

QUAID-E-AZAM LAW COLLEGE LAHORE

LLB-I

ENGLISH JURISPRUDENCE

ADVANTAGES AND DISADVANTAGES OF LEGISLATION

1. **Introduction:**

2. **Derivation:**

➤ **Legislatum:**

- i. Legis: law
- ii. Latum: process, to make
“Law making process”

3. **Meaning:**

Literal: an act or process of legislating.

Legal: according to Black’s Law Dictionary:

The process of making or enacting the positive law in written form according to some type of formal procedure by branch of Govt. constituted to perform this process.

4. **Definitions:**

i. **Salmond:**

Legislation is the source of law which consist in the declaration of legal rules by competent authority.

ii. **Gray:**

The formal utterances of the legislative organs of the society.

iii. **Holland:**

The making of general orders by our judges is as true legislations carried on by the crown.

iv. **Austin:**

There can be no law without legislative act.

5. **Views of different schools:**

i. **Analytical school:**

Law is a statute and the legislation is the making of the law.

ii. **Historical school:**

Legislation has no independent creative role at all, its only legitimate purposes to give better form and make effective the custom spontaneously developed by the people.

6. **Kinds of legislation:**

i. **Supreme Legislation**

ii. **Subordinate Legislation:**

- a. Colonial
- b. Executive
- c. Judicial
- d. Municipal
- e. Autonomous

7. **Advantages of Legislation:**

i. **Abrogative power:**

Legislation has abrogative power. It can abolish the existing law, which necessary for legal reform. Precedent dose not enjoy the abrogative power and it cannot reverse the existing law.

ii. **Accessibility:**

Statute law is easily accessible and therefore everyone may consult the law affecting themselves. If law is accessible, people will come to know what it is and are therefore more likely to follow it.

iii. **Benefits to lawyers/profession:**

The logically articulated skeleton of the law due to codified legislation makes it easy even for lawyers to extract the principles of law.

iv. **Advantage of efficiency:**

In legislation, the doctrine of separation of power results in increased efficiency. The duty of making laws is reserved for the legislature, while that of interpreting it for the judiciary so in case of precedents, the functions of legislation and interpretation are combined and that is hardly desirable.

v. **Satisfaction of principle of natural justice:**

Legislation satisfies the requirement of natural justice that laws shall be knows before they are enforced. Law is formally declared to the proper and will be subject to punishment if they violate the same. In case of precedent, it is created and declared in the very act of applying and enforcing it.

vi. **Law for future cases:**

Legislation making rules for cases that have not yet arisen, but precedent must wait until the actual concrete incident comes before the Courts for decision.

vii. **Power to make anticipatory rules:**

New points may be arisen in both a statute and case law. There may be an omission which has to be made good or a doubt to be settled or a defect cured. Legislature can settle this in on time, when its existence is brought to its notice. But precedent must wait, until by chance, the very case arises or the decision is challenged in a superior Court.

viii. **Superior in form:**

Legislation is superior in form to precedent. It is brief, clear easily accessible and knowable while the quest for the principle of law in a judicial decision entails a long search through multitudinous reports.

- ix. **General Supremacy over precedent:**
Legislation is a superior over precedent as law can be made against some precedent but the precedent cannot exist opposed to statute law.
- x. **Suitable for fact changes:**
Legislation is some suitable for fast changes which time needed. According to Prof. Friedman "It will be difficult to deny that in modern circumstances development of law through precedent is slow, costly, cumbrous and often reactionary. It is therefore less suitable for a time of fast changes and restlessness.
- xi. **Collective/socialist measures can be undertaken:**
Legislation allows the government to undertake collective welfare schemes through welfare laws. Common law which is based upon individualism is incapable of doing so.
- xii. **Democratization of law:**
The pro legislation proponents argue that it is the People who elect the Parliament which in turn makes the law; therefore indirectly it is the people who make the law. It is further argued that "what you yourself make, you tend to obey".
- xiii. **General in application:**
Judge-made-law is specific and deals with particular circumstances. Legislation lay down general rules and therefore, wider ranges of cases are covered.
- xiv. **Codified law:**
D.D. Field in his book Codification argues that no country which has once exchanged codified law for the unwritten law has ever changed back which means that codified law is good or better compared to judge-made law and constitutes a step forward in the development of the legal system.
- xv. **Initiating change:**
Many a times the government wishes to initiate change in society, which it is unable to do without legislation. As we know, sudden and drastic changes do not take place in society very quickly, for mankind by its inherent nature is averse to change.
- xvi. **No slavish obedience:**
Friedman points out that just because there is a code, it does not mean that a judge has to obey it like a slave. Judicial discretion and maneuverability exists in a spite of codes.
- xvii. **Unification:**
Codes are also useful in unifying diverse jurisdictions.
- xviii. **Logical arrangement:**
Codified laws can be arranged in a simple, coherent and logical manner. They may further, be indexed and therefore there is ease of reference which in turn saves time and is simpler to understand.
- xix. **Bulk is reduce:**
Common law as enunciated in precedent is too bulky as there is a multiplication of cases and a maze of precedents. Statute law is in general, brief; while case law is buried from sight and knowledge in the mass of records of bygone litigation.
- xx. **Functions of legislature:**

Legislature attends to the work of legislation and judiciary attends to the work of interpreting and applying law.

8. Disadvantages of legislation:

i. Rigid:

It is not possible to legislate on every possible legal situation. Unforeseen situations will always come-up which have not been incorporated into the code/legislation.

ii. Not reduced to simple language:

Technical matters cannot be reduced into simple language.

iii. Approved/Accepted:

A code takes years to be drafted, approved, accepted etc. in the mean time, society goes ahead.

iv. Codes can be misused:

Badly written codes can be misused by bad elements of society.

v. Uncertainty:

An ambiguous code or legislation leads to uncertainty, until that ambiguity is clarified by the court.

vi. Complex legislative process:

A code once enacted can be changed only by a very complex legislative process.

vii. Difficult language:

Codes written in a language alien to the masses do not serve the purpose.

viii. Politically volatile issue:

The choice of the people who will draft the code is always a politically volatile issue and allegations of bias are heaped.

9. Conclusion: