

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOL-1, ISSUE-1
ISSN-2583-8725

LEX SCRIPTA MAGAZINE OF LAW AND POLICY
ISSN- 2583-8725

VOLUME-1 ISSUE-1
YEAR: 2023

EDITED BY:
LEX SCRIPTA MAGAZINE OF LAW AND
POLICY

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOLUME-1: ISSUE-2

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EVOLUTION OF INDIAN CONTRACT ACT: A DETAILED STUDY

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ABSTRACT

We assume that Indian Contract act 1872 was derived from English Law (England), but we should not forget that before English Law or before the existence of English law, there was a society which was following law. The society was governed through laws, which we can see in medieval times, when there was no existence of law or contract law the remedy was given to the people either by Kings or Tribal Chief. The point of question is that if there was no existence of law then how the remedy/punishment/fine was given? And if there was no existence of law the crime must be committed at the peak. So, one can say that there were rules/laws which were followed by the people before enforcement or evolution of English Law. In Indian history, the transfer of properties, performance of service was taking place, not just only property transfer but also agreement for commercial transactions and personal relationship. How was this possible then? Without any encoded laws existing, how the people laid down principles by which the society was running in ancient and medieval period? Indian legal history has very a vast concept, which we will be discussing further in the article.

Keywords: Indian Contract, English law, society, kings, tribal chief, Indian history.

INTRODUCTION

As the advancement of trade in India was initiated by British, and both the parties constituted different laws which collided with each other, and there was also Mohammedan Law which was different from Hindu Law. Therefore, to overcome this situation English law or Common Law was enforced.

We had a history of the judiciary that started on 2nd Century BCE. The Brihaspati Smriti includes detailed hierarchy of judiciary during that era. And the hierarchy which we follow today that is the Supreme Court which lies at the top and is very similar to the hierarchy mentioned in Brihaspati Smriti that includes Emperor Court at the top as of today. Though in 18th Century, Courts of justice was established by Charters at Madras, Calcutta and Bombay, so it became applicable according to Indian circumstances which showed indiscriminate behaviour of English Law towards Hindu and Mohammedan Law. —Dharmal is the word commonly used in Hindu society which means duty which is very essential part of law. So here I will derive contractual relation between religion and contract law.¹

The Hindu Law which was the compilers of Smritis and the collective law that are found in Dharma shastras, evolved in India. The rules that govern contract that is Vyavahara Mayukha, the Arthashastra by Kautilya, only existing treaties and politics and government which everyone is aware of. Medieval period which is also evident of Manu smriti which contains about breach of contract and the consequences for both perspectives, it also reviewed about the pledge and explained the complicated parts of the pledges. We should not forget about Ramayana, which is famous Indian epic that contains modern principles of contract law.² We Indian are famous for our culture and history that we have. So,

¹ Krish Bhatia, *Contract Law Through the Lens of Ancient Indian Religious Texts*, Indian Journal of Law and Legal Research, Vol IV Issue III 2 (2022).

² Krish Bhatia, *Contract Law Through the Lens of Ancient Indian Religious Texts*, Indian Journal of Law and Legal Research, Vol IV Issue III 2 (2022).

in this paper I am going to derive the contractual relation between religious and historical texts with Indian Contract Act and its derivation from English Law.

RELIGIOUS TEXTS, POLLOCK & MULLA CONTEXT & ENGLISH LAW

➤ Hindu Period

- Hindu law is the combination of numerous customs and Vedas which contain various aspects of Hindu law. Manu Smriti deals with incompetence that is an essential part of contract law.
- It laid down a valid contract, that talks about which party is not competent to the contract, that is a minor, intoxicated person, old man, during an insanity period. This means no one can form a contract with them if so, it will not be considered a valid contract. According to Narada smriti the majority age is considered as 16 years means at 16 years person is eligible to enter into a contract which is not similar in modern contract.^[3]

Ø British Period

As Indian Contract Act was not established nor enforced so English law ruled over Indian presidency towns i.e., Madras, Calcutta, Bombay under the Charter of 1726,^[4] which was stated by King George. Since, it is not possible to enforce all promises, they pretended 2 assumptions:

- 1) When a promise is enforced and then an exception for that promise is evolved which becomes undesirable to enforce.
- 2) It is pretended that promises are generally unenforceable and the exception which is created after the formation of a promise becomes desirable to enforce.

But in the case if any one of the parties is from different religion means if one party is Hindu and another is Muslim then the defendant law will be enforceable. It was only applicable for presidency towns. But the cities which are situated outside the presidency town, the case was dealt by justice, equity, and good conscience.

This was followed before the implementation of Indian Contract Act, 1872. In the year 1862, after the introduction of the high court, the judgement started establishing by the help of personal law in contract cases.

Ø The Advent of Indian Contract Act

The Indian Contract bill which defines law related contract sale of immovable property, indemnity, guarantee, agency, partnership, and bailment was drafted by the third law commission in 1861 in England.^[5]

Ø Pollock & Mulla with English Law

Before we codified our own law our judges derived judgements by the help of English Law. For example, the case of **Bhagwan Das Goverdhandas Kedia v. Girdhar Lal Purushottam Das** is a landmark case by the Supreme Court which was derived from the help of English Law cases that is **Adams v. Lindsell** and **Payne v. Cave** in which theory of instantaneous and noninstantaneous mode of communication was justified by **Justice Denning** LJ with exceptions.

While drafting the Indian Contract Act, 1872 there was a collision between the Indian Legislature and the commission, and the Commission resigned. Some of the proposals were rejected by the Commissioners and some were derived from the **New York Code of 1862** and many other countries which are generally sound and useful.

➤ Manu Smriti's

It constitutes set of duties of King, society. The text has all the assumption, probability, and circumstances with remedy. That we have evolved now our ancestors had already assumed and overcame the circumstances many centuries ago.³ They even established law that has another name that is —Dharmal which shows that they were so advanced and ahead from us. Which I conclude from the text of Manu smriti which contains all types of laws before.

CONCLUSION

By evaluating the development of the contract through different historical periods, it can be determined that despite the technicalities and the modes and techniques of punishment, the underlying principle of all laws—that minors cannot enter contracts, that consent must be given by both parties in a manner and sense that are mutually acceptable, and that certain people—such as those who are inebriated or elderly—must not enter into contracts—may vary depending on the circumstances.

³ Krish Bhatia, *Contract Law Through the Lens of Ancient Indian Religious Texts*, *Indian Journal of Law and Legal Research*, Vol IV Issue III 3 (2022).