# LEGISLATION AS A SOURCE OF LAW

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## INTRODUCTION

The term ‘legislation’ is derived from Latin words, “Legis” meaning law and “Latum” which means “to make” or “set”. Thus the word ‘legislation’ means ‘making of law’. Legislation is that source of law which consists in the declaration of legal rules by a competent authority[1]. The most powerful and independent method of enacting laws is through legislation. It is the only source with the authority to pass new laws, repeal old ones, and amend existing laws[2]. However, the term "legislation" is only used to refer to a specific type of law-making, i.e., when a competent authority declares legal principles in statutory form. It means that the State's legislature has passed/promulgated a law. The law that has its source in legislation is called the enacted law or statute law.

Gray pointed out that legislation includes “formal utterances of the legislative organs of the society”[3]. According to Salmond: “Legislation is that source of law which consists in the declaration of legal rules by a competent authority”[4]. Salmond noted that legislation is the type of source of law that entails the proclamation of legal rules by an appropriate and competent body[5]. He claims that there are three different meanings associated with the term "legislation" as a source of law. In its strict sense, it is that source from where the rules of law declared by competent authority are framed. In its widest sense, legislation includes all methods of law-making. In this sense, legislation may either be (i) direct, or (ii) indirect. The law declared by legislature is called direct legislation whereas all other actions through which law is made are species of indirect legislation. In this third sense, legislation encompasses every expression of the will of the legislature whether making law or not. According to Austin: "There can be no law without a legislative act”.

## LEGISLATION AS A SOURCE OF LAW

As per the analytical school, ‘typical law’ is a ‘statute’ and ‘legislation’ is the normal process of law-making[6]. The historical school holds that among all the sources of law, legislation is the least creative. According to James Carter “It is not possible to make law by legislative action”. Its utmost power is provide a further incentive to influence behaviour by promising a reward or threatening a punishment in response to a certain action. The historical school and the analytical school both go to extremes. The analytical school makes the error of seeing legislation as the exclusive source of law and it

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[1] DR. N.V. PRANJAPE, STUDIES IN JURISPRUDENCE & LEGAL THEORY 329 (Central Law Agency, 9th Edn., 2022)
[2] DR. S.R. MYNENI, JURISPRUDENCE 179 (Asia Law House, Hyderabad, 3rd Edn., 2021)
[3] DR. N.V. PRANJAPE, STUDIES IN JURISPRUDENCE & LEGAL THEORY 329 (Central Law Agency, 9th Edn., 2022)
[4] V.D. MAHAJAN, JURISPRUDENCE & LEGAL THEORY 159 (EBC Publishing Ltd., 5th Edn, 2021)
[5] SALMOND, JURISPRUDENCE 115 (12th Edn.)
[6] V.D. MAHAJAN, JURISPRUDENCE & LEGAL THEORY 160 (EBC Publishing Ltd., 5th Edn, 2021)

gives precedent and custom little weight. The historical school makes the error of not seeing legislation as a source of new law. Mr. J.S. Khehar observed in the case of *Nidhi Kaim v. State of Madhya Pradesh*[7] that the legislation is enacted, only with the object of social good, and only in support of societal causes. Legislation flows from reason and logic.

CLASSIFICATION OF LEGISLATION

Salmond divides legislation into two types:
(1) Supreme Legislation - When a law is passed by a supreme authority or a sovereign law-making body, such as the legislature of an independent and sovereign state, it is referred to as supreme legislation. It is supreme because no other authority has the power to revoke, alter, or regulate it. Such laws cannot be revoked or overturned by another legislative body[8].

(2) Subordinate legislation: Subordinate legislation on the other hand, is that which comes from any authority other than the sovereign power. It is dependent on a higher power in order to remain valid and to continue its existence. India's Parliament is endowed with supreme legislative authority. But, there are other organs which have powers of subordinate legislation.

Validity of Subordinate Legislation
Certain requirements must be met for the delegation of legislative authority to be valid. These prerequisites are as follows:
(i) The parent Act, i.e., the Act under which the power to make subordinate legislation is exercised, must be valid.
(ii) The Parent Act's delegation clause must be valid.
(iii) The statutory instrument must not violate certain general norms laid down by judicial decisions, e.g., norms regarding ouster of court jurisdiction, imposing a penalty or tax, giving retrospective effect etc.
(iv) The statutory instrument must not violate any provisions of the Constitution[9].

The different kinds of Subordinate Legislation include:
1. Colonial Legislation - The Imperial legislature, namely the British Parliament granted varied degrees of limited autonomy to the British colonies. With the use of this power, the colonies had some degree of legislative authority. But, the Imperial legislature had the authority to repeal, amend, or replace the laws created by the colonial administrations. However, after the passing of the Statute of Westminster of 1931, the self-governing Dominions under the Crown have been given power to make law independently subject to nominal supremacy of the British Crown.

[7] Nidhi Kaim v. State of Madhya Pradesh, MANU/SC/0150/2017
[8] DR. S.R. MYNENI, JURISPRUDENCE 179 (Asia Law House, Hyderabad, 3rd Edn., 2021)
[9] Harman Singh v. Regional Transport Authority, MANU/SC/0015/1953

2. Executive Legislation - The Legislature may delegate its rule-making power to certain departments of the Executive. The rules made in pursuance of this delegated power have the force of law. They may, however, be repealed or superseded by the legislature as and when deemed necessary to do so. In India, the Executive has powers to make bye-laws on matters such as deciding the suitable place for market[10], fixing of prices, etc.

3. Judicial Legislation - In certain cases, rule-making power is delegated to the judiciary and the superior courts are allowed to make rules for the regulation of their own procedure. This is also known as judicial legislation and it should not be mistaken with judicial precedents where the Court formulates a new principle of law via its judicial decision. The Constitution of India has conferred the power of rule-making to the Supreme Court and the High Court under Articles 145 and 227 respectively. Article 145 empowers the Supreme Court to make rules relating to the following matters :

(1) for setting up norms for practicing lawyers
(2) for the procedure of appeals and time-limit for such appeals
(3) for making rules relating to costs and fees, etc.

4. Municipal Legislation - The municipal authorities have the power to make rules for the areas under their jurisdiction concerning water, land, urban cess, house tax, etc. Such bye-law making power of municipal authorities is another form of subordinate legislation.

5. Autonomous Legislation - The State may occasionally allow private entities or bodies, such as universities, companies, corporations, etc. to make bye-laws for controlling the conduct of their business. These bye-laws are formulated in exercise of the rule-making power granted to these bodies by the State. For example, Railways have their own rules for the conduct of their business.

DELEGATED LEGISLATION

Although the executive's main duty is to enforce the laws enacted by the Legislation, still, its departments have the authority to make rules for itself. Subordinate law includes legislation passed by the executive branch. Delegated legislation is, strictly speaking, any law passed by an authority other than the legislature. It means the rules, orders or bye-laws made by the executive authorities under the law passed by the Parliament[11]. In simple words, when Legislature bestows the law-making power on some other body, then the legislative power is said to be delegated and this is known as delegated legislation.

Reasons for Delegated Legislation are:

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[10] Ramesh Chandra Kachardas Porwal v. State of Maharashtra MANU/SC/0033/1981
[11] DR. N.V. PRANJAPE, STUDIES IN JURISPRUDENCE & LEGAL THEORY 333 (Central Law Agency, 9th Edn., 2022)

(1) Want of Time: Parliament is a busy body. If it devotes its time on entertaining minor and subsidiary issues and attempts to lay down all rules itself, all of its time will be consumed in preparing only a few Acts. Thus, it has to confer rule making power to the executive[12].

(2) Technicality of the Matters: Many rules are technical in nature and require consultations with the experts. It is, therefore, more convenient to delegate such rule-making power to the experts who are none else than the executive itself.

(3) Local Matters: There are matters which concern only a particular locality or particular group or profession. Any legislation on these matters needs consultation with the people of that particular locality, group or profession. Thus, some departments are given powers to make changes and rules in consultation with the people acquired with and interested in it.

Delegated legislation should not to be mistaken with the executive legislation. The former refers to the laws made by the authorities other than those to whom the Legislature has delegated its legislative authority. The latter refers to the legislation passed by the President and the Governor under Articles 123 and 213, respectively, of the Indian Constitution. These laws are in the form of Ordinances which have the force of law. Such Ordinances are issued by the respective executive heads on the ground of urgency when Legislature is not in session and they cease to have effect if not ratified within six weeks after the assembly of the Legislature. The source of delegated legislation is always the Act of the Parliament but the source of the executive legislation is a constitutional provision.

Control of Delegated Legislation

The following safeguards have been applied to delegated legislation to make sure that it is not abused:
(1) Procedural control - Certain procedural safeguards are necessary to keep a constant watch over the exercise of power by the executive or administrative authorities[13]. These may include:-
(a) Prior consultation of interests which are likely to be affected by the proposed delegated legislation;
(b) Prior publicity of proposed rules and regulations; and
(c) Publication of delegated legislation being made mandatory.

(2) Parliamentary control - This control is exercised through the committee on subordinate legislation of both the Houses of Parliament which maintains vigilance on Government's rule-making power and scrutinise the rules framed by the executive. Its goal is to keep an eye on the rule-making authorities and provide with a chance to criticise them if they abuse their authority.

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[12] DR. S.R. MYNENI, JURISPRUDENCE 183 (Asia Law House, Hyderabad, 3rd Edn., 2021)
[13] Aditi Prabhune, *Understanding The Control Mechanism Over Delegated Legislation In India And Critically Analysing The Judicial Control Of Delegated Legislation With Relevant Case Laws*, LEGAL SERVICE INDIA, (Nov 22, 2022), https://www.legalserviceindia.com/legal/article-4944-understanding-the-control-mechanism-over-delegated-legislation-in-india-and-critically-analyzing-the-judicial-control-of-delegated-legislation-with-relevant-case-laws.html

(3) Judicial control - Whenever a law made by the executive is found to be inconsistent with the Constitution or *ultra vires* the parent Act from which the law-making power has been derived, it is declared null and void by the court. The Supreme Court and the High Courts have the authority to determine whether delegated legislation is lawful or not. In the land-mark case of *Air India v. Nargesh Meerza*[14], the Supreme Court struck down the delegated legislation on the ground of non-conformity with the provisions of Article 14 of the Constitution.

SUB-DELEGATION

It is common for a person or a body to get delegated powers and authority, indirectly from a statute. The legislation created in this manner is recognised as sub-delegated legislation. This state of affairs would appear to be in conflict with the general principle that a delegate is not able to delegate further, i.e., the maxim "*delegatus non potest delegare*". In other words, the general rule is that where Parliament gives a power to make law for some specified purpose to a body or person, it can be exercised only by that body or person alone. Therefore, it would be unlawful to sub-delegate a legislative power without specific and express authority[15]. The Parent Act occasionally allows sub-delegation to authorities or officials who are not below a certain rank. Only those officers or authorities are eligible to receive the delegated power in this situation.

CONDITIONAL LEGISLATION

A conditional delegation occurs when the Legislature creates the law and transfers to another entity, merely the authority to decide when it should come into effect or when it should apply to a certain region or territory of the State. The Supreme Court observed in the case of *Hamdard Dawakhana v. Union of India*[16] that "In conditional legislation, the delegate's power is that of determining when a legislative declared rule of conduct shall become effective, and the delegated legislation involves delegation of rule-making power to an administrative agent. That means the Legislature after having laid down the broad principles of its policy in the legislation, can leave details to be supplied by the administrative authority".

COMPARISON OF LEGISLATION WITH OTHER SOURCES OF LAW

Legislation is today the most important instrument of legal evolution and in the opinion of many, it is the exclusive material source of law. In countries where there is common law, precedent or case law takes rank as a material source of law. It is therefore, desirable to compare legislation with other sources of law, namely, precedent and custom.

Comparison between Legislation and Precedent

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[14] Air India v. Nargesh Meerza, MANU/SC/0688/1981
[15] State of Punjab v. Amir Chand, MANU/PH/0001/1953
[16] Hamdard Dawakhana v. Union of India, MANU/SC/0016/1959

Difference between Legislation and Precedent are as follows[17]:

1. The legislation has its source in the law-making will of the State whereas precedent has its source in judicial decisions.
2. The Legislature imposes laws on the courts, but the courts themselves set precedents.
3. Legislation denotes formal declaration of law by the Legislature whereas precedents are recognition and application of new principles of law by courts in the administration of justice.
4. Legislation is passed prior to a case actually coming up, but the precedent is only established once the matter has been brought up and is being heard by the court.
5. Legislation is declared or published before it is brought into force but precedent comes into force at once, i.e., as soon as decision is pronounced.

Advantages of Legislation Over Precedent

1. Abrogative Power - Legislation in both constitutive and abrogative whereas precedent merely possesses constitutive efficacy. Legislation not only acts a source of law, but it also has the power to create new laws and change or repeal already existing ones. Contrarily, precedent cannot override the current laws, even though it sometimes results in laws that are in some respect better than legislation.
2. Efficiency - The essential functions of formulating and enforcing laws are divided by legislation, thereby enabling a beneficial division of labour. As a result, efficiency is increased. Contrarily, precedent unites the job of creating the law and that of enforcing it in the same hands[18].
3. Provision for future cases - Legislation can make rules in anticipation for cases that have not as yet arisen, whereas precedent must wait for the occurrence of some dispute before the court can create any definite rule of law.

Comparison between Legislation and Custom

Pointing out the importance of enacted law over customary law, Keeton observed that in earlier times legislation was supplemental to customary law but in modern time the position has reversed and customary law is treated supplementary to the enacted law. Laws passed by the legislature are clear, well-written, and comprehensive, thereby making them simple to comprehend. Enacted law is a product of the legislative branch; as a result, it reflects the general will of the populace[19]. Only after being followed for a considerable amount of time can a custom be recognised as a customary law. Legislation differs from custom in the following aspects[20]:

1. The existence of legislation is essentially de jure whereas customary law exists de facto.

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[17] Mayank Shekhar, *A Comparison between Legislation and Precedent*, LEGAL BITES, (Nov 23, 2022), https://www.legalbites.in/law-notes-administrative-law-comparison-legislation-precedent-case-laws/?infinitescroll=1

[18] *Legislation: Meaning, Definition and merits of Legislation over Precedent,* SRD LAW NOTES, (Nov 22, 2022) https://www.legalbites.in/law-notes-administrative-law-comparison-legislation-precedent-case-laws/?infinitescroll=1

[19] KEETON C.G., THE ELEMENTARY PRINCIPLES OF JURISPRUDENCE 82, (A&C Black Ltd.)

[20] Subodh Asthana, *Legislation as a Source of Law*, iPleaders, (Nov 20, 2022) https://blog.ipleaders.in/legislation-source-law/

2. Legislation develops from theoretical concepts, whereas customary law develops from usage and a long existence.
3. Legislation as a source is historically much latter as compared with custom which is the oldest form of law.
4. In contrast to customary law, which is largely unwritten (jus non scriptum) and difficult to trace, legislation is comprehensive, precise, written in form, and easily accessible.

## CODIFICATION OF LAWS

Codification means the reduction of the whole corpus juris so far as practicable, in the form of enacted law. A Code denotes "a systematic collection of statutes, body of laws so arranged as to avoid inconsistency and overlapping". Thus codification implies collection, compilation, methodical arrangement and systematisation of whole body of laws so that they are reduced in the form of general principles and rules.

## INTERPRETATION OF STATUTES

The law which comes into being through legislation is called enacted or statute law. The words of enacted law - the “litera scripta” - constitute a part of law itself. The courts have to ascertain the intention of the legislature and expressions of the enactment for its application. The process of ascertaining the meaning of the letters and expressions by the court is called either 'interpretation' or 'construction'.

Interpretation is a very important function of the court. It is through this function that judiciary evolves the law and brings changes in it, and, thus, keeps the law abreast of time. Interpretation changes with the time and place. It is of two kinds: (1) literal or grammatical; and (2) logical or liberal or functional or equitable or free.

Literal or Grammatical Interpretation or Plain Meaning Rule; Grammatical interpretation is the interpretation of statute by looking to the very letter of its expression. When the words of the statute are clear, they must be given effect to. The ordinary meaning of words may be determined by looking into dictionaries, or into such scientific and other technical works where that particular words have been employed[21].

Logical interpretation is that which departs from the letter of the law and seeks elsewhere or some other or more satisfactory evidence of the intention of the legislature. This is known as "sententia legis" or the functional interpretation[22].

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[21] DR. S.R. MYNENI, JURISPRUDENCE 194 (Asia Law House, Hyderabad, 3rd Edn., 2021)
[22] Changing Dynamics in Constitutional Interpretation, LEGAL SERVICE INDIA, (NOV. 19, 2022), https://www.legalserviceindia.com/legal/article-532-changing-dynamics-in-constitutional-interpretation.html

Interpretation varies from construction as the former is the art of finding out the true sense of any form of words, that is the sense in which the author intended to express and enable others to derive from them the same idea that the author intended to convey. Whereas, Construction is the drawing of conclusions, respecting subjects that lie beyond the direct expression of the text from elements known from and given in the text, conclusions which are in the spirit, though not within the latter of the text[23].

Harmonious Construction : When two provisions of the same statute become applicable in a given case, a harmonious construction should be given so as to avoid futility of the statute[24] and they should be so interpreted that effect be possibly given to both.

IMPORTANT RULES OF INTERPRETATION

Golden Rule: Though the literal interpretation must be accepted, it must be applied very cautiously, and it should not be followed if the statute is apparently defective. Therefore, in difficult cases the court may go beyond the words of the statute, and may take help from other sources. For example, there may be some obvious clerical errors in the text, such as a reference to a section by the wrong number, or the omission of a negative in some passage in which it is clearly required. The court should rectify the error so as to avoid the absurdity and to restore the true intent of the legislature or give the correct meaning. The court mends formal defects and restores the true intent of the legislature. This is the so-called 'golden rule' of interpretation[25].

Mischief Rule: When judges encounter problems with literal interpretation, they may refer to this rule as another guide. As per this rule, judges look into the policy of the statute. Additionally, it has been noted that words have an inner core of accepted applications encircled by an outside periphery of unresolved uses. The former points to the general direction of development, whereas manipulation takes place in the periphery. The canon of interpretation that is best suited to give effect to this approach is known as the Mischief Rule which was propounded as long ago as 1584 in Heydon’s case[26]. It was stated in that case that four things are to be discussed and considered. First, what was the common law before the making of the Act; Second, what was mischief and defect for which the common law did not provide; Third, what remedy both Parliament resolved and appointed to cure the disease of the common law; and Fourth, the true reason of the remedy.

In Heydon's case it was stated that all judges should make such construction as shall suppress the mischief and advance the remedy and to suppress subtle inventions and evasion for continuance of the mischief, and to add force and life to the cure and remedy according to the true intent of the makers of the Act.

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[23] DR. N.V. PRANJAPE, STUDIES IN JURISPRUDENCE & LEGAL *Theory* 350 (Central Law Agency, 9th Edn., 2022)
[24] A.N. Roy v. Suresh Shayam Singh, AIR 2006 SC2677
[25] DR. S.R. MYNENI, JURISPRUDENCE 195 (Asia Law House, Hyderabad, 3rd Edn., 2021)
[26] (1584) 3 Co. Rep at 7b

## CONCLUSION

In the modern world, legislation is one of the primary and most significant sources of law. Several nations in the modern world regard this method of law-making and view legislation as a crucial source of law. Legislation as a source of law attempts to create consistency by eliminating ambiguity, therefore even though it has some flaws and gaps, these problems are still much less severe than those associated with custom and precedent, the other sources of law.

It can be concluded that Legislation is recognised as one of the most effective sources of law for two main reasons. Firstly, it involves laying down of legal rules by the legislature which the State recognises as law. Secondly, it has the force and authority of the State. It is for this reason that Dias has rightly said that deliberate law-making by an authoritative power, i.e., the State is called 'legislation' provided that authority is duly recognised as the supreme power by the courts[27].

[27] DIAS & HUGHES, JURISPRUDENCE 94 (1957)