PRINCIPLES OF JUSTICE, EQUITY AND GOOD CONSCIENCE: LEGAL DISCOURSE WITH REFERENCE TO ARTICLE 21 OF THE CONSTITUTION OF INDIA

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INTRODUCTION:

The maxim of justice, equity and good conscience evolved from England in thirteenth century when traditional common law was in force in England from times immemorial.

This principle was introduced to remove the defects in Common Law Courts. The rigidity of common law judges and the bulky procedure in Court of law forced people to approach the king for justice.

HISTORY OF THIS PRINCIPLE:

In 1253, in England to prevent judges from inventing new writs, Parliament provided that the power to issue writs would be transferred to judges only one writ at a time, in a "writ for right" package known as a form of action. Because it was limited to enumerated writs for enumerated rights and wrongs, the writ system sometimes produced unjust results.[1] Therefore the plaintiff had only option to petition the king.

If changes were not quick enough, or if decisions by the judges were regarded as unfair, then litigants could directly appeal to the King, who, as the sovereign, was seen as the 'fount of justice' and responsible for the just treatment of his subjects. Such filings were usually phrased in terms of throwing oneself upon the king's mercy or conscience.

According to 17th century jurist Sir John Selden, 'Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity.'

[1] http://quod.lib.umich.edu/e/ecco/00481431.0001.000/65:8; visited on 16 Feb. 2014 at 4:00 P.M.

PRINCIPLE OF JUSTICE, EQUITY AND GOOD CONSCIENCE AND IDEA OF JOHN LOCKE:

The principle of justice, equity and good conscience is in micro sense the discretion and **real will** of the person who applies this principle. According to great political philosopher Sir Jean Jacques Rousseau, each individual has two types of will:

A. **Actual will ;and**
B. **Real will.**

A. Actual will- It is the will of an individual that is concerned with his selfish interest. This selfish interest means the self interest of an individual and it includes tits thinking about his own son, daughter, wife, etc. But it excludes the will for welfare of society.

B. Real will- It is the will of an individual towards welfare of the society.

This real will of the person is based on 'reason' of a person.

Locke wrote in his *"Essays on the Law of Nature* that-

Human beings can and should know their duties under the Law of Nature through their exercise of reason. The Law of Nature is a codification of reason.[2]

But reason is actually the will of a person(choice). So it can vary from person to person and it can be biased toward the instinct of **self-interest**[3] as stated by Rousseau.

PRINCIPLES OF EQUITY:

The term 'equity is drawn from the latin word *acquitas* which means "to equalize".

There are two main principles of equity:

1. **he who seeks equity must do equity, and**
2. **he who comes into equity must come with clean hands.**

CONDUCT OF APPLICANT:

[2] Kaviraj, Sudipta and Khilnani, Sunil, "Civil Society, History and Possibilites", 1st edn 2001, reprint 2006, Foundation Books Pvt. Ltd. Cambridge

[3] Patil, S.H. "Modern Western Political Thought", 1988, Prinwell Publishers S-10 Shopping Complex Tilak Nagar, Jaipur- 302 004India), Rupa Printers, Jaipur- 302 004(India)

While a Court of equity endeavours to promote and enforce justice, good faith, uprightness, fairness and conscientiousness on the part of defence in judicial controversies, it no less stringently demand the same from litigant parties or plaintiffs.[4]

- The maxim considered as a general rule controlling the administration of equitable relief in particular controversies is confined to misconduct in regard to or at all events, connected with, the **matter in litigation.** It does not extend to any misconduct however gross which is unconnected with the matter in litigation and from which the opposite party has no concern.
- The term "relief" has been defined by Woodroffe as "whether it be given by the issue of jnjunction or the appointment of a receiver, is granted generally upon the principle of *quia timet*, that is, the Court assists the party who seeks its aid, because he fears(quia timet) some future probable injury to his rights and interests, and not because an injury has already occurred, which required any compensation or other relief".[5]
- In *Nandan Pictures Ltd. v. Art Pictures Ltd.*[6], Court held that injunctions are forms of equitable relief and they have to be adjusted in aid of equity and justice to the fats of each particular case.

According to Dias, equity aims at three objectives:

1. the interpretation of law should be based on sound logical reasons;
2. there should be generality in the application of law, the deficiencies of law should be removed through equitable principles of justice nad good conscience.[7]

According to Sir Henry Maine, equity is a set of rules which were in existence side by side with the original law and were based on well established principles of morality, natural, justice, honesty and uprightness.

DOCTRINE OF LACHES- a principle of equity:

[4] Aggarawala, O.P.,"The Law of Specific Relief in India"; Vol.II,(Sections 31 to 44) 6th edn.; Metropolitan Book Co. Pvt. Ltd., Delhi-6.
[5] Aggarawala, O.P.,"The Law of Specific Relief in India"; Vol.II,(Sections 31 to 44) 6th edn.; Metropolitan Book Co. Pvt. Ltd., Delhi-6, **Page No. 1000, 1st para.**
[6] AIR 1956 Cal. 428
[7] Paranjape, Dr. N.V., ":Studies in Jurisprudence nad Legal Theory"

Laches in legal significance is not mere delay, but delay that works a disadvantage to another. The doctrine of laches is an application of the broader maxims of equity.

When Court sees negligence on one side and injury therefrom on the other, it is a ground for denial of relief. The doctrine of laches constitutes a defence in a Court of equity.

ORIGIN OF EQUITY:

During the late thirteenth and early fourteenth century in England, the common law courts had consolidated their jurisdiction and the system of law which they administered had become rigid, stereotype and incapable of meeting the requirements of the people. Therefore in order to keep pace with the progress of the society, new courts namely, the equity courts were established which recognised new rights, provided new remedies and thus saved English legal system form stagnation. Therefore, as rightly pointed out by Holdsworth the evolution of the modern equity law began with the history of courts in England during the medieval period. There were three types of Courts functioning in England at the beginning of the 14th century.

The law of equity sought to remove the deficiencies in the common law through its three-fold jurisdiction: (A) exclusive; (B) concurrent and (C) Auxiliary.

(A) The exclusive jurisdiction of the Chancery Court provided relief in respect of equitable rights as opposed to legal rights, which were protected by common law courts. Thus the matters relating to trusts, redemption of mortgage, administration of assets of the deceased, guardianship of infants etc. for which no remedy was provided under the common law, could be taken cognizance of the Chancery Court under the exclusive jurisdiction of equity.

(B) The concurrent jurisdiction of equity extended to two categories of cases, namely, those for which remedy granted by common law courts was totally inadequate and those for which common law courts provided remedy in an indirect manner or though multiplicity of suits. Thus the remedies provided under the equity law for these cases included injunction, specific performance of a contract, interpleader suits, accounts, partnership, set off etc.

(C) In exercising its auxiliary jurisdiction, equity did not itself decide upon the rights of parties but merely lent its help by affording the benefit of its special procedure, such as discovery of documents, appointing a receiver, grant of an injunction etc. Thus auxiliary

jurisdiction was exercised where legal remedy was available for the breach of a legal right but the procedure thereof was defective and cumbersome.

DEVELOPMENT OF LAW OF EQUITY:

The conflict between the common law courts and the Chancellor's equity jurisdictions reached its climax in 1616 when Chief Justice Coke and Lord Chancellor Ellesmere came face to face in a case where decree was obtained before Lord Coke by practising a fraud, The Chancellor, thereupon granted perpetual injunction against the decree-holder in order to undo the fraud. But the validity of this action (i.e. grant of injunction by Chancellor) was seriously questioned by Chief Justice Coke who declared that the person who obtained which an injunction was liable to be proceeded against under the statute of Praemuniro for the offence of challenging the judgment of King's Court in the Chancery Court. King James I referred the matter to Bacon, the then Attorney-General and other eminent lawyers and finally settled the controversy in favour of Lord Chancellor. This paved way to the development of equity law as litigants could now freely come to Chancellor's Equity Court for relief in cases where there was no relief or there was inadequacy of relief under the common law.

DIFFERENCE BETWEEN EQUITY AND EQUALITY:

Equality means to give equal opportunity to all persons who are equal.

Equity means distribution of a thing according to ‘need’ of a person. Equity implies fairness or fair treatment.

“Justice can mean equity but equity does not mean justice”. The reason is that justice means fairness. this fair treatment (just treatment; treatment according to need of a person) is equity and justice is consequence of the application of principles of equity.

PRINCIPLES OF JUSTICE:

The term Justice means ‘which is good for everyone’. Suppose we accept some thing because we cannot fight for it or we think that since it is the view of majority so we are bound to follow it, then it is not justice.

According to Sit John Rawls, Justice means ‘fairness’. He wrote in his book “Theory of Justice” in 1971, that if equality and freedom can be rightly maintained then only ‘justice’ can be maintained.

Freedom means to have liberty to do something. Equality means to give equal opportunity to every equal person in a particular field. It is said that equality and freedom are opposite to each other. There can be a situation where equality of an individual conflicts the freedom of other and if this will be continued unrestricted, one of the parties will suffer from injustice.

But the question is how one can confine freedom of a person in such a way that it does not come in conflict with equality of other?

According to Sir John Rawls, men has two capacities-

1. to decide the condition for god life;
2. to agree with others how to establish the condition for good life since all persons have some interests. Therefore by compromise.

He said that the balance of freedom and equality of a n individual will lead to Justice.

Empirically, it will be justice since every person have an instinct of self-interest in it according to Sir Jean Jacques Rousseau. Therefore he will not agree in a decision which is wrong and unfair.

But more particularly, in an organized society, the best answer to this question is 'concept of Justice' by Great political philosopher Honourable Sir Plato. Plato Said that "Performance of duty by every person at its allotted station is Justice". This is the best concept since it is based on an individual and is for an individual. Further, it is required to be applied before the first way of determining justice by John Rawls i.e. decision- making. Therefore this concept is appropriate.

PRINCIPLE OF GOOD CONSCIENCE:

Equity and Justice are in macro sense settled principles of law whereas the 'principle of good conscience' is particularly discretion and will(choice) of the person who is applying this principle.

According to Thomas Hobbes and Jean Jacques Rouseau, men is by nature a rule following person. He is a moral and intellectual being. Further if we read the philosophy of all these political philosophers, there is one common thing which they all have emphasized. It is that all of them tried to make a good State for welfare of the people and sid that men is a moral being.

They all have worked for the theories of truth and justice to common men. This elucidates that men is a rule following person by nature.

Good conscience means the "real will" of every person if the good conscience is applied for public welfare. Therefore this concept is best in itself but it requires a system of check and balance because the will of an individual can be actuated by the desire of self-gain.[8]

RECEPTION OF THIS PRINCIPLE IN INDIA:

The principle of justice, equity and good conscience was introduced for the first time in Bengal in India in the year 1780.

During this time the Hindus were governed by the Hindu Law and the Muslims were governed by the Mohammedan Law but for people of other sets, the principle of justice, equity and good conscience was made applicable. This is stated in Section 5 of the Central Provinces Laws Act, 1875.

In *Muhammad Raza v. Abbas Bandi*[9], the Privy Council held that the principle of justice, equity and good conscience was adopted as the 'ultimate test' for all the provincial Courts in India.[10]

The Warren Hastings Plan or even the later Regulations specifically laid down the law to be applied for a few topics, viz. inheritance, marriage, caste and other religious usages and institutions. But these topics did not exhaust the entire area of civil litigation with which the Courts used to be confronted. There was thus a serious gap in the legal system. In this vacuum, the Courts were to act according to the principle of justice, equity and good conscience

But there was serious question to be faced by the Courts of law that what are the principles of justice, equity and good conscience and from where it is to be drawn.

According to Privy Council, this maxim conferred discretionary powers to the Courts in India for adjudication.

[8] as stated by Jean Jacques Rousseau.
[9] 59 I.A. 245
[10] Jain, M.P., "Outlines of Indian Legal And Constitutional History", 1st edn 1952, 6th edn 2006 reprint 2009, Rashhtriya Printers, Delhi, **Page 396**

In the beginning there were no standards as to in which case this principle is to be applied. So the judges applied it in each case. The maxim thus opened the door for lawmaking by the judges from case to case.[11]

SOURCES OF THIS PRINCIPLE :

1. Reason of the person applying this principle;
2. Customs of the region where it is applied.

RECEPTION OF ENGLISH LAWS IN INDIA:

In course of time, a new orientation began to be given to the principle of justice, equity and good conscience. **The Courts stated interpreting the maxim to mean English law so far as applicable to the Indian Conditions.** This trend was encouraged by two developments:

1. The advent of High Courts in 1862;
2. the activisation of the Privy Council as the ultimate Court of appeal from India from 1833 onwards.

CASE- LAWS DECIDED ON THIS PRINCIPLE IN INDIA:

1. *Waghela Rajanji v. Shekh* Masluddin[12],

Facts: A guardian had covenanted for herself and her infant ward to indemnify the purchaser of the ward's estate against any claims by the government for revenue. The question which came before the Privy Council for consideration was whether a guardian had power to enter into an agreement so as to personally bind his minor ward. Lord Hobhouse delivering the judgment of the Privy Council remarked that "equity and good conscience" had been "generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances."

Held: As regards the facts of the instant case, he pointed out that there was not in the Indian law any rule which gave a guardian and manager greater power to bind the infant ward by a personal covenant than existed in the English law. "Their Lordships are not aware of any law in which the guardian has such a power, nor do they see why it should be so in Indian. They

[11] Jain, M.P., "Outlines of Indian Legal And Constitutional History", 1st edn 1952, 6th edn 2006 reprint 2009, Rashhtriya Printers, Delhi, **Page 397, 9th line**.

[12] 14 I.A. 89, 96 (1887)

conceive that it would be a very improper thing to allow the guardian to make covenants in the name of his ward, so as to impose a personal liability on the ward.

2. In *Kallup Nath Singh v. Kumlaput Jah*[13], a lease was entered into by an individual in the name of his minor son was held to be ineffectual as according to the Hindu law, a contract entered into by a minor son was void *ab initio* and accordingly, no claim could be founded thereon either against the minor or his surety.

ADVANTAGES OF THIS PRINCIPLE IN INDIA:

1. If there were indigenous rules, they were archaic and primitive and not suitable to the emerging social structure and conditions and, therefore, in this context, the English law did provide a valuable source of legal principles;
2. The English law provided principle of justice, equity and good conscience and this introduced some element of certainty in an otherwise uncertain legal system.
3. The possibility of dichotomy of law between the mofussil and the Presidency towns was very much reduced as English law was being used as the common source of law by all the Courts.

DISADVANTAGES OF THIS PRINCIPLE IN INDIA:

1. The Courts were often to undergo great pains in deciding whether a particular rule of English law would be applicable in India or not.
2. There were in 1833 a number of Chief Courts in India subjected to local Governments. Therefore a uniform interpretation of law could not always be expected from them.

For these reasons the codification of law was thought to be expedient.

CONCLUSION:

Hans Kelson pointed out that an absolute justice is an irrational ideal and one of the eternal illusions of mankind. This notion is correct because nothing is absolute in this World.

According to utilitarian approach of Sir Jeremy Bentham, there should be greatest good of greatest number. This principle must be applied for justice.

The principle of justice, equity and good conscience is basically based on intellect and the principles of natural justice. It is based on the reasonings which are suited to circumstances of

[13] Ind. Dec.(O.S.) VII, 322.

life of a common man. It seeks to liberalise the intricacies of legal procedure in order to confer justice. These principles have been sanctioned and made applicable by the Courts in India in various cases. These principles are inherent in interpretation by Hon'ble Supreme Court of Article 21 of the Constitution of India.