focusing on the codification and systematization of legal rules and principles.
- The two systems also differ in their approach to legal proceedings, with common law jurisdictions using an adversarial system and civil law jurisdictions employing an inquisitorial system, which influences the roles of judges, lawyers, and other participants in the legal process.
- Despite these differences, common law and civil law systems often interact and influence each other, particularly in areas such as international law, comparative law, and legal harmonization efforts. For

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example, the principles of contract law or human rights law may draw upon both common law and civil law traditions, and international treaties or conventions may incorporate elements from both legal systems.

Common law and civil law are distinct yet interconnected legal systems that represent the two predominant legal traditions across the globe. Each system has unique features, sources of law, and legal procedures, which influence the development, interpretation, and application of legal rules and principles in different ways. Common law and civil law systems often interact and influence each other in various areas of law, including international law, comparative law, and legal harmonization efforts, leading to the cross-fertilization of legal ideas and the emergence of hybrid legal systems and practices.

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UNIT 2

SOURCES OF LAW

2.1 CUSTOM

Introduction:

Custom is one of the oldest and most fundamental sources of law. It refers to the long-established practices, traditions, and social norms that have been consistently followed by a community or society over a long period of time. Customary law is recognized and enforced by courts and other legal authorities, and it plays a crucial role in the development and evolution of legal rules and principles. In this section, we discuss the concept of custom, its various kinds, and the essential elements of a valid custom that can become law.

What is custom? Kinds of customs:

Custom, in the context of law, refers to a consistent, long-standing practice or tradition followed by a community or society. Customs develop over time, as people engage in certain behaviors or follow specific rules in their social, economic, and cultural interactions. Customs can be categorized into various types, depending on factors such as their scope, source, or the nature of the obligation they impose.

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Some common types of customs include:

- a) **General customs:** These customs are universally followed within a particular country or jurisdiction, and they apply to all members of the society, regardless of their regional, ethnic, or religious affiliations. General customs often form the basis of national legal systems or principles.
- b) **Local customs:** Local customs are specific to a particular geographical area, region, or community, and they apply only to the members of that particular group. Local customs may be recognized and enforced by local courts or authorities, provided they do not conflict with general customs or statutory laws.
- c) **Conventional customs:** Conventional customs arise from specific agreements or arrangements between individuals or groups, such as contracts, treaties, or other legal instruments. These customs have the force of law for the parties involved, and they may be recognized and enforced by courts or other legal authorities.

Essentials of a valid Custom to become a law:

For a custom to be recognized and enforced as a valid source of law, it must meet certain essential criteria or conditions:

- a) **Antiquity:** A valid custom must have a long-standing

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and continuous history, dating back to a time beyond living memory. This requirement ensures that the custom is deeply rooted in the traditions and values of the society and is not a recent or arbitrary practice.

- b)** Certainty and consistency: A valid custom must be clear, unambiguous, and consistently followed over time. This requirement ensures that the custom provides a stable and predictable basis for legal rules and principles.
- c)** Reasonableness: A valid custom must be reasonable, just, and equitable in its content and application. This requirement ensures that the custom is compatible with the principles of justice, fairness, and the public interest.
- d)** General acceptance: A valid custom must be generally accepted and followed by the members of the relevant community or society. This requirement ensures that the custom reflects the collective values and practices of the group and is not merely a private or individual preference.
- e)** Compatibility with statute and common law: A valid custom must not conflict with existing statutory laws or common law principles. This requirement ensures that the custom is consistent with the broader legal framework and does not undermine the authority or coherence of the legal system.

Custom is a fundamental source of law that reflects the

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long-established practices, traditions, and social norms of a community or society. Customary law is recognized and enforced by courts and other legal authorities, and it plays a crucial role in the development and evolution of legal rules and principles. For a custom to be valid and enforceable as law, it must meet certain essential criteria, such as antiquity, certainty, reasonableness, general acceptance, and compatibility with statute and common law.

2.2 PRECEDENT

Precedent is a key source of law in common law jurisdictions, where the decisions of courts, especially those of higher courts, are considered binding or persuasive authority for future cases with similar facts and legal issues. The concept of precedent is rooted in the doctrine of stare decisis, which requires courts to follow the decisions of higher courts within their jurisdiction and to apply the same legal principles and reasoning to cases with similar facts and issues. In this section, we discuss the concept of precedents, their types, and the role they play in the development and evolution of legal rules and principles.

Concept of Precedents:

A precedent is a legal principle or rule established by a court in the course of deciding a case, which serves as a

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guide or authority for the resolution of future cases with similar facts and legal issues. The concept of precedent is based on the doctrine of stare decisis, which means "to stand by things decided." Stare decisis is a fundamental principle of common law jurisprudence, which ensures that the law is consistent, stable, and predictable, and that similar cases are treated alike.

Precedents may be created by courts at various levels of the judicial hierarchy, from the highest appellate courts to lower trial courts. However, the binding authority of a precedent depends on the position of the court that rendered the decision within the jurisdiction's judicial hierarchy. Higher courts' decisions generally have greater precedential value, and lower courts are generally bound to follow their rulings.

Types of Precedents:

Precedents can be classified into different types based on factors such as their binding authority, their source, or the nature of the legal principles they establish.

Authoritative and Persuasive Precedents:

Authoritative Precedents: Authoritative precedents, also known as binding precedents, are decisions of higher courts within the same jurisdiction that must be followed by lower courts in deciding future cases with similar facts

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and legal issues. Authoritative precedents ensure the consistency and coherence of the legal system, as they establish uniform legal principles and rules that must be applied by all courts within the jurisdiction.

Persuasive Precedents: Persuasive precedents, also known as advisory or non-binding precedents, are decisions of courts from other jurisdictions, lower courts, or courts of equal rank that are not binding on the court considering the case but may be considered persuasive or influential in the formulation of legal principles and rules. Persuasive precedents may be used by courts as a source of guidance or inspiration, especially in cases where there is no authoritative precedent on point or where the court believes that the existing authoritative precedents should be reevaluated or modified.

Original and Declaratory Precedents:

a) Original Precedents: Original precedents are decisions that establish new legal principles or rules, either because the case involves a novel issue or because the court decides to depart from or modify an existing precedent. Original precedents play a crucial role in the development and evolution of the law, as they allow courts to adapt legal principles and rules to changing social, economic, and technological conditions, and to correct or refine previous decisions that may be outdated or flawed.

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- b) Declaratory Precedents:** Declaratory precedents are decisions that apply, clarify, or reaffirm existing legal principles or rules without creating new ones. Declaratory precedents serve to consolidate and stabilize the law by ensuring that similar cases are treated alike and that the existing legal principles and rules are consistently and accurately applied.

Precedent is a fundamental source of law in common law jurisdictions, where the decisions of courts serve as binding or persuasive authority for future cases with similar facts and legal issues. Precedents can be classified into different types, such as authoritative and persuasive precedents, and original and declaratory precedents, depending on factors such as their binding authority, their source, or the nature of the legal principles they establish. Precedents play a crucial role in the development and evolution of legal rules and principles, as they ensure the consistency, stability, and predictability of the law and allow courts to adapt legal principles and rules to changing social, economic, and technological conditions.

DIFFERENCE BETWEEN CUSTOM, PRECEDENT AND LEGISLATION

Custom, precedent, and legislation are three primary sources of law, each with its unique features, functions, and roles in the development and evolution of legal rules and principles. In this section, we discuss the main

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differences between custom, precedent, and legislation as sources of law.

Custom:

- a) Custom represents long-standing practices, traditions, and social norms followed by a community or society over an extended period.
- b) Customary law develops organically over time as people engage in specific behaviors or follow particular rules in their social, economic, and cultural interactions.
- c) Custom is often unwritten and is recognized and enforced by courts and other legal authorities based on its antiquity, certainty, reasonableness, general acceptance, and compatibility with statute and common law.
- d) Customary law is more flexible and adaptable than legislation, as it can evolve and change with the customs and values of the society.

Precedent:

- a) Precedent refers to the legal principle or rule established by a court in deciding a case, which serves as a guide or authority for the resolution of future cases with similar facts and legal issues.
- b) Precedent is a key source of law in common law

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jurisdictions, where the decisions of courts, especially those of higher courts, are considered binding or persuasive authority for future cases.

- c) Precedent relies on the doctrine of stare decisis, which requires courts to follow the decisions of higher courts within their jurisdiction and apply the same legal principles and reasoning to cases with similar facts and issues.
- d) Precedent provides a more structured and systematic basis for legal rules and principles than custom, as it is based on the formal decisions of courts and is documented in written judgments and legal reports.

Legislation:

- a) Legislation refers to the written laws enacted by a legislature or other law-making authority, such as a parliament, congress, or council.
- b) Legislation is a primary source of law in both common law and civil law jurisdictions, and it provides a comprehensive and systematic compilation of legal rules and principles.
- c) Legislation is more formal, structured, and authoritative than custom or precedent, as it is enacted through a deliberative and democratic process, and it has the force of law by virtue of its promulgation by the law-making authority.

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- d)** Legislation can be more rigid and less adaptable than custom or precedent, as it requires formal amendment or repeal by the law-making authority to be changed or modified. However, legislation can also be more precise, detailed, and comprehensive than custom or precedent, as it addresses specific legal issues and problems and provides clear and unambiguous rules and guidelines for their resolution.

Custom, precedent, and legislation are three primary sources of law, each with its unique features, functions, and roles in the development and evolution of legal rules and principles. Custom represents long-standing practices, traditions, and social norms, while precedent refers to the legal principles and rules established by courts in deciding cases, and legislation consists of the written laws enacted by a legislature or other law-making authority. The main differences between custom, precedent, and legislation lie in their origins, development, form, and adaptability, and their recognition and enforcement by courts and other legal authorities.

2.3 LEGISLATION

LEGISLATION AND KINDS OF LEGISLATION

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Legislation is a primary source of law in both common law and civil law jurisdictions. It refers to the written laws enacted by a legislature or other law-making authority, such as a parliament, congress, or council. Legislation provides a comprehensive, systematic, and authoritative compilation of legal rules and principles, and it addresses specific legal issues and problems, offering clear and unambiguous rules and guidelines for their resolution. In this section, we discuss the concept of legislation and its various kinds.

Legislation and kinds of legislation

Legislation is the process of enacting laws through a deliberative and democratic process by a legislature or other law-making authority. It involves the formulation, discussion, and approval of bills or proposals, which are then promulgated as statutes, acts, or regulations by the executive branch of government or other relevant authority. Legislation can be classified into different types based on factors such as its scope, purpose, or the nature of the legal rules and principles it establishes.

Some common types of legislation include:

Constitutional Legislation: Constitutional legislation refers to the laws that establish or amend a country's constitution, which is the supreme law of the land and sets out the fundamental principles, structures, and processes of the government and the legal system. Constitutional legislation typically requires a special procedure for enactment and amendment, such as a

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supermajority vote in the legislature, a referendum, or a constitutional convention.

Primary Legislation: Primary legislation, also known as statutory law or acts of the legislature, consists of the laws enacted by the legislature or other law-making authority, which create, modify, or repeal legal rules and principles in various areas of law, such as criminal law, civil law, administrative law, or tax law. Primary legislation is considered the most authoritative and comprehensive source of law, as it is enacted through a democratic and deliberative process and has the force of law by virtue of its promulgation by the law-making authority.

Secondary Legislation: Secondary legislation, also known as subordinate or delegated legislation, refers to the laws enacted by an executive or administrative authority under the powers delegated by the legislature or the constitution. Secondary legislation includes regulations, rules, orders, or bylaws that are designed to implement, supplement, or clarify the provisions of primary legislation. Secondary legislation is generally subject to review and scrutiny by the legislature or the judiciary to ensure its compatibility with the primary legislation or the constitution.

Local Legislation: Local legislation consists of the laws enacted by local government entities, such as municipalities, counties, or districts, which have been granted law-making powers by the constitution or the legislature. Local legislation may include ordinances, bylaws, or regulations that govern specific aspects of local

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governance, such as land use, zoning, public safety, or environmental protection. Local legislation is generally subject to the supervision and control of the central government or the judiciary to ensure its compatibility with national laws and constitutional principles.

Private Legislation: Private legislation, also known as special or personal legislation, refers to the laws that apply to specific individuals, groups, or entities, rather than the general public. Private legislation may include acts of incorporation, land grants, or other legal instruments that confer specific rights, privileges, or benefits on the designated parties. Private legislation is generally subject to the same legislative process and legal requirements as general legislation but may be subject to additional restrictions or scrutiny to ensure its fairness, equity, and compliance with constitutional principles.

DELEGATED LEGISLATION AND ITS KINDS

Delegated legislation, also known as subordinate or secondary legislation, refers to the laws enacted by executive or administrative authorities under powers delegated to them by the legislature or the constitution. Delegated legislation plays a crucial role in modern legal systems, as it enables the government to enact detailed and technical rules and regulations that are necessary to implement, supplement, or clarify the provisions of primary legislation or to address specific legal issues and problems that may arise in the administration and

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enforcement of the law. In this section, we discuss the concept of delegated legislation and its various kinds.

Delegated Legislation:

Delegated legislation is the process by which the legislature or the constitution grants specific law-making powers and authority to executive or administrative bodies, such as government departments, agencies, or commissions, to enact legal rules and principles in the form of regulations, rules, orders, or bylaws. Delegated legislation is often used in areas of law that require specialized knowledge, expertise, or flexibility, such as environmental protection, public health, financial regulation, or telecommunications.

Delegated legislation is subject to certain legal requirements and safeguards to ensure its legitimacy, transparency, and accountability. These may include procedural requirements for the enactment, publication, and review of delegated legislation, as well as substantive requirements for its compatibility with the primary legislation or the constitution. In addition, delegated legislation may be subject to parliamentary or judicial scrutiny and control, either through a process of affirmative or negative resolution, or through judicial review on grounds of ultra vires, unreasonableness, or procedural impropriety.

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Kinds of Delegated Legislation:

Delegated legislation can be classified into different types based on factors such as the source of the delegation, the nature of the legal rules and principles it establishes, or the scope and purpose of the delegation. Some common kinds of delegated legislation include:

Regulations: Regulations are a common form of delegated legislation that consists of detailed and technical rules and standards that are designed to implement, supplement, or clarify the provisions of primary legislation. Regulations are often enacted by government departments, agencies, or commissions with specialized knowledge or expertise in the relevant area of law, and they may be subject to consultation, notice and comment, or impact assessment procedures to ensure their quality, legitimacy, and effectiveness.

Rules: Rules are another form of delegated legislation that includes general or specific guidelines, procedures, or criteria that are necessary to administer and enforce the law, such as procedural rules for courts, tribunals, or administrative bodies, or licensing criteria for regulated activities or professions. Rules may be enacted by a variety of executive or administrative authorities, such as ministries, councils, or boards, and they may be subject to different levels of parliamentary or judicial scrutiny and control, depending on their nature, scope, and impact.

Orders: Orders are a type of delegated legislation that

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consists of specific directions, commands, or decisions that are issued by executive or administrative authorities to implement or enforce the law, such as orders for the closure or seizure of premises, the imposition of sanctions or penalties, or the granting or revocation of licenses or permits. Orders may be issued on a case-by-case basis or in the form of general or standing orders that apply to a category of cases or situations, and they may be subject to judicial review or appeal on grounds of legality, fairness, or reasonableness.

Bylaws: Bylaws are a form of delegated legislation that is enacted by local government entities, such as municipalities, counties, or districts, under the powers granted to them by the constitution or the legislature. Bylaws may include rules, regulations, or ordinances that govern specific aspects of local governance, such as land use, zoning, public safety, or environmental protection. Bylaws are generally subject to the supervision and control of the central government or the judiciary to ensure their compatibility with national laws and constitutional principles. In some cases, bylaws may also be enacted by non-governmental organizations or private entities with delegated law-making powers, such as universities, professional associations, or corporations.

Statutory Instruments: Statutory instruments are a type of delegated legislation that includes a wide range of legal instruments, such as regulations, rules, orders, or bylaws, which are enacted by executive or administrative authorities under the powers conferred by a specific

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statute or act of the legislature. Statutory instruments are often used to give effect to the policy objectives or technical requirements of the primary legislation, and they may be subject to different levels of parliamentary or judicial scrutiny and control, depending on their nature, scope, and impact.

Delegated legislation is an essential source of law that encompasses various types of laws enacted by executive or administrative authorities under powers delegated by the legislature or the constitution. These types of delegated legislation include regulations, rules, orders, bylaws, and statutory instruments. Delegated legislation plays a crucial role in modern legal systems, as it enables the government to enact detailed and technical rules and regulations that are necessary to implement, supplement, or clarify the provisions of primary legislation or to address specific legal issues and problems that may arise in the administration and enforcement of the law. Delegated legislation is subject to certain legal requirements and safeguards to ensure its legitimacy, transparency, and accountability, as well as parliamentary or judicial scrutiny and control to ensure its compatibility with the primary legislation or the constitution.

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REASONS FOR GROWTH OF DELEGATED AND ITS PERMISSIBLE LIMITS IN INDIA

Delegated legislation has experienced significant growth in India, as in many other countries, due to various factors and reasons. This growth can be attributed to the increasing complexity of modern society, the need for specialized knowledge and expertise in various areas of law, and the need for flexibility and adaptability in the legal system to respond to new challenges and issues. In this section, we discuss the reasons for the growth of delegated legislation in India and its permissible limits under the Indian legal framework.

Reasons for the growth of Delegated Legislation in India:

Complexity of modern society: As society becomes more complex and interconnected, the legal system needs to address a wide range of issues and problems that require detailed and technical rules and regulations. Delegated legislation allows the government to create such rules and regulations without overburdening the legislature, which may lack the time, resources, or expertise to deal with these issues in detail.

Need for specialized knowledge and expertise: Many areas of law, such as environmental protection, public health, financial regulation, or telecommunications, require specialized knowledge and expertise to develop and implement effective legal rules and principles.

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Delegated legislation enables the government to delegate the task of law-making to specialized departments, agencies, or commissions that have the necessary knowledge, experience, and resources to address these complex issues.

Flexibility and adaptability: Delegated legislation allows the government to respond quickly and effectively to new challenges and issues that may arise in the administration and enforcement of the law, such as technological innovations, economic fluctuations, or social changes. Delegated legislation can be easily amended, updated, or repealed to reflect new circumstances, priorities, or insights, without the need for a lengthy and cumbersome legislative process.

Experimentation and innovation: Delegated legislation enables the government to experiment with new legal rules and principles, to test their feasibility, effectiveness, or acceptability before they are fully incorporated into the primary legislation or the legal system. This process of trial and error can contribute to the development and refinement of legal norms and practices, as well as the identification and elimination of potential problems or inconsistencies in the law.

Permissible limits of Delegated Legislation in India:

In India, the growth of delegated legislation is subject to

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certain legal limits and safeguards, which are designed to ensure its legitimacy, transparency, and accountability, as well as its compatibility with the primary legislation, the constitution, and the principles of democratic governance. Some of the main permissible limits of delegated legislation in India include:

Delegation must be authorized by the legislature or the constitution: Delegated legislation can only be enacted by executive or administrative authorities under powers that have been explicitly or implicitly granted to them by the legislature or the constitution. The delegation must be based on a clear and specific legal basis, and it must not exceed the scope, purpose, or intention of the delegation.

Delegation must not involve essential legislative functions or powers: The delegation of law-making powers must not involve the abdication or usurpation of essential legislative functions or powers, such as the determination of fundamental legal principles, the imposition of taxes, or the creation of criminal offenses. Delegated legislation must be limited to the implementation, elaboration, or administration of the legal rules and principles established by the primary legislation or the constitution.

Delegated legislation must be compatible with the primary legislation or the constitution: Delegated legislation must be consistent with the provisions, objectives, or principles of the primary legislation or the constitution, and it must not violate any legal or constitutional requirements, such as the principles of

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legality, equality, or fundamental rights.

Delegated legislation must be subject to parliamentary or judicial scrutiny and control: Delegated legislation must be subject to effective mechanisms of parliamentary or judicial scrutiny and control to ensure its legality, rationality, fairness, and transparency. These mechanisms may include:

- i. **Parliamentary oversight:** Delegated legislation may be subject to a process of affirmative or negative resolution by the parliament, which requires the approval, disapproval, or modification of the delegated legislation within a specified period or under certain conditions. In India, the Committee on Subordinate Legislation, a parliamentary committee, is responsible for examining and reporting on the delegated legislation to ensure its compliance with the primary legislation and the constitution.
- ii. **Judicial review:** Delegated legislation may be subject to judicial review by courts on grounds of ultra vires, unreasonableness, procedural impropriety, or violation of fundamental rights. In India, the Supreme Court and the High Courts have the jurisdiction and the authority to review and invalidate delegated legislation that does not meet the legal or constitutional requirements.

Procedural requirements and safeguards: Delegated legislation must be enacted, published, and reviewed in accordance with certain procedural requirements and

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safeguards, such as consultation, notice and comment, impact assessment, or sunset clauses, to ensure its quality, legitimacy, and effectiveness.

Delegated legislation has experienced significant growth in India due to various factors and reasons, such as the complexity of modern society, the need for specialized knowledge and expertise, and the need for flexibility and adaptability in the legal system. However, the growth of delegated legislation is subject to certain legal limits and safeguards to ensure its legitimacy, transparency, and accountability, as well as its compatibility with the primary legislation, the constitution, and the principles of democratic governance. These permissible limits include the authorization of the delegation, the exclusion of essential legislative functions or powers, the compatibility of the delegated legislation, the mechanisms of parliamentary or judicial scrutiny and control, and the procedural requirements and safeguards for the enactment, publication, and review of delegated legislation.

RELEVANT PROVISIONS

In India, the permissible limits of delegated legislation are governed by various constitutional provisions, legislative acts, and judicial decisions. Here are some relevant provisions that establish the framework for delegated legislation and its permissible limits in India:

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Constitution of India:

a) Article 245: This article provides that the Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

b) Article 246: This article sets out the subject-matter of laws that may be made by Parliament and the State Legislatures, thus establishing the basis for the delegation of legislative powers to the executive authorities.

c) Article 309: This article empowers the President or the Governor of a State to make rules and regulations for the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State, respectively.

d) Article 312A: This article grants the President the power to make rules and regulations for the organization and conditions of service of the All India Services.

Legislative Acts:

Delegated legislation is often authorized by specific acts of Parliament or State Legislatures, which confer the power to make rules, regulations, orders, or bylaws on

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executive or administrative authorities. Some examples of such acts include:

a) The Indian Penal Code, 1860: This act authorizes the central government to make rules relating to the classification of offenses and the forms of charge.

b) The Code of Civil Procedure, 1908: This act empowers the central government and the High Courts to make rules for the conduct of civil litigation, including procedural rules, forms, and fees.

c) The Income Tax Act, 1961: This act confers the power on the central government to make rules for the administration of the income tax system, including rules relating to assessment, payment, and collection of income tax.

d) The Environmental (Protection) Act, 1986: This act empowers the central government to make rules and regulations for the protection and improvement of the environment, including standards for emissions, discharge, and disposal of pollutants.

JUDICIAL DECISIONS

The permissible limits of delegated legislation in India are also shaped by judicial decisions, which have interpreted and applied the constitutional provisions and legislative acts in specific cases or controversies. Some landmark decisions of the Supreme Court of India and

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the High Courts on delegated legislation and its permissible limits include:

a) In re Delhi Laws Act, 1912 ([1951] SCR 747): In this case, the Supreme Court held that the delegation of legislative powers to the executive is permissible, provided that it is authorized by the legislature, it does not involve the abdication or usurpation of essential legislative functions or powers, and it is subject to adequate legal and constitutional safeguards.

b) Ram Jawaya Kapur v. State of Punjab (AIR 1955 SC 549): In this case, the Supreme Court ruled that the executive authorities have the power to make rules and regulations for the administration and enforcement of the law, as long as they are based on a valid delegation of legislative powers and they do not conflict with the primary legislation or the constitution.

c) A.K. Roy v. Union of India (AIR 1982 SC 710): In this case, the Supreme Court held that delegated legislation must be subject to effective mechanisms of parliamentary or judicial scrutiny and control to ensure its legality, rationality, fairness, and transparency.

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UNIT 3

BASIC PRINCIPLES OF LAW AND INDIAN LEGAL SYSTEM

3.1 PRINCIPLE OF NATURAL JUSTICE AND RULE OF EQUITY

In the Indian legal system, the principles of natural justice and the rule of equity are fundamental concepts that ensure fairness, impartiality, and justice in the administration of law. These principles are derived from common law traditions and have been recognized and applied by Indian courts in various judicial decisions. In this section, we will discuss the principle of natural justice and the rule of equity in detail.

Principle of Natural Justice

The principle of natural justice refers to a set of procedural rules and standards that aim to ensure fairness, transparency, and impartiality in the decision-making process, particularly in administrative and quasi-judicial proceedings. These principles are not codified in any specific statute or act but have been developed and refined through judicial decisions and practice over time.

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There are two main components of the principle of natural justice:

- a) **Audi alteram partem** (hear the other side): This principle requires that both parties in a dispute or proceeding must be given an opportunity to present their case and respond to the evidence and arguments of the other side. It ensures that decisions are based on a comprehensive understanding of the facts, the law, and the arguments of the parties, and it prevents arbitrary, biased, or unfair decisions.
- b) **Nemo judex in causa sua** (no one should be a judge in their own cause): This principle requires that decision-makers must be impartial, unbiased, and free from any conflict of interest that may affect their judgment or integrity. It ensures that decisions are made objectively and independently, without any undue influence, favoritism, or prejudice.

The principle of natural justice is an essential component of the Indian legal system, as it guarantees the protection of the rights, interests, and dignity of the individuals and entities that are subject to the decisions of administrative and quasi-judicial authorities. The violation of the principles of natural justice may result in the invalidation or reversal of the decision by the courts on the grounds of procedural impropriety or unfairness.

Rule of Equity:

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The rule of equity is another fundamental principle of law that aims to ensure justice, fairness, and flexibility in the application and interpretation of legal rules and principles. The concept of equity originated in the English common law system, where it was developed as a separate body of legal principles and remedies to mitigate the rigidity, formalism, and harshness of the common law rules.

In the Indian legal system, the rule of equity is not a separate or distinct body of law but is incorporated and integrated into the existing legal framework, including statutes, case law, and customs. The rule of equity operates as a guiding principle that informs and shapes the interpretation and application of legal rules and principles, as well as the exercise of judicial discretion, in order to achieve just, fair, and equitable outcomes in individual cases.

Some of the main features and functions of the rule of equity in the Indian legal system include:

- a) The interpretation and application of legal rules and principles in a flexible, purposive, and context-sensitive manner, to avoid rigidity, formalism, or injustice.
- b) The recognition and enforcement of equitable rights, interests, and remedies, such as trusts, fiduciary obligations, or specific performance, which may not be provided or recognized by the common law or statutory law.

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- c) The exercise of judicial discretion in the award of remedies, relief, or damages, to ensure that the outcome of the case is proportionate, reasonable, and appropriate to the circumstances, the conduct, and the needs of the parties.
- d) The application of equitable maxims and doctrines, such as "equity follows the law," "equity acts in personam," "he who seeks equity must do equity," or "delay defeats equities," which serve as guiding principles or rules of thumb in the determination of equitable rights, interests, and remedies.
- e) The promotion of good faith, fair dealing, and conscionable conduct in the negotiation, performance, and enforcement of contracts, agreements, and transactions, to prevent abuse, exploitation, or unconscionability.
- f) The prevention and correction of fraud, mistake, undue influence, or other forms of unconscionable or inequitable conduct that may affect the validity, enforceability, or fairness of legal rights, interests, or remedies.
- g) The development and adaptation of legal rules, principles, and remedies to meet the changing needs, expectations, and values of society, as well as the evolving nature of the economy, technology, and the environment.

The principle of natural justice and the rule of equity are

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essential components of the Indian legal system, which ensure fairness, impartiality, and justice in the administration of law. These principles operate as guiding norms and standards that inform and shape the decision-making process, the interpretation and application of legal rules and principles, and the exercise of judicial discretion, in order to achieve just, fair, and equitable outcomes in individual cases and in the broader legal system. The adherence to these principles is a fundamental requirement and a key measure of the legitimacy, credibility, and effectiveness of the Indian legal system, as well as the protection and promotion of the rights, interests, and dignity of its citizens and residents.

3.2 RULE OF LAW

DICEY'S RULE OF LAW

The rule of law is a fundamental principle of modern legal systems, including the Indian legal system. It ensures that the exercise of power by the government and its officials is governed by clear and transparent rules, which are applied consistently and fairly to all individuals, regardless of their status, position, or influence. The concept of the rule of law has its roots in ancient legal traditions, but it was significantly developed and refined by the British jurist A.V. Dicey in the 19th

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century.

According to Dicey, the rule of law has three main components:

- a. **The supremacy of law:** This principle asserts that no individual or authority, including the government and its officials, is above the law, and that all actions and decisions must be based on and subject to the law. The supremacy of law ensures that the government and its officials are accountable and that their powers are limited and controlled by the legal framework.
- b. **Equality before the law:** This principle states that all individuals are equal before the law and are subject to the same legal rules, procedures, and protections, regardless of their social, economic, or political status. The equality before the law guarantees that the legal system treats everyone fairly and does not discriminate based on arbitrary or unjustifiable grounds.
- c. **The predominance of regular law and the absence of arbitrary power:** This principle requires that the legal rules and procedures are clear, consistent, and predictable, and that the exercise of power by the government and its officials is subject to the regular law, rather than arbitrary, discretionary, or capricious decisions. The predominance of regular law ensures that the legal system is transparent, accessible, and rational, and that the rights, interests,

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and expectations of the individuals are protected and respected.

Application of Rule of Law in India

The rule of law is a fundamental principle of the Indian legal system and is enshrined in the Constitution of India, which establishes the legal framework, the institutions, and the safeguards for the protection and promotion of the rule of law. The application of the rule of law in India can be observed through various constitutional provisions, legislative acts, and judicial decisions:

The supremacy of the Constitution: The Constitution of India is the supreme law of the land, and all laws and actions of the government and its officials must be consistent with the Constitution. This principle is established by Article 13 of the Constitution, which declares that any law or action that is inconsistent with the fundamental rights is void.

The separation of powers: The Constitution of India provides for the separation of powers among the three branches of government – the executive, the legislature, and the judiciary – which ensures that the exercise of power is balanced, controlled, and subject to checks and balances. This principle is reflected in Articles 50, 122, and 211 of the Constitution, which provide for the independence of the judiciary, the immunity of the legislature, and the accountability of the executive,

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respectively.

The protection of fundamental rights: The Constitution of India guarantees a wide range of fundamental rights to the citizens, including the right to equality, the right to life and personal liberty, the right to freedom of speech and expression, and the right to constitutional remedies. These rights are protected and enforced by the judiciary, particularly by the Supreme Court of India and the High Courts, through the writ jurisdiction, as provided in Articles 32 and 226 of the Constitution.

The principle of legality: The Indian legal system adheres to the principle of legality, which requires that the exercise of power by the government and its officials is based on and subject to the law, rather than arbitrary or discretionary decisions. This principle is reinforced by various constitutional provisions, such as Article 14, which guarantees the right to equality before the law and equal protection of the laws, and Article 21, which guarantees the right to life and personal liberty and requires that any deprivation of these rights must be in accordance with the procedure established by law.

The principle of judicial review: The Indian legal system recognizes the principle of judicial review, which allows the judiciary to examine and assess the constitutionality, legality, and propriety of the actions and decisions of the government and its officials. Judicial review is a crucial mechanism for the enforcement of the rule of law, as it ensures that the government and its

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officials are accountable and that their actions are subject to legal scrutiny and control. This principle is provided in Articles 32, 131, and 226 of the Constitution, which empower the Supreme Court and the High Courts to issue writs and other orders to protect the fundamental rights and to settle disputes between the Union and the States, or between the States themselves.

The principle of due process: Although the concept of due process is not explicitly mentioned in the Indian Constitution, the Supreme Court of India has interpreted the right to life and personal liberty under Article 21 to include the principles of natural justice and procedural fairness, which are essential components of due process. These principles require that the government and its officials follow fair, transparent, and impartial procedures in the exercise of their powers, particularly in matters that affect the rights, interests, and dignity of the individuals.

The rule of law is a foundational principle of the Indian legal system, which ensures that the government and its officials are subject to the law, accountable, and committed to the protection and promotion of the rights, interests, and welfare of the citizens. The application of the rule of law in India can be observed through various constitutional provisions, legislative acts, and judicial decisions, which reflect the values and principles of legality, equality, transparency, impartiality, and justice. The adherence to the rule of law is a crucial factor in the legitimacy, credibility, and effectiveness of the Indian

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legal system and the overall governance of the country.

3.3 SEPARATION OF POWERS

MONTESQUIEU'S DOCTRINE OF SEPARATION OF POWER

The doctrine of separation of powers is a fundamental principle in modern democratic systems, including the Indian legal system. It is based on the idea that the powers and functions of the government should be divided among distinct and independent branches or institutions, in order to prevent the concentration of power, protect individual liberties, and ensure the efficiency, accountability, and legitimacy of the government. The doctrine of separation of powers was first systematically developed by the French philosopher Charles-Louis de Secondat, Baron de Montesquieu, in his seminal work "The Spirit of the Laws" (1748).

According to Montesquieu, the separation of powers should be based on the division of the government into three main branches, each with distinct powers and functions:

- a) **The Executive:** This branch is responsible for implementing, enforcing, and administering the laws, policies, and decisions of the government. The

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executive is usually headed by the head of state (such as a president or a monarch) and includes the government officials, agencies, and departments that are responsible for various aspects of public administration.

- b) The Legislature:** This branch is responsible for making, amending, and repealing the laws that govern the society. The legislature is usually composed of elected representatives (such as a parliament or a congress) who deliberate, debate, and vote on the proposed laws and policies.
- c) The Judiciary:** This branch is responsible for interpreting and applying the laws, resolving disputes, and ensuring the protection of the rights, interests, and liberties of the individuals. The judiciary is usually composed of independent, impartial, and qualified judges who preside over the courts and tribunals that deal with various types of cases, including civil, criminal, administrative, and constitutional matters.

Montesquieu's doctrine of separation of powers is based on the assumption that the division of the government powers and functions among distinct and independent branches or institutions will create a system of checks and balances, which will prevent the abuse of power, protect individual liberties, and ensure the efficiency, accountability, and legitimacy of the government.

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Position in India

The doctrine of separation of powers is a fundamental principle of the Indian legal system and is enshrined in the Constitution of India. Although the Indian Constitution does not explicitly mention the doctrine of separation of powers, it provides for the division of the powers and functions of the government among the three main branches - the executive, the legislature, and the judiciary - and establishes a system of checks and balances to maintain the balance of power and protect individual liberties.

- a) **The Executive:** In India, the executive power is vested in the President of India, who acts as the head of state, and is exercised by the Council of Ministers, headed by the Prime Minister. The President is responsible for appointing the Prime Minister, who is the leader of the majority party or coalition in the Parliament, and the Council of Ministers, who are responsible for various aspects of public administration. The executive is accountable to the Parliament and is subject to the laws and decisions of the judiciary.
- b) **The Legislature:** In India, the legislative power is vested in the Parliament, which is a bicameral institution, consisting of the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The Rajya Sabha is composed of representatives of the States and Union Territories, while the Lok Sabha is composed of directly elected representatives of the people. The Parliament is responsible for making,

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amending, and repealing the laws that govern the society, and for overseeing the actions and decisions of the executive.

- c) **The Judiciary:** In India, the judicial power is vested in the Supreme Court, the High Courts, and the subordinate courts and tribunals. The judiciary is independent of the executive and the legislature and is responsible for interpreting and applying the laws, resolving disputes, and ensuring the protection of the rights, interests, and liberties of the individuals. The Supreme Court is the highest judicial authority in India and has the power of judicial review, which enables it to examine and assess the constitutionality, legality, and propriety of the actions and decisions of the government and its officials.

The Indian Constitution incorporates several provisions that reflect the principle of separation of powers and establish a system of checks and balances among the executive, the legislature, and the judiciary. Some of these provisions include:

- **Article 50:** This article provides for the separation of the judiciary from the executive, which ensures the independence, impartiality, and integrity of the judicial process.
- **Article 122 and Article 212:** These articles provide for the immunity of the legislative proceedings from judicial scrutiny, which ensures the autonomy, independence, and effectiveness of the legislative

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process.

- Article 123 and Article 213: These articles grant the President and the Governors, respectively, the power to issue ordinances when the Parliament or the State Legislature is not in session, subject to certain conditions and limitations, which ensures the continuity and responsiveness of the legislative process.
- Article 124 to Article 147 and Article 214 to Article 231: These articles provide for the appointment, qualifications, tenure, and removal of the judges of the Supreme Court and the High Courts, as well as the jurisdiction, powers, and procedures of these courts, which ensure the independence, integrity, and competence of the judiciary.

The doctrine of separation of powers is a fundamental principle of the Indian legal system, which is enshrined in the Constitution of India and reflected in various constitutional provisions, legislative acts, and judicial decisions. The separation of powers ensures that the powers and functions of the government are divided among distinct and independent branches or institutions, which creates a system of checks and balances that prevents the concentration of power, protects individual liberties, and ensures the efficiency, accountability, and legitimacy of the government. The adherence to the doctrine of separation of powers is a crucial factor in the stability, credibility, and effectiveness of the Indian legal system and the overall governance of the country.

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3.4 INDIAN CONSTITUTION: SALIENT FEATURES

The Constitution of India, adopted on November 26, 1949, and came into effect on January 26, 1950, is the supreme law of the land and serves as the guiding framework for the Indian legal system and the governance of the country. The Indian Constitution is the longest written constitution in the world and encompasses a wide range of provisions and principles that reflect the values, aspirations, and goals of the Indian people. The salient features of the Indian Constitution include:

Preamble: The Preamble of the Indian Constitution sets forth the guiding principles, values, and objectives of the Constitution, including the commitment to justice, liberty, equality, and fraternity, the establishment of a sovereign, socialist, secular, and democratic republic, and the promotion of the welfare of the people and the unity and integrity of the nation.

Fundamental Rights: Part III of the Indian Constitution guarantees a range of fundamental rights to the citizens of India, including the right to equality (Articles 14-18), the right to freedom (Articles 19-22), the right against exploitation (Articles 23-24), the right to freedom of religion (Articles 25-28), cultural and educational rights (Articles 29-30), and the right to constitutional remedies (Article 32). These rights are enforceable by the courts and serve as the foundation of

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the Indian legal system and the protection of individual liberties.

Directive Principles of State Policy: Part IV of the Indian Constitution lays down a set of non-justiciable directives and principles that guide the actions and policies of the government and aim to promote the welfare of the people, social justice, and economic development. These principles include the promotion of adequate means of livelihood, equal pay for equal work, the right to work, the right to education, and the protection of the environment.

Fundamental Duties: Part IV-A of the Indian Constitution, added by the 42nd Amendment in 1976, lists the fundamental duties of the citizens of India, which serve as a reminder of the responsibilities and obligations of the citizens towards the nation, the society, and the environment. These duties include the respect for the Constitution, the national flag, and the national anthem, the protection of the sovereignty and integrity of the country, and the preservation of the rich cultural heritage of India.

Federal Structure: The Indian Constitution provides for a federal structure of governance, which divides the powers and functions of the government between the Union and the States. The legislative, executive, and financial powers are distributed among the Union and the States through the Union List, the State List, and the Concurrent List, as provided in the Seventh Schedule of the Constitution. The Indian federal system also includes

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provisions for the resolution of disputes and the maintenance of the unity and integrity of the nation, such as Article 131, which provides for the original jurisdiction of the Supreme Court in disputes between the Union and the States or among the States.

Parliamentary System: The Indian Constitution establishes a parliamentary system of government, which is based on the principles of representative democracy, the separation of powers, and the accountability of the executive to the legislature. The President of India serves as the head of state, while the Prime Minister, who is the leader of the majority party or coalition in the Parliament, serves as the head of government. The Parliament of India is a bicameral institution, consisting of the Rajya Sabha (Council of States) and the Lok Sabha (House of the People), which are responsible for making, amending, and repealing the laws and overseeing the actions and decisions of the executive.

Independent Judiciary: The Indian Constitution provides for an independent, impartial, and competent judiciary, which serves as the guardian of the Constitution, the protector of the rights, interests, and liberties of the individuals, and the arbiter of disputes among the parties, institutions, and branches of the government. The judiciary in India is comprised of the Supreme Court, the High Courts, and the subordinate courts and tribunals. The judges of the Supreme Court and the High Courts are appointed by the President of India on the basis of their qualifications, experience, and

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integrity, and they enjoy security of tenure and protection from external influences and pressures.

Judicial Review: The Indian Constitution empowers the judiciary with the power of judicial review, which enables the courts to examine and assess the constitutionality, legality, and propriety of the actions and decisions of the government, its officials, and its institutions. The power of judicial review is an essential feature of the Indian legal system and serves as a crucial check and balance on the exercise of power, the protection of individual liberties, and the maintenance of the rule of law and the constitutional order.

Emergency Provisions: Part XVIII of the Indian Constitution contains provisions for dealing with emergencies, which may arise due to threats to the security, stability, and integrity of the country or its parts, or due to financial crises or other exigencies. These provisions include the proclamation of a state of emergency by the President of India (Article 352), the suspension of the fundamental rights and the enforcement of the fundamental duties (Article 359), and the imposition of the President's rule in the States (Article 356). The emergency provisions are designed to ensure the continuity, resilience, and responsiveness of the Indian legal system and the governance of the country in times of crises and challenges.

Amendment Procedure: The Indian Constitution provides for a flexible yet balanced procedure for amending its provisions, which enables the adaptation,

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reform, and improvement of the Constitution in response to the changing needs, circumstances, and aspirations of the Indian people. The amendment procedure is laid down in Article 368, which requires the approval of the Parliament by a special majority (two-thirds of the members present and voting, and more than half of the total membership) and, in some cases, the ratification by the State Legislatures. The power of amendment is subject to the basic structure doctrine, which was propounded by the Supreme Court in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973) and which asserts that certain core features and values of the Constitution, such as the sovereignty, democracy, secularism, and the rule of law, cannot be altered or abrogated.

The Indian Constitution is a comprehensive and sophisticated document that provides the framework for the Indian legal system and the governance of the country. The salient features of the Indian Constitution reflect the values, aspirations, and goals of the Indian people, as well as the historical, political, social, and cultural context of the Indian nation. The Constitution ensures the separation of powers, the protection of individual liberties, the promotion of social justice and economic development, the maintenance of the unity and integrity of the nation, and the adaptability and resilience of the Indian legal system and the governance of the country.

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3.5 JUDICIAL SYSTEM IN INDIA

HIERARCHY OF COURTS

The Indian judicial system is organized in a hierarchical structure, which comprises the following levels of courts:

Supreme Court of India: The Supreme Court is the highest judicial authority in the country, and it is vested with the power of judicial review, appellate jurisdiction, and original jurisdiction. The Supreme Court has the authority to interpret the Constitution, adjudicate disputes between the central government and the states or among the states, and protect the fundamental rights of citizens. It also has the power to hear appeals from the decisions of the High Courts and other tribunals, as well as the authority to issue writs and orders for the enforcement of rights and the redress of grievances.

High Courts: Each state and union territory in India has a High Court, which serves as the highest judicial authority within its jurisdiction. The High Courts have original jurisdiction in cases involving the interpretation of the Constitution, the enforcement of fundamental rights, and disputes between the state government and its officials. They also have appellate jurisdiction in civil and

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criminal cases from the subordinate courts and tribunals within their jurisdiction. High Courts can issue writs and orders for the enforcement of rights, the redress of grievances, and the supervision and control of the subordinate courts and tribunals.

District Courts: The District Courts are the principal courts of original jurisdiction in civil and criminal matters within their respective districts. The District Courts are presided over by District Judges, who are appointed by the respective state governments in consultation with the High Courts. District Courts have the authority to hear and decide civil and criminal cases, including suits for the recovery of property, the enforcement of contracts, the determination of rights and liabilities, and the punishment of offenses under the Indian Penal Code and other laws.

Subordinate Courts: Below the District Courts, there are various subordinate courts, such as the Civil Courts, the Criminal Courts, and the Family Courts, which have jurisdiction over specific types of cases and matters within their respective areas of competence. These courts are presided over by judicial officers who are appointed by the state governments in consultation with the High Courts.

Tribunals and Special Courts: Apart from the regular hierarchy of courts, the Indian judicial system also includes various tribunals and special courts, such as the Central Administrative Tribunal, the Income Tax Appellate Tribunal, the National Green Tribunal, and the

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Debt Recovery Tribunals, which have jurisdiction over specific subject matters and areas of law, such as administrative law, taxation, environmental law, and financial law.

JURISDICTION OF THE COURTS

The jurisdiction of the courts in India is determined by the Constitution, the laws enacted by the Parliament and the state legislatures, and the rules and regulations issued by the respective courts and tribunals. The jurisdiction of the courts can be classified into the following categories:

Original Jurisdiction: This refers to the authority of a court to hear and decide a case in the first instance. The Supreme Court has original jurisdiction in cases involving the interpretation of the Constitution, disputes between the central government and the states or among the states, and the enforcement of fundamental rights. The High Courts have original jurisdiction in cases involving the interpretation of the Constitution, the enforcement of fundamental rights, and certain other matters specified in the laws and the rules of the respective courts.

Appellate Jurisdiction: This refers to the authority of a court to hear and decide appeals from the decisions, judgments, and orders of the lower courts and tribunals. The Supreme Court has appellate jurisdiction in civil and criminal cases from the High Courts, as well as in certain

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cases from the tribunals and other authorities. The High Courts have appellate jurisdiction in civil and criminal cases from the District Courts and the subordinate courts within their jurisdiction. The District Courts have appellate jurisdiction in cases from the subordinate courts within their respective districts, as provided by the laws and the rules of the respective courts.

Writ Jurisdiction: The Supreme Court and the High Courts have the power to issue writs and orders for the enforcement of fundamental rights, the redress of grievances, and the supervision and control of the subordinate courts and tribunals. The types of writs include Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari. The writ jurisdiction of the Supreme Court is provided by Article 32 of the Constitution, while the writ jurisdiction of the High Courts is provided by Article 226 of the Constitution.

Advisory Jurisdiction: The Supreme Court has the authority to provide advisory opinions to the President of India on questions of law or fact that may have a bearing on the public interest or the functioning of the government. This advisory jurisdiction is provided by Article 143 of the Constitution. The opinions rendered by the Supreme Court under its advisory jurisdiction are not binding on the government or the courts, but they carry considerable weight and authority.

Special Jurisdiction: Certain courts and tribunals in India have special jurisdiction in specific areas of law, subject matter, or territory, as provided by the

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Constitution, the laws, and the rules of the respective courts and tribunals. For example, the National Green Tribunal has jurisdiction over cases involving environmental law, the Central Administrative Tribunal has jurisdiction over cases involving administrative law, and the Debt Recovery Tribunals have jurisdiction over cases involving financial law.

Territorial Jurisdiction: The jurisdiction of the courts in India is also determined by the territorial limits within which they have the authority to hear and decide cases. The Supreme Court has jurisdiction over the entire territory of India, while the High Courts have jurisdiction over the respective states and union territories. The District Courts and the subordinate courts have jurisdiction within their respective districts and local areas, as specified in the laws and the rules of the respective courts.

The Indian judicial system is organized in a hierarchical structure, with the Supreme Court at the apex, followed by the High Courts, the District Courts, the subordinate courts, and the tribunals and special courts. The jurisdiction of the courts is determined by the Constitution, the laws, and the rules of the respective courts and tribunals, and it includes original jurisdiction, appellate jurisdiction, writ jurisdiction, advisory jurisdiction, special jurisdiction, and territorial jurisdiction. The courts in India play a crucial role in the administration of justice, the protection of individual rights and liberties, the maintenance of the rule of law,

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UNIT 4

LEGAL WRITING AND RESEARCH

4.1 LEGAL RESEARCH AND KINDS OF LEGAL RESEARCH

Legal research is the systematic process of identifying, analyzing, and interpreting the laws, regulations, cases, and legal principles relevant to a specific issue or problem. It involves the use of various research methodologies, techniques, and tools to gather, organize, evaluate, and synthesize information from diverse sources, such as statutes, case law, legal commentaries, and scholarly articles. Legal research is an essential skill for lawyers, judges, academics, and other professionals engaged in the study and practice of law, as it enables them to stay informed about the developments in the law, build strong arguments, and make well-informed decisions.

There are two main kinds of legal research: doctrinal research and non-doctrinal research.

DOCTRINAL RESEARCH

Doctrinal research, also known as black-letter law research or library-based research, is a traditional method of legal research that focuses on the analysis and

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interpretation of legal texts, such as statutes, case law, and legal doctrines. Doctrinal research involves the examination of the sources of law, the identification of legal rules and principles, the determination of their scope and application, and the construction of legal arguments and theories. The primary objective of doctrinal research is to clarify, systematize, and develop the law, in order to enhance its coherence, consistency, and predictability.

Doctrinal research typically involves the following steps:

- a) Defining the research problem or question:** This involves the identification and formulation of a specific legal issue or problem that requires investigation and analysis.
- b) Identifying the relevant sources of law:** This includes the selection and examination of the primary sources of law, such as statutes and case law, as well as the secondary sources of law, such as legal commentaries, treatises, and scholarly articles.
- c) Analyzing and interpreting the legal texts:** This involves the close reading, interpretation, and evaluation of the legal texts, in order to identify the applicable legal rules and principles, their meanings, and their implications for the research problem or question.
- d) Synthesizing the legal information:** This

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includes the organization, integration, and comparison of the legal information from different sources, in order to construct a coherent, logical, and persuasive legal argument or theory.

- e) **Drawing conclusions and making recommendations:** This involves the formulation of findings, conclusions, and recommendations based on the analysis and synthesis of the legal information, in order to address the research problem or question and contribute to the development of the law.

NON-DOCTRINAL RESEARCH

Non-doctrinal research, also known as socio-legal research or empirical research, is a method of legal research that focuses on the study of law in its social, economic, political, and cultural context. Non-doctrinal research involves the collection and analysis of empirical data, such as surveys, interviews, observations, and case studies, in order to examine the functioning, impact, and effectiveness of the law, as well as the factors that influence its development and implementation. The primary objective of non-doctrinal research is to understand and explain the relationship between law and society, in order to inform and improve the law, its policies, and its practices.

Non-doctrinal research typically involves the following steps:

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Defining the research problem or question: This involves the identification and formulation of a specific legal issue or problem that requires investigation and analysis from a socio-legal perspective.

Developing a research design and methodology: This includes the selection and elaboration of the research methods, techniques, and tools that will be used to collect and analyze the empirical data, such as surveys, interviews, observations, and case studies.

Collecting the empirical data: This involves the gathering of the empirical data from various sources, such as fieldwork, questionnaires, interviews, observations, and document analysis, in order to obtain information about the social, economic, political, and cultural aspects of the law and its effects on individuals, groups, and institutions.

Analyzing and interpreting the empirical data: This involves the systematic processing, coding, and analysis of the empirical data, in order to identify patterns, trends, relationships, and causal factors that can help explain the research problem or question.

Synthesizing the empirical findings: This includes the organization, integration, and comparison of the empirical findings from different sources and methods, in order to construct a coherent, logical, and persuasive socio-legal argument or theory.

Drawing conclusions and making

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recommendations: This involves the formulation of findings, conclusions, and recommendations based on the analysis and synthesis of the empirical data, in order to address the research problem or question and contribute to the understanding and improvement of the law, its policies, and its practices.

Legal research is a critical skill for professionals engaged in the study and practice of law, as it enables them to identify, analyze, and interpret the laws, regulations, cases, and legal principles relevant to a specific issue or problem. Legal research can be divided into two main kinds: doctrinal research, which focuses on the analysis and interpretation of legal texts, and non-doctrinal research, which focuses on the study of law in its social, economic, political, and cultural context. Both kinds of legal research involve a systematic process of gathering, organizing, evaluating, and synthesizing information from diverse sources, in order to build strong arguments, make well-informed decisions, and contribute to the development and improvement of the law and the legal system.

4.2 IMPORTANCE OF LEGAL RESEARCH

Legal research is a fundamental skill for lawyers, judges, academics, policymakers, and other professionals engaged in the study and practice of law. It

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plays a crucial role in various aspects of legal work, such as litigation, legislation, policy development, legal education, and legal scholarship. The importance of legal research can be explained through the following points:

Identification of applicable laws and legal authorities: Legal research helps professionals identify the relevant statutes, case law, regulations, and other legal authorities that govern a particular legal issue or problem. This enables them to determine the applicable legal rules and principles, interpret their meanings and scope, and understand their implications for the parties involved.

Development of legal arguments and strategies: Legal research allows professionals to analyze and synthesize information from diverse sources, in order to construct coherent, logical, and persuasive legal arguments and strategies. This is essential for effective advocacy, negotiation, and dispute resolution, as well as for the formulation of sound legal opinions and advice.

Staying informed about legal developments: Legal research enables professionals to stay abreast of the latest developments in the law, such as new legislation, judicial decisions, and policy changes. This is important for maintaining professional competence, adapting to changes in the legal environment, and providing timely and accurate legal services to clients and stakeholders.

Enhancing the quality of legal decision-making: Legal research contributes to the quality of legal decision-

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making by providing professionals with the necessary information, analysis, and insights to make well-informed and reasoned judgments. This is particularly important for judges, who are responsible for interpreting and applying the law to resolve disputes and ensure justice.

Promoting the development and improvement of the law: Legal research supports the development and improvement of the law by identifying gaps, inconsistencies, and ambiguities in the legal system, as well as by proposing new ideas, theories, and solutions to address them. This is essential for the advancement of legal knowledge, the refinement of legal doctrines, and the achievement of legal reform.

Facilitating legal education and scholarship: Legal research is a key component of legal education and scholarship, as it enables students and scholars to engage with the existing body of legal knowledge, develop critical thinking and analytical skills, and contribute to the production of new legal knowledge and understanding.

Fostering public understanding and trust in the legal system: Legal research helps professionals communicate the law and its complexities to the public in a clear and accessible manner. This fosters public understanding and trust in the legal system, which is essential for the legitimacy and effectiveness of the law and its institutions.

Supporting policy development and evaluation:

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Legal research assists policymakers in identifying and assessing the legal, social, economic, and political implications of different policy options, as well as in evaluating the effectiveness and impact of existing policies. This is crucial for evidence-based policy-making and the promotion of good governance and public welfare.

Legal research is a vital skill for professionals engaged in the study and practice of law, as it enables them to identify, analyze, and interpret the laws, regulations, cases, and legal principles relevant to a specific issue or problem. The importance of legal research is evident in its contribution to various aspects of legal work, such as litigation, legislation, policy development, legal education, and legal scholarship. By enhancing the quality of legal decision-making, promoting the development and improvement of the law, and fostering public understanding and trust in the legal system, legal research plays a critical role in the pursuit of justice, the protection of individual rights, and the advancement of the rule of law.

4.3 SOURCES OF LEGAL RESEARCH

Legal research involves the use of various sources to identify, analyze, and interpret the laws, regulations, cases, and legal principles relevant to a specific issue or problem. These sources can be broadly categorized into primary sources, secondary sources, and tertiary sources.

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Primary Sources

Primary sources of law are the authoritative and original documents that contain the text of the law itself. They are legally binding and include:

- a. **Statutes and Legislation:** Statutes are laws enacted by the legislative branch of government. They include acts, codes, and regulations that provide the general rules and principles governing a particular subject matter. Statutes can be found in official gazettes, session laws, and codified law compilations.
- b. **Case Law:** Case law refers to the written decisions of courts and tribunals that interpret and apply the law to specific disputes. These decisions serve as precedents that guide and shape the development of the law. Case law can be found in official law reports, unofficial law reports, and online databases, such as Westlaw and LexisNexis.
- c. **Constitutions:** Constitutions are the supreme law of a country, establishing the fundamental principles, structures, and powers of the government, as well as the rights and duties of citizens. Constitutions can be found in official publications, legal databases, and government websites.

Secondary Sources:

Secondary sources of law are materials that explain,

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analyze, and comment on the primary sources of law. They are not legally binding but provide valuable insights and guidance for legal research. Secondary sources include:

- a. Legal Commentaries and Treatises:** Legal commentaries and treatises are scholarly works that provide in-depth analysis and interpretation of the law. They can help researchers understand the historical context, policy objectives, and practical implications of the law, as well as identify and resolve legal issues and controversies.
- b. Law Journals and Law Reviews:** Law journals and law reviews are periodicals that publish articles, essays, and notes written by legal scholars, practitioners, and students. They cover a wide range of legal topics and often provide the latest research, analysis, and critique of the law.
- c. Legal Encyclopedias and Dictionaries:** Legal encyclopedias and dictionaries provide concise definitions, explanations, and overviews of legal terms, concepts, and principles. They serve as useful reference tools for clarifying legal terminology and understanding the basic elements of the law.
- d. Restatements and Model Codes:** Restatements and model codes are compilations of legal rules and principles that aim to simplify, modernize, and harmonize the law. They are prepared by expert committees and serve as influential guides for the interpretation and reform of the law.

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Tertiary Sources:

Tertiary sources of law are materials that help researchers locate and use the primary and secondary sources of law. They include:

- a. Legal Citations and Indexes:** Legal citations and indexes are tools that help researchers identify, organize, and retrieve the relevant primary and secondary sources of law. They include citation manuals, such as The Bluebook and the ALWD Citation Manual, as well as legal indexes, such as the Index to Legal Periodicals and the Legal Resource Index.
- b. Legal Research Guides and Manuals:** Legal research guides and manuals are resources that provide instructions, tips, and strategies for conducting legal research. They cover various aspects of legal research, such as research methodologies, techniques, and tools, as well as the use of electronic and print resources.
- c. Legal Bibliographies and Databases:** Legal bibliographies and databases are collections of legal materials that facilitate the search and retrieval of the primary and secondary sources of law. They include general legal databases, such as Westlaw and LexisNexis, as well as specialized databases, such as HeinOnline and JSTOR, that focus on specific areas of law or types of materials.

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Legal research involves the use of various sources to identify, analyze, and interpret the laws, regulations, cases, and legal principles relevant to a specific issue or problem. Primary sources of law, such as statutes, case law, and constitutions, provide the authoritative and legally binding texts of the law itself. Secondary sources of law, such as legal commentaries, law journals, and legal encyclopedias, offer insights and guidance on the interpretation and application of the primary sources of law. Tertiary sources of law, such as legal citations, research guides, and databases, help researchers locate and use the primary and secondary sources of law effectively and efficiently. Familiarity with these sources and their proper use is essential for conducting thorough and accurate legal research, developing strong legal arguments, and contributing to the advancement of legal knowledge and understanding.

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4.4 TECHNIQUES OF LEGAL RESEARCH

CITATIONS, BIBLIOGRAPHY AND FOOTNOTING

Techniques of Legal Research

There are several techniques for conducting effective legal research. The following are some key techniques:

- a) **Issue Identification:** Begin by identifying the legal issue(s) to be researched. Break down complex issues into specific, manageable questions.
- b) **Preliminary Research:** Conduct a preliminary search to gather background information on the issue(s). Use tertiary sources, such as legal encyclopedias, dictionaries, and research guides, to gain a basic understanding of the subject matter.
- c) **Keyword Development:** Develop a list of relevant keywords and phrases related to the legal issue(s). These keywords will help you effectively search for primary and secondary sources in legal databases, indexes, and catalogs.
- d) **Comprehensive Research:** Perform a comprehensive search using primary and secondary sources to locate relevant statutes, regulations, cases,

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and legal authorities. Use legal databases, such as Westlaw, LexisNexis, and HeinOnline, as well as print resources, such as law libraries and law reviews.

- e) **Updating and Validating Authorities:** Ensure that the legal authorities you have identified are current and valid. Use citators, such as KeyCite and Shepard's, to check for the status of cases, statutes, and regulations, as well as to locate subsequent authorities that cite or discuss them.
- f) **Analyzing and Synthesizing Information:** Analyze and synthesize the information obtained from primary and secondary sources. This involves evaluating the relevance, weight, and persuasiveness of the authorities, as well as identifying gaps, inconsistencies, and conflicts in the law.
- g) **Organizing and Outlining:** Organize and outline the results of your research, focusing on the key authorities, legal principles, and arguments that support your position or answer your research question(s). This will help you structure your legal writing and present your findings in a clear and logical manner.

Citations, Bibliography, and Footnoting

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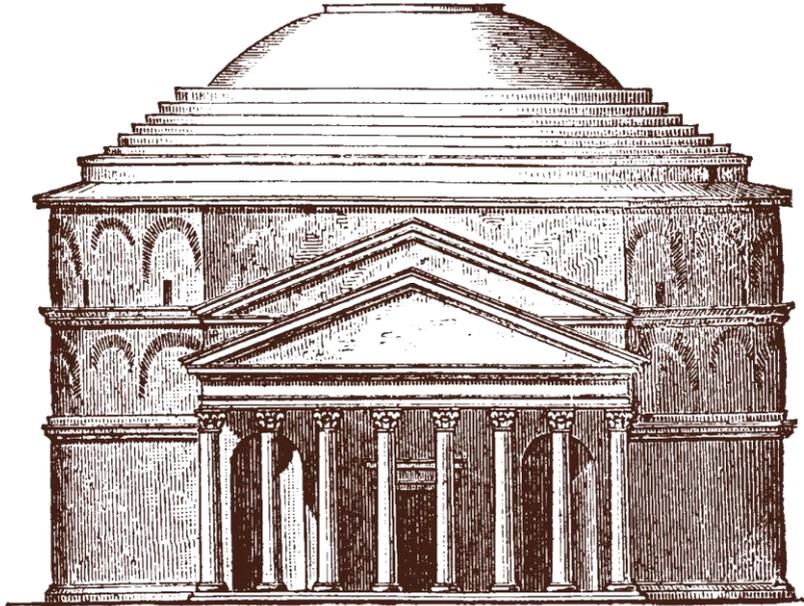
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**SYLLABUS, PRESENTING THEM IN A
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MANNER TO FOSTER A DEEP
UNDERSTANDING OF LEGAL
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REQUIRED CASE READINGS

CASE BRIEFS AND ANALYSIS

1. NAVTEJ SINGH JOHAR V. UNION OF INDIA, AIR 2018 SC 4321
2. JOSEPH SHINE V. UNION OF INDIA, 2018 SC 1676
3. REGINA V. DUDLEY AND STEPHENS, 14 Q. B. D 274.
4. SURESH KUMAR KAUSHAL V. NAZ FOUNDATION AND OTHERS, AIR 2014 SC 563
5. RATANLAL ALIAS BABULAL CHUNILAL SAMBUKA V. SUMDARABAL, AIR 2017 SC 5797
6. UNION OF INDIA AND ANOTHER V. RAGHUBIR SINGH (DEAD) THROUGH LRS, (1989) 2 SCC754
7. IN RE DELHI LAWS ACT, AIR 1951 SC 332
8. ADM JABALPUR V. SHIVKANT SHUKLA, AIR 1976 SC 1207
9. A.K. KRAIPAK V. UNION OF INDIA, AIR 1950 SC 150
10. H.L. TREHAN V. UNION OF INDIA, AIR 1989 SC 568
11. MENAKA GANDHI V. UNION OF INDIA, AIR 1978 SC 597

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12. L.CHANDRA KUMAR V. UNION OF INDIA,
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13. UNION OF INDIA V. R. GANDHI, (2010) 11
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14. RAM JAWAYA V. STATE OF PUNJAB, AIR
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1.

NAVTEJ SINGH JOHAR V. UNION OF INDIA

AIR 2018 SC 4321

Facts in Brief

The case of Navtej Singh Johar v. Union of India is a landmark judgment in the history of India's constitutional jurisprudence. The case was brought before the Supreme Court of India by a group of petitioners, led by Navtej Singh Johar, a renowned classical dancer and choreographer. The petitioners, all members of the LGBTQ+ community, challenged the constitutional validity of Section 377 of the Indian Penal Code (IPC), a colonial-era law that criminalized "carnal intercourse against the order of nature," effectively making homosexuality a criminal offense.

The petitioners argued that Section 377 violated their fundamental rights to equality, non-discrimination, freedom of expression, and life and personal liberty, as enshrined in the Constitution of India. They contended that the law was discriminatory, stigmatizing, and led to the marginalization and persecution of individuals based on their sexual orientation.

Issues

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The primary issue before the court was whether Section 377 of the IPC was constitutionally valid. The court had to consider whether the law violated the fundamental rights of the petitioners and the larger LGBTQ+ community. The court also had to address the question of whether sexual orientation was an integral part of an individual's identity and whether the state had the right to criminalize consensual sexual activity between adults of the same sex.

Arguments

The petitioners argued that Section 377 violated their constitutional rights to equality (Article 14), non-discrimination (Article 15), freedom of expression (Article 19), and life and personal liberty (Article 21). They contended that the law was based on outdated moral notions and stereotypes, which had no place in a modern, inclusive society. They argued that sexual orientation was an inherent aspect of their identity and that the state had no right to criminalize their consensual sexual conduct.

The respondents, on the other hand, defended the law, arguing that it served to protect societal morality. They contended that the law did not discriminate against individuals but rather criminalized certain acts deemed against the order of nature.

Held

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The Supreme Court, in a historic judgment, decriminalized homosexuality by striking down parts of Section 377 of the IPC. The court held that the law was unconstitutional to the extent that it criminalized consensual sexual conduct between adults of the same sex. The court recognized that sexual orientation was an integral part of an individual's identity and that discrimination on the basis of sexual orientation was a violation of fundamental rights.

The court emphasized the principles of constitutional morality, stating that societal morality could not be used to violate the fundamental rights of even a single individual. The court affirmed that the Constitution of India is an inclusive document that respects diversity and does not permit discrimination on the basis of sexual orientation.

The court also acknowledged the harm caused by Section 377, noting that the law had not only criminalized certain acts but had also reinforced stereotypes and led to the marginalization and persecution of the LGBTQ+ community. The court held that members of the LGBTQ+ community were entitled to live a life of dignity and equality, free from discrimination and prejudice.

Legal principles with relevant sections:

The case discusses the history and principles behind the creation of the Indian Penal Code, which includes Section

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377. It mentions that the Code was intended to be precise and easily understood. It also mentions that the Code was meant to be a version of the English criminal law, free from technicalities and superfluities, and modified to suit the circumstances of British India.

Obiter dictum :

The case contains an obiter dictum regarding the application of Section 377. It states that if Section 377 continues to penalize certain sexual intercourse between consenting adults, it would result in an anomalous position. The case also mentions that if Section 377 is read down to not apply to certain types of consensual sex, it would continue to apply only to homosexual sex, which would be a violation of Article 14 of the Indian Constitution.

Important para from judgement :

The concludes by stating that the provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality. It also states that the judgment in Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors. is overruled.

Subsequent Impact :

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The case discusses the impact of the judgment on societal norms and expectations. It criticizes the stereotypical understanding of the roles of the sexes and emphasizes the importance of individual autonomy in choosing a life partner. It also discusses the impact of the judgment on the understanding of discrimination and the constitutional guarantee against discrimination in Article 15(1). The case also mentions the impact of the judgment on the interpretation of Section 377 and its application to different types of sexual intercourse.

2.

JOSEPH SHINE V. UNION OF INDIA

2018 SC 1676

Facts in Brief

The case of Joseph Shine v. Union of India is a landmark judgment in the history of India's constitutional jurisprudence. The case was brought before the Supreme Court of India by Joseph Shine, a non-resident Indian from Kerala. The petitioner challenged the constitutional validity of Section 497 of the Indian Penal Code (IPC), a colonial-era law that criminalized adultery.

Section 497 of the IPC made it an offense for a man to have sexual intercourse with a married woman without the consent or connivance of her husband. However, the law did not confer any right upon women to prosecute

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their husbands for adultery. The petitioner argued that this law was discriminatory and violated the fundamental rights to equality, non-discrimination, and life and personal liberty, as enshrined in the Constitution of India.

Issues

The primary issue before the court was whether Section 497 of the IPC was constitutionally valid. The court had to consider whether the law violated the fundamental rights of the petitioner and the larger community. The court also had to address the question of whether the law was discriminatory against women and whether it was based on outdated notions of marital fidelity and gender stereotypes.

Arguments

The petitioner argued that Section 497 violated their constitutional rights to equality (Article 14), non-discrimination (Article 15), and life and personal liberty (Article 21). They contended that the law was discriminatory against women, as it did not allow them to prosecute their husbands for adultery. They also argued that the law was based on outdated notions of marital fidelity and gender stereotypes, which had no place in a modern, inclusive society.

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The respondents, on the other hand, defended the law, arguing that it served to protect the institution of marriage and the sanctity of the marital bond. They contended that the law was necessary to prevent the breakdown of marriages and to uphold societal morality.

Held

The Supreme Court, in a historic judgment, struck down Section 497 of the IPC as unconstitutional. The court held that the law was discriminatory against women and violated their fundamental rights to equality, non-discrimination, and life and personal liberty. The court recognized that the law was based on outdated notions of marital fidelity and gender stereotypes, which had no place in a modern, inclusive society.

The court emphasized the principles of constitutional morality, stating that societal morality could not be used to violate the fundamental rights of even a single individual. The court affirmed that the Constitution of India is an inclusive document that respects diversity and does not permit discrimination on any grounds.

The court also acknowledged the harm caused by Section 497, noting that the law had not only criminalized certain acts but had also reinforced stereotypes and led to the marginalization and persecution of women. The court held that women were entitled to live a life of dignity and equality, free from discrimination and prejudice.

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Legal principles with relevant sections:

The judgement in the case of Joseph Shine vs Union Of India was based on the interpretation of several legal principles and constitutional provisions. The most relevant sections are:

- a) **Article 14 of the Constitution:** This article guarantees equality before the law and equal protection of the laws within the territory of India. The court found that Section 497 of the IPC was discriminatory and violated the equality principle enshrined in Article 14.
- b) **Article 15 of the Constitution:** This article prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The court held that Section 497 discriminated against women, thus violating Article 15.
- c) **Article 21 of the Constitution:** This article guarantees the right to life and personal liberty. The court held that Section 497 infringed upon the personal liberty of individuals.

Obiter dictum:

Obiter dictum refers to a judge's incidental expression of opinion, not essential to the decision and not establishing

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precedent. In this case, the court made several obiter dicta, including observations about the changing societal values, the need for laws to reflect these changes, and the importance of personal autonomy and dignity.

Important para from judgement:

One of the important paragraphs from the judgement is:

"The right to live with dignity includes the right not to be subjected to public censure and punishment by the State except where absolutely necessary. In order to determine what conduct requires State interference through criminal sanction, the State must consider whether the civil remedy will serve the purpose. Where a civil remedy for a wrongful act is sufficient, it may not warrant criminal sanction by the State."

Subsequent Impact of the judgement:

The judgement had a significant impact on the legal landscape in India. It decriminalized adultery, thereby changing the way the law interacts with personal relationships and marital affairs. It also reinforced the principles of equality and personal liberty, emphasizing that laws which infringe upon these principles cannot stand in the face of constitutional scrutiny. The judgement has been hailed as a step forward in the recognition of women's rights and personal autonomy

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3.

REGINA V. DUDLEY AND STEPHENS

(1884) 14 QBD 273 (DC)

1) Facts in brief

In July 1884 the yacht *Mignonette* foundered in the South Atlantic. Four crew—Tom Dudley (captain), Edwin Stephens (mate), Edmund Brooks (able seaman), and Richard Parker (a 17-year-old cabin boy)—escaped in a 13-foot dinghy with scant provisions: two 1-lb tins of turnips and, later, a small turtle. By the eighteenth day adrift they had been seven days without food and five without water; the boat was “probably more than 1000 miles from land.” On 24 July Dudley proposed casting lots to sacrifice one life to save the rest; Brooks refused and Parker was not consulted. On 25 July, with no sail in sight and fearing imminent death, Dudley (with Stephens’s assent) cut Parker’s throat. The three survivors fed on his body for four days until rescue. A special verdict found that, absent cannibalism, they would “probably not have survived,” that Parker—being much weaker—was “likely to have died before them,” and that there was “no greater necessity for killing the boy than any of the other three.” They were brought to Exeter Assizes, where the jury returned the special verdict for the Queen’s Bench Division to determine the law.

2) Issues

1. **Necessity as a defence to murder:** Whether

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extreme hunger and peril at sea can constitute “necessity” justifying the intentional killing of an innocent person to preserve the killers’ lives.

2. **Scope of self-defence vs. necessity:** Whether any common-law justification for private homicide extends beyond self-defence against unlawful violence.
3. **Jurisdiction and procedure:** (a) Whether the High Court (QBD) had jurisdiction over a homicide on the high seas involving British seamen; (b) whether technical objections to the special verdict/record (e.g., need for certiorari) defeated the Crown’s case.
4. **Standard for “choosing” a victim:** Whether any lawful rule could permit a life-valuation calculus (e.g., by lots or “weakest first”) in such emergencies.

3) Arguments

For the Crown (Sir H. James, A-G)

- **No necessity defence to private homicide:** Justification for killing by a private person exists only in self-defence against the victim’s violence or to avert a grave crime; starvation is not such a case.
- **Policy and principle:** Admitting a necessity excuse would be “dangerous” and “opposed to...

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legal principle,” inviting subjective, self-serving valuations of life. (The court itself described the proposition as “dangerous, immoral, and opposed to all legal principle and analogy.”)

- **Jurisdiction proper:** Post-Judicature Act 1873, assize courts are part of the High Court; homicide by British seamen “either ashore or afloat, out of Her Majesty’s dominions” is triable as if within Admiralty—per 17 & 18 Vict. c.104, s.267 (Merchant Shipping Act 1854).

For the Prisoners (A. Collins, Q.C.)

- **Necessity (self-preservation) should excuse:** Cited Stephen’s *Digest and History of the Criminal Law*, the “single plank” hypotheticals, and *US v Holmes* (1842) to argue an “inevitable necessity” to kill Parker as the only chance to avert the deaths of all.
- **Mens rea and moral compulsion:** The intent was not malice but preservation of life under extreme duress of circumstances; the choice targeted the weakest, already dying, making the act (they argued) a tragic necessity rather than murder.
- **Procedural/jurisdictional objections:** Challenged aspects of the special verdict and the need for certiorari; argued uncertainty about Admiralty jurisdiction. (All ultimately rejected.)

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4) Held

The Queen's Bench Division (Lord Coleridge C.J. delivering the judgment; a full court concurring) held that **“necessity” is no defence to a charge of murder** where the defendants intentionally kill an innocent person to save their own lives. On the special verdict returned by the jury, Dudley and Stephens were **guilty of murder**. The court pronounced the then **mandatory sentence of death**, which the Executive later **commuted to six months' imprisonment**. The court also rejected all technical objections: the case was properly before the High Court on a special verdict; jurisdiction lay to try British seamen for homicide committed on the high seas; and no “custom of the sea” could legalize private homicide.

5) Legal principles with relevant sections

(A) Murder and justification at common law)

- **Common-law offence:** Murder was (and is, in England and Wales) a common-law offence without statutory definition.
- **No private-law “necessity” to kill:** The court laid down a categorical rule that **self-preservation does not justify the intentional killing of an innocent**. Any

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justification for homicide must rest on **self-defence** (repelling unlawful violence) or other limited public-law justifications (e.g., lawful acts of war), none of which applied.

- **Moral calculus rejected:** The law **does not permit life-valuation or utilitarian balancing** by private persons (e.g., “weakest first,” drawing lots). Choosing one victim to save more lives is not a legal defence.

(B) Burden and standard)

- **Burden on the Crown:** As always, the prosecution must prove murder beyond reasonable doubt; however, even if necessity is proved, it is **legally irrelevant** to liability for murder (i.e., it negates neither intent nor unlawfulness).

(C) Jurisdiction and procedure — statutory backdrop referenced in the judgment)

- **Admiralty/High seas jurisdiction:** Homicides by British subjects “afloat, out of Her Majesty’s dominions” were triable in England under the **statutory extension of Admiralty jurisdiction** then in force (e.g., **Merchant Shipping Act 1854, s. 267**, and cognate Admiralty jurisdiction statutes).
- **Judicature Acts:** Assize courts were branches of the **High Court of Justice** under the

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Judicature Act 1873, making the special verdict properly returnable to the Queen's Bench Division for judgment.

(D) Comparative touchpoint for Indian readers (useful analogues, not applied by the English court)

- **IPC §81 (necessity/lesser harm)** recognizes acts done without criminal intent to avert greater harm, but **does not authorize intentionally killing an innocent**.
- **IPC §§96–106 (private defence)** justify harm—including **lethal force only against unlawful aggression** within the section's limits; they **do not extend** to killing an innocent non-aggressor to save oneself.

These analogues show why Indian courts, like Dudley, would treat the killing as murder (no Exception to §300 IPC applies).

6) Obiter dictum

While the core ratio is categorical, the court made influential observations:

- **Sanctity of life and the rule of law:** If necessity excused murder, courts would be licensing **subjective, self-interested judgments** about whose life is expendable,

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undermining equal protection of life.

- **“Hard cases” not for private choice:** The judges acknowledged the **extreme temptation** and tragic facts, but insisted that the law’s protection must not bend to expediency: once private balancing is allowed, **“no limit”** can be drawn.
- **No endorsement of lotteries/custom:** Even a **lottery** would not convert homicide into a lawful act; alleged maritime “customs” yield to the criminal law.
- **Limits of hypothetical reasoning:** The court declined to found law on far-fetched hypotheticals (e.g., the “single plank” scenario), emphasizing that **clear rules** must govern even in emergencies.

7) Important para from judgment

A widely taught passage encapsulates the court’s stance (short excerpt):

“To preserve one’s life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it.”

In context, the paragraph explains that **private persons may not take an innocent life as a “lesser evil.”** The law demands constancy: **temptation does not create a licence to kill**, and allowing a necessity

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defence in such cases would be “dangerous” because **no neutral principle** could tell courts when the balance tips.

8) Impact of the judgment

Immediate impact:

- Fixed the **common-law position** that **necessity is not a defence to murder**, a rule repeatedly cited in England and across common-law jurisdictions.
- Demonstrated the judiciary’s insistence on **equal valuation of lives** and hostility to private utilitarian trade-offs in criminal law.

Doctrinal afterlife in England & beyond:

- **R v Howe [1987] AC 417 (HL):** Confirmed that **duress** (another compulsion doctrine) is **no defence to murder**, invoking Dudley’s moral foundation.
- **R v Gotts [1992] 2 AC 412:** Extended Howe to **attempted murder**.
- **Southwark LBC v Williams [1971] 1 Ch 734:** Lord Denning warned that a broad defence of necessity would “open a door” to anarchy—an echo of Dudley’s policy concern.

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- **Re A (Conjoined Twins) [2001] Fam 147 (CA):** A rare **qualified departure**: the court permitted separation surgery (killing one twin to save the other) under a **narrow “necessity” doctrine** grounded in **inevitable harm, absence of choice, and proportionality**. Crucially, the judges **distinguished** Dudley: doctors were **not selecting an innocent to kill**, but **averting an otherwise inevitable double death** under medical/legal duties.

Comparative notes (India & Commonwealth):

- **India:** Courts treat §81 IPC **narrowly**; it cannot justify **intentional homicide of an innocent**. The **private defence** chapter likewise bars lethal force against non-aggressors. Dudley is frequently cited in criminal-law classrooms to illustrate **the limits of necessity** under the IPC.
- **Canada (Perka v The Queen, 1984):** Recognized a **limited defence of necessity** in general, but the logic tracks Dudley in treating **intentional killing of innocents as effectively outside** the defence.
- **United States:** Lifeboat/necessity discussions (e.g., **United States v Holmes**, 1842) and many state doctrines align with Dudley’s caution against **utilitarian killings**.

Normative significance for students:

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- Dudley teaches that **criminal law draws bright lines** around life-taking: **some choices remain unlawful even under extremity.**
- It is a foundational case for distinguishing **excuse (duress/necessity)** from **justification (self-defence)** and for underscoring that **policy concerns—administrability, equality, abuse risk—shape criminal defences** as much as morality.

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4.

SURESH KUMAR KAUSHAL V. NAZ FOUNDATION AND OTHERS

AIR 2014 SC 563

Facts in Brief

The case of Suresh Kumar Kaushal v. NAZ Foundation and Others was a significant case in the Indian legal history that dealt with the constitutionality of Section 377 of the Indian Penal Code (IPC). Section 377 criminalized sexual activities "against the order of nature," which was interpreted to include homosexual activities.

The NAZ Foundation, an NGO working on HIV/AIDS and sexual health issues, filed a petition in the Delhi High Court challenging the constitutionality of Section 377. The High Court ruled in favor of the NAZ Foundation, stating that Section 377 was violative of Articles 14, 15, and 21 of the Indian Constitution.

However, this decision was appealed in the Supreme Court by Suresh Kumar Kaushal and others, leading to the case in question.

Issues

The primary issue before the Supreme Court was whether Section 377 of the IPC was constitutionally valid. The court had to consider whether the law violated the

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fundamental rights of the petitioner and the larger community. The court also had to address the question of whether the law was discriminatory against the LGBTQ+ community and whether it was based on outdated notions of sexual morality.

Arguments

The petitioners argued that Section 377 was necessary to uphold public morality and societal norms. They contended that the law was not discriminatory as it did not target a particular group or identity but merely identified certain acts which, if committed, would constitute an offense.

On the other hand, the respondents (NAZ Foundation and others) argued that Section 377 violated the constitutional rights to equality, non-discrimination, and life and personal liberty. They contended that the law was discriminatory against the LGBTQ+ community and was based on outdated notions of sexual morality.

Held

The Supreme Court, in a controversial decision, overturned the Delhi High Court's ruling and upheld the constitutionality of Section 377. The court held that Section 377 does not criminalize a particular people or identity or orientation but merely identifies certain acts

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which if committed would constitute an offense. The court also stated that the law does not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of the High court is legally unsustainable.

The court also held that the issue of whether Section 377 should remain in the statute book is a matter for the legislature to decide, not the judiciary. This decision was later overturned in the case of Navtej Singh Johar v. Union of India, where the Supreme Court decriminalized homosexuality.

Legal principles with relevant sections

The judgment in the case of Suresh Kumar Koushal & Anr vs Naz Foundation & Ors revolves around the interpretation of Section 377 of the Indian Penal Code (IPC). This section criminalizes sexual activities "against the order of nature," which was interpreted to include homosexual activities. The Delhi High Court had previously decriminalized such activities among consenting adults, but this decision was challenged in the Supreme Court.

The Supreme Court, in its judgment, reinstated Section 377 IPC, stating that it is the Parliament's job to decide on keeping, amending, or deleting the law. The Court held that the Delhi High Court had overstepped its boundaries by striking down the law. The Court also stated that a minuscule fraction of the country's population

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constitutes LGBT, and the mere existence of a right does not mean that it should be enforced.

Obiter dictum

In the judgment, the Supreme Court made an obiter dictum, which is an opinion or remark made by a judge that does not directly involve the facts of the case and does not have binding authority. The Court stated that the LGBT community makes up only a minuscule fraction of the total population, and that the High Court had erroneously relied upon international precedents in its anxiety to protect the so-called rights of LGBT persons.

Important para from judgement

One of the important paragraphs from the judgment is:

“It is clear that Section 377 IPC, whatever its present pragmatic application, was not enacted keeping in mind instances of child sexual abuse or to fill the lacuna in a rape law. It was based on a conception of sexual morality specific to Victorian era drawing on notions of carnality and sinfulness. In any way, the legislative object of protecting women and children has no bearing in regard to consensual sexual acts between adults in private. The second legislative purpose elucidated is that Section 377 IPC serves the cause of public health by criminalizing the homosexual behavior. As already held, this purported

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legislative purpose is in complete contrast to the averments in NACO's affidavit. NACO has specifically stated that enforcement of Section 377 IPC adversely contributes to pushing the infliction underground, make risky sexual practices go unnoticed and unaddressed. Section 377 IPC thus hampers HIV/AIDS prevention efforts. Lastly, as held earlier, it is not within the constitutional competence of the State to invade the privacy of citizen's lives or regulate conduct to which the citizen alone is concerned solely on the basis of public morals. The criminalization of private sexual relations between consenting adults absent any evidence of serious harm deems the provision's objective both arbitrary and unreasonable. The state interest "must be legitimate and relevant" for the legislation to be non-arbitrary and must be proportionate towards achieving the state interest. If the objective is irrational, unjust and unfair, necessarily classification will have to be held as unreasonable. The nature of the provision of Section 377 IPC and its purpose is to criminalise private conduct of consenting adults which causes no harm to anyone else. It has no other purpose than to criminalise conduct which fails to conform with the moral or religious views of a section of society. The discrimination severely affects the rights and interests of homosexuals and deeply impairs their dignity."

Subsequent Impact of the judgement

The judgment of Suresh Kumar Koushal & Anr vs Naz

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Foundation & Ors had a profound impact on the LGBTQ+ community in India and the discourse around their rights. The decision to uphold Section 377 of the IPC was seen as a significant setback for the rights of the LGBTQ+ community, as it effectively recriminalized homosexuality in India.

The judgment was met with widespread criticism from various quarters. Human rights organizations, both within India and internationally, condemned the decision. The judgment was seen as a violation of the fundamental rights of a significant section of Indian society. It was argued that the decision was a step backward in the ongoing struggle for equal rights for all, regardless of sexual orientation.

However, the judgment also sparked a renewed debate about the rights of the LGBTQ+ community in India. It brought the issue of LGBTQ+ rights to the forefront of public discourse, leading to increased visibility and awareness about the community and their struggles. The judgment also galvanized the LGBTQ+ community and their allies, leading to increased activism and advocacy for LGBTQ+ rights.

In the legal sphere, the judgment was criticized for its interpretation of the law and its understanding of constitutional principles. It was argued that the judgment failed to uphold the principles of equality, non-discrimination, and dignity enshrined in the Indian Constitution.

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The judgment also had implications for India's international standing. The decision was seen as contrary to the global trend towards recognizing and protecting the rights of the LGBTQ+ community. It was argued that the judgment put India out of step with many of its international peers, many of whom have decriminalized homosexuality and taken steps to protect the rights of the LGBTQ+ community.

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5.

**RATANLAL ALIAS BABULAL CHUNILAL
SAMUKA V. SUMDARABAL**

AIR 2017 SC 5797

Facts in brief

The case of Ratanlal alias Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka (D.) Th. Lrs. and Ors. revolves around the issue of adoption within the Jain community in India. The appellant, Ratanlal alias Babulal Chunilal Samsuka, claimed to be the adopted son of late Govardhandas Laxmichand Samsuka. Ratanlal's biological father was Chunilal Laxmichand, who was the brother of Govardhandas. After the death of his biological father in 1972, Ratanlal moved to Nasik to continue his education while living with Govardhandas at his residence.

Govardhandas used to carry on a business of timber in the name of defendant No. 5 initially and later he inducted into business the appellant and defendant Nos. 2 to 4 as partners. After the death of Govardhandas his wife Sundarabai, who is the original plaintiff in the suit, was also taken as a partner. When the other partners failed to give her share in the business, she issued notice to all the partners to give accounts of the 5th defendant partnership firm and also to pay the amount of her share.

In 1984, the wife and children of Chunilal issued a notice to Sundarabai and the appellant, stating that the

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appellant was the adopted son of late Govardhandas and as such he cannot claim any share in his natural family. They further sought for partition of the joint family properties. Sundarabai issued a reply notice denying the factum of adoption and thereafter filed the present suit i.e. Special Civil Suit No. 395/1987 for dissolution and accounts of defendant No. 5 partnership firm and also sought for a declaration that the appellant is not the adopted son of late Govardhandas. During the pendency of the suit, Sundarabai died and her daughters were brought on record.

Issues

The main issue in the case was whether Ratanlal was the adopted son of late Govardhandas. The appellant claimed that he was adopted by Govardhandas and Sundarabai, and the adoption ceremony was performed by a priest named Chaturbuj Sharma. The ceremony was allegedly attended by 100 to 200 people, and photographs were taken at the time of the ceremony. The appellant also claimed that there was no bar in their Jain community for the adoption of a married son or concerning the age of the adopted son.

On the other hand, Sundarabai and her daughters denied the factum of adoption. They argued that the appellant continued to use his earlier name without adopting the name of the adopted father, even after the alleged adoption. They also pointed out that the appellant's

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income tax returns after 1973 indicated that he continued to use his earlier name.

Arguments

The appellant argued that he was adopted by Govardhandas and Sundarabai, and the adoption ceremony was performed by a priest named Chaturbuj Sharma. The ceremony was allegedly attended by 100 to 200 people, and photographs were taken at the time of the ceremony. The appellant also claimed that there was no bar in their Jain community for the adoption of a married son or concerning the age of the adopted son.

On the other hand, Sundarabai and her daughters denied the factum of adoption. They argued that the appellant continued to use his earlier name without adopting the name of the adopted father, even after the alleged adoption.

Held

The High Court of Judicature at Bombay, in First Appeal No. 1662 of 1996, dated 22.12.2006, partly allowed the appeal by setting aside the judgment of the trial court and declared that the 1st defendant, who is the appellant herein, was not the adopted son of late Govardhandas Laxmichand Samsuka. Consequently, the appellant herein was permanently restrained from representing himself as the son of Govardhandas and further

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restrained him from naming himself as Ratanlal Govardhandas Samsuka.

The High Court concluded that the appellant herein is not the adopted son as the conduct and circumstances surrounding the adoption are suspicious. The following circumstances have weighed with the High Court in coming to the conclusion that the factum of adoption was not proved with cogent evidence:

- a. Non-production of negatives of alleged photographs taken during the adoption ceremony.
- b. The photographs do not portray any ceremony being performed by the priest involving the appellant and his adoptive parents.
- c. The alleged adoption took place one day before the marriage of Asha (daughter of respondent), which casts shadow on the photographs taken during the ceremony.
- d. There was no evidence on record other than the oral testimony of one Chaturbuj Sharma that he performed the adoption ceremony as a priest.
- e. The appellant himself has contradicted the oral testimony of the alleged priest Chaturbuj Sharma concerning the ceremony of taking the appellant into the lap of Govardhandas.
- f. The letters exhibited to show the change of name do not cogently establish the adoption.

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- g. From the date of adoption up to filing the suit, the appellant continued to use his earlier name without adopting the name of the adopted father.
- h. The Income tax returns of the appellant after 1973 indicates that he continued to use his earlier name.

The High Court also observed that the appellant failed to prove that he was using his adoptive father's name after 1973. He further states that he was filing income tax returns in his earlier name 'Ratanlal Chunilal'. The High Court also noted that the appellant was unable to provide any other examples of adoption of a married person in the Jain community, which was a significant factor in the case.

Legal principles with relevant sections

The case of Ratanlal alias Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka (D.) Th. Lrs. and Ors. involves the interpretation of the Hindu Adoptions and Maintenance Act, 1956, particularly the definition of 'custom' under Section 3(a) of the Act.

The Act defines 'custom' as any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group, or family, provided that the rule is certain and not unreasonable or opposed to public policy. In the case of a rule applicable only to a family, it should not have been discontinued by the family.

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The court emphasized that customs, when pleaded, are mostly at variance with the general law, and therefore they should be strictly proved. The burden of proof for establishing a type of custom depends on the type and extent of usage. It must be shown that the alleged custom has the characteristics of a genuine custom, i.e., that it is accepted willfully as having the force of law, and is not a mere practice more or less common. The acts required for the establishment of customary law ought to be plural, uniform, and constant.

The court also referred to Section 10 of the Act, which provides the conditions for a valid adoption. However, the specific details of this section were not provided in the extracted text.

Obiter dictum

The court made several observations that can be considered as obiter dicta. For instance, the court noted that custom evolves by conduct, and it is therefore a mistake to measure its validity solely by the element of express sanction accorded by courts of law. The characteristic of the great majority of customs is that they are essentially non-litigious in origin. They arise not from any conflict of rights adjusted, but from practices prompted by the convenience of society. A judicial decision recognizing a custom may be relevant, but these are not indispensable for its establishment.

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The court also observed that when a custom is to be proved by judicial notice, the relevant test would be to see if the custom has been acted upon by a court of superior or co-ordinate jurisdiction in the same jurisdiction to the extent that justifies the court, which is asked to apply it, in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration.

Important para from judgement

One of the key paragraphs from the judgment is as follows:

"It is very much evident that the appellant in this case has failed to produce any evidence to prove that such practice has attained the status of general custom prevalent among the concerned community. Custom, on which the appellant is relying, is a matter of proof and cannot be based on a priori reasoning or logical and analogical deductions, as sought to be canvassed by the appellant herein. Hence the issue is answered against the appellant."

Subsequent Impact of the Judgement

The subsequent impact of the judgement in the case of Ratanlal alias Babulal Chunilal Samsuka v. Sundarabai

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Govardhandas Samsuka (D.) Th. Lrs. and Ors. is not explicitly mentioned in the document. However, the judgement's implications can be inferred based on the legal principles and observations made by the court.

The judgement reinforces the importance of strict proof when it comes to establishing a custom that deviates from the general law. It emphasizes that the burden of proof lies with the party asserting the existence of such a custom. This principle has significant implications for future cases where a party seeks to rely on a custom to justify a particular action or practice. It sets a high bar for the evidence required to establish a custom, which could discourage parties from making such claims without substantial proof.

Furthermore, the judgement underscores the importance of pleadings in a lawsuit. The court noted that parties are governed by their pleadings, and any evidence or proof adduced without proper pleading is of no consequence. This observation serves as a reminder for parties to ensure that their pleadings are comprehensive and accurately reflect their claims and defenses.

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6.

**UNION OF INDIA AND ANOTHER V.
RAGHUBIR SINGH (DEAD) THROUGH LRS**

(1989) 2 SCC754.

Facts in Brief:

The dispute arose from compulsory acquisition of land in Village Dhaka (Delhi). A Section 4 notification under the **Land Acquisition Act, 1894** issued on **13 November 1959**. The Collector made his **Section 11 award on 30 March 1963**; on reference under **Section 18**, the Additional District Judge enhanced compensation by **10 June 1968**. The landowners pursued a further appeal in the Delhi High Court. While that appeal was pending, Parliament introduced the **Land Acquisition (Amendment) Bill, 1982** on **30 April 1982**; the **Amendment Act, 1984 (Act 68 of 1984)** commenced on **24 September 1984**. On **6 December 1984**, the High Court, applying the 1984 amendments, raised both compensation components, including **solatium at 30%**. The Union of India appealed. Owing to conflicting Supreme Court views on the **retrospective reach of the 1984 amendments** (particularly **Section 30(2)** of the Amending Act), a two-Judge Bench referred the matter to a **five-Judge Constitution Bench**. The Constitution Bench (Pathak C.J., Venkataramiah, Mukharji, Ranganath Misra & S. Natarajan, JJ.) decided the reference on **16 May 1989**.

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2) Issues

1. **Transitional reach of enhanced solatium:** Whether, under **Section 30(2)** of the **Land Acquisition (Amendment) Act, 1984**, the **30% solatium (Section 23(2))** applies **irrespective of when** the Collector's or Court's award was made (i.e., to all appeals decided between **30-04-1982** and **24-09-1984** or thereafter), or **only** where the **underlying award** (Collector/Court) itself **fell between 30-04-1982 and 24-09-1984**.
2. **Stare decisis/bench strength:** In the face of conflicting two- and three-Judge decisions on Section 30(2), could a **two-Judge Bench** refer the matter to a **larger Bench**, and what is the **binding effect** of decisions of Benches of different strength under **Article 141**?
3. **Ancillary:** Whether the word **“such”** in the phrase **“any such award”** in Section 30(2) narrows the class of appellate orders entitled to the 30% solatium.

3) Arguments

Union of India (Appellants)

- **Narrow construction of Section 30(2):** The **enhanced solatium** is a **limited transitional benefit**. The phrase **“any such award”** restricts the benefit to cases where the **award of the Collector or of the Court** was **made between 30-04-1982 and 24-09-1984**, with appeals from **those awards**

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alone qualifying. Otherwise, outcomes would depend on the **fortuity of appellate delay**.

- **Legislative intent and administrability:** Parliament chose a **date-bounded window** (from Bill-introduction to commencement) and did **not** make the amendment generally retrospective; courts should not enlarge that window by treating **all pending appeals** as eligible.
- **Precedent discipline:** Given conflicting benches, the **proper course** was a **reference to a larger bench**; co-equal or smaller benches should not overrule earlier coordinate benches.

Respondents (Landowners)

- **Broad construction (appeal as continuation):** An appeal is a **continuation** of the original proceeding; therefore, **any order in appeal** made **after 30-04-1982** (and even disposals between **30-04-1982** and **24-09-1984**) should attract the amended **30% solatium** and higher interest, **even if the underlying award** pre-dated 30-04-1982. Reliance: **Bhag Singh v. Union Territory of Chandigarh (1985) 3 SCC 737** and **State of Punjab v. Mohinder Singh (1986) 1 SCC 365**.
- **Equitable rationale:** The amending scheme was remedial; landlosers whose appeals were live when legislative policy shifted should not be denied the benefit by **chance timing**.

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- **Objection to reference:** A two-Judge Bench, it was urged, should not have referred a question already settled by a **three-Judge Bench** (Bhag Singh).

4) Held

(A) On Section 30(2): the window is award-bound, not appeal-bound

- a) The Constitution Bench adopted the **narrow construction. Section 30(2)** extends the amended **30% solatium only** where the **award of the Collector (s.11) or of the Court on reference (s.23) was made between 30 April 1982 and 24 September 1984**; if the proceeding has moved to appeal, the benefit is given **at the appellate stage, but only when the underlying award falls within that window**. In substance, **“any such award”** means **awards made in that period**, and appeals must be **appeals against such awards**. The Court **approved K. Kamalajammanniavar v. SLAO (1985) 1 SCC 582** and **overruled Bhag Singh (1985) 3 SCC 737** and **Mohinder Singh (1986) 1 SCC 365**.
- b) “The words ‘any such award’... are intended to refer to awards... between 30 April, 1982 and 24 September, 1984.” (short excerpt)
- c) The Court stressed that Parliament did **not grant general retrospectivity**; expanding Section 30(2) to **all pending appeals** would make enhanced

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solatium hinge on “**fortuitous**” appellate timing, undermining the statute’s structured transition.

(B) On bench practice and Article 141: discipline in precedent

- a) A pronouncement of law by a **Division Bench binds a Bench of the same or smaller strength**; if a later Bench disagrees, the **proper course is reference to a larger Bench**. The Court also **recommended** that, to promote certainty, future decisions ordinarily be rendered by **Benches of at least three Judges**. The two-Judge Bench’s **reference** in this matter was **upheld** as proper.

5) Legal principles with relevant sections

(a) Transitional reach of the 1984 amendments (statutory construction)

- The Constitution Bench adopts a **text-anchored, window-limited** reading of **Section 30(2), Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984)**. The phrase “**any such award**” in Section 30(2) denotes **awards of the Collector or the Court made between 30 April 1982 and 24 September 1984**; only appeals **arising from those awards** share the benefit at the appellate

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stage. Parliament **did not** grant general retrospectivity to all pending appeals.

- The Court's reading is grounded in the **text of Section 30(2)** (transitional provisions) which expressly ties the enhanced **solatium under Section 23(2)** and **interest under Section 28** to awards/orders **made after 30 April 1982 and before commencement (24 September 1984)**, and uses the qualifier "**any such award**" to confine appellate orders to that cohort.

(b) Substantive compensation components (principal Act as amended)

- **Section 23(2), Land Acquisition Act, 1894** (as amended by **Section 15, Act 68 of 1984**) mandates **30% solatium** over market value, replacing the earlier 15%. The amendment took effect **24 September 1984**.
- **Section 28** (interest on excess awarded by court) and **Section 34** (interest where compensation unpaid/deposited) were also strengthened by Act 68 of 1984; Section **30(2)–(3)** regulates their **temporal application** to pending matters, carefully enumerating which cases in the pre-commencement interval receive the uplift.

(c) Precedent discipline under Article 141 (bench-strength rule)

- A pronouncement of law by a Division Bench

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binds a Bench of the same or smaller strength; if disagreement arises, **reference to a larger Bench** is the proper course. The Court adds an institutional recommendation that, to promote certainty, future decisions **ordinarily be by Benches of at least three Judges.**

(d) Legislative intent and adjudicative restraint

- Parliament **identified a finite transitional window—from Bill introduction (30-04-1982) to commencement (24-09-1984)**—to mitigate hardship without reopening the entire backlog. The Court rejects outcomes based on the “**fortuity**” of appellate delay, insisting that **statutory text**, not **procedural happenstance**, governs who benefits.

6) Obiter dictum

Although the ratio concerns Section 30(2)’s scope, the judgment carries influential observations shaping judicial practice:

1. **Clarity, certainty, and hierarchy in precedent.** The Court reflects on the Supreme Court’s **expansive judicial review** and the concomitant duty to keep the law “**certain, clear and consistent.**” This institutional reflection, while not necessary to resolve Section 30(2), anchors the recommendation favoring **three-Judge Benches** and disciplined referral to larger benches—guidance

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that has since crystallized into a **habitual practice** rather than a textually codified rule.

2. **Administrative realism in transitional statutes.** The Court highlights the practical danger of letting **appellate disposal dates** determine entitlement, given chronic delays; the **legislature's calibrated temporal design** must not be defeated by **litigation serendipity**. These policy-laden reflections, though supporting the ratio, read as **reasoned obiter** delimiting judicial expansion of remedial statutes beyond their text.
3. **Respect for coordinate-bench comity.** The judgment's elaboration on **how smaller benches should treat prior decisions** was not indispensable to deciding solatium but **standardized internal Court discipline** and later shaped how references and overrulings are organized.

7) **Important para from the judgment (short, exam-ready excerpts)**

On the **temporal window** for solatium:

"In every case, the award... must have been made between 30 April, 1982 and 24 September, 1984."

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On the **meaning of “any such award”**:

“The words ‘**any such award**’... refer to awards **made** by the Collector or Court **between 30 April, 1982 and 24 September, 1984.**”

On **bench-strength discipline**:

“A pronouncement of law by a **Division Bench** is binding on a Bench of the **same or a smaller number** of Judges.”

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8) Impact of the judgment

(i) Immediate doctrinal settlement in land acquisition law.

- The decision **overruled** the broader appeal-based approach of **Bhag Singh (1985) 3 SCC 737** and **Mohinder Singh (1986) 1 SCC 365**, and **approved Kamalajammanniavaru (1985) 1 SCC 582**, thereby **closing a live conflict** on who qualifies for the **30% solatium** under the 1984 Amendment. This produced a **uniform, award-bound test** that lower courts could administer without calibrating for appellate timing.

(ii) Enduring template for reading transitional clauses.

- Raghbir Singh's **window-limited, text-first** approach has operated as a **methodological template** for later courts construing **inter-temporal benefits** in amendment statutes, prioritizing **express legislative cut-offs** over equitable enlargement by judicial fiat. The judgment's reliance on **Section 30(2)'s exact language** has since guided interpretation of analogous transitional provisions.

(iii) Precedent discipline and bench-size jurisprudence.

- The judgment's **bench-strength rule** has become the **starting point** for discussions on **when and**

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how smaller benches may depart from earlier authority. Subsequent Constitution Bench pronouncements, notably **Central Board of Dawoodi Bohra Community v. State of Maharashtra (2005) 2 SCC 673**, reaffirmed that a decision by a **larger bench binds** smaller or co-equal benches and directed references where departure is contemplated—traceable in part to **Raghubir Singh's** articulation.

(iv) Downstream developments in compensation law.

- While **Raghubir Singh** fixed the **eligibility window** for enhanced solatium, later jurisprudence addressed **composition and interest** on components—e.g., **Sunder v. Union of India (2001)** holding that **statutory interest applies to solatium as well**—illustrating how the compensation scheme continued to **evolve within the textual boundaries** the Constitution Bench had emphasized.

(v) Pedagogic significance for students.

- For examination and doctrinal clarity, **Raghubir Singh** is the **leading case** on: (a) **construing transitional clauses** (award-bound vs. appeal-bound reach); and (b) **internal discipline of precedent** under **Article 141** (bench-strength hierarchy). It teaches that **equities of hardship** cannot displace **precise statutory cut-offs**, and

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7.

IN RE DELHI LAWS ACT

AIR 1951 SC 332

Facts in Brief:

The case of In re Delhi Laws Act, AIR 1951 SC 332, is a landmark judgment of the Supreme Court of India that dealt with the issue of the extent and limits of the legislative powers of the State. The case arose out of the Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947, and the Part C States (Laws) Act, 1950. These Acts empowered the government to extend to the territories in question, with any restrictions or modifications, any enactment which is in force in any part of India. The question was whether such a delegation of legislative power was constitutionally valid.

Issues:

The main issue in the case was whether the legislature could delegate its essential legislative functions to another body or authority. The question was whether such delegation was a violation of the doctrine of separation of powers and whether it amounted to abdication of its legislative functions by the legislature.

Arguments:

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The arguments revolved around the principles of constitutional law, the doctrine of separation of powers, and the concept of delegated legislation. It was argued that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. The counter-argument was that such delegation was necessary for the proper discharge of public duties and that it did not amount to abdication of legislative functions.

Held:

The Supreme Court held that the power of legislation which includes the power to modify existing laws or to make new laws, is vested in the legislature by the constitution and it cannot abdicate its functions in favour of another. However, it was also held that the legislature can delegate its powers within certain limits. The court made a distinction between the delegation of legislative power and the delegation of legislative functions. It held that while the legislature cannot delegate its essential legislative functions, it can delegate legislative power. The court also held that the legislature cannot efface itself and set up a parallel legislature to discharge the primary duty with which it has been entrusted.

The court further held that the legislature, while preserving its own capacity intact, could seek the assistance of subordinate agencies. The court also observed that the extent of the specific and detailed lines

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of the rule of conduct to be laid down may vary according to the conditions and circumstances.

The court also clarified that the doctrine of separation of powers, although not expressly enshrined in the Constitution, is a part of its basic structure. However, the doctrine is not rigid and absolute in India and it allows for a system of checks and balances.

Legal principles with relevant sections

The legal principles that were discussed in the judgement are:

- a) The principle of "delegation of legislative power" which is a legal principle that means "the power of the legislature to delegate its lawmaking powers to another body or authority." This principle is not codified in any specific section of Indian law but is a well-established principle in constitutional law.
- b) The principle of "separation of powers" which is a legal doctrine that the legislative, executive, and judicial powers of government should be kept separate to prevent abuse of power. This principle is not expressly enshrined in the Indian Constitution but is considered a part of its basic structure.
- c) The principle of "ancillary legislation" which is a legal principle that means "the power of the legislature to make laws that are necessary for the implementation

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of its main legislation." This principle is also not codified in any specific section of Indian law but is a well-established principle in constitutional law.

Obiter dictum

Obiter dictum refers to a judge's incidental expression of opinion, not essential to the decision and not establishing precedent. In this case, the obiter dictum can be found in the discussion about the principles of "delegation of legislative power", "separation of powers", and "ancillary legislation". The court discussed these principles in depth, but they were not the main issues in the case.

Important para from judgement

An important paragraph from the judgement is:

"The time has passed for assigning to the constitutional distribution of powers among the separate organs of government, an operation which confined the legislative power to the Parliament so as to restrain it from reposing in the Executive an authority of an essentially legislative character."

Subsequent Impact of the judgement

The judgement had a significant impact on the interpretation of the doctrine of separation of powers and the principle of delegation of legislative power in India. It

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clarified that the doctrine of separation of powers is not rigid and absolute in India and that the legislature can delegate its powers within certain limits. The judgement also emphasized the need for the law to adapt to changing social, economic, and technological conditions. It stressed the importance of not following a groove set by precedential law and the need for new perceptions and perspectives on old and new problems.

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8.

ADM JABALPUR V. SHIVKANT SHUKLA

AIR 1976 SC 1207

Facts in Brief:

The case of ADM Jabalpur v. Shivkant Shukla, popularly known as the Habeas Corpus case, is one of the most significant cases in the history of India, particularly during the period of the Emergency (1975-1977). The case arose during a time when the nation was under a state of Emergency, declared under Article 352 of the Indian Constitution. The case was a response to the widespread arrests and detentions being carried out under the Maintenance of Internal Security Act (MISA) during the Emergency. The detentions were challenged by way of Habeas Corpus petitions in various High Courts. The main issue was whether the Presidential Order dated June 27, 1975, under Clause (1) of Article 359 of the Constitution, which suspended the enforcement of Articles 14, 21, and 22, barred the filing of Habeas Corpus petitions under Article 226 before a High Court for challenging the legality of detention under MISA.

Issues:

The case raised several important constitutional issues. The primary issue was whether, in view of the Presidential order dated June 27, 1975, under Clause (1)

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of Article 359, any writ petition was maintainable under Article 226, before a High Court for Habeas Corpus to enforce the right to personal liberty of a person detained under the Maintenance of Internal Security Act on the ground that the order of detention or the continued detention is, for any reason, not under or in compliance with the Maintenance of Internal Security Act. The second issue was if such a petition was maintainable, what was the scope or extent of judicial scrutiny, particularly, in view of the aforesaid Presidential order which covers, inter alia, Clause (5) of Article 22, and also in view of sub-section (9) of Section 16A of the Maintenance of Internal Security Act.

Arguments:

The arguments in the case revolved around the interpretation of the Constitution, particularly the scope and extent of judicial scrutiny in writs of habeas corpus in view of the Presidential order and Section 16A(9) of MISA. The contention of the detenus was that the grounds, information, and materials for their detention referred to matters of State and it would be against public interest to disclose them. This contention was considered plausible but ultimately not sustained. It was also argued that the courts, in dealing with petitions for writs of habeas corpus, should take into account the stand taken by the detenu regarding the allegations of their detention. It was their function to give consideration to any fresh material which may be produced before them regarding the truth and correctness of those allegations.

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Held:

The Supreme Court, by a majority of 4:1, held that in view of the Presidential Order dated June 27, 1975, no writ petition under Article 226 could be maintained in any High Court for challenging the legality of detention under MISA. The Court held that the Presidential Order was valid and effective in suspending the enforcement of the fundamental rights under Articles 14, 21, and 22. The Court also held that the scope of judicial scrutiny was limited in view of the Presidential Order and Section 16A(9) of MISA. The Court observed that the executive cannot deprive a person of his personal liberty except by authority of law and that the order of detention was not bad. The Court's decision was widely criticized for its endorsement of the state's power to suspend fundamental rights during the Emergency.

Legal Principles with Relevant Sections

The ADM Jabalpur vs. Shivkant Shukla case is a landmark case that dealt with the power of the state during the times of emergency. The legal principles that were discussed and applied in this case were primarily related to the interpretation of Article 21 and Article 359 of the Indian Constitution.

Article 21 of the Indian Constitution provides that no person shall be deprived of his life or personal liberty

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except according to the procedure established by law. This case, however, dealt with the suspension of this right during the Emergency period declared by the President of India under Article 352 of the Constitution. The court held that during such an emergency, the right to move the court for the enforcement of Article 21 would remain suspended.

Article 359 allows the President to suspend the right to move any court for the enforcement of such rights conferred by Part III (Fundamental Rights) of the Constitution as may be mentioned in the order, during a national emergency. The court held that the suspension of the right to move a court for the enforcement of the right contained in Article 21 cannot have the effect of debaring an aggrieved person from invoking the jurisdiction of the High Court under Article 226 of the Constitution.

Obiter Dictum

The obiter dicta in this case were significant and have been subject to much debate and criticism. The court held that mala fides or any other invalidating fact could be proved during the emergency. This implies that the court recognized the possibility of misuse of power during the emergency, but still upheld the suspension of fundamental rights.

Another obiter dictum was the court's observation that the requirement of the due process clause as a substantial

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restriction on government control was becoming a thing of the past and the rule was being restricted more and more.

Important Para from Judgement

One of the important paragraphs from the judgement is as follows: "The rule enacted in sub-section (9) (a) of section 16A bears close analogy to a rule of conclusive presumption and in the circumstances, it must be regarded as a genuine rule of evidence. I may make it clear that if the grounds, information and materials were not, by and large, of such a character as to fall within the class of documents relating to matters of State which it would be injurious to public interest to disclose, I would have found it impossible to sustain this statutory provision."

Subsequent Impact of the Judgement

The judgement in this case has had a profound impact on the interpretation and understanding of the Constitution of India, particularly the provisions relating to the suspension of fundamental rights during an emergency. The judgement was widely criticized for its endorsement of the state's power to suspend fundamental rights during an emergency, which was seen as a blow to civil liberties.

The judgement has also had a significant impact on the legal and political discourse in India. It has been cited in

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numerous subsequent cases and has influenced the development of constitutional law in India. The judgement has also been a subject of discussion and debate in academic circles and has been criticized for its interpretation of the Constitution and its implications for civil liberties.

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9.

A.K. KRAIPAK V. UNION OF INDIA

AIR 1950 SC 150

Facts in brief:

The case revolves around the selection of officers to the Indian Forest Service in both senior and junior scales from officers serving in the forest department of the State of Jammu and Kashmir. The selection was done by a Special Selection Board, one of whose members was the Acting Chief Conservator of Forests of the State. This individual was also a candidate for selection to the Indian Forest Service. The Acting Chief Conservator did not participate in the Board's deliberations when his own candidacy was considered, but did participate when the names of his rivals were considered. He also participated in the preparation of the list of selected candidates in order of preference. The Acting Chief Conservator's name was at the top of the list of selected officers, while the names of three conservators, who were his rivals, were omitted.

Issues:

The main issue in this case was whether the Acting Chief Conservator's participation in the selection process, while also being a candidate, violated principles of natural justice.

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Arguments:

The argument was that the Acting Chief Conservator's involvement in the selection process, particularly in the consideration of his rivals and the preparation of the list of selected candidates, was unfair and unjust. This was seen as a violation of the principles of natural justice, as he was both a candidate and a member of the selection board.

Held:

The court held that the selections were unjust due to the involvement of the Acting Chief Conservator in the selection process. The court set aside the impugned selections and ordered the Union Government and the State Government to pay the costs of the petitioners. This case highlighted the importance of fairness and justice in administrative proceedings.

Legal principles with relevant sections

The case of A.K. Kraipak v. Union of India, AIR 1950 SC 150, is a landmark case that significantly contributed to the evolution of administrative law in India. The case primarily dealt with the principles of natural justice and their applicability to administrative actions. The judgment highlighted the principle of "Nemo Judex in

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Causa Sua" which means "no one should be a judge in his own cause". This principle is a fundamental concept of natural justice aimed at ensuring fairness and impartiality in the decision-making process. The case also emphasized the importance of the "Audi Alteram Partem" rule, which means "hear the other side". This principle ensures that a person is given an opportunity to defend himself before a decision is made affecting him. The case also dealt with the concept of bias and its impact on the decision-making process. The court held that even a reasonable likelihood of bias is sufficient to invalidate a decision .

Obiter dictum

The obiter dictum in this case is the court's observation on the evolution of the concept of quasi-judicial power. The court observed that what was considered as an administrative power some years back is now being considered as a quasi-judicial power. The court also noted that the procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. The court further observed that it is neither possible nor desirable to fix the limits of a quasi-judicial power .

Important para from judgement

An important paragraph from the judgement is where the

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court discusses the concept of bias and its impact on the decision-making process. The court held that even a reasonable likelihood of bias is sufficient to invalidate a decision. The court further observed that in deciding the question of bias, human probabilities and ordinary course of human conduct must be taken into consideration

Subsequent Impact of the judgement

The judgement in A.K. Kraipak v. Union of India had a significant impact on the development of administrative law in India. The case broadened the scope of the principles of natural justice and their applicability to administrative actions. The judgement also blurred the distinction between administrative and quasi-judicial actions, thereby expanding the scope of judicial review. The principles laid down in this case have been subsequently followed and applied in numerous cases involving administrative actions. The case has also influenced the development of laws and regulations pertaining to administrative procedures in India.

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10.

H.L. TREHAN V. UNION OF INDIA

AIR 1989 SC 568

Facts in brief:

The Caltex (Acquisition of Shares of Caltex Refining (India) Ltd. and of the undertakings in India of Caltex (India) Ltd.) Act 17 of 1977 was enacted by the Union Parliament and came into force with effect from April 23, 1977. The Act provides for the acquisition of shares of Caltex Oil Refinery (India) Ltd. (CORIL), a Government Company, and for the acquisition and transfer of the right, title, and interest of Caltex (India) Ltd. in relation to its Undertakings in India with a view to ensuring coordinated distribution and utilization of petroleum products. Under section 3 of the Act, the share in the capital of CORIL stood transferred to and vested in the Central Government on the appointed day being December 30, 1976. The Chairman of the Board of Directors of CORIL issued a circular dated March 8, 1978, stating that consequent upon the takeover of the Caltex (India) Ltd. by the Government, the question of rationalization of the perquisites and allowances admissible to the employees of the company had been under consideration.

Issues:

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The main issue in this case was whether the rationalization of the perquisites and allowances admissible to the employees of the company, as mentioned in the circular dated March 8, 1978, adversely affected the terms and conditions of service of the respondents.

Arguments:

The argument was that the rationalization of the perquisites and allowances admissible to the employees of the company, as mentioned in the circular dated March 8, 1978, adversely affected the terms and conditions of service of the respondents. The respondents contended that their existing rights, advantages, or benefits should not be deprived or curtailed without affording them an opportunity to be heard. They argued that the principles of natural justice should be followed in the decision-making process.

Held

The court held that the impugned circular issued by the Board of Directors of Caltex Oil Refinery (India) Ltd. (CORIL) was quashed. The court found that the circular had adversely affected the terms and conditions of service of the employees of CORIL. The court observed that the terms and conditions of service could be altered by CORIL, but such alteration has to be made 'duly' as

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provided in sub-section (2) of section 11 of the Act. The court also held that the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. Therefore, the court dismissed the appeal and upheld the decision of the High Court in quashing the impugned circular.

Legal principles with relevant sections

The legal principles that were invoked in this case were primarily related to the rules of natural justice and the right to a fair hearing. The court referred to section 11 of the Act, which provides for the alteration of the terms and conditions of service of the employees. The court highlighted that such alteration has to be made 'duly', which excludes any arbitrary exercise of power. The court also referred to the principle that there can be no deprivation or curtailment of any existing right, advantage, or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant an opportunity of being heard.

Obiter dictum

The court made an important observation, which can be

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considered as obiter dictum, about the post-decisional hearing. The court observed that the authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. The court referred to a recent decision of this Court in K.I. Shephard & Ors. v. Union of India & Ors., JT 1987 (3) 600, to support this observation.

Important paras from the judgement

Here are some important paragraphs from the judgement:

- a) "In our opinion, the word `duly' is very significant and excludes any arbitrary exercise of power under section 11(2). It is now well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article of the Constitution".
- b) "In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice.

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The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity".

- c) "In this connection, we may refer to a recent decision of this Court in K.I. Shephard & Ors. v. Union of India & Ors., JT 1987 (3) 600. What happened in that case was that the Hindustan Commercial Bank, The Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under section 45 of the Banking Regulation Act, 1949".

Subsequent Impact of the Judgement

The judgement in H.L. Trehan v. Union of India has had a significant impact on the interpretation and application of the rules of natural justice in the context of employment law. The court's decision emphasized the importance of giving employees an opportunity to be heard before making decisions that could adversely affect their terms and conditions of service. This has likely influenced subsequent cases involving similar issues, reinforcing the principle that any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend

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against the provision of Article of the Constitution. The judgement also highlighted the inadequacy of post-decisional hearings, which could have implications for administrative procedures in various sectors. This case has likely influenced the development of laws and regulations pertaining to administrative procedures in India.

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11.

MENAKA GANDHI V. UNION OF INDIA

AIR 1978 SC 597.

Facts in Brief

Parties and setting. Maneka Gandhi, a journalist and author, held a valid Indian passport issued under the **Passports Act, 1967**. On 2 July 1977, the Regional Passport Officer, New Delhi, served her a letter directing that she surrender her passport forthwith, invoking Section 10(3)(c)—stating only that the action was in “public interest.” The administration simultaneously relied on Section 10(5) to withhold reasons, asserting that disclosure would itself be against public interest.

Immediate aftermath. Gandhi requested the grounds for impounding. The Ministry declined to disclose them. She then approached the Supreme Court under Article 32, alleging violations of Articles 14, 19 and 21 and seeking (i) quashing of the impounding order, (ii) disclosure of reasons, and (iii) an opportunity of being heard.

Government’s stance and later disclosure. During proceedings, the Union filed an affidavit stating that the passport had been impounded because Gandhi was likely to be required by the Shah Commission of Inquiry (probing Emergency-period excesses), and there was apprehension she might leave India to avoid deposition, hence the “public interest” necessity. The Union also

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argued that in sensitive situations pre-decisional hearing could be dispensed with, but a post-decisional hearing would be offered.

Procedural posture. A **seven-judge Bench** heard the matter. The case thus arrived in the Supreme Court on a direct constitutional challenge to the validity and application of Sections 10(3)(c) and 10(5) of the Passports Act and the procedural fairness of the impounding order.

Backdrop in prior law. In **Satwant Singh Sawhney v. D. Ramarathnam (AIR 1967 SC 1836)**, the Court had recognized a right to travel abroad as part of “personal liberty” under Article 21, leading Parliament to enact the Passports Act, 1967. Parallely, the Court’s fundamental-rights jurisprudence was shifting away from A.K. Gopalan (1950)’s “compartmentalized” reading of Articles 14, 19 and 21, especially after R.C. Cooper (1970) and E.P. Royappa (1974) emphasized effect-based analysis and non-arbitrariness under Article 14.

2) Issues

1. **Scope of “personal liberty” (Art. 21):** Whether the right to travel abroad is encompassed within “personal liberty” under Article 21 (building upon Satwant Singh), and, if so, what procedural standards must govern any deprivation.

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2. **Meaning of “procedure established by law”:**
Whether “procedure” in Article 21 is satisfied by **any** enacted procedure, or whether the procedure must be “right, just and fair” (i.e., non-arbitrary, non-oppressive, and reasonable), thereby importing substantive due process-like standards.
3. **Interrelationship of Articles 14, 19 and 21:**
Whether these provisions are mutually reinforcing (the “golden triangle”) such that a law abridging personal liberty must simultaneously pass tests of equality (Art. 14) and, where applicable, reasonableness under Article 19.
4. **Validity of Sections 10(3)(c) and 10(5) of the Passports Act, 1967:**
(a) Is the ground “in the interests of the general public” under s. 10(3)(c) void for vagueness or does it confer unguided discretion?
(b) Is withholding of reasons under s. 10(5) compatible with Articles 14 and 21?
5. **Natural justice—pre-decisional hearing:**
Whether the audi alteram partem rule (notice and hearing) is a mandatory pre-condition before impounding a passport; or whether exigent circumstances can justify post-decisional hearing, and on what safeguards.
6. **Article 19 implications:** Whether impounding a passport can incidentally abridge freedoms under Article 19(1)(a) (speech) and 19(1)(g) (profession),

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and if yes, whether the Passports Act provides reasonable restrictions satisfying Articles 19(2)/(6).

7. **Judicial review standards:** What intensity of judicial scrutiny governs exercises of statutory discretion citing “public interest”, and what recording/communication of reasons is constitutionally required?

3) Arguments

Petitioner (Maneka Gandhi).

The petitioner urged a broad reading of “personal liberty,” contending that travel abroad is a core aspect recognized in Satwant Singh. Any deprivation of this liberty must comply with Article 21 and cannot be based on a secret, unreviewable administrative fiat. She attacked Section 10(3)(c) for vagueness (“interests of the general public” being open-ended) and Section 10(5) for enabling non-disclosure of reasons, which disables effective challenge and violates natural justice. Leaning on R.C. Cooper and E.P. Royappa, she argued that Articles 14, 19 and 21 are interlocked: a law restraining personal liberty must also be non-arbitrary (Art. 14) and reasonable (Art. 19). The petitioner pressed the Court to jettison **A.K. Gopalan’s** compartmentalization and to constitutionalize a “**fair, just and reasonable**” standard under Article 21—akin to **substantive due**

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process. She insisted on a **pre-decisional hearing** as the rule, because the **very act of impounding** imposes immediate, serious civil consequences. At the very least, prompt, full reasons must be furnished, with an effective, time-bound post-decisional hearing before an independent authority. Finally, she maintained that impounding also burdened her speech and profession, implicating **Articles 19(1)(a) and (g)**, which the statute must satisfy through narrowly tailored restrictions.

Respondent (Union of India).

The Union contended that Parliament enacted a comprehensive scheme in the **Passports Act, 1967**, which codifies grounds for refusal/impounding and procedures including recording of reasons (**s. 10(5)**). The phrase “in the interests of the general public” is a well-known constitutional standard (cf. Articles 19(5), 19(6)), not an invitation to arbitrariness. In sensitive contexts—especially where national interests or ongoing inquiries are at stake—pre-decisional hearing may be impracticable and may frustrate the purpose; the law therefore allows withholding of reasons where disclosure would itself harm the public interest. The Union further argued that **Article 19(1)(d)** protects movement within India, not overseas travel; and any incidental impact on Articles 19(1)(a) or (g) does not render the statute unconstitutional where the primary object is to regulate international travel documents. Finally, the Union

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emphasized that judicial review remains available: the authority must record reasons, the Court can call for them, and the Government in fact offered a post-decisional personal hearing—which, in urgent situations, suffices to meet natural justice.

4) Held (Ratio and Operative Directions)

The Supreme Court, by a seven-judge Bench, **recast Article 21** and constitutional procedure, while upholding the **Passports Act, 1967** subject to strict constitutional guardrails.

(a) Article 21—Meaning of “procedure established by law.”

“Procedure” cannot be whatever a statute says. To be valid under Article 21, the procedure must be **right, just and fair—non-arbitrary, non-fanciful, and non-oppressive**. A law or its application that is arbitrary fails Article 21 and, by the same token, **violates Article 14**. This is the doctrinal heart of the case.

(b) Articles 14, 19 and 21 are interlinked (“golden triangle”).

Fundamental rights are not isolated compartments. A law that deprives personal liberty (Art. 21) must also satisfy the guarantees of **equality (Art. 14)** and, where the law’s **direct and inevitable effect** touches freedoms in

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Article 19, it must pass **19(2)–(6) reasonableness** as well. The earlier **A.K. Gopalan** view of watertight separation is rejected for an **effects-based, integrated** approach.

(c) Right to travel abroad is “personal liberty.”

Reaffirming **Satwant Singh**, the Court held that the **right to travel abroad** falls within the **wide amplitude** of “personal liberty” in Article 21. Regulation is permissible only through a **fair, just and reasonable** procedure.

(d) Sections 10(3)(c) and 10(5), Passports Act—upheld with constitutional reading.

The ground “in the interests of the general public” in s. 10(3)(c) is not per se vague; it is a constitutional phrase known to Indian law. But the **discretion is tightly channeled** by Articles 14 and 21: the authority must act on relevant material, for a proper purpose, and by a fair procedure.

Under s. **10(5)**, the authority must **record reasons in writing in every case. Ordinarily, those reasons must be communicated** to the passport-holder. Only in exceptional situations—where the authority specifically records that disclosure would itself be against public interest—may communication be withheld; even then, courts can call for and examine the reasons (including in camera) in judicial review.

(e) Natural justice—pre/post-decisional hearing.

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The **audi alteram partem** rule is part of the constitutional requirement of fairness under Articles 14 and 21. Ordinarily, a pre-decisional hearing must be afforded before impounding. However, urgent situations may justify an **interim impounding** without prior hearing, **provided** the State affords a **prompt, effective post-decisional hearing** and communicates (or justifiably withholds) reasons as above. A hearing in name only is insufficient; it must be real, time-bound, and meaningful.

(f) Case disposition.

The Court **did not strike down** Sections 10(3)(c) or 10(5), **nor** did it automatically quash the impounding order. Instead, it **read in procedural safeguards** and directed the Union to supply reasons (subject to public-interest privilege), and grant a prompt personal hearing so that the petitioner's representation could be decided afresh on a **constitutionally fair** basis. The order would then be open to further judicial review on the merits of the reasons and the fairness of procedure adopted.

5) Legal Principles with Relevant Provisions

(1) **Article 21—Fair, Just, and Reasonable Procedure (Substantive Due Process—like Standard).**

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- **Text engaged:** “No person shall be deprived of his life or personal liberty except according to procedure established by law.”
- **Holding/principle:** “Procedure” in Article 21 imports standards of fairness. A statute or its application must not be arbitrary, oppressive, or irrational; otherwise it fails Article 21.
- **Effect:** Introduces a **substantive reasonableness** check into Article 21, aligning it with the equality guarantee in **Article 14** and the reasonableness scheme of **Article 19**.

(2) Article 14—Anti-arbitrariness as the core of equality.

- **Text engaged:** “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
- **Holding/principle:** **Arbitrariness is the antithesis of equality.** Every State action—legislative, executive, quasi-judicial—must be based on relevant considerations and follow a **fair procedure**. This principle infuses Article 21: a **procedurally unfair** deprivation of liberty is ipso facto unequal and void.

(3) Articles 14, 19, 21—Integrated Rights Analysis (“Golden Triangle”).

- **Texts engaged:** Articles 14, 19 (esp. 19(1)(a),

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19(1)(g), 19(2)–(6)), and 21.

- **Holding/principle:** Where State action **deprives liberty**, courts must **simultaneously** examine **(i) equality** (non-arbitrariness under Art. 14), **(ii) reasonableness** of restrictions if Art. 19 freedoms are directly and inevitably affected, and **(iii) fairness of procedure** under Art. 21.
- **Effect:** **Overrules in effect** the **Gopalan** compartmentalization; anchors Indian due-process jurisprudence in **effects** rather than formal classification.

(4) Natural Justice as a Constitutional Mandate (Audi Alteram Partem).

- **Texts engaged:** Articles **14** and **21** (as fairness requirements).
- **Holding/principle:** **Notice and opportunity to be heard** are the **norm** before civil consequences are imposed. Exceptions exist for urgency, confidentiality, or public interest, but then the State must provide a swift, meaningful post-decisional hearing, disclose reasons unless a recorded public-interest privilege is invoked, and ensure an impartial decision on the representation.

(5) Duty to Record and Communicate Reasons; Limited Public-Interest Privilege.

- **Statute engaged:** **Passports Act, 1967, s.**

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10(3)(c) (impounding on enumerated grounds including “in the interests of the general public”); s. 10(5) (duty to record reasons and communicate unless contrary to public interest).

- **Holding/principle:**

- **Reasons must be recorded in writing** in every case of impounding.
- **Communication of reasons is the rule; withholding** is the exception and requires a **specific, contemporaneous satisfaction** that disclosure would itself injure public interest.
- **Judicial review** remains unimpaired: courts may **call for the reasons**, test their **relevance and sufficiency**, and, if needed, examine them in camera to protect sensitive interests.

- **Effect:** Converts a broadly worded statutory discretion into a **constitutionally disciplined power**.

(6) Right to Travel Abroad as “Personal Liberty.”

- **Constitutional basis:** Article 21; prior authority Satwant Singh Sawhney (1967).
- **Holding/principle:** The **breadth** of “personal liberty” includes **exit rights** (international travel). The State may **regulate** but must adhere

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to fair, just, and reasonable procedures and non-arbitrary standards.

(7) Article 19 Interfaces (Speech and Profession).

- **Texts engaged:** Art. 19(1)(a) and 19(1)(g); restrictions under 19(2) and 19(6).
- **Holding/principle:** If impounding a passport has a direct and inevitable effect of restricting speech (e.g., lectures abroad, publication events) or profession (e.g., work/commerce overseas), the restrictions must be reasonable within the meaning of **Art. 19(2)/(6)**. The State cannot evade scrutiny by framing the action merely as “passport regulation.”

(8) Remedial Structure and Standards of Review.

- **Standards:**
 - **Relevance and purpose:** Material must rationally support “**interests of the general public**” (s. 10(3)(c)).
 - **Proportionality-like inquiry:** The measure should be no more restrictive than necessary to meet the stated public interest (implicit in the fairness + non-arbitrariness synthesis).
 - **Reasoned decision:** A **speaking order** following the hearing; failure to supply reasons (absent valid privilege) or

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to hear the affected person vitiates the action.

- **Remedy in this case: Reading down** the statute, **directions to disclose reasons** (subject to privilege) and to grant a prompt personal hearing, with the decision thereafter amenable to judicial review.

6) Obiter Dictum

The judgment contains widely cited observations that, while not strictly necessary to decide the relief, have had strong persuasive force:

(a) “Fairness” as the constant of State action. The Court described reasonableness as a “brooding omni-presence” within Article 14; hence, any procedure under Article 21 must be “right, just and fair,” not “arbitrary, fanciful or oppressive.” This general anti-arbitrariness axiom travels beyond passports to all civil-consequence decisions.

(b) Natural justice is flexible, not ritualistic. *Audi alteram partem* is the norm, yet its content is situational: a full hearing, a brief hearing, pre-decisional, or in urgent cases a prompt post-decisional remedial hearing—but the rule must not be “jettisoned save in very exceptional circumstances where compulsive necessity so demands.”

(c) Reasons and open government. Reasons must be

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recorded in every case; communication of reasons is the rule, and withholding them is a narrowly gated exception grounded in a contemporaneous public-interest satisfaction. In Krishna Iyer, J.'s flourish: a State that "revels in secrecy" in matters of liberty "busies itself with its own burial."

(d) No purely territorial cage for select freedoms. The Court indicated there are no geographical limits to Article 19(1)(a) and 19(1)(g); where State action erects barriers to expression or profession abroad, Article 19 scrutiny can be triggered. This observation has informed later cross-border speech/profession disputes.

7) Important Paragraphs from the Judgment (teaching extracts)

- a. "The procedure contemplated by Article 21 must... be right and just and fair and not arbitrary, fanciful or oppressive."
- b. "The principle of reasonableness... pervades Article 14 like a brooding omni-presence."
- c. "There are no geographical limitations to freedom of speech and expression guaranteed under Article 19(1)(a)."
- d. "It may be a hearing prior to the decision or... a post-decisional remedial hearing."

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- e. “The *audi alteram partem* rule must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands.”
- f. “Reasons must be disclosed... almost invariably, save in those dangerous cases where irreparable injury will ensue to the State.”
- g. “The right to go abroad... is included in ‘personal liberty’ within the meaning of Article 21.”
- h. “A government which revels in secrecy... busies itself with its own burial.”

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12.

L.CHANDRA KUMAR V. UNION OF INDIA

AIR 1997 SC 1125.

1) Facts in brief

L. Chandra Kumar, an advocate, challenged the constitutional scheme of tribunalisation introduced by Part XIV-A of the Constitution (Articles 323-A and 323-B, inserted by the 42nd Amendment, 1976) and the Administrative Tribunals Act, 1985—particularly provisions excluding the writ jurisdiction of High Courts and limiting access to the Supreme Court. Multiple matters from different High Courts were clubbed and referred to a seven-judge Constitution Bench. The case also required a re-examination of *S.P. Sampath Kumar v. Union of India* (1987), which had treated tribunals as effective substitutes for High Courts for certain subject-areas. The Bench was constituted by CJI A.M. Ahmadi and Justices M.M. Punchhi, K. Ramaswamy, S.P. Bharucha, S. Saghir Ahmad, K. Venkataswami, and K.T. Thomas; the judgment was delivered on 18 March 1997.

The legal backdrop included: (i) creation of subject-matter tribunals under Articles 323-A/323-B; (ii) Section 28 of the AT Act excluding court jurisdiction over service matters; (iii) Section 5(6) of the AT Act concerning Benches and composition; and (iv) the constitutional place of Articles 32, 226 and 227 as vehicles of judicial review. The Court set out the text of Part XIV-A and took note of the reference order (1995) 1 SCC 400 that had

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flagged inconsistencies after *Sampath Kumar*.

2) Issues

The Court crystallized three controlling questions: (i) whether the exclusionary clauses—Article 323-A(2)(d) and Article 323-B(3)(d)—that oust the jurisdiction of “all courts” (save Article 136) are compatible with the constitutional power of judicial review under Articles 226/227 and 32; (ii) whether tribunals constituted under Articles 323-A/323-B have competence to test the constitutional validity of statutory provisions/rules; and (iii) whether, as they function, such tribunals can be effective substitutes for High Courts in exercising judicial review, and what reforms would be needed.

3) Arguments

Petitioners/appellants. They contended that judicial review by constitutional courts is part of the basic structure under *Kesavananda Bharati* and cannot be excluded or diluted by ordinary legislation or even by constitutional text that purports to oust jurisdiction. In particular, Articles 226/227 (High Courts) and 32 (Supreme Court) are structural guarantees; clauses in Articles 323-A(2)(d) and 323-B(3)(d) and Section 28 of

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the Administrative Tribunals Act (AT Act) which exclude court jurisdiction therefore violate the basic structure. They argued that *S.P. Sampath Kumar* erred in treating tribunals as “substitutes” for High Courts: tribunals are executive-created bodies with mixed membership, limited security of tenure, executive control over finances and infrastructure, and selection processes not dominated by the judiciary—features that threaten independence and the rule of law. They added that tribunals should not become the last or near-final word on constitutionality; at minimum, their decisions must be subject to judicial review by a Division Bench of the High Court. They also submitted that tribunals should be competent to consider constitutional challenges in the first instance (as courts of first instance for their subject-areas), but such rulings must be reviewable by High Courts. Finally, they pressed for institutional reforms: judicial primacy in selection, longer and secure tenure, pay parity, removal safeguards, and routing of appeals through High Courts rather than encouraging direct Article 136 special leave petitions.

Union of India and supporting respondents. They emphasized the constitutional authorization for tribunalisation in Part XIV-A, arguing that Parliament deliberately created specialized fora to secure speedy and expert adjudication in service, tax, and other technical domains, to reduce the load on constitutional courts. They relied on *Sampath Kumar* to argue tribunals could serve as effective substitutes, with the Supreme Court’s Article 136 jurisdiction providing ultimate oversight.

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They maintained that ouster clauses were textually permitted by Articles 323-A/323-B and necessary to avoid duplication of proceedings; that tribunals are manned by judicial members of High Court calibre; and that institutional infirmities could be cured by administrative improvements rather than by striking down the exclusion of High Court jurisdiction.

4) Held (ratio and operative directions)

The Court (seven-judge Bench) substantially overruled *S.P. Sampath Kumar* and re-anchored tribunalisation within the basic-structure framework.

1. Judicial review by constitutional courts is part of the basic structure. The power of judicial review over legislative and administrative action vested in High Courts under Articles 226/227 and in the Supreme Court under Article 32 is an integral, essential feature that cannot be excluded. Accordingly, the clauses in Articles 323-A(2)(d) and 323-B(3)(d), and Section 28 of the AT Act, are unconstitutional to the extent they exclude or curtail the jurisdiction of High Courts under Articles 226/227. The same applies, mutatis mutandis, to similar exclusionary provisions in other tribunal statutes.
2. Tribunals are courts of first instance within their domain. For matters entrusted to them (e.g., service

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disputes under the AT Act), litigants must ordinarily approach the tribunal first. However, tribunal decisions are subject to scrutiny by a Division Bench of the High Court within whose territorial jurisdiction the tribunal sits, under Articles 226/227.

3. Route of further appeals. In the post-decision hierarchy, challenges should proceed from the tribunal to the High Court (writ/ supervisory review) and only thereafter, in appropriate cases, to the Supreme Court. Direct resort to Article 136 from tribunal decisions is not barred but should be discouraged as a matter of judicial policy so that the High Courts perform the primary constitutional review.
4. Competence of tribunals to decide constitutional questions. Tribunals are competent to test the constitutional validity of subordinate legislation and statutory rules, and may also examine challenges to provisions of parent statutes arising in cases before them. But any such determinations remain subject to High Court judicial review. Where a substantial constitutional question arises, the tribunal should, where possible, sit in an appropriate coram including a judicial member.
5. Institutional safeguards and reforms. The Court issued guidance to secure tribunal independence: judicial dominance in selection committees; preference for sitting or retired High Court judges as Chairpersons; adequate tenure and conditions of

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service to attract talent; minimization of single-member benches for complex questions; and administrative control placed, as far as practicable, under the judiciary rather than the parent executive department. These directions were framed to operate prospectively and to inform legislative/administrative adjustments.

6. Disposition. The exclusionary clauses were read down/struck to restore High Court jurisdiction. Existing and future tribunal decisions would henceforth be amenable to High Court review; pending matters were to be worked through this channel. *Sampath Kumar* was overruled to the extent it treated tribunals as substitutes for High Courts in constitutional review.

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5) Legal principles with relevant provisions

Article 32; Articles 226–227 (basic structure). Judicial review by the Supreme Court and High Courts is part of the Constitution's basic structure. Any statutory or constitutional arrangement that excludes or substantially curtails this power is invalid to that extent. High Courts' writ and supervisory jurisdiction over tribunal decisions is thus constitutionally guaranteed.

Articles 323-A and 323-B (Part XIV-A). These articles authorize specialized tribunals but do not permit the erasure of High Court judicial review. Clauses purporting to exclude "the jurisdiction of all courts" must be read subject to the basic structure; tribunals function as additional, not substitutive, fora.

Administrative Tribunals Act, 1985 (notably Sections 5 and 28). Section 28's ouster of court jurisdiction is unconstitutional insofar as it bars Articles 226/227 review. Section 5's scheme must be operated to ensure benches with an adequate judicial component decide complex and constitutional questions; institutional design should reflect judicial primacy in appointments and security of tenure.

Separation of powers and rule of law. The decision reiterates that effective judicial review is indispensable to the rule of law; specialized expertise and speed cannot be pursued at the cost of constitutional supremacy. Tribunal independence is not ornamental but functional: appointments, tenure, and administrative control must

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insulate adjudication from executive influence.

Hierarchy and forum policy. Tribunals are courts of first instance for their subject-areas; High Courts are the primary constitutional reviewers; the Supreme Court's Article 136 remains as a safety valve but is to be invoked sparingly after High Court scrutiny.

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6) **Obiter dictum**

The Court made several influential observations that were not strictly necessary to grant relief but have guided tribunal design and practice:

- Tribunal administration should be centralized under one coordinating authority. The Court suggested routing “all such Tribunals... under a single nodal ministry... appropriately... the Ministry of Law,” pending creation of an independent supervisory body.
- Mixed composition remains valuable. Calls to stop appointing Administrative Members altogether were rejected; the Court stressed the founding premise of specialist bodies combining judicial and administrative expertise.
- Prospective overruling. To preserve stability, the new route of review (Tribunal → High Court DB → possible Article 136) was applied prospectively, leaving earlier decisions undisturbed.

7) **Important paragraphs (for teaching/exam use)**

- Basic structure and judicial review:

“We... hold that the power of judicial review over

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legislative action vested in the High Courts... and in this Court... is... part of the basic structure.”

- High Court oversight of tribunals:

“All decisions of Tribunals... will be subject to the High Court’s writ jurisdiction under Articles 226/227... before a Division Bench.”

- Route of further challenges:

“No appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136... [the party] will be entitled to move the High Court...”

- Tribunals’ power to decide constitutional questions:

“The Tribunals are competent to hear matters where the vires of statutory provisions are questioned... [but] not... substitutes for the High Courts and the Supreme Court.”

- Exception—parent statutes:

“The Tribunals shall not entertain any question regarding the vires of their parent statutes... In such cases... the High Court... may be approached directly.”

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13.

UNION OF INDIA V. R. GANDHI

(2010) 11 SCC 1

Facts in Brief:

The case arises from the order dated 30.3.2004 of the Madras High Court in WP No. 2198/2003 filed by the President of Madras Bar Association (MBA) challenging the constitutional validity of Chapters 1B and 1C of the Companies Act, 1956 (**Act' for short**) **inserted by Companies (Second Amendment) Act 2002** (Amendment Act' for short) providing for the constitution of National Company Law Tribunal (**NCLT' or Tribunal'**) and National Company Law Appellate Tribunal (**NCLAT' or Appellate Tribunal'**).

Issues:

The main issue raised by the Madras Bar Association (MBA) was the constitutional validity of the establishment of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) under the Companies Act, 1956.

Arguments:

The MBA argued that the establishment of the NCLT and NCLAT violated the basic and essential features of the

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Constitution. They contended that the jurisdiction conferred upon the High Court under Articles 226 and 227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution.

Held:

The Supreme Court held that the clauses in Article 323A and Article 323B, which empower Parliament and State Legislature to totally exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136, in regard to the disputes and complaints referred to in Article 323A(1) and the matters specified in Article 323B(2), offended the basic and essential features of the Constitution and were unconstitutional. The court also held that the "exclusion of jurisdiction" clause enacted in any legislation, under the aegis of Articles 323A [2(d)] and 323B[3(d)] are also unconstitutional.

Legal principles with relevant sections:

The legal principles in this case revolve around the constitutional validity of the creation of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The court examined the legislative competence of Parliament to create such tribunals under Entries 77, 78, 79, and Entries 43, 44 read with Entry 95 of List I, Item 11A read with Entry 46 of List III of the Seventh Schedule. The court

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also examined the provisions of the Companies Act, 1956 as amended by the Companies (Second Amendment) Act, 2002 relating to the constitution of NCLT and NCLAT.

Obiter dictum:

An obiter dictum in the case can be seen where the court discusses the importance of 'Independence of Judiciary' and how it is a cardinal principle of the Constitution. The court also discusses the legislative competence of Parliament to provide for the creation of courts and Tribunals.

Important para from judgement:

One of the important paragraphs from the judgement is where the court lays down the provisions of Article 323A and Article 323B that a law made under sub-clause (1) of the respective Articles may provide for. Another important paragraph is where the court discusses the jurisdiction conferred upon the High Court under Articles 226 and 227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution.

Subsequent Impact of the judgement:

The judgement had a significant impact on the structure and functioning of the NCLT and NCLAT. The court's

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decision to uphold the constitutional validity of the creation of these tribunals affirmed the legislative competence of Parliament in this regard. However, the court also emphasized the importance of maintaining the independence of the judiciary, which has implications for the functioning of these and other similar tribunals. The judgement also clarified the jurisdiction of these tribunals and the Supreme Court's role in relation to them. This has helped in providing a clear framework for the operation of these tribunals and their relationship with the broader judicial system.

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14.

RAM JAWAYA V. STATE OF PUNJAB

AIR 1955 SC 549

Facts in Brief

The case was a petition under Article 32 of the Constitution, preferred by six persons who carried on the business of preparing, printing, publishing, and selling textbooks for different classes in the schools of Punjab, particularly for the primary and middle classes, under the name and style "Uttar Chand Kapur & Sons." The Education Department of the Punjab Government had issued a series of notifications since 1950 regarding the printing, publication, and sale of these books which had not only placed unwarrantable restrictions upon the rights of the petitioners to carry on their business but had practically ousted them and other fellow-traders from the business altogether

Issues:

The main issue in the case was whether the restrictions imposed by the Punjab Government on the petitioners' right to carry on their business of preparing, printing, publishing, and selling textbooks were constitutional. The petitioners contended that no restrictions could be imposed upon their right to carry on the trade, which is guaranteed under Article 19(1)(g) of the Constitution, by

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mere executive orders without proper legislation and that the legislation, if any, must conform to the requirements of clause (6) of Article 19 of the Constitution.

Arguments:

The petitioners argued that the notifications issued by the Punjab Government had not only placed unwarrantable restrictions upon their rights to carry on their business but had practically ousted them and other fellow-traders from the business altogether. They contended that no restrictions could be imposed upon their right to carry on the trade, which is guaranteed under Article 19(1)(g) of the Constitution, by mere executive orders without proper legislation.

Held:

The court held that the functions of a modern State are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. The court also held that the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated. The court also noted that a trader might be lucky in securing a particular market for his goods but if he loses that field because the particular customers for some reason or

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other do not choose to buy goods from him, it is not open to him to say that it was his fundamental right to have his old customers forever.

Legal principles with relevant sections:

The judgment in the case of *Ram Jawaya v. State of Punjab* reaffirmed the principle of separation of powers, albeit not in its absolute rigidity. The functions of the different parts or branches of the Government have been sufficiently differentiated. The executive can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. However, the executive Government can never go against the provisions of the Constitution or of any law.

Obiter dictum:

The judgment made several obiter dicta, including the observation that the functions of a modern State are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is expected to engage in all activities necessary for the promotion of the social and economic welfare of the community (Page 1). The judgment also noted that there is no fundamental right guaranteeing the approval of books as textbooks by the

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Government, and that such chances are incidental to all trades and businesses.

Important para from judgement:

An important paragraph from the judgment is the one that discusses the executive powers of the Union and the States as laid down in Articles 73 and 162 of the Constitution. The judgment clarifies that these articles do not mean that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. Rather, the powers of the State executive do extend to matters upon which the state Legislature is competent to legislate and are not confined to matters over which legislation has been passed already.

Subsequent Impact of the judgement:

The judgment in Ram Jawaya v. State of Punjab has had a significant impact on the understanding of the separation of powers and the scope of executive action in India. It clarified that the executive powers of the Union and the States extend to all matters on which the respective legislatures are competent to legislate, not just those on which legislation has already been passed. This has implications for the range of actions that the executive can undertake in the exercise of its powers. The

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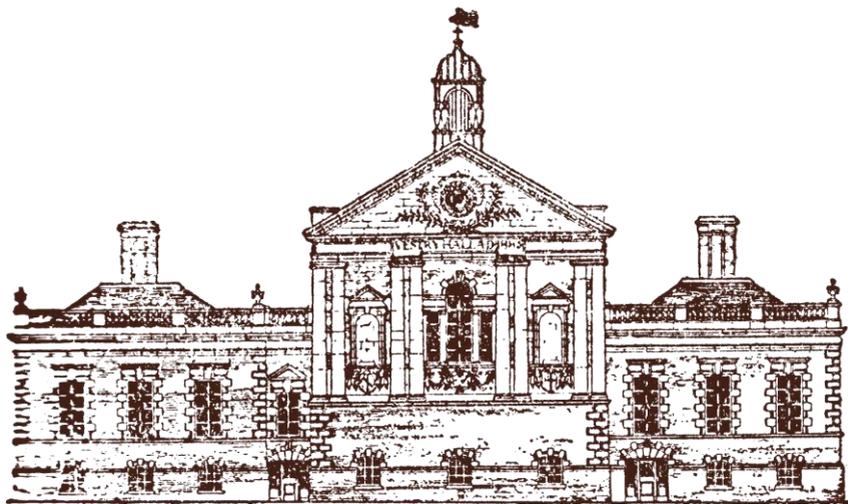
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PAPER 1

PART A

**QUESTION 1: WRITE SHORT NOTES ON THE
FOLLOWING:**

**QUESTION (A): MUNICIPAL AND
INTERNATIONAL LAW**

Municipal Law

Municipal law, often termed as domestic or national law, pertains to the laws that govern the functioning of a nation within its territorial boundaries. This includes the constitution, legislation, regulations, and judicial precedents which determine the legal structure, individual rights, duties and the various organs of the government. The term 'municipal' here is derived from the Latin 'municipium', meaning a city whose citizens have the privileges of Roman citizenship. It does not mean law over a municipality or city in its current usage.

The municipal law system in India is guided by the Indian

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Constitution, the supreme law of the land, along with statutes passed by Parliament and State Legislatures, and interpretations thereof by the judiciary. The doctrine of '*rule of law*' provided by AV Dicey, and the '*basic structure doctrine*' established in the landmark case of **Kesavananda Bharati vs State of Kerala (1973)** are fundamental principles underpinning the Indian municipal law system.

International Law

International law, as opposed to municipal law, comprises legal rules, norms, and standards that govern relations between sovereign states and other entities having international personality like United Nations, International Court of Justice etc. International law encompasses two primary subfields: *public international law* which governs relationships between sovereign states and international entities, and *private international law* or *conflict of laws*, which addresses the choice of law in cases involving foreign law elements.

Sources of international law include international conventions or treaties, international custom, and general principles of law recognized by civilized nations, as outlined in Article 38(1) of the Statute of the International Court of Justice. Noteworthy, the **Vienna Convention on the Law of Treaties (1969)** is a key document governing the treaties between nations.

The relationship between international law and municipal law can be complex. As per *monist theory*,

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represented by Hans Kelsen, international law and the domestic law of nations are part of a unified legal framework. However, according to the *dualist theory*, as propounded by Triepel and Anzilotti, domestic and international law are separate systems, with domestic law taking precedence within a nation's borders.

In India, the dualist theory is generally followed, as seen in the case of **Gramophone Company of India Ltd. vs Birendra Bahadur Pandey (1984)** where it was observed that rules of International law can be incorporated into the domestic law only through legislation.

QUESTION (B): CIVIL LAW AND CRIMINAL LAW

Civil Law

Civil law, in the broadest sense, is the branch of law dealing with the rights and obligations of individuals towards each other. It provides the legal framework that helps in resolving non-criminal disputes, involving issues such as property rights, contract disputes, divorce, and child custody, among others. Remedies for civil law cases usually involve monetary compensation or orders to do or not do something, known as injunctions.

In the Indian context, there are numerous statutes governing different aspects of civil law, like the Indian Contract Act, 1872, the Hindu Marriage Act, 1955, and the

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Specific Relief Act, 1963, among others. The Code of Civil Procedure, 1908 governs the procedural aspects of civil litigation.

Criminal Law

In contrast, criminal law involves the regulation and punishment of crimes. It pertains to conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people. The objective of criminal law is deterrence, punishment, and rehabilitation of the offender. In criminal law, the state or the government prosecutes an individual for violating laws that have been codified in the penal code. Unlike civil law, the primary remedy under criminal law is punishment, which can range from fines and community service to imprisonment and in some jurisdictions, even capital punishment.

In India, the Indian Penal Code, 1860, forms the backbone of criminal laws, setting out various offenses and their punishments. The procedural aspects are governed by the Code of Criminal Procedure, 1973.

Interplay between Civil and Criminal Law

While both civil and criminal laws are integral to the governance and order of society, their goals, applicability, and the standards of proof differ significantly. Civil law focuses on dispute resolution and victim compensation while criminal law emphasizes on punishment and deterrence. An act can be both a civil and a criminal

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wrong, leading to parallel civil and criminal proceedings. For example, in a case of assault, the victim may sue the offender for damages in a civil court, while the state may simultaneously prosecute the offender in a criminal court.

Standard of Proof: In civil law, the standard of proof is usually on the balance of probabilities (also known as preponderance of the evidence), i.e., it is more likely than not that the event occurred. In contrast, criminal law demands proof beyond reasonable doubt, given the serious consequences, including deprivation of liberty, that may follow a conviction.

Legal Representation: Both civil and criminal law have a right to legal representation. However, in India, as per Article 22 of the Indian Constitution, free legal aid is a fundamental right in criminal cases, a principle reaffirmed in the landmark case of **Hussainara Khatoon vs Home Secretary, State of Bihar (1980)**. This right is not absolute in civil cases.

QUESTION (C): CASE ANALYSIS

Case analysis or case law analysis is a method of studying and understanding court decisions. It is a critical skill in legal practice and education as it allows students and practitioners to interpret and apply precedent, identify legal principles and arguments, and understand judicial reasoning.

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The process involves several steps:

- a) **Case Citation:** The case name, the court where it was decided, and the year of decision. This information is crucial for referencing the case.
- b) **Facts of the Case:** This involves identifying the circumstances that led to the litigation and the questions of law or fact at issue.
- c) **Procedural History:** This details how the case progressed through the court system, including the decisions of lower courts and any appeals.
- d) **Issues:** These are the legal questions that the court is asked to resolve.
- e) **Judgment:** This is the decision of the court. It involves identifying the verdict, the reasons for the decision, and the principles of law applied.
- f) **Ratio Decidendi:** The principle of law upon which the decision is based. This forms the binding precedent for future cases.
- g) **Obiter Dicta:** These are the comments or observations made by the judge that are not directly relevant to the decision but may be persuasive in future cases.
- h) **Dissenting or Concurring Opinions:** These are the viewpoints of other judges who either disagree or agree with the majority decision but for different reasons.

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For instance, the analysis of the landmark case **Kesavananda Bharati vs State of Kerala (1973)** would involve understanding the facts related to constitutional amendments and the fundamental rights, the multiple issues around the power of Parliament to amend the constitution, the 7:6 judgment affirming the existence of a basic structure of the constitution that cannot be amended, and the various obiter dicta and dissenting opinions presented.

QUESTION (D): CITATIONS

A legal citation is a reference to a legal source, such as a case, statute, legal treatise, or law journal article. Citations are crucial in legal writing to demonstrate the basis for the legal argument being made and to enable others to find and verify the cited legal authority.

Legal citations typically include the title of the case, the published source in which the case can be found, a parenthetical that indicates a court and jurisdiction, and the year of decision.

- a) **Case Citation:** In Indian context, a case citation typically includes the names of the parties involved, the year of reporting, the abbreviated name of the law report in which the case is published, the volume number of the report, and the page number at which the report begins. For instance, in **Maneka Gandhi vs Union of India (1978) 1 SCC 248**, "Maneka

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"Gandhi vs Union of India" is the case name, "1978" is the year of reporting, "1" is the volume number, "SCC" refers to the Supreme Court Cases report, and "248" is the page number.

- b) **Statute Citation:** When citing statutes, the title of the act and the year it was passed are mentioned. For instance, The Indian Penal Code, 1860.
- c) **Journal Citation:** For a law journal, the citation typically includes the author's name, the title of the article, the volume and issue number of the journal, and the year of publication. For example, A.K. Srivastava, "Law and Social Change," 10 Indian J. Soc. & Legal Studies 1, (2023).

Indian legal citation mostly follows the system of British Commonwealth and can vary slightly based on different law reports. However, the idea behind a citation is to provide enough information to allow readers to find and check the sources themselves. This ensures that legal writing is transparent, precise, and verifiable, thereby fostering legal research and discussion.

In addition to cases, statutes, and journals, legal citations also cover other sources, including constitutions, government documents, treatises, and even online resources.

There is also an increasing tendency to cite foreign and international authorities, for which specific guides exist. For example, for United States cases, The Bluebook: A

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Uniform System of Citation is the most commonly used guide.

Role of Citations in Legal Research and Writing

Citations are integral to legal research and writing. They establish the credibility of legal arguments, identify sources, and acknowledge the contributions of others. Moreover, proper citation practice helps to avoid plagiarism, an ethical violation in academia and the profession.

Importance of Case Analysis and Citations in Legal Method

The combination of case analysis and citation in legal method highlights the interconnected nature of law. Legal understanding is built upon analyzing and interpreting previous cases and legislation. Each case or statute forms a part of the larger legal landscape. Through case analysis, we can discern patterns in judicial decision-making, interpret legal principles, and predict future trends.

On the other hand, legal citations ensure that legal arguments are substantiated and traceable, promoting transparency and accountability. They help us trace the evolution of a particular legal principle, understand the context in which it was interpreted, and apply it to new scenarios.

In essence, case analysis and citations are crucial tools in any legal method that aims to understand, explain, and

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predict the law. They are indispensable to both legal education and the practice of law.

As future legal professionals, it's vital for us to master these skills early in our legal education. The development of these skills is not a mere academic exercise; they are practical tools that will enhance our capacity to analyze, reason, and communicate effectively in our future legal practice.

For example, the ability to conduct thorough case analysis is a core skill for any advocate preparing their arguments. Citations, on the other hand, lend credibility to those arguments and ensure that they are grounded in existing legal authority.

Similarly, legislators need to analyze previous statutes and relevant case law when drafting new legislation to ensure that it's consistent with existing laws and constitutional principles. Likewise, they must appropriately cite these sources to provide the context and rationale behind the new legislation.

QUESTION (E): RULE OF EQUITY

Equity, in legal parlance, refers to a set of principles that were developed in England to supplement the common law and mitigate its harshness. It was administered by the Court of Chancery in England during the Middle Ages. It provided relief when the rigid application of common law rules failed to achieve justice, thereby functioning as a

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"corrective" to the common law.

In essence, equity seeks to do what is fair and just based on the specific circumstances of a case, rather than strictly adhering to established legal rules. Equity is not a complete system of law unto itself; it works alongside the common law, filling in gaps and softening the rigidity of legal rules.

Maxims of Equity

Equity is guided by certain principles or 'maxims' which inform its application. Some of the fundamental maxims of equity are:

- a) **Equity will not suffer a wrong to be without a remedy (ubi jus ibi remedium):** This is the cornerstone of equity, stating that for every legal wrong, there must be a remedy.
- b) **He who seeks equity must do equity:** This principle states that a party seeking equitable relief must be prepared to act fairly towards the opposing party.
- c) **He who comes to equity must come with clean hands:** This means that anyone seeking an equitable remedy must themselves be free of wrongdoing in relation to the matter.
- d) **Delay defeats equity (Vigilantibus, non dormientibus, jura subveniunt):** This embodies the principle that equity aids the vigilant and not

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those who sleep over their rights.

Equity in Indian Legal System

In India, the principles of equity are interwoven with the Indian legal system. While there is no separate court of equity, the principles of equity are applied by all courts. The Specific Relief Act, 1963 and the Trust Act, 1882 are examples of statutes embodying equitable principles. Also, courts often apply principles of equity in their exercise of discretionary powers.

One of the landmark cases highlighting the application of equity in India is the case of **M. C. Mehta vs Union of India (1987)**, also known as the Oleum Gas Leak case. In this case, the Supreme Court of India, applying the principle of strict liability, evolved a new rule of absolute liability in the context of hazardous industries, as an equitable measure to protect the rights of affected individuals.

Equity and Common Law

In contemporary law, the distinction between equity and common law is less pronounced than in the past. Common law courts can grant equitable remedies (such as injunctions), and courts of equity apply principles of common law. However, the influence of equity is still notable in certain areas, such as trust law, and when courts grant remedies like specific performance or injunctions that common law would not provide.

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PART B

Q.2. LAW IS A NATIONAL PATTERN OF CONDUCT TO WHICH ACTIONS DO OR OUGHT TO CONFORM. COMMENT ON THIS STATEMENT WHILE DEFINING LAW, ITS UTILITY AND REQUIREMENT IN THE SOCIETY.

Defining Law

Law, in its broadest sense, is a system of rules established by a sovereign entity, such as a nation, which governs the actions of its members and is enforceable through sanction or penalty. It is a structured set of principles and regulations designed to maintain order, justice, and predictability in a society.

At its core, law is meant to guide and regulate human behavior, ensuring the smooth functioning of society. It is often seen as both prescriptive and normative. In a prescriptive sense, law sets out what individuals and institutions can or cannot do. In a normative sense, law sets a standard for how individuals and institutions should behave.

However, the understanding of law isn't confined merely to its statutory or formalistic interpretations. Legal philosopher H.L.A. Hart, in his book 'The Concept of Law', made a distinction between the 'external' and 'internal' points of view of law. The external point of view

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perceives law merely as a system of coercion backed by state power. Conversely, the internal point of view, which Hart posits is necessary for a functioning legal system, recognizes law as not just rules enforced by the state but as standards of behavior which the society generally adheres to out of a sense of obligation.

Utility of Law

Law is a tool of social control that serves several vital functions:

- 1. Maintaining Order:** The most apparent function of law is to maintain order in society, preventing conflict and chaos. It provides a framework for resolving disputes, whether they be interpersonal, business, or international conflicts.
- 2. Establishing Standards:** Laws establish acceptable standards of behavior. They provide guidelines for the conduct of individuals, governments, and businesses.
- 3. Protecting Liberties and Rights:** Laws also serve to protect individual rights and liberties. For instance, the Constitution of India enshrines fundamental rights that protect the liberties of citizens and other persons in India.
- 4. Promoting Social Justice:** Law also serves to promote justice and equality. It is used as a tool for social change and to address societal issues, such as discrimination, corruption, and inequality.
- 5. Facilitating Planning:** Laws provide predictability

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and certainty, enabling individuals and businesses to plan their activities within the known legal framework.

6. Serving as a Tool for Social Change: Law can also be a catalyst for social change. Through the enactment and enforcement of laws, societies can effect changes in social, economic, and political conditions.

Law and Society

The interaction of law and society is a focal point for sociological and legal studies. The law is not a rigid or static entity, but rather it evolves and responds to social norms and pressures. In this context, the statement "Law is a national pattern of conduct to which actions do or ought to conform" makes significant sense.

Law reflects the moral and ethical standards of a society. It is shaped by and evolves with societal norms and values. However, law is not merely a mirror of society but also plays a role in shaping social norms. For instance, laws prohibiting discriminatory practices aim to change societal attitudes and behaviors.

In many respects, the law reflects societal consensus on the minimum standards of behavior. However, it can also be a site of contestation, reflecting differing views within society. The dynamic interaction between societal norms and law can be seen in various spheres, including civil rights, environmental regulation, and digital privacy.

Recent Developments and Illustrations

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In India, the dynamic and evolving nature of law, reflecting societal norms and leading to societal change, can be observed in several landmark judgments.

For instance, the Supreme Court of India, in **Navtej Singh Johar vs Union of India (2018)**, decriminalized consensual homosexual acts by reading down Section 377 of the Indian Penal Code (IPC). The Court held that the criminalization of such acts was a violation of fundamental rights, namely the right to equality and the right to life and personal liberty, which include the right to privacy and the dignity of the individual. This historic judgment shows how the law responded to evolving societal understanding and acceptance of homosexuality, and it also aims to shape societal attitudes by affirming the dignity and rights of LGBTQ+ individuals.

In another landmark judgment, **Justice K.S. Puttaswamy (Retd) vs Union of India (2017)**, the Supreme Court of India recognized the right to privacy as a fundamental right under the Constitution. The Court noted that privacy is a multifaceted right that touches upon various aspects of an individual's life, including personal autonomy, informational self-determination, and protection of one's physical spaces. The evolution of law in recognizing such a right reflects the changing social context, especially in light of technological advancements that pose new threats to privacy.

On a similar note, the Supreme Court's decision in **Shakti Vahini vs Union of India (2018)** highlighted

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the law's role in combating deep-seated social issues. In this case, the Court condemned the practice of "honor killings" and directed the government to take preventive, remedial, and punitive measures. The Court stated that the right to choose a life partner is a fundamental right under the Constitution, and no individual or collective entity has the right to infringe upon this freedom. The judgment is an example of the law acting as a tool for social change, challenging traditional norms that violate fundamental rights and human dignity.

Law as a Regulator of Conduct

Law, indeed, is a "national pattern of conduct to which actions do or ought to conform." But it is not just a mere pattern of conduct; it's a structured system designed to regulate a society. It is based on fundamental principles of justice, fairness, and equity. It seeks to balance individual freedoms with societal interests, protect vulnerable individuals and groups, and promote social welfare. It is a dynamic system that adapts to changes in societal values and advances in technology.

As future legal practitioners, we must understand law not only as a tool for dispute resolution but also as an instrument of social change. We must also recognize the inherent flexibility and adaptability of the law, its capacity for growth and development, and its potential to serve as a force for progress. As Justice Oliver Wendell Holmes Jr., a prominent figure in American jurisprudence, famously said, "The life of the law has not been logic; it has been experience." This emphasizes the

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fundamental relationship between law and society and underscores that the law evolves based on societal needs, values, and experiences.

Q.3. ELUCIDATE THE FOLLOWING:

A) SUBSTANTIVE AND PROCEDURAL LAWS

B) RATIO DECIDENDI AND OBITER DICTA

Question (a): Substantive and Procedural Laws

Law is categorized into different types based on its functions and applications. Two primary categories are substantive law and procedural law. Both are crucial for the administration of justice, yet they serve different purposes and have distinct functions in the legal process.

Substantive Law

Substantive law refers to the body of rules that determine the rights and obligations of individuals and collective bodies. It is concerned with the substance of a legal matter, addressing issues such as the definition of crimes, contractual rights, and duties in civil law, among others. It provides a framework for the conduct that is regulated by law, defining what constitutes a legal or illegal act.

Substantive laws include all laws that deal with rights, duties, and liabilities. For instance, the Indian Penal Code, 1860, which defines different types of crimes and prescribes their punishments, is an example of

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substantive law. Similarly, the Indian Contract Act, 1872, which lays down the rules and principles related to contracts, is another instance of substantive law.

Procedural Law

Procedural law, on the other hand, provides the mechanism through which substantive law is applied. It sets out the process and method for proceeding with civil, criminal, administrative, and other legal matters. It comprises rules regarding how a court case is commenced, what kind of service of process is required, the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases, the timing and manner of depositions and discovery, the conduct of trials, the process for judgment, various available remedies, and how the courts and clerks must function.

Procedural laws include laws like the Code of Criminal Procedure, 1973, and the Code of Civil Procedure, 1908, in India. These laws provide the process to be followed in criminal and civil proceedings, respectively.

The Interplay Between Substantive and Procedural Law

Substantive and procedural law work hand-in-hand in the administration of justice. While substantive law defines legal rights and obligations, procedural law provides the machinery for enforcing those rights and obligations. The procedural law cannot be understood without reference to the substantive law it is designed to

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enforce.

For example, if a person is charged with theft, substantive law defines what constitutes theft and what penalties may be imposed. Procedural law, on the other hand, dictates what evidence can be presented, how the trial will be conducted, and how the verdict will be determined.

Landmark Cases Highlighting The Difference

The distinction between substantive and procedural law has been a point of discussion in various cases. In the landmark case of **T. S. Baliah v. T. S. Rangachari** (AIR 1969 SC 701), the Supreme Court of India held that the penalty proceedings for concealment of income is not a part of the assessment proceedings but that they constitute a separate and distinct matter. Hence, the provision imposing a penalty is a substantive law.

In **Francis Bennion vs. Jyoti Basu** (AIR 2005 Cal 1), the High Court of Calcutta held that procedural provisions are generally intended to be facilitative and not obstructive, and that while considering the impact of a procedural law on rights/obligations under substantive law, the procedural law must be construed to advance the cause of justice rather than to defeat it.

Answer to Question (b): Ratio Decidendi and Obiter Dicta

The doctrines of 'ratio decidendi' and 'obiter dicta'

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originate from the common law tradition and serve to identify the legal principles laid down by courts in their judgments. Both play a vital role in the development and application of law, especially in jurisdictions that follow the doctrine of precedent (stare decisis), including India.

Ratio Decidendi

Ratio decidendi, a Latin phrase meaning 'the reason for the decision', is the principle or rule of law on which a court's decision is founded. It is the binding part of a judicial decision which must be followed by lower courts in future cases with similar facts. In simple terms, it's the underlying principle that the court uses to come to a decision. It includes the facts of the case, the legal issues arising from these facts, the laws applied by the court, and the application of these laws to the facts of the case.

Understanding the ratio of a case requires identifying the material facts of the case, i.e., the facts necessary for the decision, and the court's reasoning linking the material facts to the legal outcome. The ratio of a case is critical because it establishes a legal precedent that courts are bound to follow in future cases with similar facts.

Obiter Dicta

Obiter dicta, on the other hand, are remarks or observations made by a judge that, although included in the body of the court's opinion, do not form a necessary part of the court's decision. Unlike the ratio, obiter dicta are not binding on later courts, but they may have

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persuasive value. They include hypothetical examples, analogies, statements of policy, or views on related legal issues. They may provide guidance for future cases or suggest how the court might decide on issues not directly before it.

While obiter dicta do not have the force of law, they are important as they provide insights into the court's thinking and can influence the development of law. They may be persuasive, particularly when they are part of the judgment of a superior court.

The Relationship between Ratio Decidendi and Obiter Dicta

The concepts of ratio decidendi and obiter dicta are closely related but serve different purposes in a judgment. While the ratio decidendi forms the binding precedent, the obiter dicta are non-binding statements that may nevertheless carry persuasive authority. They both contribute to the evolution of law, with ratio decidendi shaping the binding doctrine and obiter dicta influencing the direction of future legal development.

Landmark Cases Illustrating The Concepts

The distinction between ratio decidendi and obiter dicta is crucial in the application of the doctrine of precedent. The Supreme Court of India, in the case of **Union of India v. Dhanwanti Devi (1996) 6 SCC 44**, stated that it is the ratio decidendi, not obiter dicta, that has binding force.

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An example of obiter dicta having persuasive value is found in **Navtej Singh Johar v. Union of India (2018) 10 SCC 1**. Here, the Supreme Court of India made certain observations regarding the need for anti-discrimination laws to protect LGBTQ+ individuals. These comments were not necessary for the court's decision to decriminalize consensual homosexual acts, making them obiter dicta, but they are likely to influence the development of anti-discrimination law in India.

Q.4. "CUSTOM PRECEDES LEGISLATION, AND, AS SOCIETY ADVANCES IS REPLACED BY IT". DO YOU AGREE WITH THIS STATEMENT? COMMENT ON LEGISLATION' AS AN IMPORTANT SOURCE OF LAW? ALSO EXPLAIN DELEGATED LEGISLATION.

The evolution of societies has always seen a transformation of sources of law from more primitive forms like customs, traditions, and religious edicts to more complex and organized forms such as legislation. This transition reflects the dynamics of societal growth, changes in sociopolitical structures, and advancements in legal thought. The quote, "Custom precedes legislation, and, as society advances is replaced by it," aptly summarizes this transition. This essay will explore the statement, the significance of legislation as a source of law, and the concept of delegated legislation.

Custom as a Source of Law

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Customs are one of the oldest sources of law. They originate from the social practices, traditions, and norms of a society and are accepted over time by the community as binding rules of conduct. When a particular practice is followed consistently and regularly over an extended period and is considered by the society as obligatory, it evolves into a custom. Customary law has been prevalent in societies long before the advent of formal legal systems.

Customary law is still significant in various legal systems around the world, especially in areas like family law and property law, and is particularly prominent in societies with unwritten constitutions. However, with societal advancement, the role of customs has gradually been overtaken by legislation due to several reasons, including the need for clarity, uniformity, and adaptability to changing societal needs.

Legislation as a Source of Law

Legislation, derived from the Latin word 'legislatio,' refers to the process of making or enacting laws by the legislative body in a political unit. The term can apply to a single law, also known as a statute, or a collection of laws. Legislation is regarded as one of the most important and direct sources of law in modern societies. It is a manifestation of the sovereign power of the state, typically exercised by the parliament or similar legislative bodies.

Legislation has a number of advantages over custom as a source of law. Firstly, legislation is precise and

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unambiguous in nature. The legal provisions are clearly stated, leaving little room for different interpretations. Secondly, legislation ensures uniformity of law across the jurisdiction, ensuring fairness and equal treatment. Thirdly, it can be easily and swiftly amended or repealed to adapt to the changing needs of society. Lastly, it can address complex and novel issues which could not have been anticipated or regulated by customs.

In the Indian context, examples of legislation include the Indian Penal Code, 1860, the Civil Procedure Code, 1908, the Indian Contract Act, 1872, and many others. These statutes govern various aspects of civil and criminal law in India.

Delegated Legislation

While legislation enacted by the legislative body is the primary source of law, the modern administrative state's complexities necessitate another form of legislation known as 'delegated legislation' or 'subordinate legislation.' It refers to rules of law made by an individual or body under powers given to them by an Act of Parliament.

Delegated legislation allows for more detailed administrative matters to be modified and adjusted quickly, often without requiring a full legislative process. This is crucial in areas where technical expertise is required or where swift action might be necessary, such as public health emergencies or changing economic conditions. Examples of delegated legislation can include

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rules, regulations, orders, bye-laws, etc.

However, delegated legislation is not without its concerns. There is a risk of excessive delegation where legislative powers might be abused by the executive. Therefore, control over delegated legislation, both judicial and legislative, is necessary to prevent any misuse of powers.

The Transition from Custom to Legislation

As society evolves, so too does its legal structure and sources of law. Customs, being the oldest source of law, have played a crucial role in shaping early legal systems. However, as societies grew in complexity and the need for a more organized and structured system of law became apparent, legislation took over as the primary source of law.

This transition was due to a variety of reasons. Customs, while being an essential reflection of societal norms and values, are largely uncodified and may vary greatly from one region to another within the same jurisdiction. This lack of uniformity can lead to inequality and injustice. Furthermore, customs are rigid and slow to adapt to societal changes. In contrast, legislation, being a deliberate and conscious enactment by a sovereign authority, provides the necessary uniformity, clarity, and flexibility. It can be quickly amended or repealed to reflect the changing needs and aspirations of society.

The Importance of Delegated Legislation

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With societal advancement and increasing administrative complexities, even the legislative process may fall short in terms of efficiency and expertise, leading to the evolution of delegated legislation. Delegated legislation is an essential tool for modern governments that need to make laws on technical subjects or need to make laws swiftly. It allows subject matter experts in different fields, like health, education, technology, etc., to make or adapt laws according to the need of the hour.

In India, examples of delegated legislation include the rules and regulations made under statutes like the Income Tax Act, 1961, the Companies Act, 2013, the Environment Protection Act, 1986, etc. These rules and regulations provide the detailed framework necessary for the implementation of the broad principles laid down in the parent Act.

However, the power to make delegated legislation is not unfettered and is subject to both legislative and judicial control. The legislative control is exerted through the requirement of laying before and approval by the Parliament or State Legislature, as the case may be. Judicial control, on the other hand, is exercised by the courts by reviewing the legality and constitutionality of the delegated legislation.

Q.5. WHAT IS CUSTOM? WHAT IS THE PLACE OF CUSTOM AMONG SOURCES OF LAW? EXPLAIN.

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Custom is an established pattern of behavior that can be objectively verified within a particular social setting. Customary law, as a source of law, predates other forms of law-making and is still relevant in many legal systems today. This essay aims to define custom, explore its place among the sources of law, and elaborate on its significance and limitations.

Defining Custom

Custom, in the legal sense, refers to a rule of conduct followed by the people in a particular district, province, or country over a significant period of time. These customs, when acknowledged and enforced by courts, transform into customary law. Two essential elements define a custom – 'immemorial antiquity,' which means the custom should have been practiced for a very long time, and 'continuity,' which refers to the uninterrupted and consistent practice of the custom. Additionally, customs must be reasonable, certain, and should have been observed as of right, meaning they are obligatory and not optional.

Place of Custom Among Sources of Law

Custom holds a prominent place among the sources of law, primarily because it is one of the oldest and most traditional forms of law-making. In many societies, particularly those without a codified set of laws, custom represents the primary source of law.

The legal systems of many countries, including common

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law, civil law, and mixed jurisdictions, acknowledge the role of custom as a source of law. In common law jurisdictions, like England and India, customs form a part of the law when they are recognized by courts through the application of the doctrine of precedent. In civil law jurisdictions, like France and Germany, customs are recognized as a source of law but are typically only invoked when legislation and case law do not address a specific issue.

In the international context, customary international law, derived from the consistent practice of States accompanied by *opinio juris*, or the belief that the practice is required by law, is considered a primary source of international law, alongside treaties and general principles of law.

The Significance and Limitations of Custom

Customs offer several advantages as a source of law. Firstly, customs are inherently democratic, as they originate from the people themselves, and reflect their needs, values, and experiences. Secondly, customs have a high degree of social acceptability and compliance, given they are rooted in social practices.

However, custom as a source of law also has limitations. Firstly, customs may lack precision and clarity, leading to uncertainty and potential disputes. Secondly, customs tend to be static and may not adapt swiftly to changing social needs and circumstances. Thirdly, some customs may perpetuate inequality or injustice and may conflict

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with principles of human rights.

For example, in the famous Indian case of *Madhu Kishwar vs State of Bihar (1996) 5 SCC 125*, the Supreme Court held that tribal customs concerning inheritance that discriminated against women were not valid, as they were inconsistent with the principles of equality and non-discrimination embodied in the Constitution of India.

Custom as a Source of Law in Indian Legal System

In the context of the Indian legal system, custom has played a significant role, particularly in personal laws relating to marriage, divorce, adoption, inheritance, etc. The Indian legal system is a unique blend of legislation, customary law, and judicial precedents.

In Hindu law, customs have been recognized as a vital source of law and given the same importance as the sacred texts. The Hindu Marriage Act, 1955, for example, allows for the solemnization of a marriage in accordance with the customary rites and ceremonies of either party. Similarly, Muslim law in India is largely based on religious customs and practices.

However, it is important to note that the Indian Constitution is the supreme law of the land, and any custom or tradition, regardless of its antiquity, cannot violate constitutional provisions. This was firmly established in the landmark case of *Shah Bano vs. Mohd. Ahmed Khan (1985) 2 SCC 556*, where the Supreme Court

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of India upheld the rights of a Muslim woman to maintenance under the secular law of the country, despite conflicting customs under Muslim law.

The Challenges of Customary Laws

Despite the significance of customs, they present certain challenges. Their uncodified nature can lead to issues of inconsistency and ambiguity. A lack of codification also means that these customs are often not accessible to common people who are supposed to abide by them, which can lead to misuse or misinterpretation.

Furthermore, customs can be inherently resistant to change, which can result in them becoming outdated or irrelevant in the face of societal progress. For instance, certain customary practices might be in conflict with the principles of equality and justice. Therefore, it is necessary to maintain a balance between respect for cultural diversity and the protection of individual rights.

Another crucial aspect is the conflict between custom and statute. When a statute is clear, it overrides the customary law, as statutory law is passed by a competent legislative body representing the will of the people at large and is designed to cater to the needs of the contemporary society.

Role of Judiciary in Customary Laws

The role of judiciary becomes paramount in recognizing and enforcing customs as a source of law. It is the responsibility of the judiciary to ascertain the existence of

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a custom and to ensure that it fulfills all the necessary legal requirements. The courts, while recognizing customs, also have to ensure that they do not contravene constitutional principles.

Q.6. "THE CONCEPT OF RULE OF LAW IS THAT THE STATE IS GOVERNED, NOT BY THE RULER OR THE NOMINATED REPRESENTATIVES OF THE PEOPLE BUT BY THE LAW." ELUCIDATE IN DETAIL.

The rule of law is a fundamental doctrine encompassing the basic principles of equality before law, accountability to the law, fairness in the application of the law, separation of powers among others. This concept is a cornerstone of democratic societies and reflects the supremacy of law over the whims and fancies of individuals in power. This essay seeks to provide a comprehensive understanding of the rule of law, its principles, and significance.

Defining the Rule of Law

The rule of law is a complex and multifaceted concept, the origins of which can be traced back to ancient Greece. However, the modern conception of the rule of law is usually associated with the British jurist A.V. Dicey, who identified three essential elements of the rule of law in his seminal work "Introduction to the Study of the Law of the Constitution" (1885). These principles are:

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1. **Supremacy of Law:** Law is the ultimate sovereign and everyone, regardless of their status or position, is subject to it. No one can be punished or made to suffer except for a breach of law.
2. **Equality before Law:** Every individual, irrespective of their social, economic or political status, is equal before the law. The same laws apply to everyone, and no person is above the law.
3. **Predominance of Legal Spirit:** The rights and liberties of the individual are safeguarded by the ordinary law of the land and the enforcement of these rights does not rely on discretionary powers.

The Rule of Law in Practice

In practical terms, the rule of law ensures that governments operate within the law, and that citizens have the ability to seek redress for the violation of their rights. The rule of law restrains arbitrary government action, thereby safeguarding individual rights and liberties. It also establishes predictability and certainty in the law, allowing individuals and businesses to plan their activities with a reasonable level of assurance about the legal consequences of their actions.

One of the most significant manifestations of the rule of law is the concept of judicial review. This empowers courts to review the actions of the executive and legislative branches and to declare them unconstitutional if they violate the rights of individuals or exceed the

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powers granted to them by law. Judicial review thus serves as a vital check on the powers of the state.

Significance of the Rule of Law

The rule of law is a fundamental principle that guarantees justice, fairness, and equality. It serves as a bulwark against tyranny and misuse of power, ensuring that state authority is exercised in a manner consistent with established laws. The rule of law promotes transparency and accountability, holding both government officials and private individuals accountable for their actions.

The rule of law is not merely a legal principle but also an essential precondition for democracy, economic development, and human rights. It provides the framework within which democratic processes function and fundamental rights are respected. Moreover, the rule of law fosters a conducive environment for economic development by establishing clear rules and regulations and providing mechanisms for the resolution of disputes.

The Rule of Law in Contemporary Society

In the contemporary world, the importance of the rule of law cannot be overstated. However, maintaining the rule of law poses many challenges, particularly in societies marked by deep-seated corruption, discrimination, and inequality. For the rule of law to be effective, it must be coupled with the establishment of a robust and independent judiciary, the promotion of transparency and accountability, and the fostering of a culture of

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legality where respect for the law is a cornerstone of social behavior.

Rule of Law and Judiciary

A key instrument for maintaining the rule of law is a robust and independent judiciary. Judges, through their interpretations of statutes and constitutions, play a vital role in maintaining the rule of law by ensuring that actions of the state conform to legal norms.

The principle of the separation of powers also reinforces the rule of law by establishing checks and balances among the legislative, executive, and judicial branches of government. This prevents the concentration of power in any one branch and safeguards against the misuse of power.

In the Indian context, the Supreme Court has been a staunch defender of the rule of law. For instance, in the landmark case of *Kesavananda Bharati vs. State of Kerala* (1973), the Court established the doctrine of the 'Basic Structure' of the Constitution, which cannot be altered by the Parliament, thereby reinforcing the supremacy of the Constitution and the rule of law.

However, the rule of law is threatened when there is a disregard for legal norms and principles. Corruption, for instance, undermines the rule of law by allowing individuals to evade justice and escape punishment. Discrimination and inequality also erode the rule of law, as they violate the principle of equality before the law.

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Moreover, in many countries, the rule of law is compromised by arbitrary state actions, human rights abuses, and a lack of judicial independence. In such contexts, the rule of law remains an aspiration rather than a reality.

Role of Legal Education and Legal Professionals

Legal education and legal professionals have a critical role to play in promoting the rule of law. Legal education should inculcate in students a deep respect for the law and its role in society. Students should be taught about the significance of the rule of law, and trained to apply legal principles in a fair and impartial manner.

Legal professionals, on their part, must uphold the highest standards of integrity and professionalism. They must use their expertise to uphold the rule of law and to fight against injustice and abuse of power.

Rule of Law: Historical Development

To extend our understanding of the rule of law, it's valuable to consider its historical development. The roots of this principle can be traced back to ancient civilizations. The concept of 'Maat' in ancient Egyptian civilization, the code of Hammurabi in Babylonia, and the 'Dharma' concept in ancient Indian texts all speak of a system where society is regulated by norms and rules, a rudimentary form of what we now recognize as the rule of law.

In Ancient Greece, particularly in the city-state of Athens,

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the rule of law emerged as a political ideal against the arbitrary rule of tyrants. In the Roman legal tradition, the principle of "the rule of law, not the rule of men" was encapsulated in the Latin phrase "Lex Rex" (Law is King), contrasting the earlier maxim of "Rex Lex" (King is Law).

The Magna Carta of 1215, an English legal charter often considered the foundation of constitutional law, is another significant milestone in the development of the rule of law. It asserted that even the King was not above the law, introducing a fundamental principle of the rule of law: everyone is subject to the law and accountable for their actions.

The evolution of the rule of law continued through the Enlightenment and into the modern era, where it has become a central tenet of liberal democratic theory and constitutional governance. Philosophers like John Locke and Montesquieu helped articulate the importance of the rule of law as a safeguard against arbitrary state power and a guarantor of individual rights.

Q.7 WHAT IS JURISDICTION? DISCUSS ABOUT THE VARIOUS JURISDICTION OF THE COURTS IN INDIA.

Definition of Jurisdiction

Jurisdiction, in legal parlance, is a concept that refers to the authority granted to a formally constituted legal body or to a political leader to deal with and make judgments

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on legal matters and, by implication, to administer justice within a defined area of responsibility. The term is also used to denote the geographical area or subject-matter to which such authority applies.

Jurisdiction draws its substance from international law, conflict of laws, constitutional law, and the powers of the executive and legislative branches of government to allocate resources to best serve the needs of society.

Types of Jurisdiction

Broadly, jurisdiction can be classified into three types: personal jurisdiction, territorial jurisdiction, and subject matter jurisdiction.

1. **Personal Jurisdiction** or jurisdiction in personam is the power that a court has to make a decision regarding the party being sued in a case.
2. **Territorial Jurisdiction** refers to the court's power to bind the parties to an action based on the location where the action is filed.
3. **Subject-Matter Jurisdiction** is the authority of a court to render a judgment concerning a specific type of dispute.

Jurisdiction of Courts in India

The Constitution of India, statutes and various legislations, lay down the structure of the courts in India and define their powers and jurisdiction. The Indian Judiciary is a unified judicial system, organized in a

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hierarchical form.

Supreme Court of India

The Supreme Court, at the top of this hierarchy, has original, appellate, and advisory jurisdiction.

- **Original Jurisdiction:** Article 131 of the Constitution provides the Supreme Court with original jurisdiction over disputes between states, or between the central government and one or more states. It's noteworthy that this jurisdiction is not exclusive and can be shared with other high courts.
- **Appellate Jurisdiction:** The Supreme Court stands as the highest court of appeal. It hears appeals in civil and criminal matters from the High Courts, the appellate courts in the states. It also hears appeals for cases involving the interpretation of the Constitution or a point of law.
- **Advisory Jurisdiction:** Under Article 143 of the Constitution, the President may seek the opinion of the Supreme Court in the form of advisory jurisdiction.

High Courts

High Courts in the states or Union Territories hold jurisdiction at the regional level. They possess original and appellate jurisdiction.

- **Original Jurisdiction:** High Courts have the power to issue directions, orders, and writs to any person or

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authority within their territorial jurisdiction. This includes cases related to fundamental rights and other constitutional matters.

- **Appellate Jurisdiction:** They hear appeals from lower courts situated within their territorial jurisdiction.

District Courts

District Courts and their equivalents are the lowest level of courts in the Indian judiciary. They have jurisdiction over a district or a group of districts, and their jurisdiction is mainly of two types:

- **Civil Jurisdiction:** In the civil side, district courts deal with property disputes, matrimonial cases, cases related to tort law, contract violations, etc.
- **Criminal Jurisdiction:** On the criminal side, district courts hear criminal cases pertinent to their district, provided the punishment for the crime is not a death sentence.

Apart from these general jurisdictions, several other courts and tribunals with special jurisdictions have been established in India. These include Family Courts, Consumer Forums, Commercial Courts, Labour Courts, and Tax Tribunals.

Territorial and Pecuniary Jurisdiction

Besides personal and subject-matter jurisdiction, courts also have specific territorial and pecuniary jurisdiction.

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Territorial jurisdiction refers to the authority of a court over cases within a specific geographical area. Pecuniary jurisdiction refers to the ability of a court to entertain cases of a particular monetary value or cases pertaining to a specific type or category of economic transactions.

Special Courts

India also has special courts and tribunals for specific types of cases. For instance, the National Green Tribunal has the jurisdiction over cases involving environmental issues. The Intellectual Property Appellate Board (IPAB) deals with cases pertaining to intellectual property rights. These special courts and tribunals have been established to ensure that complex and nuanced matters are addressed by judges with expertise in those specific areas.

Constitutional Jurisdiction

In addition, High Courts and the Supreme Court have constitutional jurisdiction. They can hear cases questioning the constitutional validity of laws passed by the legislature or actions taken by the executive. This jurisdiction plays a critical role in preserving the sanctity of the Constitution and upholding the rule of law.

Evolving Jurisdiction

Jurisdiction is not a static concept; it evolves with changing societal norms and legal advancements. For instance, with the advent of the internet and cyberspace, questions of jurisdiction in this new domain have arisen. Courts around the world, including in India, are

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grappling with issues such as whether they have jurisdiction over a dispute that involves an internet transaction carried out by parties located in different countries, or a defamatory statement made on a website hosted in another country.

International Jurisdiction

At the international level, different jurisdictions apply as well. International courts like the International Court of Justice (ICJ) and the International Criminal Court (ICC) have jurisdiction over disputes between nations and crimes of international concern respectively.

Q.8. EXPLAIN IN BRIEF VARIOUS KINDS OF LEGAL RESEARCH. STATE THE ADVANTAGES AND DISADVANTAGES OF DOCTRINAL AND NON-DOCTRINAL RESEARCH.

Legal research is the foundation of any legal action, case analysis, or law formulation. It entails the systematic identification and study of legal authorities that can be used to support a legal decision, case, or legislative amendment. There are two primary types of legal research: Doctrinal (also known as Traditional or Library-based research) and Non-Doctrinal (also known as Empirical or Field-based research).

Doctrinal Legal Research

Doctrinal research, often termed "black-letter law"

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research, is a theoretical and conceptual form of study. It focuses on the analysis of legal texts such as statutes, legal cases, and other authoritative documents to explore the law's "doctrine". It aims to understand the law as it is, its interpretation, and its application. The research sources used are primary and secondary sources.

Advantages of Doctrinal Research:

1. **Comprehensiveness:** Doctrinal research involves a thorough examination of legal texts, enabling a comprehensive understanding of the law.
2. **Applicability:** It provides a theoretical framework that can be applied to real-world situations. It is especially beneficial in dispute resolution and legal reasoning.
3. **Validity:** As it primarily relies on statutes, case laws, and authoritative texts, the validity of the findings is high.

Disadvantages of Doctrinal Research:

1. **Limited Perspective:** This research approach tends to be conservative and rigid, focusing mainly on legal rules and principles without adequately considering the social, economic, and political contexts of the law.
2. **Not Grounded in Reality:** As it is primarily text-based, it may not take into account the realities and experiences of those affected by the law.

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Non-Doctrinal Legal Research

Non-Doctrinal research, also known as empirical or socio-legal research, involves the study of law in relation to society. It employs techniques like interviews, surveys, and observations to understand how law operates in society. It focuses on the interaction between law, legal institutions, and the populace, offering a more practical understanding of the law.

Advantages of Non-Doctrinal Research:

1. **Holistic Understanding:** Non-doctrinal research provides a more comprehensive perspective on law by considering its interaction with society.
2. **Grounded in Reality:** It involves real-world data collection, making it more relevant to understanding law in action.
3. **Dynamic:** It acknowledges the evolving nature of law and can adapt to societal changes, unlike doctrinal research.

Disadvantages of Non-Doctrinal Research:

1. **Time-consuming and Costly:** The collection of empirical data can be costly and time-consuming.
2. **Unpredictability:** Since it deals with human behavior, the results might be unpredictable and inconsistent.

Other Types of Legal Research

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Beyond the doctrinal and non-doctrinal dichotomy, legal research can also be classified based on the nature and purpose of the research:

1. **Descriptive Research:** This type of research aims to describe the current state of a legal phenomenon or issue accurately.
2. **Analytical Research:** This research examines the reasons behind legal developments or the functioning of a law. It is focused on understanding why things are the way they are.
3. **Applied Research:** Applied research focuses on finding solutions to specific legal problems or questions. It is geared towards practical application.
4. **Fundamental Research:** This is more theoretical, aiming to develop new concepts, theories, or principles in law. It is also known as pure or basic research.
5. **Quantitative Research:** This research uses numerical data and statistical methods to study legal phenomena.
6. **Qualitative Research:** This focuses on understanding the subjective experiences of individuals and uses methods such as interviews, focus groups, and ethnographic studies.
7. **Comparative Legal Research:** It involves comparing legal systems or legal rules of more than

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one country. It aims to understand the similarities and differences and may serve as a basis for law reform.

8. **Historical Legal Research:** It studies the historical development of a legal concept, law, or institution.

The Importance of Legal Research

Legal research is critical for several reasons. First, it helps lawyers, judges, and law scholars to understand the nature and structure of law, including statutes, precedents, and legal principles. This understanding is essential for the interpretation and application of the law. Second, legal research facilitates the development of legal argumentation and reasoning skills. Third, legal research can contribute to law reform. By studying the effectiveness and impact of existing laws, researchers can identify areas of law that need to be revised or updated.

The Interplay of Doctrinal and Non-Doctrinal Research

While doctrinal and non-doctrinal research methods seem different, they can be complementary. For instance, a researcher may first conduct doctrinal research to understand the legal principles related to a particular issue and then use non-doctrinal research to understand how those principles are applied or how they affect individuals and society. The combination of these methods can result in a more holistic understanding of

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the law and can help to ensure that the law is both theoretically sound and practically effective.

Q.9. WHAT ARE THE VARIOUS TECHNIQUES INVOLVED ON LEGAL RESEARCH?

Legal research is a systematic process of identifying and retrieving information pertinent to support legal decision-making. It involves finding answers to complex legal questions and providing the necessary groundwork for legal arguments, opinions, briefs, and legal theories. The process of legal research can be meticulous and time-consuming, requiring a variety of research techniques to ensure a comprehensive understanding of the issue at hand. This answer aims to elucidate some of these fundamental techniques involved in conducting effective legal research.

1. Issue Identification

Every legal research process begins with the identification of the issue or the legal question that needs answering. This is a crucial step because the nature of the issue will determine the subsequent steps and techniques required in the research process. This step may involve understanding the facts of the case, identifying the jurisdictions involved, and defining the legal concepts at play.

2. Development of a Research Plan

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After identifying the issue, the next step is to develop a research plan. This step involves deciding on the types of sources to consult, the order in which they will be consulted, and the methods that will be used to analyze and interpret the data obtained.

3. Use of Primary and Secondary Sources

In legal research, both primary and secondary sources of law are essential. Primary sources are the laws and cases themselves, while secondary sources include law reviews, legal encyclopedias, textbooks, and legal commentaries that analyze and explain these laws and cases.

4. Legal Analysis and Interpretation

Once the researcher has gathered information from primary and secondary sources, the next step is to analyze and interpret this information. This can involve case analysis, statutory interpretation, and the application of legal principles and precedents.

5. Citation and Referencing

Citation and referencing are important parts of legal research. They ensure that the sources of information used are properly credited and can be easily traced by others. There are different citation formats in the legal field, and the researcher must be familiar with the required citation style.

6. Legal Writing and Reporting

After conducting research, the researcher must then write

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a legal memorandum, brief, or a research paper depending on the aim of the research. This involves presenting the findings in a clear, concise, and coherent manner. The researcher must ensure that the report is written in the proper legal language and format.

7. Use of Legal Research Tools

There are several legal research tools available that can greatly facilitate the research process. These include legal databases such as Westlaw, LexisNexis, and Manupatra, which contain extensive collections of statutes, case law, and secondary sources.

8. Updates and Validation

Legal research is not a one-time process. Laws change and new judicial decisions are made, affecting the status and interpretation of the law. Therefore, it is important for legal researchers to keep their research updated and to validate their findings periodically.

9. Legal Reasoning and Argumentation

The ultimate aim of legal research is to support legal reasoning and argumentation. Therefore, a good legal researcher should be able to use the findings of their research to construct sound legal arguments and contribute to the resolution of legal disputes.

10. Use of Non-Legal Sources

Although legal research primarily involves the use of legal sources, it may sometimes be necessary to consult non-

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legal sources, especially in the case of interdisciplinary legal research. Non-legal sources could include historical documents, statistical data, sociological studies, and the like.

11. Evaluation of Sources

Evaluating the credibility, relevance, and reliability of sources is a crucial step in legal research. Sources should be assessed based on their origin, the author's expertise and reputation, the date of publication (to ensure timeliness), and the objectivity and accuracy of the content. For instance, court decisions from higher courts have more precedential value than lower courts, and recent sources are generally more useful for staying abreast of current law.

12. Understanding Legal Terminology

Legal research involves dealing with complex legal terminologies. An understanding of these terms is critical to comprehend the sources properly and accurately interpret the legal issues. Dictionaries and glossaries, both online and offline, can be invaluable tools for legal researchers.

13. Use of Research Log

Maintaining a research log helps keep track of the sources consulted and the information collected. It helps in organizing the research process, avoiding duplication of effort, and documenting the research journey for future reference or replication.

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14. Organization of Research Findings

The organization of research findings involves systematically arranging the data, evidence, and information gathered during the research process. This may involve categorization based on relevance to different aspects of the research question, chronology, jurisdiction, or any other factor that aids in understanding and presenting the research findings. Effective organization is essential for the logical presentation and interpretation of research findings.

15. Collaboration and Networking

Legal research can be a collaborative endeavor, often requiring interaction with other lawyers, legal scholars, or experts in other disciplines. Networking can provide opportunities to share ideas, seek feedback, and gain different perspectives on the research problem.

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PAPER 2

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING

QUESTION (A): CONCEPT OF MORALITY

The **Concept of Morality** in law has a broad scope and underpins much of the substantive and procedural legislation that governs our societal life. The concept refers to the system of beliefs that defines what is considered right or wrong behavior in society. Morality is intrinsically linked with ethics, and it is the moral compass that often dictates human behavior.

Morality has a strong influence on law, shaping the way society views certain issues and dictating what should be prohibited or regulated. It can be perceived from both a **subjective perspective**, wherein morality is deemed to be personal and varying from individual to individual, and an **objective perspective**, where it is viewed as universal and constant across human society.

The Indian legal system is replete with instances where morality has shaped the law. However, the task of defining morality can sometimes prove controversial as it varies between cultures, societies, and individuals.

Indian Penal Code (IPC), 1860

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The Indian Penal Code, 1860 is a prime example where the influence of morality on law can be discerned. Several offenses in the IPC, such as those related to obscenity (Section 292-294), adultery (Section 497, which has now been decriminalized in *Joseph Shine v Union of India*, 2018), bigamy (Section 494) are all reflective of societal morals.

Landmark Cases

In the landmark judgment of '**K.S. Puttaswamy v. Union of India**' (2017), the Supreme Court of India held that the right to privacy is a fundamental right under Article 21 of the Indian Constitution, thereby recognizing the importance of individual autonomy and moral agency.

Another significant example is the judgment in '**Navtej Singh Johar v. Union of India**' (2018), where the Supreme Court of India decriminalized homosexuality by reading down Section 377 of the Indian Penal Code. This decision marked a significant shift in societal morality and its reflection in law, emphasizing the principle of non-discrimination and individual freedom.

However, the relationship between law and morality is complex and contentious. While laws can be designed to reflect and enforce moral norms, they can also challenge prevailing moral norms when they conflict with principles of justice and equality. The intricate relationship between morality and law requires careful navigation to maintain a balance between individual

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rights, societal norms, and justice.

QUESTION (B): PUBLIC AND PRIVATE LAW

Public Law and **Private Law** are two broad categories of law that regulate different aspects of human life and societal organization.

Public Law encompasses legal rules that govern relationships between individuals and the government, and those relationships between individuals that are of direct concern to society. Public law includes several significant branches such as constitutional law, administrative law, and criminal law.

For example, in the landmark case of '**Maneka Gandhi v. Union of India**' (1978), the principles of natural justice were upheld, asserting the importance of due process and fair treatment in administrative actions, reflecting the essence of public law.

Private Law, on the other hand, is the body of law that governs relationships between individuals and private entities. It includes branches such as contract law, tort law, property law, and family law.

In the case of '**Carlill v Carbolic Smoke Ball Co**' (1893), a significant case in contract law, it was held that a general offer made to the world at large can be accepted by anyone who performs its terms, even without their intention to accept being communicated to the offeror.

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This case delineates the relationships and responsibilities between private parties, hence encapsulating the nature of private law.

Interaction of Public and Private Law

There is a clear interaction between public and private law. While public law governs the relationship between the state and its citizens, private law regulates the relationships between individuals or private entities. However, the two can overlap, and the line dividing them isn't always clearly demarcated.

For instance, if a private entity violates a contract, the aggrieved party can seek recourse under private law (contract law). However, if that entity violates a law or regulation, it becomes a matter of public law, and the state may initiate prosecution under criminal law. This interplay is evident in cases like '**Standard Chartered Bank v. Directorate of Enforcement**' (2005), wherein a corporate entity was held liable under public law (FEMA regulations), thus demonstrating the overlap between public and private law.

Transformation of Public and Private Law

In recent times, the line between public and private law is blurring. Issues traditionally considered under the purview of private law are increasingly being regulated by public law norms, particularly when they affect public interest. The fields of environmental law, consumer protection, and competition law are prime examples of

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this transformation.

Environmental Law has significantly evolved over the years. Private industries that were traditionally governed by private law are now under the scrutiny of public law due to their potential impact on the environment. Landmark judgments like '**M.C. Mehta v. Union of India**' (1987), also known as the Oleum gas leak case, have underscored the concept of absolute liability and the role of public law in governing actions of private entities.

Consumer Protection Law is another domain where public and private law intertwine. The Consumer Protection Act, 2019, empowers consumers by ensuring that manufacturers, service providers, and advertisers adhere to the law, reflecting the public law norms. The case of '**Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd.**' (2016) is a significant precedent where the rights of consumers were upheld against the malpractices of private builders.

In **Competition Law**, the Competition Act, 2002 aims to prevent practices that have an adverse effect on competition, promote and sustain competition, protect the interests of consumers, and ensure freedom of trade. Here, the public law steps in to regulate the behavior of private entities to ensure fair market competition.

QUESTION (C): PRINCIPLE OF NATURAL JUSTICE

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The **Principle of Natural Justice** is a foundational concept of law that safeguards the fundamental human right to equality and fairness. This principle is not codified in any statute but is implied in the Indian Constitution under Article 14 and forms the basis of procedural law. It ensures transparency, accountability, and predictability in administrative actions.

There are two primary principles of natural justice:

1. **Nemo Judex in Causa Sua (No one should be a judge in his own cause):** This principle ensures impartiality in the administration of justice. It prevents any authority from adjudicating a matter in which they may have a bias or personal interest.

The landmark case of '**Maneklal Chhotalal v. M.G. Makwana**' (1967) upheld this principle, where the Supreme Court held that an adjudicating authority, having personal bias or prejudiced mind, cannot possibly decide a case impartially.

2. **Audi Alteram Partem (Hear the other side):** This principle mandates that no one should be condemned unheard. It safeguards the right to a fair hearing and encompasses two elements: notice and hearing. Every person against whom any action is intended must be given an opportunity to present their case.

In the seminal case of '**Maneka Gandhi v. Union of India**' (1978), the Supreme Court held that the right to

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fair hearing is a part of Article 21 of the Constitution and the procedure established by law must be fair, just, and reasonable. This principle was given an expansive interpretation, encompassing the right to be informed of the grounds of the action, the right to an opportunity to rebut, and the right to representation.

The principles of natural justice, while not absolute, play a crucial role in ensuring the fairness of administrative and quasi-judicial proceedings. Exceptions may exist in cases of urgency, confidentiality, impracticability, or where the statute expressly or impliedly excludes their application.

QUESTION (D): SALIENT FEATURES OF INDIAN CONSTITUTION

The **Indian Constitution**, the world's lengthiest written constitution, embodies the nation's fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and duties of citizens. It is often described as a 'bag of borrowings' due to its unique ability to borrow features from various other constitutions while maintaining its distinctiveness. Here are some of its salient features:

1. **Preamble:** The Preamble serves as the guiding light of the Constitution. It outlines the objectives of the Constitution - Justice, Liberty, Equality, and

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2. **Written Constitution:** The Indian Constitution is the lengthiest written constitution in the world. It originally consisted of 395 Articles divided into 22 parts and 8 schedules. As of my knowledge cutoff in September 2021, it comprises about 470 articles, 25 parts, 12 schedules, and 5 appendices.
3. **Parliamentary System of Government:** The Indian Constitution provides for a parliamentary form of government, modeled after the British system, but with federal features. The President is the constitutional head, and the Prime Minister is the executive head.
4. **Fundamental Rights and Duties:** Part III of the Constitution guarantees fundamental rights to all citizens. The rights include Right to Equality (Art. 14-18), Right to Freedom (Art. 19-22), Right against Exploitation (Art. 23-24), Right to Freedom of Religion (Art. 25-28), Cultural and Educational Rights (Art. 29-30), and Right to Constitutional Remedies (Art. 32). Fundamental Duties were added later. Fundamental Duties were added later by the 42nd Amendment Act, 1976, under Article 51A. These duties, though not enforceable, act as a constant reminder of the moral obligations that every citizen owes to the nation.
5. **Directive Principles of State Policy (DPSP):** Part IV of the Constitution, from Articles 36 to 51,

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provides guidelines for the formulation of laws by the state. These directives, although not justiciable, are fundamental in the governance of the country, aiming to establish social and economic democracy.

6. **Federal System with Unitary Bias:** India has a federal structure of government, although the word is not used in the Constitution itself. It establishes a dual polity consisting of the Union at the Centre and States at the periphery. However, the Indian Constitution also contains several unitary features, making it federal in form but unitary in spirit.
7. **Judicial Review:** The Indian Constitution provides for a strong and independent judiciary. It has the power to review legislation and executive orders to ensure their constitutionality. The Supreme Court of India and the High Courts have the power to interpret the Constitution.

In the landmark case of '**Keshavananda Bharati v. State of Kerala**' (1973), the Supreme Court ruled that while the Parliament has wide amending powers, it did not extend to altering the basic structure of the Constitution.

8. **Secular State:** The Indian Constitution establishes India as a secular state. Article 25 to 28, also known as the 'Religion Clauses,' guarantees Freedom of Religion to every citizen. The state has no religion of its own and respects all religions equally without favoring any religion.

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9. **Emergency Provisions:** Part XVIII of the Constitution provides for emergency provisions. It allows for three types of emergencies - National, State, and Financial, providing the means to secure the country's stability and security during such crises.
10. **Amendment of the Constitution:** Article 368 of the Constitution provides for the amendment of the Constitution. The Constitution can be amended by a special majority in the Parliament. However, the amendment should not tamper with the Constitution's basic structure, as laid down in the '**Keshavananda Bharati v. State of Kerala**' case.

QUESTION (E): HIERARCHY OF COURTS

The Indian Judiciary is organized as a hierarchy of courts, providing a clear structure for the administration of justice. The structure ensures an efficient system of appeal and review to uphold justice and rule of law.

1. **Supreme Court of India:** At the apex of the hierarchy is the Supreme Court of India, established by Part V, Chapter IV of the Constitution. The Supreme Court is the ultimate interpreter of the Constitution and the laws of the land. It exercises original, appellate, and advisory jurisdiction. Its decisions are binding on all other courts in the country.
2. **High Courts:** Below the Supreme Court, the High

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Courts stand at the top of a state's judicial administration. Each state or group of states has a High Court. The High Courts possess original, appellate, and supervisory jurisdiction. They adjudicate civil and criminal cases and interpret the Constitution and the law.

3. **District Courts:** Subordinate to the High Courts are the District Courts, which form the backbone of the Indian Judiciary. District Courts are presided over by a district judge and handle most of the original civil and criminal cases under the purview of the state legislation.
 - **Civil Cases:** For civil cases, the system often involves Munsif's Courts (Junior Civil Judge Court) and the Court of Subordinate Judge (Senior Civil Judge Court), before reaching the District Judge's Court.
 - **Criminal Cases:** In the case of criminal proceedings, the hierarchy comprises Judicial Magistrate of Second Class and Judicial Magistrate of First Class, followed by the Chief Judicial Magistrate, and the Court of Session which includes a Sessions Judge.
4. **Special Courts:** Additionally, there are a number of special courts and tribunals created to deal with specific types of disputes, including the Consumer Dispute Redressal Forums, Family Courts, Industrial Tribunals, etc. These courts operate under the rules of

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the specific statutes that establish them.

5. **Tribunals:** Several quasi-judicial bodies or tribunals also exist, such as the Central Administrative Tribunal, Armed Forces Tribunal, National Green Tribunal, etc. These bodies are vested with judicial powers to adjudicate on disputes related to specific areas.

This hierarchy allows for an organized system of appeals. Decisions from lower courts can be appealed in higher courts, providing opportunities for the correction of errors or oversight, if any. This hierarchical structure lends credibility, predictability, and a degree of uniformity to the legal system.

PART B

QUESTION 2: CLASSIFICATION AND FUNCTION OF LAW

Law, being the backbone of society, can be classified in various ways based on jurisdiction, focus, or function, to name a few. Each classification and function of law serves a unique purpose, governing a different aspect of societal interactions and helping in the smooth functioning of society.

Classification of Law

1. Based on Jurisdiction

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On a jurisdictional basis, law is primarily divided into two types - domestic (or national) and international law.

- **Domestic Law:** This is the law that governs within a specific country's borders. It is further divided into different categories such as:
 - **Public Law:** This governs the relationships between individuals and the government, and between different branches of the government. It includes constitutional law, administrative law, and criminal law. For example, the Indian Penal Code, 1860, which provides the definition and punishment for various offenses, is a part of criminal law, and thus falls under public law.
 - **Private Law:** This governs relationships between individuals. It includes areas like contract law, tort law, property law, and family law. For instance, the Indian Contract Act, 1872, which lays down the rules governing contracts, is a part of private law.
- **International Law:** This governs the relationships between sovereign nations and other entities that have international legal status, like the United Nations. It is further divided into Public International Law, Private International Law (or Conflict of Laws), and Supranational Law.

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An example of international law would be the Geneva Conventions, which govern the rules of war and humanitarian law in international armed conflicts.

2. Based on Focus

Law can also be classified based on the specific area of focus. For instance:

- **Substantive Law:** This includes all laws that list the rights, duties, and liabilities of the citizens and the penalties imposed on them. It defines how the laws work and includes civil laws like the Indian Contract Act, 1872, and criminal laws like the Indian Penal Code, 1860.
- **Procedural Law:** This comprises the rules by which a court hears and determines the outcome of civil, criminal, or administrative proceedings. The procedural law ensures justice, speedy disposal of cases, and also helps in maintaining law and order in society. An example of procedural law would be the Code of Civil Procedure, 1908, which lays down the procedure for civil courts.

3. Based on Religious Practices

In some nations, law is also divided based on religious practices:

- **Secular Law:** These are the laws that have been

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formulated by the legislative bodies without any religious influences and apply to all citizens irrespective of their religion. Most laws governing a secular state fall under this category.

- **Religious Law:** These are laws that have evolved from religious practices and apply to the followers of that particular religion. An example of this is Islamic law (Sharia), which governs the conduct of Muslims, or Hindu law, which governs the conduct of Hindus in India.

Function of Law

The primary functions of law in society can be broadly understood under the following heads:

1. Social Control

Law serves as an instrument of social control. It sets down guidelines for conduct and behavior, and those failing to adhere to these norms may be punished. Law thus ensures a certain degree of social order and conformity.

2. Dispute Resolution

Inevitably, disputes arise between individuals, between individuals and the state, or between states themselves. Law provides mechanisms for resolving these disputes, whether it be through litigation in the court system or through alternative dispute resolution mechanisms such as mediation or arbitration.

3. Protection of Rights and Liberties

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Law establishes and protects the fundamental rights and liberties of individuals. In democratic countries, the constitution usually enshrines these rights and freedoms. For instance, the Indian Constitution guarantees several Fundamental Rights to its citizens, such as the right to equality, the right to freedom of speech and expression, and the right to life and personal liberty under Articles 14, 19, and 21, respectively. The role of law here is to ensure that these rights are not infringed upon and to provide remedies if they are.

4. Maintenance of Peace and Order

Laws play an essential role in maintaining peace and order in society. For instance, criminal laws like the Indian Penal Code, 1860, help deter crimes by setting up a system of punishments for various offenses. The fear of legal repercussions acts as a deterrent, preventing potential offenders from engaging in unlawful activities.

5. Facilitating Social Change

Law can also be instrumental in bringing about social change. Laws can either be a direct source of change or an indirect facilitator by changing the social infrastructure conducive to change. For example, the abolition of untouchability in India was brought about by the Untouchability (Offences) Act, 1955, now renamed as the Protection of Civil Rights Act, 1955. This legislation was a means of bringing about societal change and breaking down age-old social barriers.

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6. Basis of Compromise

Law serves as a medium for compromise in society. It seeks to strike a balance between the conflicting interests of various individuals and groups in society. Laws are framed in a manner that accommodates various interests while also ensuring justice.

7. Economic Function

Laws also have an economic function. They regulate economic activities, determine the distribution and utilization of resources, and control economic power. Examples include laws related to taxation, such as the Income Tax Act, 1961, and corporate laws like the Companies Act, 2013.

8. Directing Function

Laws also serve a directing function, guiding the actions of its subjects. They act as a blueprint, indicating the manner in which activities are to be performed. For instance, traffic laws direct the behavior of motorists on the road.

An example that beautifully showcases the role of law can be seen in the context of environmental protection. The Environment Protection Act, 1986, a substantive law in India, was enacted in response to the Bhopal Gas Tragedy, intending to protect and improve the environment. It confers powers on the central government to coordinate action by state governments, to plan and execute a nationwide program for the

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prevention, control, and abatement of environmental pollution. This Act is an excellent example of how the law functions in social control (by regulating industrial pollution), dispute resolution (by establishing a mechanism for adjudication), protecting rights (by promoting the right to a clean environment), maintaining peace and order, facilitating social change (by promoting sustainable development), serving as a basis for compromise (between development and environmental protection), fulfilling economic functions (by regulating industries), and having a directing function (by outlining the duties and responsibilities towards the environment).

QUESTION 3: DISTINGUISHING BETWEEN

(A) SUBSTANTIVE AND PROCEDURAL LAW

Substantive and procedural laws form the cornerstone of our legal system. Each has its unique functions and characteristics, together ensuring the smooth administration of justice.

Substantive Law refers to the statutory or written law that defines, describes, regulates, and establishes legal rights, duties, liabilities, and causes of action that can be enforced by law. It provides the substance, i.e., the rights and obligations that govern individuals, corporations, and other entities. It is essentially the 'what' of the law, defining how laws work, how crimes and conflicts can be legally defined, and what consequences may be assigned

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to them. Substantive law, therefore, encompasses laws such as criminal law, civil law, and business law.

An example of substantive law is the Indian Penal Code, 1860. It describes and defines different offenses and prescribes punishments for the same. For instance, under Section 299, the IPC provides the definition of culpable homicide, whereas Section 300 defines murder.

Procedural Law, on the other hand, is the set of rules and standards followed by courts to ensure the enforcement of rights and duties established by substantive law. It outlines the method and means through which substantive laws are applied. This includes the step-by-step process for prosecuting civil and criminal cases, as well as rules of evidence, jurisdiction, appeals, and the conduct of trials. Simply put, procedural law is the 'how' of the law.

The Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1973, in India, are examples of procedural law. They provide the procedure to be followed in civil and criminal proceedings, respectively. For instance, the CrPC lays down the process for the investigation, trial, and punishment of offenders under its various provisions.

The key differences between substantive and procedural law include:

1. **Nature:** Substantive law deals with the rights, duties, and obligations of individuals and legal entities. In

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contrast, procedural law outlines the method and means of enforcing those rights and obligations.

2. **Role:** Substantive law defines the legal relationship between different parties, while procedural law provides the mechanism to regulate and enforce that relationship.
3. **Effect:** A violation of substantive law results in a substantive right being infringed, leading to legal liability. A violation of procedural law, however, may result in a legal proceeding being rendered invalid.
4. **Change:** Changes to substantive law can have a direct impact on the rights and obligations of individuals. Changes to procedural law mainly affect the administration of justice and court processes.

(B) MUNICIPAL AND INTERNATIONAL LAW

Municipal Law and International Law are two distinct types of legal systems, each with its own jurisdictions, objectives, and operations.

Municipal Law is the domestic law of a country, governing the relationships among individuals and between individuals and the state within a country's territorial limit. It includes various types of laws such as constitutional law, criminal law, civil law, administrative law, etc. Municipal law is enacted by the legislative body of a country, and the judiciary of that country interprets and applies it.

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For instance, the Indian Penal Code is part of the municipal law of India, governing criminal offences within the territory of India.

International Law, on the other hand, governs the conduct of states and international organizations and, to some extent, relations between individuals in the international arena. It consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and their relations inter se, as well as with some of their relations with persons, whether natural or juridical. International law is divided into 'Public International Law' which governs the relationship between states and international entities, and 'Private International Law', often referred to as 'Conflict of Laws', addressing the jurisdictional questions and enforcement of foreign judgments in cross border private disputes. International law is primarily formulated through international treaties and agreements, customary international law, general principles of law recognized by civilized nations, and judicial decisions and scholarly teachings.

For example, the Geneva Conventions, which provide the standards of international law for humanitarian treatment in war, are part of international law.

Key distinctions between municipal and international law include:

1. **Source:** The sources of municipal law are usually the constitution, legislation, and judicial decisions within

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a particular state, while international law derives its source from international treaties and conventions, international customs, general principles of law recognized by civilized nations, and judicial decisions and scholarly teachings.

2. **Scope:** Municipal law governs the actions of individuals within a state's territory, while international law primarily governs the relations between sovereign states and intergovernmental organizations.
3. **Enforcement:** In the case of municipal law, the state has a structured mechanism for enforcement - through the domestic police, judiciary, and administrative machinery. However, international law often lacks a similar direct enforcement mechanism, and states often have to resort to diplomatic channels, sanctions, or international judicial bodies like the International Court of Justice to enforce international law.
4. **Hierarchy:** When a conflict arises between municipal law and international law, how it is resolved varies. In some jurisdictions, such as India, domestic law usually takes precedence as per the 'Doctrine of Transformation', which mandates that international law can be enforced in a country only when its parliament transforms it into domestic law. On the other hand, in many European countries, international law takes precedence over domestic law under the 'Monistic Theory', which holds that

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international law and domestic law form a single legal system.

5. **Subjects:** The subjects of municipal law are the citizens of a country, whereas in the case of international law, the subjects are sovereign states, international organizations, and to some extent, individuals.

QUESTION 4: RECOGNITION OF 'CUSTOM' AS A SOURCE OF LAW

Customary law, or simply 'custom', is one of the oldest sources of law. Custom refers to the practices, traditions, and rules that have been consistently and uniformly followed by a group of people over a considerable period. They hold the force of law within a community, region, or country, especially in societies where written law is sparse or non-existent. The force of custom comes from its acceptance by the community as binding.

In legal systems across the world, including India, a custom must fulfill certain essential conditions to be recognized as a source of law:

1. **Antiquity:** The custom must have been practiced for a long time. It should be "immemorial", meaning that its origins should extend back beyond memory and it should be difficult to trace its beginning.
2. **Continuous:** The custom should have been followed

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without interruption since its inception. Any significant lapse of time in the practice could impact its validity.

3. **Peaceful Enjoyment:** The custom should have been practiced peacefully. If it has been followed under duress, force, or violence, its legality may be disputed.
4. **Certainty:** The custom should be specific and definitive. Vague or ambiguous customs may not be legally binding.
5. **Compulsoriness:** The custom should be obligatory in nature. It should not be optional.
6. **Reasonableness:** A custom should be reasonable. It should not oppose the principles of justice and public good.
7. **Consistency:** A custom should not contradict any statutory law or other customs.

In India, these conditions have been recognized in various judicial precedents. For instance, in the case of *Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee* (AIR 1938 PC 369), the Privy Council stated that a custom to be valid must be ancient, certain, and reasonable.

However, a 'custom' can lose its status as a source of law under certain circumstances:

1. **Statutory Abrogation:** If a statute explicitly

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abolishes a custom, the custom loses its force of law. For instance, the Hindu Marriage Act, 1955, abolished many customs previously prevalent in Hindu societies in India.

2. **Disuse:** If a custom is not observed continuously and is neglected or abandoned, it will lose its legal validity.
3. **Change in Social Conditions:** With changing social, economic, and political scenarios, certain customs may become outdated and irrelevant, leading to their eventual disuse.
4. **Contradiction to Public Policy, Morality, or Law:** If a custom goes against public policy, morality, or a statute, it may be invalidated by courts. For instance, the practice of 'Sati' was an ancient custom in some parts of India, but it was declared illegal by the British Raj in 1829 due to its inhumane nature.

Custom, in Indian jurisprudence, can be divided into two types:

1. **Legal Custom:** These are customs that have been incorporated into the law of the land and have the force of law. They are binding on the whole community or class of communities. Legal customs are further subdivided into:
 - a. **General Custom:** These customs are universally followed within a political territory, irrespective of any particular community. They form part of the common law of the land.

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- b. **Local Custom:** These customs are followed only in certain regions and are binding on the people of those regions only.
2. **Conventional Custom:** These are customs that are binding on the parties to a contract because of an agreement. They are not law except between or among the parties who have agreed to be governed by the custom.

In India, custom has always played a significant role in governing societal relations, especially in personal and family matters. Courts in India have recognized and enforced various customs, such as the custom of adoption, the custom of dowry (which, although legal traditionally, is now prohibited by law due to its misuse), and various marriage customs.

However, it's critical to understand that the recognition and enforcement of custom are not absolute. They are subject to the principles of public policy, morality, and statutory law. If a custom goes against constitutional principles or public policy, it will not be enforced. For instance, the Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985 AIR 945) held that customs and usages contrary to public policy should not be enforced.

In terms of losing its validity, a custom could also lose its status as a source of law if it conflicts with other established customs. A classic instance is the conflict between local custom and general custom. In such cases, unless proven otherwise, general customs take

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precedence over local customs.

Moreover, the judicial attitude towards custom as a source of law is of immense importance. Over the years, judicial trends in India have shown an inclination towards the codification of customary law, which results in the reduction of custom as an independent source of law. For example, many customs that were once part of the Hindu customary law have now been codified into the Hindu personal laws.

QUESTION 5(A): PRECEDENT AS A SOURCE OF LAW

Legal precedent, often referred to as case law or judge-made law, is a principle or rule established in a previous legal case that is either binding or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The Latin term 'stare decisis' (meaning, "to stand by things decided") underlies the doctrine of precedent, encouraging courts to follow historical cases when making a ruling on a similar case.

The doctrine of precedent has two components:

1. **Ratio Decidendi:** This is the principle or rule of law on which a court's decision is founded. It is the binding part of a judicial decision and must be followed by courts in later cases.
2. **Obiter Dicta:** These are comments or observations

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made by a judge that, although included in the body of the court's opinion, do not form a necessary part of the court's decision. Unlike ratio decidendi, obiter dicta are not binding on later courts, though they can be of persuasive value.

The use of precedent provides predictability, stability, fairness, and efficiency in the law. The precedent system allows for continuity in law, as well as an opportunity for change when societal norms evolve.

In India, the doctrine of precedent is enshrined in Article 141 of the Constitution, which states that the law declared by the Supreme Court is binding on all courts within the territory of India. The decisions of the High Courts are binding on the subordinate courts within their jurisdiction, but they are not binding on other High Courts.

One of the landmark cases that defined the concept of precedent in India is the *Keshavananda Bharati vs. State of Kerala* (AIR 1973 SC 1461). In this case, the Supreme Court, by a 7-6 majority, introduced the "basic structure" doctrine, which held that the Parliament could not alter the basic structure of the Constitution. This case has since been used as a precedent to safeguard the basic features of the Constitution.

However, the principle of precedent is not an absolute and rigid rule in India. Article 141 itself provides that the Supreme Court's rulings are binding, not its observations. Furthermore, the Supreme Court has, in several

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instances, overruled its previous decisions. For instance, in the *Golak Nath vs. State of Punjab* case (AIR 1967 SC 1643), the Supreme Court overruled its earlier decision and held that Fundamental Rights could not be abridged or taken away.

The strength of a precedent depends upon the hierarchy of courts, with decisions by a higher court generally having more binding authority than a lower court. However, it is subject to principles of *res judicata*, meaning an issue that has been previously brought to the court and a ruling already issued cannot be raised again.

QUESTION 5(B): DELEGATED LEGISLATION

Delegated legislation, also known as secondary legislation or subordinate legislation, refers to laws made by an individual or body under powers given to them by an Act of Parliament. It allows the government to amend a law or change the details of a law without needing to push through a completely new Act of Parliament.

Delegated legislation allows for flexibility and speed in law-making, given the time-consuming process of passing an Act through Parliament. It also allows for expertise to be applied in law-making, as the powers can be delegated to experts in the relevant field.

In India, delegated legislation is a widely accepted practice. It allows legislative bodies to save time and focus on the principal provisions of the law, leaving the finer

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details and modalities to be worked out by the executive or an expert body.

However, delegated legislation is subject to certain controls and restrictions. It is governed by the following three principles:

1. **Sub-delegation:** This is the principle based on the Latin maxim 'delegatus non potest delegare' which translates to 'a delegate cannot further delegate.' While the legislature may delegate its legislative function to the executive, the delegate (executive) cannot further delegate this function unless explicitly permitted by the legislature.
2. **Conditional Legislation:** The legislature can lay down the policy and principles guiding the delegated authority but cannot leave the determination of these principles to the delegate. This is based on the premise that the basic policy and guidelines must be laid down by the legislature and not left open-ended.
3. **Procedural Safeguards:** The delegated authority must comply with the procedure prescribed by the legislature while exercising its delegated functions.

In India, judicial control over delegated legislation has been a subject of extensive discussion. The judiciary has upheld the constitutionality of delegated legislation on several occasions. In *In Re Delhi Laws Act* (AIR 1951 SC 332), the Supreme Court of India recognized the need for delegated legislation due to the complexity of modern

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administration. The Court observed that while the legislature must declare the policy of the law and the legal principles which will control any given cases, the power of filling up the details can be left to the executive.

However, the judiciary also ensures that this power is not misused. In *Hamdard Dawakhana v. Union of India* (AIR 1960 SC 554), the Supreme Court held that the delegation is valid only if the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the limits of the policy laid down by the legislature.

Another form of control over delegated legislation in India is Parliamentary control. The legislature, in its delegating act, usually retains control over the exercise of the delegated power. This control may be of several types, such as laying procedures, affirmative or negative resolution procedures, or committee control.

QUESTION 6: THE RULE OF LAW

The "Rule of Law" is a foundational principle of any democratic society. It establishes that all individuals, including the government, are subject to and accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. It is opposed to the rule by a single person or class.

The rule of law is, in essence, a framework of laws and institutions that govern a country and underpin its civil,

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political, and socioeconomic activities. These laws, which are set out in a country's constitution and other legal documents, serve to protect individual rights, maintain order, and limit the power of government.

Substantive and Procedural Aspects of the Rule of Law

The rule of law has both substantive and procedural aspects.

1. **Substantive Rule of Law:** This aspect of the rule of law goes beyond the traditional notion of procedural fairness to include the content of legislation. The substantive rule of law requires that laws be clear, predictable, non-retroactive, and public; protect fundamental rights, including the security of persons and property; and meet standards of justice and morality. It posits that laws must not be arbitrary and must meet certain standards of fairness and justice, such as respect for human rights and equal treatment under law.
2. **Procedural Rule of Law:** This aspect of the rule of law encompasses the method by which laws are applied and enforced. It includes concepts such as due process, the right to a fair trial, and access to justice. This requires that the processes by which laws are enacted, administered, and enforced are accessible, fair, and efficient.

Dicey's Concept of Rule of Law and Its

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Applicability in Modern Welfare State

A.V. Dicey, a British jurist and constitutional theorist, formulated one of the earliest and most influential concepts of the rule of law. His concept includes three principles:

1. **Supremacy of Law:** No man can be punished or lawfully interfered with by the authorities except for breaches of law. In other words, all actions must be authorised by law.
2. **Equality before Law:** No man is above the law, and everyone, regardless of rank or condition, is subject to the ordinary laws of the land.
3. **Predominance of Legal Spirit:** Rights and freedoms are protected by the ordinary law of the land and not by a written constitution.

These principles, although conceived in the 19th century, continue to influence the concept of the rule of law and its application in contemporary democratic states.

However, Dicey's traditional concept of the rule of law has faced certain criticisms, especially in the context of a modern welfare state. Modern welfare states are characterised by the prevalence of socio-economic rights and affirmative state obligations, which often involve a greater level of government intervention and discretion. This challenges Dicey's model of a limited, non-interventionist state.

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Dicey's rule of law doesn't fully take into account the welfare rights, like the right to health, education, social security, etc., which are essential components of a modern welfare state. These rights often require positive state action and policy-making discretion, which doesn't perfectly align with Dicey's model of a strict legal constraint.

Furthermore, Dicey's concept of the rule of law is primarily focused on "formal" equality, while modern legal systems often seek to promote "substantive" equality, which may require differentiated treatment to overcome historical or systemic disadvantages.

Rule of Law in Modern Welfare State

This means that today's rule of law encompasses a broader spectrum of principles, and it has evolved to reconcile with the goals of a welfare state, such as social justice and economic equity. The rule of law now accommodates social rights and recognizes the role of the state as a provider of public goods and services. It also recognizes the need for a balance between individual rights and the collective needs of society.

In the Indian context, the preamble of the Indian Constitution reflects this broader view of the rule of law. It mentions 'Justice, social, economic and political' as a key objective of the Constitution, and this is reflected in the Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) of the Indian Constitution. The Indian judiciary, too, has embraced

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this more nuanced view of the rule of law.

For instance, the Supreme Court of India, in *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), held that the procedure established by law must be just, fair and reasonable and not fanciful, oppressive or arbitrary. This judgment went beyond the procedural fairness requirement to incorporate substantive fairness into the interpretation of the rule of law, thus aligning it more closely with the demands of a welfare state.

In another landmark judgment, *Bandhua Mukti Morcha v. Union of India* (AIR 1984 SC 802), the Supreme Court expanded the scope of the right to life and liberty to include the right to live with human dignity, which includes the bare necessities of life such as adequate nutrition, clothing and shelter. This interpretative approach reflects the substantive aspect of the rule of law in a welfare state.

Moreover, the Indian courts have often used Public Interest Litigation (PIL) as a tool to advance the rule of law and to ensure that the benefits of the welfare state reach the poorest and the most marginalized sections of the society.

QUESTION 7: SEPARATION OF POWERS AND AUDI ALTERAM PARTEM

(a) Separation of Powers

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The principle of **Separation of Powers** is one of the cornerstones of democratic governance and constitutionalism. It proposes that the three branches of government — legislative, executive, and judiciary — should be distinct and operate independently from each other, to prevent the abuse of power and protect democratic liberties.

Origins and Evolution

The concept of separation of powers finds its roots in ancient Greece and Rome, but the modern understanding of this doctrine is largely credited to French philosopher Montesquieu, who elaborated it in his work, "The Spirit of the Laws" (1748). He argued that by dividing governmental powers, a system of checks and balances is established, thus preventing any one entity from gaining absolute power and leading to tyranny.

Application of Separation of Powers

The application of this principle varies widely among different countries. Some constitutions strictly adhere to this doctrine (like the United States), while others exhibit a more flexible approach. In the case of the United States, the Constitution clearly divides power among the three branches of government, ensuring that no one branch has exclusive control over a particular function of government.

Separation of Powers in India

In the context of India, the Constitution doesn't expressly

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mention the doctrine of separation of powers, but it implicitly provides for a functional separation of powers among the three branches.

The Legislature (Parliament and State Legislatures) has the power to make laws (Article 245 to 255), the Executive (President, Governor, Council of Ministers, and administrative machinery) has the responsibility to implement and enforce laws, and the Judiciary (Supreme Court, High Courts, and subordinate courts) has the power to adjudicate disputes and interpret the constitution and laws.

However, there isn't a strict separation of powers in India. For example, the executive is part of the legislature, and there is a system of judicial review where the judiciary can strike down laws passed by the legislature if they are found to be unconstitutional.

In the landmark case of *Kesavananda Bharati vs State of Kerala* (AIR 1973 SC 1461), the Supreme Court held that although the principle of separation of powers is not explicitly recognized in the Constitution, it is an inherent part of its basic structure.

(b) Audi Alteram Partem

Audi Alteram Partem is a Latin phrase that means "hear the other side". This principle is the cornerstone of natural justice and procedural fairness. It ensures that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the

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evidence against them.

This rule embodies the following key elements:

1. **Notice:** The person against whom the action is taken must be given notice of the case against him.
2. **Hearing:** After notice, a proper and fair hearing must be given to the person affected.
3. **Bias:** The decision-maker should be impartial and without bias.

Application in Indian Legal System

In India, the principle of Audi Alteram Partem is followed not only in judicial proceedings but also in administrative and quasi-judicial proceedings. It ensures fairness, equality, and justice. Any order passed or decision made in violation of the principle of natural justice, including Audi Alteram Partem, is deemed void.

In *Maneka Gandhi vs Union of India* (AIR 1978 SC 597), the Supreme Court held that the principle of Audi Alteram Partem is a part of the concept of due process, and it applies not only to quasi-judicial bodies but also to administrative bodies affecting civil rights or liberties.

In *Mohinder Singh Gill vs Chief Election Commissioner* (1978 AIR 851), the Supreme Court again emphasized the importance of this principle, stating that the basic postulate of natural justice is "nobody should be condemned unheard".

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Exceptions to Audi Alteram Partem

However, like every rule, Audi Alteram Partem also has exceptions. These exceptions usually arise in cases of emergencies, confidentiality, routine matters, or when the application of the rule would defeat the purpose of the action. For instance, in cases of preventive detention, the right to fair hearing may be curtailed in the interest of national security.

In the case of *AK Kraipak vs Union of India* (AIR 1970 SC 150), the Supreme Court observed that the principle of natural justice cannot remain the same applying to all situations. The horizon of natural justice is constantly expanding.

QUESTION 8: DISTINGUISH BETWEEN DOCTRINAL AND NON-DOCTRINAL RESEARCH AND THE ROLE OF SUPERVISOR IN LEGAL RESEARCH

(a) Doctrinal vs Non-Doctrinal Research

Doctrinal Research, also known as traditional, library, or armchair research, is a method of research that primarily focuses on the study of legal doctrines through the analysis of case law and statutory materials. The researcher aims to understand, interpret, and analyze the existing legal principles and statutes and their interrelation.

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The key features of doctrinal research include:

1. **Data:** The main sources of data in doctrinal research are primary sources such as statutes, case laws, and legal documents, and secondary sources like legal commentaries, articles, and textbooks.
2. **Analytical:** Doctrinal research is highly analytical. It seeks to deduce legal principles and theories from the analysis of legal texts and cases.
3. **Descriptive:** Doctrinal research is descriptive in nature. It describes the existing law, explains it, and tries to find out the inconsistencies, if any, for further development of the law.

Non-Doctrinal Research, also known as empirical or socio-legal research, is a research method that involves the study of law and legal institutions from a social perspective. It uses social science methods to understand law, legal institutions, and legal phenomena.

The key features of non-doctrinal research include:

1. **Data:** Non-doctrinal research relies on empirical data collected through interviews, questionnaires, surveys, observations, etc.
2. **Investigative:** Non-doctrinal research is investigative, aiming to discover new facts or compile and interpret old facts about law and legal institutions.
3. **Critical:** Non-doctrinal research adopts a critical

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approach, questioning the impact, effectiveness, and functioning of law and legal institutions in society.

To sum up, while doctrinal research emphasizes the "black-letter law" approach, focusing on legal provisions and principles, non-doctrinal research is concerned with the law's actual operation in society and its impact on individuals and communities.

(b) Role of Supervisor in Legal Research

The role of a supervisor in legal research is multifaceted and crucial for ensuring the success of the research project. A supervisor provides guidance, expertise, and support throughout the research process, and their roles include:

1. **Guidance:** A supervisor provides guidance in defining the research question, developing the research design, and choosing appropriate research methods.
2. **Review and Feedback:** The supervisor reviews drafts of the research, provides constructive feedback, and helps refine the arguments and analyses.
3. **Ethical Oversight:** The supervisor ensures that the research adheres to the highest standards of academic integrity and ethical conduct.
4. **Resource Identification:** A supervisor assists in identifying resources and materials relevant to the research topic.

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5. **Motivation and Support:** A supervisor encourages and motivates the researcher, providing emotional and intellectual support throughout the research process.
6. **Skill Development:** Through their expertise and knowledge, the supervisor also contributes to the skill development of the researcher.
7. **Network and Collaboration:** A supervisor can help the researcher connect with a wider academic and professional network, fostering opportunities for collaboration and further study.

Challenges in Legal Research and the Supervisor's Role

Both doctrinal and non-doctrinal legal research present their own sets of challenges. Doctrinal research might be criticized for being too detached from the realities of how law operates in society, while non-doctrinal research often requires interdisciplinary expertise and careful attention to research design and ethical issues.

In the case of **doctrinal research**, challenges might include the need to navigate vast bodies of legal texts, keeping up with changes in case law and legislation, and difficulties in determining which cases or laws are most relevant or influential. Doctrinal research may also be challenged by the need to understand and interpret complex legal concepts and language.

On the other hand, **non-doctrinal research** involves

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its own complexities. This type of research often requires knowledge of social science research methods, such as survey design or statistical analysis, which may not be familiar to all legal scholars. Ethical issues may also be particularly relevant in non-doctrinal research, particularly when dealing with human participants.

In confronting these challenges, the **supervisor's role** is particularly crucial. They can guide the student in choosing a suitable research methodology and navigating legal texts. They can offer advice on the most influential or relevant cases or legislation to consider. With their own experience in legal research, they can also help students anticipate and prepare for potential obstacles.

In the context of non-doctrinal research, the supervisor's role might also include providing or directing students towards training in social science research methods, and offering guidance on ethical issues. The supervisor can assist in designing surveys or interviews, conducting data analysis, and interpreting results.

In both types of research, a supervisor may also help the student understand how their work fits into the broader field of legal scholarship. They can guide the student in contextualizing their research findings, identifying their contribution to existing knowledge, and suggesting areas for further research.

The Evolving Nature of Legal Research and Supervisor's Role

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Legal research does not stand still, and the line between doctrinal and non-doctrinal research is increasingly blurred. Many legal scholars now use a combination of doctrinal and non-doctrinal methods in their research. For example, a researcher might use doctrinal methods to identify and analyse relevant laws and cases, and then use non-doctrinal methods to explore how these laws operate in practice.

In this evolving landscape, the supervisor's role is also changing. They must be open to new methods and approaches, and be prepared to guide students in using these methods. They might also need to collaborate with supervisors from other disciplines, particularly when students are conducting interdisciplinary non-doctoral research.

QUESTION 9: WRITE SHORT NOTES ON THE FOLLOWING:

(A) TECHNIQUES OF LEGAL RESEARCH

Legal research is a systematic process to identify and retrieve information necessary to support legal decision-making. The methodology one adopts in conducting legal research depends on the nature of the research question. However, some key techniques and steps are common to most legal research projects.

- 1. Identify and Define the Research Problem:**
The first step in any legal research is to identify the

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legal issue or problem. The issue should be clearly defined, with the scope and limitations identified. This step often involves a preliminary literature review to understand the existing discourse on the issue.

Here, you should remember the importance of specificity. Ambiguous or too broad questions can lead to an impractical scope of research. For example, "What is the impact of the IT Act, 2000, on the Indian society?" is too vague. A better question would be, "What has been the effect of Section 66A of the IT Act, 2000, on freedom of speech in India?"

2. **Formulate a Research Plan:** This involves identifying the research objectives, questions, and hypothesis. Based on the defined problem, one needs to decide what type of research - doctrinal or non-doctrinal - is appropriate.

It's important to understand that this plan is a guide, not an absolute rule. It can and should be revisited and revised as the research progresses. Additionally, the research plan should contain a tentative timeline and an outline of resources necessary for the study.

3. **Data Collection:** The next step involves collecting data. In doctrinal research, primary sources of data include statutes, case laws, and legal documents, while secondary sources include books, journal articles, and commentaries. For non-doctrinal research, data can be collected through surveys,

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interviews, case studies, and observations.

For effective data collection, researchers often employ legal databases like Westlaw, LexisNexis, Manupatra, and SCC Online. These databases can help to locate relevant cases, statutes, and scholarly articles. Knowledge of legal terminology and the ability to use Boolean operators can significantly improve the efficiency of this step.

4. **Data Analysis:** Once the data is collected, it is analysed and synthesized to answer the research question. In the case of doctrinal research, this often involves interpretation and application of legal principles and precedents. In non-doctrinal research, statistical or qualitative data analysis methods may be used.

This step requires the researcher's ability to logically and objectively analyze data. You must be able to sift through the information collected and connect the dots to form a coherent and substantial argument. The skill to understand and apply legal reasoning plays a crucial role here.

5. **Drawing Conclusions:** Based on the analysis, the researcher draws conclusions and recommendations. These conclusions should be logical, justified, and relevant to the research problem and objectives.

This step needs a balance of objectivity and creativity. While your conclusions must be grounded in the data

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analysed, they should also be innovative, offering new perspectives or solutions to the legal issue at hand.

6. **Writing the Research Report:** The final step involves writing and presenting the research findings. This includes an introduction, literature review, methodology, findings, analysis, conclusion, and bibliography.

The importance of clear and precise legal writing cannot be overstated. Each section should flow logically into the next, and jargon should be kept to a minimum to ensure readability. Legal writing also demands attention to details such as footnotes and citation styles.

(B) ESSENTIALS OF CITATION AND BIBLIOGRAPHY WITH APPROPRIATE ILLUSTRATIONS

Citation is an essential part of academic writing. It allows you to acknowledge the contributions of other authors and avoid plagiarism. Proper citation also enables your readers to verify your sources and further explore the topic.

In legal research, the Bluebook: A Uniform System of Citation is commonly used. Here are some basic citation examples following the Bluebook format:

1. **Book Citation:** William E. Forbath, Law and the Shaping of the American Labor Movement (1991).

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- Author's full name, Book Title in Italics (Year of Publication).
2. **Journal Article Citation:** Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131 (1991).
 - Author's full name, Article Title, Volume Number Journal Title in small caps Page Number (Year).
 3. **Case Citation:** Marbury v. Madison, 5 U.S. 137 (1803).
 - Case Name, Volume Reporter Page (Year).
 4. **Statute Citation:** Clean Air Act, 42 U.S.C. §§ 7401-7671q (2012).
 - Title of the Act, Title Number U.S.C. §§ Section Numbers (Year).

A bibliography is a systematic list of the books, articles, and other sources you have used in your research. In the Bluebook format, the basic format for a bibliography entry is similar to a footnote or endnote but with the author's name inverted.

Here are a few points to remember:

- **Alphabetization:** Entries should be alphabetized by the author's last name. If there is more than one work by the same author, these should be listed chronologically.

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- **Hanging Indents:** Bibliography entries typically use a 'hanging indent' style. This means that the first line of the entry is flush with the left margin, and all subsequent lines are indented.
- **Consistency:** The most important aspect of your bibliography is consistency. If you choose a particular citation style, it's important that you stick to it throughout your bibliography.

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PAPER 2

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING

QUESTION (A): RELATIONSHIP BETWEEN LAW AND MORALITY

The relationship between **law and morality** is complex and interdependent, grounded on the fundamental basis of societal ethics. It reflects how society views behavior, defining acceptable conduct, and facilitating cohesion. Despite some overlapping areas, it's important to understand the nuances and distinctions between the two.

The Overlap of Law and Morality

The origins of many legal concepts can be traced back to moral principles. Moral norms often form the basis for law, such as prohibitions against murder, theft, and deceit. The English jurist **Sir Edward Coke** proclaimed that law is the perfection of reason, which cannot be contrary to morality. A reflection of this idea is seen in cases like *R v Dudley and Stephens (1884)*, where the court held that necessity is not a defense for murder, thereby demonstrating an instance where law adheres to the moral prohibition of taking human life.

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Distinction Between Law and Morality

Despite overlaps, law and morality are not synonymous. Not all moral wrongs are legally punishable (*R v Brown [1994]*). The reverse is also true - not all legal requirements are morally justifiable, as seen in cases involving unjust laws in non-democratic regimes.

Interactions Between Law and Morality

The dynamic interplay between law and morality can be categorized under **Natural Law Theory** and **Legal Positivism**.

The natural law theory postulates that law's legitimacy arises from its basis in morality. **St Thomas Aquinas**, a proponent of this theory, believed an immoral law is no law at all. In contrast, legal positivism, championed by **John Austin**, suggests that a law's legitimacy comes from its establishment by an authority and doesn't necessarily require moral justification.

Recent legal philosophies like **Dworkin's Theory** try to strike a balance, acknowledging that while law isn't entirely derived from morality, moral principles play a significant role in legal interpretation and application.

QUESTION (B): INTERNATIONAL LAW AND MUNICIPAL LAW

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International law and **municipal law** are two distinct legal systems that govern international and domestic affairs, respectively.

International Law

International law comprises norms, regulations, and principles that govern interactions between sovereign states, international organizations, individuals, and other recognized entities. Key sources include treaties, customary international law, and the general principles of law recognized by civilized nations.

Municipal Law

Municipal law, on the other hand, is the domestic law of a state, governing legal relationships within its territory. It is formulated by the sovereign and includes statutes, precedents, administrative regulations, and constitutional provisions.

Interactions between International Law and Municipal Law

The relationship between international and municipal law primarily falls into two theories: **Monism** and **Dualism**.

The monist view, advocated by **Hans Kelsen**, suggests that international and municipal law form a unified legal system. International law automatically forms part of domestic law and doesn't require specific incorporation. This view is evident in jurisdictions like the Netherlands.

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Conversely, dualism posits that international and municipal law are separate legal systems. For international law to apply domestically, it must be transformed into municipal law through enabling legislation. This approach is followed in countries like the UK (*R (on the application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2008]*).

The application of these theories varies across jurisdictions and contexts, thereby making the relationship between international and municipal law dynamic and nuanced.

The Need for Harmonization

The necessity of aligning international obligations with domestic legal frameworks has been increasingly recognized. The **Vienna Convention on the Law of Treaties (1969)**, for instance, emphasizes that a state cannot invoke the provisions of its internal law as justification for its failure to perform a treaty. This represents a vital aspect of international law – that states should honor their commitments on the global stage, despite possible contradictions with domestic legislation.

Direct Effect and Indirect Effect

Certain provisions of international law have a **direct effect** in domestic law, implying that individuals may directly invoke these provisions before their national courts. This principle is notably adopted by the Court of

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Justice of the European Union in the case of *Van Gend en Loos v Nederlandse Administratie der Belastingen* (1963). Here, the court held that certain provisions of the Treaty on the Functioning of the European Union (TFEU) have a direct effect and could be invoked by individuals in the Member States' courts.

In contrast, the **indirect effect** or consistent interpretation principle obliges national courts to interpret domestic law, as far as possible, in the light of the wording and purpose of the international law in question. This approach promotes harmonization between the two legal systems.

Conflict Resolution

Discrepancies between international and municipal law may lead to conflicts. In such situations, states follow different principles based on their respective stances. Monist jurisdictions adhere to the principle of **lex posterior** (later law prevails), while dualist jurisdictions follow the principle of **lex superior** (higher law prevails).

Impact of Human Rights Law

The advent of human rights law has significantly impacted the relationship between international and municipal law. Human rights treaties often require domestic incorporation and implementation, thereby directly affecting municipal law. Landmark judgments like the **Inter-American Court of Human Rights**

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case of *Velásquez Rodríguez v Honduras* (1988) demonstrate international law's growing influence on domestic human rights protections.

QUESTION (C): INTERPRETATION OF STATUTES

Interpretation of statutes is a fundamental aspect of legal studies and practice, necessitated by the intrinsic ambiguities and complexities in legislative texts. It refers to the process by which courts understand and apply legislation, often requiring a balance between literal meanings and lawmakers' intent.

Literal Rule

The **Literal Rule** posits that words should be interpreted in their plain, ordinary, and grammatical meaning, irrespective of the result. This rule respects the sovereignty of the legislature, assuming that they mean what they say. An example is the case of *Fisher v Bell* (1961), where a shopkeeper displaying a flick knife in his shop window was held not guilty of offering for sale because the literal interpretation of 'offer for sale' in contract law is different from its ordinary meaning.

Golden Rule

The **Golden Rule** is a modification of the literal rule and is applied to avoid absurd or undesirable outcomes. The court may depart from the ordinary sense if it leads to a

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manifest contradiction or inconsistency. The classic case demonstrating the application of the golden rule is *Grey v Pearson (1857)*, where Lord Wensleydale stated that the grammatical and ordinary sense of the words may be modified to avoid absurdity and inconsistency.

Mischief Rule

The **Mischief Rule** (or **Rule in Heydon's Case (1584)**) looks at the law before the statute was passed to examine the problem (mischief) the statute aimed to remedy. By understanding the mischief, courts can interpret the statute in a way that suppresses the problem and advances the remedy.

Purposive Approach

The **Purposive Approach** goes beyond looking at the mischief rule. Here, the courts interpret in light of the purpose or intent of the legislation, even if this means deviating from the literal meaning of the words. This method gained prominence in European law and in the interpretation of the **European Convention on Human Rights**, as shown in the *Pepper v Hart (1992)* case.

QUESTION (D): CONSTITUTION AS THE BASIC LAW

A constitution is often referred to as the **Basic Law** of a land. It is the supreme law of a country, providing the

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blueprint for the governance structure and outlining the fundamental principles and norms that regulate relations between state entities and between the state and its citizens.

The Supreme Law

Being the supreme law, the constitution has the highest legal status. No other law, be it legislative or executive, can supersede it. Any law inconsistent with the constitution is deemed void. For instance, the **Marbury v Madison (1803)** case in the United States established the concept of judicial review, asserting the supremacy of the constitution over other laws.

Establishment of State Structure and Powers

The constitution delineates the state's structure, often establishing different branches of government - typically the executive, legislative, and judiciary - and distributing powers among them. It sets the rules for their interaction and establishes checks and balances to prevent the abuse of power.

Protection of Fundamental Rights

The constitution usually enshrines fundamental rights of the citizens and lays down the framework for their protection. It sets limits on state action, ensuring the state respects and upholds individual freedoms and dignity. The landmark case of *Kesavananda Bharati v State of Kerala (1973)* in India underscored the importance of the constitution in protecting fundamental

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rights by establishing the "basic structure doctrine," which limits the parliament's power to amend the constitution in a way that would infringe upon fundamental rights.

Procedure for Amendment

Being the Basic Law, a constitution usually has entrenched procedures for amendment, making it more enduring than ordinary legislation. However, it is not inflexible and provides for its own amendment to reflect changing societal values and circumstances, often through a more rigorous process compared to ordinary legislation. This balance between rigidity and flexibility ensures the relevance and sustainability of the constitution over time.

For instance, the **US Constitution** requires the approval of two-thirds of both houses of Congress and three-fourths of the states for amendments. This rigorous process ensures that changes reflect a broad consensus and protects against whimsical or hasty modifications.

Interpretation of the Constitution

Constitutional interpretation plays a crucial role in understanding and applying the Basic Law. Given its broad and often ambiguous provisions, courts, particularly the apex court, interpret the constitution's text and principles in light of contemporary conditions and challenges. In this way, constitutional jurisprudence evolves over time.

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For instance, in the landmark case of *Brown v Board of Education (1954)*, the U.S. Supreme Court interpreted the Constitution's Equal Protection Clause to prohibit segregation in public schools, overturning its previous interpretation from the *Plessy v Ferguson (1896)* case.

The Constitution as a Living Document

The idea of the constitution as a 'living document' suggests that its interpretation should adapt to evolving societal norms and values, which allows it to stay relevant over time. This concept, championed by legal theorists like **Justice Oliver Wendell Holmes**, emphasizes that the Constitution's purpose is to guide the life of a society and respond to its growing demands and complexities.

QUESTION (E): LEGAL MATERIALS

Legal materials constitute the resources that provide the content, context, and interpretation of the law. They can be categorized as primary and secondary sources, with both being crucial for comprehensive legal research and practice.

Primary Legal Materials

Primary legal materials are the authoritative sources of law, consisting of:

1. **Constitutions:** The supreme law of the land, defining the structure of the government, the

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distribution of powers, and the rights of the citizens.

2. **Legislation:** Enacted by the legislative authority, legislation includes acts, statutes, ordinances, and statutory instruments.
3. **Case Law:** Decisions made by courts. Precedents, or past judicial decisions, form a crucial part of common law systems.
4. **Regulations:** Rules created by administrative agencies within the scope of authority delegated by the legislature.
5. **Treaties and Conventions:** Agreements between nations, which are binding in international law.

Secondary Legal Materials

Secondary legal materials assist in the understanding, interpretation, and application of primary legal materials. They include:

1. **Legal Commentaries:** These provide expert analysis and opinions on the law and can include law reviews, legal treatises, and law journals.
2. **Textbooks:** Comprehensive presentations of legal principles and rules on a specific area of law, which provide contextual understanding and practical implications.

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3. **Legal Encyclopedias:** These provide a broad overview of legal principles and doctrines.
4. **Digests:** Summaries of court decisions, often organized by subject matter for ease of reference.
5. **Legal Dictionaries:** They provide the meanings of legal terms and phrases.
6. **Annotated Law Reports:** These include the text of the law and case law, along with expert analysis and commentary.

Significance of Legal Materials

Legal materials play an indispensable role in legal studies and practice. They guide practitioners in advising clients, preparing legal arguments, and making or adjudicating legal decisions. For scholars and students, these resources provide comprehensive knowledge and understanding of the law, its interpretation, and its application.

Legal materials also ensure the principle of **legal certainty** by informing citizens of their rights and obligations. They embody the concept of the **rule of law**, ensuring that laws are publicly accessible, clear, and predictable.

The evolution of technology has transformed access to legal materials, with digital platforms making them more readily available. This revolution, while increasing accessibility, has also underscored the need for skills in

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navigating and understanding a vast and complex array of legal resources.

PART B

Q2: DEFINITION OF 'LAW' UNDER THE INDIAN LEGAL SYSTEM AND THE NEED FOR LAW IN SOCIETY

In legal studies, the term '**Law**' has eluded a universal definition, owing to its intricate and multifaceted nature, and its relation to various aspects of human society including morality, culture, politics, and economics. However, there are certain common threads which tie together various conceptions of law - it is generally seen as a system of rules, recognized and enforced by a set of institutions, designed to regulate behavior and relations within a society. The importance of law is paramount as it provides order, predictability, and a framework within which freedoms can flourish.

In the context of the Indian legal system, understanding '**Law**' involves unraveling its historical underpinnings, socio-cultural implications, constitutional provisions, and statutory and case laws.

Historical Background

The roots of the Indian legal system can be traced back to ancient times when laws were largely based on customs, religious practices, and royal decrees. The

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Dharmashastras and the Arthashastra, for instance, laid down rules for governance, justice, and social conduct. These were the earliest forms of law in India, tying legal principles to moral and ethical codes, and the governance structure of the day.

The arrival of the British significantly reshaped the Indian legal landscape, introducing elements of the common law system, formal legal institutions, and comprehensive codified laws. Key statutes like the Indian Penal Code (IPC), 1860, and the Indian Contract Act, 1872, were enacted during this period, many of which continue to form a significant part of Indian law.

Post-independence, the framing of the Constitution of India marked a momentous shift. The Constitution, as the supreme law of the land, now set the framework for all other laws and the functioning of the state.

The Constitution as the Source of Law

The **Constitution of India** lays down the fundamental principles upon which the Republic of India is to be governed. It delineates the structure of the government, defines the powers and responsibilities of the three branches - the executive, legislature, and judiciary - and sets out the fundamental rights and duties of the citizens.

According to Article 13 of the Constitution, any law that is inconsistent with or in derogation of the fundamental rights is, to the extent of the inconsistency or derogation, void. This underscores the Constitution's supremacy and

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its role as the primary source and litmus test for the validity of laws in India.

Statutes, Case Law, and Customary Law

Apart from the Constitution, the term 'Law' in the Indian legal system encompasses **statutes** (Acts and laws enacted by the Parliament and the State Legislatures), **case law** (judgments and orders of courts that lay down legal principles and interpret laws), and **customary law** (traditional practices recognized by courts as binding).

The various statutes in India, ranging from the Indian Penal Code (IPC) to the Information Technology Act, 2000, regulate diverse aspects of social, economic, and political life.

Case law, or the decisions of courts, also constitute a significant source of law. In interpreting statutes and the Constitution, courts often articulate legal principles and doctrines that shape the law's application in concrete cases. For instance, the Supreme Court's landmark judgment in the case of Kesavananda Bharati v State of Kerala laid down the 'basic structure' doctrine, according to which the Parliament cannot amend the Constitution in a manner that alters its basic structure.

Customary Law, Personal Law, and Other Sources

Customary law forms a crucial part of 'Law' in India, especially in tribal areas and in matters of personal law. For example, tribal communities in states like Nagaland

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and Mizoram largely follow their traditional customs for civil matters like marriage, inheritance, and divorce. These customs, while not codified, are legally recognized and enforceable due to their long-standing practice and acceptance within these communities.

The recognition of **personal laws** is another unique aspect of the Indian legal system. Laws related to marriage, divorce, inheritance, and other family matters vary among different religious communities, reflecting India's diversity. These laws are usually based on religious texts and traditions, and their interpretation and application often involve a blend of religious, moral, and legal principles. For instance, Hindu personal laws are primarily derived from ancient texts like the Dharmashastras, while Muslim personal laws are largely based on the principles of the Quran.

Administrative regulations, international treaties and agreements, and law commission reports also contribute to the corpus of 'Law' in the Indian context.

Administrative regulations or rules are created by administrative agencies under the powers delegated to them by statutes. They provide the detailed mechanics of how the broad mandates of statutes will be implemented.

International law also influences Indian law. When India signs an international treaty or convention, it often enacts domestic laws or amends existing ones to align with its international obligations, as was the case with the enactment of the Protection of Human Rights Act, 1993,

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which followed India's ratification of the International Covenant on Civil and Political Rights.

Reports and recommendations of **law commissions** and committees, though not legally binding, also significantly influence law-making in India. Their exhaustive research and analysis of various legal issues guide the formulation of new laws and amendments to existing ones.

Societal Need for Law

Having examined the meaning of 'Law' within the Indian legal system, it's important to discuss why society needs law.

At its core, the law serves to maintain **order and stability** in society. It provides a predictable and systematic framework for dealing with disputes, thus preventing chaos and violence.

The law also defines the **rights and responsibilities** of individuals, corporations, and other entities. It specifies what is permissible and what is not, thereby providing guidelines for behavior. By defining and protecting fundamental rights, the law also ensures individual freedoms and dignity.

Law acts as an instrument of **social control** and **social change**. While it reinforces societal norms and expectations, it can also be used to initiate and manage change. For instance, laws prohibiting discriminatory practices or promoting environmental sustainability

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reflect societal progress and the evolving consensus on these issues.

Law also facilitates **cooperation and coordination** among diverse groups and individuals in society. By providing rules for various transactions and interactions - from contract laws governing business dealings to traffic rules regulating road use - the law allows for a harmonious and efficient functioning of society.

Law plays a critical role in achieving **justice**. Through its procedures and principles, law seeks to ensure that wrongs are redressed, justice is served, and a fair balance is maintained between competing interests.

Reflection on the Complexity and Dynamism of Law

Continuing with our exploration of 'Law' in the Indian context, it's important to emphasize the inherent complexity and dynamism of law. This complexity arises from the multitude of sources, interpretations, and applications of law, and its interplay with other societal structures and norms.

The **dynamism of law** stems from its continuous evolution to respond to changing societal needs and values. For example, the growth of digital technology and the internet has necessitated new laws like the Information Technology Act, 2000, to address issues like cybercrime, data protection, and e-commerce. Similarly, the recognition of evolving societal values can be seen in

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judicial decisions like the landmark judgment in Navtej Singh Johar v. Union of India, where the Supreme Court decriminalized homosexuality, overturning a colonial-era law.

This dynamism also extends to the interpretative realm, with courts often called upon to interpret laws in the light of new circumstances, technologies, and societal understandings. As highlighted earlier, the role of the judiciary, particularly the Supreme Court, in shaping the law through its judgments is a key aspect of the Indian legal system.

Rule of Law and Legal Pluralism

Two important principles in the Indian legal system are the **rule of law** and **legal pluralism**.

The rule of law is a foundational principle of the Indian Constitution and Indian law. It implies that every person is subject to the law, including people who are lawmakers, law enforcement officials, and judges. This principle is reflected in the Constitution's guarantee of equality before the law (Article 14) and the prohibition of arbitrariness in state action.

Legal pluralism refers to the coexistence of multiple legal systems within a socio-political space. In the Indian context, this is seen in the coexistence of statutory law, constitutional law, customary law, and personal law. This pluralism is a reflection of India's socio-cultural diversity, but it also raises complex questions about the interplay

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and potential conflicts between these different sources of law.

Law and Social Transformation

Finally, it's crucial to underline the transformative potential of law. Law not merely reflects social reality, but can actively shape it. Through its instruments, the state can seek to effect social change and achieve societal goals. This can be seen in legislation aimed at social welfare and reform, like the Right to Education Act, 2009, which seeks to ensure free and compulsory education for all children, or the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which aims to prevent and redress atrocities against these historically marginalized communities.

Similarly, the constitutional guarantee of fundamental rights and the judiciary's proactive role in their protection and enforcement has been instrumental in advancing social justice and equality in India. From the right to life and personal liberty to the right to constitutional remedies, these rights provide a strong legal basis for challenging injustice and discrimination.

Q3: FUNCTIONS AND CHARACTERISTICS OF LAW WITH RELEVANT JUDICIAL DECISIONS

Law plays a central role in modern societies. It serves multiple functions, from preserving social order and protecting rights, to promoting social justice and

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facilitating change. The nature and functions of law are defined by certain characteristics that lend law its authority, legitimacy, and effectiveness. To delve deeper into the functions and characteristics of law, let's consider them with reference to relevant judicial decisions in India.

Functions of Law

1. **Preservation of Social Order:** The primary function of law is to maintain order in society and provide a structured system for conflict resolution. Without law, disputes could lead to chaos and violence. A landmark judgment reinforcing this function is the *Kesavananda Bharati v. State of Kerala* case (1973), where the Supreme Court held that the basic structure of the Constitution - including the rule of law - cannot be amended, thereby reinforcing the supremacy of law in maintaining societal order.
2. **Protection of Rights and Liberties:** Law protects the fundamental rights and freedoms of individuals. It provides mechanisms for the enforcement of these rights and remedies for their violation. The *Maneka Gandhi v. Union of India* case (1978) is seminal in this context. The Supreme Court expanded the interpretation of the right to life and personal liberty under Article 21, thereby enhancing the protective function of law.

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- 3. Social Control and Regulation:** Law acts as an instrument of social control, defining acceptable and unacceptable behavior in society. The *State of Maharashtra v. M. S. Pandermath* case (2004), which upheld the death sentence for a heinous crime, exemplifies how law serves to deter serious offences and regulate societal behavior.
- 4. Social Change and Reform:** Law can be a powerful tool for social transformation. It can help challenge traditional norms and promote progressive values. The *Vishaka v. State of Rajasthan* case (1997), where the Supreme Court issued guidelines to prevent sexual harassment at the workplace, illustrates how law can catalyze social change.
- 5. Resolution of Disputes:** Law provides formal mechanisms for the resolution of disputes. The *L. Chandrakumar v. Union of India* case (1997), which affirmed the power of high courts and the Supreme Court to review administrative actions, underscores the law's role in providing avenues for the redressal of grievances.

Characteristics of Law

Law possesses certain characteristics that give it its distinct nature and make it effective in performing its functions. These include:

- 1. Generality:** Laws are generally applicable to all persons within a jurisdiction, regardless of their

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status. The principle of equality before the law, enshrined in Article 14 of the Indian Constitution, reflects this characteristic.

2. **Normativity:** Laws are normative in nature, prescribing what ought to be done or not done. They are not merely descriptive but carry an inherent obligation for compliance.
3. **Predictability:** Law provides a degree of predictability, creating a framework within which individuals can plan their actions. This characteristic of law was emphasized in the *R. D. Shetty v. International Airport Authority* case (1979), where the Supreme Court laid down that administrative actions should be governed by standards that are not arbitrary, vague, or fanciful.
4. **Enforceability:** Laws are enforceable by the state. Non-compliance with laws leads to sanctions or penalties. This characteristic is evident in the criminal justice system where violations of law are punished.
5. **Dynamic Nature:** Law is not static; it evolves with changing societal values and needs. This dynamic nature of law was reflected in the *Navtej Singh Johar v. Union of India* case (2018), In this landmark judgement, the Supreme Court decriminalized homosexuality by reading down Section 377 of the Indian Penal Code. The court acknowledged evolving societal understanding and global trends towards

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recognizing the rights of LGBTQ+ individuals, thereby illustrating how law evolves with the times.

6. **Reasonableness:** Laws must be reasonable and not arbitrary. They must conform to the principles of justice and fairness. This characteristic of law was upheld in the **Maneka Gandhi v. Union of India** case (1978) where the Supreme Court held that any law that deprives a person of his personal liberty has to be fair, just, and reasonable.
7. **Prospective Nature:** Laws are usually prospective, meaning they apply to future actions and events. Retroactive laws are generally seen as unjust because they can punish individuals for actions that were not illegal at the time they were committed. However, exceptions to this principle exist in both civil and criminal law under certain conditions.

Implications of the Functions and Characteristics of Law

The various functions and characteristics of law underscore its central role in society. By maintaining order, protecting rights, regulating behavior, promoting social change, and resolving disputes, law shapes the societal structure and individual lives in profound ways.

The principle of generality ensures that law applies equally to all, embodying the democratic ideal of equality. The normative nature of law lays down the standards of behavior, while its predictability allows individuals and

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entities to plan their actions with some degree of certainty about the legal consequences.

The enforceability of law underscores its authority, providing a deterrent against violations and a mechanism for redressal of wrongs. The dynamic nature of law ensures that it stays relevant and responsive to changing societal needs and values.

The principle of reasonableness prevents arbitrary and unjust use of legal power, ensuring that law serves its purpose of justice. The prospective nature of law respects the principles of fairness, as individuals should only be held accountable under laws that existed at the time of their actions.

Q4: POSITION OF 'PRECEDENT' AS A SOURCE OF LAW IN INDIA, CONTENTS AND KINDS OF PRECEDENT WITH CASE LAW

In the hierarchical structure of the legal system in India, **precedent** plays a pivotal role as a source of law. Precedent, also known as case law or judge-made law, refers to the principle whereby courts follow the decisions of higher courts in cases where the facts are materially similar. This principle, known as 'stare decisis', forms a cornerstone of legal interpretation and application in common law systems like India.

Precedent as a Source of Law in India

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The significance of precedent as a source of law in India cannot be overstated. Article 141 of the Constitution of India provides that the law declared by the Supreme Court is binding on all courts within the territory of India. Similarly, the decisions of the High Courts are binding on all lower courts within their respective jurisdiction. This constitutional provision formalizes the place of precedent in the Indian legal system.

Precedents shape legal norms and ensure consistency, predictability, and stability in the law. They allow for the evolution of law, with courts interpreting and applying statutes and the Constitution to new and complex legal issues. Precedents can articulate and develop principles, interpret legislation, and fill gaps where the law is silent or ambiguous.

However, while precedent is a fundamental source of law, it is also subject to certain limitations. It is well-settled that the precedent's binding force stems not from the personalities who create it but from the principles that the case establishes. Moreover, the Supreme Court has the power to review and overrule its precedents, as demonstrated in the historic *Kesavananda Bharati v. State of Kerala* case (1973), where the Court overruled its earlier decision and introduced the doctrine of basic structure.

Contents and Kinds of Precedent

The contents of a precedent typically comprise the facts of the case, the legal issues involved, the arguments of the

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parties, the reasoning of the court, and the decision or 'ratio decidendi'.

- 1. Ratio Decidendi:** This is the principle or rule of law on which a court's decision is founded. It is the part of the judgment that sets a binding precedent for future cases. For example, in the *Maneka Gandhi v. Union of India* case (1978), the Supreme Court held that Article 21's protection of life and personal liberty is not limited to mere freedom from bodily restraint, but encompasses a variety of rights. This ruling is now the ratio decidendi that future cases involving Article 21 must follow.
- 2. Obiter Dicta:** These are comments or observations made by the judge that, while persuasive, are not binding. They do not form the ratio decidendi and are not necessary for the decision in the case. However, they can be influential in future cases and help guide judicial reasoning.

Precedents can be classified into various kinds based on their authority and application:

- 1. Binding Precedent:** This refers to a precedent that must be followed by courts in future cases with similar facts. The decision of a higher court within the same jurisdiction serves as a binding precedent for a lower court.
- 2. Persuasive Precedent:** This refers to a precedent that, while not binding, may be considered by a court

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in deciding a case. For example, decisions of courts from other jurisdictions or lower courts may be considered as persuasive precedent.

- 3. Original Precedent:** This refers to a precedent that creates and applies a new legal principle for the first time.
- 4. Superseded Precedent:** This refers to a precedent that has been overruled or set aside by a later decision of a higher court or a statutory provision. These precedents are no longer authoritative.
- 5. Per Incuriam Precedent:** These are precedents where a court has rendered a judgment without considering a relevant statutory provision or a precedent which could have had a substantial bearing on the case at hand.
- 6. Sub Silentio Precedent:** A precedent sub silentio, literally "under silence", is one where a particular point of law has not been consciously determined in a case, and the judgment has passed without the court considering it.

Elaboration with Case Law

To further illustrate the importance of precedent in Indian law, consider the evolution of the right to privacy in Indian jurisprudence. The landmark case **K.S. Puttaswamy v. Union of India** (2017) is a testament to the influential power of precedents.

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In the early cases, the Supreme Court in **Kharak Singh v. State of Uttar Pradesh** (1964) and **Gobind v. State of Madhya Pradesh** (1975), the court recognized a limited constitutional right to privacy derived from the rights to life and personal liberty. However, the right to privacy was not recognized as a fundamental right.

Fast forward to **K.S. Puttaswamy v. Union of India**, the Supreme Court overruled its previous judgments and held the right to privacy to be a fundamental right protected under Article 21 of the Constitution. The Puttaswamy decision exemplifies how precedent functions as a dynamic mechanism for legal evolution, allowing the courts to reinterpret the law in light of changing societal values and developments.

Q5: DELEGATED LEGISLATION AND INDIAN LEGAL SYSTEM'S SAFEGUARDS AGAINST EXCESSIVE DELEGATED LEGISLATION, WITH CASE LAW

Delegated legislation, also known as secondary, subordinate, or subsidiary legislation, refers to those laws that are passed by an individual or body under powers given to them by primary legislation, typically an Act of Parliament or State Legislature. The concept is based on the principle of expediency; as it is impossible and impractical for legislative bodies to deliberate upon every

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minor detail, the power to make rules for specific matters is often delegated to an executive authority or a statutory body.

Understanding Delegated Legislation

In a complex modern society, legislation must respond promptly and flexibly to diverse and technical matters. As it is impossible for Parliament or State Legislatures to deal with each minute detail and technicalities, they pass the skeleton of the policy guidelines and principles as legislation, and delegate the rest to the executive or administrative authorities.

These delegated authorities then frame rules, regulations, bye-laws, etc. to carry out the principles laid out in the enabling Act. Examples of delegated legislation in India include the Income Tax Rules, 1962 under the Income Tax Act, 1961, and the Industrial Disputes (Central) Rules, 1957 under the Industrial Disputes Act, 1947.

Safeguards against Excessive Delegated Legislation in India

The potential of abuse of power through delegated legislation has long been recognized, and the Indian legal system has multiple safeguards to prevent excessive delegation.

- 1. Constitutional Limitations:** Article 13(3) of the Indian Constitution recognizes laws as inclusive of "any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory

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of India the force of law". Hence, delegated legislation, like other laws, must comply with the Fundamental Rights and other constitutional provisions.

- 2. Legislative Control:** Both Parliament and State Legislatures retain control over delegated legislation through procedural requirements set in the enabling Act, such as requirements to lay drafts before the legislature or secure legislative approval. Some legislatures have even established committees to scrutinize delegated legislation.
- 3. Judicial Review:** Courts in India can and do review delegated legislation. The test generally applied by courts to decide the validity of delegated legislation is whether it is within the confines of the power granted by the enabling Act.

Case Law Illustrations

A line of cases in Indian law demonstrates the courts' approach to delegated legislation:

- 1. In Delhi Laws Act Case (1951),** the Supreme Court upheld the constitutionality of delegated legislation but also established important principles. It held that the essential legislative function, which consists in the determination of the legislative policy and formulation of the rule as a policy, cannot be delegated by the legislature.

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2. The principle was reiterated in **Raj Narain Singh v. Chairman, Patna Administration Committee** (1955), where the Supreme Court ruled that while legislative bodies could delegate their subsidiary functions, they couldn't delegate their essential functions.
3. In **Hamdard Dawakhana v. Union of India** (1960), the Supreme Court struck down a delegated legislation on the ground that it was violative of Article 19(1)(g) of the Constitution and was not saved by clause (6) of Article 19.
4. In **Ajit Nath Ray v. Union of India** (1973), the Supreme Court held that the power of delegated legislation could be challenged on the grounds of conflict with the Constitution, the Act delegating the power, or on the ground that it is so arbitrary or unreasonable that no legislature could have intended to delegate such power.

Q6: THE CONCEPT OF 'SEPARATION OF POWER' AND ITS APPLICATION IN DEMOCRATIC LEGAL SYSTEMS, WITH RELEVANT CASE LAW

Separation of Powers is a doctrine of constitutional law which creates the division of governmental responsibilities into distinct branches to prevent the concentration of power in one sector. The doctrine is

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typically characterized by the division of the government into three branches: the legislative, the executive, and the judiciary.

This concept is rooted in the philosophy of checks and balances, ensuring that each branch operates independently of the others, yet maintaining a system of interdependence and interaction to prevent any one branch from gaining absolute power. The fundamental idea is to prevent the abuse of power and ensure good governance.

Separation of Powers in Theory

The origin of the modern concept of the separation of powers is often attributed to Montesquieu's work, "The Spirit of the Laws", where he noted that the independence of the judiciary is the key to people's liberty. His writings influenced many subsequent constitutions, including the U.S. Constitution, which is seen as a classic example of a system based on the separation of powers.

The theory envisions three branches of government, each with distinct functions:

- 1. Legislative:** This is the law-making body, typically the parliament or legislature, responsible for enacting laws.
- 2. Executive:** This body is responsible for implementing and administering the laws. The executive branch includes the president or prime minister and the administrative bureaucracy.

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- Judicial:** This branch is charged with interpreting laws and delivering judgments. The judiciary ensures the rule of law and protects citizens' rights by checking the legality of actions by the other branches.

Separation of Powers in Practice: Flexibility in Democratic Legal Systems

While the separation of powers is a fundamental principle of modern democratic governance, its application is not absolute in most democracies. The doctrine is usually applied flexibly, allowing for a certain degree of overlap in the functions of the different branches.

The Indian Constitution, for instance, does not strictly adhere to the doctrine of separation of powers but incorporates a system of checks and balances. Although the three organs of the government are placed in three different Articles of the Constitution (Parliament under Article 79, the President under Article 52, and the Supreme Court under Article 124), there exists a slight blending of functions, for example, the President has legislative powers, the executive can issue ordinances when the parliament is not in session, and the judiciary has the power of judicial review.

Case Law Illustrations

- In the landmark case of **Kesavananda Bharati v. State of Kerala** (1973), the Supreme Court of India held that although the Constitution of India

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does not explicitly mention the doctrine of separation of powers, it is inherent in the Constitution's structure and scheme.

2. In the case of **Indira Nehru Gandhi v. Raj Narain** (1975), the Supreme Court explicitly held that the Indian Constitution does not strictly follow the doctrine of separation of powers.
3. In **R. Coelho v. State of Tamil Nadu** (2007), the Supreme Court held that judicial review is a basic feature of the Indian Constitution, and therefore, the power of the judiciary to review and check the actions of the legislative and executive branches is beyond the purview of the amending power of the Parliament.

Q7: DICEY'S RULE OF LAW AND ITS APPLICABILITY IN THE CURRENT SCENARIO: A CRITICAL DISCUSSION ON THE RULE OF LAW IN THE INDIAN LEGAL SYSTEM

Rule of law is a fundamental principle of governance that suggests that every person is subject to the law, including lawmakers themselves. It primarily implies that no person is above the law and that everyone should be treated equally under the law. This concept also suggests that the laws should be applied equally and fairly, without any discrimination.

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The term "Rule of Law" was popularized by the British jurist A.V. Dicey in his book "Introduction to the Study of the Law of the Constitution," published in 1885. According to Dicey, the rule of law has three key principles:

1. **Supremacy of Law:** No man can be punished or lawfully interfered with by the authorities except for breaches of law.
2. **Equality Before the Law:** No man is above the law, and everyone, regardless of their status, is subject to the ordinary laws of the land.
3. **Predominance of Legal Spirit:** The rights of individuals are determined by legal judgement rather than by administrative order.

Now, let's examine the applicability of Dicey's rule of law in the current scenario and discuss the principle of the rule of law in the Indian legal system.

Dicey's Rule of Law: Applicability in the Current Scenario

In a strict sense, Dicey's rule of law may not be entirely applicable in the present-day scenario. While the principles of supremacy of law and equality before the law remain essential, modern democracies have moved beyond the narrow confines of Dicey's interpretation to encompass a broader, more nuanced understanding of the rule of law.

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In many contemporary societies, the rule of law is considered more than just the absolute supremacy of ordinary law; it also includes principles of justice, fairness, and human rights. Administrative law, a field that Dicey distrusted, has developed into an important branch of law, aiming to control potential abuses of discretionary power by public authorities. Similarly, the idea of rights being determined by legal judgement rather than administrative order has expanded to include not just civil and political rights but also social, economic, and cultural rights.

Therefore, while Dicey's rule of law forms the foundation, modern societies have evolved to understand and implement a more comprehensive version of the rule of law, one that seeks not just to restrict and regulate power but also to enable and empower individuals and communities.

Rule of Law in the Indian Legal System

In the context of the Indian legal system, the rule of law is a foundational principle embedded within the Constitution. While the Constitution of India does not explicitly mention the phrase "rule of law," it embodies its essential elements.

The Preamble itself provides for justice (social, economic, and political), liberty (of thought, expression, belief, faith, and worship), equality (of status and opportunity), and fraternity, indicating the intent to establish a society governed by the rule of law. Moreover, the Fundamental

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Rights (Part III of the Constitution) and Directive Principles of State Policy (Part IV) further enshrine the principles of justice, equality, and liberty, underlining the rule of law.

These provisions seemingly contradict Dicey's notion of absolute legal equality. However, they can also be seen as a part of the necessary modifications required to ensure a broader understanding of the rule of law, where not just legal but also social and economic equality and justice are pursued.

Indeed, the Indian judiciary has played a pivotal role in upholding the principle of rule of law, ensuring that it doesn't become a mere rhetoric. In the landmark case of *Kesavananda Bharati v. State of Kerala* (AIR 1973 SC 1461), the Supreme Court of India held that the rule of law was a part of the basic structure of the Constitution and, hence, could not be abridged or taken away.

Furthermore, in the case of *ADM Jabalpur v. Shivkant Shukla* (AIR 1976 SC 1207), popularly known as the Habeas Corpus case, the Supreme Court asserted that even during the period of emergency, the state could not arbitrarily detain individuals and that the rule of law would still prevail.

Therefore, while the Indian legal system may not strictly adhere to Dicey's rule of law, it nonetheless upholds the principle's essence. It balances the need for legal certainty, equality, and checks on governmental power with the pursuit of broader socio-economic goals.

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Q8: UNDERSTANDING LEGAL RESEARCH, ITS IMPORTANCE AND STEPS TOWARDS CONDUCTING RESEARCH

Legal research is a systematic process of identifying and retrieving information necessary to support legal decision-making. It involves the study of laws, legal principles, and regulations for the purpose of discovering and understanding the details about a particular legal question or issue. The importance of legal research cannot be understated, and it is a critical skill for anyone studying or practicing law.

Importance of Legal Research

Legal research is significant for several reasons:

1. **Problem-solving:** Legal research helps in analyzing a legal problem and finding the most appropriate solution. Whether one is an advocate arguing a case, a business professional trying to understand a contractual clause, or a law student writing a legal paper, research helps to understand the nuances of the issue and provide well-informed, practical solutions.
2. **Staying Up-to-Date:** Laws and regulations are dynamic and constantly evolving. Legal research aids in staying current with the latest

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developments and understanding how they apply to a particular situation.

3. **Developing Legal Arguments:** For lawyers and law students, legal research is indispensable for preparing legal briefs and arguments. Researching case laws, statutes, legal opinions, and scholarly articles can provide the necessary ammunition to make convincing arguments.
4. **Legal Understanding:** Legal research helps to understand the legal context in which a problem arises, the applicable law, and the precedent that courts have established. It provides a nuanced understanding of the legal landscape, making it easier to navigate.
5. **Avoiding Malpractice:** For legal practitioners, thorough legal research is not just about winning a case; it is also a professional responsibility. Inadequate research could lead to malpractice lawsuits.

Steps towards Conducting Legal Research

Conducting legal research is a structured process that includes several key steps:

1. **Identify the Legal Problem:** The first step in legal research is identifying and understanding the legal question or problem. This could range from understanding a complex constitutional issue to interpreting a contract clause. It is

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important to understand what exactly needs to be addressed.

- 2. Preliminary Research and Fact Gathering:** This involves gathering as much information as possible about the problem. It could involve reading up on the issue, talking to experts, and understanding the context in which the problem arises. This gives a basic understanding of the issue and helps narrow down the focus of the research.
- 3. Develop a Research Plan:** Once you understand the problem, the next step is to develop a research plan. This involves identifying the resources that need to be referred to, the jurisdictions to be covered, and the timeline for the research.
- 4. Perform the Research:** Now, based on the plan, the research begins. This includes reading case laws, statutes, legal journals, and other resources to gather the necessary information.
- 5. Analyze the Information:** Once the information is gathered, it needs to be analyzed. This includes understanding how the law applies to the issue at hand, how the courts have interpreted similar issues, and how scholars have commented on the issue.

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6. **Present the Research:** The final step is presenting the research in a structured, understandable manner. Whether this is a legal memo, a research paper, a court brief, or just a discussion, it is important to clearly and coherently present the research findings.

Example of Legal Research

Let's consider an example. Suppose you're tasked with researching whether an Indian company can legally terminate an employee who has been absent for a long period due to serious illness.

Here, the legal problem is understanding the legal implications of terminating an employee due to long-term illness. Preliminary research might involve understanding the basic employment law principles, reading up on employee rights, and the company's policies. After understanding the basics, the research plan would involve identifying relevant labor laws, case laws, and perhaps even international standards if the company is multinational.

The research might involve a deep dive into the Indian labour laws, notably the Industrial Disputes Act, 1947, which provides for certain protections for workmen against unfair dismissal, and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which might apply if the illness could be classified as a disability. You would also need to

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study the company's policies on employee absences and terminations.

This research may lead to several Supreme Court and High Court cases where the issue of terminating an employee due to long-term illness was discussed. This might include judgments that define what constitutes a 'reasonable' period of illness absence, the requirements for medical certificates, and the definition of 'disability'. It would also require understanding the balance between an employer's right to expect regular attendance and an employee's right to health and job security.

The analysis of the information would involve understanding how these laws, judgments, and policies would apply to the current situation. Is the period of illness 'reasonable'? Has the employee provided adequate medical certification? Does the illness qualify as a 'disability' under the law?

The final step would be to present this research. This might be in the form of a memo to the company's HR department, outlining the legal risks of terminating the employee, and the potential defenses if the employee were to bring a claim. It might also provide recommendations on how to handle such situations in the future, such as developing clear policies on long-term illness absences.

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Q9: UNDERSTANDING SOCIO-LEGAL RESEARCH AND TECHNIQUES OF LEGAL RESEARCH

Legal research isn't limited to analyzing statutes, case laws, and administrative regulations alone. In many instances, understanding the social, political, and economic contexts in which laws operate is equally crucial. This is where **socio-legal research** comes into play. Meanwhile, legal research, whether doctrinal or socio-legal, requires specific techniques to be effectively and efficiently conducted.

Socio-Legal Research: Definition and Importance

Socio-legal research is an interdisciplinary approach to legal studies that draws on methods from a variety of disciplines, including sociology, political science, psychology, anthropology, and economics, to explore the relationship between law, legal processes, society, and socio-political institutions. It examines how law and legal institutions both affect and are affected by social structures and cultural norms.

The importance of socio-legal research stems from its ability to provide nuanced insights into law's real-world impact. While traditional legal research might provide information about what the law is, socio-legal research helps us understand how the law operates in society, how it affects people's lives, how societal structures and values

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influence the law and legal processes, and how social problems can be addressed through legal interventions.

For instance, socio-legal research can investigate how laws relating to domestic violence are implemented and experienced on the ground, how caste or gender influence access to justice, or how economic policies affect labor rights enforcement.

Techniques of Legal Research

Legal research, whether it's doctrinal or socio-legal, employs a range of techniques, some of which are:

1. **Statutory Interpretation:** This involves the analysis and interpretation of legislation, including statutes, regulations, and constitutional provisions. Techniques include the literal rule, the golden rule, and the mischief rule.
2. **Case Law Analysis:** This involves studying and analyzing judgments to understand the application and interpretation of laws. Researchers need to identify the ratio decidendi (the legal reason behind a decision) and obiter dicta (other statements made in judgment that aren't binding).
3. **Historical Analysis:** This method involves studying the historical background and development of a legal concept or law to better understand its current form and interpretation.

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4. **Comparative Analysis:** This method compares legal systems or legal provisions in different jurisdictions to understand different approaches to similar legal questions or to find solutions to a legal problem.
5. **Empirical Research:** Empirical legal research involves collecting and analyzing data to answer a research question. It can involve qualitative methods (e.g., interviews, focus groups, observations) or quantitative methods (e.g., surveys, statistical analysis).
6. **Interdisciplinary Approach:** This method draws on theories and methodologies from other disciplines, such as sociology, psychology, economics, etc., to understand legal phenomena. It is especially used in socio-legal research.

Example of Socio-Legal Research and Techniques Used

Suppose you are researching the effectiveness of the law relating to sexual harassment at the workplace in India (Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013). Here's how you might use different research techniques:

- **Statutory Interpretation:** Understanding the provisions of the Act and its intended objectives.

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- **Case Law Analysis:** Studying relevant judgments to see how courts are interpreting and enforcing the Act.
- **Historical Analysis:** Understanding the historical context of the law, including social movements, international commitments, and legal developments that led to its enactment.
- **Comparative Analysis:** Comparing the Indian law with similar laws in other jurisdictions, for instance, the U.S. Title VII or the UK Equality Act.
- **Empirical Research:** Conducting surveys or interviews with employees, employers, and legal practitioners to understand their experiences with the Act. For example, you could ask about the effectiveness of complaint mechanisms, challenges in implementation, or the impact of the law on workplace culture.
- **Interdisciplinary Approach:** Drawing on sociological theories about power dynamics in workplaces, psychological research on the effects of harassment, or economic analysis of the costs and benefits of such laws to businesses.

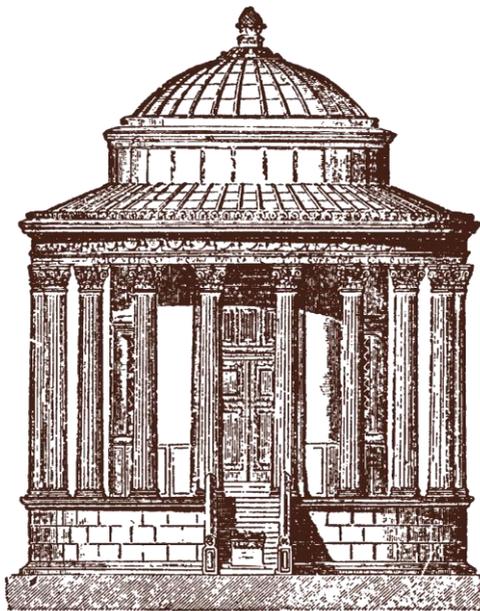
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MIND MAPS

**FOR OPTIMAL INFORMATION
RETENTION AND EFFECTIVE LAST-
MINUTE REVISIONS, WE INTRODUCE
THE MIND MAPPING & TRAINING
MODULE. THIS UNIQUE FEATURE**

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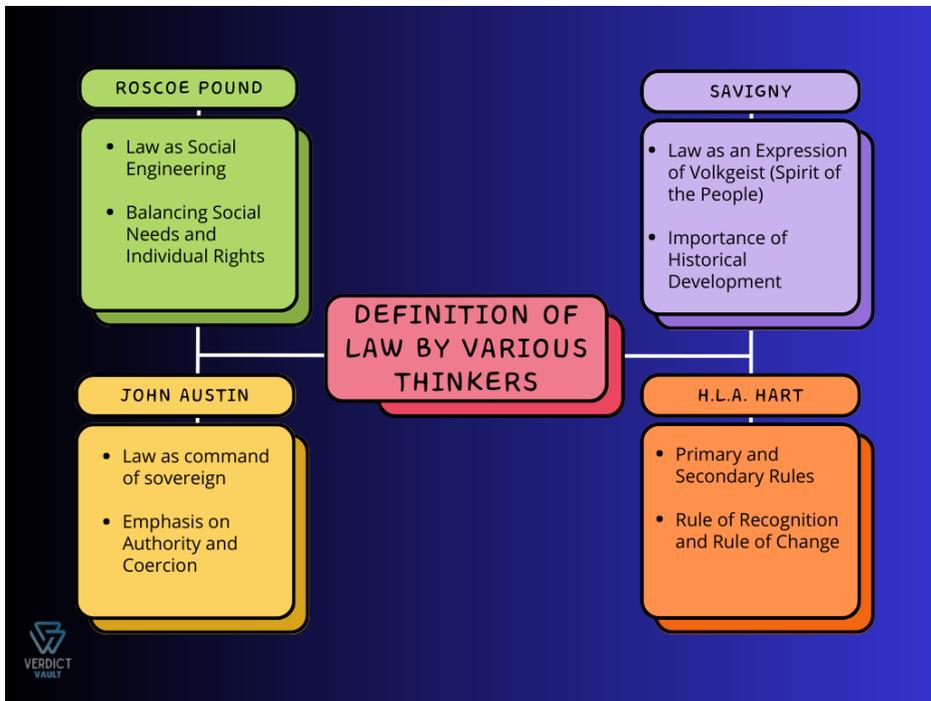
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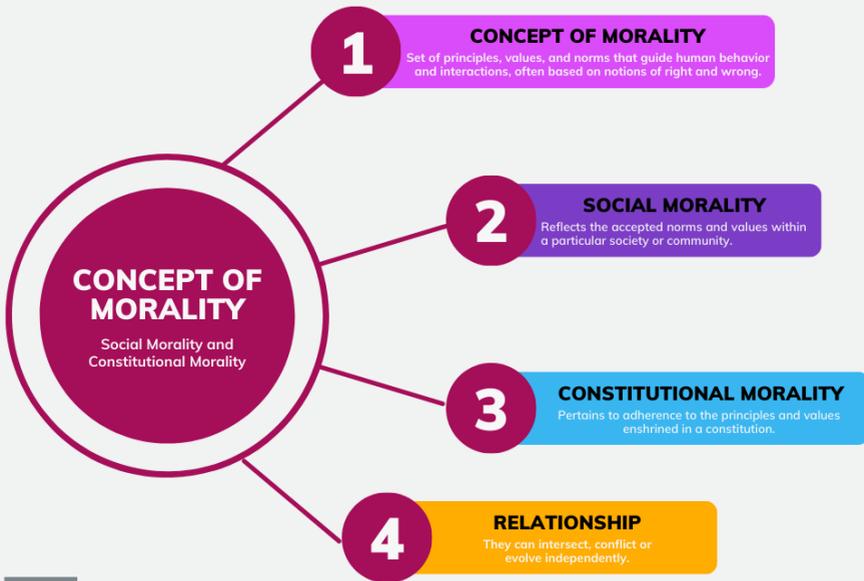
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Definition of Law by John Austin



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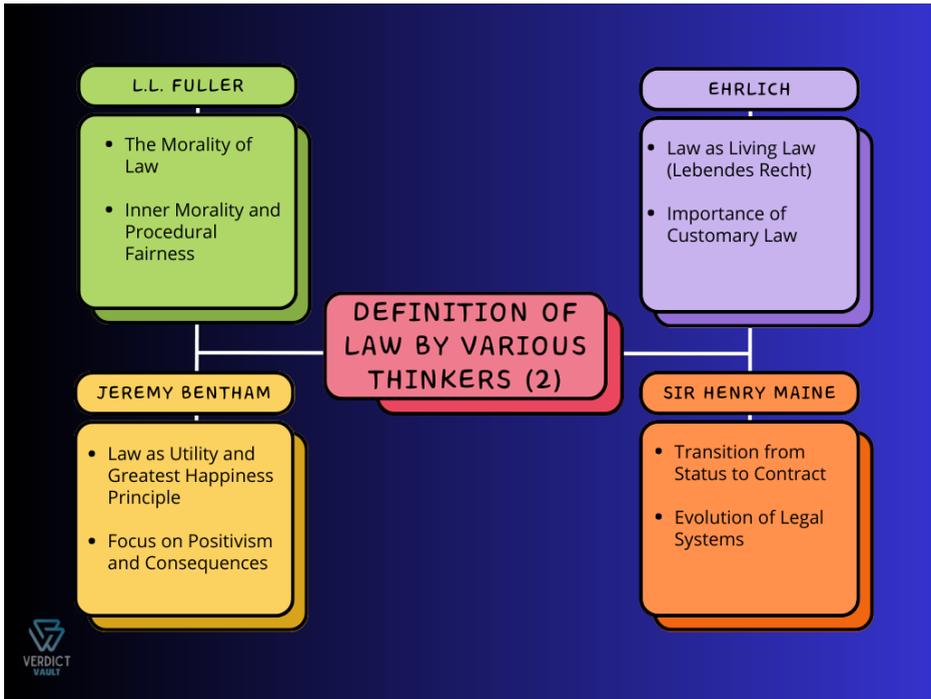
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Law, Justice and Morality

Concept

- **Law:** A system of rules and regulations enforced by a governing authority, often with sanctions for non-compliance.
- **Justice:** Fairness, equity, and the application of the law in a manner that upholds rights and promotes societal well-being.
- **Morality:** A set of ethical principles and values that guide individual and societal conduct.

Nexus

Law and Morality are:-

1. Overlapping
2. Conflicting
3. Autonomous
4. Have varied enforcement procedures

01

02

03

Limits of Morality in Law

1. A diverse society holds varied moral viewpoints, making complete alignment challenging.
2. Overreliance on morality can undermine individual rights and autonomy.

04

Justice and Morality

1. Justice and morality often align, as just laws tend to be morally acceptable.
2. Ethical considerations guide the pursuit of justice, especially in areas like criminal law and human rights.

Role of Morality in Law

1. Morality can influence the creation, interpretation, and enforcement of laws.
2. Laws may embody moral principles, reflecting societal norms and values.
3. Legal reforms may be driven by shifts in moral perspectives, e.g., movements for civil rights and LGBTQ+ rights.

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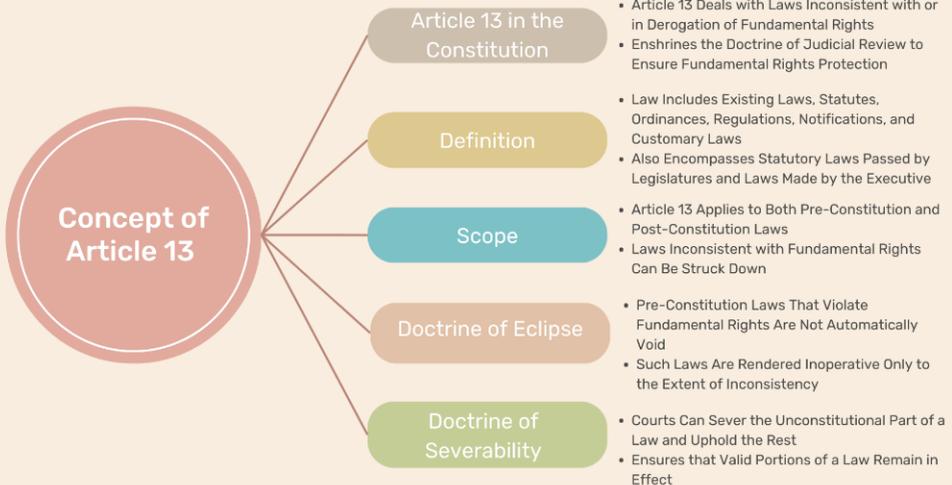
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Concept of Article 13 (Continued)

Judicial Review and Fundamental Rights

- Courts Play a Crucial Role in Ensuring Fundamental Rights Protection
- Laws Contravening Fundamental Rights Can Be Declared Invalid

Express and Implied Repeal

- Article 13(1) Invalidates Laws Inconsistent with Fundamental Rights
- Article 13(2) Prohibits the State from Making Laws Inconsistent with or in Derogation of Fundamental Rights

Supremacy of Fundamental Rights

- Fundamental Rights Hold Supremacy Over All Laws
- Laws Violating Fundamental Rights Are Rendered Null and Void

Protecting Fundamental Rights

- Article 13 Guarantees Fundamental Rights from Legislative Encroachment
- Courts Ensure Fundamental Rights Remain Unabridged

Expanding the notion of "law"

- Article 13 Broadens the Concept of Law Beyond Legislative Enactments
- Encompasses Customary Practices and Executive Actions

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CONCEPT OF JUSTICE AND ITS KINDS (I)

01 Justice as Fairness

- Fair and Equitable Treatment for All Individuals
- Equal Distribution of Rights, Opportunities, and Resources
- Elimination of Discrimination and Unjust Privileges

02 Retributive Justice

- Focus on Punishing Wrongdoers
- Offenders Pay for Their Misdeeds
- Eye for an Eye Principle

03 Restorative Justice

- Emphasis on Repairing Harm and Restoring Relationships
- Encourages Dialogue Between Offenders and Victims
- Aims for Healing and Reintegration

04 Distributive Justice

- Fair Distribution of Social Goods and Benefits
- Ensures Access to Resources Based on Need, Merit, or Contribution
- Tackles Socioeconomic Disparities

05 Procedural Justice

- Fairness in Legal Processes and Procedures
- Impartial Decision-Making and Transparency
- Importance of a Just Legal System

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CONCEPT OF JUSTICE AND ITS KINDS (2)

06

Corrective Justice

- Focus on Rectifying Injustices and Balancing Harms
- Compensating Victims for Losses Suffered
- Addressing Imbalances Resulting from Wrongs

07

Social Justice

- Elimination of Systemic Inequalities and Oppression
- Equal Access to Opportunities and Resources
- Focus on Vulnerable and Marginalized Groups

08

Communitarian Justice

- Harmony and Well-being of the Community
- Collective Welfare Over Individual Interests
- Balancing Individual Rights with Common Good

09

Compensatory Justice

- Focus on Compensation for Harm Suffered
- Financial Restitution and Redress for Injuries
- Providing Relief to Victims

10

Restrospective and Prospective Justice

- Retrospective: Rectifying Past Injustices
- Prospective: Preventing Future Injustices

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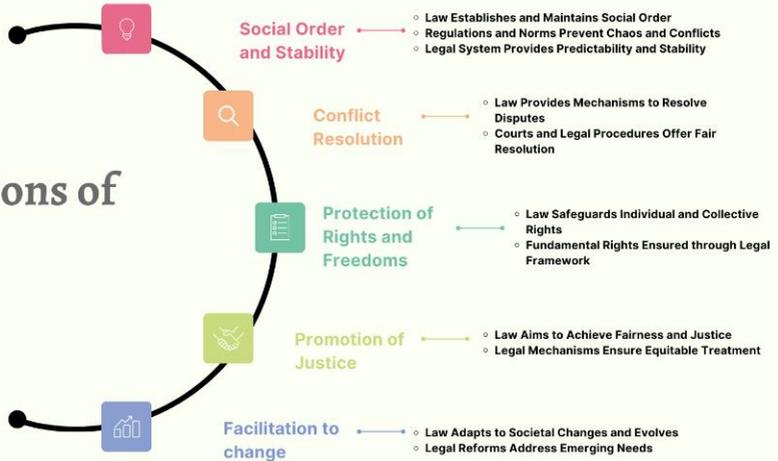
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Functions of law (1)



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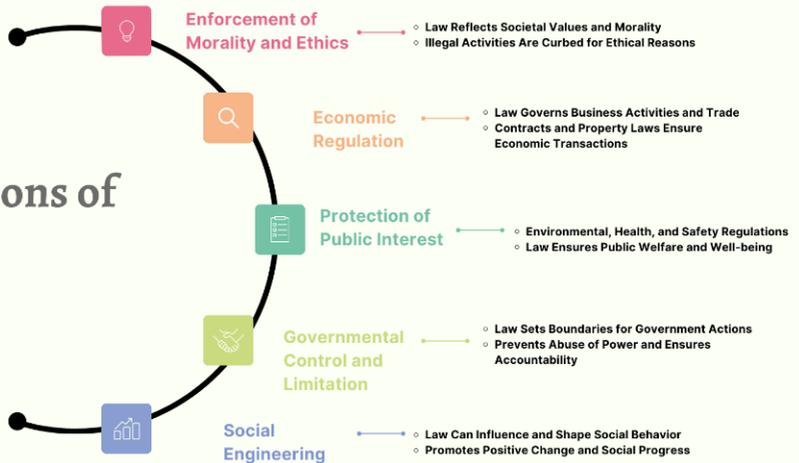
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Functions of law (2)



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UNIT 2

ANTIQUITY

Must have existed from time immemorial, indicating its long-standing practice within the community.

CERTAINTY

- Must be clear, definite, and not vague or ambiguous.
- People should have a common understanding of the custom's scope and application.

CONTINUITY

- Custom must have been practiced continuously and consistently over time.
- Brief interruptions may not invalidate a custom if they are due to legitimate reasons.

REASONABLENESS

- Custom should not be unreasonable, irrational, or against public policy.
- It should align with societal norms and values, promoting harmony and fairness.

CONFORMITY WITH LAW

- Custom must not be contrary to any existing written law.
- If a custom conflicts with a written law, the latter prevails.

INTERPLAY WITH OTHER SOURCES OF LAW

- Custom can complement or supplement written laws.
- Courts may recognize customs as valid sources of law if they fulfill the essential criteria.

ESSENTIALS
FOR
CUSTOM TO
BECOME
LAW



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MEANING

- Also called subordinate legislation, it is made by authorities other than the legislature.
- It is derived from the powers delegated by the legislature to other bodies, like government ministers or administrative agencies.

KINDS

01 PREDICTION

Implements and enforces primary legislation



05

SUBSTANTIVE/ REGULATORY



Fills in the details of primary legislation, adding specificity.

DELEGATED

LEGISLATION –

MEANING & KINDS

02

EMERGENCY

Enacted during emergencies, often giving temporary powers.



04 CONDITIONAL/ CONTINGENT

Comes into force based on specified conditions.



03

ANCILLARY

Accompanies primary legislation, e.g., forms or schedules.



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Essentials for a Valid Custom to become law



Antiquity

The custom must have existed from time immemorial.



Certainty

The custom must be clear, definite, and not vague or ambiguous.



Continuity

The custom must have been practiced continuously and consistently



Conformity with law

The custom must not be contrary to any existing law.



Reasonable

Custom should not be unreasonable, irrational, or against public policy.



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PERMISSIBLE LIMITS OF DELEGATED LEGISLATION

1

Ultra Vires Doctrine

Delegated legislation must not exceed the scope of the parent act.

2

Procedural Safeguards

Delegated bodies must adhere to procedural requirements while exercising their powers.

3

Non-Delegation of Essential Legislative Functions

Fundamental policy decisions must remain within the jurisdiction of the legislature.



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FLEXIBILITY

Delegated legislation can adapt to changing circumstances, ensuring that laws remain relevant and effective.

EXPERTISE

Delegated bodies often possess specialized knowledge in specific areas, enabling them to create detailed and effective regulations.

EMERGENCIES

Delegated legislation can be used to address urgent situations or emergencies, providing authorities with immediate tools to respond effectively.

REASONS FOR GROWTH OF DELEGATED LEGISLATION

ADMINISTRATIVE NECESSITY

Delegated legislation helps in managing administrative details, such as forms, schedules, and procedures, without burdening the primary legislative process.

EFFICIENCY AND TIMELINESS

Delegated legislation allows for quick adjustments to laws without the lengthy legislative process. This is particularly useful for rapidly changing situations or technical matters.



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LEGISLATION - MEANING AND KINDS

Meaning



- Legislation refers to laws formally enacted by legislative bodies, such as parliaments or congresses.
- It is a written and authoritative source of law that governs various aspects of society.

Interplay with other sources



- Legislation can codify customary practices or principles of justice.
- Courts interpret and apply legislation, often considering precedents.

Importance



- Legislation provides clear and specific rules for individuals and entities to follow.
- It addresses new challenges, societal needs, and gaps in existing laws.

Hierarchy



- Legislation varies in authority, with higher-level laws prevailing over lower-level ones.
- Constitutions hold the highest legal authority and serve as a foundation for other legislation.

Types



- 1 Statutes: Laws passed by legislative bodies that apply to the entire jurisdiction.
- 2 Acts: Formal legal documents enacted by legislatures, often addressing specific issues.
- 3 Ordinances: Laws enacted by local governments, typically in municipalities.
- 4 Regulations: Rules issued by administrative agencies to implement statutes.
- 5 Codes: Comprehensive compilations of laws on a specific subject, providing a systematic framework.

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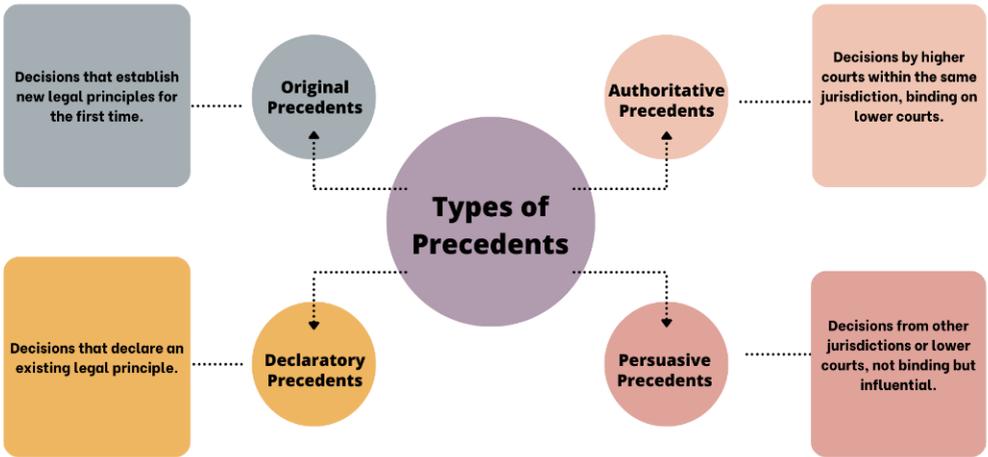
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Difference between Custom, Precedent and Legislation

Difference	Custom	Precedent	Legislation
Origin	Develops from consistent practices and usages of a community over time.	Arises from past judicial decisions and case law.	Created by legislative bodies, such as parliaments or congresses.
Nature	Unwritten, traditional, and based on societal norms.	Based on the principle of stare decisis ("stand by things decided").	Written laws formally enacted by the legislative authority.
Application	Influences common law and supplements written laws.	Guides similar cases in the future for consistency and predictability.	Governs various aspects of society and legal relationships.
Example	Local customs, general customs, and particular customs.	Authoritative and persuasive precedents, original and declaratory precedents.	Statutes, acts, ordinances, regulations, and codes.

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UNIT 3

SALIENT FEATURES OF INDIAN CONSTITUTION (1)



Longiest
Written
Constitution



Federal
Structure with
Unitary Basis



Sovereign,
Socialist, Secular,
Democratic,
Republic



Parliamentary
Democracy



Independent
Judiciary



Fundamental
Rights and
Directive
Principles

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Amendment
Process



Emergency
Provisions



Protection of
Minorities and
Cultural Diversity

SALIENT
FEATURES OF
INDIAN
CONSTITUTION
(2)



Adaptive and
Dynamic



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VERDICT
VAULT

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Hierarchy of Judicial System in India

01



Supreme Court

The highest court of the land, with original and appellate jurisdiction.

Role: Constitutional interpretation, safeguarding fundamental rights, and highest court of appeal.

02



High Courts

State-level superior courts with original and appellate jurisdiction.

Role: State-level constitutional interpretation, protection of rights, and appellate jurisdiction.

03



District Courts

At the district level, with civil and criminal jurisdiction.

Role: Original jurisdiction in civil and criminal matters.

04



Subordinate Courts

Below district courts, including various types of courts and tribunals.

Role: Specialized jurisdiction in specific areas.



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Rule of Law

DICEY'S RULE OF LAW

Proposed by A.V. Dicey, the rule of law asserts that everyone, including government officials, is subject to the law.

ASPECTS

- Supremacy of Law: No one is above the law; all are equal before the law.
- Equality Before Law: Equal treatment under the law, regardless of social, economic, or political status.
- Predominance of Legal Spirit: Courts act as guardians of individual rights, ensuring the rule of law prevails.

CHALLENGES AND REALITIES

- Judicial Backlog: Challenges in ensuring timely access to justice.
- Social and Economic Inequalities: Despite legal provisions, disparities persist.
- Administrative Efficiency: Ensuring effective and efficient governance without compromising individual rights.

RULE OF LAW IN DEMOCRACY

- The rule of law is a cornerstone of democratic governance.
- It safeguards individual rights, prevents abuse of power, and ensures accountability.



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PRINCIPLES OF NATURAL JUSTICE AND ROLE OF EQUITY

Meaning

- **Definition:** The principle of natural justice ensures fairness in legal proceedings by imposing certain procedural safeguards.
- **Components:** It includes the right to a fair hearing, impartial decision-maker, and the opportunity to present one's case.

Application in India

- The Indian Constitution incorporates principles of natural justice in Article 14 (right to equality) and Article 21 (right to life and personal liberty).
- Indian courts uphold natural justice and equity, particularly in administrative and quasi-judicial proceedings.

Rule of Equity

- **Definition:** The rule of equity complements the strict application of legal rules by allowing for flexibility and fairness in individual cases.
- **Origin:** Derived from English equity jurisprudence, aiming to prevent harsh or unjust outcomes.

Scope and Limitations

- Natural justice may be subject to limitations, such as national security or administrative necessity.
- Equity may be applied cautiously to prevent misuse or overriding statutory rights.

Interplay

- Both principles emphasize fairness and balance in legal proceedings.
- Natural justice ensures procedural fairness, while equity focuses on substantive fairness.

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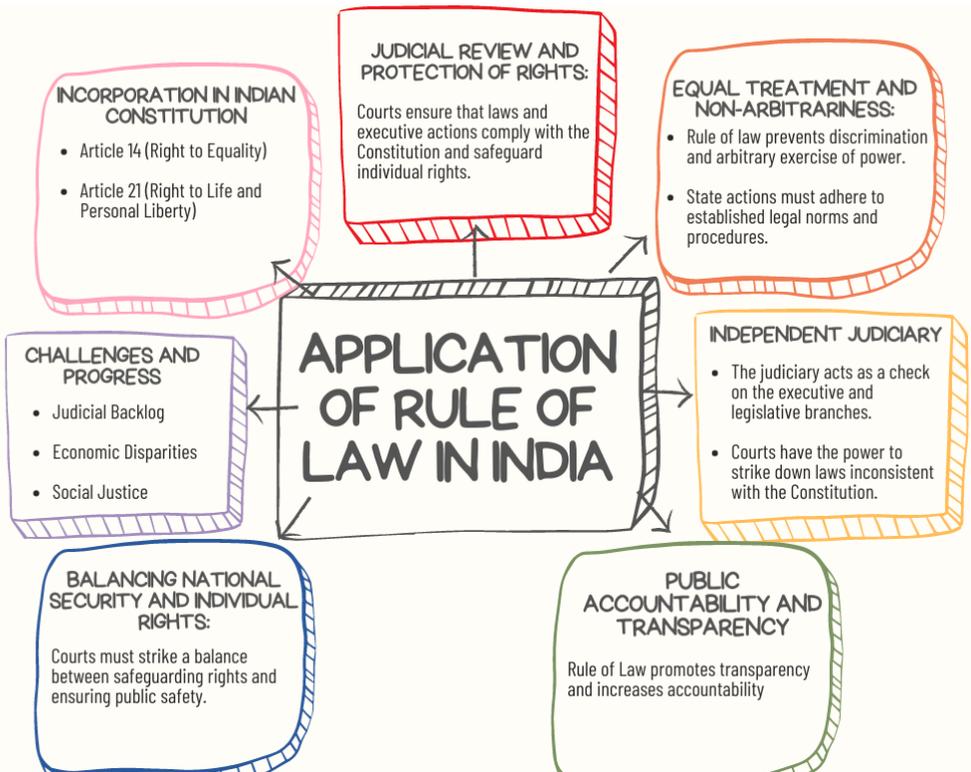
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MEANING

- Proposed by French political philosopher Baron de Montesquieu.
- Advocated for the separation of powers among the three branches of government.



THREE BRANCHES OF GOVERNMENT

1. Legislative Branch: Enacts laws and represents the people's will.
2. Executive Branch: Implements and enforces laws.
3. Judicial Branch: Interprets laws and ensures justice.



IMPORTANCE

- Prevents concentration of power and potential abuse.
- Safeguards individual rights by maintaining a system of checks and balances.



APPLICATION IN INDIA

- Articles 50 (Separation of Judiciary from Executive) and Separation of powers is not absolute; there's some overlap among the branches.



INTERPLAY WITH RULE OF LAW

- Separation of powers complements the rule of law.
- Rule of law ensures government actions adhere to established legal norms.



CHALLENGES AND DYNAMICS

- Balancing power among the branches to prevent encroachment.
- Ensuring cooperation and effective governance without compromising independence.

MONTESQUIEU'S DOCTRINE OF SEPARATION OF POWERS

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UNIT 4

TECHNIQUES OF LEGAL RESEARCH (1)

• EFFECTIVE USE OF KEYWORDS

- Choose precise and relevant keywords to search legal databases and sources.
- Utilize Boolean operators (AND, OR, NOT) to refine search results.

• ADVANCED DATABASE SEARCHING

- Utilize advanced search features of legal databases for targeted results.
- Narrow down search using filters, facets, and date ranges.

• SECONDARY SOURCES

- Refer to textbooks, legal encyclopedias, and treatises for comprehensive understanding.
- Secondary sources provide explanations, summaries, and analysis of legal concepts.

• PRIMARY SOURCES

- Directly analyze primary legal materials such as statutes, case law, and regulations.
- Understand legislative intent, judicial reasoning, and legal precedents.

• CASE ANALYSIS

- Examine the facts, issues, and legal principles of relevant cases.
- Analyze the court's reasoning and judgments to build legal arguments.

• LEGISLATIVE HISTORY RESEARCH

- Study legislative debates, committee reports, and amendments to understand the intent behind laws.

• SHEPARDIZING OR KEYCITING

- Verify the validity and relevance of case law and statutes.
- Check for subsequent citations, overruled cases, or legislative amendments.

• ONLINE LEGAL RESEARCH PLATFORMS

- Access online legal databases for comprehensive legal research.
- Leverage search functions, citation tools, and annotation features.

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• INTERLIBRARY LOAN SERVICES

- Request access to legal materials not available in your library through interlibrary loans.

• INTERVIEWS AND SURVEYS

- Conduct interviews with legal experts or stakeholders for firsthand information.
- Use surveys to collect data on legal issues from relevant parties.

TECHNIQUES OF LEGAL RESEARCH (2)

• ETHICAL CONSIDERATIONS

- Maintain academic and professional integrity by accurately citing sources.
- Avoid plagiarism and ensure proper attribution.

• TECHNOLOGY IN LEGAL RESEARCH

- Leverage digital tools and software for efficient searching and analysis.
- Utilize citation management tools for organizing references.

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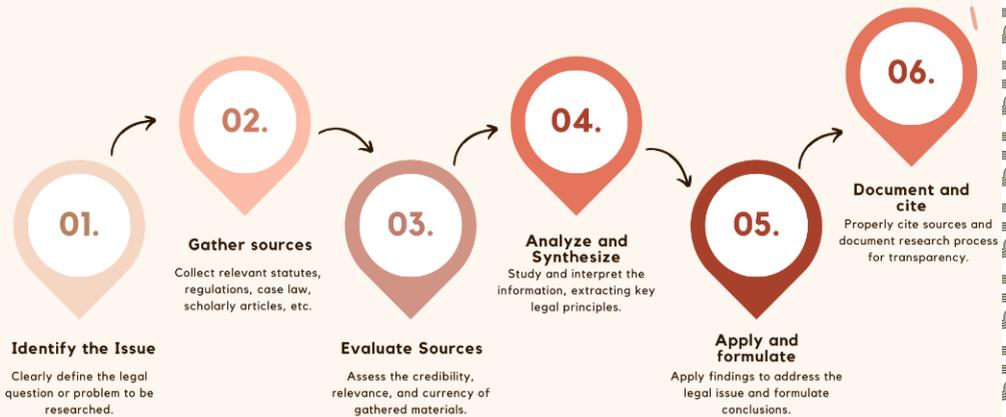
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STEPS IN LEGAL RESEARCH



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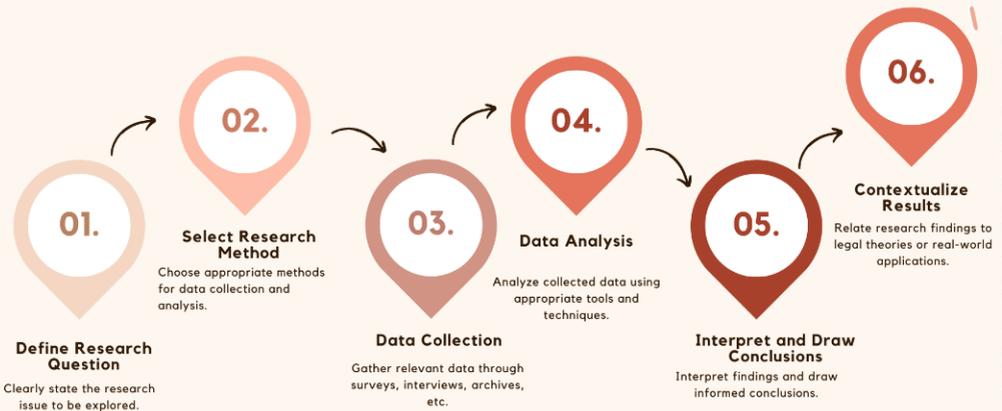
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STEPS IN NON-DOCTRINAL RESEARCH



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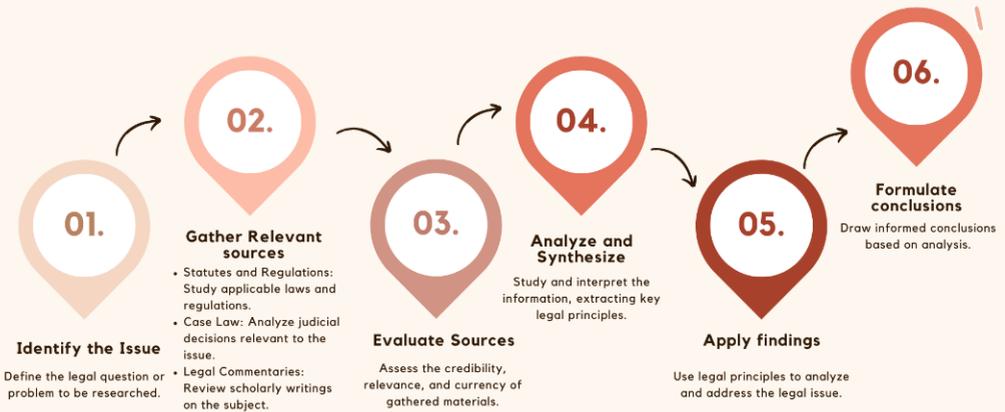
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STEPS IN DOCTRINAL RESEARCH



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Use in Legal Writing

- Policy papers, scholarly articles, socio-legal studies, and historical analyses rely on non-doctrinal research.
- Supports arguments for legal reforms and improvements.

Importance

- Provides insights into the social, historical, and practical aspects of law.
- Informs policy-making, legal reforms, and addresses complex legal issues.

Challenges

- Ensuring reliable and accurate data collection and analysis.
- Navigating interdisciplinary approaches and methodologies.

Technology and Legal Research

- Digital tools facilitate data collection, analysis, and visualization.
- Online databases aid in accessing historical records and comparative legal materials.

Ethical considerations

- Ensure ethical practices in data collection, respecting privacy and informed consent.
- Attribute sources accurately to maintain academic integrity.

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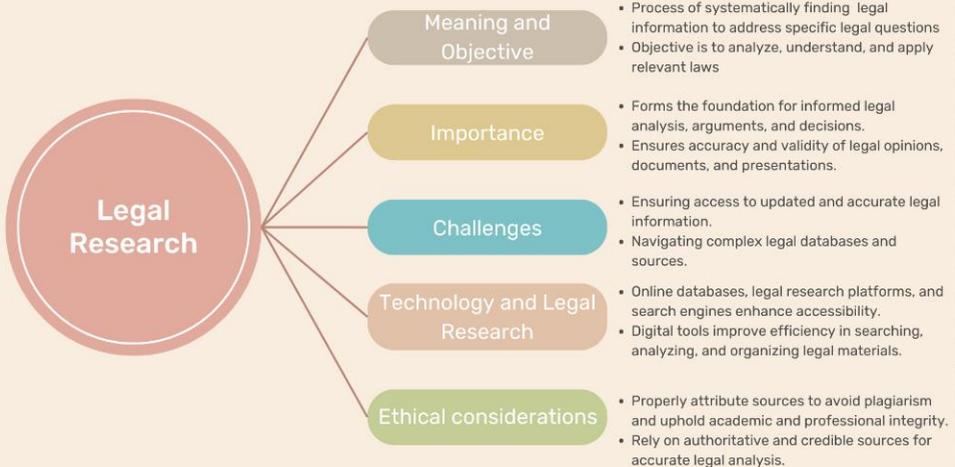
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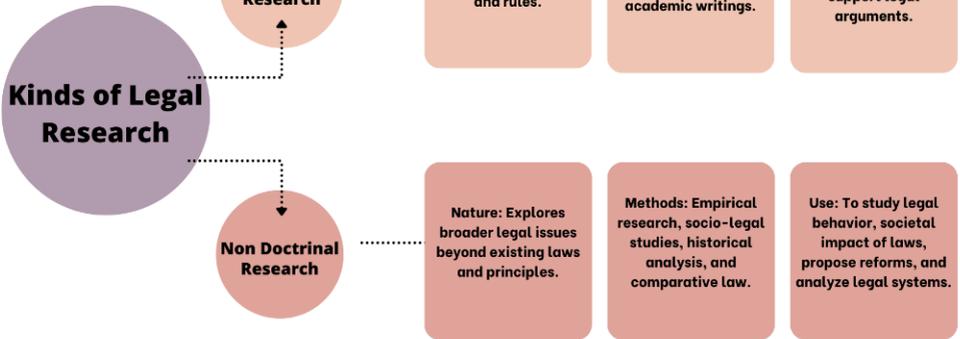
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Plagiarism and Citation

- Proper citation prevents unintentional plagiarism.
- Attribute ideas, words, and information obtained from others.

Citing Different Types of Sources

- Books: Author(s), title, publisher, publication year, page numbers.
- Journal Articles: Author(s), article title, journal name, volume, page numbers, publication year.
- Case Law: Case name, court, volume, reporter, page numbers, year.
- Statutes: Title, section number, jurisdiction, publication details, year.

Online Sources

- Cite online sources like websites, databases, and online journals.
- Include the URL, access date, and description of the source.

CITATIONS, BIBLIOGRAPHY AND FOOTNOTING (2)

Consistency and Accuracy

1. Ensure uniformity in citation style and format.
2. Double-check information for accuracy.

Use of Citation Management Tools

- Software tools like EndNote, Zotero, or Mendeley help organize and format citations.

Ethical Considerations

- Cite sources accurately to avoid plagiarism and maintain academic integrity.
- Seek permission for using copyrighted materials if required.

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MR. MOHIT TANWAR, FOUNDING MENTOR, TTS

Mohit Tanwar, a distinguished scholar, holds the prestigious Indraprastha Research Fellowship (IPRF) from Guru Gobind Singh Indraprastha University, New Delhi and is currently pursuing a Ph.D. in law at the University School of Law Legal Studies, GGS IP University, specialising in Digital Payments and Corporate Governance. As an esteemed IPRF scholar at USLLS, he possesses

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knowledge in diverse legal subjects, including Alternative Dispute Resolutions (ADR), Law of Tort, Code of Civil Procedure, Constitutional Law & Criminal Law. Mohit is the visionary Founder & Mentor of Top The Semester (Formerly, Verdict Vault), a legal Ed-Tech platform dedicated to enlightening minds and fostering success. He is active in the field of Web3, Crypto and Blockchain Technology since the year 2014, in both academic and practical fields.

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MR. SHIVANG VERMA, FOUNDER, TTS

Mr. Shivang Verma is an accomplished legal professional with a wealth of expertise and brings a dynamic perspective to Top The Semester (Formerly, Verdict Vault). He is passionate about enhancing legal education and empowering the next generation of legal minds. As a lawyer dedicated to innovation and excellence, he embodies Top The Semester's commitment to reshaping the future of legal learning.



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