

Sources of law:

The source of law includes the material from which the judges obtain the rules for deciding the cases. In this sense, it includes legislation (Acts of Parliament), judicial precedents, customs, religions, opinions of legal experts, jurists etc.

1. Legislation as a source of law: 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 the source of law which consists in the declaration of legal rules by a competent law making authority. The law making power has been vested in the Parliament by the Constitution. In Article 65 of the Constitution of Bangladesh it has been provided- "There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic"

However, the parliament can delegate power to make orders, rules, regulations, bye laws or other instruments having legislative effect to any person or authority by Act of Parliament. As the Constitution provides in the same Article- "Provided that nothing in this clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, bye-laws or other instruments having legislative effect." Such orders, rules, regulations, bye-laws or other instruments having legislative effect made by any authority other than the Parliament are known as **delegated legislation**.

2. Custom as a source of law: A custom may be defined as a continuing course of conduct which, by the express approval of the

community observing it, has come to be regarded as fixing the norm of conduct for members of society. Custom may be of two kinds, (1) Local custom and (2) general custom

(1) Local custom: A local custom is that which prevails in some defined locality. It is a particular rule of conduct which has existed from time immemorial and has obtained the force of law in a particular locality.

(2) General custom: A general custom is operative throughout the realm and constitutes one of the sources of common law of the country. It is usually practised by all the people living in the country and it is prevalent throughout the land.

Requisites of a valid custom: In order to be a valid custom, it must conform to certain requirements which are as following:

(1) Reasonableness: A custom must be reasonable. A custom shall not be valid if it is apparently repugnant to right and reason and it is likely to do more mischief than good if it is enforced. A general observance of a custom leads to the presumption that it has a rational basis and it is useful and convenient.

(2) Consistency: A custom to be valid must be in conformity with the statute law. In other words, it must not be contrary to an Act of Parliament. A custom should necessarily yield where it conflicts with a statutory law.

(3) Compulsory observance: A custom to be legally recognized as a valid custom must be observed as of right. It means that custom must have been by all concerned without recourse to force and without the necessity of permission of those who are adversely affected by it. It must be regarded by those affected by it not

merely as an optional rule but as an obligatory or binding rule of conduct.

(4) Continuity and immemorial antiquity: A custom to be valid should have been continuously in existence from the time immemorial.

(5) Certainty: In order to prove the existence of a custom since time immemorial, it must be shown that it is being observed continuously and uninterruptedly with certainty.

3. Judicial Precedent as a source of law: Judicial precedents may be defined as those judicial pronouncements of the courts which carry with them certain authority having a binding force. According to Jeremy Bentham, precedent is a judge-made law while Austin calls it as Judiciary's law. Article 111 of the Constitution of Bangladesh provides- "The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it." Thus precedent may be said to be case-law which not only has a binding authority but must also be followed by the subordinate courts.

Kinds of precedents: Precedent may be either authoritative or persuasive

(a) Authoritative precedent is one which has a binding force and the Judge must follow it whether he approves it or not. Authoritative

precedents are the decisions of the superior court of justice which are binding on the subordinate courts.

(b) Persuasive precedent is one which the Judges are under no obligation to follow but they may take into consideration. Foreign judgments are instances of persuasive precedent. Thus authoritative precedents are the legal sources of law while persuasive precedents are merely historical sources.

4. Religion: Religion is one of the important sources of law. In most of the personal matters of Muslim community, Islamic Shariah Law is applied. For example, in all questions regarding intestate succession, special property of females, marriage, dissolution of marriage including talaq, ıla, zihar, lian, khula and mubarat, maintenance, dower, guardianship, gifts, trusts and trusts properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat). On the otherhand, in some cases of personal matters of the Hindu community, the Hindu personal law is applicable.

There are two classes of Magistrate, namely :-

- (a) Judicial Magistrate, and
- (b) Executive Magistrate.

Judicial Magistrate:

There are four classes of judicial Magistrate, namely :-

- (a) Chief Metropolitan Magistrate in Metropolitan Area and Chief Judicial Magistrate in other areas,
- (b) Magistrate of the first class, who shall in Metropolitan area, be known as Metropolitan Magistrate,
- (c) Magistrate of the second class; and
- (d) Magistrate of the third class.

There are several other specialized courts, including the following:-

1. Labour Courts;
2. Administrative Tribunals;
3. Income Tax Appellate Tribunals;
4. Money Loan Courts (Artha Rin Adalat);
5. Insolvency Courts.
6. Special Tribunal
7. Nari O Shishu Nirjatan Daman Tribunal

Executive Magistrate:

All persons appointed as Assistant Commissioners, Additional Deputy Commissioners or Upazila Nirbahi Officer in any District or Upazila shall be Executive Magistrates and may exercise the power of Executive Magistrate within their existing respective local areas.

Where, the functions exercisable by a Magistrate relate to matters which are administrative or executive in nature, such as the granting of a license, the suspension or cancellation of a license, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

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Hierarchy of Courts in Bangladesh

The Supreme Court of Bangladesh, which is situated in the Appellate Division (AD) and the High Court Division (HCD). The HCD hears appeals and revisions from subordinate courts, issues orders and directives against writ petitions to protect the sanctity of the fundamental rights embodied in the country's constitution. It has the original jurisdiction for admiralty matters, company matters and writ petitions. The HCD has the legal capacity to declare any law passed by the Parliament of Bangladesh as null and void to the extent of inconsistency with the fundamental rights guaranteed under the constitution.

The AD is empowered to hear appeals from the HCD or any other statutory body.

The subordinate civil courts, created under the Civil Courts Act 1987, are divided into five:-

1. District Judge Court: It has appellate, revision, transfer, review and reference jurisdiction up to the suit value of Taka does not exceed five crore Taka.
2. Additional District Judge Court: It has got the same jurisdictions as that of the District Judge Court but it can exercise such jurisdiction only if seated by the District Judge.
3. Joint District Judge Court: It has the original jurisdiction to try cases of suit the value of which exceeds 25 taka.
4. Senior Assistant Judge Court: It has the original jurisdiction to try cases the value of which exceeds 15 Lac Taka but does not exceed 25 lac taka.
5. Assistant Judge Court: It has the original jurisdiction to try cases of suit the value of which does not exceed Taka 15 lac.

Besides the Supreme Court and the Courts constituted under the laws of Bangladesh, there shall be two classes of Criminal Courts in Bangladesh, namely:-

- (a) Courts of Sessions ; and
- (b) Courts of Magistrates.

Court of Sessions consists of the followings:

- District Sessions Judges Court, in Metropolitan Area Metropolitan Sessions Judge Court
- Additional District Sessions Judge Court, in Metropolitan Area Additional Metropolitan Sessions Judge Court
- Joint District Sessions Judge Court in Metropolitan Area Joint Metropolitan Sessions Judge Court

2. General and Special Law: General Law consists of those legal rules which the Courts take judicial notice whereas the special law consists of those legal rules which the courts will not recognize and apply them as a matter of course but which must be specially proved and brought to the notice of the courts by the interested parties. There are several kinds of special laws, namely, (1) local law, (2) Foreign law, (3) Conventional law, (4) Autonomic law, (5) martial law and (6) International Law.

3. Substantive and Procedural law: Substantive law is that which defines a right while procedural law determines the remedies. Substantive law is concerned with the ends which the administration of justice seeks to achieve while the procedural law deals with the means by which those ends can be achieved. For example, law of contract, transfer of property, crimes are substantive laws whereas the laws of criminal procedure or civil procedure are procedural laws.

4. Law in Rem and Law in Personam: Law in rem relates to enforcement of rights which a person has against the whole world against the people in general whereas law in personam deals with enforcement of right available against a definite person or persons. For example, the law of inheritance, ownership etc. comprises the subject-matter of law in rem while the law of contract, trust is the subject-matter of law in personam.