



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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

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LECTURE: 3

NAME OF FACULTY: Ms. Kaneez Fatima

Assistant Professor

Lecture-33



Lecture – 33 : Importance of custom as a source of law in India

Importance of custom as a source of law in India:

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.

Custom was the most important source of law in ancient India. Even the British initially adopted the policy of non-intervention in personal matters of Hindus and Muslims. After independence and the enactment of the Constitution, the Indian Parliament took many steps and abrogated many old customary practices by some progressive legislation.

Hindu personal laws were codified and the Hindu Marriage Act, 1955 and the Hindu Adoption Act, 1955, were adopted. The Constitution of India provided a positive environment for these social changes. After independence, the importance of custom has definitely diminished as a source of law and judicial precedent, and legislation has gained a more significant place. A large part of Indian law, especially personal laws, however, are still governed by the customs.

- i. Hindu Personal Laws
- ii. Hindu Marriage Act, 1955
- iii. Hindu Succession Act, 1956,
- iv. Hindu Minority and Guardianship Act. 1956 and
- v. Hindu Adoptions and Maintenance Act, 1956