

Precedents provide grounds for Common Law

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PEOPLE are social being. They must be able to make a difference between good and bad. However, everybody are not equally good or equally bad. Some are better than others. Others are worse than some other. All it means that human being can also behave like animal. It is our social responsibility to aware the good people and to negatively sanction or punish the bad people. However, we cannot arbitrarily punish people. Higher offence receives higher punishment as it requires an expensive defense. Similarly, lower offence is accompanied by little punishment. All it means, the crimes and punishment vary from zero (0) to infinite (∞). This requires us to frame rules and regulation of various degrees for different kinds of crime. The highest form of rules and regulations are called law. The commonness of punishment for the common offence as is found as the precedent is called common law.

The objectives of law and order are to ensure the rights and privilege, safety and security of the human beings in their life and living. We would like to have safety and security in life along with well protection and respects. Our social groups include individual, family, society, school, college, institution, club, business, movement and the various public institutions or offices and the social activities. Each of these institutions must have its set of rules and regulation within which they operate. All these require the rules and regulation of going or doing, which are in other words called the law and order.

Laws are the highest form of rules & regulation to protect the individual by determining what is his acceptable behaviour and conduct. Laws are fundamental elements of civil society. Laws are used to maintain order ensuring good conduct and protecting the civil and human rights of the individual. With no law, society is likely to degenerate into disorder and anarchy. Laws exist primarily to halt any kind of decense into chaos, violence and anarchy.

Laws are not framed by any individual. It is framed by either the state or the people's representative in the parliament or by the judges through court procedure. Once it is made by the parliamentary member, this is considered the people's law made for the greater interest of the people to get protected by the state and its laws. Laws are, however, not perfect over the time. As time goes, people's life and living change to meet various requirements.

Therefore, the laws are not something permanent in life. Laws are flexible or will change to make the requirement of life. Briefly speaking, people and society changes too must to law.

Common law is called the case law or the precedent. Common law is normally developed by the judge in the court through its decision of court proceedings. Common law is not framed through the legislative statutes or the executive branch of the government or its action. Common law system is a legal system which has a presidential weight. The basis of the common law is that it would be unfair if we treat the similar facts and fig-

ure differently on different occasion. The aims and objectives of common law are to bring in the commonness by removing the differences if any to provide a fair justice to the client. Common law is largely based on a number of precedents. The body of the precedent is called the common law. Common law is the matter of first impression with an aim of common values and goals. Countries of common law are those of Commonwealth or the British Commonwealth. There are 54 member countries of the common law. Common law is originated from the administration of Mozambique and Ruanda, which used to be the British colony. Out of these British colonial administration, common law is developed. The member states cooperate within a framework of common values and goals as outlined in the Singapore declaration. These include the promotion of democracy, human rights, good governance, rules of law, individual liberty, equalitarianism, free trade and multi-literalism etc. The Commonwealth

ment. Precedents tend to be developed by senior judge in higher courts, which lends them authority and experience.

The point above notwithstanding, common law also allows for flexibility and change in decision-making. Precedents can be challenged, set aside and replaced by new precedents. The courts provide ample opportunity for common law reform.

Common law is faster, flexible and responsive than parliamentary law. In other words, common law often reacts and responds more willingly to changing social values, community expectation and so on. The courts can achieve law reform faster because they are not bound by the political and procedural constraints of the legislative process.

Judges and courts are not guided and influenced by politics, unlike their law-making counterparts in the parliament. The courts can therefore implement law reforms that are controversial or unpopular - reforms that might affect election results if they were initiated in the parliament. Abortion, for example, has been permitted under common law in three States, while the parliaments in those States have refused to legislate on the matter.

Disadvantages of Common Law: Unlike the parliament, the courts can only change common law ex post facto ('after the fact'). They cannot change the law of their own accord. Courts can only deal with cases which are brought before them.

Laws and precedents may be obviously outdated and in need of reform - yet until relevant criminal charges are laid or relevant civil action is initiated, there is no opportunity for these laws and precedents to be changed.

While creating legislation is the main function of parliament, making common law is not the main function of the court. They instead exist to administer justice-law-making is a secondary outcome rather than a purpose of the courts.

Parliamentarians are elected by the people but judges are appointed by the court system. This invites criticism that judges are unaccountable to the people; that they make decisions inconsistent with community standards and values; and that common law is itself undemocratic. This point-of-view is often expressed in the media, particularly on the subject of sentencing.

Courts lack the time, resources and opportunity to fully consider changes to common law. New legislation may go through numerous inquiries, investigations, parliamentary committees, law reform bodies and consultation before it is drafted and introduced. In contrast, a judge or panel of judges have minimal time and resources at their disposal when forming common law decisions.

Common law can be overridden at any time by legislation. The parliament is the supreme law-making body and common law is inferior to laws made by the parliament. While this may be a disadvantage of common law, it is also a response to the point above (that common law is made undemocratically).

The doctrine of precedent works effectively for the most part, because it provides stability and consistency in the legal system. Parties involved in trials and hearings can understand that decisions made are based on precedent, rather than personal views or arbitrary judgment

is not a political union. The Commonwealth is an inter-governmental organization, through which countries with diverse social, political and economic background are regarded as equal in statutes. Common law legal systems are stemmed in England where the common law originated in the middle age. Common laws are used in nations or regions that trace their legal heritage to England as former colony of British Empire. These British colonies are USA, Barbados, Malaysia, Singapore, Bangladesh, Pakistan, Srilanka, India, Ghana, Cameroon, Canada etc. are members with heads of state other than the sovereign.

Advantages of Common Law: Common law expands on, clarifies and implements legislation. The wording of acts of parliament is often broad and generic, providing general instruction on the law but not how it should work in certain situation. The role of judges and common law is to examine specific facts for each case, interpret relevant legislation and administer the law in line with these findings. As one jurist put it, "Common Law puts meat on legislative bones".

Similar to the above point, common law can respond to cases, situations and facts that were not foreseen or anticipated by legislators. It is impossible for parliament to legislate for every possible situation or circumstance.

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