

Group-B

Q 2 Types of legislation, define sub ordinate legislation and its kind?

TYPES OF LEGISLATION:

Legislation can be done by many different authorities on the basis of that, there has been a differentiation done between various types of legislation. Broadly, legislation can be divided into two categories

1. Supreme Legislation
2. Subordinate Legislation

1. SUPREME LEGISLATION:

Supreme legislation is that which proceeds from the sovereign power in the state. It cannot be repealed, annulled or controlled by any other legislative authority. It is enacted by the highest law-making authority in the state.

For example parliament in India, USA and England.

In England, Supreme legislation cannot be questioned in a court of law. The British Parliament is in every sense of sovereign law making body. In Britain, the doctrine of parliamentary sovereignty implies supremacy and omnipotence of British Parliament. Therefore, it possesses the power of Supreme legislation. In India and United States of America however, the parliament is sovereign but not supreme because legislation can be declared ultra virus or unconstitutional by a court of law. It may therefore, be amended or altered.

In India, even though there are certain checks on lawmaking authority of parliament but still it is the supreme authority to make laws in India.

2. SUBORDINATE LEGISLATION:

Subordinate legislation is that which proceeds from any authority other than the sovereign legislation power, and is, therefore, dependent for its existence or validity on some superior or supreme legislative authority. It comes from a subordinate legislature or any authority and is subject to the repealing or sanctioning control of a superior legislation.

In England all form of legislative activity recognized by law, other than the power of parliament are subordinated and subject to parliamentary control.

KINDS OF SUBORDINATE LEGISLATION:

According to Salmond, delegated legislation is that which proceed from any authority other than sovereign power. Salmond refers to five Kinds of Subordinate Legislation which are as follows :

(1) Municipal legislation

(2) Executive legislation

(3) Colonial legislation

(4) Autonomous legislation

(5) judicial legislation

The chief forms or types of subordinate legislation are five in number. These are:

1. COLONIAL LEGISLATION:

It is applicable only in cases where any country is under the control of some other country and the country in controlling authority has the power to supervise laws in the subordinate country. In such cases laws made by subordinate country is colonial law, for example laws made by one of the British colonies and dominions.

2. EXECUTIVE LEGISLATION:

Though the main function of the executive is to enforce laws, but in certain cases, the power of making rules is delegated to the various departments of the government, which is called subordinate delegated legislation.

• DELEGATED LEGISLATION:

When power to make laws conferred by the supreme authority over the executive, it is also called delegated legislation. The power so conferred upon the executive body to make laws all for the following reasons:

Because of lack of time parliament does not have time to formulate laws always by itself. So it delegates it to the executive.

Delegated legislation may create danger in certain aspects which according to Keeton are two-fold:
The delegation of excessive powers. Assumptions of wider powers than provided by parliament.

3. JUDICIAL LEGISLATION:

It means rules of procedure made by superior courts for their own guidance under authority delegated to them for the purpose. In other words the superior courts have the power of making rules for the regulation of their own procedures.

4. MUNICIPAL LEGISLATION:

Sometimes municipal authorities are provided with the power of establishing special laws for the districts under their control. They are allowed to make bye-laws for limited purposes within their areas. These are legislation of local bodies such as municipal or corporations.

5. AUTONOMOUS LEGISLATION:

When power is conferred by supreme authority upon groups of individuals in relation to matters governing them, it is autonomous legislation. It basically gives power to that group to make laws for themselves and run autonomously.