
FROM THE CRADLE TO THE GRAVE: THE NATURE, CLASSIFICATION AND SOURCES OF LAW IN THE INDIAN LEGAL SYSTEM

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ABSTRACT

The law affects every aspect of our lives, and yet it is not easy to define. This paper attempts to explain, in simple terms, what law is, why a society needs it, and where it comes from. It begins by distinguishing law from other kinds of rules — the rules of a sport, or the conventions of a community — and suggests that what sets law apart is that it is enforceable by the courts. It then sets out the principal classifications of law, namely, international and municipal law, public and private law, substantive and procedural law, and civil and criminal law, and explains the practical significance of each. The paper thereafter examines the role that law plays in society, and in particular its role as an agent of modernisation and social change in India. Finally, it discusses the four major sources of law in the Indian legal system: the Constitution, custom, judicial precedent and legislation. Throughout, the discussion is stated as the law stands in 2026, and it therefore takes account of the recodification of the criminal law by the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023, of the consolidation of twenty-nine central labour enactments into the four Labour Codes brought into force in November 2025, and of the arrival of a wholly new field of regulation under the Digital Personal Data Protection Act, 2023 and the Rules made under it. The paper is offered as a foundational account for students of law and for readers approaching the discipline for the first time.

Keywords: Nature of law; classification of law; sources of law; custom; judicial precedent; legislation; law and social change; recodification; Indian legal system.

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I. INTRODUCTION: WHAT IS LAW?

“Do not keep sharp objects with you while travelling in a train!”

“Do not drive your car on the sidewalk!”

“Do not steal your neighbour’s property!”

How many times a day does someone tell you what to do? How often do you have to stop yourself from doing what you want, because you know that the action is prohibited or wrong? In India, it seems as though we have laws, rules and regulations to oversee just about everything; we do not always like these rules, since they often mean that someone is telling us what to do, or is keeping us from doing what we want. Yet, to live in a civil society, we must have some rules to follow.

The law affects every aspect of our lives; it governs our conduct from the cradle to the grave, and its influence even extends from before our birth to after our death. We live in a society which has developed a complex body of rules to control the activities of its members. There are laws which govern working conditions (for example, by laying down minimum standards of health and safety), laws which regulate our contracts with strangers (for example, flight tickets, bus tickets, or the letting out of one’s house on rent), and laws which control personal relationships (for example, by prohibiting marriage between close relatives).² In more recent years, the law has followed us online as well, and now regulates how our personal data may be collected, stored and used.³ So, what is “law”, and how is it different from other kinds of rules? Ever since we are born, we hear the word “law” in our daily life, and yet it is still not easy to

²See, e.g., THE CODE ON WAGES, 2019, No. 29, Acts of Parliament, 2019 (India); THE INDUSTRIAL RELATIONS CODE, 2020, No. 35, Acts of Parliament, 2020 (India); THE CODE ON SOCIAL SECURITY, 2020, No. 36, Acts of Parliament, 2020 (India); THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020, No. 37, Acts of Parliament, 2020 (India). These four Labour Codes were brought into force on November 21, 2025, in place of twenty-nine central labour enactments, among them THE FACTORIES ACT, 1948, No. 63, Acts of Parliament, 1948 (India). See Press Release, Ministry of Labour & Emp., Gov’t of India, Government Makes the Four Labour Codes Effective to Simplify and Streamline Labour Laws (Nov. 21, 2025), <https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=2192463> (last visited Feb. 10, 2026). See also THE INDIAN CONTRACT ACT, 1872, No. 9, Acts of the Governor General in Council, 1872 (India); THE HINDU MARRIAGE ACT, 1955, No. 25, Acts of Parliament, 1955, § 5(iv) (India) (prohibiting marriage between parties within the degrees of prohibited relationship).

³THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023, No. 22, Acts of Parliament, 2023 (India), read with THE DIGITAL PERSONAL DATA PROTECTION RULES, 2025, Gazette of India, pt. II sec. 3(i) (Nov. 14, 2025) (India). The Rules were notified on November 13, 2025, and bring the obligations of the Act into force in stages over a period of eighteen months.

define.⁴ In reality, there is no perfect definition of law. The term “law” has various definitions.⁵ Many lawmakers and scholars have defined law in various ways.⁶ As such, there is no single complete definition of what law means.

It may be useful to notice a few of these definitions. *Salmond* defined law as the body of principles recognised and applied by the State in the administration of justice.⁷ The definition has not gone without criticism: *Keeton* pointed out that what is regarded as just does not remain the same from one age to another, and *Roscoe Pound* objected that it confines law to what the courts decide, and leaves the statute out of account altogether.⁸ *Austin*, writing from the positivist standpoint, defined law as the command of the sovereign backed by a sanction.⁹ This brings out the imperative character of law, but it too has been criticised for leaving morality out of account, and for failing to explain those laws which confer powers rather than impose duties. *Hart’s* answer was that a legal system is better understood as the union of primary rules of obligation with secondary rules of recognition, change and adjudication.¹⁰ From the sociological standpoint, *Roscoe Pound* described law as a social institution to satisfy social wants, and thought of the lawyer’s task as a kind of social engineering in which competing interests are weighed against one another.¹¹ To these may be added the realist view of Justice *Holmes*, for whom law was nothing more pretentious than a prediction of what the courts will in fact do.¹²

⁴The difficulty of arriving at a settled definition is itself a persistent theme in jurisprudence. See H.L.A. HART, *THE CONCEPT OF LAW* 1–17 (Penelope A. Bulloch & Joseph Raz eds., 2d ed. 1994).

⁵Law, LAW NOTES, <https://www.lawnotes.in/Law> (last visited Feb. 10, 2026).

⁶The definitions noticed below are only a sample. For the historical school’s insistence that law is the product of the spirit of a people, see FRIEDRICH CARL VON SAVIGNY, *OF THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE* 24–30 (Abraham Hayward trans., Littlewood & Co. 1831); for the pure theory of law as a hierarchy of norms each deriving its validity from a superior norm, and ultimately from the *Grundnorm*, see HANS Kelsen, *PURE THEORY OF LAW* 193–221 (Max Knight trans., 2d ed. 1967).

⁷JOHN W. SALMOND, *JURISPRUDENCE* 41 (Glanville L. Williams ed., 10th ed. 1947).

⁸See G.W. KEETON, *THE ELEMENTARY PRINCIPLES OF JURISPRUDENCE* 3–9 (2d ed. 1949); 1 ROSCOE POUND, *JURISPRUDENCE* 15–25 (1959).

⁹JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* 18–21 (Wilfrid E. Rumble ed., Cambridge Univ. Press 1995) (1832). To the same effect, see THOMAS ERSKINE HOLLAND, *THE ELEMENTS OF JURISPRUDENCE* 40 (13th ed. 1924) (describing law as a general rule of external human action enforced by a sovereign political authority).

¹⁰See HART, *supra* note 4, at 26–49 (on the inadequacy of the model of coercive orders), and *id.* at 79–99 (law as the union of primary and secondary rules).

¹¹ROSCOE POUND, *AN INTRODUCTION TO THE PHILOSOPHY OF LAW* 47 (rev. ed. 1954); ROSCOE POUND, *SOCIAL CONTROL THROUGH LAW* 63–80 (1942). Compare RUDOLF VON IHERING, *LAW AS A MEANS TO AN END* 380 (Isaac Husik trans., Boston Book Co. 1913) (law as the guarantee of the conditions of life of society, secured by the coercive power of the State).

¹²Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 461 (1897).

What these definitions have in common is more instructive than what divides them. Each of them is looking at the same institution from a different side, the idealist from the end which law serves, the positivist from the authority which makes it, the sociologist from the society in which it works, and the realist from the court in which it is applied.

In its simplest form, the law is a set of rules, enforceable by the courts, which regulate the government of the State and govern the relationship between the State and its citizens, and between one citizen and another.¹³ These laws are generally contained in constitutions, legislation, judicial decisions and the like. As individuals, we encounter many “rules”. The rules of a particular sport, such as the off-side rule in football, or the rules of a club, are designed to bring order to a particular activity. Other kinds of rule may really be social conventions, such as not speaking ill of the dead. In such a case, the “rule” is merely a reflection of what a community regards as appropriate behaviour. In neither situation would we expect the rule to have the force of law and to be enforced by the courts.¹⁴

II. CLASSIFICATION OF LAW

Laws can be classified into different kinds. These are:

- (1) International law and municipal law;
- (2) Public law and private law;
- (3) Substantive law and procedural law; and
- (4) Civil law and criminal law.

A. Distinction between International and Municipal Law

International law is an important branch of law. It deals with those rules and regulations of nations which are recognised by them and are binding upon each other through reciprocity. Many jurists, however, do not give much importance to this branch.¹⁵ In recent times, this

¹³The working definition adopted here is close in substance to that of Salmond. See supra note 7 and accompanying text.

¹⁴On the difference between rules that merely order an activity and rules that impose legal obligation, see HART, supra note 4, at 82–91.

¹⁵Austin famously regarded the law of nations as “positive morality” rather than law properly so called. AUSTIN, supra note 9, at 123, 171.

branch of law has grown manifold and has acquired increasing importance on account of globalisation and other related factors.¹⁶ International law has been further classified as follows:

- (1) Public international law; and
- (2) Private international law.

Municipal laws are basically domestic or national laws. They regulate the relationship between the State and its citizens, and determine the relationship among citizens themselves.¹⁷ Municipal law can be further classified into two segments:

- (1) Public law; and
- (2) Private law.

B. Distinction between Public and Private Law

The distinction between public law and private law concerns whom the law directly governs or affects. Public law addresses the relationship between persons and their government, while private law looks at dealings between two persons.¹⁸

Public law mainly consists of laws aimed at regulating the functioning of society. The main areas of public law are constitutional law, administrative law and criminal law.

Private law concerns the legal relationships between individuals. The main areas of private law are property law, contract law and the law of torts.

C. Distinction between Substantive and Procedural Law

Substantive law is that body of statutory law which deals with the legal relationship between people, or between the people and the State. Substantive law, therefore, defines the rights and

¹⁶See generally MALCOLM N. SHAW, INTERNATIONAL LAW 1–48 (9th ed. 2021).

¹⁷In India, the relationship between the two systems is mediated by the Constitution. See INDIA CONST. art. 51(c) (directing the State to foster respect for international law and treaty obligations); *Id.* art. 253 (empowering Parliament to legislate to give effect to international agreements); *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India) (applying an international convention in the absence of domestic legislation on the point).

¹⁸See INDIA CONST. pt. III (fundamental rights) and pt. XIV (services under the Union and the States), both of which regulate the citizen's relationship with the State.

duties of the people, and the offences and their punishments. *For example*, the Bharatiya Nyaya Sanhita, 2023, which since July 1, 2024 has taken the place of the Indian Penal Code, 1860, defines the offences and prescribes their punishments.¹⁹

Procedural law, on the other hand, comprises the rules and principles that govern the conduct of courts and lawyers in dealing with disputes. Procedural law lays down the rules with the help of which substantive laws are enforced. *For example*, the Bharatiya Nagarik Suraksha Sanhita, 2023 lays down the procedure for arrest, collection of evidence, trial, bail and so on, while the Bharatiya Sakshya Adhiniyam, 2023 lays down the rules of evidence by which such proceedings are conducted.²⁰

A word of caution is necessary here for the reader in 2026. The older statutes have not disappeared altogether. An offence committed before July 1, 2024 continues to be investigated and tried under the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973, while an offence committed on or after that date is governed by the new Sanhitas. Our courts are therefore working with both sets of laws at the same time, and will continue to do so for some more years.²¹

D. Distinction between Civil and Criminal Law

For an understanding of the difference between civil law and criminal law, the table below may be seen.²²

¹⁹THE BHARATIYA NYAYA SANHITA, 2023, No. 45, Acts of Parliament, 2023 (India), brought into force on July 1, 2024 in place of THE INDIAN PENAL CODE, 1860, No. 45, Acts of the Legislative Council of India, 1860 (India). The Sanhita contains 358 sections, as against the 511 sections of the Code it replaced.

²⁰THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, No. 46, Acts of Parliament, 2023 (India), which replaced THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1974 (India), with effect from July 1, 2024. It introduces, among other things, time limits for the completion of investigation and trial, the compulsory use of forensic science in the more serious offences, the audio-video recording of search and seizure, and trial in absentia. The law of evidence is now contained in THE BHARATIYA SAKSHYA ADHINIYAM, 2023, No. 47, Acts of Parliament, 2023 (India).

²¹See THE BHARATIYA NYAYA SANHITA, 2023, *supra* note 19, § 531 (saving pending proceedings and investigations under the repealed Code).

²²Civil Law vs. Criminal Law, DIFFEN, https://www.diffen.com/difference/Civil_Law_vs_Criminal_Law (last visited Feb. 10, 2026).

Table 1: Civil Law and Criminal Law Compared

Basis	Civil Law	Criminal Law
Definition	Civil law deals with disputes between individuals, between organisations, or between the two, in which compensation is awarded to the victim.	Criminal law is the body of law that deals with crime and with the legal punishment of criminal offences.
Purpose	To resolve disputes between individuals, between organisations, or between the two, and to compensate the party who has suffered loss or injury.	To maintain the stability of the State and of society by punishing offenders, and by deterring them and others from offending.
Case filed by	A private party.	The Government/ the State.
Standard of proof	“Preponderance of evidence.” The claimant must establish the case on the balance of probabilities.	“Beyond reasonable doubt.” The prosecution must exclude every reasonable hypothesis of innocence.
Type of punishment	Compensation, usually financial, for injury or damage, or an injunction in a case of nuisance.	A guilty accused is liable to custodial punishment (imprisonment) or to non-custodial punishment (fine or community service). In exceptional cases, the death penalty.
Examples	Landlord and tenant disputes, divorce proceedings, child custody proceedings, property disputes, personal injury, and the like.	Theft, assault, robbery, trafficking in controlled substances, murder, and the like.

Two clarifications may be added to the table. First, the standard of proof in a civil proceeding is the preponderance of probabilities, and the claimant is not required to establish the case beyond reasonable doubt.²³ Secondly, although the death penalty remains on the statute book, it may be imposed only in the rarest of rare cases.²⁴

²³In civil proceedings the case must be established on a preponderance of probabilities, and not beyond reasonable doubt. See *N.G. Dastane v. S. Dastane*, (1975) 2 S.C.C. 326, ¶¶ 24–25 (India).

²⁴The death penalty may be imposed only in the “rarest of rare” cases. See *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684, ¶ 209 (India).

III. WHY DO WE NEED LAW?

Laws are rules that bind all people living in a community. Every country follows its own legal system, which is based on certain characteristics and factors peculiar to that country. The legal system consists of certain laws and rules that shape the citizen's morality and behaviour in society. Law is inevitable. It defends us from evil. The purpose of law is to govern relationships among individuals, and between individuals and their society.²⁵ Law shapes our society and all its affairs in some or the other way. We have laws to protect our general safety, and to ensure our rights as citizens against abuse by other people, by organisations, and by the government itself. It helps in promoting the common good. It helps in resolving disputes and encourages people to do the right thing. We need laws to keep the interests of all the people in society balanced and stabilised. Without the fulfilment of these desired tasks, man would simply become equal to the animals - or, worse still, would allow his darker side to emerge and to control his life.

A. Law and Society

The law is important for a society, for it serves as a norm of conduct for citizens. It was also made to provide proper guidelines and order upon the behaviour of all citizens, and to sustain equity among the three branches of the government. It keeps society running. Without law there would be chaos, and it would be survival of the fittest and every man for himself. That is not an ideal way of life for the most part.

The law is important because it acts as a guideline as to what is accepted in society. Without it, there would be conflict between social groups and communities. It is pivotal that we follow it. The law also allows for easy adaptation to the changes that occur in society.

B. Law as an Agent of Social Change

Law plays an important indirect role in regard to social change by having a direct impact on society. For example, a law setting up a compulsory educational system.²⁶

²⁵This is the classical account of law as an instrument of social control. See POUND, *supra* note 11, at 63–80.

²⁶INDIA CONST. art. 21A, inserted by the Constitution (Eighty-sixth Amendment) Act, 2002; THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009, No. 35, Acts of Parliament, 2009 (India).

On the other hand, law interacts in many cases indirectly with basic social institutions in a manner constituting a direct relationship between law and social change. For example, a law designed to prohibit polygamy.²⁷

Law thus plays the part of an agent of modernisation and social change. It is also an indicator of the nature of societal complexity and of its attendant problems of integration. Further, the reinforcement of our belief in the age-old panchayat system, and the abolition of the abhorrent practices of untouchability, child marriage, sati and dowry, are typical illustrations of social change being brought about in the country through laws.²⁸

The recent history of Indian legislation illustrates the same point. Between 2024 and 2026, three of the oldest statutes on the Indian statute book, the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, were replaced by the three Sanhitas of 2023; twenty-nine central labour enactments, several of them framed in the 1930s and the 1940s, were consolidated into four Labour Codes which were brought into force on November 21, 2025; and an entirely new subject, the protection of personal data, entered our law through the Digital Personal Data Protection Act, 2023 and the Rules made under it in 2025. Each of these is an instance of the law catching up with a society that has changed around it.²⁹

²⁷THE HINDU MARRIAGE ACT, 1955, *supra* note 2, §§ 5(i), 17 (India), read with THE BHARATIYA NYAYA SANHITA, 2023, *supra* note 19, § 82 (bigamy) (but contrast the position under Muslim personal law, under which a male may contract as many as four simultaneous marriages, see THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937, No. 26, Acts of the Governor General in Council, 1937, § 2 (India), so that the prohibition of polygamy has never operated uniformly upon all communities in India; the Supreme Court has nevertheless held that polygamy is not an essential religious practice protected by Article 25, see *Javed v. State of Haryana*, (2003) 8 S.C.C. 369, ¶¶ 40–60 (India), and *Khursheed Ahmad Khan v. State of U.P.*, (2015) 8 S.C.C. 439, ¶¶ 9–12 (India). The setting has lately begun to change at the level of the States: THE UNIFORM CIVIL CODE OF UTTARAKHAND ACT, 2024, No. 1, Acts of Uttarakhand Legislature, 2024 (India), in force since January 27, 2025, prohibits polygamy for all residents of that State other than the Scheduled Tribes, and the Gujarat Uniform Civil Code, 2026, passed by the State Assembly on March 25, 2026 and awaiting notification, is to the same effect. The example is therefore a double one: it shows not only that law and social change move together, but also that the very same rule may operate differently upon different communities, and in different States, at the same time).

²⁸See INDIA CONST. art. 40; *Id.* pt. IX, inserted by the Constitution (Seventy-third Amendment) Act, 1992; THE PROTECTION OF CIVIL RIGHTS ACT, 1955, No. 22, Acts of Parliament, 1955 (India); THE PROHIBITION OF CHILD MARRIAGE ACT, 2006, No. 6, Acts of Parliament, 2007 (India); THE COMMISSION OF SATI (PREVENTION) ACT, 1987, No. 3, Acts of Parliament, 1988 (India); THE DOWRY PROHIBITION ACT, 1961, No. 28, Acts of Parliament, 1961 (India).

²⁹See THE BHARATIYA NYAYA SANHITA, 2023, *supra* note 19; THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, *supra* note 20; the four Labour Codes, *supra* note 2; and THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023, *supra* note 3.

Law is an effective medium or agency, instrumental in bringing about social change in the country, or in any region in particular. Therefore, we may rejuvenate our belief that law has been pivotal in introducing changes in the societal structure and in societal relationships, and continues to be so.³⁰

Even in cases where law cannot bring about change in society, it can still create certain preconditions for social change. Moreover, after independence, the Constitution of India provided far-reaching guidelines for change. Its directive principles suggested a blueprint for a new nation.³¹ The de-recognition of the caste system, equality before the law, and equal opportunity for all in the economic, political and social spheres, were some of the high points of the Indian Constitution.³²

IV. WHERE DO LAWS COME FROM? THE SOURCES OF LAW

To have a clear and complete understanding of law, it is essential to understand the sources of law. “Sources of law” means the sources from which law, or the binding rules of human conduct, originate. In other words, law is derived from these sources. Different jurists have given different views on the origin and the sources of law.

On the basis of what different jurists opine on the sources of law, the following are the major sources of law in any modern society:

- (1) The Constitution;
- (2) Custom;
- (3) Judicial precedent; and
- (4) Legislation.

A. The Constitution as a Source of Law

The fountain source of law in India is the Constitution, which, in turn, gives due recognition to

³⁰See generally MARC GALANTER, *LAW AND SOCIETY IN MODERN INDIA* (Rajeev Dhavan ed., 1989); UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* (1982).

³¹INDIA CONST. pt. IV. On the relationship between the directive principles and the fundamental rights, see *Minerva Mills Ltd. v. Union of India*, (1980) 3 S.C.C. 625, ¶¶ 56–57 (India).

³²INDIA CONST. arts. 14–17.

statutes, case law and customary law consistent with its dispensations. The Constitution is a set of fundamental ground rules setting out the powers of the different branches of government, that is, the executive, the legislature and the judiciary; and the manner in which these entities operate and interrelate. The Constitution also sets out basic principles, such as fundamental rights and duties. A Constitution overrides any other source of law.³³

B. Custom as a Source of Law

Local customs and conventions which are not against statute, morality and the like are also recognised and taken into account by the courts while administering justice in certain spheres. Custom may simply be explained as those long-established practices or unwritten rules which have acquired a binding or obligatory character.

A custom, to be valid, must have been observed continuously for a very long time without any interruption. Further, a practice must be supported not only for a very long time, but must also be supported by the opinion of the general public and by morality.³⁴ However, every custom need not become law. For example, the Hindu Marriage Act, 1955 prohibits marriages which are within the degrees of prohibited relationship. The Act, however, still permits marriages within the degrees of prohibited relationship if there is a proven custom within a certain community.³⁵

It must also be remembered that custom does not stand above the Constitution. A custom, however ancient and however sincerely followed, cannot be enforced if it takes away a right guaranteed by Part III. This has been the position taken by the Supreme Court in recent years, and it marks the outer limit within which custom continues to operate as a source of law.³⁶

³³See INDIA CONST. art. 13 (rendering void any law inconsistent with the fundamental rights); *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India) (holding that even the amending power cannot destroy the basic structure of the Constitution) Further, the Constitution of India is considered as the law of the land.

³⁴The requirements of a valid custom — antiquity, certainty, continuity, reasonableness and conformity with public policy — are well settled. See *Mst. Subhani v. Nawab*, A.I.R. 1941 P.C. 21 (India); *Collector of Madura v. Moottoo Ramalinga Sathupathy*, (1868) 12 Moo. Ind. App. 397, 436 (P.C.) (observing that under the Hindu system of law clear proof of usage will outweigh the written text).

³⁵THE HINDU MARRIAGE ACT, 1955, supra note 2, § 5(iv) (permitting a marriage within the degrees of prohibited relationship where the custom or usage governing each of the parties permits it); *Id.* § 3(a) (defining “custom” and “usage”).

³⁶See *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 S.C.C. 1 (India) (holding that a custom or usage which is inconsistent with the fundamental rights cannot be sustained); INDIA CONST. art. 13(3)(a) (bringing custom and usage having the force of law within the definition of “law” for the purposes of Part III). See INDIA CONST. art. 13(3)(a) defines “law”, for the purposes of Part III, to include “any Ordinance, order,

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

C. Judicial Precedent as a Source of Law

This law comes from the judicial branch. Judicial precedents refer to previous decisions of the superior courts, such as the Supreme Court and the High Courts, which are important sources of law. In most of the developed legal systems, the judiciary is considered to be an important organ of the State. In modern societies, rights are generally conferred on the citizens by legislation, and the main function of the judiciary is to adjudicate upon these rights.

The judges decide those matters on the basis of the legislation and the prevailing custom, but while doing so they also play a creative role by interpreting the law. By this exercise, they lay down new principles and rules which are generally binding on the lower courts within a legal system.³⁷ In simple words, this means that the judiciary bases its legal decisions on what is written in the Constitution, and on previous court rulings in similar cases. This is a process called *stare decisis*, which in Latin means “let the decision stand”.³⁸ The decisions of the Supreme Court are binding on all courts within the territory of India.³⁹

Precedent, however, does not make the law immovable. A larger Bench may depart from what a smaller Bench has laid down, and the Supreme Court may reconsider its own view when it thinks it right to do so. A recent illustration is the advisory opinion delivered by a Constitution Bench in November 2025 on the powers of the Governor and of the President in dealing with Bills passed by the State legislatures, in which the Court departed from the timelines and from the doctrine of “deemed assent” that a smaller Bench had laid down only a few months earlier.⁴⁰ The lesson for the student of law is a simple one: a judgment is authority

bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law”, and so brings custom and usage within the definition.

³⁷The Constitution Bench has explained that the doctrine of binding precedent promotes certainty and consistency in judicial decisions and enables the organic development of the law. See *Union of India v. Raghubir Singh*, (1989) 2 S.C.C. 754, ¶ 9 (India).

³⁸Glossary, JUD. LEARNING CTR., <https://judiciallearningcenter.org/glossary/> (last visited Feb. 10, 2026).

³⁹INDIA CONST. art. 141 (“The law declared by the Supreme Court shall be binding on all courts within the territory of India.”). The Supreme Court is not, however, bound by its own earlier decisions. See *Bengal Immunity Co. v. State of Bihar*, A.I.R. 1955 S.C. 661, ¶ 25 (India).

⁴⁰See *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India*, Special Reference No. 1 of 2025, 2025 INSC 1333 (India) (advisory opinion delivered on Nov. 20, 2025, holding that the

until it is displaced, and one must always look for the latest decision, and for the decision of the largest Bench, on the point.

It may be added that finding the precedent has itself become easier. Judgments of the Supreme Court now carry a neutral citation of the form “2025 INSC 1333”, and are available without charge through the Court’s electronic reports, so that the search for authority is no longer confined to the printed law report.⁴¹

D. Legislation and Statutes as a Source of Law

In modern times, legislation is considered to be the most important source of law. The importance of legislation as a source of law can be measured from the fact that it is backed by the authority of the sovereign, and that it is directly enacted and recognised by the State.

Statutes are laws that are enacted by Parliament, by the State legislatures and by the legislature of a Union Territory through the law-making process.⁴² Statutes are written, discussed, argued and voted upon in Parliament, or in the legislature of a State or Union Territory. Besides these, there is a vast body of law known as subordinate legislation, in the form of rules, regulations and bye-laws made by the Central and State governments and by local authorities such as municipal corporations, municipalities, gram panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or by the State or Union Territory legislature concerned.⁴³ The courts then apply and interpret these statutes on a case-by-case basis.

A feature of law-making in recent years deserves particular notice. Instead of amending a large number of separate Acts, Parliament has increasingly replaced whole groups of them with a single consolidating code. The three criminal law statutes of 2023 and the four Labour Codes are the clearest examples, and the student who begins the study of law in 2026 will find

courts cannot prescribe timelines for the grant of assent and departing from the doctrine of “deemed assent” laid down by a smaller Bench in *State of Tamil Nadu v. Governor of Tamil Nadu*, decided on Apr. 8, 2025).

⁴¹Judgments of the Supreme Court now carry a neutral citation of the form “2025 INSC 1333” and are made available without charge through the Court’s Electronic Supreme Court Reports. See Electronic Supreme Court Reports (e-SCR), SUP. CT. OF INDIA, <https://www.sci.gov.in> (last visited Feb. 10, 2026).

⁴²See INDIA CONST. arts. 245–246, sch. VII (distributing legislative competence between the Union and the States).

⁴³On the permissible limits of delegated legislation, see *In re Delhi Laws Act, 1912*, A.I.R. 1951 S.C. 332 (India) (holding that the essential legislative function may not be delegated).

that a good part of the statute book has been rewritten within the last three years.⁴⁴

The practical importance of subordinate legislation, too, is easily underestimated. A statute often cannot work at all until the rules under it are notified. The Digital Personal Data Protection Act, 2023, for instance, remained largely inoperative until the Rules were made in November 2025, and even then its obligations were brought into force in stages; and although the four Labour Codes are themselves in force, the rules under them were still being notified by the States well into 2026.⁴⁵

V. CONCLUSION

Law, then, is not a distant or technical subject that concerns only lawyers and judges. It is the framework within which an entire society conducts itself. We have seen that although there is no perfect definition of law, what distinguishes a legal rule from the rule of a sport or from a social convention is that a legal rule is enforceable by the courts. We have also seen that law is not of one kind alone; it is classified into international and municipal law, public and private law, substantive and procedural law, and civil and criminal law, and each of these classifications tells us something useful about whom the law governs, what it protects and how it is enforced.

The Indian experience shows, further, that law is not merely a mirror of society; it is also an instrument with which society is reshaped. The Constitution, custom, judicial precedent and legislation together supply the rules by which we live, and each of these sources has its own place in the hierarchy. The Constitution stands at the top; legislation has become the most important source in modern times; precedent lends the system certainty and continuity; and custom, though diminished, has not disappeared.

The years between 2024 and 2026 have shown this more plainly than most. A criminal law that had governed the country since 1860, a labour law framework assembled over the better part of a century, and a wholly new law of personal data have all been settled afresh

⁴⁴The three criminal law statutes of 2023, *supra* notes 19–20, and the four Labour Codes, *supra* note 2, are the clearest recent examples of this technique. Between them they displaced three of the oldest statutes on the Indian statute book and twenty-nine central labour enactments.

⁴⁵See THE DIGITAL PERSONAL DATA PROTECTION RULES, 2025, *supra* note 3 (notified more than two years after the parent Act, and bringing its principal obligations into force in phases). The position under the Labour Codes is comparable: although the Codes themselves are in force, the final Central and State rules were still being notified through the early part of 2026.

within a very short span of time. For the student, this is a reminder that law is never learnt once and for all; the principles endure, but the statutes which carry them are always being rewritten.

It follows that an understanding of the nature, classification and sources of law is not the preserve of the specialist. It is the first requirement of informed citizenship. A society that knows its law is better placed to obey it, to use it, and — where the law falls short — to change it.