

# **Custom and Usage as Relevant Fact under Evidence Law**

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**Abstract:** *The law of evidence plays a crucial role in determining the admissibility of facts in judicial proceedings. Among the various categories of relevant facts, custom and usage occupy a unique position, particularly in civil and commercial disputes. Custom and usage reflect long-standing practices that are accepted by a community or group and, over time, acquire legal recognition. Under the framework of evidence law, such customs and usages are considered relevant when they help in interpreting agreements, explaining rights and obligations, or establishing the existence of a particular legal relationship.*

*This paper examines the concept of custom and usage as relevant facts under evidence law, with special reference to the Bharatiya Sakshya Adhinyam, 2023 and the earlier Indian Evidence Act, 1872. It explores the meaning, essential elements, types, and conditions required for the recognition of customs. The study also highlights the role of courts in determining the validity of customs and the evidentiary value attached to them.*

*The objective of this research is to provide a comprehensive understanding of how customs and usages influence judicial decisions and contribute to the development of law. The paper also analyzes important case laws and addresses challenges associated with proving customs in modern legal systems..*

**Keywords:** Custom, Usage, Relevant Facts, Evidence Law, Admissibility, Bharatiya Sakshya Adhinyam 2023, Indian Evidence Act 1872, Legal Custom, Trade Usage, Judicial Interpretation.

## **I. INTRODUCTION**

The law of evidence forms one of the most important branches of legal study, as it determines how facts are presented, examined, and proved before a court of law. Without proper rules governing evidence, the administration of justice would become uncertain and unreliable. Evidence law ensures that judicial decisions are based on truth, logic, and legally acceptable materials rather than assumptions or personal beliefs.

Among the various kinds of relevant facts recognized under evidence law, custom and usage hold a very special and unique position. Unlike written laws that are enacted by the legislature, customs develop gradually over time through continuous and uniform practice by people within a community or trade. These customs, once established and accepted, may acquire legal recognition and become binding.

In a country like India, which is socially and culturally diverse, customs play a significant role in governing everyday life. Many personal laws relating to marriage, inheritance, and family relationships are deeply influenced by customs. Even in commercial transactions, trade usages help in interpreting agreements and understanding the intention of the parties.

Custom and usage are therefore treated as relevant facts because they help courts understand the background of a case. They provide context, clarify ambiguities, and sometimes even override general rules when properly proved. The Bharatiya Sakshya Adhinyam, 2023 continues to recognize the importance of custom and usage, ensuring that traditional practices are not ignored in modern legal proceedings.



Thus, the study of custom and usage is essential for understanding how law interacts with society and evolves with changing practices.

## **II. MEANING OF CUSTOM AND USAGE**

Custom may be defined as a rule of conduct that has been continuously and uniformly followed for a long period of time and has acquired the force of law within a particular community, locality, or group. It is not merely a habit or practice but something that people believe to be legally binding and obligatory.

Usage, on the other hand, refers to a practice that is commonly followed in a particular trade, business, or profession. It may not have the same legal force as custom but is still important in determining how parties conduct their transactions.

Usage is often used to interpret contracts, especially when certain terms are not clearly defined.

The difference between custom and usage lies mainly in their legal recognition. Custom is stronger and can be enforced as law if it satisfies certain conditions. Usage is comparatively weaker and is mainly used as evidence to explain or supplement agreements.

For example, in a particular trade, it may be customary to allow a certain number of days for payment after delivery of goods. Even if the contract is silent on this point, the court may consider the usage of the trade to determine the intention of the parties.

Thus, both custom and usage play an important role in evidence law by helping courts understand the real meaning and intention behind actions and agreements.

## **III. LEGAL BASIS UNDER EVIDENCE LAW**

The recognition of custom and usage under evidence law is based on the principle that law should reflect social realities. Courts do not function in isolation; they operate within a society where people follow certain established practices and traditions. Ignoring these practices would lead to injustice.

Under the Bharatiya Sakshya Adhiniyam, 2023, facts which show the existence of any custom or usage are considered relevant when they help in determining the rights and liabilities of parties. This provision is similar to the earlier Indian Evidence Act, 1872, which also recognized the importance of custom.

Courts generally admit evidence of custom or usage in situations where:

- The terms of a contract are unclear or ambiguous
- The law does not provide a clear rule
- The parties have acted according to a particular practice

For instance, in commercial contracts, certain terms may have a special meaning in a particular trade. In such cases, courts rely on trade usage to interpret those terms.

Thus, the legal basis of custom and usage lies in their ability to provide clarity, fairness, and practical solutions in legal disputes.

## **IV. ESSENTIAL ELEMENTS OF A VALID CUSTOM**

Not every practice can be recognized as a custom. Courts have laid down certain essential conditions that must be satisfied before a custom is accepted as valid.

Firstly, the custom must be ancient. This means that it should have been in existence for a long period of time. Although no fixed time is prescribed, the custom should be old enough to show that it is well established.

Secondly, the custom must be certain and definite. It should be clear in its terms and not vague or ambiguous. Courts cannot enforce a custom that is uncertain.

Thirdly, the custom must be reasonable. It should not be unfair, arbitrary, or oppressive. Any custom that goes against principles of justice and morality will not be recognized.

Fourthly, the custom must be continuous and uninterrupted. It should have been followed consistently without any break.



Fifthly, the custom must be compulsory. People should follow it as a matter of obligation and not merely out of convenience.

Lastly, the custom must not be opposed to law. If a custom conflicts with a statutory provision, it will not be valid. These conditions ensure that only genuine and fair customs are given legal recognition.

#### **V. TYPES OF CUSTOM**

Customs can be classified into different types depending on their scope and application.

General customs are those which apply to the entire country or a large section of society. These customs are widely recognized and have universal application.

Local customs are limited to a particular locality, village, or region. They are binding only on the people of that area.

Trade or commercial customs are practices followed in a particular trade or business. These customs are very important in commercial law as they help in interpreting business transactions.

For example, in the shipping industry, there are several established customs regarding delivery, payment, and risk. Courts often rely on these customs to resolve disputes.

Thus, different types of customs serve different purposes but all contribute to the proper functioning of the legal system.

#### **VI. CUSTOM AS A SOURCE OF LAW**

Custom is one of the oldest sources of law. Before the development of written laws, customs governed human behavior and social relations.

Even today, many personal laws in India are based on customs. Courts recognize these customs as long as they meet the required conditions.

Thus, custom continues to influence modern legal systems and remains relevant in evidence law.

#### **VII. ADMISSIBILITY OF CUSTOM AND USAGE**

Custom and usage are admissible as evidence when they are relevant to the case. However, the party relying on such custom must prove its existence.

Custom and usage play a very important role in ensuring that justice is not only based on written laws but also on the realities of society. In many situations, strict application of written law may lead to unfair results, especially when parties have been following a particular practice for a long period of time. Therefore, courts consider customs and usages to understand the real intention of the parties and to provide a fair and reasonable solution to disputes. This makes the legal system more flexible and practical.

The burden of proof lies on the person who claims that a particular custom exists. Courts require strong evidence, such as:

- Witness testimony
- Documentary proof
- Previous judicial decisions

Admissibility depends on whether the custom satisfies legal requirements.

#### **VIII. PROOF OF CUSTOM AND USAGE**

Proving custom is often challenging. Courts require clear and convincing evidence.

In modern times, even though laws are codified and detailed, customs still continue to influence legal decisions. Particularly in rural areas and traditional communities, customs are followed more strictly than written laws. Courts recognize this fact and give importance to customs when they are properly proved. However, they also ensure that such customs do not violate principles of justice, equality, and public policy.



Custom and usage also contribute to the development of law by influencing judicial decisions. Over time, when courts repeatedly recognize and enforce certain customs, these practices may gradually become part of the legal system. This process shows how law evolves from social practices and adapts to changing conditions. In this way, custom acts as a bridge between society and law, ensuring that legal rules remain relevant and responsive to the needs of people. It highlights the dynamic nature of law, which is not confined to statutes but also shaped by lived experiences.

Custom can be proved through:

- Oral evidence from persons familiar with the practice
- Documentary records
- Historical evidence
- Judicial precedents

The standard of proof is strict to avoid false claims.

### **IX. ROLE OF COURTS**

Courts play a crucial role in determining the validity of customs.

Another important aspect of custom and usage is their role in maintaining consistency and predictability in legal relations. When parties follow a particular custom over a long period, it creates a sense of expectation and stability in their dealings. This becomes especially important in commercial transactions, where uniform practices reduce confusion and disputes. Courts recognize that ignoring such established customs may lead to unfair outcomes, as parties often rely on these practices while entering into agreements. Therefore, by treating custom and usage as relevant facts, the law ensures that justice aligns with practical realities and long-standing expectations.

However, it is important to note that not all customs deserve legal recognition. Some customs may be outdated, discriminatory, or inconsistent with modern values of equality and justice. For example, certain traditional practices may conflict with constitutional principles or human rights. In such cases, courts have the authority to reject those customs, even if they have been followed for a long time. This reflects the principle that law must promote fairness and social progress, rather than blindly follow tradition. Thus, while custom and usage are important, they must always be evaluated in light of contemporary legal standards.

They examine:

- Whether the custom is ancient and continuous
- Whether it is reasonable
- Whether it conflicts with statutory law

Courts act as gatekeepers to ensure that only valid customs are recognized.

### **X. IMPORTANT CASE LAWS**

1. Collector of Madura v. Mootoo Ramalinga Sethupathi (18C8)

Recognized the importance of custom as a source of law.

2. Thakur Gokal Chand v. Pravin Kumar (1U52)

Held that custom must be ancient, certain, and reasonable.

3. Ujagar Singh v. Jeo (1U5U)

Emphasized strict proof of custom.

These cases highlight the judicial approach towards custom.

### **XI. CUSTOM IN CONTRACT LAW**

Custom and usage are often used to interpret contracts.

Customs also reflect the cultural and social values of a community. In a diverse country like India, different communities follow different traditions that govern their daily lives. These customs may relate to marriage, inheritance, property rights, or even dispute resolution mechanisms. Recognizing these customs under evidence law ensures that the



legal system respects cultural diversity and does not impose a uniform rule in all situations. However, courts carefully examine such customs to ensure that they do not violate fundamental rights or principles of justice. This balance between tradition and modern law is essential for a fair legal system.

The evidentiary value of custom and usage largely depends on the manner in which they are proved before the court. Unlike documentary evidence, customs do not usually exist in written form, which makes their proof more complex. Courts rely on the testimony of witnesses who are familiar with the practice, as well as historical records and previous judgments. The credibility of such evidence plays a crucial role in determining whether the custom should be accepted. Therefore, the process of proving custom requires careful examination and strong supporting material to ensure that justice is not based on uncertain or misleading claims.

They help in:

- Explaining unclear terms
- Filling gaps
- Determining intentions of parties

Thus, they play a significant role in commercial transactions.

## **XII. CHALLENGES IN MODERN TIMES**

With modernization, reliance on custom has decreased. However, challenges remain:

- Difficulty in proving customs
- Conflict with statutory laws
- Risk of misuse

In the context of globalization and technological advancement, the relevance of custom and usage has evolved rather than diminished. While traditional customs continue to exist, new forms of trade usages have emerged in areas such as digital commerce, banking, and international trade. These modern usages are often recognized by courts to interpret complex transactions and agreements. For instance, standard practices in online transactions or digital contracts may not always be written explicitly, but they are understood and followed by parties. Thus, the concept of usage continues to adapt to changing economic and technological conditions.

Courts must balance tradition and modern law.

## **XIII. CRITICAL ANALYSIS**

Custom and usage provide flexibility in law but also create uncertainty.

Despite their importance, reliance on custom and usage also raises certain concerns.

One of the major issues is the difficulty in proving the existence and validity of a custom. Since customs are unwritten, they depend heavily on oral evidence and historical records, which may not always be reliable. There is also a risk that false or outdated customs may be presented before the court to gain an unfair advantage.

Therefore, courts adopt a cautious approach and require strict proof before recognizing any custom. This ensures that only genuine and reasonable practices are given legal effect, thereby protecting the integrity of the legal system.

Advantages:

- Reflect social practices
- Adaptable

Disadvantages:

- Difficult to prove
- Risk of inconsistency

Thus, their application must be carefully regulated.



#### **XIV. PRACTICAL IMPORTANCE OF CUSTOM AND USAGE**

Custom and usage are not just theoretical concepts but have real-life importance in legal practice. They are frequently used in courts to resolve disputes where written agreements are incomplete or unclear. In commercial transactions, trade usages help in determining payment terms, delivery obligations, and risk allocation.

In addition, customs serve as an important tool for interpreting the intention of parties in legal transactions. When parties enter into agreements, they often rely on common practices prevailing in their community or trade, even if such practices are not expressly mentioned in the contract. Courts take these usages into account to understand what the parties actually intended. This approach helps in avoiding unnecessary disputes and ensures that agreements are interpreted in a fair and reasonable manner.

For example, in the textile industry, there may be a customary practice regarding the quality of goods or the method of measurement. Even if the contract does not mention these details, courts may rely on such customs to decide the case. Thus, custom and usage ensure fairness and efficiency in legal proceedings.

#### **XV. DIFFERENCE BETWEEN CUSTOM AND USAGE**

Custom and usage, though similar, are different in nature. Custom has legal force and is binding, while usage is more flexible and depends on circumstances. Custom is usually followed as a matter of obligation, whereas usage is followed as a matter of practice.

At the same time, there is a need for caution while relying on customs in legal proceedings. Since customs are not always documented, there is a possibility of exaggeration or misrepresentation by parties. Some individuals may attempt to present a false custom to support their claim. Therefore, courts insist on strict proof and carefully examine all evidence before accepting a custom. This cautious approach ensures that justice is not compromised by unreliable or fabricated claims.

Custom and usage also play a significant role in reducing rigidity in the legal system. Written laws are often general in nature and may not cover every possible situation that arises in real life. In such cases, customs provide flexibility by offering practical solutions based on established practices. This flexibility helps courts deliver justice in a more realistic and situation-based manner. It ensures that the law is not applied mechanically but is adapted according to the facts and circumstances of each case.

For example, a custom relating to inheritance in a community may be legally binding, whereas a usage in trade regarding payment time may vary depending on the agreement.

#### **XVI. FUTURE OF CUSTOM IN EVIDENCE LAW**

The role of custom and usage is likely to continue in the future, even with the growth of modern laws. While technology and globalization are changing legal systems, traditional practices still remain relevant in many areas.

Another significant function of custom and usage is to fill gaps in legal rules and agreements. In many cases, laws may not provide clear guidance on specific issues, and contracts may leave certain aspects undefined. In such situations, courts look at the prevailing customs or usages to complete the missing details. This approach ensures that disputes are resolved in a practical and reasonable manner, reflecting the actual expectations of the parties involved. It also reduces the need for unnecessary litigation by providing a commonly accepted standard for resolving uncertainties.

Courts will continue to balance between written law and customs, ensuring that justice is delivered in a fair and practical manner.

#### **XVII. CONCLUSION**

Custom and usage are important relevant facts under evidence law. They bridge the gap between formal law and social practices.

While modern laws dominate, customs continue to play a vital role in certain areas. Courts ensure that only valid customs are recognized.



In conclusion, custom and usage remain essential tools in achieving justice and fairness.

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