

The law and constitution of india essay sample

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CONSTITUTION OF INDIA

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, procedures, establishes the structure, duties, power of government institution and set of fundamental rights, the duties of citizen, directive principles. India is having world's longest written constitution of any sovereign nation. Indian Constitution became effective from 26 of January 1950(67 years ago).

WHAT IS LAW?

The system of rules which a particular community or country recognizes as regulating the actions of its member and it may be enforce by the imposition of penalties.

JURISTS - A person who studies jurisprudence and research on law. Jurist can work as a law lecturer, legal writer etc.

DEFINITION OF LAW BY VARIOUS JURISTS:

Austin - " Law is the command of the sovereign , law is the aggregate of rules set by men as politically superior or sovereign to man as politically subjects."

Bentham - " A law is an assemblage of signs declarative of 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 person, who in a case are or supposed to be subject of his power."

Hobbes - " Law is the formal glue that holds fundamentally disorganized societies together."

O. W. Holmes - " The prophecies of what the courts will do.... Are what I mean by the law.

SOURCES OF LAW:

There are three types of sources of law:

1. Custom
2. Precedent
3. Legislation

1. Custom - Custom occupies an important place in regulation of human conduct in almost all the societies. In fact, it is one of the oldest sources of law making. A custom may be defined as a continuing course of conduct which by the acquiescence or express approval of the community observing it, has come to be regarded as fixing the norm of conduct for members of the society. But it is to be noted that, the importance of custom as a source of law continuously diminishes as the legal system grows. The reason being that with emergence and growing power of the state, custom is largely

superseded by legislation as a source of law. It has been generally said that custom is to society what law is to the state.

Each one of them is the expression and realization, to the measure of men's insight ability, of the principles of rights and justice. The influence of custom on society is similar to that of law to the state.

Keeton defines custom as " those rules of human action, established by usage and regarded as legally binding, by those to whom the rules are applicable, which are adopted by the court and applied as a source of law because they are generally followed by the political society as a whole or by some part of it.

ESSENTIALS OF THE VALID CUSTOM:

Reasonableness - It is essential for a custom to become a law to be reasonable. If a custom is not reasonable it cannot take the shape of law.

Conformity with the law - A custom should not violate any law which is prevalent in the society. A custom in order to become a law has to pass the test of legal sanity. Until and unless a custom is not in conformity of law or legal practices.

Custom must be practice in continuation - A custom must be practiced regularly without any interpretation for a long time. If it happens then that custom becomes a law.

Custom must be enjoyed peacefully - It is necessary that a traditional practice coming from a long time is being enjoyed by the society without any

conflict. If there is conflict with related to customs.

Custom must be certain - It is necessary for a custom to be certain to get itself converted into an enforceable law.

2. PRECEDENT - " Laws derived from the previous judgment of the courts." "

Only such decisions as lay down some new rule or principle are called judicial precedents. The application of such judicial decisions is governed by different principles in different legal systems. These principles are called ' Doctrine of Precedent."

3. LEGISLATION - It is law which has been promulgated by a legislature or governing body or by the process of making it. Before an item of legislation becomes law it may be known as a bill, and may be broadly referred to as " legislation", while it remains under consideration to distinguish it from other business. Legislation can have many purposes: to regulate, to authorize, to outlaw, to provide (funds), to sanction, to grant, to declare or to restrict. It may be contrasted with a non-legislative act which is adopted by an executive or administrative body under the authority of a legislative act or for implementing a legislative act.

SUBSTANTIVE AND PROCEDURAL LAW

Substantive laws - They are the set of laws that governs how the members of society are to behave. It defines rights and responsibility in civil laws and crimes and punishments in criminal law.

PROCEDURAL LAWS - They are also called adjective laws. It comprises of the rules by which a court hears and determines what happen in civil,

criminal, administrative proceeding or lawsuit. These rules are designed to ensure a fair and consistent application of due process or fundamental justice to all cases that comes before a court.

PUBLIC AND PRIVATE LAWS

PUBLIC LAWS - They are the laws that govern the relation b/w govt. and individual and the relation b/w individuals which are of direct concern to society. These laws comprise of tax law, criminal laws, administrative laws, Constitutional law as well as procedural law.

PRIVATE LAWS - They are the part of civil law legal system which is the part of the jus commune that involves relationship between individual, such as law of contract and law of obligation. It is to be distinguished from public law, which deals with relationships between both natural and artificial person (i. e., organizations) and the state, including regulatory penal law, statutes and other law that affects the public orders.

MUNICIPAL AND INTERNATIONAL LAWS

MUNICIPAL LAWS - It is the national, democratic, or internal law of a sovereign nation defined in opposite of international law.

INTERNATIONAL LAWS - International law is the set of rules generally regarded and accepted as binding in relations between state and between nations.

WHAT ROLE LAW PLAYS IN SOCIETY?

The law is important for the society as it is the system or set of rules and regulations which a particular community or country has to follow. It was also made to provide proper guidelines for the people and to sustain the equality in three branches of government. It keeps society running. Without law there would be survival of the fittest, chaos, everyman for himself.

The law is important as it acts as the guideline and is accepted by the society. Without this there would be conflicts between social groups and communities. Law allows easy adoption to changes that occur in society.

Society is a 'web-relationship' and social change obviously means a change in the system of social relationships where a social relationship is understood in terms of social processes and social interactions and social organizations. Thus the term, 'social change' is used to indicate the desirable changes in social organization, social process etc. Closer analysis of the role of law vis-à-vis social change leads us to distinguish between the direct and the indirect aspects of the role of law.

Laws play an indirect role in regard to social change by shaping the direct impact on society. Example- A law is setting to a compulsory education system.

On the other hand, law interacts in many cases indirectly with basic social institutions in a manner constituting a direct relationship between law and social change. For example, a law designed to prohibit polygamy.

RELATIONSHIP BETWEEN LAWS AND SOCIETY

Theorists have traditionally maintained that there are certain broad views on the substantive criminal law. One set of such constraints concerns the sorts of behavior that may legitimately be prohibited. Is it proper, for example, to criminalize a certain kind of action on the grounds that most people in one's society regard it as immoral? The other set of constraints which concern what is needed in order to establish criminal responsibility that is liability, independently of the content of the particular statute whose violation is in question.

Legal system reflects all the energy of life within in any society. Law has the complex vitality of a living organism. We can say that law is a social science characterized by movement and adaptation. Rules are neither created nor applied in a vacuum, on the other hand they created and used time and again for a purpose. Rules are intended to move us in a certain direction that we assume is good, or prohibit movement in direction that we believe is bad.

IMPORTANCE OF LAW IN A SOCIETY

The importances of laws are paramount to the survival of our society as we know it. Without laws, the society in which we live in today would be far different as we struggle to remain in control of our future. The bullying few would decimate our society into either of two forms, an anarchical society where people do as they please, or a society on the brink of extension due to the lack of civil order. What I will explain to you in this article will, I hope, make you see sense in the importance of our laws in the society we live in. To be against the importance of laws in our society would show one to be

ignorant and naive. I will without a doubt, prove that statement I have made to be correct.

CONSEQUENCES OF ABSENCE OF LAWS, IN A SOCIETY

A society without law is a society of chaos. A state without laws would be anarchy. By definition anarchy is a state of disorder due to recognition or absence of an authority figure. Life without some type of rules to control us would be a state of disorder.

We all are human being, and by human nature we all have flaws. If these flaws are not some way, they can get hand and weak out upon a person and the people around him. If there were no laws, people would do as they pleased. On a daily basis you would see theft, murder, rape and cruel and harsh life. There would be Darwin's theory - The survival of the fittest. The weak part of society who could not survive in the Free State would suffer and diminished because their rights would in no way to be protected.