



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Development of Equity and Its Relation with Rule of Law

Satyaveer Singh^a

^aNational Law University, Jodhpur, India

Received 28 November 2021; Accepted 20 December 2021; Published 24 December 2021

Equity now an inseparable part of any legal jurisprudence, emerged from the lack of incompetency of the existing laws to meet ends of justice is now a fundamental branch of civil, common, and international law. Equity supplements the justice delivery mechanism of these laws with the quintessence of good conscience, reasonableness, fairness, and justice. For our better understanding of the significant role, equity plays in any judicial system or the Indian legal system we need to have clarity over its origin and historical development. This article does serve this very purpose. It is a well-researched methodical account of the development of equity. The article also seeks to explore the interplay of equity with the concept of “Rule of law” which we in our general expression refer to as the common legal system. The article while listing down the differences between the two seemingly different systems also reconciles them as co-joints necessary for the effective administration of justice. The article traces the significance of equity in contemporary India and how the Constitution enshrines articles that propound the ideas of equity and good conscience.

Keywords: equity, rule of law, jurisprudence.

INTRODUCTION

In ordinary language “equity” means natural justice. Originally the system and need for the evolution of equitable principles of law arose from the need for justice but today these principles are no more or no less promising natural justice than the common legal

jurisprudence. Aristotle defines equity as the correction of the law where it is defective on account of its generality and the definition is constantly repeated by later writers. It is generally understood as a way to fill the gap which arises when common legal rules fail to deliver complete justice. It is a departure from the rules when they are either over-conclusive or under conclusive with the facts at hand and fails to do complete justice. So it generally works to fill the gap that arises due to the generality aspect of legal rules by adopting a personally customized approach, this being the most important characteristic of equity. In contemporary legal discourse, the meaning of equity may be interpreted in several ways but the intent from its creation to its use today has remained consistent. Started as a method to deliver particularised justice from the court of chancery, over time its significance was better understood and it increased and today it has become an important remedial method in Indian jurisprudence.

EVOLUTION OF EQUITABLE PRINCIPLES OF LAW

The evolution of both equity and common law system can be traced back to legal development that took place in England. In the latter half of the 13th century, before the conquest of William the conqueror, the English judicial system comprised of the old Anglo-Saxon courts. They used to sit openly in form of open for all meetings like that of a freeman. With the advent of time, these folk courts were replaced by the itinerant justices who were directly appointed by the king or the crown. William the conqueror made sweeping changes and appointed a chief judiciary to preside over the trials of various disputes. This led to the origin of common law tribunals throughout England.¹ The tribunals were a delegation of the judicial decision-making powers of the king. The sovereign delegated the power by the issuance of writs, which were documents issued in order to start an action in the courts especially the Court of Chancery. Whenever a dispute arose a writ was issued, the court would initiate action and the dispute would be resolved. However, sometimes there arose situations that were new and the common law would respond with flexibility by issuing newer writs. By the 14th century, the

¹ 'Development of Equity Law in India' (*Law Teacher*, 22 September 2021) <<https://www.lawteacher.net/free-law-essays/equity-law/equity-common-law-appliance-in-india-equity-law-essay.php>> accessed 25 November 2021

common law became rigid and the office of chancery gradually started refusing to issue new writs. The litigants feared injustice and hence directly approached the king in such circumstances. The combination of stagnation that prevailed in the common system with regards to the continuation of the same writs and individual injustice gave rise to the tradition of petitioning the king himself. The king would avail legal advice from Lord Chancellor who held expert knowledge of the common law and would go on to decide cases and develop principles to do complete justice. These principles with time came to be known as the equitable principles of law or simply equity. By the reign of King Edward, I (1272-1307) cases were occasionally referred by the king or the select council to the chancellor for deciding the matters. The king with time passed down his judicial authority and by the reign of Edward III (1326-1377) the chancery was regarded, in certain measures, as a common court with the sovereign delegating his judicial authority completely to the Lord Chancellor, and subsequently, his court came to be known as the court Of Chancery or court of Equity. Eventually, the struggle of supremacy started between the court of Chancery and the court of law, there were cases reported of the alleged abuses by the court Chancery, the two systems of laws at times delivered conflicting judgments on the same issue and hence by the early 17th century, it was well settled by various acts that in case of conflict between the law and the equity, equity shall prevail. However, between 1873-75 the Judicature Acts were enacted which merged the two systems of law laying down the base of the present system where both the laws are applied by the same court.² With the enactment of these acts, the practical distinction between the two systems of law was created but it failed to create any intellectual distinction between the two. The acts modified the method by which the legal and equitable remedial rights were administered but they continued to exist as two separate disciplines of the legal system. The historical origins of the two systems are relevant for understanding the differences between legal and equitable remedies.

WHAT IS EQUITY?

² Ian Mcleod, *Legal Methods*, 9th Edition

The emergence of equity took place from the guiding ideas of “conscience”, “good faith”, “reason”.³ It was primarily devised to meet the ends of justice and good conscience. It involves a departure from the general principles of law. The general rules in certain situations may be overinclusive or underinclusive with regards to the goal meant to be achieved. Equity fills the gaps arising out of the generality of legal rules by adopting a personalized approach to resolving conflicts aiming to achieve the ends of justice. For example, imagine an individual A enters into a contract with B a renowned painter for purchasing a painting that B would draw, A organizes an art presentation where the same painting is to be made the chief attraction. B before the program refuses to draw the painting as was engaged in some more profitable exchange. If A approaches common law courts, he could be made entitled to some compensation on account of the damages he suffered due to the absence of the painting. But this would not be complete justice on part of A as his real intent behind the contract was to avail the painting the same of which he could not get from anywhere else. The common law fails in these situations and it is equity that can deliver complete justice. The court may order “specific performance” of the contract which is one of the equitable principles. This would direct B to perform his part of the contractual obligations and enable him to avail the painting. Hence had the court relied only on general legal principles, no effective administration of justice was possible, equity filled in the gap by enabling the specific performance of the contract. Similarly, in a case involving infringement of copyright, compensation for the infringement (legal rule) would not effectively deliver justice until an injunction order to immediately restrain from exploiting the copyright is issued. Again in a case involving nuisance to an individual’s enjoyment of property through certain intangible mediums like the smell, sound, etc compensation for the same should be coupled with an injunction order to stop the same for meeting ends of justice and reasonableness.

CONFLICT BETWEEN EQUITY AND RULE OF LAW AND THEIR RECONCILIATION.

Rule of law primarily requires judges to follow rules whereas equity requires them to depart from these rules. However, rule of law must be not be understood simply as strict adherence

³ Wesley Newcomb Hohfeld, *Michigan Law Review* (Vol. 11, No.8, The Michigan Law Review Association 1993) <<https://www.jstor.org/stable/pdf/1275798.pdf>> accessed 24 November 2021

to the rules, the most influential account of the rule of law was offered by A. V. Dicey in his formulation where he incorporated three ideas mainly: (1) the regular law being the supreme as opposed to arbitrary decisions, (2) equal enactment and application of law to all persons and class of persons, and (3) incorporating constitutional principles and law as essential to the ordinary laws. The conflict between the principles of rule of law and equitable principles of law can be categorized into four divisions to understand them better:

Regularity: Rule of law believes in the principle of treating like cases alike. It depends on consistency and regular application of legal rules involving somewhat similar material facts. This feature is incompatible with equity as the same is not regular and is predicted depending upon the unique features of a case. Equity tries to treat like cases alike by treating them differently and ensuring that the ends of justice are met in each case. Thus by departing from the general principle equity tries to adhere to the very principle.

Publicity: Rule of law believes in prior knowledge of rules and laws to the subjects and maybe because of these requirements judges are directed to decide the cases on basis of already designed and publicly declared laws but equity is post hoc in nature, it emanates after the facts of the case is well known the results required by equity may not be known until the parties have already acted upon, however in contemporary times now there is a well-developed system of parallel equitable principles.

Generality: Rule of law requires that the laws be structured in general terms and for application in general situations while equity demands formulation of principles depending upon particular situations. The judges give detailed reasons as to why the application of the general rule is not justified in a particular situation and then draft principles to meet the ends of justice. However, even in equity, the principles are not formed in the names of particular individuals or they cease to operate after the case is decided but are very well applicable in any situation where the legal facts of the case are the same. For every case involving a copyright infringement as discussed above the court would direct monetary compensation for the losses suffered due to infringement (application of general law) and pass injunction orders

to above any further exploitation by the illegal exploiters (application of the equitable principle of law).

Predictability: Rule of laws provides the parties enough space to rightly predict the legal consequences of their actions and leaves little space for any official abuse on account of arbitrariness. Equity on the other hand is highly unpredictable as it is devised depending upon the particular facts of the case. However, with time and the gradual invention of depositories of equitable principles of law, the question of predictability has eventually been reduced to a minimum.

Rule of law involves the application of legal rule over the facts of the case whereas equity involves analyzing the facts and application of legal principles. Although both differ in their means their ends what they both seek to achieve is similar which is to ensure effective administration of justice and to uphold the real intent of the legal rule in every case. The equitable principles of law have their origin as a separate legal discipline but today owing to their repeated use and universal acceptance they have assimilated themselves in the legal jurisprudence of common law countries and yet have been able to maintain the sanctity of their separate coexistence.

EQUITY IN CONTEMPORARY INDIA

Equitable principles have been deeply rooted in Indian traditions since ancient times. The Hindu legal texts like the Manusmriti have widely propounded the rule of Dharma. Dharma was a concept tantamount to today's rule of law wherein even the sovereign was held accountable to the law. Dharma was a guiding light to one's action and principally appealed to one's conscience. When the British codified the law in India they gave importance to principles of equity and imbibed them in the Indian judicial system. Warren Hasting's Judicial plan of 1772 established "Adalats" which adjudicated upon disputes not involving Hindu or Mohammadan law on basis of principles of equity and good conscience. The supreme courts which ran parallel to these small courts decided matters based on English common law and equity. When the high Courts were established by the Indian High Courts Act 1861, they

reserved the power to adjudicate upon issues by adopting a liberal interpretation of statutes and following principles of equity and good conscience to meet the ends of justice.⁴

When the Indian Constitution was adopted in 1950, several articles were incorporated to give the judicial bodies enough autonomy to decide matters based on principles of equity and good conscience. Article 142 of the constitution provides for the power of the Indian Supreme court to do complete justice. The apex court has various times invoked this article to enforce directions not mentioned in statute books to ensure effective administration of justice. In the recent case of *State of Goa v Fouziya Imtiaz*⁵ involving the question of right appointment of state election commissioner of Goa, the court while holding the appointment to be violative also directed all the states of the Union by invoking Article 142 to follow the correct procedure for appointment and to immediately sack any appointment based on an arbitrary basis, thus did complete justice by ensuring that all states have rightly appointed state election commissioners.

In the broad sense, it can be said that Equity includes within itself sweep Social Justice. This is because Equity, is understood as encompassing the principles of justice and fairness and including within itself sweep natural law or rights, and remedial construction of statutes to further the ends of justice. Even Aristotle remarked that equity and justice 'coincide'. Contrarily, social justice is a mere species of genus 'justice', which also includes political and economic justice. Therefore, Equity is more expansive in scope and arguably includes within itself the concept of Social Justice.⁶ The constitution of India in its preamble mentions meeting justice in the social, economic, and political sphere as one of its objectives. Article 15(3) and 15(4) provide for making special provisions for women, children, and people belonging to certain sects to ensure that the goals of social and economic justice are met.⁷ Article 14 establishes a general rule of equality and no discrimination but again various articles

⁴ Debi S. Saini, 'Law_and_Social_Development_in_India' (*Research Gate*) <<https://www.researchgate.net/publication/260283665>> accessed 27 November 2021

⁵ *The State of Goa v Fouziya Imtiaz Shaikh* 2021

⁶ Debi S. Saini, 'Law_and_Social_Development_in_India' (*Research Gate*) <<https://www.researchgate.net/publication/260283665>> accessed 27 November 2021

⁷ Constitution of India, 1950

propound the idea of positive discrimination based on good conscience and equity as evidently unequal cannot be treated equally. The Indian Contracts Act and the Special Relief Acts are strong examples of such statutes which often restore to principles of equity and good conscience to adjudicate disputes.

CONCLUSION

The rule of law is not a law of rules. The well-established notion that law is a rule-bound practice is incorrect because it does not provide for the role of judicial virtue in constructing legal perception. The practice of equity by a virtuous judge does not hinder the genuine importance of achieving regularity, publicity, predictability, and generality in the law. Adherence to the letter of the law is part of the virtue of judicial integrity, but respect for legal rules is not the whole of judicial excellence and neither does it warrant effective administration of justice and achievement of the intent behind the legal rule in every situation. There may arise situations in which a judge with practical wisdom and virtue will perceive that adherence to the pith and substance of the law would not help in upholding its very spirit until a departure from its letter is made. Sometimes justice and the rule of law require the practice of equity for it is beyond the capability of lawmakers to correctly anticipate all situations that are deemed to arise in the future and demand various possible interpretations of a legal rule, so it is necessary to allow space to the decision-makers to guide their decision under the purview of equitable principles of law to ensure meeting the ends of justice.