

General Principles of Law-Concept & Sources

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- HUMANITY -- LAW -- DIVINITY
- LAW THE CONNECTIVITY BETWEEN HUMANITY AND DIVINITY
- Cosmic divine spirit transformed into human spirit in this Universe – Nature, and hence law is considered Divine. – Hence Law is revered, respected, and obeyed.
- King i.e. sovereign was considered as the personification of law, and sovereign has become the prime source of law.

GENESIS OF LAW

- In course of time, sovereignty shifted from king to Common Man.
- THE END PRODUCT OF LAW IS JUSTICE. And sans justice law is insipid and loses public acceptance.
- Socio-Economic Equality and Justice – Welfare State for proletariat and poor – the touchstone/proof of modern concept of Justice – Constitutional provisions to be the guidepost for establishing an egalitarian society.

Cont...

- Law incapable of any precise definition.
- Not a fiction but a fact – mere theoretical morality is not the real content but pragmatic experience of law is the true spirit of law.
- Transformation of 'law in theory' into 'law in practice' – the task of social administration and state governance.
- Conceptual analysis – Distinction between Norm, Rule, Law, Principle & Value.

LAW UNBOUNDED

- The refined version of Common sense.
- Law may be described by experience
- nature - multidimensional and multifunctional & is the dictate of right reason - Natural Law basis
- Is command of the sovereign - positivism

WHAT LAW MEANS

- Is Volk Geist (peoples' spirit)-
Historical
- Is an instrument of social control or
Social Engineering – Sociological &
practical – source of progressive and
revolutionary views.

Law is what the judges say it is –
Realism – caught in the controversy
since judicial absolutism is defied.

Cont....

- Classification of law is not scientific – only a technique of convenience and expediency in understanding the concept of law. Some norms adopted for differentiation -
- Codified & uncodified (structural format)
- International & municipal – (territorial application)

FACETS OF LAW

- Substantive and procedural – (Functional)
- Civil and criminal – (nature)
- Private and Public – (objective test)
- Supreme/organic and ordinary – (status)

Cont....

- **Legislation** – Constitution, Statutes, Rules etc
- **Custom**- practice (s) passed on by one generation to the next- ancient, certain, uniform, not opposed to public policy & continuous
- **Precedent**- authoritative & persuasive-ratio decidendi & obiter dicta

Sources of Law

- *-ignorantia juris non excusat -Ignorantia facti excusat*
- Salus populi est suprema lex – regard for the public welfare is the highest law. – relation between individual and state – individual interest and welfare to yield before societal interest and welfare
- Rule of Law
- Separation of Powers

General Principles of Law

- Principles of Natural Justice
- Audi Alteram Partem (hear the other side)
- Nemo debet esse iudex in causa sua. (no man can be a judge in his own cause)
- State Liability in Torts & Contracts.
- *Ubi jus ibi remedium*
- *Volenti non fit injuria* (damage suffered by consent is not a cause of action)
- *Res ipsa loquitur* (the thing speaks for itself)

Cont....

- *Actus non facit reum nisi mens sit rea*
(the intent and the act both concur to constitute the crime)
- *Nemo debet bis vexari pro una et eadem causa* (it is a rule of law that a man shall not be twice vexed for one and the same)
- “**FIAT JUASTITIA RUAT COELUM**” — let justice be done, though the heaven should fall.

Cont...

Thank you