

1. Introduction

1.1 Meaning and Nature of Law

An ancient time people were free. They ruled by themselves. When people lived with group then they made rule to manage their behavior and conduct. Then after gradually they became ruler and ruled. Senior person of the group might be setup the rule and regulation at earlier time. The society gradually developed and changed. In the changing context rule and regulation also be changed. In course of time various laws were enacted and amended. All activities of natural persons as well as artificial persons are regulated and guided by laws. Law is a formal mechanism of social control. By changing nature of law there is not universal definition of law. It depends on the contexts and perceptions.

In general, the term 'law' means a set of rules. Those rules are made by the authorities. Public laws are made and implemented by state authority. But private laws are imposed by the party in according to existing laws.

Law is an English word derived from the Stoic term 'Lag'. It means Stable and universal. In general sense, law means the command of the sovereign power to manage and regulate the external human activities. Law is a general term and has contextual meaning. It is used in different places within different senses and names. Still, it is impossible to define it in a single term. Many literatures have been created, many books have been written by many writers on this topic. However, it has not unanimous definition.

Here is better to cite an expression made by Lord Lloyd, who says "Since much juristic ink has flowed in an endeavor to provide a universally acceptable definition of law, but with little sign of attaining the objective".

1.2 Definition of Law

John Austin says: A law is a rule of conduct imposed and enforced by the sovereign.

According to Salmond: Law is the body of principles recognized and applied by the state of administration of Justice.

According to Justice Holms: Law is that what Justice says in his decision.

According to Roscoe Pound: Law is the body of principles, recognized or enforced by public and regular tribunals in the administration of Justice.

Lawrence, Robert and Peter State that: The law refers to the body of philosophy, principles, standards and rules which the Courts apply in deciding cases brought before them.

On the basis of above said several definitions, it can be said the term law cannot be defined unanimously. Some Scholars have defined law in the narrow sense and some have defined in wider sense. It is impossible to formulate commonly accepted single definition of law because there are several schools of thought concerning to it. Eminent Jurist H.L.A Hart also accepts this fact that the definition of law is very difficult task.

At the Summing up, it can be said that to define the term of law is very difficult task. Besides this, many eminent scholars have made various efforts. Comparatively a definition given by Black Stone is wider than others; who

affirms that "Law in its most general and comprehensive sense signifies a rule of action, and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational".

In conclusion, it can be said that the essence and core of all definitions is similar. Law is a set of rules and principles made by sovereign power through legitimate process to control or regulate the society for justice, peaceful living and social security.

1.3 Origin and Nature of Law

Law is inseparable part of society. It is the standard to maintain the relation between the society and its members. In the absence of law, society becomes destroyed and creates the situations of disorder, painfulness and anarchy.

The nature of law denotes its inseparable and inherent qualities. It can be to fulfill the needs of contemporary society. The need of society is determined by its members and they make law to fulfill their requirement. For this purpose law can play significant role to regulate, control and provide guidance to the society. There are several views on law as mentioned in the various definitions and schools of thought. Every School of thought has accepted the law as their specific understanding and defines it in different ways. Similarly, the various definitions also have not prescribed the same nature of law. According to the several schools of thought and definition; the nature of law can be found as follows.

- Law is made and administered by the competent authority which is known as sovereignty.
- Law cannot avoid the principles of natural justice. It should be based on reason and rationality.
- It is the rule of conduct of the society. It is based on common interest of the society and it tries to maintain the balance of interest for social solidarity and harmony.
- It has uniformity in action.
- It is the most powerful in the world. Law is more powerful than the lawmakers.
- It is rigid and equally enforceable to all persons in the society. No one can escape from its coverage.
- Law and Justice are interrelated.
- Law is administered by the court.
- It is changeable with the pace (speed) of time and on the basis of common need.
- It is backed by sanction of painful consequences in case of violation.
- In the strict sense it is free from the extra legal phenomena like morality, religious conviction etc.

IN *Karishma Impex vs. National Trading Limited*, S.C. held that, 'the parties to the contract can create mutual obligation by agreeing upon the terms and condition as per their need which should be within the boundary of the law and such type of contractual rights are different from constitutional and legal rights.' (Nepal Law Journal, 2048, p. 891)¹

1.4 Purpose of Law

The purpose of law is concerning to meet or fulfill the certain objectives, which are as follows:

- To maintain the peace and security in society.
- To maintain the social and political stability in the society.

¹Karishma Impex vs. National Trading Limited

- To maintain the social solidarity and harmony in the society.
- To contribute for strengthening the public welfare, national economy and individual and commercial interest.
- To prohibit criminal activities and harmful human conduct in society.
- To contribute to make developed, prosperous and civilized country in the international community.

1.5 Types of Law

Law is an instrument to regulate and control the society. There are several types of laws in existence. There is no unanimous view in classification of law among the Jurists and scholars of this field. The basis of classification is also different among them. Therefore it is very difficult task to give particular classification which may be acceptable for all. There are three general types which are common in most of the countries.

- From the point of view of creation and nature of law. e.g. Substantive and Procedural law
- From the point of view of jurisdiction. e.g. Criminal and Civil
- From the point of view of legal effect. e.g. Private and Public

1.5.1 From the point of view of creation and nature of law

5.1.1 a. Substantive Law:

It is fundamental part of law and it is related to the Rights, Duties and liabilities of persons. It specifies the definitions of such rights, duties and liabilities of a person in the country. It is related as doctrinal part of law.

According to Salmond: Substantive law is concerned with the ends of the administration of Justice. Substantive law is based on the legal principles and related to the subject matter and motive of the law. It is the real and actual law. It deals with content of Law.

5.1.2 b. Procedural Law

The Procedural law deals with how the content of law is implemented while substantive law deals with the content of law. It is related to the procedure of legal proceedings. It also determines the steps of process of legal remedy in the case of violation of substantive law. It is supplementary parts of substantive law. It deals with the process regarding how to acquire remedy. It refers to the procedure for putting law into practice.

Differences between Substantive Law and Procedural Law

| Substantive law | Procedural Law |
|---|---|
| 1. It is known as law of the rights and duties. | It is known as remedial law. |
| 2. It is the end of the law | It is the means of the law. |
| 3. It contains rights and remedies of the victim party. | It contains modes and conditions to restore rights of the victim party. |
| 4. It determines rights and relationship of the | It determines the relation between court and the |

| | |
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| parties. | parties to a particular case. |
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1.5.2 From the point of view of jurisdiction

5.1.3 a. Criminal Law:

Criminal law determines the crime and punishment. A punishment will be determined for them under the criminal law. It is believed as a rigid law. It deals with the crime against the state. Criminalization, de-criminalization and re-criminalization of human conduct are the subject matters of it. This law prohibits such types of human activities which are regarded as harmful to the society or state.

5.1.4 b. Civil Law:

Civil law is that part of law, which is related with the property and position of persons. It is made and enforced by the state to regulate the society. Civil law deals with the wrong doing of the individuals. Like; land law, contract law, and commercial law are the illustrations of civil law.

1.5.3 From the point of view of legal effect

5.1.5 a. Private Law:

This part of law is very much important and necessary for general people for their daily activities. It regulates the relations between two or more persons. It deals with the personal rights, duties and liabilities. And it may be civil and criminal in nature. Contract law, Commercial law, Family law are the illustrations of this category of law.

5.1.6 b. Public Law:

Public law deals in the public matters. It defines and regulates the relation between the state and people. Public law is related to the public interest and crimes regarding the security, public health and so on. e.g. Constitution deals with the jurisdiction of Governmental bodies and dispute between local and national governments.

1.6 Sources of Law

The term source indicates that the place of thing from where something emerges or come into existences. Source means origin of law. The source of law is relating to its validity. There is no unanimous view in respect of source of law among the thinkers. Here are five major sources of law which are discussed here under.

According to *Salmond* there are following sources of law:-

- a. **Legislation:** Legislation is the main source of law in the modern states. It enjoys the law making power of country. It is made according to the change of time and it is the outcome of a long series of discussions among the representatives of people. It is made by legislative body and enforced by the supreme power.

- b. **Precedent:** Precedent is the judicial decision which contains itself principle. Such principle which creates in the verdict (decision) of court and is applicable to other similar future cases of the same nature of case.
- c. **Custom and Usage:** Custom is the oldest source of law. It is habitual behavioral system of the human society. It is the usage of long period in a community. It shows that in primitive society the life of people was regulated by custom. Custom be proved to be immemorial, it must be reasonable, continuously observed certain and definite. Those custom which must not oppose principles of morality and must not conflict with the state law, is called a valid custom in present and regarded as a source of law.
- d. **Convention:** Convention means agreement between two or more parties for their dealings. Conventional law is derived from the convention and treaty and it is applicable for the concerned parties. Although it is regarded as weak source of law.
- e. **Ordinance and regulation:** An executive body also makes laws in the name of the ordinance, order and regulations. It also fulfills the vacuum of law and is more useful to maintain day to day administrative functions of state.

1.7 Meaning of Business Law

Business is a part of social activity, regulated by the law. Business law is the law connected with business. It is an aggregate of those rules which are connected with trade, commerce and industry. It is known as commercial law and mercantile law. The term business law may be defined as that branch of law which is concerning to trade, industries and commerce. It is an ever growing branch of law with the changing circumstances of trade and commerce. It is concerning with the establishment, operation, development, expansion and winding up of any business activities. It regulates the relation between business entities in regard to contracts, sale of goods, partnership, companies insurance, insolvency, carriage of goods, arbitration and so on.

Business law is not separate discipline. It is a part of civil law. It deals with the rights and obligations of businessmen or business firms that arise out of the business transactions. There is no demarcation of business law with other branches of law in term of application and procedure, businessmen or business firms who commit offense in regard to other offender.

According to A.K Sundran: Business law provides legitimacy, security, control and incentives to business activities. It also protects rights and interests of consumers or labors, and business and society.

M.C. Kuchhal sates: The term mercantile law may be defined as the branch of law which comprises laws concerning trade, industry and commerce.

Thus business law is that part of law which deals with all the laws connected with every activity of business and rights and obligations of business persons and business firms arising from the business transactions. It helps the business community to carry its transactions without and fears and uncertainty with certainty and confidence.

1.7.1 Features of Business law

Basic features of business law are as follows:

- Business law is the fast growing part of law.
- It regulates industry, trade and commerce.
- It regulates every business activities of business community.
- It includes the law of contract, company, agency, banking, insurance, arbitration.
- It protects rights and interest of business community.
- It is most important means to create positive environment for the prosperity of business.

1.7.2 Importance of Business Law

Business law is a part of law which is relating to trade, commerce and industry. It is very much important in business community from starting point to ending point of every business activity. Establishment, operation, winding up of business institution should be recognized by law and it provides validity for business activities. As a regulating and controlling instrument, the business law significantly contributes to develop the business area. The need and important of business law can be mentioned as follows:

- To establish and run the business activities.
- To increase and maintain business transactions.
- To develop capital market.
- To develop the economic activities.
- To prepare the foundation for national development.
- To create employment and support the national interest.
- To create the environment for investment.
- To regulate the behavior of businessmen and officials of the business sectors.
- To develop the new principle of business.
- To increase the knowledge of international business.
- It helps to protect public health, safety and environment protection.
- To settle the commercial disputes.
- To aware and caution to obligations and duties of businessmen and firms.

1.8 Sources of Business Law

Source means place of beginning or origin. Source of business law means the beginning point of rules and regulations in regard to trade, commerce and business. There may be numbers of sources which have contributed to creation of business law. Here are under the major sources of business law which contributes to develop the business environment. Those are as follow.

8.1.1 a. Law made by Parliament:

The laws made by parliament are important source of business law. To enact the new law repeal and amendment of existing law is the sole business of this body. To regulate the business you need the strong law. This law is the outcome of demand of the people in tuning of the time. It is made through formal process after a series of discussions by the law makers. For Example: Contract Act 2056, Arbitration Act, 2055 Parliament was made or enacted those laws which enhance or promote the business. That is why law made by parliament is an important source of business law.

8.1.2 b. Custom and Usages:

Custom is particular way of behaviors. The rule developed from custom is customary rule. The customary rule is binding, whereas it is ancient, reasonable, proved to be immemorial continuously followed and recognized by the state. For this reason traditional custom and usages play important role in the development of business law.

8.1.3 c. Precedents:

Judicial decisions are called precedents. A precedent is a judicial decision which contains in itself a principle said judicial authority in course of verdict of the business case which is applicable to other similar nature of case in future. It is also known as case made law.

8.1.4 d. English Mercantile Law:

Business law was evolved in England. It is the pioneer of business law in the world. Nepalese and Indian business law is influenced by the British business law that is why English mercantile law is another source of Nepalese business law.

8.1.5 e. Opinion of Professional and Experts:

Lawyers and Jurists play significant role to create new principles and thoughts of business law. Various research and analysis create the environment of enacting and amending the existing law as well as introducing the new one. So the opinion of professional and expert on the business area help to develop the business law.

8.1.6 f. Business agreements and Conventions:

This is most important sources of modern business law. International business organizations are more active in this realm. Those organizations are active at a national level, international level and word wide. They play vital role to manage, regulate and control the business affairs. e.g. SAFTA, EU, WTO Those organization has made various agreement, bilateral and multilateral treatises and Conventions. These are also became the source of national business law. According sec 9 of the treaty act 1990, it creates the obligation to the parties to obey it and the contrary provision to it law is invalid.

8.1.7 Short Questions

1. Define business law. Explain any three major sources of Nepalese business law. [4+6]
2055
2. Define legal environment. Why is the study of legal environment important for a business? [4+6]
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3. What is business law? Is there any clear-cut line of demarcation between business law and other branches of law? [5+5]
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4. Explain the nature and sources of Nepalese business law. [5+5]
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5. Explain the nature and sources of Nepalese business law. [10]
2059
6. State and explain the importance of legal environment for business. [10]
2060
7. Define business law. Explain the sources of Nepalese business law. [4+6]
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8. Give the concept of business law and explain its importance. [3+7]
2062
9. What is business law? Explain the sources of business law. [3+7]
2063
10. Give the concept of business law and explain its importance. [3+7]
2066
11. Define business law. Explain its importance. [3+7]
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