General Principles of Law - Concept & Sources

Dr. Madhavi Ravulapati
Associate Professor - Law
DR. MCRHRDI
Hyderabad
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.
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.
• 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.
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)
• Substantive and procedural – (Functional)
• Civil and criminal – (nature)
• Private and Public - (objective test)
• Supreme/organic and ordinary – (status)
• **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
-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
• Principles of Natural Justice
• Audi Alteram Partem (hear the other side)
• Nemo debet esso judex 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)
• **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.
Thank you