Original Research Paper Law

Equity and Law

Shreemanshu Kumar Dash | Research Scholar, Department of Law, Sambalpur University, Sambalpur, Odisha, INDIA

ABSTRACT

Law is a means to an end and not an end by itself. It necessarily follows there from that the objective of a legal provision, in the abstract form, is more important than the statute, in a concrete form. The abstract is sought to be achieved with the help of the concrete. At times it so happens, from the practical point of view, that if we stick to the legal provisions, than justice is not done and if we tend to do justice, than we need to deviate from the legal provisions. The reason behind such an anomaly is the inability of the generality of the legal provisions to attend to the particularity of certain cases of peculiarity.

KEYWORDS Equity, common law, conscience, justice, reason, Chancery, judicature, policy

INTRODUCTION:
The word "equity" is derived from the Latin word "acquitas" which means 'leveling'. Equity is the name that we give to the set of rules that traditionally supplemented the common law where the application of the common law would have operated too harshly. This was done to achieve what is sometimes referred to as natural justice, or more simply speaking, fairness.

A Court of Equity, Equity Court or Chancery Court is a court that is authorized to apply principles of equity, as opposed to law, to cases brought before it. These courts began with petitions to the Lord Chancellor in England.

Equity as a source of Law:
In England, equity originated in Chancery, where the Chancellor sat as the "Keeper of the King's conscience" to give relief to the King's subjects in cases of hardship, by the application of the principles of morality or conscience. But equity is not identical with morality. Rather it is synonymous to justice.

The law enacted by the legislature, is susceptible to be influenced by the policies of the state whereas the rules and principles of justice are not dominated by such character. They contain the principles of natural justice. The principles and rules emerging from the exercise of the residuary power, forms an important, distinct and living source of law in the state.

Nature and Scope of Equity:
The literal meaning of equity is "right as founded on the laws of nature, fairness, justice. Equity as defined by some of the jurists may be quoted as under:-

Aristotle, "Equity is the correction of the law where it is defective on account of its generality".

Sir Henry Maine, "Equity means any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law by virtue of a superior sanctity inherent in those principles".

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.

Blackstone, "Equity, in its true and 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".

Essence is to be given more importance than the form of a legal provision and the essence of equity as defined by the maxim is "equity will not suffer a wrong to be without a remedy".

Equity under Roman Law:
The Praetor was the supreme judicial magistrate of the Roman Republic. Jurisdiction of the Praetor was exercised by means of formulae or written statement. A judex or judge was required to be bound by the terms of the formulae. The judgments or the administration of justice, according to '***jus civile'*** or civil law and the technicalities of the proper formula or kind of action were strictly followed. Gradually the Praetor began exercising another jurisdiction, called his extra-ordinary jurisdiction whenever an adherence to the old ***jus civile*** would do a moral wrong. In course of time, the cases and the modes in which he would thus interfere (based on natural law), grew more and more common and certain and thus a body of moral principles was introduced in the Roman Law which constituted equity (***acquitas***) by the side of ***jus civile***. Strict adherence to the technicalities of law was thereby softened.

Equity under English Law:
By the middle of the thirteenth century, in England, came into existence three great courts namely, the King's Bench, the Common Bench or the Court of Common Pleas and the Exchequer. The law which these courts administered was in part traditional or customary law and in part statute law and was named as "common law". Owing to the narrowness, extreme rigidity and formalism that is to say, adherence to the forms and precedents, of the traditional common law courts, there used to raise cases for which the common law gave either inadequate or no remedy.

In such peculiar cases, a petition was made to the King in Council to exercise his extraordinary judicial powers. This trend developed as a custom of referring these petitions to the Chancellor, who was the chief of the King's Secretaries and has been aptly described by Maitland as "the King's Secretary of state for all developments" and was usually a bishop and this custom later on confirmed by an order of Edward lll in 1349. The Chancellor used to act initially in the name of the King in Council, but in 1947 a decree was made in his favour through which on his own authority, he exercised his jurisdiction and such practice continued and finally led to the establishment of the court of Chancery besides the courts of common law. It may be mentioned here that the Chancellor, in entertaining these petitions, acted according to his judicial conscience or the principles of natural justice. The petitions were filed before the Chancellor, the head of Chancery only in the cases where no remedy was available in common law and the equitable jurisdiction in England grew up because the

Chancellor tried to give remedies in those cases. Up to the year 1873, there remained, in England, two separate sets of courts with two distinct jurisdictions- the common law courts and the chancery courts. Such a double justice delivery system was inconvenient to the litigants from practical point of view. Therefore the Judicature Act, 1873 was passed whereby the two classes of courts were amalgamated and reconstituted. There after all the courts acted as courts of complete jurisdiction recognizing and enforcing all the rights and remedies irrespective of legal or equitable. By virtue of the Judicature Act of 1873 and 1875, one High Court of Judicature was constituted for administration of both law and equity. It was provided tin general terms that in cases where there was a conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity would prevail over that of the common law.

Equity under the Indian Legal System:

In India, it has been provided by the Hindu Law that, "in case of a conflict between the rules of ***Smritis***, either may be followed, as reasonings on the principles of equity (Yuktivichar) shall decide the solutions". Hindu law has never been static and has consequently introduced equitable principles to meet the exigencies of the time. The latter ***Smrikaras***, namely, Narada and Brihaspati have categorically acknowledged the importance of equitable principles. Brihaspati has said that "decisions should not be based merely on scriptures. There would be failure of justice if the principles based on reasons are not followed." These principles of reasons can be called principles of equity. Kautilya also provides that if the Dharma-text is found opposed to judicial reason, it fails and there the authority of reason prevails. Yajnavalkya does not allow a possibility of conflict between Reason and Text. He limits the superiority of reason or equity to a conflict between the ***Sastras*** themselves.

The Mohammedan law also partly owes its origin to the principles of equity. The principles are known as ***istehsan*** or juristic equity. Hanafi sect of Sunnis was founded by Abu Hanifa who expounded the principle that the rule of law based on analogy could be set aside at the option of the judge on a liberal construction or juristic preference to meet the exigencies of a particular case.

Under the British Rule and administration of justice, the law commission for preparing a body of substantive law for India, recommended that the judges should decide these case for which there is no provision in law "in the manner they deem most consistent with the principles of justice, equity and good conscience".

The Indian legal history is silent about the double justice delivery system unlike it was in vogue in England before 1873, for exercising equitable jurisdiction the courts of Equity as well as law as enjoined to decide those cases for which there is no provision under the existing body of law, based on the principles of "justice, equity and good conscience". Even in places where there was no statutory provision to the effect, judges could conform and act according to the principles of justice, equity and good conscience in the absence of specific law on the point.

In India the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However, in 1963 the Specific Relief Act was passed by the Parliament following the recommendation of the Law Commission and repealing the earlier "Specific Relief Act" of 1877. 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:

- Recovery of possession of immovable property (ss. 5–8)
- Specific performance of contracts (ss. 9–25)
- Rectification of Instruments (s. 26)
- Recession of Contracts (ss. 27–30)
- Cancellation of Instruments (ss. 31–33)
- Declaratory Decrees (ss. 34–35)
- 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 has 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 power in terms of Section 151 of the Code of Civil Procedure, 1908, which applies 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 of the Code of Criminal Procedure, 1973. Further, such inherent powers are vested in the Apex Court in terms of Article 142 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".

Nature of Equitable Interests:

The equitable rights and interests may be discussed as under:-

- Equitable rights were created primarily for one or the other of three purposes: i) to protect confidence, 2) to promote fair dealing and 3) to prevent oppression.
- An equitable right arises when a right vested in one person by the law should, in the view of equity, be, a matter of conscience, vested in another. "Practically equitable rights are merely extensions and modifications of legal rights over property".
- The general rule is that equity follows the law and that equitable interests have in general the same incidents and attributes as have corresponding legal interest. They devolve and can be settled, mortgaged and disposed of precisely in the same way as legal interests.
- Equity follows the law and as such a legal estate or interest takes precedence over the equitable estate or interest. In case of conflict between the legal owner and a person entitled to an equitable interest, the rule of decision is contained in the maxim "where equities are equal, the law prevails".
- As among different equitable estates or interests, the deciding rule is expressed through the maxim : "where equities are equal, the first in time prevails".
- The most important characteristic of an equitable interest specifically in contrast with the legal interest is, to some an extent, entangled in a controversy and depends upon the answer to the question : Are equitable rights and interests like legal rights and interests, ***jura in rem*** i.e. rights against the whole world or are they ***jura in personam*** i.e. rights only against certain persons ?

The Maxims of Equity:

The rules relating to the exercise of equitable jurisdiction are based on and derived from those essential truths of morality- the essential principles of rights and obligations of people. The judicial principles which are emanated from equity are the outcome of experiences of life. Those judicial principles constituting the ultimate sources of equitable doctrines are commonly known as maxims of equity some of which may be summed up as follows:-

1. Equity will not suffer a wrong to be without a remedy.
2. Equity follows the law.
3. Where equities are equal, the law shall prevail.
4. Where equities are equal, the first in time shall prevail.
5. He, who seeks equity, must do equity.
6. He, who comes to equity, must come with clean hands.
7. Delay defeats equity.
8. Equality is equity.

9. Equity looks to the intent, rather to the form.
10. Equity imputes an intention to fulfill an obligation.
11. Equity looks on that as done which ought to have been done.
12. Equity acts in ***personam***.

Each of these maxims has its own legal significance and works as the guiding factors for the courts in deciding practical problems. What maxim is to be invoked under a particular situation depends upon the facts and circumstances of each case. What is required on the part of a judge is to be sensible enough to discern the wrong recognized by law because from the legal perspective it is more important to know as to 'where lies the wrong than who did it' and apply the spirit of the legal provision in disposing of the same in the larger interest of the society.

Conclusion:

Equity in fact plays an important role in justice delivery system. In the modern hi-tech society with digitalization of almost all systems, a computer devise would be a nice replacement of a human being from the position of a judge because 'feed the facts and laws into it and get a judgment with all accuracy' would be a very good idea. But it would never be possible, howsoever developed the digital world may be, for the simple reason that, to decide something, what is required is a mind, and a machine doesn't have it nor will ever have also. To judge something, it requires a conscience and to judge a case, it requires a judicial conscience. No doubt, there are so many things in the name of legal provisions, precedents, rules etc. etc. but what supersedes all is justice, equity and good conscience which, again, stem from the dictates of conscience and each case is to be decided on its own merits for it is an undeniable cardinal principle of the entire legal system that 'every case is a new case'.

Suggestions:

1. The maxims of equity are the cardinal principles of legal system. They are more to be perceived than merely understood.
2. While applying the rules of reason, a court is required to act sensibly. To act sensibly, a judge has to be morally upright personally.
3. There are so many arguments for and against certain things but should prevail the ones which subserve the larger interest of the society.
4. To judge cases, what is required is a sound thought which is possible only in a peaceful state of mind. If the judges are over burdened, there will be little difference between a human being and a machine.
5. If the society expects the best performance from the judiciary, it is highly necessary that the judiciary, in turn, be given healthy environment to work so that their performance will strengthen the societal fabric.
6. The high sounding words, royal robe, awesome attire etc. are all in vain because systems are yet to be up to the expectation of the general public. They need to be public oriented so that people will come forward to cooperate with the system.

References:

1. Principles of Equity : G.P.Singh.
2. Equity, Trust and Specific Relief : B.M.Gandhi
3. Transfer of Property Act : R. K. Sinha.
4. Jurisprudence & Legal Theory : Prof. Dhyani.
5. The Constitutional Law of India : Kailash Rai.