Chapter: Concept of Legislation

A. UNDERSTANDING LAW AND LEGISLATION

Why Does the Distinction Matter?

Law does not come from statutes alone. Courts develop binding precedents, and certain customs acquire legal force. This distinction matters because it identifies the source of a rule, the authority behind it and the constitutional limits on its operation. An Act usually establishes the framework; rules and regulations supply the working details.

LAW — BROADER CONCEPT	LEGISLATION — ONE SOURCE OF LAW
Binding norms recognised and enforceable by the legal system; regulate conduct, create rights and duties, and resolve disputes.	Formal making or enactment of binding law by a competent legislative authority.
Includes legislation, judicial precedents and legally recognised customs.	Requires competent authority, formal enactment or promulgation, and a binding legal rule.

Illustration:

Law Beyond Legislation

Consider a principle laid down by the Supreme Court: under Article 141, it binds courts across India even though Parliament has passed no separate Act. Likewise, a legally recognised custom may operate as law.

KEY IDEA: Legislation is a source of law, but not its only source.

B. TYPES OF LEGISLATION

PRIMARY LEGISLATION	SECONDARY / SUBORDINATE LEGISLATION
Made by legislatures or under specific constitutional legislative power.	Made by the Executive, regulator or authorised body under an enabling law.
Lays down the principal legal framework or policy.	Supplies procedures, operational details or technical standards.
Acts, Ordinances, Constitution Amendments.	Rules, Regulations, By-laws.

(i) Primary Legislation

- **Act:** Enacted by Parliament or a State Legislature after a Bill completes the prescribed process and receives required assent.
- **Ordinance:** Temporary law promulgated by the President or Governor when constitutional conditions require immediate action; has the force and effect of an Act, subject to legislative scrutiny and constitutional limits.
- **Constitution Amendment:** Changes constitutional text through Article 368; certain amendments also require ratification by at least half of the State Legislatures.

(ii) Secondary / Subordinate Legislation

Subordinate legislation is made by the Executive, a regulator or another authorised body under powers conferred by the Constitution or a parent Act. It gives practical effect to the principal law; it cannot travel beyond the power delegated.

INSTRUMENT	FUNCTION	EXAMPLE
Rules	Procedures and operational details.	RTI application procedure and fees.
Regulations	Technical or sector-specific standards.	SEBI requirements for market participants.

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INSTRUMENT	FUNCTION	EXAMPLE
By-laws	Local administrative requirements.	Municipal building and sanitation requirements.

Illustration:

How Subordinate Legislation Works

The Right to Information Act, 2005 establishes the right to information and authorises rule-making. The RTI Rules deal with matters such as application procedure and fees. They cannot override the Act or curtail the statutory right.

KEY IDEA: The Act supplies the authority; the rules supply the procedure.

Why Is Secondary Legislation Needed?

NEED	PURPOSE / EXAMPLE
Operational detail	Turns broad provisions into workable procedures (RTI Rules).
Flexibility and timely response	Updates procedural or technical details without a new Act for every change (disaster-management rules).
Specialised knowledge	Allows expert regulators to frame standards (SEBI regulations).
Local regulation	Addresses local administrative needs (municipal by-laws).

Remember the Distinction:

Rules usually address procedure, regulations commonly deal with sector-specific standards, and by-laws govern matters within a local authority's jurisdiction. Their validity depends on the enabling law and the Constitution.

C. CONSTITUTIONAL SIGNIFICANCE

PROVISION	SIGNIFICANCE
Article 13	"Law" includes ordinances, orders, by-laws, rules, regulations, notifications and customs/usages with force of law; inconsistent law is void to the extent of inconsistency with Fundamental Rights.
Articles 123 and 213	Article 123: the President may promulgate an Ordinance when both Houses of Parliament are not in session and immediate action is necessary. Article 213: the Governor may do so when the State Legislature is not in session, subject to constitutional conditions.
Articles 245–246; Seventh Schedule	Distribute legislative competence between Parliament and State Legislatures.
Article 368	Procedure for constitutional amendment.
Article 141	Law declared by the Supreme Court binds all courts in India.

Important:

A rule is not valid merely because an authority has issued it. Courts may strike it down if it exceeds the delegated power, contradicts the parent Act or violates constitutional provisions, including Fundamental Rights.

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D. ILLUSTRATIONS FOR QUICK UNDERSTANDING

Illustration:

From an Act to Rules: One Law, Two Levels

Under the RTI Act, 2005, the right to seek information comes from Parliament's enactment. The rules explain how applications are made and fees paid.

KEY IDEA: A rule may facilitate the right; it cannot take it away.

Illustration:

Rules, Regulations and By-laws: Three Uses

An RTI rule deals with application procedure; a SEBI regulation sets standards for market participants; a municipal by-law governs local building requirements.

KEY IDEA: The source of power and area of operation differ, but each must stay within its statutory authority.

E. UPSC PRELIMS PYQS

PYQ 1 — Ordinance-making power

With reference to the Indian polity, consider the following statements:

1. An Ordinance can amend any Central Act.
2. An Ordinance can abridge a Fundamental Right.
3. An Ordinance can come into effect from a back date.

Which of the statements given above are correct?

(a) 1 and 2 only
(b) 2 and 3 only
(c) 1 and 3 only
(d) 1, 2 and 3

PYQ 2 — Meaning of "law" under Article 13

"X" was addressing a seminar on the meaning of the term "law" as provided under Article 13, Part III of the Constitution of India. "X" explained that the meaning of the term "law" in the Constitution of India was very comprehensive. It included ordinances, orders and even rules and regulations. "Y" pointed out that the term "law" in Article 13 also included custom or usage having in the territory of India the force of law, to which "X" was not convinced.

Based on the above, select the correct conclusion from the options given below:

(a) "X" is correct in the interpretation of law, including the view on non-inclusion of custom.
(b) The view of "Y" that "law" included custom is not correct.
(c) The views of both "X" and "Y" are correct.
(d) The view of only "Y" is correct.

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