



# EQUITY PRINCIPLES UNDER INDIAN LEGAL SYSTEM AND IT'S RELEVANCE IN CONTEMPORARY ERA: A CRITICAL STUDY

*Dr. Rajesh Kumar*

*Associate Professor*

*School of Law, Raffles University, Neemrana. Rajasthan*

**Abstract:** The concept of Equity was introduced in England but now it has become the need of the day, so it has been spread worldwide. It is complementary to Law not contradictory to Law. It will apply if the law is not compatible with providing adequate justice then the court will provide justice through the rules of Equity. In this research paper, I focused on the Principles of equity, the importance of equity and its relevance in the contemporary era.

**Keywords:** Equity, Common Law, Chancery, Kings Bench, Jurisdiction, etc.

## **INTRODUCTION:**

Equity is a procedure to provide justice if existing laws is not competent to provide the remedy. The term 'Equity' is derived from the Latin word 'Acquitas' it is the similar English word 'leveling'. In cases where the common law would have been applied too strictly, a different set of rules known as equity have typically been used in addition to it. It was done to create fairness, also known as what is sometimes called natural justice.

Man is fundamentally a social creature. He is unable to live an isolated life or fulfill his needs or goals. He comes into contact with people and engages in interactions with them in part by nature and in part by the dictates of the situation. However, not all guys can think or act in concert in the same way. Controversies or disputes between people can be found in this resemblance of nature or aim and the diversity of opinions or deeds. These disputes must be handled through the administration of justice and the law. It is feasible for those involved in a specific disagreement to gather, determine, and carry out the proper action or make atonement for the wrong. However, it is typically impossible for a human to think objectively, and the individual in question's self-interest is likely to taint his judgment regarding his cause. According to a legend, when asked what the difference between right and wrong was, a savage reportedly said, "It is right when I take my neighbor's woman, but it is wrong when he takes mine." Of course, one cannot expect a civilized man to hold such a belief, but the tale does show how human nature remains unchanging.

Therefore, the parties must entrust a third party who is unrelated to or uninterested in the issue with the task of rendering a verdict in their favour. Such a reference infers the parties' submission to the arbitrator's decision and their confidence and faith in the arbitrator's objectivity and sound judgment. The idea that no one should be allowed to decide their case is in line with the natural justice principle. However, such a method of dispute resolution is riddled with flaws or challenges. Before any action is taken, individuals should be aware of what is right and what is wrong. It is also vital that a person's rights, obligations, or liabilities should not depend on or change according to the opinions of a specific arbiter. Such decisions or norms, which must be founded on them, should be as certain, consistent, and rational as feasible. Undoubtedly, enforcing such awards is the most challenging aspect of resolving disputes. Of course, the individual's conscience can and often does suffice in some situations, but in others, some kind of outside punishment is required. The approval or disapproval of society might serve as such an external sanction, and it certainly helps to accomplish the desired result. Still, there are and must continue to be instances where a harsher, more coercive punishment is called for. Defining, deciding, and upholding the people's rights and obligations. The people acknowledge, submit to, or organize themselves into a sovereign political power. The term "State" refers to a group or class of people who live in a certain territory and have been brought together under a single superior to ensure their regular submission. The authority to which such a pledge of allegiance has been made in the State is referred to as the sovereign political authority. It could be made up of, reside in, or be a part of a person, group, or class of individuals. It declares, either explicitly or obliquely, ordains a general code of conduct for anyone inside its borders, along with a strong penalty for disobeying it. This state's law is referred to as, among other things, these codes of conduct. The body of law of a State must be following the common attitudes, notions, and aspirations of its citizens or, at the very least, must be proportionate to the level of submission displayed by or expected from them. The State is responsible for tasks like providing for social security and other needs. The State's law is responsible for resolving disputes involving human rights and interests. However, societal demands and ideas always come before legal requirements. Therefore, creating harmony between those social ideas and the law already in place becomes vital. Therefore, using equitable principles is necessary to satisfy social expectations and advance the cause of justice.

### **DIFINITION OF EQUITY:**

It is not an easy work to define equity but there are few philosophers who try to define equity.

**According to Aristotle**, 'equity is the process of amending a law when its general application causes a flaw'<sup>1</sup>

"The correction of errors brought forth by legal equality is equity. It is to forgive others for their mistakes, to look at the intention rather than the action, to the whole rather than the part, to the actor's character throughout the play rather than in the immediate here and now, to remember good rather than evil and the good one has received rather than the good one has done, to tolerate being hurt, to want to settle a dispute through words rather than through needs, As long as the arbitrator or arbitrators act equitably, it is appropriate to accept their verdict.

<sup>1</sup> G.P.Singh, Principles of Equity, p.4

**According to Maitland-** "Equity is that set of rules which, if the Judiciary Act had not been passed, would have been administered by the Anglo Courts and which would have been known as the Court of Equity."<sup>2</sup>

**Snell:** "Equity ..... In its technical sense, may be defined as a portion of natural justice, which nature, though legally enforceable, was not enforced by courts of common law for historical reasons, which enforced by Equity courts(Court of Chancery)<sup>3</sup>.

**Sir Henry Maine,** "Equity means anybody of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law by a superior sanctity inherent in those principles".<sup>4</sup>

**Henry Levy Ulman,** "Equity is a body of rules, the primary source of which, was neither custom nor written law, but the imperative dictates of conscience and which had been set forth and developed in the courts of Chancery<sup>5</sup>

**Blackstone,** "Equity, in its genuine meaning, is the soul and spirit of all law; positive law is construed and natural law is made by it. In this way, equity is synonymous with justice, in that, it is the true and sound interpretation of the rule".<sup>6</sup>

## **Development of Equity under various Legal Systems**

Under this head, I discussed the development of Equity under the Roman Legal System, English Legal System and Indian Legal System.

### **Roman Legal System:**

In the Roman Republic, the Praetor served as the top judge. Formulae or written statements were used to exercise the Praetor's jurisdiction. A judex or judge was obligated to abide by the formulae's conditions. Jus civile, or civil law, was used to administer justice, and the specifics of the right procedure or course of action were closely adhered to. As time went on, the Praetor gradually started using his extraordinary jurisdiction if adhering to the ancient jus civile would be immoral. A collection of moral principles that comprised equity (acquitias) alongside jus civile was therefore brought into Roman law throughout time as the situations and ways in which he would so intervene (based on natural law) became more frequent and certain. Thus, strict devotion to legal technicalities was loosened.

### **English Legal System:**

- Following the Norman Conquest of England in the 11th century, Common Law had developed into a distinct system. There were three common law courts at that time, name are as follows.
- **kings bench,**
- **Common Law Pleas**

<sup>2</sup> Ibid

<sup>3</sup> [https://www.worldwidejournals.com/paripex/recent\\_issues\\_pdf/2016/November/equity-and-law\\_November\\_2016\\_1905506201\\_4909311.pdf](https://www.worldwidejournals.com/paripex/recent_issues_pdf/2016/November/equity-and-law_November_2016_1905506201_4909311.pdf) visited on 25/09/2022

<sup>4</sup> Ibid

<sup>5</sup> Supra

<sup>6</sup> supra

- **Exchequer**

The "common law" that these courts governed was a combination of conventional or customary law and statute. The ancient common law courts used to hear cases for which the common law provided either an insufficient or no remedy because of their high formality, extreme rigidity, and narrow focus. A request was made to the King in Council to use his special judicial powers in such unique circumstances. This habit was further reinforced by an edict issued by Edward III in 1349. The Chancellor was the chief of the King's Secretaries and was properly described by Maitland as "the King's Secretary of state for all developments." He was typically a bishop. This practice gave rise to the current tendency.

Disgruntled litigants started approaching the King, known as the "Fountain of Justice," by presenting a petition (or bill) pleading with him to resolve their dispute fairly. The King in Council initially decided on these petitions by himself, but as the workload grew, he turned them over to the Chancellor in his capacity as "Keeper of the King's Conscience." The Chancellor was often a member of the clergy, usually a bishop, and was knowledgeable in both civil and canon law. The Court of Chancery was finally established by the King through his Chancellor to handle these petitions.

The Chancery, where clerks issued writs, commissions, and other legal documents, was under the control of the Chancellor. Clerks there used to operate behind a wooden screen called a cancelleria, hence the name Chancery. The Chancellor decided how to handle these petitions based on what was morally appropriate. The Chancellor would grant or withhold relief based on the merits of the specific case before him, not based on any precedent, but rather on how they affected his sense of right and wrong. The Court of Chancery became independent of the King's Council in 1474 when the Chancellor issued the first order in his name. This practice persisted and eventually resulted in the establishment of the court of Chancery in addition to the courts of common law. It should be noted that the Chancellor acted under the principles of natural justice or his judicial conscience when he decided to entertain these petitions. Only in situations where there was no common law remedy available and the equitable jurisdiction in England developed as a result of the Chancellor's attempts to provide remedies in those situations were petitions filed before the Chancellor, the head of Chancery, 1873 and earlier. The common law courts and the chancery courts continued to exist in England as two independent sets of courts with two unique areas of jurisdiction. The litigants found this parallel justice delivery system to be inconvenient from a practical standpoint. As a result, the Judicature Act, of 1873, which merged and rebuilt the two kinds of courts, was approved. Ultimately, the courts used their full judicial authority by recognizing and upholding all legal and equitable rights and remedies. One High Court of Judicature was established to administer both law and equity as a result of the Judicature Acts of 1873 and 1875. In general, it was stated that the rules of equity would take precedence over the common law in situations where there was a disagreement or difference between the rules of equity and the rules of common law concerning the same topic

### **Equity Principles in Indian Legal System:**

We can divide it in three parts on the basis of development era of legal system.

- The Hindu Law

- The Mohammedan law
- Under the British Rule and administration
- After Independent in 1947.

### **The Hindu Law:**

Hindu law in India stipulates that "in event of a dispute between the Smritis norms, either may be implemented, as justifications based on the principles of equity (Yuktivichar) shall select the answers." Hindu law has always evolved to meet changing needs; therefore equitable principles have been added as a result. Narada and Brihaspati, the latter Smrikaras, have unequivocally accepted the significance of equitable ideals. According to Brihaspati, "decisions should not be solely based on scriptures. If the principles founded on logic are not followed, justice would not be served. These rationales can be referred to as equity principles. "Kautilya further states that the authority of reason will take precedence in cases when the term "Dharma" is shown to conflict with judicial reason. There is no possibility of a clash between reason and text according to Yajnavalkya. He restricts the debate about the virtues of equity or reason to disagreements among the Sastras themselves.

### **The Mohammedan law**

The concepts of equity also played a role in the development of Mohammedan law. The rules are referred to as juristic equity or Ehsan. The Hanafi sect of Sunnis was created by Abu Hanifa, who advanced the idea that the analogy-based rule of law might be disregarded at the judge's discretion based on a liberal interpretation or juristic choice to suit the needs of a particular case. Judiciary held in the case of **Hamira B. v. Zubaida B.**<sup>7</sup> The chapter on the Kazi's responsibilities (adab) in the main function of Islamic law "clearly demonstrates that the principles of equity and equitable considerations commonly acknowledged in the English court of chancery are not alien to the Islamic system, but are frequently referred to and invoked in the adjudication of the case."

### **Under the British Rule and administration**

The Supreme Court of Judicature was formed by the governing Act of 1773 with the authority of equity, the Rule of justice, and good conscience. Judges are expressly given guidance in Section 17 for matters that are not covered by any laws. Clause 19 of the Letters Patent states that all three courts are now High Courts. Under clause 9 of Regulation-VIII, 1832, the Mufassil Court was subject to the same rules. **Murari Lal v. Devkaran**<sup>8</sup> the court held that Judges might adhere to and act under the principles of justice, equity, and good conscience in the lack of particular law on the subject, even in jurisdictions where there was no statutory provision to that effect.

### **After Independent in 1947:**

Even after getting independence in 1947, India continued to adopt the common law notion of equity. However, the older "Specific Relief Act" of 1877 was repealed in 1963 when the Specific Relief Act was passed by the Parliament on the advice of the Law Commission. The majority of equitable principles were codified and made statutory rights in the 1963 Act, ending the courts' authority to issue equitable reliefs. The following rights were

<sup>77</sup> (1916)43 I.A. 294,301-302

<sup>8</sup> AIR 1965 SC 225,230

codified by the 1963 Act. Under Section 38 of the Specific Relief Act, after determining whether a contract has been breached, the Court may order the party to whom the relief is given to pay the opposing party any compensation that justice may require. Additionally, Sections 30 and 38 states that the court may order the party to whom the relief is granted to pay the other the compensation that justice may need after assessing the cancellation of an instrument.

Section 62 of the Indian Trust Act imposes the equitable condition of repaying the consideration paid in the transfer of property made under a rescindable contract, and Section 86 imposes the condition when the beneficiary seeks a declaration of trust or retransfer of trust property that the trustee had improperly purchased. The Transfer of Property Act's section 35 states that anyone who receives a benefit from an instrument must accept or reject the instrument in its entirety. The "Doctrine of Election" is included in this section and is covered in a different category. According to Section 51 of the Transfer of Property Act, a person who makes improvements to real estate while believing that he has total ownership rights there and is subsequently evicted by someone with a better title is entitled to compensation for the improvements that person made.

As per the provisions of the Indian Contract Act, a contract is voidable at the discretion of the person whose assent was improperly obtained "where consent to an agreement is caused by undue influence." Any such contract may be annulled in its whole or, if the party with the right to avoid it has benefited from it, on the terms and conditions that the court may find appropriate first. The Indian Contract Act's sections 64 and 65 are similarly grounded in the maxim "He who seeks equity must do equity."

As a result of this codification, the earlier available equitable reliefs have changed in nature and tenure, becoming statutory rights that must be properly pleaded to be enforced. In addition, to the extent that these equitable reliefs have been enshrined as rights, they are no longer at the discretion of the courts, or as English law puts it, "Chancellor's foot," but rather are enforceable rights subject to the fulfillment of the requirements of the 1963 Act.

Under Section 151 of the Code of Civil Procedure, 1908, which applies to all civil courts in India, the courts there continue to exercise their inherent authority. According to Section 482 of the Code of Criminal Procedure, 1973, the High Courts are the only criminal courts in India with this kind of inherent authority. In addition, the Supreme Court of India has certain inherent powers under Article 142 of the Indian Constitution, which gives it broad authority to issue orders as needed to provide full justice in any case that is currently before it. "Courts in India are under no obligation to accept any rules that the equity courts in England may have established, even if the utmost respect should be paid to the wisdom and authority of the English courts."<sup>9</sup>

### **Jurisdiction of Equity:**

A person who had experienced civil damage and wished to seek redress under Common Law was required to establish that his case fell within the parameters of an available cause of action. The common law previously set forth the types of action. However, he was left helpless when he was unable to prove it. In that case, equity

<sup>9</sup> Woodroffe's *dutt v Watson* co Venkatacharyulu v. Rangacharyulu (1890) 1 M.L.J. 85: I.L.R. 14

would step up to offer that harmed person relief. Only in situations where the law was so flawed as to fail to provide the citizens of the nation with proper justice could equity step in. At the end of the eighteenth and the beginning of the nineteenth centuries, the Court of Chancery exercised equitable jurisdiction, which was typically categorized about Common Law under three primary heads, namely:

### **Exclusive Jurisdiction:**

In situations when the common law did not provide remedies. The Court of Chancery recognized these rights and granted equitable relief in such cases in the exercise of its "Exclusive Jurisdiction" in many instances where the plaintiff's claim depended solely on equitable principles and the plaintiff had no rights whatsoever against the defendant in any court other than the Court Chancery. The rights of those making claims under "trust" constituted the most significant branch of this jurisdiction. The Common Law did not recognize trusts and considered the "trustee" to be the actual landowner. However, Equity considered the beneficiary (in whose favour the trust is established) to be the true owner of the trust's assets. Other significant rights falling under the sole purview of equity included married women's rights to property granted to them for private use. Equity recognized these rights, which were not recognized by Common Law, and stipulated that the husband would not be given custody of the wife's property until he agreed to set aside money from it for her and her children.

### **Concurrent Jurisdiction:**

When the common law does not provide sufficient relief at the very least without undue delay or circuit. Both the Common Law Court and the Court of Equity had the authority to rule under the concurrent jurisdiction, but only under their own rules and procedures. Equity's method provided benefits that were not possible under the law. This was the rationale behind the suitor's preference for the Chancery Court, where an additional or substitute remedy was available. It indicates that the remedy supplied by the equity in a concurrent jurisdiction was appropriate, adequate, and effective where the relief awarded by common law courts was insufficient to repair the plaintiff's right. Therefore, equity and common law coexisted under concurrent jurisdiction.

### **Auxiliary Jurisdiction:**

In situations where its unusual approach allows it to gather evidence that a common law court would be unable to do so. Auxiliary jurisdiction allowed equity to grant relief to the plaintiffs when their legal rights were to be decided based on a title or witness testimony. In this jurisdiction, equity made available some practices that the common law did not permit. If someone held the title to a property through which the Court would determine the parties' respective shares, Equity required that person to present that document for the Court to make a decision. When the testimony of the witnesses may make or break the case, the witnesses were required to appear in court for questioning and cross-examination. The Common Law Courts did not have the authority to compel witnesses to testify in court.

### **Importance of Equity in Contemporary Era:**

Equity principles played a vital role to enhance the Indian judicial system and provide complete justice. These rules gave a new direction and power to the judicial system. Judiciary provides justice through these rules whereas per enacted laws justice was not possible. In India, the majority of equitable norms and principles has

been incorporated into statute law and are thus relevant to the extent of the provisions provided therein. It doesn't matter whether the equity provisions in Indian statute books derive from common law, equity, or a combination of the two. Due to the country's significant cultural variety and varying social circumstances, India's Factual situations may call for protective measures. The fundamental ideas of the ratio itself may not serve as a binding precedent, but English judgments, particularly those based on equity, may apply.

The notion of "equity of redemption" is a guideline for fairness, justice, and morality. It needs to be adjusted in each instance to the situation's reality and the uniqueness of the transaction. We must consider the period, the circumstance, the price spiral, the term agreement, and the other commitments in the context of the parties' financial circumstances. Therefore, in our opinion, it is not possible to hold that there was no obstruction to the justice of redemption in these situations given the facts.<sup>10</sup>

However, in recent years, judges have tended to take a fresh approach rather than the conventional one, which incorporates English law. There are a few instances, such **State of Bihar v. Abdul Maji**,<sup>11</sup> where the Supreme Court deviated from the English method.. In **Rattan Lal v. Vardesh Chander**<sup>12</sup>, the court held that a disagreement over a lease's definition had to be resolved under justice, equity, and good conscience. Speaking on behalf of the Supreme Court, Krishna Iyer, J. argued that Independent India should create its system of justice and equality rather than blindly adhering to English law. Further, he added, "India should shed its neo-colonial legal system<sup>13</sup>."

While the Supreme Court yearns to forge its brand of justice and equity, it hasn't yet broken its habit of relying on English law or any other legal system. We no longer need to read through case law because the Supreme Court has cited English law in the case of mercy killing (also known as the case of Aruna Shuanbagh), among other legal systems from around the globe. The Supreme Court referred to and cited THE AIREDALE CASE (Airedale NHS Trust v. Bland)<sup>14</sup> in which the House of Lords ruled that if doctors act following their best medical judgment and remove the artificial life support system when it is in the patient's best interest, the act cannot be viewed as criminal<sup>15</sup>.

However, in light of the aforementioned, the notion of "justice, equity, and good conscience" is far from adequate. This results from the fact that the saying "justice, equality, and good conscience" does not have a clear-cut meaning. There is no specific body of law mentioned. It merely refers to the judge's discretion, to put it simply. The maxim (Doctrine) has also allowed judicial law to flourish from case to case. Furthermore, applying a law that was created in a different society, with different climates thousands of miles away is pretty ludicrous. Since this doctrine has consistently been effective. According to historical evidence, Indian courts have

<sup>10</sup> Pomal Kanji Govindji & Ors vs Vrajlal Karsandas Purohit & Ors

<sup>11</sup> AIR 1954 SC 245

<sup>12</sup> AIR 1976 SC 588

<sup>13</sup> <https://www.jklaws.in/articles.aspx?id=27>

<sup>14</sup> (1993) All E.R. 82) (H.L.)

<sup>15</sup> <https://www.jklaws.in/articles.aspx?id=27>



consistently declined to apply several English legal doctrines. Even at times, English rules that were a result of England's special circumstances have been adopted by Indian courts<sup>16</sup>.

## **Conclusion**

The scope of my paper is to discuss the origin of Equity, its History, its development of Equity and its relevance in the contemporary era in India. There were several difficulties to provide justice through common law courts so this concept evolved to provide complete justice. This concept is adopted by Indian courts also and now it has become a power full tool in the Indian Judicial system. It is proved very fruitful.

---

<sup>16</sup> <https://www.jklaws.in/articles.aspx?id=27>