

## ***ROLE OF EQUITY IN THE CONTEMPORARY JUDICIAL SYSTEM OF INDIA***

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### **Abstract**

The concept of equity has been first used in Britain, in 'Court of Chancery'. Equity is not a component of law, rather it is moral sense which modifies and amend the strict and rigid margin of law. Though there is no common definition of equity still many jurists have mentioned the concept of equity in their work. In India there has been no wok on equity but still equity has had its due place and importance in development of law under the Indian legal system. The extent of this essay is to pursue the background and progress of equity. It would also deal with advancement of value and further more its present scenario for Indian legitimate frame work. It tries to explicitly determine the reason if any for the failure of the current law in bringing about social changes. This essay examines the origin, historical development and its applicability and relevancy in Indian legal system. The essay would also include the recent scenario and proceeding related to equity. Over and above this, by way of exploring the evolution of equity, it seeks to exhibit the principle that any evolution in any legal regime which tries to alter to the social values of the nation can only achieve success if the socio-economic cultural situation in the society is made contributory for the operation of law. Therefore, the law in isolation can never be fortunate in approximation about a social change unless backed by the social, economic and cultural factors.

### **I. INTRODUCTION**

As the common law was incapable of providing relief in cases of mortgage, lease, contract, accident, trust, the concept of equity was developed in England. Notably, in Indian law, the doctrine of equity has been integrated and is useful in the present administration of justice. Equity is an essential branch of Jurisprudence, but at the same time, it is a vast and challenging subject, assisting the weak or defective laws. Though it is not a gene of law morally it modifies and amends the strict and rigid edges of the law. It not only accompaniment and defend the common law from the shift and crafty contravention against justice but also helps in meeting the current needs of the society. Therefore, it neither demolish the legal rules made by the lawmakers, nor does it produce

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it, but assist it. The term equity, in particular sense, is associated with fairness and justice that is it includes the administration of justice to attain the underlying intention of justice. Equity works as a subsidiary jurisdiction to consider the defects of law, deficiency, and absence of law to meet the essence of justice in society. To exercise the power of equity, either separate courts can be constituted, or existing courts can be allowed to exercise jurisdiction of equity. The term equity can be understood in various senses, for example, morality, honesty, and uprightness, or it can be referred to as a principle of natural justice, which tempts the fixed rule of law, or it may also be ensured as well-formulated set off fixed rules. The term "equity," however, also be used in a different and more qualified sense. A fair decision may be one that is neither based on an existing rule of law nor designed to emigrate a new chronology of precedence. Its sole objective may be to do justice to the parties in a case characterize by a conformation of facts unlikely ever to be repeated in reality in the same or standardized way.

Equity is an unclear term; it has been used in various senses. In literal senses, it is regarded as right subjected to fairness and justice that is something that originated out of our good inner conscience. It is, however, difficult to describe equity, as a scheme of jurisprudence distinct from law. Various jurists have made sincere efforts in defining the term 'equity' as: "Equity is the correction of the law where it is defective on account of its generality" - *Aristotle*. In the word of *Sir Henry Maine*- "Equity means a body of rules which is neither a custom or written law but conscience of judiciary developed by the court of the chancellor. "*Maitland* defines "equity as the body of rules administered by the English Courts of Justice which were but for the operation of Judicature Act, would be administered by those courts which would be known as the court of equity. "According to *Plato*, - "equity is indispensable to any intelligent administration of justice, and it removes the defect from the existing law. "Therefore, by considering all the above definitions as proposed by various jurists, it is quite clear that equity is derived from natural justice and a good conscience, which helps in weft the loopholes of the laws made by the legislature.

## **II. HISTORICAL BACKGROUND**

### **England**

When Norman conquest England during *11-12th century* there where three courts which were prevailing in England

- (i) Court of king's bench

- (ii) Court of common plea
- (iii) Exchequer

These courts pursued the principle of common law. To initiate litigation in these courts, the claim needed to fit in 'form of action' provided by chancery headed by Lord Chancellor. If the complaint did not fall in the listed category, no remedy was provided, and hence the litigant sometimes used to approach the king. The king further delegated the matter to his council, which eventually went to the Lord Chancellor.

By **14th century**, it seemed that the court of chancellor was operating as parallel courts that functioned on the principle of equity. Later by the **15th century**, the judicial power of chancellor was acknowledged. Though the bishops of church were made chancellor of the courts earlier but with the end in **17th century**, lawyers were appointed to the office of chancellor considering their high cognition in the field of law.

Overtime equity developed an arrangement of precedent. Many people reprimanded the working of chancellor courts as there was no fixed law governing; moreover, the power exercised by Lord Chancellor was unrestricted. There arose a lot of confusion and tension which climaxed the ***Earl of Oxford case (1615)***, where the judgment of chief justice of King's Bench was taken by fraud. Then the lord chancellor, in the same case, forbidden the order of common law propounded by the King's bench, which leads to a conflict between the principle of common law and principles of equity. The matter was then taken to Sir Francis, who reached to the conclusion that in the event of any dispute between common law and equity, equity will prevail. Later the principles of equity were enshrined in the ***Judicature Act 1870***, as a result of which court of equity and common law courts were incorporated.

## **India**

The notion of equity is not new to the Indian Judicial system. The history of equity in India is as old as in England, the root of equity is traceable in ancient Indian society and judicial system. Though there was never a separate court for administration of equity still, the pertinence of equity has been witnessing from ancient times. In India, the history of the extraction of equity can be traced back to the Hindu age. At that time, equity was considered in terms of an obligation. Thus, every decision had to be reasonable and not solely based on '**Dharmshastras**'. Even in case of conflict in Dharm Shastras, a rational approach was adopted. ***According to Kautilya***- "If the

original holy text of religion were found to be unreasonable and contrary to judicial reasoning, then the original version of faith would be futile, and authenticity of religious reasonableness would also be ineffective, and equity would prevail over it". In ***Mohammedan Law***, also equity has ensured a vital place the founder of the Sunni branch, Abu Hanifi, elaborated the principle that the rule of law should be interpreted liberally according to time and circumstances. The supreme court of Judicature, which was recognized by ***Regulating Act 1773***, also constituted a court of equity, and the concept of 'justice and good conscience' was expressly laid down under section 17. after the abolishment Supreme Court judicature at the Presidency, High Courts were constituted there. The equity jurisdiction was entrusted through clause 19 of the Letters Patent.

The notion of equity has also been statutorily recognized by various enactments such as-

- (i) Specific Relief Acts,1877
- (ii) Indian Trust Act,1882
- (iii) Indian Contract Act,1872
- (iv) Transfer of Property Act,1882
- (v) Indian Succession Act,1925

Therefore, it can be noticed that India never had a separate court of equity, like that in England.

### **III. THE SUBJECT MATTER OF EQUITY**

While describing the subject matter of equity ***Snell*** explained it as- "although in many cases equity intervened to put right on injustice, it must not be thought that every injustice was subject to an equitable intervention. In truth, there was no certainty when equity would come into play". Therefore, he tried to explain that although equity can be used to eliminate injustice put at the same time, it cannot always be done. There is no certainty in the diligence of the principle of equity. The jurisdiction of equity, therefore is, extensive as it relates to the conscience of an individual.

#### **Scope of equity**

Resort to the principle of equity is only permissible where there is no express statutory provision. There are certain exceptions to the principle of equity, which is identical to the rule of English Law, for example, in a conflict between custom and equity, equity would prevail. Rule of Equity,

Justice, and Good Conscience means a rule of common law and equity in England. However, in India, it is not binding; rather only works as guidance in the absence of law.

Equity is not applicable in India where it is-

- (i) Uncertain in nature
- (ii) Where merits of equity are not of the quality which appeals its universal applicability

Only in the rarest of the rare cases, Indian courts give a new interpretation of already established principles of equity in England when it is not in contradiction with any Indian statute, and it is suitable as per the Indian Social Condition.

### **Division of equity jurisdiction**

Jurisdiction of equity are classified into the following three categories namely-

**(i) *Exclusive Jurisdiction***- 'creation of new rights'

It is applied where there is no recognized set of rights and remedies are given under common law. Nevertheless, the conscience appeal that the rights and solutions should be recognized.

***According To Strahan***- "such cases where general law was not capable of providing any right, however according to good conscience rights were necessary to be granted, it comes within exclusive jurisdiction". Therefore, the court of chancery provided relief to the aggrieved party where the general law was silent. For example, - trust- public law does not recognize the concept of faith, and trusty who had the property was considered as the owner of such property. However, under equity, such trusty is not the owner. Preferably only the beneficiary is the real owner of trust property.

**(iii) *Concurrent Jurisdiction***- 'creation of new remedy.'

It includes all those cases where both the court of general law and the court of equity were empowered to grant relief. It depends on the option of the litigant in which court he prayed for deliverance.

***According To Strahan***- "it includes cases where general law provides rights, but enforcement of such rights and remedies granted are not sufficient.

It is exercised in the following circumstances: -

- a) Cases, where general law provides right but remedy provided, are not adequate. Example- In case of breach of contract, the general law is provided only for damages, but while exercising, equity-specific performance is also offered.
- b) Relief is provided in both cases, but in general law, it is provided indirectly, and in equity, it is provided directly.

In case of breach of contract specific performance is granted by the court of equity only when the remedy given by the general court is not sufficient.

Case- ***Colls Vs. Home and Colonial Store Ltd. 1904***

- The petitioner instituted the case as the defendant obstructed the Light.
- Right to Light was a legal right but usually enforced as an equitable remedy.
- Under common law it was stated that the obstruction should be such that it should lead to nuisance, but applying concurrent jurisdiction adequate relief was provided as an equitable remedy.
- Nevertheless, in appeal, the judgment of the equity court was overruled, stating there was no nuisance caused by such an act, which was necessary to seek the legal remedy.

(iv) ***Auxiliary Jurisdiction***- 'creation of new procedure.'

In this both right and remedy depends on legal principles. It is used to assist the court, established under the general law, to remove shortcomings of legal procedures.

***According to Strahan***- "it includes cases where relief can be provided by ordinary judicial conscience, but its legal procedure was erroneous".

In case of breach of ordinary contract law provides for right and relief, but there is no provision to prove breach of contract. In such cases, equity by order of discovery of document assisted general law.

It was held in ***London Corp. Vs. Levy (1809)*** that to exercise auxiliary jurisdiction, it is necessary that under the general law any proceedings initiated or likely to be initiated, without initiation of a legal proceeding; otherwise, it cannot be exercised.

It is divided into two category-

- a) Where the subject matter of the suit is property
- b) Where a court of equity has cleared the way for proceeding whether contemporaneous or subsequent and whether in its own or another jurisdiction.

This division of classification was criticized by Maitland on the following basis-

1. It gives pre-assumption of a logical system. Equity is not a broad subject that can be classified.
2. It is not as such useable as courts are divided into two categories i.e., administering the law and administering equity, which was abolished by the Judicature Act.

#### **IV. RECENT JUDGEMENT IN INDIA GOVERNED BY EQUITY**

**-In *Navtej Singh Johar v. Union of India, 2018*** – the court, while applying the principle of equity, gave legal recognition to the LGBTQ community by making amendments in Section-377 of Indian Penal Code, 1860. In its landmark judgment, the Supreme Court held consensual sexual acts between two adults, legal. This judgment was based on the maxim, "Equity looks to the intent, rather than to the form."

-In 2017, the apex court of India, while working on the maxim "Equality is equity," applied the principles of equity, natural justice, and good conscience in ***Shayara Bano v. Union of India, 2017***, and declared the practice of Triple Talaq as unconstitutional. Though it was recognized in Muslim law to fulfil the need of the society and to recognize the rights of Muslim women, it was abolished. As a result of judicial activism in 2019, "The Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed.

-Considering the brutal role played by the minor accused in the horrifying Gang Rape case of ***Nirbhaya (Mukesh and Anr. Vs. State for NCT Of Delhi And Others, 2017)***, certain amendments were made in 2015, in Juvenile Justice (Care and Protection of Children) Act, 2000. In the aforesaid case, the judges of the supreme court, while considering the significant role of minor in this case, upheld the principle of equity and convicted him for rape and murder and sentenced him for three years of imprisonment. The judgment was based on the principle "Equity

follows the law" as it tried to fulfil the intention of the legislature keeping in mind the needs of the society also.

-In the recent judgment given by the supreme court regarding the dispute between *Ram Janam Bhumi and Babri Masjid land (M Siddiq (D) Thr Lrs V. Mahant Suresh Das & Ors., 2019)* the court applied the principle of equity. It gave judgment based on the maxim "equity will not suffer wrong to be without a remedy," which is fundamental to the rule of law. The motive was that no wrong should be allowed to go unredressed, provided it was capable of being remedied by courts of justice.

## **V. CONCLUSION**

Equity works as a subsidiary jurisdiction to deal with the defects of law, deficiency, and absence of legislation to meet the requirements of justice in society. India, a country with diverse culture hold in its heart people from varies communities. To exercise the principle of equity, either separate courts can be constituted, or existing courts can be allowed to exercise jurisdiction of equity. It will not be wrong to say that there is no express legal system or provisions related to equity in India; still, the judiciary works proactively to achieve the objective of equity, natural justice, and good conscience. Mode of exercise of equity jurisdiction would depend on the needs and conditions of the society, where an adequate and effective remedy is available, their principle of equity would not be helpful. The expression 'The Law of State' also includes in its ambit, principles of equity to give it equal force before courts and society, as a law. Principle of equity is different from law, as the term 'Law' is restricted to Statue, Precedents, in contrast, the term 'Equity' is wide enough to include in its ambit practice and rules or Code of conduct as per the dynamic needs of society or requirements of justice.

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