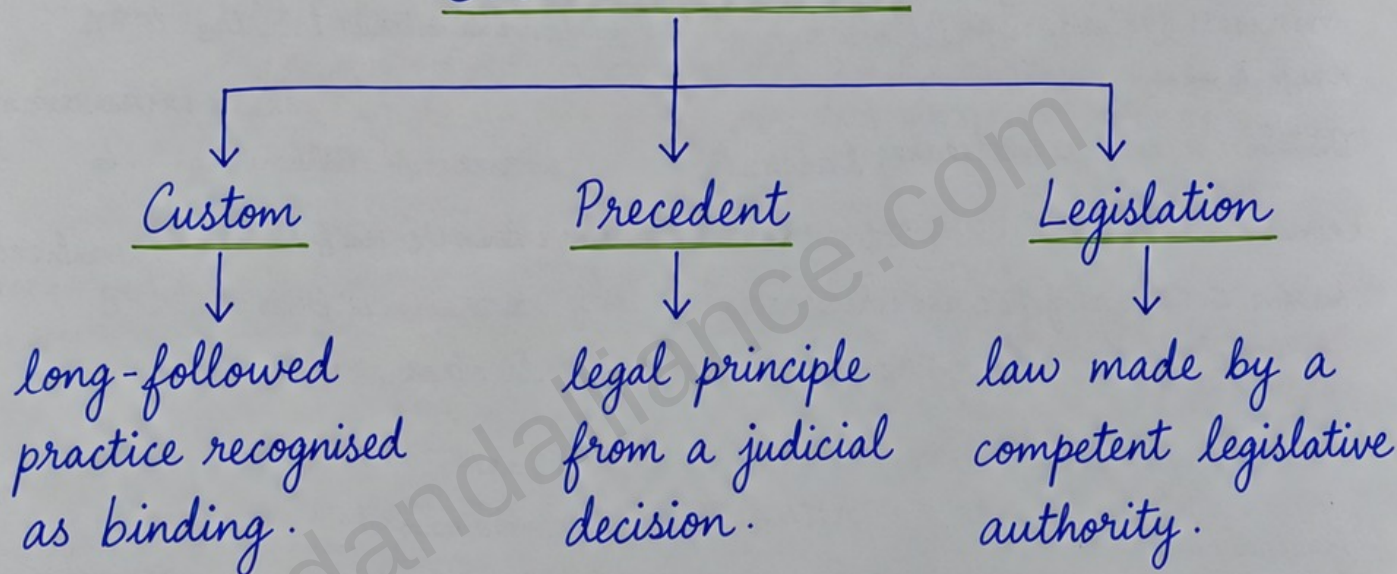


Sources of Law - Introduction

Q - What are sources of Law?

Sources are the origins or recognised forms through which legal rules develop and acquire authority.

SOURCES OF LAW

Note: Different sources interact; not every practice is law and not every observation by a judge is binding.

Q - Why study sources?

To know where a legal rule comes from and how to find it.

Unit II plan: customs + precedents + legislation + delegated legislation.

Custom - Meaning & Kinds

Q - What is Custom?

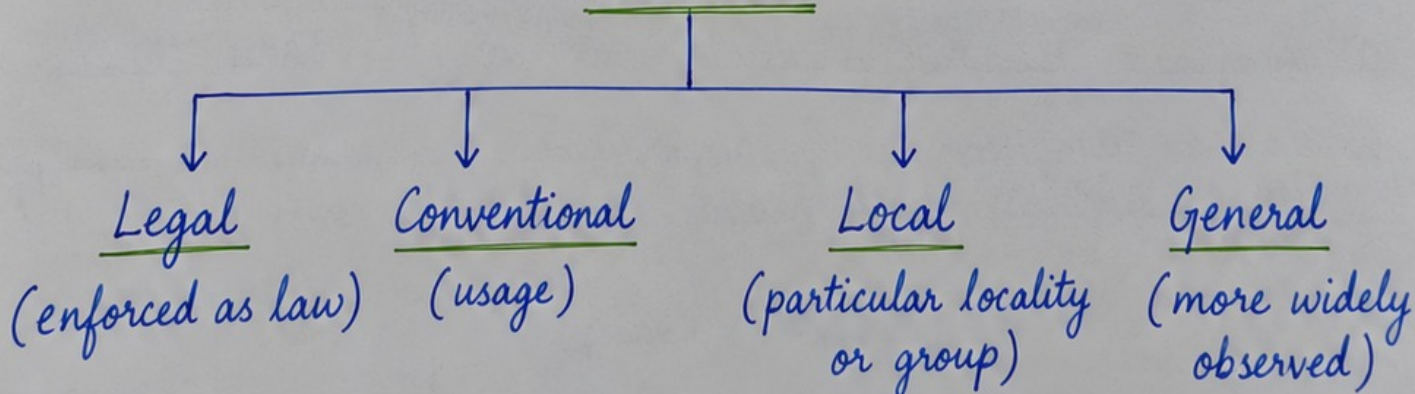
Custom = a practice followed consistently over time and accepted as obligatory by a community.

(v. imp) Custom may become legally relevant when the legal system recognises it.

Kinds of custom:

- (1) Legal custom → enforced as law when legally valid.
- (2) Conventional custom / usage → recognised through agreement or trade practice, subject to law.
- (3) Local custom → observed in a particular locality or group.
- (4) General custom → more widely observed.

CUSTOM



(v. imp) → Mere habit is not necessarily a binding custom.

Essentials of a Valid Custom

Q - When does a custom acquire legal force?

- ① Antiquity → followed for a sufficiently long period.
- ② Continuity → observed consistently.
- ③ Certainty → clear rule and scope.
- ④ Reasonableness → not arbitrary or oppressive.
- ⑤ Obligatory character → accepted as binding, not optional.
- ⑥ Peaceable observance → not maintained through conflict.
- ⑦ Consistency with law and public policy.

Long use + Consistency + Certainty + Recognition

Case : Thakur Gokal Chand v. Parvin Kumari (1952)

→ long, invariable and accepted usage helps prove binding custom.

Note → Indian courts assess the actual evidence; no rigid immemorial-time formula.

Custom - Proof and Limits

Q - How is a custom proved in court?

A party relying on a special custom ordinarily pleads and proves its existence, continuity and scope.

Evidence may include earlier decisions, documents, conduct, community practice and reliable witnesses.

(v. imp) A custom cannot prevail merely because it is old.

Limits → clear statutory prohibition, constitutional requirements and public policy may prevent enforcement.

Custom v. Usage :

Custom → practice claimed as a legally binding rule.

Usage → established course of dealing, often relevant to interpreting contracts.

Practice → Proof → Legal recognition

(v. imp) The existence of an alleged custom is a question needing reliable proof.

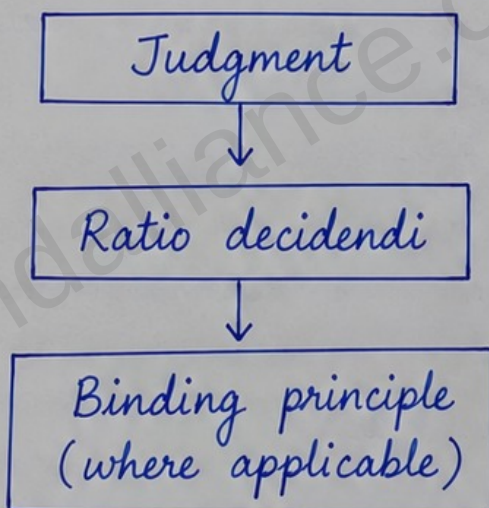
Judicial Precedent - Basics

Q - What is a Judicial Precedent?

A precedent is an earlier judicial decision used as authority for deciding a later similar legal issue.

Stare decisis → stand by decided matters.

Art. 141 → law declared by the Supreme Court binds all courts within India.



Ratio decidendi → legal reason necessary for the decision.

Obiter dicta → incidental remarks; may persuade but are not the binding ratio.

v. imp → Identify material facts + issue + rule + decision.

Example: A later court compares relevant facts before applying an earlier ruling.

Kinds of Precedents

Q - Authoritative v. Persuasive precedent?

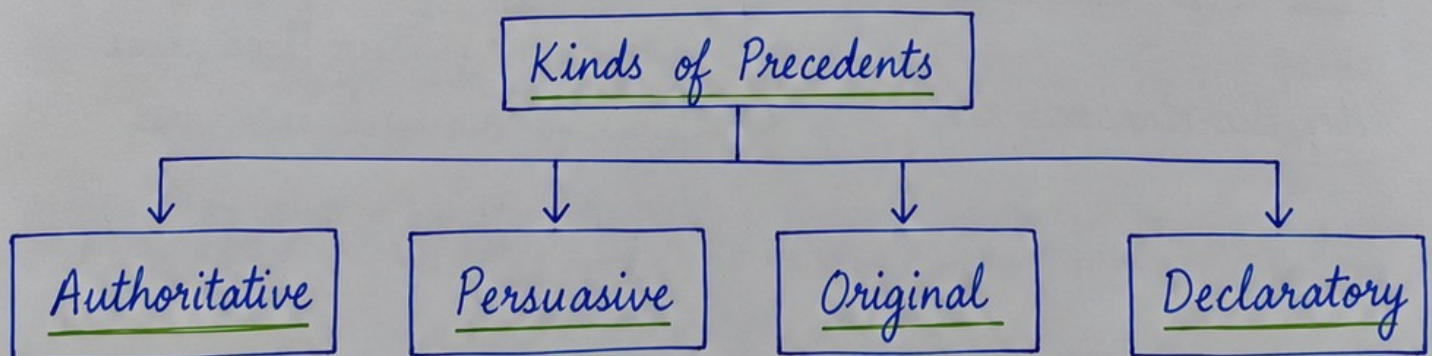
- Authoritative (binding) → must be followed by a court within the applicable judicial hierarchy.
- Persuasive → may be considered but need not be followed.

Supreme Court : Art. 141 binds courts in India.

High Court : generally binds subordinate courts within its territory; persuasive elsewhere.

Q - Original v. Declaratory?

- Original precedent → establishes a new legal principle for an issue.
- Declaratory precedent → applies or restates an existing principle.



(v. imp) → Precedential force depends on court, ratio and context.

How Precedent Operates

Q - Does every line of a judgment bind?

No. Identify the ratio, not isolated observations.

Following → apply a binding ratio to materially similar facts.

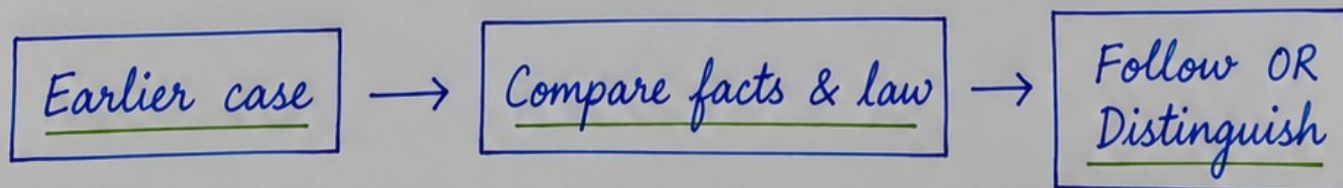
Distinguishing → explain meaningful factual or legal differences.

Overruling → a competent higher or larger bench rejects an earlier legal rule.

Reversing → appellate court changes the result in the same case.

Per incuriam → exceptional description of a decision made without regard to controlling law.

Note: Bench strength and court hierarchy matter.



v. imp

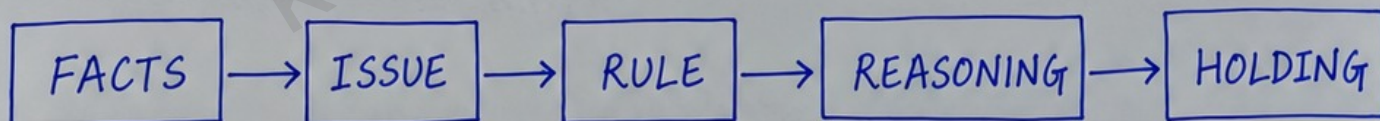
Do not treat obiter and ratio as identical.

Reading a Judgment - Practice

Q - How to prepare a case brief?

- (1) Case name + court + year.
- (2) Material facts.
- (3) Legal issue.
- (4) Relevant statute / earlier cases.
- (5) Ratio decidendi.
- (6) Decision and remedy.
- (7) Any obiter or dissent.

Exam note: → facts are important because a precedent is applied by analogy.



Practice: Two judgments conflict. Check court hierarchy, bench size, dates and precise legal issues before choosing authority.

Reference: Union of India v. Raghukir Singh (1989) - study precedent and bench discipline.

Legislation - Meaning & Kinds

Q - What is Legislation?

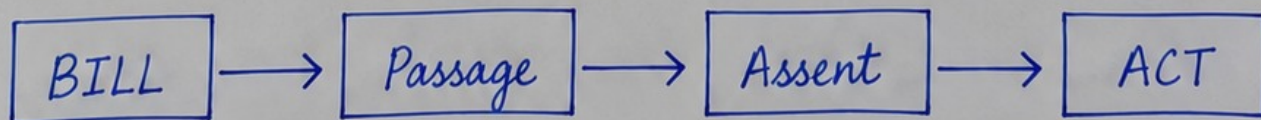
Legislation is law-making by a legally authorised body through a prescribed process.

In India, Parliament and State Legislatures enact Laws within constitutional limits.

Kinds of Legislation:

- (1) Primary / supreme legislation → directly made by a competent legislature.
- (2) Subordinate / delegated legislation → made under authority granted by a parent Act.

Bill → proposed law ; Act → Bill passed and duly assented to.



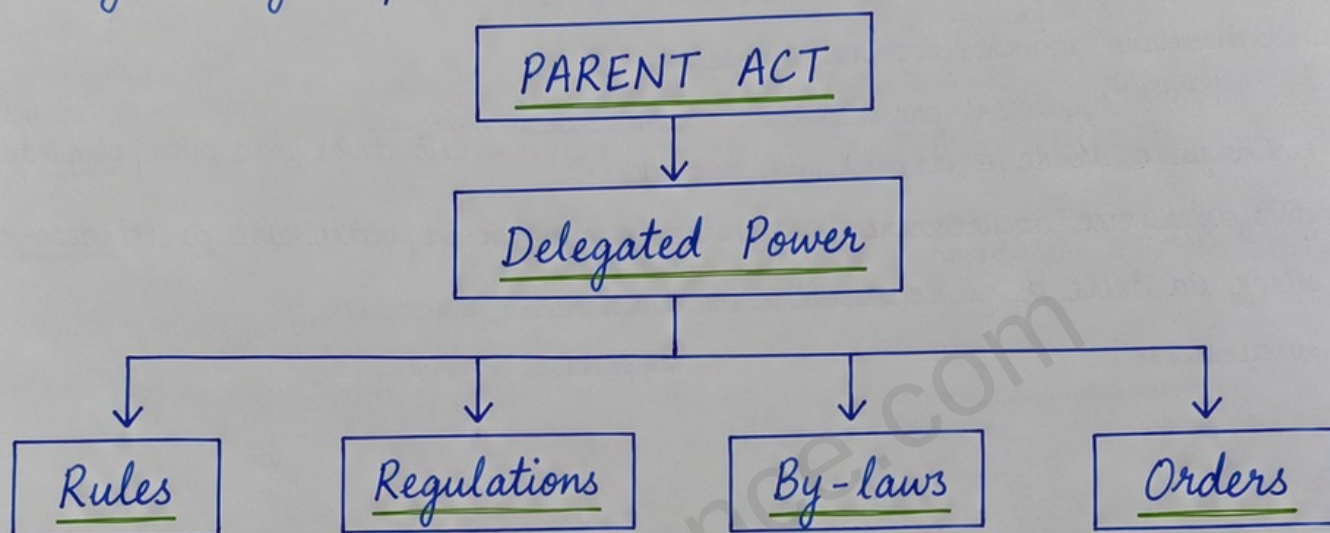
Ordinance → temporary law under constitutional power, distinct from delegated rules.

(v. imp) Check commencement ; passage and assent do not always mean immediate operation.

Delegated Legislation - Forms

Q - What is Delegated Legislation?

Rules made by an authorised body within the powers given by a parent statute.



Rules → detailed procedures implementing an Act.

Regulations → sector-specific norms issued by authorised bodies.

By-laws → local or institutional rules within lawful authority.

Orders / notifications → operative directions or declarations, when authorised by law.

Conditional legislation → legislature states the rule but another authority determines when specified conditions exist for its operation.

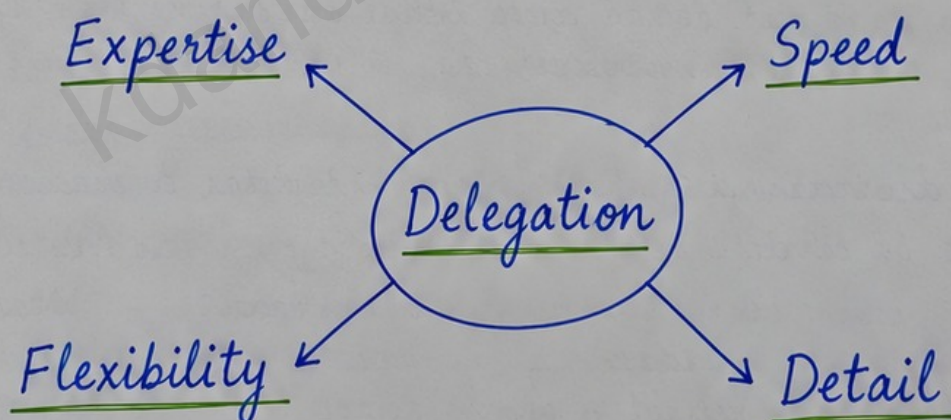
v. imp

A rule cannot override the parent Act.

Why Delegation Has Grown

Q - Reasons for growth of delegated legislation?

- ① Heavy legislative workload.
- ② Technical detail needs specialists.
- ③ Flexibility when conditions change.
- ④ Speed in urgent administration.
- ⑤ Local variation and special needs.
- ⑥ Frequent updates to procedures.
- ⑦ Legislature sets policy ; bodies work out details.



Example → An Act sets environmental duties ; rules prescribe forms, standards and procedures.

Warning → Convenience is not unlimited authority.
Delegation needs safeguards.

Limits and Control in India

Q - Can Parliament delegate every power?

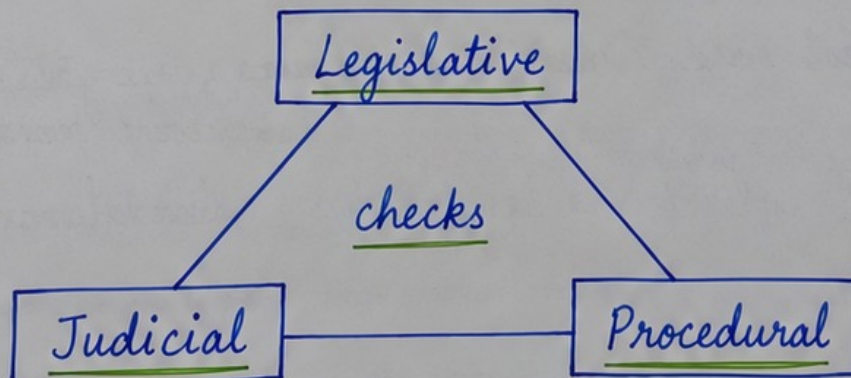
NO. Essential legislative function - framing basic legislative policy - must remain with the legislature.

Subordinate rules must stay within the parent Act and the Constitution.

Controls :

- ① Legislative → laying before House / committee scrutiny where applicable.
- ② Judicial → review for ultra vires, unconstitutionality or arbitrariness.
- ③ Procedural → required publication, consultation or notice, if prescribed.

Case : In re Delhi Laws Act (1951) → limits on delegation of essential functions.



v. imp → delegated law cannot exceed the scope and purpose of the enabling Act.

Comparison & Unit II Revision

Q - Custom v. Precedent v. Legislation ?

	<u>Custom</u>	<u>Precedent</u>	<u>Legislation</u>
Meaning	= social practice recognised as binding.	= judicial rule / ratio.	= law-making by authorised body.
Origin	practice.	court.	legislature.
Proof	usage.	reported decision.	enacted text.

v. imp Binding force depends on legal recognition and hierarchy.

QUICK REVISION

- ① Custom : kinds + essentials + proof.
- ② Precedent : Art. 141, ratio, obiter, kinds.
- ③ Legislation : primary and subordinate.
- ④ Delegation : forms, reasons, limits, controls.

Exam Q1 : Explain essential conditions of a valid custom.

Exam Q2 : Distinguish ratio from obiter.

Exam Q3 : Why is delegated legislation necessary and controlled ?