

# Law

## Meaning

- Etymology -Tutonic word lag-to lay,to place, to set/fix
- Something positive/imposed
- Rule of conduct imposed by authority
- Human Law
  - a.Moral
  - b.Politico – legal

## Definitions of Law

- T E Holland “***law is a general rule of external human action enforced by a sovereign political authority***”
- Mac Iver “***the state is both child and parent of law***”  
“***without law there is no order, without order men are lost, not knowing where they go,not knowing what they do***”

# Nature of Law

## Broad classification

### 1. Descriptive/Scientific laws

- Operates in the universe
- Independent of our will
- we can only discover, cannot alter or escape from it.
- No external agency is required
- Test is true or false

### 2. Prescriptive or Stipulative laws

- Man made law, adopted by human society for regulating its behaviour
- Based on forceful considerations-custom, human conscience, public opinion
- Can be changed according to needs and mode of thinking
- Eg: penal code
- Test is Right or Wrong

# Nature of Law/Schools of thought

## 1. Natural law school

- Arising from the moral sphere
- It is higher law to which state must confirm
- Fear of some supernatural power
- Sanctity/authority from a higher law
- Different from scientific law & normative
- Eg: Roman jurisprudence, Divine law
- Exponent- Immanuel Kant (1724-1804)
- Deterministic or Imperative law

*“Written in the heart of man by the finger of God”*

## Nature of Law/Schools of thought

### 2. Analytical Jurisprudence /Legal Positivism

- 19<sup>th</sup> century Anglo American Legal tradition
- John Austin (1790-1859)-chief exponent- Law as the command of the sovereign person or body promulgated in a particular political society
- All law as positive, as direct command of a competent authority
- Rejects the natural law doctrine as unscientific, grounded on mythical entity
- International law is not law-neither promulgated by a sovereign nor enforced by a political superior

## Nature of Law/Schools of thought

### 3. Historical Jurisprudence

- Legal evolutionism
- Tracing the essence of legal ideas and institutions to their historical roots
- Legal evolution is the outcome of play of social forces.
- Custom as the fundamental form of law-it originated in the life of the people
- Legislation as device of translating popular consciousness in to enactments.
- Law has no fixed content
- Change in social institutions and awareness bring about corresponding changes in the substance of law.
- Exponents-Henry Maaine (1822-88), F C Savigny(1779-1861)

## Nature of Law/Schools of thought

### 4.Sociological Jurisprudence

- State is not the source of law
- State is an agency to impute legal value to the rules which already exist in society
- Law is prior to the state and superior to the state
- Law is an instrument of solving social problems and achieving social progress
- Law should be open to interpretation and revision
- Proper function of law is social engineering
- Law is to be determined with reference to social purpose which it is designed to serve
- Harold J Laski(1893-1950)

# Sources of Law

## 1. Custom

- Oldest expression of law
- Modes of behaviour which were found suitable after trial for a long time
- Stabilized and accepted standard of behaviour
- Neither created nor inspired by the state-eg:marriage and family
- State make laws to regulate these institutions with changing needs and levels of consciousness
- Common law in England based on customs,recognised by law courts as valid as law

# Sources of Law

## 2. Religion

- Custom and Religion were intertwined
- Allied source of custom is religion
- People have reposed their faith in supernatural agencies
- Lay down rules for the regulation of their behaviour
- Holy books and their interpretation became religious law
- Gradually religious laws have been translated in to specific rules by the state
- Personal laws of all religions



# Sources of Law

## 3.Adjudication

- Customs were referred to the wisest men of the community
- Their decisions formed precedence for future guidance
- These were given in writing, they constituted case-law

## 4.Equity

- Informal method of making new law
- Altering old one depending on intrinsic fairness of equality of treatment
- Proper and natural justice when existing law does not apply properly
- Judgement has to be given according to commonsense or fairness
- When new conditions of life develop, positive law become unsuitable
- Judges decide cases on general principles of fairness, reasonableness, common sense and natural justice

# Sources of Law

## 5. Legislation

- Reflects will of the state
- Placing specific rules on the statute book of the land
- Legislation has outplaced the significance of other traditional forces like custom & tradition