

Constitutional
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sanctions. ordinary



Constitutional Law is fundamentally distinct from Ordinary Law. According to Dicey, it includes “ all rules which directly or indirectly affect the distribution or the exercise of power in the State”, and which “ are enforced by the courts.

” Constitutional Law defines the organisation of the State, determines the functions exercised by different departments of government, and establishes the relationship between the rulers and the ruled. Constitutional Law may be either written or unwritten. It may be the result of the deliberate effort of a body - like the Constituent Assembly especially convened for the purpose or it may be the product of history and may consist largely in a mass of customs, usages, and judicial decisions, as in Britain. Since the whole of the Constitutional Law cannot be unwritten, a part of it may consist of laws passed by the Legislative Assembly of the country and enacted from time to time.

Ordinary Law: The State is both the child and the parent of law. The constitutional and the ordinary laws have different characters and have different sanctions. Ordinary law is made and enforced by the competent authorities of the State, and it determines the relations of the citizens to the State and to one another. The courts take cognizance of this law alone, apply it in deciding cases of dispute, and the government enforces obedience to their decisions.

Ordinary Law may, for proper comprehension, be divided into Public Law and Private Law: 1. Public Law regulates the relations of the individuals to the State. It is made by the State for and on behalf of the community. It

determines, " within its range," as Mclver says, " not so much the order of the State as the order of society." The State punishes the offender against it, using, if necessary, the force of its authority. Public Law may further be subdivided into Administrative Law and General Law.

Administrative Law defines in detail the manner in which the government through its various organs exercises the powers that are conferred upon it by the Constitutional Law. In the narrower sense, it is that part of Public Law which fixes the organization and determines the competence of organs that administer the law, and indicates to the individual remedies for the violation of his rights. There prevail two systems to deal with cases arising between private individuals and officers of the government acting in their official capacity. One is what Dicey called, the Rule of Law, as it is obtainable in Britain, the United States of America, India and the other Commonwealth countries.

The other is the Administrative Law administered in separate Administrative Courts and as prevailing in the Continental Countries of Europe, notable in France. General Law determines the relation of private citizens to the State. It is necessary to distinguish between General Law made by the law-making authority, and decrees or orders issued in pursuance of the General Law. A General Law fixes some general and permanent Rules of conduct, whereas a decree or order is the particular application of a General Law at a particular time. For example, a law will decide as to what the qualifications are for holding a certain position in the State; a decree or order will appoint a particular individual. 2.

Private Law regulates the relations among individuals. It prescribes the conduct of man in society in his relation to others, and guarantees to each the enjoyment of his rights. In Private Law, sometimes termed civil law, the parties concerned are private persons and the State is the arbiter. The State, however, does not regulate all the relations among persons, but only those which in its opinion are of such social importance as to need legal regulation, for example, laws concerning property, contract, marriage, and torts. This is how Holland distinguishes Private Law from Public Law.

“ In Private Law,” he says, “ the parties concerned are private individuals above and between who stands the State as an impartial arbiter. In Public Law also the State is present as an arbiter, although it is at the same time one of the parties interested.” Municipal Law is an ancient term which means the law of a particular State and Public Law and Private Law, combined together, are called Municipal Law, though we prefer to call it National Law. In contrast to the Municipal or National Law, there is also a body of rules which regulate relations between States and it is called International Law.