

# EQUITY, COMMON LAW AND ITS APPLICATION IN INDIA: A STUDY

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## INTRODUCTION

“The system of equity includes that portion of natural justice which is judicially enforceable but which for various reasons was not enforced by the courts of common law.”<sup>1</sup> “EQUITY is that system of justice which was developed in and administered by the High Court of Chancery in England in the exercise of its extraordinary jurisdiction. EQUITY, in its technical and scientific legal sense, means neither natural justice nor all that portion of natural justice which is susceptible of being judicially enforced. It has, when employed in the language of English law, a precise definition and limited signification, and is used to denote a system of justice which was administered in a particular court – the nature and extent of which cannot be defined in a single sentence, but can be understood and explained only by studying the history of that court, and the principles upon which it acts. In order to begin to understand what equity is, it is necessary to understand what the English High Court of Chancery was, and how it came to exercise what is known as its extraordinary jurisdiction. Every true definition of equity must, therefore, be, to a greater or lesser extent, a history.”<sup>2</sup>

“In its technical sense, equity may be defined as a portion of natural justice which, although of a nature more suitable for judicial enforcement, was for historical reasons, not enforced by the common law courts, an omission which was supplied by the Court of Chancery. In short, the whole distinction between equity and law is not so much as a matter of substance or principle as of form and history.”<sup>3</sup>

## ORIGIN AND DEVELOPMENT OF EQUITY

*Equity is that system of justice which was administered by the High Court of Chancery in*

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<sup>1</sup> Historical Outlines of Equity <[http://www.unlockingthelaw.co.uk/samples/trusts\\_ch01.pdf](http://www.unlockingthelaw.co.uk/samples/trusts_ch01.pdf)> accessed 27 November 2009.

<sup>2</sup> George T. Bispham, *The Principle of Equity* (11<sup>th</sup> edn. 1931) 1-2

<sup>3</sup> R.E. Megarry, *Snell's Principles of Equity* (23<sup>rd</sup> edn. 1947)2

the plaintiff. This was more often than not insufficient and inappropriate, as money cannot solve everything. People who could not obtain justice in the Common Law Court then appealed directly to the King who was described as 'the fountain of justice. Most of these cases were referred to the King's Chancellor. He came to be known as 'the King's conscience.' The Chancellor developed new remedies that were able to compensate plaintiffs more fully than the Common Law remedy of damages."<sup>6</sup>

## COMMON LAW COURTS

The common law courts which developed under English jurisprudence by the end of the thirteenth century were The King's Bench, the Court of Common Pleas, and The Exchequer. Although each of these courts had jurisdiction over different subject matters, they were all regarded as "common law" courts, i.e., courts governed by strict rules of law, a formalized procedure and are bound by judicial precedent. At that point in time, the common law courts had no equity jurisprudence, and the Court of Chancery was still nonexistent.

## DEVELOPMENT OF EQUITY VIS-À-VIS RISE OF THE COURT OF CHANCERY

The law of England may be said to be composed of three great elements: common law, equity and legislation. The most important kind of legislation is the Act of Parliament (otherwise called a Statute), though nowadays there is something which is known as a delegated legislation, for eg the government orders which are generally known as statutory instruments and they have come to be of great importance as well. Even a layman is not likely to experience difficulty in understanding the meaning of legislature.

In the middle ages, the courts of common law failed to give redress to certain types of cases where it was most needed and the litigants therefore petitioned the king, who was the "foundation of justice" for extraordinary relief; and then the king with the help of chancellor<sup>7</sup> set up the special courts i.e. the Court of Chancery to deal with the petition, and the rules applied by the court of chancery crystallized into law and became a regular part of the law of the land. The most important branch of equity is the Law of Trusts. But equitable remedies such as specific performance and injunction are much needed in case of "conflict or variance" between the rules of common law and the rules of equity, wherein equity came to prevail. Suppose, A brought an action against B in

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<sup>6</sup> Black's Law Dictionary, (8th ed. 2005) 579-580.

<sup>7</sup> Chancellor was the King's Secretary, was responsible for issuing legal writs to complainants who wished to bring a legal action in one of the common law courts.



*England in the exercise of its extraordinary jurisdiction. ... Every true definition of equity must, therefore, be, to a greater or less extent, a history.*

Bispham, Principles of Equity, at 1, 2.

“Prior to William the conqueror, there were the old Anglo-Saxon courts. They used to sit in the open air meetings of freeman. Slowly these folk courts were replaced by itinerant justices appointed by the crown or by the king’s court (*curia regis*). William the conqueror made several changes and appointed a chief judiciary to preside over the trials of suits. This led to the origin of common law tribunals throughout England. The hardship caused by the king was removed by the ‘Magna Carta’ which provided that ‘the common pleas shall no longer follow the king’. During the period the judicial officials became the Court of Exchequer and officials were related to the cases of revenues and later enlarged through the use of legal fictions. Slowly the chancellor presiding over the Court of Exchequer became personal advisor and representative of the Crown. The court continued its process until the new act came into the force on 2<sup>nd</sup> November 1875, consolidating it into the “Supreme Court of Judicature”<sup>4</sup>

“Two distinct systems of law were administered by different tribunals at the same time in England till the year 1875. The older system was the common law and it was administered by the King’s Benches. The more modern body of legal doctrine developed and administered by the Chancellor in the court of Chancery as supplementary to and coercive of the old law was the law of Equity.

The two systems of law, as mentioned above, were by and large identical and in harmony leading to the maxim that ‘*equity follows the law*’. In other words, the rules already established in the old Courts were adopted by the Chancellor and incorporated into the systems of equity, unless there was some sufficient reason for their rejection or modification. In case of conflict, the rule of Chancery prevailed, because if a common law action was brought in defiance of a rule of Equity, the defendant could apply to the Court of Chancery for an order called a common injunction, directed to the plaintiff and ordering him not to continue his action.”<sup>5</sup>

“Once a writ was on paper, it could not be changed, so if a mistake was made the case would become void and the person making the claim would lose the case. People were often not content with the decision made by the Common Law Court, as the only remedy they could get was ‘damages.’ This was compensation money paid by the defendant to

<sup>4</sup> C.M. RAO, *Law of Injunctions* (8<sup>th</sup> ed. 2007) 445-667.

<sup>5</sup> Megha Karnwal, *Law of Equity* <<http://jurisonline.in/2008/11/law-of-equity/>> accessed 28th November 2009.

one of the common law courts and in the view of the Court of Chancery the action was inequitable, B's proper course would be to apply to the Court of Chancery for an order, called a common injunction. This directed and ordered A to discontinue his action. If A defied the injunction of the court then this would put him in the prisons for contempt of court. "Equity does work "behind the scenes" of the common law action."<sup>8</sup>

"The two streams have met and now run in the same channel, but their water do not mix"<sup>9</sup>

## GROWTH OF EQUITY

"A dual system of rights and interests, namely – legal and equitable, came to the fore due to the double system of the administration of justice in England before the Judicature Act, 1873 – 1875."<sup>10</sup>

## WHY WAS EQUITY IMPORTANT IN THE DEVELOPMENT OF ENGLISH LAW?

Equity was important in the development of English law because it resolved some of the defects of the common law, which otherwise might have led to a loss of public confidence in the legal system - since the hallmark of a civilized society is a proper legal system.<sup>11</sup>

As these Chancellors had no formal legal training, and were not guided by precedent, their decisions were often widely diverse. However, in 1529 a lawyer, Sir Thomas More, was appointed as Chancellor, marking the beginning of a new era. After that, all future Chancellors were lawyers, leading to the development of a number of equitable doctrines. Criticisms continued in the court.

## EVILS OF THE COMMON LAW

One of the major evils of the Common law was the inflexibility of the writ system, and

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<sup>8</sup> Glanville Williams, *Learning the Law* (11<sup>th</sup> ed. 2009) 24-29.

<sup>9</sup> Owing to the prevailing ignorance of legal history, modern courts sometimes express the heretical option that law and equity have become fused, so that common law remedies are available to enforce equitable rights. *International factors v. Rodriguez* [1979]Q.B. at 358A.

<sup>10</sup> Megha Karnwal Law of Equity, <<http://jurisonline.in/2008/11/law-of-equity/>> accessed 28 November 2009.

<sup>11</sup> <<http://members.lycos.co.uk/lawnet/EQUITY.HTM>> accessed 4th November 2009.



the consequent expense that if a writ had a minor drafting error, it would be thrown out. For example, in *Pinnel's Case*,<sup>12</sup> where Pinnel won as a result of Cole's drafting error even though Cole was legally right.

- I. Many cases were lost on technicalities.
- II. The common law did not allow oral evidence.
- III. There was no power of enforcement.
- IV. It was easy to avoid the consequences of one's actions.
- V. The wayer of law system was unfair.
- VI. There was no recognition of trusts.

## IMPORTANT DEVELOPMENTS IN EQUITY

- I. As a result of the inadequacies of the Common Law courts, people petitioned to the King through his Chancellor. This developed into a complete legal system, and the Chancellor, as petitions increased, set up the Court of Chancery (1474), the rules of which became equity.
- II. The *Earl of Oxford's Case*<sup>13</sup>, which decided that if equity and the common law were in conflict, equity would prevail (codified in the *Judicature Act 1873* and currently contained in the *Supreme Court Act 1981*).
- III. In the mid-19<sup>th</sup> century, the procedure of the Court of Chancery (discovery of documents and injunctions) was made available in the Common Law courts.

## ADVANTAGES OF EQUITY OVER THE COMMON LAW

One of the core advantages of Equity over the Common Law was that the Court of Chancery succeeded in stopping unconscionable writs through the injunction, by which the common law claimant was restrained from continuing his action. If the claimant defied the order he would be imprisoned for contempt. It was said that there existed two legal systems - one to do injustice, and the other stop it, and that equity was the conscience of the law.

"Equity in U.S. law can be traced to England, where it began as a response to the rigid procedures of England's law courts. Through the thirteenth and fourteenth centuries,

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<sup>12</sup> (1602) 5 Co Rep 117a.

<sup>13</sup> [1615] 1. Chan. Rep. 5-16 in English Reports, vol. 21, pp.485-489.

the judges in England's courts developed the common law, a system of accepting and deciding cases based on principles of law shaped and developed in preceding cases. Pleading became quite intricate. If a complaint was not dismissed, relief was often denied based on little more than the lack of a controlling statute or precedent.

Frustrated plaintiffs turned to the king, who referred these extraordinary requests for relief to a royal court called the Chancery. The Chancery was headed by a Chancellor who possessed the power to settle disputes and order relief according to his conscience. The decisions of the Chancellor were made without regard for the common law, and they became the basis for the law of equity.<sup>14</sup>

## REMEDIES DISCOVERED BY THE CHANCELLORS

The Chancellor developed new remedies that were able to compensate plaintiffs more fully than the Common Law remedy of damages.

- 1) Injunction
- 2) Specific performance
- 3) Account of profits
- 4) Rescission
- 5) Declaratory relief
- 6) Rectification
- 7) Estoppels
- 8) Certain proprietary remedies, such as constructive trusts or tracing
- 9) Subrogation
- 10) In very specific circumstances, an equitable lien

There were four main remedies known as injunctions, specific performance, rescission and rectification. Injunction was a court order that asked a person to do or refrain from doing something. Specific performance was an order that a contract should be carried out as agreed. Rescission was where the parties were returned as far as possible to their pre-contract position. Rectification was where the court would order a document to be altered to reflect the parties' intentions. There were also two other remedies known as trusts and mortgages. An account of profits is usually ordered where payment of damages would still leave the wrongdoer unjustly enriched at the expense of the wronged party.

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<sup>14</sup> Black's Law Dictionary, (9th ed. 2005 ) 579-580.

## GENERAL PRINCIPLES OF EQUITY

The importance of the maxims ought not to be overstated: they are far from being rigid principles, but exist as terse sentences which illustrate the policy underlying specific principles.<sup>15</sup>

### **1. *Aequitas est correctio legis generalities latae, qua parte deficit: i.e., Equity is a correction of the general law in the part where it is defective.***

For a long time, the English Courts were guided by the doctrine *ubi remedium ibi jus* (where there is a remedy there is a right) but with the development of the Court of Chancery in England, this doctrine gave way to a more pragmatic and just doctrine called '*ubi jus ibi remedium*' (where there is a right there is a remedy).

### **2. He who seeks equity must do equity**

This maxim put a mandate on the seeker of equity. A litigant, claiming something by way of equity, must, himself be ready and willing to grant to his opponent, that which the opponent is entitled. *Chappell v. Times Newspapers Ltd*,<sup>16</sup> where workers wanted an injunction against their dismissal for going on strike refused to agree not to strike if the injunction were to be granted, and thus the injunction was not granted.

### **3. *Aequitas sequitur legem i.e. Equity follows the law***

Equity only intervened when some important factor became ignored by the law. Thus, in the early stages of the development of the law of trusts, the Lord Chancellor and, subsequently, the Court of Chancery acknowledged the valid existence of the legal title to property in the hands of the feoffee (or trustee). The acquisition of this title by the feoffee was dependent on compliance with the appropriate legal requirements for the transfer of the property.

### **4. Equity will not suffer a wrong to be without a remedy**

This maxim illustrates the intervention of the Court of Chancery to provide a remedy if none was obtainable at common law. The 'wrongs' which equity was prepared to invent new remedies to redress were those subject to judicial enforcement in the first place.

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<sup>15</sup> Historical outlines of equity <[http://www.unlockingthelaw.co.uk/samples/trusts\\_ch01.pdf](http://www.unlockingthelaw.co.uk/samples/trusts_ch01.pdf)> accessed 27 November 2009.

<sup>16</sup> [1975] 1 WLR 482.



In *Cohen v. Roche*,<sup>17</sup> specific performance was not granted for a contract for some Hepplewhite chairs (damages were granted instead) since they were not rare or unique enough.

## 5. He who comes to equity must come with clean hands

The assumption here is that the party claiming an equitable relief must demonstrate that he has not acted with impropriety in respect of the claim.

## 6. Equality is equity

Where two or more parties have an interest in the same property but their respective interests have not been quantified, equity as a last resort may divide the interest equally. The same remedy must be available to the other parties if the position was reversed. In *Flight v. Bolland*<sup>18</sup>, it was held that minors cannot be granted specific performance against adults, since minors' contracts are in themselves unenforceable.

## 7. Where there is equal equity, the law prevails

Equity did not intervene when, according to equitable principles, no injustice resulted in adopting the solution imposed by law. Thus, the *bona fide* purchaser of the legal estate for value without notice is capable of acquiring an equitable interest both at law and in equity. Equity is not a punishment.

In *Wroth v. Tyler*<sup>19</sup>, specific performance was refused, since it would have forced Tyler to sue his own wife. Equitable damages were awarded instead, in lieu of specific performance.

## 8. Where the equities are equal, the first in time prevails

Where two persons have conflicting interests in the same property, the rule is that the first in time has priority at law and in equity: *qui prior est tempore potior est jure*. In the absence of a legal estate in the matter and the contest is among the equitable estate only, the rule is that the person whose equity attached to the property first will be entitled to priority over other or others.

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<sup>17</sup> [1927] 1 KB 169.

<sup>18</sup> Contrast in *Beswick v. Beswick*, (1828) 38 ER 817 where the House of Lords granted specific performance for a contract to pay money since it was the most equitable remedy - £5 a week for life could not fairly be enforced with damages.

<sup>19</sup> *Wroth v Tyler* [1974] Ch 30.



### **9. Vigilantibus, non dormientibus jura subvenient Delay defeats equity (equity aids the vigilant and not the indolent)**

Where a party has slept on his rights and has given the defendant the impression that he has waived his rights, the court of equity may refuse its assistance to the claimant. This is known as the doctrine of laches.

### **10. Equity looks at the intent rather than the form**

The court looks at the substance of an arrangement rather than its appearance in order to ascertain the intention of the parties. For example, in equity a deed is not treated as a substitute for consideration.

### **11. Equity imputes an intention to fulfill an obligation**

The principle here is based on the premise that if a party is under an obligation to perform an act and he performs an alternative but similar act, equity assumes that the second act was done with the intention of fulfilling the obligation.

### **12. Equity regards as done that which ought to be done**

If a person is under an obligation to perform an act which is specifically enforceable, the parties acquire the same rights and liabilities in equity as though the act had already been performed.

## **EQUITY IN INDIAN LEGAL SYSTEM**

Most of the equitable principles and rules have, in India, been embodied in the statute law and has been made applicable to the extent of the provisions made therein. The provisions of equity in Indian statute books might have their source in common law or in equity or in an adjustment between the two.

Statutory recognitions of the principles of equity are found in:

- A. The Indian Contract Act, 1872;
- B. The Specific Relief Act, 1877;<sup>20</sup>
- C. The Indian Trust Act, 1882;<sup>21</sup>

<sup>20</sup> An Act to define and amend the law relating to certain kinds of Specific Reliefs.

<sup>21</sup> The Indian Trusts Act was passed in 1882 to define law relating to private trusts and trustees. A trust is not a 'legal person'. Property of trust is held in name of trustee for benefit of beneficiary.

D. The Transfer of Property Act, 1882;<sup>22</sup> and

E. The Indian Succession Act, 1925.

“The point primarily relates to the section 28<sup>23</sup> of the *Indian Contract Act, 1872*. The subject is of great importance from the point of view of economic justice, avoidance of hardship to consumers and certainly and symmetry of the law. The equitable doctrines featuring in the Indian Contract Act are mainly, the doctrine of penalties and forfeiture, stipulations as to time in a contract, equitable relief on the ground of misrepresentation, fraud and undue influence. In a case which went to the Supreme Court, a clause in an insurance policy provided that all the benefits under the insurance policy shall be forfeited if the suit was not brought within the specified period<sup>24</sup>, the clause was held to be valid.”<sup>25</sup>

“Trust and trustees is a concurrent subject [Entry 10 of List III of Seventh Schedule to Constitution]. Thus, the Act will apply all over India except when specifically amended/ altered by any State Government.

The Indian Trusts Act was passed in 1882 to define law relating to private trusts and trustees. A trust is not a ‘legal person’. Property of trust is held in name of trustee for benefit of beneficiary. The rules administered by the English Courts of equity under the head of justice, equity and good conscience are contained in the Indian Trust Act.”<sup>26</sup>

Many doctrines of equity are contained in the Transfer of Property Act. The English

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<sup>22</sup> (4 of 1882) 17th February, 1882 An Act to amend the law relating to the Transfer of Property by act of Parties.

<sup>23</sup> *Every agreement,—*

- (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
- (b) Which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent?]

<sup>24</sup> *Vulcan Insurance Co. v. Maharaj Singh*, AIR 1976 S.C 287-294.

<sup>25</sup> Justice KK Mathew section 28, Indian Contract Act, 1878 <<http://lawcommissionofindia.nic.in/51-100/Report97.pdf>> accessed 15th November 2009.

<sup>26</sup> Indian Trust Act,1882 <<http://www.dateyvs.com/gener06.htm>> accessed 30 November 2009.



doctrine of part performance has been drawn in section 53A<sup>27</sup> of the Act. Section 48<sup>28</sup> and section 51<sup>29</sup> are also based on the equity principles. Equity of redemption in England was codified to Right of redemption in India<sup>30</sup> and in the case of *Gangadhar v. Shankar Lal*<sup>31</sup> and *Prithi Nath Singh v. Suraj Ahir*<sup>32</sup> the codified law was followed.

Section 180-190<sup>33</sup> of the Indian Succession Act<sup>34</sup> deals with doctrine of election in cases of will and section 35<sup>35</sup> of the Transfer of Property give effect to this doctrine in general.

<sup>27</sup> Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

<sup>28</sup> Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

<sup>29</sup> When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

<sup>31</sup> AIR 1958 SC 770

<sup>32</sup> AIR 1963 SC 1041

<sup>33</sup> It deals with election:

180-Circumstances in which election takes place

181-Devolution of interest relinquished by owner

182 -Testator's belief as to his ownership immaterial

183 -Bequest for man's benefit how regarded for purpose of election

184 -Person deriving benefit indirectly not put to election

185 -Person taking in individual capacity under will may in other character elect to take in opposition

186 -Exception to provisions of last six sections

187-When acceptance of benefit given by will constitutes election to take under will

188-Circumstances in which knowledge or waiver is presumed or inferred

189 -When testator's representatives may call upon legatee to elect

190 -Postponement of election in case of disability

<sup>34</sup> *Dasureddi v. M. Venkatasubammal* (1934) 2 MLJ 650

<sup>35</sup> Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of, subject nevertheless, where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

It is important to bring to the notice for the reader that though the English rules of equity have been substantially incorporated by the Indian Legislature, yet, there are many other rules of English Equity are either not been followed in India or are adopted only in a modified form, keeping in view the different ground realities of the country.”<sup>36</sup>.

“In India the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However it was in 1963 that the “Specific Relief Act” was passed by the Parliament of India following the recommendation of the Law Commission of India and repealing the earlier “Specific Relief Act” of 1877.<sup>37</sup> Under the 1963 Act, most equitable concepts were codified and made statutory rights, thereby ending the discretionary role of the courts to grant equitable reliefs. The rights codified under the 1963 Act were as under;

1. Recovery of possession of immovable property (ss. 5 - 8)
2. Specific performance of contracts (ss. 9 - 25)
3. Rectification of Instruments (s. 26)
4. Rescission of Contracts (ss. 27 - 30)
5. Cancellation of Instruments (ss. 31 - 33)
6. Declaratory Decrees (ss. 34 - 35)
7. Injunctions (ss. 36 - 42)

“With this codification, the nature and tenure of the equitable reliefs available earlier have been modified to make them statutory rights and are also required to be pleaded specifically to be enforced. Further to the extent that these equitable reliefs have been codified into rights, they are no longer discretionary upon the courts or as the English law have it, “Chancellor’s foot” but instead are enforceable rights subject to the conditions under the 1963 Act being satisfied. Nonetheless, in the event of situations not covered under the 1963 Act, the courts in India continue to exercise their inherent powers in terms of Section 151<sup>38</sup> of the Code of Civil Procedure, 1908<sup>39</sup>, which applies

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<sup>36</sup> Megha Karnwal Law of Equity <<http://jurisonline.in/2008/11/law-of-equity/>> accessed 28th November 2009.

<sup>37</sup> An Act to define and amend the law relating to certain kinds of Specific Reliefs.

<sup>38</sup> Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

<sup>39</sup> The Code of Civil Procedure, 1908 (Act No. 5 of 1908) of India is an act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.



to all civil courts in India. There is no such inherent power with the criminal courts in India except with the High Courts in terms of Section 482<sup>40</sup> of the Code of Criminal Procedure, 1973<sup>41</sup>. Further, such inherent powers are vested in the Supreme Court of India in terms of Article 142<sup>42</sup> of the Constitution of India which confers wide powers on the Supreme Court to pass orders 'as is necessary for doing complete justice in any cause of matter pending before it.'<sup>43</sup>

Woodruff says: not only may there be in India rights to be protected which are unknown to English law,<sup>44</sup> but interests of which it does take cognizance, may here require protection by an injunction, or otherwise, in a set of circumstances in which it is not necessary to grant relief in England, or the converse may be the case<sup>45</sup>

Thus according to the usages obtaining in certain places in India, the right of privacy is recognized and injunctions are issued to protect the right of privacy. The rule of English law is different from that.<sup>46</sup>

English rules and decisions to the extent which related to the Court of Chancery and the Courts of Common law in England were very different from those between the High Courts and Mofussil courts in India<sup>47</sup> as they were also the respective powers and functions of these courts.

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<sup>40</sup>Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

<sup>41</sup> An Act to consolidate and amend the law relating to Criminal Procedure.

<sup>42</sup> Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

<sup>43</sup><[http://en.wikipedia.org/wiki/Equity\\_%28law%29](http://en.wikipedia.org/wiki/Equity_%28law%29)> accessed 24th November 2009.

<sup>44</sup> *Manishankar Hargovan v Trikam Narsi* (1867) 5 B.H.C.B.

<sup>45</sup> Woodruff's law of injunction.

<sup>46</sup> *Turner v Spooner* (1861) 30 LJ Ch 801, 803

<sup>47</sup> *Moran v river steam navigation* [1964] S.C.R. 333

In India, in view of its large cultural diversity, and for various social circumstances, different factual circumstances may warrant circumstances for protection. The broad principles of the English decisions may apply, particularly those based on equity, though the ratio itself may not act as a binding precedent"<sup>48</sup>

## CONCLUSION

The equity in England developed in way back sixteenth century and is working as a part of legislature now. The importance of equity was greater emphasized than the common law system. During the centuries it developed and gained an importance in England and slowly it reflected in Indian legal system too. In India it developed through various statutes and today there are several Acts which have passed and are working by the Equity principles. The legality of equity has radically gained in significance in recent years as well in the past. The importance of equity is greatly emphasized in India also, which I have explained in my paper in part 4.1. In England equity was stated to get less importance and it was then made as a part of legislature. Today, equity has gained importance in India and various Acts work following Principles of Equity.

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<sup>48</sup> C.M Rao *Law of Injunctions*(8<sup>th</sup> ed 2007) 445-667