Introduction to Forensic Nursing and Indian Laws — Unit 5: Sources of laws and law-making powers

Sources of Law

Definition

- **Law** is a system of rules recognised and enforced by the State to regulate conduct, protect rights and resolve disputes.
- A nurse's legal responsibilities may arise from legislation, court decisions, professional regulation and the duty owed to a patient.
- An institutional policy guides work but cannot authorise an act that the law prohibits.

Main Sources

1. Constitution

- The Constitution is the supreme legal framework and determines the powers of government and protection of rights.
- Other laws must remain consistent with it.

2. Legislation

- Legislation consists of Acts made by Parliament or state legislatures within their constitutional authority.
- Examples include laws governing criminal offences, child protection and professional regulation.

3. Delegated Legislation

- Rules, regulations and notifications may be made by an authority using powers granted by an Act.
- They supply operational details but must remain within the parent law and constitutional limits.

4. Judicial Precedent

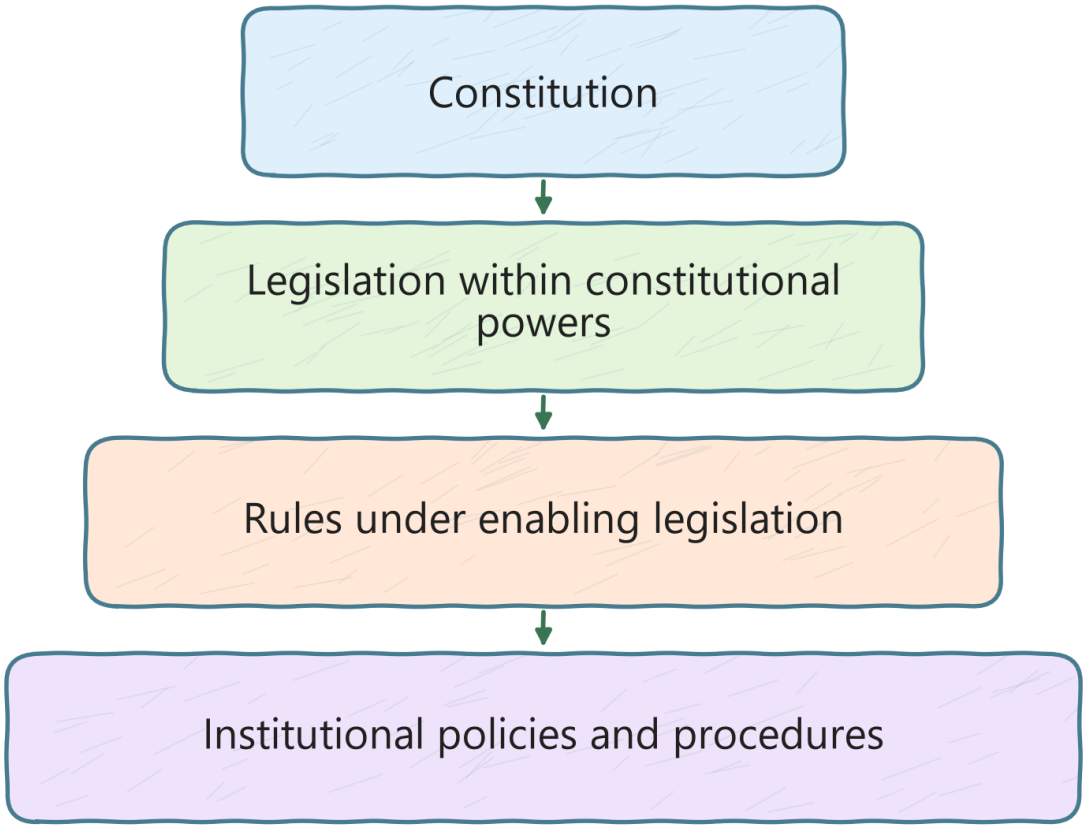
- Judicial precedent is a legal principle established through a court decision that guides later cases according to the court hierarchy.
- Law declared by the Supreme Court is binding on courts throughout India under Article **141**.
- A judgment must be read in its legal context rather than reduced to an isolated sentence.

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5. Custom and Personal Law

- Certain customs and personal laws are recognised in specified legal matters when valid under the applicable legal framework.
- A custom cannot justify a violation of constitutional protections or an applicable statute.

Lower authority must stay within higher law



Court decisions interpret the law and may be binding

Policies and rules must remain within higher legal authority

Law-making Powers

Constitutional Distribution

- Legislative powers are distributed mainly through Articles **245–246** and the Seventh Schedule.
- The three legislative lists distinguish matters primarily assigned to Parliament, states and both levels.

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Legislative Lists

1. Union List

- Parliament generally legislates on Union List subjects, such as defence and foreign affairs.
- National responsibility supports uniform action on matters affecting the country as a whole.

2. State List

- State legislatures generally legislate on State List subjects, including public health and sanitation, hospitals and dispensaries.
- State laws and rules therefore influence many everyday healthcare arrangements.

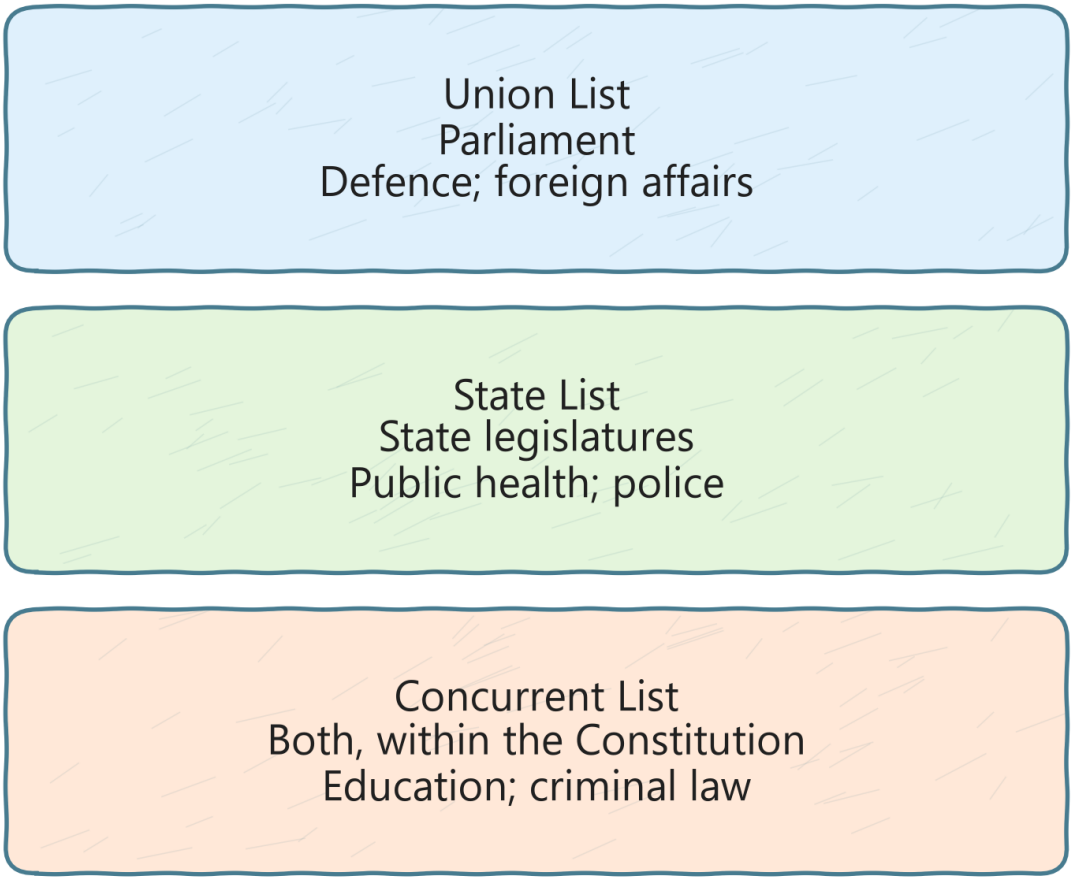
3. Concurrent List

- Parliament and state legislatures can legislate on Concurrent List subjects, including criminal law and criminal procedure within constitutional limits.
- Where valid Union and state laws conflict on a concurrent subject, Article **254** governs the result and its specified exceptions.

First Hope

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Distribution of legislative subjects



Constitutional exceptions and conflict rules also apply

Legislative subjects may belong to the Union, states or both

Other Powers

- Parliament has residuary legislative powers over matters not assigned to the state or concurrent lists.
- The Constitution also permits Parliament to legislate on certain state matters in specified circumstances.
- These exceptions should not be confused with a general power for any authority to make any health-related rule.

Making an Ordinary Parliamentary Law

1. Introduction of a Bill

- A **Bill** is a proposed law introduced in Parliament by a minister or another eligible member.
- Introduction begins consideration but does not itself make the proposal enforceable law.

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2. Consideration and Examination

- Members debate the proposal, and it may be examined by a committee.
- Clauses and amendments are considered according to parliamentary procedure.

3. Passage by Parliament

- An ordinary Bill must be passed by both Houses in the required form.
- Special rules apply to Money Bills and constitutional amendment Bills.

4. Assent

- The Bill is presented to the President for assent through the constitutional process.
- Once enacted, it becomes an Act, but the date when each provision operates depends on its commencement clause and notifications.

5. Commencement and Implementation

- Some Acts operate immediately, while others start on a specified or separately notified date.
- Rules and administrative arrangements may be needed to implement the law in practice.

State Legislation

- State legislatures make laws within their authority, with the Governor performing the constitutional role concerning assent and reservation where applicable.
- Nurses should distinguish an enacted law from a draft Bill, proposed amendment or unofficial summary.

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