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**FACULTY OF JURIDICAL SCIENCES**

**E- CONTENT**

**COURSE: BALLB-Vth Sem**

**SUBJECT: EQUITY AND TRUST**

**SUBJECT CODE: BAL 506**

**NAME OF FACULTY: DR. ANKUR SRIVASTAVA**

# Lecture-1

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**Development of equity in England: Historical Background-**

It was early provided that, in seeking to remove one who wrongfully entered another's land with force and arms, a person could *allege disseisin* (dispossession) and demand (and pay for) a writ of entry. That writ gave him the written right to re-enter his own land and established this right under the protection of the Crown if need be, hence its value. In 1253, to prevent judges from inventing new writs, Parliament provided in the Provisions of Oxford that the power to issue writs would thereafter be transferred to judges only one writ at a time, in a "writ for right" package known as a form of action.

However, because it was limited to enumerated writs for enumerated rights and wrongs, the writ system sometimes produced unjust results. Thus, even though the King's Bench might have jurisdiction over a case and might have the power

to issue the perfect writ, the plaintiff might still not have a case if there was not a single form of action combining them. Therefore, lacking a legal remedy, the plaintiff's only option would be petitioning the King.

People began petitioning the King for relief against unfair judgments of the common law courts. As the number of petitioners rapidly grew, the King delegated the task of hearing petitions to the Lord Chancellor, who was literally the Keeper of the King's Conscience. Since the early Chancellors lacked formal legal training and showed little regard for precedent, their decisions were often widely diverse. In 1529, a lawyer, Sir Thomas More, was appointed as Chancellor, marking the beginning of a new era.

After this time, all future Chancellors was lawyers. Beginning around 1557, records of proceedings in the Courts of Chancery were kept and several equitable doctrines developed. Chancery continued to be the subject of extensive criticism, the most famous of which was 17th-century jurist John Selden's aphorism:

*"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. 'This all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another*

*a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience."*

A criticism of Chancery practice as it developed in the early medieval period was that it lacked fixed rules and that the Lord Chancellor was exercising an unbounded discretion. The counter-argument was that Equity mitigated the rigour of the common law by looking to substance rather than to form.

Litigants would go 'jurisdiction shopping' and often would seek an equitable injunction prohibiting the enforcement of a common law court order. The penalty for disobeying an equitable 'common injunction' and enforcing a common law judgment was imprisonment.

The Chief Justice of the King's Bench, Sir Edward Coke, began the practice of issuing writs of *habeas corpus* that required the release of people imprisoned for contempt of chancery orders.

This tension climaxed in the Earl of Oxford's case (1615) where a judgment of Chief Justice Coke was allegedly obtained by fraud.[13] The Lord Chancellor, Lord Ellesmere, issued a common injunction from the Chancery prohibiting the enforcement of the common law order. The two courts

became locked in a stalemate, and the matter was eventually referred to the Attorney-General, Sir Francis Bacon.

Sir Francis, by authority of King James I, upheld the use of the common injunction and concluded that in the event of any conflict between the common law and equity, equity would prevail. Equity's primacy in England was later enshrined in the Judicature Acts of the 1870s, which also served to fuse the courts of equity and the common law (although emphatically not the systems themselves) into one unified court system.

**Equity in India:**

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 of India following the recommendation of the Law Commission of India 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 powers 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 powers 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 Supreme Court of India 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".

## MCQs

1. Development of equity was started in ……..

i. England
ii. India
iii. Canada
iv. None of these

2. King James I was the king of……..?
   i. India
   ii. England
   iii. Canada
   iv. None of these
3. The Chief Justice of the King's Bench, Sir Edward Coke, began the practice of issuing writs of ……..
   i. *habeas corpus*
   ii. Mandamus
   iii. Both
   iv. None of these

4. The courts in India continue to exercise their inherent powers in terms of ……..of the Code of Civil Procedure, 1908, which applies to all civil courts in India.
   i. Section 151
   ii. Section 150

iii. Section 152
iv. Section 153

5. The "Specific Relief Act" was passed by the Parliament of India in the year…….

i. **1973**
ii. **1963**
iii. **1947**
iv. **1993**

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