

**DE JURE NEXUS LAW JOURNAL**

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**EQUITY, JUSTICE AND GOOD CONSCIENCE AS A SOURCE OF  
HINDU LAW**

**ABSTRACT**

*Hindu Law is considered as one of the ancient and prolific laws in the world which is approximately 6000 years old. Hindu Law had been established in order to implement the principle of natural justice which targets at ultimate welfare of the people. Since the ancient times there have been many sources of law such as Dharam shastras, Dharam sutras, manusmriti and the most rigid and important source of all times is dharma. Other ancient sources include shrutis, smritis, legal customs, religion, beliefs, mores and values. Ancient sources include judicial precedents, legislations and the principle of equity, conscience and justice as a source of Hindu Law. When the judges don't have a particular law to be applied from the statutes that in that scenario the principle of equity, justice and good conscience is applied. It is the essence of modern rule of law. The founding members of the Hindu Law has clearly justified this principle in every aspect of Hindu Law. In matters such as protection of fundamental rights, equal treatment before law, maintaining the separation of powers or preventing excessive arbitrariness, this principle holds its place intact. Through this principle, courts have been successful in delivering timely justice and ensure a smooth justice-delivery system. The courts, through the principle of equity, conscience and justice has also been able to eradicate the problems of outdated legislations and overcrowded courts. This paper attempts to establish the justice, equity and good conscience as the penultimate and strong source of Hindu Law. It will also study the scope, importance and development of this doctrine under Hindu legal system*

## **KEY WORDS**

*Hindu Law, Indian legal system, The principle of justice, equity and good conscience, Common law, Procedural law, Substantive law, Judicial discretion, Judicial adjudication*

## **INTRODUCTION**

In the Hindu legal system, the principle of equity, justice and good conscience gives rise to the principle of administration of statuses which is not specifically covered in the statuses. Since it is not possible for the authorities to give a wide and comprehensive laws. Equity, justice and good conscience fills this gap. It supplements and complements law to maintain liberty and freedom while giving the verdicts. The English laws are also awarded for giving in value addition of this principle to the Hindu Law. The regulation of 1827 opened the gates for east India company to act in accordance with justice, equity and good conscience. Certain provisions of English law such as consequences of the actions of the person dies with him is not acceptable in India. The need of this doctrine arises when the plaintiff and the defendant are follows different religion and is governed by a completely different set of personal laws. The privy council in the famous case of *Waghela Ransanji vs Sheikh Masluddin*<sup>1</sup> expressed the reason that if the Hindu Law had no law which could be applied to a particular case, this principle shall follow. The famous sayings such as both parties have a right to say in the matter and nobody can be the judge in his own case is the external manifestation of justice, equity and conscience.

## **The Introduction Of The Principle Of Equity, Justice and Good Conscience in Hindu Legal System**

In the landmark cases of *Ibrahim vs Samrat* and in the case of *Baghella vs Sheikh Massluddin*, it has been propounded by the privy council that this principle should be incorporated into Indian legal system only after closely examining and analyzing this system. Warren Hastings, the then governor general of India introduced a judicial outlay which also reflects this principle, it was decided that the cases of Hindu and Muslims should be dealt with their own personal laws, customs, traditions and religion and in absence of all these, this principle shall be incorporated. The principle of equity, justice and good conscience needs an inherent motivation to serve the interest of both the parties which can be fulfilled if their case is heard in unbiased

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<sup>1</sup> Rajsangji vs Sheikh Masluddin (1887) 11 Bom 551

manner and in accordance with the principles of natural justice. In the plan of 1781 of impey, this principle has also been talked about. In the princely states of madras and Bengal and Bombay, this idea was implemented by the legislation of 1793, 1802 and 1827 respectively. We find the essence of this idea from the British era. This was also residing over the cases of Hindu and Mohammadean Laws where personal laws couldn't work. Common law and principle of equity went hand in hand. These were the two main sources of legislations before the freedom era. Hearing of the cases were done in the chancellery courts following the principle of equity, justice and good conscience.

### **Scope**

the scope varied in the regions where there was no personal law to be relied while deciding the court matters. We also see the inclusion of this principle in the various laws such as *Indian trusts act, 1882, Indian contract act 1882, civil procedure code 1908* and the *Hindu marriage act 1955*. The section 151 and sec 482 of CPC<sup>2</sup> mentions the inherent powers of the court which is the equity, justice and good conscience. The same has been held in the case of *Jam Nala vs Khemraj Nathulal*<sup>3</sup>. Apart from this, even the criminals are punished keeping in mind this principle. The principle of death penalty which is granted in the rarest cases

### **Importance and Its Role in The Indian Legal System**

according to Holdsworth, the importance of principle of equity, justice and good conscience holds relevant in each and every era. In the case of *state of Karnataka vs Rameshwar Rice Mills*<sup>4</sup>, it was held by the supreme court where there is a contract between the two parties and one of them commits a breach of contract, then the case should not directly jump to court, it should first be arbitration and conciliation center to be settled on in order to deliver timely justice which is one of the essential elements of natural justice which is deeply interconnected with the principle of equity, justice and good conscience. It is also believed that judgement is nothing but a given case which involves facts and judgements and its ultimate aim is to deliver justice. Laws consist of substantive laws and procedural law which is also ultimately derived from the principle of equity, justice and good conscience.

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<sup>2</sup> Sec 151, sec 482 civil procedure code, 1908

<sup>3</sup> Jamna Lal vs Legal Representatives of Khemraj, 1979 WLN 545

<sup>4</sup> State of Karnataka etc vs Shri Rameshwara Rice Mills, 1987 AIR 1359

*Justice Krishna Iyer* is considered as one of the most known judges as he delivered most of his judgements which was based on a sense of fairness and paid less emphasis on substantive and procedural laws. he believed that lawyers could easily play with the laws but they cannot separate morality from justice. Justice should be painted with the colors of equity and fairness rather than procedural and substantial laws. In the case of Bangalore water supply case and Som Prakash Rekhi, he deeply emphasized on this principle and prevents the oppressed from being oppressed.

### **Inclusion of this Principle in Specific Relief Act**

Section 8 of this act, acts in consonance with the principle of equity, justice and good conscience which entitles a person to recover his specific movable property. Under this all those persons can claim the property back who have even temporary of the property and acts as a trustee of the property. Possession is the foundation of this proviso. This was enacted to ensure that even those who are not the owners of the property have the remedy to claim the possession of the property back.

One of the famous cases is *Thanikkuzhyii vs Kizhakkumpurath*<sup>5</sup> in which the plaintiff was in the possession of the property and defendant had kept these properties in his control. The plaintiff was entitled to recover those items.

### **Correlation Of the Principle of Equity, Justice and Good Conscience with The Hindu Succession Laws**

This principle also acts in consonance with the Hindu succession Law. Hindu succession act 1956 was one of the major steps that was taken to enact the procedure of equitable relief. It was brought to uplift the status of women which made them the co-parceners of the property. In the case of *Vineeta sharma vs Rakesh Sharma*, this provision was interpreted again to remove the ambiguity of this law which also fulfilled the motive of gender equality that has been enshrined in our constitution. This amendment now focuses on the aspect that whether daughters are married or unmarried, they will be equal co-parcener in their father's property. This law did justice to the rights of daughters and also to sons as daughters would now have same liability as sons.

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<sup>5</sup> Thanikkuzhyii vs Kizhakkumpurath, AIR 1998 Ker 244

## **CONCLUSION**

The principle of equity, justice and good conscience have evolved from the precedents and legislations and is important sources of Hindu Law when there are no statutes to be considered. This principle acts on the basis of judge's discretion where they analyse and interpret the cases of just trial. Both the three elements are inter connected and inter woven. This principle also fulfils the aspects of famous sayings. The doctrine that those who seek justice must come with clean hands and should not have committed any crime in the past. If the plaintiff is himself involved in fraud or in breach of contract then he cannot seek equity and justice in the court of law. This principle also enacts that delay defeats the ultimate purpose of law. Justice must be timely rendered with the intention of equity and good conscience. The other concept it involves is that equality is equivalent to equity where it tries to establish the position of the parties equally in the eyes of law so that the trial can be fair. Thus, we see the application of this principle in almost every legal system. From English law to common law. This fills the gaps while adjudication of the laws by the judges and gives them the chance to view every case from a moral perspective. This principle gives a shape to the judicial discretion. If properly implemented can prove to be a greatest asset for the Indian legal system

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