INSURANCE EXAM · IC-24

IC-24 Legal Aspects of Life Assurance

Revision book

16	2	159
chapters	master tables	numbered sections

FREE SAMPLE: Chapter 1 of 16

CHAPTER 1

Sources of Law

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MUST KNOW

1. Law = rules a country makes to regulate the actions of its citizens; common elements: State, rules, society.
2. **Four classes of sources:** formal, historical, legal, literary (F-H-L-L).
3. **Ancient Indian law:** Srutis, Smritis, customs, commentaries; Smriti loses to Sruti.
4. **Mitakshara:** all India except Bengal. Dayabhaga: Bengal.
5. **Muslim law:** Hanafi and Shia. Indian Succession Act **1925**. UCC: Article 44 (duty of the State).
6. Higher court binds lower court; precedent holds until reversed or overruled.
7. Constitution adopted **26 Nov 1949**; commenced **26 Jan 1950** (Art 394). Art 245 = power to make laws; Art 372(1) = old law continues.
8. **Bill:** Lok Sabha, Rajya Sabha, President's assent (last step).
9. **Life insurance Acts:** **1912** (first), **1938** (comprehensive), **1950** (first extensive amendment), **1956** (LIC Act).

1.1 Definitions of law

Jurist	Idea
Austin	Commands of a sovereign; typical law = state command or statute
Salmond	Principles recognised and applied by the state in the administration of justice
Grey	Rules the courts lay down to decide legal rights and duties
Roscoe Pound	Body of knowledge and experience for social engineering
Philips Heck	Each command settles a conflict of interests

- **Common to all:** State/authority; set of rules; society.
- **Aims:** decide rights and duties, administer justice, keep order.
- **Present trend:** sociological aspect.

1.2 Four classes of sources

Class	Meaning / examples
Formal	Authority from the sovereign's commands (the State)
Historical	Common law, equity, Merchant Law, Roman law, European law, customs, legislation
Legal	Case law, legislation, custom (custom now minor)
Literary	Law reports, statutory instruments, jurists' textbooks

- Formal source = ultimate authority (State); material sources = how law's content forms (custom, case law, statute).

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Roman law = historical. Law reports and textbooks = literary.

1.3 Delegated legislation

- Orders in Council; Ministerial Regulations; local authority and other bye laws; miscellaneous (local authority orders).
- Parliament uses Law Commission and Royal Commission reports as a base for laws.

1.4 Ancient Indian law

- Divine origin; King gave out the law; law independent of State.
- **Srutis (the Vedas, revealed texts):** little lawyer's law; Upanishads = highest principles of justice.
- **Smritis (Manu, Yajnavalkya):** principal source of lawyer's law. Dharma = religious, moral, legal, physical, metaphysical.
- **Custom:** ancient, certain, reasonable; construed strictly.
- **Commentaries:** Mitakshara (Vijnaneswara, on Yajnavalkya Smriti) and Dayabhaga (Jimutavahana, later) = two schools.

TRAP

- **Smriti conflicts with Sruti:** Smriti rejected.
- Dayabhaga = Bengal, mostly partition and inheritance; Mitakshara = everywhere except Bengal.

- **Privy Council:** Collector of Madurai v. Mooto.

1.5 Modern Indian law

- **British rule:** uniform criminal and civil law; personal laws stayed by community.
- **Indian Succession Act 1925:** other communities, mostly Christians (wills common to Hindus too).
- UCC aims at one secular set of personal laws for all citizens (marriage, divorce, inheritance, adoption).

TRAP

Article 44 puts the duty on the State, not on citizens.

- **Bill steps:** introduced in Lok Sabha; passed by Rajya Sabha; President's assent.

1.6 Common law, precedent, equity

- **Common law:** customs of the English people, found in court decisions; not static.
- Higher court binds lower courts; highest court may review its own decisions.
- **1966:** House of Lords treats its decisions as normally binding but may depart when right.
- Equity = fairness, good conscience; it is law, legally binding.
- Equity began in the 13th century; Chancellor; Court of Chancery; fused in one High Court of Justice in **1875**.
- **India:** law and equity in one court; act on equity, justice and good conscience; s.151 CPC **1908** = inherent power of the court.

1.7 Statute law and Constitution

- Statute law = Parliament laws + State laws + Constitution + Art 372 enactments + subordinate legislation. Purely written.

Article	Subject
44	Uniform civil code
245	Parliament and State make laws
372(1)	All law in force continues until altered, amended or repealed
394	Commencement = **26 Jan 1950**

- **Art 372:** only common law on substantive rights adopted in India is available.

1.8 Judicial precedent in India

- Judge applies the law, does not make it (British pattern); decisions still bind later cases.
- **Supreme Court and High Courts:** subordinate courts follow them strictly; judicial activism.
- Vishaka v. State of Rajasthan (AIR **1997** SC 3011): guidelines on women at work, a declaration of law until legislation.

1.9 Life insurance law

- **Vedas:** "Yogakshema" in Rig Veda. Ship owners' common fund = organised form.
- General law of contract applies; insurance has aleatory and adhesion features.
- Life fund = public money, guarded by strict law.

Year	Law
1912	Indian Life Assurance Companies Act (based on English Act **1909**)
1938	Insurance Act (4 of **1938**), comprehensive
1950	Insurance (Amendment) Act, first extensive amendment
1956	Life Insurance Corporation Act

> **TODAY'S RULE**
>
> Today the law is shaped mostly by IRDAI regulations (name IRDAI since **2015**); many older regulations were merged in **2024** (Protection of Policyholders' Interests, Operations and Allied Matters Regs **2024**; Insurance Products Regs **2024**).

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First Act = **1912**; first comprehensive Act = **1938**; first extensive amendment = **1950**.