

Judicial Precedent

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- Main feature of English legal system because most of the common law is unwritten and owes its origin from judicial precedents.
- Precedents have a binding force on judicial tribunals for deciding similar cases in future.
- In Continental countries like Germany, France, Italy JP has only instructional value and not authoritative, while in English legal system it is authoritative.
- English Judges played very important role in development of single homogeneous system of common law.
- According to Salmond, the doctrine of precedent has two meanings -
① loose sense - precedents include merely reported case law which may be cited and followed by the courts
② strict sense - precedents means case laws which not only has binding authority but must also be followed.

Precedent as a Source of Law

Precedent has a binding force and therefore it is an important source of English law. According to Bentham precedent is a judge-made law while Austin calls it as 'Judicial law'.

Doctrine of Precedent has gained favour with English law courts because it leads to certainty of law, ~~and also~~ it enables illogical and unsatisfactory decisions to be overruled to meet the end of justice.

Nature of Judicial Precedent

A Judicial Precedent is always constitutive in nature means it can create law but can't abolish it. The judges are not at liberty to substitute their own views when there is a settled principle of law.

Kinds of Precedents

Either authoritative or Persuasive

- Authoritative → binding force and judge must follow it whether he approves it or not. These are the decisions of superior court which are binding on subordinate courts
- Persuasive - Judges are not under the obligation to follow but they may take into consideration

Kinds of Persuasive Precedents

- ① Foreign Judgments
- ② Judgments of Privy Council
- ③ Judicial dicta (Obiter dicta)
- ④ Authoritative text books and commentaries
- ⑤ Decision of superior courts to other parts of British Empire.

India -

Decisions of House of Lords, Privy Council and S.C. of USA & Canada have only persuasive value.

Decisions of S.C. of India are binding on all the courts in India and constitute authoritative precedents.

A/141 - of the Constitution of India gives a Constitutional status to the doctrine of Precedent in respect of laws declared by S.C.

In Bengal Immunity Ltd v Sh. Bihari (AIR 1955 SC 661)

The S.C. has held that it is not bound by its own decision

In Somvati v Sg Punjab (AIR 1913 3415) S.C. clarified that what is binding is ratio decidendi i.e. principle of law applicable to the legal problem.

A decision of a H.C. shall be authoritative for its subordinate courts whereas it would be only persuasive for H.C.s of other states.

In England - House of Lords is the highest court in the hierarchy of courts. Therefore its decisions are absolutely binding on all inferior courts.

Declaratory Theory of Precedents

Judges don't make law but they merely declare it. Judges maintain and explain the existing law, hence they are lawfinders and not law-makers (Blackstone)

American Jurist James Carter supports Blackstone theory and ^{says} judicial decisions are mere declaration of existing laws.

While Austin calls declaratory theory as hypothetical and a childish fiction employed by Common law judges as no law can be made by them.

But the view of Carter was criticised by some jurists on the ground that ^{existing} cases which are not covered by law create new notions and formulate new principles.

for eg in Rylands v Fletcher a new category of

Circumstances which destroy the Binding force of Judicial Precedents

① Ignorance of Statute - A precedent is not binding

if it be rendered in ignorance of any statute or any other rule having the force of statute.

It is also not binding if the Court had the knowledge of the existence of the statute but it failed to appreciate its relevance to the matter in hand due to negligence or ignorance.

② Inconsistency with earlier decision of higher Court -

A precedent loses its binding force completely if it is inconsistent with the decision of a higher Court.

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Ratio Decidendi —

It is a well established ^{but} doctrine of precedents pre-supposes existence of the hierarchy of courts.

In general Courts are bound by the decisions of all higher Courts than itself.

In England — a H.C. judge can't question a decision of the Court of appeal, nor can the Court of Appeal refuse to follow the judgments of the House of Lords.

A decision generally has two aspects —

① What Principle it lays down as the rule of law which it becomes an authority and its Ratio decidendi of the case

② What the case decides How the Parties. "Sunt materiae" become res judicata b/w the parties and can't be subject of further dispute

Ratio decidendi — Reason of the decision or rule of law upon which the decision is founded.

Res judicata — decision given in a particular case and conclusive b/w the parties of the case.

Example — According to Rupert & Cross ratio decidendi is a rule of law expressly or impliedly treated by the judge as a necessary step in reaching ~~the~~ his conclusion.

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According to Prof- Goodhart ratio decidendi is nothing more than the decision based on the material facts of the case.

Illustration — English Case — Bridges v Hawkesworth

(1851) 21 L.J.Q.B.71 — In this case a customer found ~~the~~ some money on the floor of a shop. The Court applied the rule of 'finders-keepers' and awarded possession of the money to him rather than the shopkeeper.

Ratio decidendi of the case is finders of goods is the keeper.

Loughlin v Stevenson — it was held that manufacturer is liable to consumer for his negligence in manufacturing the goods. Thus the plaintiff was held entitled for damages caused due to decomposed soil inside the garage bin.

Obiter dicta — In the course of judgment, a judge makes various observations which are not precisely relevant to the issue before him. For instance he may illustrate his reasoning by reference to hypothetical situations.

These dicta have the force of persuasive authority and are not binding upon the courts. The courts may seek help from them but they are not bound to follow them.

Obiter dicta literally means something said by the judge which does not have any binding authority.

eg. In the S.R. Bommai Case — 3 Judges bench of SC unanimously held that Secularism is the basic structure of the Constitution.

Ramaswamy observed Solidism, Social Justice and fraternity are included in basic structure. T. Ambedkar opined Art 15, 16, 25 form B.S.

These observations are obiter dicta as they were not directly in issue in the instant case. The ratio is secularism is a part of Basic structure.

Difference - Ratio of precedent is related from material fact and decision of the case while obiter dicta are not relevant for the decision of case e.g. hypothetical facts illustrations and casual expression.

Doctrine of Stare Decisis -

Like England this doctrine is accepted under the Indian Law. Written law is required.

In Sarwan Singh Lambi v UOI S.C. ruled that even obiter dicta of the S.C. is expected to be followed by other courts.

Meaning - "to stand by precedents and not to disturb settled points".

Recognised by Constitution of India Art 341 which declares that law declared by S.C. shall be binding upon all the Courts of India.

Advantage - It introduces a sense of certainty and calculability.

Disadvantage - It creates problem when the decision is erroneous.

Judicial Precedents

Doctrine of Precedent — English Courts make a habit of following their previous decisions with more or less defined limits. This is called Doctrine of Precedent.

ratio decidendi — The part of the case that is said to possess authority is ratio decidendi, that is the rule of law upon which the decision is founded.

JP is a distinguishing feature of the English ~~law~~ legal system because most of the common law is unwritten and owes its origin to judicial precedents.

- In continental countries like Germany, France, Italy judicial precedents are only instructive and not authoritative.

- Salmond — Doctrine of Precedents has two meanings.

① In a loose sense precedent includes merely reported case laws which may be cited and followed by the courts.

② In strict sense precedents mean that case law which not only has a great binding authority but must also be followed.

- The difference of opinion is as to the present practice of treating precedents as absolutely binding.
(even bad or erroneous judgments should be followed)

- The doctrine of precedent has gained favour with English courts because it leads to certainty of law and also predictability of decision is always preferable to approximation of ideals.

Nature of Judicial Precedents -

Judges can create law but can't abolish it. The judges are not at liberty to substitute their own view when there is a settled ^{principle} ~~rule~~ law. They can only fill in the gaps in the legal system and remove imperfection in the existing laws.

Kind of Precedents - either authoritative - binding force
or
persuasive. as the judge must follow it whether he appears or not

Authoritative precedents are the decisions of superior court of justice which are binding on subordinate courts.

Persuasive precedent - on the other hand, is one which the judges are under no obligation to follow but which they may take into consideration.

Thus authoritative precedents are the legal source of law while persuasive precedents are merely historical sources.

Persuasive Precedents -

- ① Foreign judgments
- ② Decisions of superior courts of other parts of British Empire
- ③ Judgments of the Privy Council when sitting as the final court of appeal from the colonies
- ④ Judicial dicta (obiter dicta)
- ⑤ Authoritative text books and commentaries.

Position in India - In the Indian context.

The decisions of the House of Lords, Privy Council and S.C of USA or Canada have only persuasive value.

Decisions of S.C of India are binding on all the courts in India.
Constitutional authoritative precedents are the legal

- A/141 - Law declared by S.C. shall be binding on
all courts within the territory of India

- A/121 - S.C. ^{shall} be a court of record -

- ① Records are admitted to be of evidentiary
value
- ② Can punish for its contempt
(6 months or fine or both)
- ③ Decisions shall be binding.

stare decisis - "stand by what has been decided
and do not unsettle the established"

To provide a precedent - You ~~don't~~ need to know the legal reasoning behind a decision. This appears in the judgment given by the judge is the ratio decidendi.

Anything else mentioned in a judgment including the judgment of ~~disagreeing~~ dissenting judges is obiter dicta (other things said)

The idea of precedent can be further separated into 3 main categories -

① Binding Precedent - This is precedent from earlier cases which must be followed even if the judge does not agree with the legal principle.

To create a binding precedent the facts of the later case must be sufficiently similar to the earlier case

② Original Precedent - when a point of law has never arisen before. Analogy is used to help decide the case

③ Persuasive Precedent - Non binding but persuasive upon the judges. It can arise from a number of sources such as - obiter dicta in earlier cases
judgments given by the ^{Courts} ~~committees~~ of other countries

Judicial Precedent is an important source of English law as an original precedent is one which ~~applies~~ creates and applies a new rule. However the later ~~the~~ decision especially of the Higher Courts can have a number of effects upon precedents.

- ① Reversed - When on appeal in the same case the decision is reversed, the decision will cease to have any effect.
- ② Overruled - When in a later case a higher court decides that the first case was wrongly decided.
- ③ Refusal to follow - This arises when a court, not bound by the decision, can't overrule it but does not wish to follow it so it simply refuses to follow it.
(decision given is while it does the deciding other way)
- ④ Distinguished - When an earlier ~~decision~~ case is rejected as authority, either because the material facts differ or because the statement of law in the previous case is too narrow to be properly applied to the new set of facts.
- ⑤ Explained - A judge may seek to interpret an earlier decision before applying it or distinguishing it. Thus the effect of the earlier case is ~~very~~ varied in the circumstances of the present case.

Judicial Precedents in Civil Law System -

The effects of civil law doctrine of precedent on the process of formation and ~~evolution~~ evolution of case law is examined. Unlike the Common law system, Civil law system ~~does not~~ ^{do} not adopt a stare decisis principle in adjudication. In deciding any given legal issue precedents serve a persuasive role. Civil law courts are expected to take

Past decisions into account when there is a sufficient level of consistency in case law. On uniform case law develops courts treat precedents as a source of "soft" law, taking them into account when reaching a decision.

Advantage and disadvantage of doctrine of Judicial Precedent

- ① Convenient timesaving device → If a problem has already answer and been solved it is rational to reach the same conclusion.
- ② Can become thoughtless → The convenience of following precedent should not be allowed to degenerate into a mere mechanical exercise performed without thought.
- ③ Creates certainty in the law — Is perhaps the most important advantage claimed for the doctrine of judicial precedent. It may also allow persons generally to order their affairs and come to settlements with a certain amount of confidence.
- ④ Avoid mistakes — The existence of a precedent may prevent a judge making a mistake that he might have made if he had been left on his own without guidance.
- ⑤ Mistake perpetuated — Judicial mistakes of the past are perpetuated unless bad decisions are overruled.
- ⑥ Too Confusing — Advantage of certainty is lost when there are too many cases.
- ⑦ Prevent ~~is~~ injustice — To doctrine of Precedent may save the interests of justice. It would be unjust to reach a different decision in a following case.

(12) Ensures impartiality of judge

(8) Practical character - Case law is practical in nature and based on the experiencing actual cases brought before the court rather than on logic or theory

(9) Limits development of law - It is a limiting factor in development of judge made law

(10) Offers opportunity to develop the law - If a law could not be provided by Parliament the courts can more quickly lay down new principles or extend old principles

(11) Citing of precedents and case laws helps the ~~member~~ members of the Bar to substantiate their argument without waste of time and energy.

(12) Precedents provides flexibility to law to adapt itself to new situation and social conditions

(13) The law contained in case law is certain and easy to understand. Once a case is decided people know it with certainty as to what would be ~~sub~~ ruling in similar cases which arise in future.

(14) At a time erroneous decisions of superior courts create practical problem for subordinate judges as they are bound to follow even if they are wrong and defective.

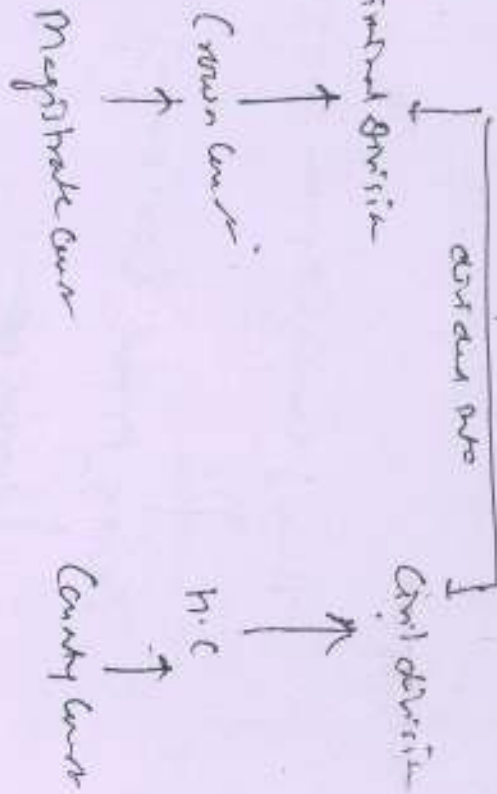
(15) Development of law through case law more or less depends on chance. If there has been no litigation on an important legal issue, the courts shall never have opportunity to create precedent on that point.

(16) Bentham holds that judicial precedent is arbitrary in character. Unlike legislature the judges are not responsible to anyone hence they are likely to be arbitrary in using their discretion.

(17) What should be the validity of the law made by case law? It should depend on the number of ~~case laws~~ decision in which it has been followed or it should depend on the ~~the~~ reputation of judge who decides the precedents.

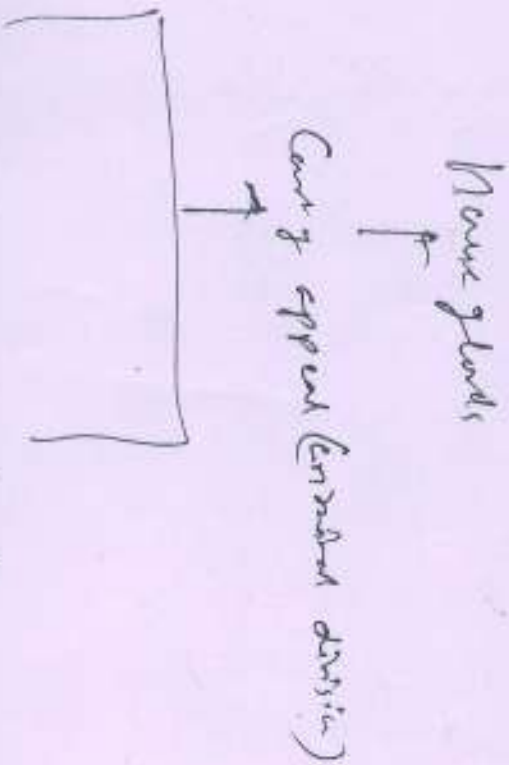
number that it becomes practically difficult to find out a particular case from such a voluminous legal literature

- (15) At times, different cases express conflicting opinions on the same point which renders the validity of precedent doubtful and uncertain..



House of Lords (How H.L. is replaced by Supreme Court which was established by Part III of the Constitutional Reform Act 2005 and started work on 1st Oct 2009.

Magistrate Courts
County Court
(more serious offences)



UK Legal System

The UK of Great Britain and Northern Ireland consists of four countries forming three distinct jurisdictions each having its own court system: England & Wales, Scotland and Northern Ireland.

United Kingdom was established in 1701 with the Union of Great Britain and Ireland, but only achieved its present form in 1922 with the partition of Ireland and the establishment of the Republic of Ireland.

Civil Courts

Flowing Levels (Supreme Court of Appeal)

County Appeal (Civil Division)

appeal

Chancery

Queen's Bench

Fam. Div.

divided

appeal

HC

County Court
(Civil case at first instance)
District Judge
(ex-ante minor claims)

appeal
(Civil case at first instance on appeal)

Legal Services Authorities Act, 1987

Lok Adalat

③ ① → s/19 → Organisation of Lok Adalats

- ① Every State Authority District " S.C. Legal Services Committee
Taluka Legal " "

may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for areas as it thinks fit

- In H.M. Narkat and Hussain Khan Khatoon case S.C. talked of about free legal aid and speedy trial and declared it as a part of FR 41A21.

- Preamble talks about Social, Economic and Political justice and other related provisions
see A/14, 20, 21, 22, 32, 34-A, 51A and 22C

- Manu Gandhi v UOI

- Initially the Lok Adalats were working as voluntary agency without any statutory backing

It is view of the govt growing popularity, then was demand for primary & statutory backing to the institution
~~Before it came into force the Lok Adalats were given by the~~

Govt in exercise of its duty s/13A drafted Legal Services Authorities Bill B. 1987 and same was enacted by Parliament as Act acknowledging the institution of Lok Adalat and giving statutory status to

Lok Adalats. However the Act was brought into force from 1995

A firm ~~proposed~~ Enacting LSAA 1982

in Sep 80 Govt of India with the object of providing free legal aid ~~to the poor~~ by a resolution dated 20 Sep 80 appointed

"Committee for Implementing Legal Aid Schemes" (CILAS) with P. N. Bhargava as the chairman to monitor and implement legal aid

Programme on a uniform basis in all the States

and Union Territories

This Committee set up several legal aid and advice ~~boards~~ boards throughout the Country

- But on a review of the working of the CILAS certain deficiencies were noticed and therefore it was felt that it would be desirable to constitute statutory legal service authorities at National, State and District level to provide effective monitoring of legal aid programmes and the Legal Service Authorities Act 1987 was ~~the~~ conceived

- Reasons which compelled govt to establish CILAS w. Lok Adalats

(1) Preamble (2) Art 39-A, 21, 14, 31A, 22, 32, etc

Case - Him Hockot v St of Maharashtra (AIR 1978 SC 1542)
Hussanara Khanna v St of Bihar (AIR 1979 SC 1767)
Mandla, Gaud v U2 (AIR 1978 SC 597)
Sahib Das v Union Territory of Andaman & Nicobar (AIR 1976 SC 971)
Kishan v St of Bihar (AIR 1981 SC 748) & 14th 1st Legal Commission 1958

②

- Lok Adalat - Court involving people
- Britishers substituted this old concept with ~~adversarial~~ adversarial system
- Lok Adalats can be organized at any level - Central, state, district and Taluk by State Authority, District Authority, S.C. Legal Services Authority or Legal services authority
- Ordinarily Lok Adalats are to consist of three members -
 - ① A sitting or retired judicial officer
 - ② A member of legal profession (Advocate, law officer, law teacher)
 - ③ Social Worker, preferably a woman
- They associate students, social activists and voluntary organisations for successful conduct of Lok Adalats
- Pending case - P.C. → Lok Adalat
Directly receiving an application from both party.
- Method compromise and settlement and founded by principle of justice, equity and fair play as understood in common law and Constitutional law
- Members ensure fairness and ~~equity~~ equality so that the weaker party is not compelled to enter into unjust compromise
- Lawyers can represent their client with the permission of Lok Adalats. Though advocacy is not encouraged
- They are like mobile courts where active players are parties themselves and no body is loser but both the parties are victors in some sense
- National Legal Services Authority was constituted on 1st Dec 1985
J.S. A. Pandey was first executive chairman of NLSA

National Legal Services Authority (to lay down policies and
principles for making legal
services available. It allocates
funds and grants to state
legal services authority and NGOs)

↓
State Legal Services Authority
(headed by Chief Justice H.C.)
Chairman

↓
District Legal Services Authority
(D.J. is ex officio chairman)

↓
Taluk Legal Services Committee
(headed by senior civil judge
Chairman)

Constitution Provisions, 14, 21, 22, 32, 39A, 51A,

Panchayats — Part IX and IX A were added to the
Constitution by 73rd Amendment Act 1992 and 74th Amendment
Act 1992 popularly known as Panchayati Raj and Nagar Palika
Constitution Amendment Act 1992. Art 243, 243(A) — 243(C)

Purpose & democracy at grass root level

Art 42 — Organisation of village Panchayats

CUSTOMARY LAW

In law Custom can be described as the established pattern of behaviour. Generally customary law exists when -

- ① a certain legal practice is observed
- ② the relevant actors consider it to be law.

Customary law & Codification - The modern codification of civil law developed out of customs of the middle ages. Experience of law that developed in a particular community and slowly collected and later written down by local jurists. Such customs acquired the force of law when they became the undisputed rules by which certain rights or obligations were regulated b/w members of a community.

International law -

In International law, customary law refers law of nations, or the legal norms that have developed b/w states.

Through the customary exchange ~~that takes~~ over time. Essentially legal obligations are believed to arise b/w states to carry out their affairs consistently with past accepted conduct.

[A preemptory norm is a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted. Preemptory ~~norms~~ norms are also ktd jus cogens.]

Customary IL can be distinguished from treaty law which consists of explicit agreements b/w nations to assume obligation. However many treaties are attempt to codify pre-existing customary law.

It is not necessary that every custom should be recognised by law, ~~as~~ as it is not possible. So till the time when custom is overruled by the law it remains valid.

Reasons for Recognising Custom —

When a particular conduct is followed by people continuously for a long time we call it habit.

But if some conduct or rule is followed by most people of a particular class or locality, then whether the others should follow the same would invariably depend upon the generality of practice.

It is not necessary that the court should recognise all the practices which are prevalent in a community as custom. For instance there is a practice

among Hindus that the male relatives of the deceased shave off their heads as a mark of condolence, but

if a man does not follow this custom the court is certainly not going to punish him.

Similarly the mourning in a funeral procession are supposed to wear black cloths in England, but if a person does not follow this practice, he can't be punished by court for committing this breach of custom.

Thus there are conventional customs established by usage and long practice and the courts shall not take judicial notice of such customs. These such customs are not obligatory.

On the other hand there are certain customs which are binding and are enforceable by court of law since they are backed by the sanction of the state.

- One of the oldest sources of law making
 - The importance of custom as a source of law continuously diminishing as the legal system grows.
- Reason being The emergence and growing power of the state.
- Custom is largely superseded by legislation as a source of law.

Definition →

Dr. Allen defines custom as the uniformity of habits or conduct of people under like circumstances.

When the people find any act to be good and beneficial and apt and agreeable to their nature and disposition, they use and practise it for time to time and it is by frequent use and multiplication of this act that a custom is made.

Salmond opines that custom embodies those principles as are acknowledged and approved not by the power of the state but by public opinion of the society at large.

Austin suggests that custom is a rule of conduct which the ~~governing~~ governed observe spontaneously and not in pursuance of law settled by the political superior.

Judicial Committee of the Privy Council; In
Harpreet v Shirdya (1976) observed that custom
is a rule which has obtained the force of law
in a particular family or region due to long
usage.

Reasons for Recognition of Custom →

When a particular conduct is followed
by people continuously for a long time we
call it habit. But if some conduct or rule
is followed by most people of a particular
class or locality, then whether the custom should
follow the same would necessarily depend
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are prevalent in a community as custom.

eg. Hindu Hindus that the male relatives
of the deceased shave off their heads as a
mark of condolence, but if a man does not
follow this custom, the court ~~shall~~ ^{will} not punish
him.

Similarly the women in a funeral procession
are supposed to wear black clothes in
England but if anybody doesn't follow
he can't be punished.

On the other hand there are certain customs which are binding and enforceable by a court of law since they are backed by the sanction of the state, for eg. performance of sapaspad.

In earlier stages of the development of society before the state came into existence people were being governed by the customary laws. Thus prior to 1850 when civil and criminal laws were not codified topics such as succession, marriage, adoption, contract, transfer of property and crimes such as assault, theft, murder, rape, treason were regulated by customary laws in absence of legislation on these subjects.

It would therefore, be seen that though customary law is the oldest of laws, yet it is the weakest and so it becomes insufficient as soon as legislation or it comes into existence.

An appraisal of Hindu Jurisprudence would unmistakably reveal the customary law as a rule of conduct authoritatively imposed by the divine power upon man governing all his activities public or private and affecting his spiritual and temporal interests. Every step in life is guarded in the interests of peace preservation of human society.

It is well known that ancient Hindu law was predominantly duty oriented. Smritis and Smitis emphasised on "duties" rather than "rights".

This however does not mean that the early Hindu society society does not recognise any rights. eg the husband over his wife and wife had absolute right over her stridhan property.

Present laws are statutory or constitutional are man made but the Hindu law was divine.

Custom necessarily involves two conceptions faith
constant use.

According to Mulla - Custom meant practice

of good men which necessarily involves an element of reasonableness and which is not opposed to public policy. He emphasized that one should follow the righteous path that has been followed by one's ancestors. By following this path one does not suffer

(a)
Requisites of a valid Custom — Requirements laid down by law

- ① Reasonableness → A custom shall not be valid if it is apparently repugnant to right and reason and it is likely to do more mischief than good if enforced.

A custom should be rational, useful and convenient. eg. Sati practice, child marriage, Servant ~~with a girl~~

Pillar Objection — The true rule seems to be not that a custom will be admitted if reasonable but that it will be admitted unless it is unreasonable.

Sir Edward Coke pointed out that a custom is contrary to reason if it is opposed to the principles of justice, equity and good conscience.

eg. S.C. in Ram Jhan Lal v Radhey Shyam held that the custom of recognising the channel of the river or stream as the boundary b/w two or more villages, irrespective of its change in path, can't be said to be unreasonable and hence a valid custom.

- ② Consistency — A custom to be valid must be in conformity with statute law or it should not be contrary to an Act of Parliament. A custom should necessarily yield when it conflicts with a statutory law. This is a true principle of law in England and countries like India which follow English law.

② Antiquity — A custom to be valid should have continuously in existence from the time immemorial. Blackstone says that if anyone can show the beginning of it, it is not a good custom.

English law has set an arbitrary but necessary limit to legal memory which is ~~the~~ 1189 A.D. — the year of the reign of Richard I. has been fixed at which the custom must be proved to be in existence.

If it could be shown that a custom came into existence at any time later than 1189, presumption to antiquity shall be defeated.

In India this rule of 1189 is not applied. All that is required to be proved is that the custom has been in existence from the ancient time. In other words, there is no definite year laid down in India to define antiquity of a custom.

In India continuous existence for a long time is more important.

④ Continuance → A custom must have ^{been} in practice continuously. In England the custom during the period from 1189 must have been enjoyed continuously without any interruption. If a custom has been disturbed for a considerable time, a presumption arises against it.

⑤ Peaceable enjoyment — Custom must be enjoyed peaceably. If a custom is in dispute for a long time it is negative. The presumption that it originated by consent.

Obligatory force - The custom must have an obligatory force. It must be have been supported by the general public opinion and enjoyed as a matter of right.

③ Certainty - A custom which is vague or indefinite can't be recognised.

(R) (C) (C) (A) (P) (O) (C)

Kind of Customs -
 ↳ Conventional Custom
 ↳ Legal Custom
 ↳ Local Custom
 ↳ General Custom

① Conventional Custom - Also called 'usage'.

- Its authority is conditional on its acceptance by the parties.
- It is legally binding because it has been expressly or impliedly incorporated in a contract by the parties concerned.

R C² A P O Custom

- R - Reasonableness
- C - Consistency
- C - Continuity
- C - Certainty
- A - Antiquity
- P - Peaceable enjoyment
- O - Obligatory force

Indian Constitution provides for customs and excise as
sources of law in Art 13 (3) (b)

⑤ Growth of delegated legislation

- ① The newly evolved concept of welfare state has caused tremendous increase in the work of the govt. Parliament has less time and thus, why they define only the essential legislative principles.
- ② On technical issues it is difficult for Parliament to make laws so they entrust this task to concerned ministry.
- ③ for constant adaptation to unknown future conditions.
- ④ Delegated legislation is more efficient. Eg. Examples are control of public exchange, import and export policy.
- ⑤ for emergency purposes eg. war, flood, economic depression delegated legislation is required.

Control of Delegated Legislation —

- ① Procedure Control → It is not always possible for the Parliament to exercise effective control over delegated legislation. Procedural Control may include —
 - ① Prior consultation of interests which are likely to be affected by proposed delegated legislation eg. In USA consultation with medical association.
 - ② Prior publishing of proposed rules and ~~by~~ regulations.
 - ③ Publication of delegated legislation being made mandatory.

In India there is no ~~express~~ express provision of law for prior consultation but "Prior publication" is enacted in s. 23 of General clauses Act ~~1897~~ 1897.

④ Municipal Legislation -

Municipal authorities are allowed within their area to make ~~local~~ bye-laws for limited purpose
eg. Water tax, land and urban cen, property tax, town planning, public health etc.

- ⑤ Autonomous Legislation → State may occasionally allow private entities such as Universities, Companies, Corporations etc to make bye-laws

Delegated Legislation -

Main function of executive is to enforce law.

In strict sense ~~def~~ delegated legislation means legislation made by any authority other than the legislature.

Delegated Legislation is different from Executive Legislation

Delegated Legislation stands for the laws made by the authorities other than the legislative bodies or whom the legislature delegates its legislative power.

Executive Legislation - means laws made by President

and governor in the form of ordinance. These ordinances are issued on the ground of urgency when legislature is not in session. The source of delegated legislation is always the Act of the Parliament whereas the source of the executive legislation is a constitutional provision.

Source of Law

(1)

Indian Context
 { Hindu Scriptures (duty is the foundation
 head of all laws
 → sovereign from where the law emanates

Hindu law → Smriti, Smiti, Vedas, Upanishads, Code of Manu,
 and Yajnavalkya

Natural law philosophy — Law is a gift of God in the form
 of Holy Books

Thus Quran, Hadis, Bible are the source of law

Modern Jurisprudence

Austin Source of law
 { ① Authority from which law emanates
 e.g. Sovereign
 ② Historical material — Code of Manu, Justinian Code
 ③ Causes which give order of society the
 force of law e.g. legislation, custom, Equity

Salmond →

Source of Law

Material Source

Formal Source

Legal Sources (Authoritative)

Historical Sources
(non-authoritative)

Writings of eminent jurists,
 foreign judgments etc

Legislation

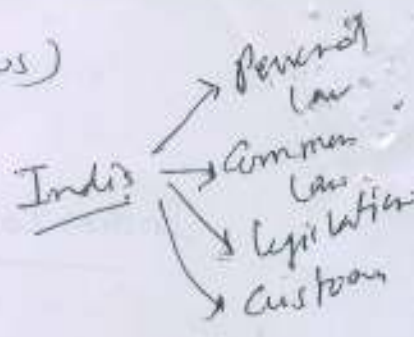
Precedents

Customary
Law

Conventional law
(based on agreements)

English Law →

- (1) Precedent (Case laws)
- (2) Customs
- (3) Conventions



Legislation

legis → law, latere → to make
legislation → making of law

Legislation → Supreme Legis. (Enacted by Parliament)
Subordinate Legis.

(1) Colonial Legislation — British colonies had

limited power of self gov. through imperial legislation. But the laws so made by colonial gov. could be ~~repealed~~ repealed, altered or suspended by the British Parliament.

(2) Executive Legislation — Parliament delegates its ^{rule} ~~law~~ making power to Executive. However the law made by executive can be repealed or superseded by legislature.

Keeton suggests that this species of subordinate legislation has given a vast body of rules & administrative law commonly called a public law.

Executive legislation in India includes power to make rules, regulations and bye-laws for administrative matters.

(3) Judicial Legislation → Judiciary is ~~also~~ authorised to make rules for ~~regulation~~ regulation of their own procedure.

eg. — A.P. 145 — rule making power of S.C.

A.P. 227 — rule making power of H.C. (Power of ^{superintendence})

eg. Rules of setting norms for practising lawyer, procedure of appeals and time limit for such appeals, transfer of cases to different H.C.s, laying down conditions for review petitions.

Limitation — (1) These rules should be under the law enacted by Parliament.
(2) Approval of President is necessary for such rules.

particular area or territory of the country
the conditional legislation. ~~the~~ delegate

In Rayburn v. Day (AIR 1982 Pat)

Patel J.C. observed that in a conditional legislation the law is complete in itself and certain conditions are laid down as to how and when law would be applied by the delegate.

Legislation compared with other sources of law

Most significant in modern time.

4. Conditional delegation takes place when the Legislature empowers the executive to -

1. Extend the operation of an existing law to a particular area or territory

2. determine the time of application of or Act to a given area

3. Extend the duration of a temporary Act

4.

② Parliamentary Control → Legislation should be laid down before the Parliament so that members could get an opportunity to discuss and amend it. This control is exercised through the Committee on subordinate legislation of both the houses of Parliament which maintains vigilance on Govt's rule making power and scrutinises the rules framed by executive.

③ Judicial Control —

- whether the law is inconsistent with the Constitution
- Ultra vires from the Parliament — one can declare it null & void if power is vested in the executive.

eg. Margie Mithya Case — Service of the hostess would be terminated if she marries within first four years of her service or on the first pregnancy. It denied sexual intercourse with a person to whom she was married.

Sub delegated legislation — A body or a person to receive delegated power indirectly under a statute.

The Rule is a delegate is not able to delegate further. Means when Parliament gives a power to make law for some specified purpose to a body or a person it can be exercised only by that person.

In India Sub-delegation without express authority is invalid.

Conditional delegation — When a Legislative confers law making power upon some other ~~authority~~ body, the legislative power is said to be delegated. But when legislature itself enacts the law and gives to some other body only the power of determining when it should come into force or when it should be applied in a

Free Legal Aid -

①

Importance of free legal aid was held in various decisions like in the case of Hussain Khan Khatri

Sukh das v Union Territory of Arunachal Pradesh

Khatri v State of Bihar

- Free legal aid is must in the country like India where majority of the people are poor or indigent and live below the poverty line (37%).
- The provision of free legal aid have been made in the Constitution as well as in the Legal Service Authorities Act 1987 and simultaneously s/304 of CrP.C.
- Free legal aid is an Constitutional mandate Art 14, 19, 21, 22 (1), 32, 39A, 51A, 226.
- A/21 (1) expressly provides that "No person, who is arrested shall be detained in custody, without being informed as soon as may be, of the grounds for such arrest nor shall be denied of the right to consult and to be defended by a legal practitioner of his choice."
- Long before the Indian Constitution, even in Old Criminal Procedure Code s/314(C) it was already provided.
- According to A/21 a person can not be deprived of his life and personal liberty except according to the procedure established by law.
and as per Mandale Gadhikar the procedure should be just, fair & reasonable.
- Through 42nd Amend. 1976 Art 39-A was added in DPSP which talks about Equal Justice & free legal aid.

Thus Art 21 is a Constitutional right of every accused person who is unable to engage a lawyer and secure legal service on account of reasons such as poverty or indigence.

- For the first time in 1958 Law Commission India in its 14th Report ~~made~~ made certain recommendations for state legal aid and emphasized the right to assignment of counsel at govt expense.

Same thing was recommended again in 41st and 48th report of law commission.

- This recommendation has now been codified in s/304 of Cr.P.C

- s/304 of Cr.P.C it is clear that in Criminal Trial the Magistrate or the Senior Court before whom ~~prosecution~~

accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence or any other disability he is entitled to free legal services at the cost of state.

- It is an absolute Constitutional necessity and it is necessary that such lawyer should be of competence. Such counsel appointed ^{for} the accused must be given the complete brief of the case and then to prepare the case. Failure to this is a denial of proper representation of the accused and vitiates the trial (Fair Rishore v State (1969)).

Also, no counsel can be thrust upon the accused without ascertaining the wishes of the accused and without giving him any choice in selecting his lawyer.

As per Art 22 (1)

Promoting legal literacy, organizing legal aid camps, encouragement of PSLs and holding Lok Adalats as initiatives for bringing about settlements of disputes whether pending in court or outside.

In Indian legal system litigant is the most regulated person and only 0.2% of GDP is spent on administering law and justice.

- Legal Literacy — Pre-conditioning rule of law. People must have knowledge about their rights and entitlements.

Legal aid camps and legal literacy should be encouraged.

- NGOs, social action groups, journalists, advocates and law students can play a significant role to educate the people about law.

The Institution of Lok Adalat

Part of ADR and evolved as a part of CILAS programme with the object of taking justice to the doorstep of the poor and to give speedy and cheap justice to those who can't afford the ~~heavy~~ cost of legal & battle.

- Lok Adalat handles the disputes through conciliation and counselling.

- Dispute in the Lok Adalat is resolved by discussion in an informal atmosphere in which parties and panel members of the Lok Adalat participate and settlement is reached with the mutual and free consent of the parties. Unlike in litigation concluded in our regular courts being in the nature of compromise there is no winner and no ~~loser~~ loser in a mediated resolution of dispute by Lok Adalat.

(4)

Concurred with the programming of legal aid as it's implementation of Constitutional mandate, in September 1980 the Govt India with the object of providing free legal aid ~~program~~ by a resolution dated 26th Sep 1980 appointed "Committee for implementing Legal Aid Schemes" (CLAS) with P.N. Bhargwati as the Chairman to monitor and implement legal aid programmes on a uniform basis in all states and UTs.

The Committee evolved a model scheme for legal aid programmes which includes organization of legal aid camps and set up several legal aid and advice boards throughout the country.

But on the review of the working of CLAS, certain deficiencies had come to the fore. It was therefore felt that it would be desirable to constitute statutory legal service authorities at national, state and district levels to provide effective monitoring of legal aid programmes. Therefore Legal Service Authorities Act 1987 was enacted with a view to constitute legal service authorities at National, State and District.

The Act was brought into force in 1985.

- Many states evolved their own programmes and even enacted state legislation and promulgated certain schemes to provide legal aid to underprivileged and disadvantaged sections of the society.

- As part of CILAS Programme Lok Adalats were constituted and hit rates were organized at various places in the country under the supervision of State Legal Aid and Advice Board, for the disposal in a summary way and through the process of Arbitration.
- The organizers of the Lok Adalats fixed the date and place of holding Lok Adalats about a month in advance and information about the holding of Lok Adalat was widely publicized through press and other means of publicity.
- Presiding officers of various courts were requested to look into the cases pending in their respective courts and to see whether there was possibility of conciliation in these cases.
- Such of those cases where there was reasonable possibility of conciliation were identified and listed. Cases were analysed, classified under various heads according to the nature of dispute and substance were recorded.
- The pre-Lok Adalat conferences are held and parties to the dispute were approached and motivated by legal aid teams which include law students, social workers and volunteers to resolve their dispute through Lok Adalats.
- Before the case was taken up by the Lok Adalat, the mediation process or justice process through Lok Adalat was initiated and desirability of conciliation and compromise and the scope of a settlement mutually acceptable to the parties was assessed. This process was continued and resumed at the campsite of the Lok Adalat.
- Once parties had made a compromise or arrived at a settlement, it was reduced into writing by members of the panel of the Lok Adalat, signatures of the parties are taken.

and countersigned by the members of the panel and passed on to the Court concerned for ~~final~~ final decree or order

- Multiple panel according to the need of Lok Adalats were set up. They consist two or three ~~members~~ persons, one of them could be a retired judge or a senior retired civil servant or an advocate, a law teacher

and other social workers and eminent persons of the locality carefully chosen by Local Aid Committee on the basis of their record of public service, honesty and respectability among local population and their quality as good conciliators.

- ~~When the compromise~~ When the compromise so arrived at was presented before the Court concerned, the Court was expected to look into the question whether all the parties entering to the suit were entering into settlement or compromise, fair and legality of the settlement or compromise and satisfy itself that compromise had been arrived at by free and mutual consent of the parties. After this process of due verification decree or order was passed in terms of the settlement or compromise.

- ADRs - In USA more than 90% of cases involving legal disputes are settled through ADRs while in India 91% go for trial and 9% through ADR.

- Lok Adalats are an effective institution of ADR. When disputes are settled through negotiation, conciliating, conciliation, compromise and settlement.

- Through legal services Authorities Act 1987 Statutory status was given to Lok Adalat.

- Lok Adalats are conciliatory agencies.

In India Lok Adalats were already working in the form of Panchayats but replaced by adversarial system based upon English common law.

But now it is revived again through Legal Services Authorities Act 1987 in the form of Lok Adalats.

Ordinary Lok Adalats consist of three members -

- ① Sitting or retired judicial officer
- ② an advocate, law officer or law teacher
- ③ A social worker preferably a woman.

- Pending cases are referred to Lok Adalats either when both parties are agree or when one of the parties desire it and court is also satisfy that settlement is possible.
- Lok Adalats have power of a civil court in summoning and examining witnesses, discovery of documents, reception of evidence on affidavits and requisitioning of public records. Lok Adalat can specify its own procedure and it is guided by the principles of justice, equity and fair play.
- Whenever a settlement is ~~reached~~ reached an award is made which is deemed to be a decree of a civil court. It is to be written down in simple and clear terms. No appeal is permissible. If no compromise is reached it goes back to the same court for regular trial of settled petitioners get back the paid court fee.

Lawyers can represent in a their client with
the permission of the Lok Adalat

- Lok Adalats have jurisdiction to settle civil, criminal & revenue disputes in the courts and tribunals in the area for which the Lok Adalat is organized
- Legal aid includes → legal awareness, legal advice, counselling, PIL, Lok Adalats and other ADRs, para-legal services, law reforms etc.
- Lok Adalats have no jurisdiction over non-compoundable offences
- Every award of Lok Adalat shall be final and binding on all parties to the dispute and no appeal shall lie to any court against the award

added
thing
from

Lok Adalats and Permanent Lok Adalats (L22) by LSA Part 102
Permanent Lok Adalats - District Authority or
State authority shall by notification establish
Permanent Lok Adalats at such places and for
exercising such areas as may be specified in the
notification. (ii) It shall consist of a district judge or
additional district judge or two additional district judges or
higher in rank than that of a district judge
shall be a chairman of PLA

Two other persons having adequate experience
in public utility services to be nominated
by Central Gov. or State Gov.

- Matter can't be brought before the Permanent Lok
Adalat when - offence is non-compoundable
more than 10 lakhs
- Central Gov. may increase the limit
Rt to Lok

PLA while conducting Conciliation proceeding
will decide the case on merit and will
be guided by the
principles of natural justice

Through Legal Services Authorities (Arbit) Act, 2002 for the establishment of Permanent Lok Adalats for pre-litigation conciliation and Settlement of disputes concerning Public Utility Services (S/2-A) and to decide them on merits if no settlement is forthcoming. The Central and State Authorities are authorised to establish such PLAs at any place to exercise such jurisdiction.

In respect of one or more public utility services as notified PLA undertakes pre-trial settlement on the application of any ~~one~~ party to the dispute and subsequently other party is not allowed to invoke the jurisdiction of any court in the same dispute.

PLA assists the parties to arrive at a settlement; when the parties do not reach the settlement, PLA can decide the dispute on merit. While deciding the cases on merit PLA shall be guided by the natural law of justice.

Arbit. Act 2002 excludes the jurisdiction of the civil courts over the subjects specified in Sec 22 A(b) as public utility services. Summary power of revision or appeal should have been vested on a higher authority so as to bring the procedure in conformity with the rule of law.

- S/2(A) of the Act makes the decision of the PLA final and binding whether made as a result of settlement or on merits. It provisions by taking away the power of judicial review of the courts. Subverts the basis of democratic Constitution that judicial reviewing the laws can't be taken away by any law.

Lawyers can represent their client with the permission of the Lok Adalat.

- Lok Adalats have jurisdiction to settle, civil, criminal & revenue disputes in the courts and tribunals in the area for which the Lok Adalat is organized.
- Legal aid includes → legal awareness, legal advice, counselling, PZL, Lok Adalats and other ADRs, para-legal services, law reforms etc.
- Lok Adalats have no jurisdiction over non-compoundable offences.
- Every award of Lok Adalat shall be final and binding on all parties to the dispute and no appeal shall lie to any court against the award.

Added by me
Lok Adalats and Permanent Lok Adalats (1/22/87) LSA Act 1986
Permanent Lok Adalats - (1) Central Authority or State authority shall by notification establish Permanent Lok Adalats at such places and for exercising such areas as may be specified in the notification. (2) It shall consist - a district judge or additional district judge or has held judicial rank higher in rank than that of a district judge shall be a Chairman P.L.A.

Two other persons having adequate experience in public utility services to be nominated by Central Govt. or State Govt.

- Matters can't be brought before Permanent Lok Adalat when -
 - value of property in dispute is more than Rs. 10 lakhs
 - Central Govt. may increase the limit Rs. 10 lakhs.

P.L.A. while conducting conciliatory proceedings & will decide the case in merit and will be guided by the principles of natural justice.

Through Legal Services Authorities (Amendment) Act, 2002 for the establishment of Permanent Lok Adalats for pre-litigation conciliation and Settlement of disputes concerning Public Utility services (S/2-A) and to decide them on merits if no settlement is forthcoming. The Central and State Authorities are authorised to establish such PLAs at any place to exercise such jurisdiction.

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Amendment 2002 excludes the jurisdiction of the civil courts over the subjects specified in Sec 22 A(b) on public utility services. Summary power of revision or appeal should have been vested on a higher authority so as to bring the procedure in conformity with the rule of law.

5/2002 of the Act renders the awarding the PLA final and binding whether made as a result of settlement or on merits. It provisions by taking away the power of judicial review of the courts. Subverts the basic structure of the Constitution that judicial review of the laws cannot be taken away by any law.

Customs

①

- ^{is} ~~It is~~ a very important source of law
- Customs arose first and then law came later
- Law is a more definite organisation of human society with some kind of power structure established.
- Customs arise whenever a few human beings come together as no associating human beings ~~can~~ can exist permanently without adopting some rules to govern their rights and obligations.
- The ~~origins~~ English Common Law which in its origin was built upon custom gave the world modern Merchantile law.
- Twelve Tables of Rome were based upon customs of the people.
- According to Austin Customs become law only when it receives judicial or legislative recognition.
- Courts ^{can} give recognition to customs prospectively as well as retrospectively.
- Allen says customs are self sufficient and self justified law and the function of the Court is declaratory rather than constitutive.
- But simultaneously courts can declare customs invalid.
- Historical jurists ^{also} ~~say~~ ^{tell} that all early laws were customary and the function of legislation is limited to supplementing and rectifying custom.
- Puchta - Custom is for the people, a mirror in which the people may recognise itself.
But flaw of this theory is that there are customs which are not based on an instinctive sense of right in the community as a whole e.g. ~~slavery~~ slavery.

In India long before the advent of the British, customs were observed by the people and were enforced not by the courts but by villagers or community Panchayats.

When the British system of Justice came there very customs were placed before the courts which enforced them.

In such a situation, custom did not become effective for the first time after judicial recognition.

Hindu view of Customs

Very important source of law. Two views have prevailed.

Dharmashastra written subordinated customs to Smriti and Smriti which was given a high authority.

- Grantha - Customs of countries which are not opposed to Vedic scriptures are authoritative and binding.
- Apastamba - Custom repugnant to any clear text of Veda is to be rejected.
- Atthasatras writer Kautilya held that Smriti and customs were of equal authority and in case of conflict the former must be taken to be of greater force.
- When the Smriti failed to satisfy the growing needs and changing conditions of the people the commentators adapted the Smriti-law by the process of interpretation to bring it in line with customs which had taken roots in the contemporary society.

- Dharma concerns both - religion & legal duties.
- According to Koster - British implemented a distinction b/w the religious & legal rules found in Dharmashastras and thus separated Dharma from law.
- Sources of Dharma - ① Smriti - ② Custom.
- ③ Acts - Practice - refer to the norms and standards established by educated people who know and live by the first source.

two important sources - Law of Manu & Yajñavalkya

① Classical Hindu law - Highly based upon Dharmashastras
 Records of Courts are completely lacking for classical and medieval India.

② Anglo-Hindu law - (1772-1814)
 ① Collection and translation of important Dharmashastras
 ② Use of Court Pandits as British Counsel for aid
 British judges in interpreting classical Hindu law
 ③ Proliferation of case laws that resulted eventually in the redundancy of Court Pandits

③ Modern Hindu law - Written and Codified in the
 Light of Constitution -

- ① Hindu Marriage Act 1955
- ② Hindu Succession Act 1956
- ③ Hindu Minority & Guardianship Act 1986
- ④ Hindu Adoption and Maintenance Act

Muslim Law

Sources - Koran - Word of God.

Hadis - or traditions

Ijma - Consensus of Opinion amongst the learned.

urf - Custom

qiyas - analogical deduction from the first three

- Muslim jurists continued to recognise custom as a source of law on the principle "fret whatever the people generally consider to be good for themselves is good in the eye of God."

- Conditions laid down for the validity of custom.

Under the Muslim law are -

(1) It must be generally prevalent in the country

(2) It must not be merely a local usage in a village or town though it need not be ancient or immemorial

(3) It must be an established course of conduct and not merely a practice on few occasions

(4) Custom being essentially territorial it can't affect the law in other lands.

Customs in Modern Legal System

When Britishers came to India even though they did not touch the personal laws, when Hastings created the Adalat system in Bengal, Bihar, Orissa.

Adalats were directed to decide all cases of inheritance, marriage and other on the basis of Koran and Shastras.

In 1781 this provision was supplemented by a provision to the effect that in all cases for which no specific direction was given the Adalats were to act according to justice, equity and good conscience.

(3)

- In 1827, it was laid down for the courts that the law to be observed in the trial of suits shall be Acts of Parliament and regulations of gov., in absence of such Acts and Regulations usage of the country, if none such appears on the basis of equity.

Kind of Customs - Dividing the customs into those which apply to a particular caste, community & group residing in a particular territorial area.

eg. See Pg 39.

A family custom is one which applies to a particular family only.

①

Requisites of a Valid Custom -

① It should be certain & not vague that the course of conduct upon which the custom rests must not be left in doubt but be proved with certainty. A vague custom can't be recognised.

② A custom to be valid must be ancient.
In England they fixed a year 1189, in case of an alleged custom it is sufficient to prove that the custom existed at that remote date and that presumption should be in general be raised by evidence showing continuance even as far back as living memory goes.

But immemorial origin. In India does not have the same sense as in England. In India immemorial proved by 20 yrs but it's different in their approach on this point.

③ Reasonable - A custom should not be unreasonable, immoral or opposed to public policy or against public equity or good sense.

eg. Nannan Tan Maide v Allayattin Suman custom of adoption of 4 girls by the

denying girls was held as invalid custom.
a custom permitting a woman to desert her husband at her pleasure and marry again without his consent is invalid custom.
Sardari, Sati Practice.

Proof of a Custom — Before the advent of the British period the customs of the people were mostly unwritten and unrecorded and were enshrined in the consciousness of the people. With the coming of the British methods of administration of justice, it became necessary and imperative to establish customs in the courts before they could be enforced. This became necessary to record them in writing.

— It was laid down by the courts in a large number of cases that a party alleging that he is governed by a custom must specifically allege the same and prove its existence. There is no presumption that a particular person or class of persons is governed by a custom unless he proves it rests on him who alleges it.

— Customs also got place in our I.E.A. — 111 & 112 & 113
Decisions of courts regarding a custom are relevant —
— Arts 42 of the I.E.A., though made the section by
are not conclusive.

— Arts 56 of I.E.A. nothing need to be proved of
what courts can take judicial notice. Therefore
a custom by repeated recognition by courts becomes
entitled to judicial notice.

— Proof of Custom — (a) Issued by authority for each district
which is an evidence of custom

(b) manuals of customary laws
(c) private attempts in the form of compilations
like Sant Ram Dogra's Code of Tribal Customs.

Origins of Custom

Custom can play a very important part as a source of law and only next to statutory law. Custom is given preference over the religious laws of the parties.

- In England there is nothing like a family or a tribal custom, then the custom is local having the force of law in a particular locality. But in India family custom is fully recognised and enforced.
- In England usage - particular department of business etc.

In India - usage has nothing to do with trader's custom but covers all aspects of family relations.

Term usage is used synonymously and interchangeably with custom.

Difference - usage may be established in a much less time period than the customs e.g. like 12 years.

- In India a family can renounce customs applicable to it and adopt other customs. This is not found in England.

Drawbacks

- Presently new customs are difficult to get recognition from the courts. Future legal growth in India will be mostly due to legislative and through judicial interpretation.
- When the legislation is passed custom to that extent is abrogated for e.g. Hindu legislation.
- Prevalence of custom makes the system less uniform. It varies from family to family, region to region and community to community.
- It becomes expensive for the parties to produce evidence not only to satisfy the court but also to custom. Till a custom is proved, one's position remains vague and insecure for he or she can feel sure where the custom would be accepted or not.

Railway company is an autonomous body. It makes by-laws for the regulation of its administration.

② Judicial Rule — Powers are given to the judiciary to make rules for the regulation of its procedure. In India Supreme Courts and High Courts also have the power to make rules for their respective procedures and administration.

③ Local laws — Local bodies are given powers to make by-laws concerning their local matters.
e.g. Municipal Corporation, Zila Parishad etc.
Panchayats etc.

④ Colonial law — The countries which are not independent and are under the control of some other state have to give supreme power to make law. Such countries are of various classes — colonies, dominions etc. The laws made by them are subject to the supreme legislation of the state under whose control they are.

⑤ Executive made law → A govt consists of three branches —
① Legislature ② Executive ③ Judiciary.

The function of the ~~legislature~~ legislative organ is to make law. That of the judiciary is to administer justice and of the executive to execute laws & to run administration.

In some countries (generally parliamentary form of govt) ~~legislature and executive~~ executive organ in addition to its usual functions does some law making also. This too is a kind of legislative subordinate legislation. This power to the executive is delegated by the legislature. This kind of subordinate legislation is called delegated legislation.

[Delegated Legislation]

Codification of laws — Codification means "reduction of the whole corpus laws so far as practicable in the form of enacted law. In other words, Code denotes a systematic collection of statutes, body of laws so arranged as to avoid inconsistency and overlapping.

Codification implies collection, compilation, methodical arrangement and systematisation of whole body of laws so that they are reduced in the form of general principles and rules.

- In ancient Rome, Justinian compiled the mass of Roman laws into what is known as Justinian law.

France → Napoleon Code

Jewish → Code of Hammurabi

Chinese Code.

In India the process of codification of laws is known to be in existence from the ancient time.

The codes of Manu, Yajnavalkya, Bṛhaspati and Parashara were compiled in Vedic age which contained the rules of Hindu law and religion.

During the Moghul period in India the codification of laws was given priority by Moghul rulers.

King Aurangzeb got a Code on Hindu law compiled by Raghunandan Shastri known as Fatawa - a Plungin.

Fatawa