

UNIT - III

Sources of Law

Legislation • Precedent • Custom • Comparative Study

Unit Structure

01

Legislation as a Source of Law

Supreme and subordinate legislation, advantages

02

Precedent (Case Law)

Stare decisis, ratio decidendi, obiter dicta

03

Custom as a Source of Law

Essentials of a valid custom, kinds of custom

04

Comparative Perspective

Relative importance of the three sources

Legislation as a Source of Law

Legislation is the formal enactment of law by a competent authority (legislature or authorised body).

Kinds:

- Supreme legislation – made by the sovereign legislature (Parliament, State Legislature) and not subject to any higher legislative authority.
- Subordinate (delegated) legislation – made by authorities other than the legislature under powers delegated by the legislature (rules, regulations, bye-laws, notifications).

Advantages of legislation: certainty, clarity, prospective operation, democratic legitimacy, ability to reform the law comprehensively.

Disadvantages: rigidity, possible lack of practical experience, difficulty of amendment.

Precedent (Judicial Precedent)

A precedent is a previous judicial decision that serves as an authority for deciding a subsequent similar case.

Doctrine of Stare Decisis: “to stand by things decided”. Courts are bound by previous decisions of higher courts in the same hierarchy.

Ratio Decidendi: the legal principle or rule that is the binding element of the decision – the reason for the decision.

Obiter Dicta: statements made by the way; persuasive but not binding.

Types of precedent: binding (authoritative) and persuasive. Overruling, distinguishing and reversing are techniques used by courts.

Custom as a Source of Law

Custom is a rule of conduct that has been uniformly observed for a long time and has acquired the force of law.

Essentials of a valid custom (Salmond / Blackstone):

- Antiquity (from time immemorial – in England, 1189)
- Continuity
- Peaceable enjoyment
- Obligatory force (not optional)
- Certainty
- Consistency with other customs
- Reasonableness
- Conformity with statute law

Kinds: Legal custom (local or general) and Conventional custom (usage). In India, personal laws of Hindus and Muslims historically rested heavily on custom.

Comparative Study of Sources

In modern legal systems, especially those influenced by the common-law tradition:

- Legislation has become the primary and most important source of law. Parliament can change any rule of common law or custom.
- Precedent remains vital for the development and interpretation of law, especially in areas not covered by statute.
- Custom has largely been superseded by legislation and precedent, but still survives in limited areas (trade usages, personal law, constitutional conventions).

In India, the Constitution is the supreme source; legislation is next; judicial precedent (especially of the Supreme Court under Art. 141) is binding; custom is recognised where the law so provides.

Key Takeaways – Unit III

- Legislation is the formal enactment of law by a competent authority – supreme or subordinate.
- Precedent operates through the doctrine of stare decisis; only the ratio decidendi is binding.
- A valid custom must be ancient, continuous, certain, reasonable and not opposed to statute.
- In modern systems legislation is the dominant source; precedent remains crucial for development of the law.
- Custom has declined in importance but still plays a role in personal law and commercial usage.
- Article 141 of the Indian Constitution makes the law declared by the Supreme Court binding on all courts.

End of Unit – III

Sources of Law – Legislation, Precedent & Custom

Proceed to Unit-IV: Legal Concepts – Rights, Ownership, Possession, Personality