

# **PART - A**

## **THE INDIAN CONTRACT ACT, 1872**

### **1-A. DEVELOPMENT OF CONTRACTS AND SPECIAL CONTRACTS**

#### **SYNOPSIS:**

- A. Earlier period*
- b. Medieval period*
- c. Industrial revolution, 1760*
- D. Twentieth century*
- E. Globalisation (21<sup>st</sup> century)*

Indian contract law is based on English contract law. The English Contract development history was mainly influenced by Ancient Greek and Roman laws.

#### **A. EARLIER PERIOD:**

Roman law identified many categories of contractual transactions. Each of the contracts had its own requirements, which needed to be fulfilled for its enforcement. There were four categories of consensual agreements, and four kinds of contracts creating two property rights namely pledge (*pignus*) or/and secured loans (*mutuum*). Roman law thus represented many specific kinds of contracts, depending on their nature of transactions.

#### **B. MEDIEVAL PERIOD:**

During the medieval period, the number of English courts were minimal and hence there existed several number of methods for settling the disputes without going to courts.

In the local and manorial courts, the first treatise by Ranulf de Glanville, i.e., *Treatise on the laws and customs of the English Kingdom* in 1188 was applied. If people disputed the payment of a debt, then both the parties to the debt (creditor and debtor) and their witnesses would attend court and have evidence by swearing oaths.

Since the parties to the debt and their witnesses risked perjury (giving false evidence), they avoided approaching courts, but rather were encouraged to resolve the disputes by alternate dispute resolution systems.

The Royal Courts were fixed by the *Magna Carta* 1215. These Courts also settled breach of contract claims, where some breach of the King's peace had been alleged. A jury would be called to the Royal Courts to decide such claims.

Gradually, these courts allowed claims where there had been no breach of the King's peace. However in such claims, there should be allegation of breach of the King's peace.

From 1350, the Court of Chancery and the King's Bench started to allow claims without the fictitious allegation of force and arms.

In 1381, the doctrine of consideration was formed to enforce any obligation. Consideration is something of many value.

The courts awarded damages (compensation) only if there was loss or damage incurred by either party in a broken agreement.

The Statute of Frauds 1677 codified the contract types and it specified the required forms of contracts.

In international coastal trading, the Merchant customs played a most influential part especially in the coastal trading ports like London, Boston, Hull and King's Lynn.

In the 1500s, litigations sharply increased due to expanding trade activities and also been due to a centralization of lawsuits in the King's Bench and Common Pleas.

In the late 17th and 18th centuries Sir John Holt, and then Lord Mansfield actively developed the principles of international trade law and custom by incorporating the same in English common law. The principles of commercial certainty, good faith, fair dealing, and the enforceability of seriously intended promises were some of the principles incorporated in the English common law.

Thus the saying by Lord Mansfield that "Mercantile law is not whereby the law of a particular country but the law of all nations", and also "the law of merchants and the law of the land is the same".

### **C. INDUSTRIAL REVOLUTION, 1760:**

Due the industrial revolution in England, the English courts became more and more wedded to the concept of "freedom of contract". It was considered a sign of progress, as State restrictions on workers and businesses were removed. The transactions which were till then were of status, but from 1760 onwards "**status to contract**". Everybody had the same degree of free will and a generalised law of contract was expounded. In **Printing and Numerical Registering Co v Sampson**, Sir George Jessel MR held "contracts when entered into freely and voluntarily are to be held sacred and enforced by Courts of justice."

The Judicature Act 1875 laid down the equitable principles such as estoppel, undue influence, rescission for misrepresentation and fiduciary duties or disclosure requirements in contractual transactions.

However, the essential principles of English contract law remained the same for enforceability of contracts i.e., an offer for certain terms, an acceptance, consideration, free consent, i.e., free from duress, undue influence or misrepresentation, fairness in exchanges between unequal parties, general obligations of good faith, 'liabilities not to be forced upon people behind their backs' etc., These rules were applied to all nations under the British Empire. India being a colony of British Empire enacted in the Indian Contract Act, 1872 incorporating the above English principles of contract. When the Sale of Goods Act, 1893 was enacted in the British parliament, India followed the suit by enacting the Indian Sale of Good Act, 1930.

#### **D. TWENTIETH CENTURY:**

In the beginning of the 20th century, the legislative changes in law of contract, changed the attitude of courts which effected wide-ranging reforms in the contract laws, which existed in 19<sup>th</sup> century.

The Misrepresentation Act 1967 shifted the burden of proof on persons making misleading statements.

The Unfair Contract Terms Act 1977 created the jurisdiction to scrap contract terms which were "unreasonable" curtailing the bargaining powers of one party.

The principle of 'Collective bargaining' and growing number of employment rights developed the employment contracts which in turn developed a new branch of law called labour law where workers had rights, like a minimum wage, fairness in dismissal, the right to join a union and take collective action, and these rights could not be taken away by way of a contract with the employer.

Since, business and commerce became widened, the scope of the general law of contract became limited and hence special contract laws had to be enacted. Thus the Partnership Act, the Sale of Goods Act, the Negotiable Instruments Act, the Transfer of Property Act, etc., were enacted to settle the disputes in these areas.

However, the general contract law remained the foundation of specific contracts.

**E. GLOBALISATION (21<sup>ST</sup> CENTURY):**

Due to Globalization, there were increasing openness of markets, opportunity of international employments, commercial contracts etc., which required special contract laws to settle the disputes evolving from these areas. So in addition to the existing contract laws, the international commercial arbitration laws were enacted.

