Research Paper Law

Importance and Relevance of Law of Contract in The Era of Globalisation

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ABSTRACT

Mercantile law is an important branch of civil law which deals with laws relating to the business transaction. The main sources of mercantile law in India are the English laws, Indian statute laws, judicial decisions, local custom and wages. The law of contract is the most important part of the mercantile law which deals with general rules relating to all types of contracts and covers the special provisions relating to some specific contracts. Now contract is contained in "The Indian Contract act 1872"which provides the legal framework for formulation of trade, business and commercial transactions. The courts are to put flash into the bare bones of the act. The scope and applicability of the provisions of the act, 1872, have, thus; been explained in a very large number of cases which came before the courts from 1872 to till date. Thus, now contract became the foundation for our business laws.

KEYWORDS LAW, CONTRACT, IMPORTANCE, RELEVANCE, GLOBALISATION

INTRODUCTION:-

When we purchase milk or newspaper in the morning or go to movie in the evening, you are entering into a contract. Such being the scenario, discussions on the subject or consequences of any breach of contract or avoidance or non-compliance of obligations is of vital importance. Mercantile law is an important branch of civil law which deals with laws relating to the business transaction. The main sources of mercantile law in India are the English laws, Indian statute laws, judicial decisions, local custom and wages. The law of contract is the most important part of the mercantile law which deals with general rules relating to all types of contracts and covers the special provisions relating to some specific contracts. Now contract is contained in "The Indian Contract act 1872"which provides the legal framework for formulation of trade, business and commercial transactions. The courts are to put flash into the bare bones of the act. The scope and applicability of the provisions of the act, 1872, have, thus; been explained in a very large number of cases which came before the courts from 1872 to till date. Thus, now contract became the foundation for our business laws.

HISTORICAL PERSPECTIVE:-

Human society has always had laws. Earlier the directives of the rulers and kings were the law. These included, among others, imposition of taxes and obeisance to the ruler. Different parts of the world, including India, had their own peculiar kinds of law. The divergences, however, came to acquire a degree of uniformity with British colonial expansion will stop the British colonised the world, moving to America, Canada, Australia, New Zealand, India and other parts of Asia and Africa. Wherever they went, there had to be the law, order and system for adjudication of disputes. In short, illegal system had to be set up.[1] The law of contract has developed as a result of increased complexity of commercial transactions. Until 17th century, disputes between parties in the exchange of goods or services could be addressed only under Law of Torts. However as commerce and trade increased and the range of products and services expanded, the need for specific law dealing with contracts became apparent and the law of contract begin to develop. In the later 17th century, judges began to hear increasing numbers of cases regarding commercial transactions, resulting in the genesis of Law of Contract. For this, they brought in features of their own legal system. Thus, India has come to share features of the British system, like many other countries. But the indiscriminate application of English law within the jurisdiction of the Supreme Court to Hindus and Mohammedans led to many inconveniences.

To remove this difficulty, the act of 1781, empowered the Supreme Court i.e. court at Calcutta and statue of 1797 the recorders Court[2] i.e. court at madras and Bombay to determine all the matters of contract in case of Mohammedans by the laws governing them and in case of Hindus by the laws and usages governing them. The effect of statutes was to supersede English law so far as regards Hindus and Mohammedans law of contract was applied by High Court up to the passing of the Indian contract act, 1872. The Indian Contract Act, 1872, primarily drafted by the Third Law Commission of India, is primarily a codification of English Law subject to certain changes. The Act also heavily drew from the draft Civil Code of New York (drafting attributed to David Dudley Field), although Pollock, the renowned commentator on the Indian Contract Act, was of the opinion that the said Civil Code was "about the worst piece of codification ever produced".[3]

MAKING OF THE INDIAN CONTRACT ACT, 1872:-

The first draft of the Indian Contract Act made by the third Indian Law Commission was a simplified statement of the English law with modifications suitable to India. There were differences between the views of the Indian legislature and the Commission; so the Commission resigned. The drafting of the future statutes fell upon the Indian legislative department. Some proposals of the Commissioners were rejected, while some provisions were borrowed from the draft New York Code of 1862. The final draft was the work of Fit James Stephen.[4] Sir Fredrick Pollock is of the opinion that the framers borrowed from various codes of other countries leaving an incongruous effect. But, he says after allowing for all drawbacks, the result was generally sound and useful one.[5]

The Contract Act did not cover the entire field of Law of Contract- in cases not provided by the Contract Act or other legislative enactments relating to particular contracts, it was incumbent on High Courts in their original jurisdiction to apply Hindu law to Hindus and Mohammedan's law to Mahommedans. An instance is the rule applicable to Hindus governed by the Mitakshara law in the Bombay presidency that a debt wrongfully withheld after demand of payment has been made, interest becomes payable from the date of demand by the way of damages. The rule, however, is not applied to Hindus in the Madras presidency;[6] but such cases have been few, and the Hindu and Mahommedan laws of contract may, for all practical purposes, to be regarded as superseded by the Contract Act and other enactments relating to particular contracts.

The Contract Act continued to be in operation by virtue of Article 372 (1) of the Constitution of India.[7] However, the pro-

visions of the Act would be subject to the provisions of the Constitution. Any provision of the Contract Act, if inconsistent with fundamental rights, would be void under Article 13 of the Constitution. Contract of service under the state must be consistent with the provisions of the Constitution.[8]

The Indian contract act, 1872 extends to whole of India, except the state of Jammu and Kashmir. The bill pertaining to act 9 of 1872 was passed on 25th of April, 1872 and the act came into force on 1st September, 1872.

So, the first common law to develop in the field of trade and commerce was the law of contract. This was to be the foundation of business law. As trade and commerce developed, business practices became specialised. Corresponding to this, the principle formulated by the courts could also be clustered into different areas. For example, the sale of goods was specific form of a contract stop it raised a specific set of issues in relation to the quality of goods, transfer of ownership, and payment of price. Carriage, finance, banking, and insurance were the other business relations to emerge. The courts developed with the law on these fields on the foundation of law of contract.

MEANING AND DEFINITIONS OF "CONTRACT" UNDER INDIAN CONTRACT ACT, 1872:-

MEANING OF "CONTRACT":

The essence of law of contract is that the state support and enforces contracts made by individuals. Contracts are voluntary agreements reached between individuals which have benefits for both the parties. Two individuals are in agreement when their minds meet. It is an agreement or set of promises giving rise to obligations which can be enforced or are recognised by law.[9] Thus, all agreements are not enforceable by law and, therefore, all agreements are not contracts .some agreements may be enforceable by law and others are not. Only those agreements which satisfy the essentials mentioned in section 10 of the Indian contract act, 1872, becomes contracts. However, all contracts are agreements.[10]

DEFINITIONS:

All agreements are not contract and enforceable by law like - social arrangements, or contracts which offend against public decency and public policy and those which involve criminal activity. Various jurists tried to explain the meaning of "contract" in their own words. A few of these are:-

Sir Fredrick Pollock:

"A promise or set of promises which the law will enforce."[11]

Sir William Anson:

"The law of contract may be provisionally described as that branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it."[12]

SEC.2 (h) Of Indian Contract Act, 1872:

"An agreement enforceable by law is a contract."[13]

Why should contracts be enforced?

As a very broad principle, agreements between individuals and between commercial entities are based on a very high degree of freedom of choice; but, in the modern era with increasing use of the statute to regulate behaviour that may mislead, exclude liability or be oppressive, Contracts should be enforced.

IMPORTANCE OF LAW OF CONTRACT IN MODERN ERA:-

Importance of Law of Contract is now not limited only to a particular field, but if we see in the present era of globalisation, liberalisation and industrialisation, every organisation, Institute, company, government concerns, private businessmen etc., all are engaged in contracts in one form or the other. Apart from private business man with his concern with other businessman, he has to enter into many other contracts for insurance of business and goods, purchase and sale of machinery, contracts with employers and employees in his concern and many other implied contracts also. In educational institutes, and institute enters into contract with their students, faculty, mess, hostel concerns, constructions, loans from banks etc. In international era, in respect of international business and IPR, licensing of copyright, patent, royalty fees etc., all are contracts.

Actually, if we say in a literal contrast about the contracts in present times, contract is entered into between the 2 bodies (persons, organisation, institutes etc.) to secure their interest, money, liability in a contractual obligation. So, the scope of the Law of Contract can never end, but it will go on and on expanding with the passage of time.

RELEVANCY OF LAW OF CONTRACT IN THE WORLD OF GLOBALISATION:-

Our society depends upon free exchange in the marketplace at every level. Law of Contract makes this possible. Exchanges in the marketplace always depend upon voluntary agreements between individuals or other "legal persons". Such voluntary agreements could never work without Law of Contract. Law of Contract serves to make these agreements "enforceable", which usually means that it allows one party to a contract to obtain damages from the other party through the court, upon showing that the later stands in breach of contract. Without Law of Contract, these voluntary agreements would instantly become impractical and unworkable. Since such agreements lie at the very heart of our society and economy, and since they depend upon Law of Contract, it is no exaggeration to say that "Law of Contract lies at the heart of our system of laws and serves as the foundation of our entire society." No exchange is exempt from the law of contract, which indeed can be rightly called the cornerstone of marketplace civilization.

We enter into contracts day after day. Taking a seat in a bus amounts to entering into a contract. When you put a coin in the slot of a weighing machine, you have entered into a contract. You go to a restaurant and take snacks; you have entered into a contract. In such cases, we do not even realise that we are making a contract. In the case of people engaged in trade, commerce and industry, they carry on business by entering into contracts. The law relating to contracts is to be found in the Indian Contract Act, 1872.The law of contracts differs from other branches of law in a very important respect. It does not lay down so many precise rights and duties which the law will protect and enforce; it contains rather a number of limiting principles, subject to which the parties may create rights and duties for themselves and the law will uphold those rights and duties. Thus, we can say that the parties to a contract, in a sense make the law for themselves. So long as they do not transgress some legal prohibition, they can frame any rules they like in regard to the subject matter of their contract and the law will give effect to their contract.

CONCLUSION:-

Law of contract touches every section of our lives. As, it is well-known that law is not static, but dynamic. The law of contract and its principles like breach of contract, remedies for breach of contracts etc. also have been going through changes, prompted on one hand by a desire of preventing injustice and on the other hand, of satisfying expectations of the parties and demands of commercial expediency. As new problems are coming up related to the consequential damages for breach of contract due to the change in socio- economic-political and international needs, the law relating to damage is also in the stage of evolution. The Indian contract act of 1872 provides a legal framework for the formulation of trade, business and commercial transactions, though it is equally applicable where such transactions are involved in friendly, family and social matters.

The Indian and English law have remained witness to a number of changes during the past decades. Recent Supreme Court decisions have dealt upon newer areas and issues arising out of modern-day trade and commerce and have con-

tributed to the development of the law on the subject. Some such issues which have received judicial attention are:-

1. Principles and practices relating to consequential damages for breach of contract.
2. Measurement of damages for breach of contracts
3. Mis-statements of fact in advertisements and their effect upon contracts based upon them.

With the growing mobility of employees, the courts have been facing the difficult task of balancing the interest in the context of restraint of trade and compensation for breach of contract and foreseeability of consequential damages for breach of contracts. Issues related to the function and principles of assessment of damages deserve especial attention of the courts. Moreover, Sale of Goods Act, Consumer Protection Act and other laws also talks about damages and remedies. The focus of my research paper is to evaluate the importance of Law of contract in the present era, so that the new problems of this field can be solved. As the area of Law of contract is so vast that we cannot explain it in brief. It is well-known that the law of contract is applicable everywhere in the world, so this research paper will be of immense significance for the lawyers, jurists, law enforcement agencies, judiciary, Law students, and Law researchers and for all those who are involved in the field of law and business.

Tracing the history of contractual relationships and the law relating to this field, from the medieval times to how we see it today, this research has enabled the researcher to truly appreciate the Indian Contract Act as not merely a piece of legislation, but a law we come across in our everyday life.

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