

UNIT - II

Functions of Law • Justice & Theories of Punishment

Civil & Criminal Administration of Justice • Secondary Functions of Courts

Unit Structure

01

Functions and Purpose of Law

Order, justice, social control, dispute resolution

02

Questions of Law, Fact and Discretion

Distinction and role of the judge

03

Justice and its Kinds

Distributive, corrective, formal, substantive

04

Theories of Punishment & Administration of Justice

Retributive, deterrent, preventive, reformatory

Functions and Purpose of Law

Law performs several essential functions in society:

- Maintenance of order and social stability
- Protection of individual rights and liberties
- Resolution of disputes through established procedures
- Allocation and regulation of power
- Social control and guidance of behaviour
- Facilitation of social change and social engineering
- Provision of a framework for economic activity and contracts

The ultimate purpose is often stated as the realisation of justice, though different schools define justice differently.

Questions of Law, Fact and Discretion

- Question of Fact: What actually happened? Determined by evidence. In a jury trial, the jury decides facts; in a bench trial, the judge does.
- Question of Law: What is the legal rule applicable? Interpretation of statutes, precedents and legal principles. Always decided by the judge.
- Discretion: The power of the judge to choose among legally permissible alternatives. Discretion must be exercised judicially, not arbitrarily.

The distinction is important for appeals: questions of law are more readily reviewable than findings of fact. Mixed questions of law and fact also arise.

Justice and its Kinds

Justice is the central ideal of law, yet its meaning is contested.

Aristotle's classification remains foundational:

- Distributive Justice – fair allocation of goods, honours and opportunities among members of the community according to merit or need.
- Corrective (Remedial) Justice – restoration of the balance when one person has wrongfully taken from or injured another.

Modern distinctions:

- Formal Justice – treating like cases alike; equality before the law.
- Substantive Justice – the fairness of the outcome or of the content of the law itself.
- Procedural Justice – fairness of the process by which decisions are reached.

Indian constitutional vision of justice includes social, economic and political justice (Preamble).

Civil and Criminal Administration of Justice

Civil Justice

Concerned with the enforcement of rights and the redress of private wrongs.

Remedies: damages, injunction, specific performance, declaration, restitution.

Parties: plaintiff and defendant.

Standard of proof: balance of probabilities.

Criminal Justice

Concerned with the punishment of public wrongs (offences against the State/society).

Object: punishment, deterrence, protection of society, reformation.

Parties: State (prosecution) and accused.

Standard of proof: beyond reasonable doubt.

Theories of Punishment

Retributive

Punishment is justified because the offender deserves it. “An eye for an eye.” Backward-looking.

Deterrent

Punishment is justified by its ability to deter the offender and others from committing crimes. Forward-looking.

Preventive / Protective

Punishment incapacitates the offender (imprisonment, death) so that he cannot commit further crimes.

Reformative / Rehabilitative

The aim is to reform the offender and reintegrate him into society as a law-abiding citizen.

Secondary Functions of the Court

Apart from the primary function of administering justice (deciding disputes), courts perform secondary functions:

- Administration of estates of deceased persons (probate, succession)
- Guardianship and custody of minors and persons of unsound mind
- Supervisory jurisdiction over subordinate courts and tribunals
- Advisory opinions (in some systems)
- Declaration of legal status (legitimacy, marriage, etc.)
- Enforcement of arbitral awards and foreign judgments
- Public interest litigation and continuing mandamus in the Indian context

These functions show that courts are not merely passive adjudicators but active institutions of governance.

Key Takeaways – Unit II

- Law serves the functions of order, justice, social control, dispute resolution and social engineering.
- Questions of law are for the judge; questions of fact are determined by evidence; discretion must be judicial.
- Justice has distributive, corrective, formal, substantive and procedural dimensions.
- Civil justice redresses private wrongs; criminal justice punishes public wrongs.
- Theories of punishment – retributive, deterrent, preventive and reformatory – offer different justifications.
- Courts also perform important secondary (administrative and supervisory) functions.

End of Unit – II

Functions of Law • Justice • Theories of Punishment

Proceed to Unit-III: Sources of Law – Legislation, Precedent & Custom