



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

**Course : B.A LL.B/BB.A LL.B**

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**SUBJECT: Jurisprudence**

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**LECTURE: 3**

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**Assistant Professor**

# Lecture-29



## Lecture – 29 : Kinds and Essential valid Custom

### Kinds of Customs:

Customs can be broadly divided into two classes:

- i. **Customs without sanction:** These kinds of customs are non-obligatory in nature and are followed because of public opinion
- ii. **Customs with sanction:** These customs are binding in nature and are enforced by the State. These customs may further be divided into the following categories:
  - **Legal Custom:** Legal custom is a custom whose authority is absolute; it possesses the force of law. It is recognized and enforced by the courts. Legal custom may be further classified into the following two types:
    - a) **General Customs:** These types of customs prevail throughout the territory of the State.
    - b) **Local Customs:** Local customs are applicable to a part of the State, or a particular region of the country.
  - **Conventional Customs:** Conventional customs are binding on the parties to an agreement. When two or more persons enter into an agreement related to a trade, it is presumed in law that they make the contract in accordance with established convention or usage of that trade. For instance, an agreement between landlord and tenant regarding the payment of the rent will be governed by convention prevailing in this regard.

### Essential of a valid custom:

All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts. The jurists and courts have laid down some essential tests for customs to be recognized as valid sources of law. These tests are summarized as follows:

1. **Antiquity:** In order to be legally valid customs should have been in existence for a long time, even beyond human memory. In England, the year 1189 i.e., the reign of Richard I King of England has been fixed for the determination of the validity of customs.
2. **Continuous:** A custom to be valid should have been in continuous practice. It must have been enjoyed without any kind of interruption. Long intervals and disrupted practice of a custom raise doubts about the validity of the same.

**3. Exercised as a matter of right:** Custom must be enjoyed openly and with the knowledge of the community. It should not have been practised secretly. A custom must be proved to be a matter of right. A mere doubtful exercise of a right is not sufficient to a claim as a valid custom.

**4. Reasonableness:** A custom must conform to the norms of justice and public utility. A custom, to be valid, should be based on rationality and reason. If a custom is likely to cause more inconvenience and mischief than convenience, such a custom will not be valid.

**5. Morality:** A custom which is immoral or opposed to public policy cannot be a valid custom. Courts have declared many customs as invalid as they were practised for immoral purpose or were opposed to public policy. Bombay High Court in the case of Mathura Naikon v. Esu Naekin<sup>1</sup> , held that, the custom of adopting a girl for immoral purposes is illegal.

**6. Status with regard to:** In any modern State, when a new legislation is enacted, it is generally preferred to the custom. Therefore, it is imperative that a custom must not be opposed or contrary to legislation. Many customs have been abrogated by laws enacted by the legislative bodies in India. For instance, the customary practice of child marriage has been declared as an offence. Similarly, adoption laws have been changed by legislation in India.