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# UNIT 1 WHAT IS LAW AND ITS ROLE IN SOCIETY? HOW IS A COUNTRY'S LEGAL SYSTEM ORGANISED?

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## 1.1 INTRODUCTION

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We come across different types of rules in every day life. Some of them are rules of 'law' and some are merely rules for the general guidance of the society strictly not 'law'. In this Unit, we will know which kind of law is called 'law proper'. Once we know the meaning of the term 'law', then it would be easy to understand the role of law in society. Law regulates marriage, break-up of marriage, custody of children, and maintenance of old parents. Law governs business, environment, and political life of a country. Law ensures peace, good order, and progress in society. In this Unit, we would also try to understand the significance of law for the society.

Making of Law is also one important aspect of the legal system. Who can make law? Whether national legislature and State legislatures only have the power to make law or judges can also make law? Whether people's practices can also make law? Can District Collector/Magistrate make law? Can a country make law for another country? All these questions could be easily understood if we understand the process of law making.

Sources of law are also very important to be understood. Can Constitution be a source of law? Can laws passed by national and State legislatures be a source of

law? Can the practices of people be a source of law? Can the judgments pronounced by the Supreme and High Courts of a country be the source of law? Can the law passed by one country be a source of law for other country?

This unit further provides understanding of working methods of the legal systems in South Asia also need to be understood. A legal system needs operating machinery to run it. What are the components of this operating machinery? What are the role of judges, lawyers, courts, media, and Non Governmental organizations to run the legal system of a country? In this Unit, we will discuss working of legal systems of South Asia also.

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## **1.2 OBJECTIVES**

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After reading this unit, you should be able to:

- identify the rule of law amongst variety of rules around you;
- describe the role of law in the development of society;
- discuss how law is made and what are its sources; and
- know as to how legal systems in South Asia work.

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## **1.3 WHAT IS 'LAW'?**

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As discussed in the introductory section, we come across different types of rules in our day to day life. Rules set by our parents in the family, rules of science, rules of a club, rules of an informal game etc. are some of the common examples. Are all these rules of 'law'? This question can be answered if we know the meaning of the term 'law'. We should be able to distinguish rules of law from rules which are not law.

First thing to understand in this connection is that rules/law of science are not rules of law, because rules of law are made by human being. Rules of science are not made by human being, they are made by nature. Law means rule made by superior political or judicial authority (comprising human being) having legitimate power to make rule for the guidance of the conduct of other human beings. What is the meaning of superior political or judicial authority? Superior political authority means the appropriately constituted legislature/parliament or executive authorities deriving powers from those superior political authorities. Superior judicial authority means the highest court of the land or other courts deriving power from the law framed either by the Constitution or the superior political authority.

The national parliament, in a centralized political structure, is vested with the powers of making rules which could be considered as law. The legislatures of provinces of a nation also possess the powers of making rules in the nature of law. It depends on the political structure of the country to designate authorities which would be vested with making the rules in the nature of law. If a country is having the federal nature of its political structure, the power to make law would be vested both in national and provincial legislatures. If a country is having unitary or centralized political structure, the power to make rules would be vested in national parliament.

Another characteristic of law is that it tries to establish norms in the society to regulate human behavior. It prescribes what the behavior of the members of the society ought to be and it also forbids what it ought not to be. The norms may be



social, political, economic, or environmental. What would be the nature of the political structure of the country? Norms in political field may be set by law to have a federal or unitary political structure. Similarly, norms can be set by law in the social field to have a socialist or capitalist pattern of society. Likewise, norms can be set up by law in the economic field to regulate the conduct of companies, banks, investors etc. Similarly, norms can be set up by law in the field of environment to regulate the conduct of those industries which pollute the environment or those vehicles which emit harmful gas, etc.

One more general character of law is that the norms established by law are coercive in nature. Coercion means compulsion. Coercion operates according to established norms of law. Law has the backing of authority of the State apparatus. If the norms/rules established by law are not obeyed by those for whom it is made, then the law has inbuilt punishment mechanism. Law itself is not capable to be enforced as such. Law needs to be enforced by the State authorities acting under the powers conferred on them by law. The punishment prescribed by law may be of different forms. It may be execution or hanging to death, imprisonment, payment of fines, or payment of compensation etc. State apparatus entitled to coerce individuals to perform acts according to rules of law may be police, courts, jail authorities, civil administration staff etc.

Sometimes rules of law are also equated with the rules of morality. Parents may set very high rules of morality to be observed by the children. But those rules of morality may not necessarily be those of law. Morality confers greater burden than the benefits. For example, honesty and speaking truth may cost a person much more than what one receives in material terms. Law always tries to balance between the restrictions on the individual and gains to him or to the society. It will not put a greater burden than the resultant benefits. That is why in some countries, suicide or homosexuality or mercy-killing is no longer an offence. Further, an organized and regularized machinery of the State is present to enforce the rules of law, but morals are not supported by such machinery.

Why are the rules of a club or of an informal game not rules of law? Now we can understand that rules of a club are only having the second characteristic of law as discussed above. Those rules are made by the members of the club themselves. The members are not a political authority enjoying the powers to make rules of law. The rules satisfy the second characteristic because the norms made by the club are for the regulation of the behavior of the members of the club. Again the third characteristic of law is absent. There is no coercive order authorized by the State authorities to enforce the rules of club. Similarly, the rules of an informal game satisfy the second characteristic of law. Hence, those rules are not to be called law. However, the rules of a formal game may be part of law because the rules are made by an authority which has derived powers from the appropriate legislative authority. Then it would satisfy all the three characteristic of law.

#### **Self Assessment Question**

1) What do you mean by the term 'Law'?

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## 1.4 WHAT IS THE ROLE OF LAW IN SOCIETY?

Law is closely linked with the society. As the society develops, law also develops. Law goes on changing with the changes in society. This is known as dynamics of the society as well as of law. Law is considered as an instrument of social change since it is an effective method of social control. Law has close relationship with sociology, history, politics, economics, psychology, philosophy and so on. If the law is implemented properly in today's time of democratic law making, law would certainly become an important instrument of social change.

During the colonial rule, the law was little responsive to the needs of South Asian society. In fact with the advent of the British rule, the development of the native law came to a halt. The British rulers were rather interested in the continuation of their rule than in the development of law. Therefore, those laws did not reflect the social needs of the region. After the independence of the nations in this region, fast progress of the society was needed. For that purpose, law, among other tools, was considered to be an important tool to accelerate the pace of the progress of the society.

In today's time, the different societies of the world are progressing in a fast way. Information Technology revolution, biotechnological successes, faster modes of transport etc. have made the progress and interaction of the society possible. With this progress, regulation of the use and transmission of information, and bio-technology tools becomes important. How can the cyber crimes be controlled? What is the right of the citizen to get information from the Government? How can the misuse of drugs and cosmetics be controlled? Can a person possess any harmful weapon which is dangerous to society? Law is an effective tool to lay down norms in an area and the members of the society are expected to adhere to those norms. It is in the interest of the society to adhere to the norms laid down by law.

Law protects human dignity by granting rights to human beings and imposing corresponding duties on other fellow human beings. The rights granted to human beings by domestic and international law is called 'human rights'. Some of those human rights are so basic in character and are considered by many legal systems as 'Fundamental Rights'. Other human rights are called Social, Cultural and Economic Rights. The violation of the fundamental rights is very serious matter and law ensures the protection of those fundamental rights and thus promotes human dignity. Some of the examples of those rights are right to equality, right to liberty, right to freedom, right to practice any religion. Who protects these rights? It is law which protects these rights. Human being is the unit of the society. Once human dignity is ensured in a society, society can prosper and human beings can commit themselves to the well-being of the whole humanity.

South Asian society, at present, seems to be at cross-roads as the countries of the region are confronted with many complex problems such as poverty, unemployment, social and economic backwardness, communalism, corruption, terrorism and so on. Selfish and individualistic approach is penetrating deep in South Asian life. That may shatter the regional character of South Asia. Considered from this angle, the role of law and legislation has become all the more significant to tackle these burning issues in order to maintain social equilibrium by reconciling various conflicting interests of the members of South Asian society.

In the South Asian context, at present there is a wide gap between the poor and the rich, the socially neglected and socially dominating class. This situation makes it



imperative for the State to provide adequate protection to weaker sections of the society, prevent exploitation, corruption and malpractices. The State must ensure equitable distribution of wealth and material resources to subserve the common good. The new challenges before the region because of socio-economic and technological changes can be effectively met either by introducing new laws or amending the existing laws to meet the exigencies of law.

The role of law in a civilized society may either be direct or indirect. To give examples, laws relating to compulsory primary education help indirectly in the progress of the society in the long run while the law relating to prohibition (alcoholic drinks) has a direct impact upon the social life and morality of the people. Likewise, the laws relating to protection of environmental pollution have a direct bearing upon public health. On the other hand, licensing laws indirectly affect the economy of the country.

### **Self Assessment Question**

2) What is the role of Law in society?

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## **1.5 HOW IS LAW MADE?**

The power to make law may be called legislative power. Legislative power is vested primarily in the sovereign authority of a political community. The sovereign authority exercises legislative power through the institution of supreme legislature of a country. It depends upon the political structure of the country to lay down the procedures regarding making of the law. If the political structure is federal one then the law making power is vested in the supreme legislature of the whole country (viz., Parliament) and also in the supreme legislature of the provinces (viz., Legislative Assemblies) forming the federation. If the political structure is unitary one, then the law making power would be vested in the supreme legislature (which is the Parliament) of the country only.

If law is made primarily by the supreme legislature of a country, can it be said that subordinate legislature is also given the power to make laws? The answer is in affirmative. Subordinate legislative power may be vested in local units of self-governance, autonomous bodies, executive bodies, and higher judicial authorities. Why do we call subordinate legislative power? Subordinate legislative power is that legislative power which is enjoyed with the authority of the supreme legislature. If legislative power is exercised without the authority of supreme legislature, it would not be considered as law.

The law made by supreme legislature (whether federal or unitary) is generally named as "Act", "Code", and "Statute". But the process of making law is slow. If in any area, law has to be made, the appropriate legislature introduces the draft of the proposed law which is called "Bill". If the Bill is passed in the legislature according to the established practice, it becomes law of the land when it receives the assent of the Head of the State. The date of coming into force of the law is generally notified. Unless there is no notification of law, law does not come into force.



The law made by subordinate legislature (whether autonomous or executive or judicial or local) is generally named as “Rule”, “Bye-laws”, “Order”, “Statute”, and “Ordinance” etc. The term “delegated legislation” is used when executive makes law. Law making power is said to be delegated to the executive by the supreme legislature in any given area. Such legislation owes its existence, validity and continuance to the supreme legislature. Supreme legislature controls every aspect of law making by the subordinate legislature. The delegated authority to make law should not be misused by the executive.

The autonomous bodies can also make law to govern itself. For example, University is an autonomous body which has got the powers to make law for itself. The Railway Company is also an autonomous body. Similarly, local bodies are powers to make law concerning their local matters. These are generally called “bye-laws”. Bye-laws made by a local body operate within its respective locality. The examples of local bodies are: Municipal Corporations, Municipal Boards, Panchayats, etc. The higher judicial branch of the State machinery is also given the power to make law. Such powers are given to regulate their own procedure of dispensing justice. Rules as to the composition of the court (viz., single bench, double bench, and full bench) may be framed by the higher judiciary themselves.

Can the supreme legislator make any law as it wishes? Is there any control on the legislative power of the supreme legislature? The answer is in the affirmative. The control on the legislative power of the supreme legislature is exercised by the basic socio-economic philosophy of the nation on which it is standing. This basic socio-economic philosophy is generally documented in every nation and is called “Constitution”. The Constitution is the highest law of the land. It is the Constitution which lays down the extent of the legislative power of the supreme legislature. Thus, the supreme legislature can not make any law as it wishes. It should make only those laws which are according to the provisions of the Constitution and promoting the ideals of the Constitution.

Another interesting question may be whether people of a country can make law by practice? The answer is again positive. But is a very difficult process to prove the practices of people amounting to law in the courtroom. Court may recognize the practices of people as law if it holds that the practice in question is custom. Such recognition by Court depends upon some factors, viz., duration of practice, consistency of practice, generality of practice, reasonableness, adherence to public policy and the existing Statute in the area. Unless a Court does not recognize the practice of people as customary law, such practice would not become law. Many practices of the people enjoying the status of customary law, right of pre-emption and ‘sapta –padi’ (amongst Hindus) in marriage.

Sometimes you may also come to know that Court has made a law. Is it really possible? Can the Court make law? Yes, the Court can make law, but with certain conditions. One, that it is not the prerogative of all courts to make a law. Only higher Courts can, in certain circumstances, make law. Two, the circumstances in which the higher Courts could make law might be: absence of any law passed by the supreme legislature in the field, the meaning of the existing legislation (or words contained in legal provisions) is not clear, there is no commentary available on the point, the interpretation of a Constitutional provision etc. If the higher Courts, in these circumstances deliver a judgment, it is called ‘judicial precedent’ and it is also one way by which law can be made and that would be binding on the people. The



examples of this way of law-making are some of the judgments of Supreme Court, like *Vishakha v. State of Rajasthan* (prevention of sexual harassment at work places), *Keshavanand Bharati v. State of Kerala* (basic structure doctrine in the context of amendment of the Constitution), etc.

**What is Law and its  
Role in Society?  
How is a Country's  
Legal System  
Organised?**

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## 1.6 WHAT ARE THE SOURCES OF LAW?

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Why do we need to know the sources of law? We need to know the sources of law because it helps us in identifying the reservoir of law, the location of law, the residence of law. Once we know the source or sources of law, we can use and apply it at our convenience; we can have access to it at any time as we know the residence and location of it.

Although sources of law differ from system to system and society to society, yet seven broad sources of law can be discussed here. Those sources are: Constitution, legislation, judicial precedent, custom, morality, equity, and opinion of jurists. Some of these sources are called 'authoritative sources' and some are called 'non-authoritative sources'. Authoritative sources are: Constitution (in those legal systems in which there is Constitution and which is enjoying the highest reverence), legislation, judicial precedent, and custom. Non-authoritative sources are: morality, equity, and opinion of jurists.

In most of the legal systems, the Constitution is generally regarded as the highest source of law. It is also called the ultimate source of law. All other sources of law are not enjoying the same status as is enjoyed by the Constitution because the Constitution is the fundamental law of the land. The provisions of the Constitution lay down binding rules. Violation of the provisions can be checked and remedied by the Court action. But there are Constitutions like that of China, which simply lay down the rules for the guidance of the governance. Violation of the Chinese Constitutional provisions can be checked only at the political level, not at the level of the Court.

Even though the Constitution of a country enjoys, generally, a very high status, yet, legislation is the most important and biggest source of law today. The term "legislation" means the making or enacting the law. Legislation is that source of law which consists in enactment of legal rules by a competent authority e.g., Parliament or State legislatures. Thus, legislation is long and thoughtful process of legal evolution. It consists in the formulation of norms of human conduct in a given prescribed form through a given prescribed process. Legislation includes Acts, Statutes, Codes, Ordinances, Rules, Regulations, Bye-laws, Orders, Directions, Notifications, etc. All these forms of legislation are the most important sources of law because these are precise and certain. These are easily accessible. The sections, clauses, sub-clauses, paragraphs of legislation are simple to be used.

In Common Law legal system, judicial precedents constitute a very important and authoritative source of law. The term "judicial precedent" refers to a previous decided case of an appellate court (like, High Courts and Supreme Court) which is, or may be, taken as an example or rule for subsequent cases or by which some similar acts or circumstances may be supported or justified. In short, it means the use of past decided cases as guides in the moulding of future decisions. The authority of precedent lies in the power exercised by appellate courts. If the appellate courts are not enjoying authority, then the authority of judicial precedent would be absent. But in Civil Law legal systems (like, Russia, France, Germany, Italy, Japan and Latin American



countries), decisions of the highest court does not enjoy the authority. Thus, those judicial decisions are not the source of law.

Custom is the oldest source of law. Before the advent of legislation and precedent, custom was the most important source of law. Even though today the scenario has changed, custom remains to be an important source of law. Custom means uniform practice of the people under like circumstances. Certain practices are accepted by the people as good or beneficial and they go on practicing them which, in course of time, acquire the force of law. It is, however, not any practice that qualifies to become a legal custom, like wearing black clothes at funerals.

To become a source of law, a practice must satisfy five essentials. First that the practice must be of long standing. Single day practice would not make that practice a custom. Second, the practice must be continuous and certain. Continuous practice is an important factor here. Certainty of practice is also important. Practice should not be vague. Third, the practice must be reasonable one, not unreasonable. Reasonableness of a practice is tested according to the time when the practice started, not according to the contemporary time. Fourth, the practice must not be against any legislation or statute. Even if the practice is very old, yet it must not oppose legislation. Fifth, the practice is compulsory for people in a particular given set of circumstances. People are obliged to act according to the expected practice in the given circumstances. If people practice without such feeling of obligation, it would not become custom. For example, the practice of presenting roses to beloved ones on Valentine's Day can be a custom only if such present is made with the obligatory feeling. If one is necessarily obliged to present roses on that day, then it would be a custom, otherwise not.

Morals are not authoritative sources of law. Those are unauthoritative sources. Courts are not bound by moral norms. However, Courts may be influenced by moral norms or principles. The moral norms are abstract, not precise and concrete. This is the reason why moral norms are not binding. Moral norms lack the backing of the State.

Equity rules are also not binding as authoritative source. 'Equity' is a combination of morals and law. Morals have a great influence on equity norms. The main ingredient of equity norms is conscience. You might have heard of some of the famous equity principles, like, 'he who comes to seek equity must come with clean hands', and 'he who seeks equity must do equity'. For example, a party seeking specific performance of an agreement for the transfer of land may be refused that equitable remedy by applying equitable principles as source of law if it is found that he has acted improperly in relation to that agreement (i.e. . does not have 'clean hands'), such as by denying its existence in previous court proceedings.

Sometimes, the opinion of legal experts and eminent text book writers on law work as a source of law. In all the mature legal systems, they influence and mould the law. Although there is no sanction of the State behind them and there is no binding force of this source, this source is consulted by the Courts and is, sometimes, applied by them. For example, **Pollock** is regarded as an authority in Contract Law. **Chalmers** is regarded as an authority in Negotiable Instruments law. **Oppenheim** is regarded as authority in international law. In international law, new situations and problems constantly arise. The jurists express their opinions on such problems and in many cases they are followed by Courts and applied as source of law.



### Self Assessment Question

3) What are the main sources of Law?

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What is Law and its  
Role in Society?  
How is a Country's  
Legal System  
Organised?

## 1.7 HOW DO THE LEGAL SYSTEMS OF SOUTH ASIA WORK?

If you start getting an understanding of actual working of South Asian legal systems, you would be appreciating the above discussions in a better way. It must be stated here that the legal systems of South Asia bear a common basis. This basis has different methods of expression. Let us see the some of the legal systems of South Asia.

### 1.7.1 Bangladesh

In the People's Republic of Bangladesh, all laws derive their existence from the Constitution of the country. The Constitution is regarded as the solemn expression of the will of the people. The people of Bangladesh adopted, enacted, and gave to themselves their Constitution on 4<sup>th</sup> November, 1972. This Constitution is the supreme law of the Republic. Any other law which is inconsistent with the Constitution shall be declared void.

The Parliament of Bangladesh has a very important role in law making process. The legislative powers of the Republic are vested in the Parliament. Moreover, Parliament can delegate its law making power to any person or authority. Every proposal in Parliament for making law is made in the form of a Bill. When the Bill is passed by Parliament, it is presented to the President for assent. When the President gives his assent, the Bill becomes law and is called an Act of Parliament.

When the Parliament is dissolved or is not in session, the President of Bangladesh possesses the power to issue Ordinance, which is also law for the whole country. Such Ordinance has to be laid before Parliament for its approval. This approval has to be taken at the very first meeting of the Parliament following the promulgation of the Ordinance, unless it is repealed.

The Supreme Court of Bangladesh can also lay down law for the country by its judgments. The Supreme Court has been made a court of Record. It enjoys the power to punish for contempt of Court. The Supreme Court comprises the Appellate Division and the High Court Division. The Chief Justice, and the Judges appointed to the Appellate Division, sits only in that division and the other Judges sit only in the High Court Division. The law declared by the Appellate Division is binding on the High Court Division and the law declared by either division of the Supreme Court is binding on all Courts subordinate to it.

Local governments in every administrative unit of the Republic are also given power to frame rules, and bye laws according to the prescribed directions of the Parliament. The executive authorities can also frame rules, and orders but the power is subject

to overarching control of the Parliament. The people's custom is also given a prominent place, but it must not also conflict with any express provisions of the Acts of Parliament.

### **1.7.2 Bhutan**

Bhutan is a land-locked country. Its political system has developed from an absolute monarchy into a constitutional and democratic monarchy. In 1999, the fourth king of Bhutan created a body called the Council of Ministers (Lhengye Zhungtshog). The 'Druk Gyalpo' (King of Druk Yul) is Head of State. The executive power is exercised by the Council of Ministers headed by the Prime Minister. In 2008, the first general elections took place in Bhutan.

The Constitution of Bhutan was adopted on 18 July 2008. This Constitution is the supreme law of the country. It has thirty five articles and four schedules. The Supreme Court is the guardian of the Constitution.

The Supreme Court was established after the coming into force of the new Constitution. It is the highest court of the land. The next in hierarchy is High Court. The judgments of these Courts enjoy high respect and binding authority. A comprehensive codified law, called the Supreme law (Thrimzhung Chhenmo), covers almost all civil and criminal matters. This is the basis of all the subsequent laws enacted in Bhutan.

The Parliament of Bhutan is vested with legislative powers. It consists of the 'Druk Gyapo', the National Council and the National Assembly. A Bill passed by Parliament comes into force upon the assent of the Druk Gyapo. Money Bills and financial Bills originate only in the National Assembly whereas any other legislative Bill may originate in either House. A Bill is passed by a simple majority except in the case of joint sitting.

The King exercises substantial powers and is not answerable to any Court of law. Even the Parliament can not make a law to change the King's powers except through a National Referendum.

Religious practices have given birth to a number of customary practices. They have been enjoying high status in the legal system also. But they should not come into conflict with any law passed by the legislature.

### **1.7.3 India**

India is a socialist, democratic, and secular republic. In India, the Constitution is regarded as the supreme law. The people of India adopted, enacted and gave to themselves their Constitution on 26<sup>th</sup> of November 1949. It came into force on 26<sup>th</sup> January 1950. It is a comprehensive document originally containing 395 Articles. You might be surprised to know that it is the bulkiest Constitution in the whole world. Besides dealing with the structure of Government, it makes detailed provisions for the rights of citizens and for the principles to be followed by the State in the governance of the country.

As India is a federal State, the Parliament as well as State legislatures enjoy the powers to make law in their respective spheres. However, the Union Parliament is more powerful than the State legislatures in making law. The Parliament is composed of the President of India and two Houses, namely Council of States and the House of the People. The proposal to make law is known as Bill. A Bill may originate in either House of Parliament. It has to be passed in both the Houses of the Parliament.



Once it is passed, it becomes an Act of Parliament. Thereafter, the Act has to take the assent of the President to finally become law. This law has to be notified to become operational. The same process is followed at State (provincial) level. There, the Act passed by the State legislature has to take the assent of the Governor of the State.

You must also know that the President of India also enjoys legislative powers when both the Houses of the Parliament are not in session and the circumstances exist for immediate legislative action by the President. Such law is called 'Ordinance'. It has to take the assent of both the Houses of the Parliament to be alive. If the assent is not granted, it would be a dead law. Similarly, the Governor of a State enjoys similar powers in the State to promulgate Ordinance.

The law declared in the judgments of the Supreme Court is binding on all Courts in India. Twenty one High Courts also enjoy similar powers in their respective territorial jurisdictions. These Courts are Courts of Record. The legal system is dependent upon the proper and efficient delivery of justice by these Courts. The Supreme Court enjoys original, appellate, writ, extraordinary, and advisory jurisdictions. The High Courts enjoy appellate, writ, and extraordinary jurisdictions. Some High Courts, like Delhi, Mumbai, Chennai, and Kolkata enjoy original jurisdiction too. Original jurisdiction means that jurisdiction in which a matter may go at the first instance in that Court.

The Parliament also delegates its legislative powers in the hands of executive and autonomous bodies. For example, a University may frame rules for its functioning. The administrative authorities may frame rules, orders etc. to supplement the Act passed by the Parliament. The local authorities, like Village Panchayats and Municipal Corporations have been given Constitutional status and are empowered to make rules in their respective areas.

Custom also plays a very important role in India's legal system. The personal laws of different communities are based on people's customs. Mercantile customs are also recognized by Courts in India. The customs of tribal communities are also recognized by Courts. However, custom and law passed by appropriate legislature must not come into direct conflict with each other. You should know that in such a case, the law enacted by legislature would prevail.

#### **1.7.4 Maldives**

Maldives is an island country in the Indian Ocean. It is the smallest Asian country in terms of both population and area. The Constitution of Maldives was adopted on 7 August 2008. It has 308 Articles and 3 Schedules. The Constitution establishes a Presidential, Democratic, and Islamic Republic in which the President is the Head of the Government. The President is directly elected by the people on the basis of universal and secret ballot. Non-Muslims cannot vote.

All legislative power in the Maldives is vested in the People's Majlis (Parliament). The Majlis cannot pass any law which contravenes any tenets of Islam. Every Bill passed by the People's Majlis is presented for assent by the President within 7 days from the date of passing and when President gives assent, it becomes law. Every Bill assented to by the President is published in the Government Gazette on the day of assent.



The judicial power is vested in the Courts. The Supreme Court and the High Court are Courts of record and their judgments are binding on all lower courts. The Supreme Court is the final authority on the interpretation of the Constitution, the law, or any other matter dealt with by a court of law.

### **1.7.5 Nepal**

Nepal is a federal and democratic Republic. The Constitution is the fundamental law of Nepal. Any law inconsistent with it shall, to the extent of such inconsistency, be void. On January 15, 2007 a 328-member interim Parliament, including 83 Maoist representatives and other party representatives, was constituted. The first sitting of the Parliament unanimously endorsed an interim Constitution, which replaced the Constitution of 1990. This Interim Constitution has to give way to the Final Constitution to be drafted by the Constituent Assembly by the year of 2010.

Nepal held its historic Constituent Assembly (CA) election on 10 April, 2008. Primarily mandated to draft a new Constitution of Nepal, the CA also serves as a Parliament. Before this arrangement, there was bi-cameral legislature, namely, House of Representative (lower house) and National Assembly (upper house). But now Constituent Assembly works as a Parliament. So there is no upper house and lower house at present. Any CA member may introduce a proposal to enact law in the form of a 'Bill'. But Money Bill and a Bill concerning the Nepal Army, Armed Police Force, Nepal Police as well as security body shall be introduced only as a Government Bill. If the Bill is passed, and it receives the assent of the President, it becomes law.

The Supreme Court of Nepal is the apex court in the judicial hierarchy. All Courts and judicial bodies, other than the Constituent Assembly Court (this court is constituted only to try the election petitions of the elections of CA), are subordinate to Supreme Court. This Court is the final authority to interpret the Constitution and the laws in force.

Nepal has 14 zones. In each zone, there is one Appellate Court. Appellate Court decides the appeals from district Courts and other tribunals. However, the principles of law laid down by these Courts are not binding. Thus, the principles of law affirmed, upheld, overruled by the Supreme Court has binding authority all over Nepal.

Custom has played a vital role in the law making process in Nepal. For example, the Interim Constitution accepts that the cow is the national animal of Nepal and cow and ox killing is the serious crime. Prohibition of cow and ox-slaughter has been a customary practice in Nepal. Similarly, bigamy is prohibited, but polyandry is permitted in some tribal communities, since they practice this system from the very beginning. Incest is a very serious crime for Hindu Brahmins, but it may be permissible in the tribal and Muslim community.

### **1.7.6 Pakistan**

The Islamic Republic of Pakistan recognizes its Constitution as the supreme law of the land. The first Pakistani Constituent Assembly was elected in the year of 1947 and after nine years in 1956, adopted a short-lived Constitution. The present Constitution was enacted and adopted on 12 April 1973 and came into effect on 14 August 1973.



The Constitution provides for Majlis-e-Shoora (Parliament) consisting of the President and two Houses. The Houses are known respectively as National Assembly and the Senate. The Provinces have their own legislative bodies. The Parliament and the Provincial Legislatures have been designated separate areas on which these bodies can make law. The Parliament can make law with respect to any matter listed in the Federal Legislative List or in the Concurrent Legislative List. The Provincial Legislature can make law in any matter listed in State Legislative List. A Bill has to be, first of all, introduced in the appropriate legislature and when it is passed by the legislature, it has to take the assent of the President to be called as an 'Act'. An Act of legislature is enforced as law when it is notified.

The President of Pakistan may also make law by promulgating 'Ordinance' when the Majlis is not in session. This Ordinance enjoys the same status as an Act passed by the legislature. However, the Ordinance must get the positive support of the Majlis-e-Shoora once it is in session.

The higher judiciary in Pakistan possesses powers to bind the subordinate Courts by its judgments. The Constitution provides that if Supreme Court decides a question of law or the opinion of the Court is based upon a principle of law or explains a principle of law, it is binding on all other courts in Pakistan. Similarly, the judgments of High Courts are binding on all courts subordinate to it. It means precedents of these courts are binding as law.

### **1.7.7 Sri Lanka**

Sri Lanka is a democratic and socialist republic. It accords highest place to the Constitution in law making. The Sri Lankan Constitution was adopted on 16 August 1978. The Constitution establishes a unitary model of State in which the Central government is vested with all important powers of law-making. The country is divided into administrative units. After 13<sup>th</sup> Amendment to the 1978 Constitution, provincial councils were established in nine provinces. Each of these nine provinces are administered by a directly elected provincial council.

The legislative wing of the State is known as the Parliament. It consists of 225 members elected on the basis of proportional representation by the people. Parliament can make law related to national, provincial and concurrent interests. The legislative proposals have to be made in the form of a 'Bill'. Ordinary Bills have to be published in the gazette before its introduction in the Parliament. Urgent Bills do not have to follow this procedure. The Bills have to be read at three stages and finally if it is passed, it has to get the President's assent to be passed as law.

The President of Sri Lanka is very powerful as the country has Presidential system of government. The President is not only the Head of the State, but also the head of the government. He can promulgate Ordinance when the Parliament is not in session. The Ordinance has the virtues of law.

The Supreme Court and the Court of Appeal of Sri Lanka are Courts of Record. They possess the power to punish for its contempt. The Supreme Court is the highest and final superior Court of Record. The Court of Appeal exercises appellate jurisdiction for the correction of all errors in fact or in law which are committed by the lower courts. The judgments of Supreme Court and Court of Appeal are binding on subordinate Courts. So, those judgments are very important for you to understand.

In Sri Lanka, customary practices also have great significance. For example, the religious practices of Buddhists are based on customary practices and are recognized by higher courts. It is not the ancient Buddhist texts which are the basis of customary practices, but the local customary rules that the Courts have accepted.

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## **1.8 SUMMARY**

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- In this Unit, we discussed the meaning of the terms ‘law’, ‘rules of law’, ‘rules in the nature of law’, ‘bye law’, ‘Ordinance’, ‘Act’, ‘Statute’ etc. and how these terms differ in meaning from other rules and nature’s law, moral law etc. We also discussed the role of law in the development of society. We discussed that a haphazard development of society is not preferred; rather a regulated system of society is preferred. Such regulation comes from an organized system of law, and institutions to enforce the law, and personnel who administer law. The problems in the South Asian region can be solved by using law as one of the several means.
- This unit also tried to comprehend the process of law making and its sources. We now know that the law making process is a very systematic process and various people and institutions are involved in them. The role of the Constitution, legislature, and the judiciary is very significant in this regard. We discussed even the power of communities and groups to create customary law if they practice it for considerable time. We got to understand the working of the legal systems of South Asian countries of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. The working of these systems could give us a glimpse of the actual institutions and people, and law which ultimately make up the system of law making and administration of law.

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## **1.9 TERMINAL QUESTIONS**

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- 1) What do you mean by the term ‘law’? Discuss also the process of making the law.
- 2) Describe the role of law in the development of society. How South Asian society can grow better with the better use of law?
- 3) What are the sources of law? Discuss.

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## **1.10 ANSWERS AND HINTS**

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### **Self Assessment Questions**

- 1) Refer to Section 1.3
- 2) Refer to Section 1.4

### **Terminal Questions**

- 1) Refer to Section 1.3 and 1.5
- 2) Refer to Section 1.4
- 3) Refer to Section 1.6



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## 1.11 GLOSSARY

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<b>Constitution</b>	: The highest law of the land containing values and principles of the socio-economic-legal system.
<b>Act</b>	: A piece of law passed by the legislature.
<b>Customary law</b>	: It is people's practices which may mature into custom after a given period, and following a consistent, and uniform practice. It should be not against public policy and statutory law
<b>Precedent</b>	: A judgment containing new legal principle laid down by higher Courts

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## 1.12 REFERENCES AND SUGGESTED READINGS

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- 1) A bare reading of the Constitution of your country.
- 2) Any Act passed by your Parliament.
- 3) A judgment of your Supreme Court.