



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 3

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Lecture-27



Unit 4

Lecture –27:- Custom as a Source of Law

Custom as a Source of Law:

A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for a very long time, but it must also be supported by the opinion of the general public and morality. However, every custom need not become law. For example, the Hindu Marriages Act, 1955 prohibits marriages which are within the prohibited degrees of relationship. However, the Act still permits marriages within the prohibited degree of the relationship if there is a proven custom within a certain community. Custom can simply be explained as those long-established practices or unwritten rules which have acquired binding or obligatory character.

In ancient societies, the custom was considered as one of the most important sources of law; In fact, it was considered as the real source of law. With the passage of time and the advent of modern civilization, the importance of custom as a source of law diminished and other sources such as judicial precedents and legislation gained importance.

Custom as a law:

There is no doubt about the fact that custom is an important source of law. Broadly, there are two views which prevail in this regard on whether custom is the law. Jurists such as Austin opposed custom as a law because it did not originate from the will of the sovereign. Jurists like Savigny consider custom as the main source of law. According to him the real source of law is the will of the people and not the will of the sovereign. The will of the people has always been reflected in the custom and traditions of the society.

Custom is hence a main source of law. E.g., In India Saptapadi is an example of customs as a source of law. It is the most important rite of a Hindu marriage ceremony. The word, **Saptapadi** means "**Seven steps**". After tying the Mangalsutra, the newly-wed couple takes seven steps around the holy fire, which is called Saptapadi. The customary practice of Saptapadi has been incorporated in Section 7 of the Hindu Marriage Act, 1955.