

government to implement various welfare legislations.

Legislation compared with other Sources of Law

Legislation as a source of law is gaining more and more importance in modern time so much so that the significance of custom and precedent is gradually receding. Historically also legislation has always been recognised as an important source of law as compared with other sources. It is therefore desirable to compare legislation with other sources of law, namely, precedent and custom.

Legislation and Precedent

Legislation as a source of law when compared with precedent merits support for the reasons stated below :—

1. The legislation has its source in the law-making *will* of the State whereas precedent has its source in judicial decisions.
2. Legislation is imposed on courts by the Legislature but precedents are created by the courts themselves.
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 enacted before a case actually arises but the precedent comes into existence only after the case has arisen and taken for decision before the court.

36. AIR 1960 SC 554.

37. AIR 1982 Pat. 1.

5. Legislation is expressed in comprehensive form but the scope of judicial precedent is limited to identical cases only.

6. Legislation is generally prospective whereas precedent is retrospective in nature.

7. 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.

8. Legislation is undertaken with the intention of law-making but it is not so in the case of precedent. The precedent which includes *ratio decidendi* and *obiter dicta* is intended to settle a specific dispute on the point of law once for all.³⁸

9. It is not difficult for the public to know the law enacted by Legislature but the precedent based on case law is not easily known to the general public. At times even the lawyers who deal with the law are ignorant about the existence of a particular ruling of the Court.

10. Legislation involves law-making by deductive method whereas case-law is created by resort to inductive method.

It would thus be seen that legislation as a source of law is far more advantageous than that of the precedent. It is not merely a source of law, but is equally effective in amending or annulling the existing law. Precedent, on the other hand, cannot abrogate the existing rule of law. This, in other words, means that legislation is both, constitutive and abrogative but precedent is merely constitutive and lacks abrogative capability.

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 enacted by Legislature being definite, written and comprehensive, they are easy to understand. That apart, enacted law is created by Legislature therefore, it is an expression of the general will of the people.³⁹ A custom can be accepted as a customary law only after it is practiced for a long time. Legislation as a source of law differs from custom in the following aspects :—

1. The existence of legislation is essentially *de jure* whereas customary law exists *de facto*.
2. Legislation grows out of the theoretical principles but customary law grows out of practice and long existence.
3. Legislation as a source is historically much latter as compared with custom which is the oldest form of law.
4. Legislation is an essential characteristic of modern society whereas the customary law has developed through primitive societies.
5. Legislation is complete, precise, written in form and easily accessible, whereas customary law is mostly unwritten (*jus non scriptum*) and is difficult to trace.

6. Legislation results out of deliberations but custom grows within the society in natural course.
7. Legislation expresses the relationship between men and the State but customary law is based on relationship between men *inter se*.⁴⁰