

## **Review**

# **The Public- Private Law Divide – A Critical Appraisal**

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**In ancient times, Private Law was considered as General Law and Public Law was considered to consist of exceptions to this General Law. In the later part of the Twentieth-century Public Law began to play a prominent in 'Constitutionalization' of Private Law, as well as the development of Administrative Law and this in turn lead to the development of the various functional fields of Law viz, Labor Law, Medical Law, and Consumer Law. The Public Law now refers to the areas of Constitutional Law, Administrative Law, and Criminal Law. Public law, as a form of Law regulates the relations between the Citizen and State and intends to ensure that the State Power is not misused, However it is also mindful about the need for a governmental power to regulate the activities of the citizens for ensuring Good Governance. Hence it strikes a balance between the Power and the obligations of the States**

**Keywords:** Constitution, Public Law, Private Law, Criminal Law, Good Governance

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## **INTRODUCTION**

Law regulates the human activities to ensure that there is orderly human existence in the society. Law takes different forms depending on the context in which it applied or the activities which it intends to regulate. Public Law as form of Law regulates the relationships between citizens and governments and stipulates the rules which govern how public institutions work. The states with a common-law tradition have in place public law that intersects and overlaps Private Law, while in those countries which follow Civil Law follow two separate systems of law for Public and Private. In general, Administrative and Constitutional Law form the two central categories of Public Law. Public Law defines relationships between the organs of the state and aims to create the concept of absolutist monarchy that features in

modern forms of Governments. The Roman nation of the republican, which is the root of Republican Government in Western political theory at least, is considered as the precursor for the early conceptualization of for Public Law as a concept or independent body of rules. The Principles of the Public Law depict the manner in which the developing nation-state had various and sometimes competing goals and how states were directed towards a communal way of life for its citizens based on natural law.

## **MATERIALS AND METHOD**

The division between Public and Private Law is made in the context of the Civil Law Legal systems. However, distinction between the Public/Private divide does not

apply strictly to Civil Law systems as the emphasis of the Public Law's aspects of the State are applicable to all systems of government. Even in Common Law Legal System, Public Law is in place as the actions which are prohibited by State are equally prohibited by the private parties. For instance, common law systems, as prevalent in United Kingdom and Canada, follow distinction between the Public and Private Law. In ancient times,

Private Law was considered as general law and Public law was considered to consist of exceptions to this general law. In the later part of the Twentieth-century Public Law began to play a prominent in 'constitutionalization' of Private Law, as well as the development of Administrative Law and this in turn lead to the development of the various functional fields of Law viz, Labor Law, Medical Law, and Consumer Law. The Public Law now refers to the areas of Constitutional Law, Administrative Law, and Criminal Law.

### Constitution

The Constitution is a document having legal sanctity which divides the powers of the Government among it's various organs and regulates the exercise of such power. According to Aristotle "constitution" refers to the notion of a system of higher law which regulates the governance of the State. Initially the religious instruments like the Islamic Charter of Medina and legal instruments like The Magna Carta, signed in 1215 in England, and customary practices and conventions regulated the manner of governance of a State with a dual-system of law where one set of rules were higher than the other and therefore took precedence. Later on these rules were codified to be adopted as a Higher Law which could check the misuse of power by the State. The Constitution represents a notion of a higher law that has in place a mechanism to prevent the misuse of the power by the organs of the Government. In most countries, Constitution is seen as the Ground Norm which forms the basis of the legal system as prevalent in that country and is the touch stone to assess the legality of any State Act. Public Law is also associated with Constitutionalism, which means that, Constitution must not just divide the powers of the Government among various organs but also have in place a mechanism to prevent one organ usurping the powers of an another organ. The Principles of Rule of Law, Separation of Powers and Judicial Review are the key concepts of the Constitutionalism which owe their origin to Pubic Law.

### Administrative Law

Administrative Law contains the rules and procedures relating to exercise of Administrative Powers and

adjudication of any disputes by competent Agencies, Tribunals, and Courts. The concept of Judicial Review is the core aspect of Administrative Law which empowers the Courts to determine the legality of the Government Activities in regard to Administration. Administrative Law is equally concerned with the exercise of the Discretionary Powers by the Government as in a welfare state Governmental activities affect the Legal and Constitutional Rights of the citizens.

### Differences between Public Law and Private Law

There are various ways in which the Public Law and Private Law can be distinguished. The distinction between public and private law is as follows.

(a) **Public law.** Public law is concerned with the relationship between the state and its citizens. This comprises several specialist areas such as:

(i) **Constitutional law.** Constitutional law is concerned with the workings of the British constitution. It covers such matters as the position of the Crown, the composition and procedures of Parliament, the functioning of central and local government, citizenship and the civil liberties of individual citizens.

(ii) **Administrative law.** There has been a dramatic increase in the activities of government during the last hundred years. Schemes have been introduced to help ensure a minimum standard of living for everybody. Government agencies are involved, for example, in the provision of a state retirement pension, income support and child benefit. A large number of disputes arise from the administration of these schemes and a body of law, administrative law, has developed to deal with the complaints of individuals against the decisions of the administering agency.

(iii) **Criminal law.** Certain kinds of wrongdoing pose such a serious threat to the good order of society that they are considered crimes against the whole community. The criminal law makes such anti-social behaviour an offence against the state and offenders are liable to punishment. The state accepts responsibility for the detection, prosecution and punishment of offenders.

(b) **Private law.** Private law is primarily concerned with the rights and duties of individuals towards each other. The state's involvement in this area of law is confined to providing a civilized method of resolving the dispute that has arisen. Thus, the legal process is begun by the aggrieved citizen and not by the state. Private law is also called civil law and is often contrasted with criminal law. 2 Criminal and civil law. Legal rules are generally divided into two categories: criminal and civil. It is important to understand the nature of the division because there are

fundamental differences in the purpose, procedures and terminology of each branch of law.

(a) **Criminal law.** The criminal law is concerned with forbidding certain forms of wrongful conduct and punishing those who engage in the prohibited acts. Criminal proceedings are normally brought in the name of the State and are called prosecutions.. It should be noted that prosecutions may also be undertaken by bodies, such as the trading standards department of the local authority, and by private individuals, e.g. a store detective prosecuting a shoplifter. In criminal cases you have a prosecutor who prosecutes a defendant in the criminal courts. The consequences of being found guilty are so serious that the standard of proof is higher than in civil cases: the allegations of criminal conduct must be proved beyond a reasonable doubt. If the prosecution is successful, the defendant is found guilty (convicted) and may be punished by the courts. The Criminal Justice Act 2003 sets out for the first time in legislation the purposes of sentencing adult offenders, which are punishment, crime reduction, the reform and rehabilitation of offenders, and reparation. Punishments available to the court include imprisonment, fines, or community orders such as an unpaid work requirement. If the prosecution is unsuccessful, the defendant is found not guilty (acquitted).

(b) **Civil law.** The civil law deals with the private rights and obligations which arise between individuals. The purpose of the action is to remedy the wrong that has been suffered. Enforcement of the civil law is the responsibility of the individual who has been wronged; the state's role is to provide the procedure and the courts necessary to resolve the dispute. In civil proceedings a claimant sues a defendant in the civil courts. The claimant will be successful if he can prove his case on the balance of probabilities, i.e. the evidence weighs more in favour of the claimant than the defendant. If the claimant wins his action, the defendant is said to be liable and the court will order an appropriate remedy, such as damages (financial compensation) or an injunction (an order to do or not do something). If the claimant is not successful, the defendant is found not liable. Many of the laws affecting the businessperson are part of the civil law, especially contract, tort and property law. The distinction between the criminal and civil law does not depend on the nature of the wrongful act, because the same act may give rise to both civil and criminal proceedings. Normally, the loser in a civil action pays the winner's costs. So Gordon is ordered to pay Julie's costs in bringing the action.

## CONCLUSION

Public law, as a form of Law regulates the relations between the Citizen and State and intends to ensure that the State Power is not misused, however it is also mindful about the need for a governmental power to regulate the activities of the citizens for ensuring Good Governance. Hence it strikes a balance between the Power and the obligations of the States. Constitutional and Administrative Laws are regarded to be the prominent parts of the Public Law and are at various instances overlapping with regard to powers and procedures for exercise of powers. The Judiciary has played an important role in evolving the Public Law by recognizing its importance in the Governance and identifying new principles of Public Law.

The Principles of Judicial Review, Separation of Powers and Rule of Law are the principles of Public Law which have got the Judicial Recognition and are recognized as part of the Legal System in various countries. Public Law is relevant for Legal Research and in framing of policies by the Government as it stipulates the rules for exercise of power by the organs of the Government in compliance of the Constitutional and Legal Rights.

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