

Introduction to LawMeaning and Nature of Law

Q - What is Law?

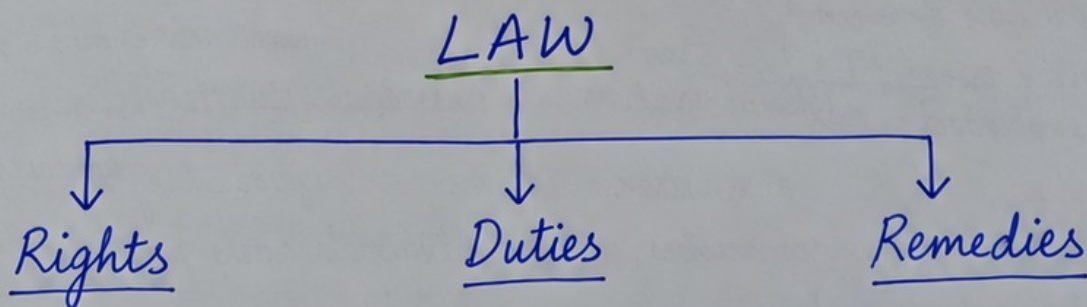
Law is a body of rules recognised and enforced through legal institutions.

The word law may mean a rule of conduct, a legal system, or a particular enactment.

Nature → normative, general, authoritative, enforceable, and capable of change.

Q - Why do we need law?

To maintain order, protect rights, settle disputes and organise social life.



v. imp → Not every moral wrong is a legal wrong.

Unit I syllabus: thinkers + Art. 13 + functions + justice / morality + classifications.

Definitions - Austin & Bentham

Q - Austin's command theory?

Law = command of a determinate sovereign, backed by a sanction.

Sovereign → Command → Duty → Sanction

Key words: political superior; habitual obedience.

Criticism → cannot fully explain constitutional limits, customs or power-conferring rules.

Q - Bentham's view?

Law is an expression of the legislator's will; he assessed law by its utility.

Principle of utility → greatest happiness of the greatest number.

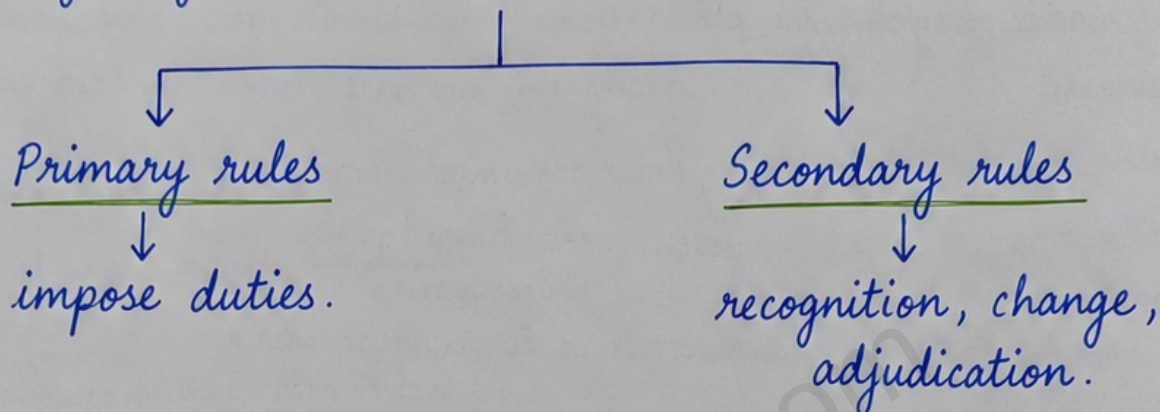
<u>Austin</u> :	<u>Bentham</u> :
command + sanction	utility + law reform

(v. imp) → Austin = analytical positivism;
Bentham = utilitarian reform.

Definitions - Hart, Savigny, Maine

Q - H.L.A. Hart?

A legal system unites primary and secondary rules.



Q - Savigny's theory?

Law grows with the people's spirit (Volksgeist), customs and history.

Law is not simply invented by a legislator.

Q - Sir Henry Maine?

Progressive societies move from Status to Contract.

Status —————> Contract

Note → Maine describes historical legal development, not a universal rule.

Exam tip: Hart = rules; Savigny = Volksgeist; Maine = historical evolution.

Definitions - Pound, Ehrlich, Fuller

Q - Roscoe Pound?

Law is a tool of social engineering: balancing competing interests.

Example → individual freedom versus public welfare.

Q - Eugen Ehrlich?

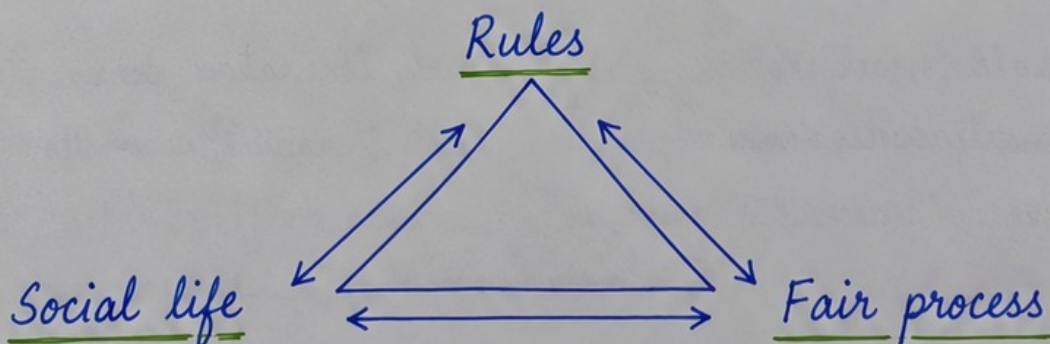
Living law operates in real social relationships, not only in written codes.

Observe how associations and communities actually organise conduct.

Q - Lon L. Fuller?

Law has an inner morality of legality.

Eight principles: generality, publicity, prospectivity, clarity, consistency, possibility, stability, congruence.



Remember → Pound: social interests; Ehrlich: living law; Fuller: legality.

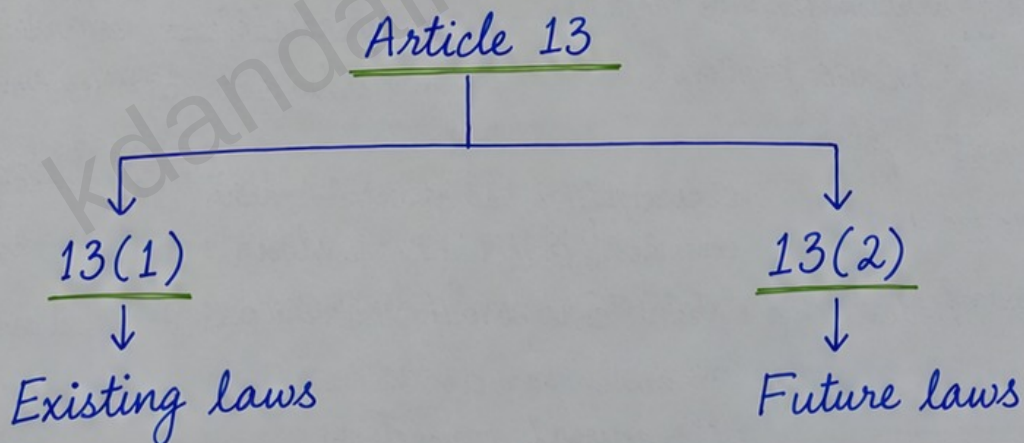
Concept of Law - Article 13

Q - Why is Article 13 important?

It protects Fundamental Rights by testing laws for inconsistency with Part III.

Art. 13(1) → pre-Constitution laws: void to the extent inconsistent with Fundamental Rights.

Art. 13(2) → State shall not make law taking away or abridging Fundamental Rights; contravening law is void to that extent.



v. imp → Entire Act need not always be void; the inconsistent part may be separated.

Note: A law can be challenged before constitutional courts.

Article 13 - Scope & Doctrines

Q - What is 'law' under Art. 13(3)(a)?

Includes Ordinance, order, bye-law, rule, regulation, notification, custom or usage having force of law.

Art. 13(3)(b) → 'laws in force' includes relevant pre-Constitution laws not repealed, even if not operating everywhere.

Art. 13(4) → amendments under Art. 368 are excluded from Article 13; but they remain subject to Basic Structure review.

v. imp Doctrine of Severability →
remove invalid part if the rest can stand.

Doctrine of Eclipse →

certain earlier laws become inoperative to the extent of conflict, not necessarily erased.

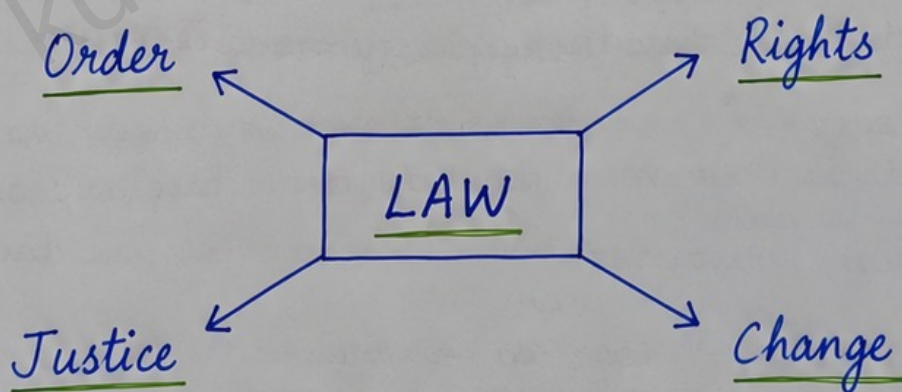
Cases to remember:

- ① R.M.D. Chamarbaugwala (severability);
- ② Bhikaji Narain Dhakras (eclipse);
- ③ Kesavananda Bharati (Basic Structure).

Functions of Law

Q - What are the functions of law?

- (1) Social control → regulates behaviour.
- (2) Order and security → protects life and property.
- (3) Rights and duties → defines legal positions.
- (4) Dispute settlement → courts and other forums.
- (5) Justice and remedies → redress for wrongs.
- (6) Social change → reform of harmful practices.
- (7) Welfare and coordination → supports public interests.



Example - Contract Law enforces promises; criminal law prohibits defined offences.

(v. imp) Law can maintain stability AND enable reform.

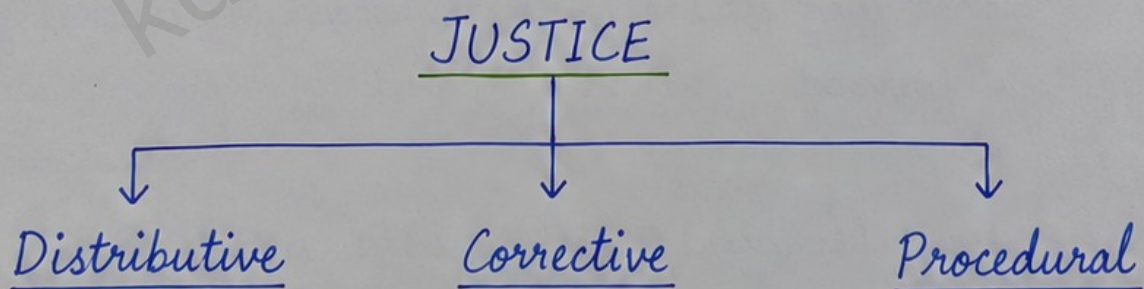
Concept and Kinds of Justice

Q - What is Justice?

Justice means fair treatment, giving people what is due and protecting rights through proper institutions.

Kinds of justice :

- (a) Distributive → fair sharing of benefits and burdens.
- (b) Corrective → remedying a wrong or loss.
- (c) Procedural → fair hearing and unbiased decision-making.
- (d) Social → reducing unfair exclusion and disadvantage.
- (e) Economic → fairness in economic opportunities.
- (f) Political → equal civic participation.



Example : hearing both parties before deciding is procedural justice.

Remember → Equality and fairness are related, but identical treatment is not always substantive fairness.

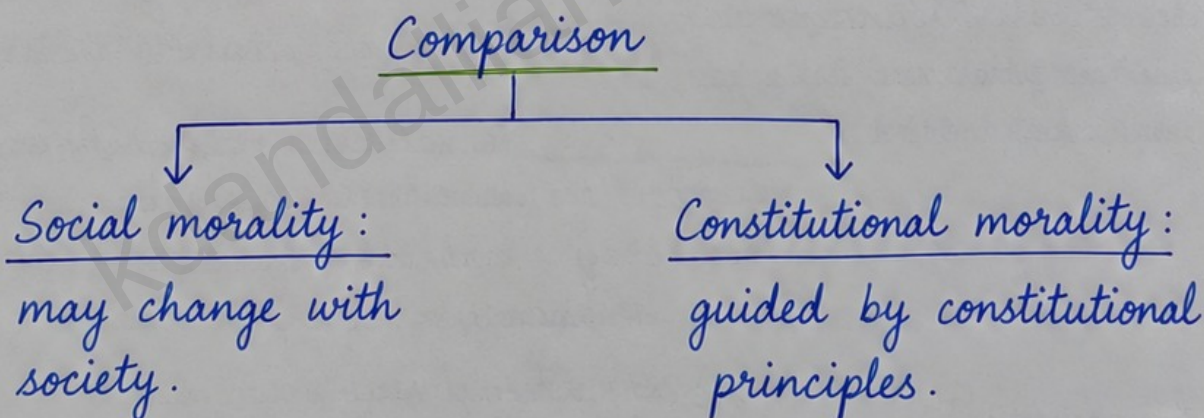
Morality - Social & Constitutional

Q - What is Morality?

Morality = principles and beliefs about right and wrong conduct.

Social morality → prevailing values, customs and attitudes of society.

Constitutional morality → commitment to constitutional values: liberty, equality, dignity, fraternity and rule of law.



v. imp → Popular opinion alone cannot determine constitutional rights.

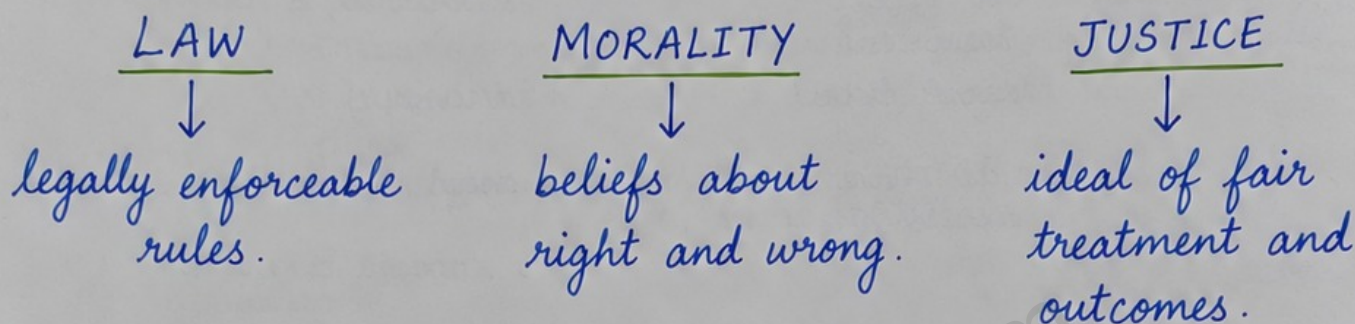
Example → Equality and dignity can protect a minority even when social attitudes disagree.

Cases to read: Navtej Singh Johar v. Union of India (2018); Joseph Shine v. Union of India (2018).

Law, Justice and Morality

Q - Are law and morality the same?

No. They overlap, but their sources and enforcement differ.

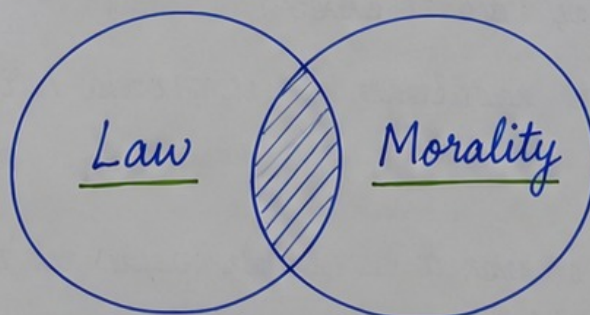


(v. imp) Nexus → moral ideas often influence legislation and judicial reasoning.

Differences → something may be immoral but lawful, or legally valid yet criticised as unjust.

Hart → separate the existence of law from its moral merit.

Fuller → legality requires fidelity to fair rule-making principles.



Remember → Legal validity and moral worth are distinct questions.

Classification I - Municipal & Public

Q - Municipal Law v. International Law?

Municipal (domestic) law → rules operating within a State's legal system.

International law → rules governing States, organisations and some international relations.

Note → How international rules operate domestically depends on the legal system.

Q - Public Law v. Private Law?

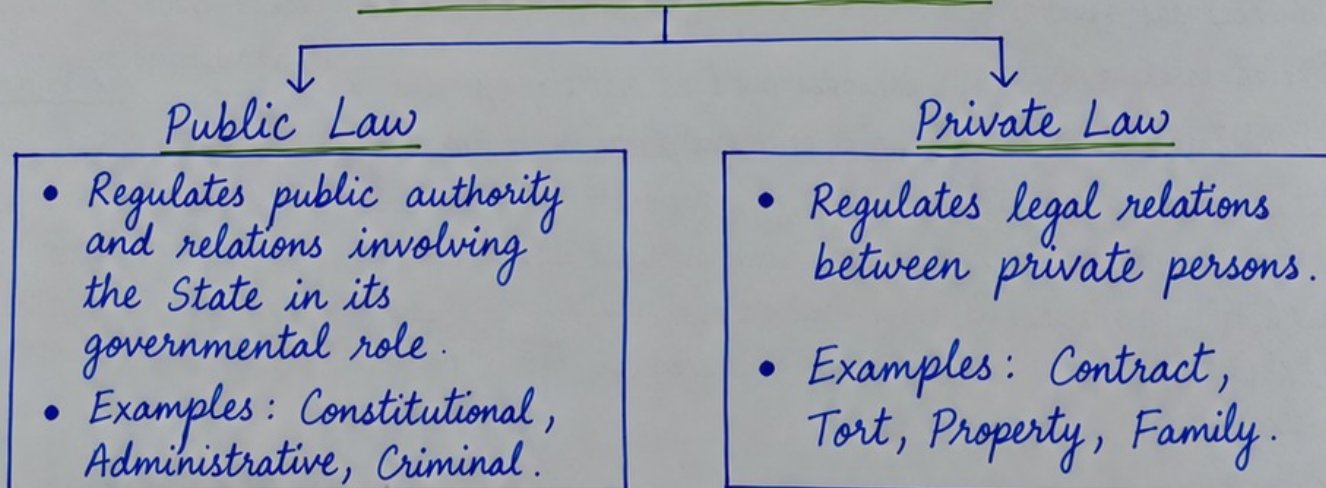
Public law → regulates public authority and relations involving the State in its governmental role.

Examples: Constitutional, Administrative, Criminal.

Private law → regulates legal relations between private persons.

Examples: Contract, Tort, Property, Family.

Public Law v. Private Law



v. imp

→ Borders overlap; a dispute can raise both public and private issues.

Classification II - Civil & Procedure

Q - Substantive Law v. Procedural Law ?

Substantive → creates or defines rights, duties, offences and liabilities.

Procedural → explains how rights are enforced or legal claims decided.

v. imp

RIGHT / DUTY → PROCEDURE → REMEDY

2021 examples : IPC and Contract Act (substantive);
CPC and CrPC (procedural).

Q - Civil Law v. Criminal Law ?

Civil → disputes over private rights; usual remedies include damages or injunctions.

Criminal → prosecution of legally defined offences; possible consequences include punishment.

Civil case: A v. B ; criminal case: State v. Accused
(usually).

Note → The same facts may create both civil and criminal consequences.

Classification III & Revision

Q - Common Law v. Civil Law traditions ?

Common law tradition → developed strongly through judicial precedent, with statutes also important.

Civil law tradition → traditionally organised around comprehensive legal codes; judgments also matter.

India follows a common-law-influenced system with extensive codification.

v. imp Important → 'Civil law' here means a legal tradition, NOT simply non-criminal cases.

UNIT I - QUICK REVISION

- ☐ (1) 8 thinkers and their key ideas.
- ☐ (2) Article 13(1)-(4), severability, eclipse.
- ☐ (3) Functions: order, rights, disputes, welfare, reform.
- ☐ (4) Justice: distributive, corrective, procedural etc.
- ☐ (5) Social morality v. constitutional morality.
- ☐ (6) Five classifications of law.

Practice Q: Is every immoral act illegal? Explain with reasons.