



SOURCES OF LAW

Sources of law give the law its mandatory characteristic and oblige the courts to apply it on the cases standing before them.

According to both paragraphs (2) and (3) of article (1) of the Iraqi Civil Law, official and unofficial sources of law are six sources classified into two categories; the main sources and the interpretative sources.

THE MAIN SOURCES

1) LEGISLATION:

It is the written legal rules enacted by a competent organ or power in a State. This organ or power is usually parliament, which come to the existence by election.

KINDS OF LEGISLATION:

There are three kinds of legislations, classified **serially** as follows:-

a) Constitutional Legislation (Constitution):

The fundamental law of a state, whether written or unwritten, which sets out how that State will be organized; or determines the political system of State, the form of government and the relationship between executive, legislative and judicial authorities, as well as organizes the relationship between these powers and citizens, besides identifies the public rights and freedoms.

b) Ordinary Legislation:

An ordinary law is a normal law (such as: administrative, criminal, civil, commercial laws), generally distinguished from a constitutional law and Subordinate law, which is enacted by the legislative body of the State (parliament) that is determined by the constitution.

c) Subordinate Legislation:

Subordinate Legislation in Iraq (and Kurdistan Region) issued by the executive authority after being authorized to do so by the legislator. It is issued in the form of Systems, Instructions and Internal Regulation to facilitate the implementation of the ordinary legislation.

2) THE CUSTOM:

It is the general practices and usages of a certain behaviour that is, usually, come to have the force of law by common adoption and unvarying habit. Courts in Iraq are applying custom rules as a formal source when there is no legislation applicable to the case raised before them.

Conditions of Custom:

- 1- It must be general and constant practices existed for a long time. It should not be against the public policy of legislation.
- 2- It derives its force of law from the tacit consent of the legislature and general adoption from people in public or particular places.

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3) PRINCIPLES OF ISLAMIC LAW:

Islam does not only include matters of purely religious flavor, which is regulating the relationship of the individual to God, but also legal rules for the regulation of human conduct between the individuals themselves. For example: the rules regulating marriage, divorce, inheritance, civil transactions, crimes, matters of public law, and affairs of international law and relations. Thus, it is justifiable to designate Islam as being "a religion and a State".

4- EQUITY (RULES OF JUSTICE):

Equity as a formal source of law, can be defined as a body of rules existing by the side of the original positive law of the country. It is founded on distinct principles of reason, or deduced from absolute justice. Therefore, principles of equity are strong, interrelated with the idea of natural law.

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THE INTERPRETATIVE SOURCES OF LAW

1- Judiciary (Judgment or Judicial Decisions):

It is a judicial opinion of a particular case in front of the judge, written by him in the framework of applying sources of law in the course for resolving a legal dispute and usually indicating the facts that led to the dispute and an analysis of the law used to arrive at the decision.

However, the question that will arise is whether such legal sources in the form of judgments or judicial precedents (case law) are applicable to all cases of a similar kind? The answer of this question depends on the judicial system followed in the country; in England and all Anglo-Saxon legal systems the judicial decision regarded as a main source of law, but in the other legal systems it is regarded as a supplementary source of law as it is the case in Iraq and many other countries in the world, which is binding only the parties to the case before the competent court.

2. JURISPRUDENCE (JURISTS OPINIONS):

Jurisprudence, or science of law, it is the views of prominent legal scholars and their interpretations of the law, which seeks to analyze, explain, classify, and criticize entire provisions of law. It can be found in their books, articles, research papers and other writings. Although such views are theoretical not binding to the courts directly (mainly), but they play a great role in clarifying the meaning of written legal rules, i.e. the legislation.