History of Law of Contract

Hindu and Mahomedan Laws of Contract prior to the Contract Act : By the charter Act of 1781 the High Courts were obliged to decide disputes between Hindus and Mahomedans by their own laws or by the law of the defendant[2]. But it has to be observed allowing for a few peculiarities the Hindu law of contracts does not vary very materially from the English law. Any good English lawyer with the 6th and 9th chapters of *Manu* in his hands can solve at once with facility and correctness many a dispute between Hindu's upon the more ordinary subjects of litigation among them. The Hindu's contracts were not always with Hindus; and to do business his methods had to fall into line with the business habits and ideas of Europeans and others. That is perhaps the reason for Maine's remark in the Legislative Council on 14th December 1866 that there were great chapters of law on which in India there was no indigenous system of rules of any sort. *Colebrooke's Digest* contained a great deal of Hindu law on the subject of Contracts : that subject was prominently mentioned in its title page and treated as occupying half the book. Francis Macnaghten who was no friend of Hindu Law observed that commonsense was to be discovered in the Hindu law of contract.

The source of Mahomedan law i the *Fatwa Alamgiri* which is the repository of the decisions of Aurangeb's time, *Hiba (gift)* is like sale a form of contract and the doctrine of *iwaz* (return consideration) has highly special features gift being treated juristically as a form of contract where there is a proposal or offer to give and an acceptance by the donee.[3]

History of Contract Act. – It is agonist this background that the Indian law Commission of 1855 laid down the governing principle that a body of substantive civil law was wanted for british India as a whole. The Commission which drafted the Contract Act consisted of Lord Romilly[4]. Sir Edward Ryan. Mr. Robert Lowe,[5] Mr. J.M. Macleod, William Milbourne James.[6] and Mr. John Henderson. The draft produced in 1866 was a unanimous one. The draft Produced in 1866 was a unanimous one. The draft contained

269 clauses. The first 50 sections deal with general principal of contracts, 51 to 59[7] with specific performance, quasicontracts[8] sale of goods,[9] indemnity[10] bailment[10a] agency[11] and partnership.[12] There was no parade of classification or logical order and the only merit that can be claimed for the draft is that it reduced to a manageable compass a great mass of law which had previously been contained only in textbooks and reports. The dictum of Sir James Stephen that a Government ought to re-enact its Codes as often as a law bookseller would bring out a new edition of them has proved to be prophetic to some extant and the sections on sale of goods and partnership have been detached to form separate Acts. The delay in the matter of the Home Government conceding the necessity of permitting the Indian legislature and Government to have an effective voice in the framing of the Indian Codes was utilised to compare the draft with standard textbooks, to make alterations in the arrangement of the first 50 sections and to incorporate matter borrowed from Dudley Field's *New York Civil Code* which Sir Frederick Pollock has described as an infliction which the sounder lawyers of that State have been happily successful so far in averting from its citizens'[13] Lord Bryce also remarks that the Contract Act is neither exact nor subtle and its language is far from lucid ..... Sir James Stephen did not shine either in fineness of discrimination or in delicacy of expression.[14] The definition of 'Contact' in the draft was open to the objection that it rang the changes on contract, engagement, and agreement which are used in ordinary. English as haven much the same meaning. Stephen retouched the definition section and his analysis is exhibited in section2. But the juxtaposition of Stephen's language over the Commissioners' language, added to Stephen's tripping over his own language in place has not led to happy results. The draft proposed to make all registered agreements without consideration binding but the Act has selected only such registered agreements as are entered into on account of natural love ad affection etc. for the above favourable treatment. The innovation that consideration need not move from the promisee was perhaps not deliberately intended by the Commissioners. Sir George Rankin opines that the extended meaning given to consideration is not even a workable improvement in the law. The section making a minor's contract void was perhaps intended to give effect to the rule of Hindu law upon the subject. The provisions as to restraint of traded are borrowed from the *New York Civil Code.* The commissioners wanted to abolish the

distinction between penalty and liquidated damages and wanted that the sum named in the contract as the sum payable in case of breach should be paid accordingly. But the opposition of certain Calcutta businessmen eliminated this proposal. Three of the seven clauses of the Commissioner's draft on quasicontract dealt with estoppel and deceit and were omitted. The judgment of Hbert is that the Indian condifiers built not with brass or stone but with materials more nearly resembling the brick or stucco of Lower Bengal. Sir Frederick Pollock says :

'The Contract Act's more practical defects are evidently due to the acceptance by the original framers of unsatisfactory statements which coming' to India with a show of authority naturally escaped minute criticism amid the varied business of the legislative department'.

History of Contract.- Without some idea of the origin of contract in English Law much of the law would be meaningless and appear anomalous. From the pages of Bracton's De Legibus et Consuetudinibus Angliae written between 1250 and 1258 wegather that there existed at that time the writs of debt. detinue, account and covenant which have a bearing on the present matter. Debt lay where plaintiff claimed a definite sum of money as due to him from the defendant. The precise amount due must be claimed and nothing more. If L 20 was demanded and L 19 was proved the plaintiff failed as completely as if he had declared in writ of right for an estate in Oxford and proved title to one in Cambridge. Detinue was primarily available against a bailee who had failed to return the bailor's goods. In writ of account the defendant was called upon to render to the plaintiff a reasonable account of the monies received by him on the plaintiff's behalf. The writ of covenant mainly concerned with land no doubt recognised the principle that an agreement as such deserved to be protected but its wider potentialities were frustrated by the rule that the writ could not be used unless the defendant's promise was under seal. In debt and detinue unless the plaintiff relied on a document under seal the defendant could have recourse to wager at law and avoid the real issue. Account was cumbersome and dilatory involving three stages.

The liberality of the Chancellor who upheld promises seriously intended, if some good cause for it could be shown, constrained the common lawyers to find some adequate means of competition or to face the inevitable loss of litigation. The action on the case

which was of delictual origin came in handy to save the situation. While trespass lay for injuries committed by the direct application of force. If it was demonstrated that failure to implement a particular undertaking caused injury to the plaintiff's person or property there was no logical reason why he should not be allowed to bring case. In the language of the pleading the defendant had assumed (assumpsit) and individual task and had discharged it badly. The covenant or agreement was emphasised not in order to uphold the sanctity of the agreement but to justify the imposition of a delictual liability. The only limitation was that the defendant must not only have undertaken to do certain work, he must actually have entered upon his task. If a person undertakes to rebuild housed and neglects to do so assumpsit did not lie. The man in the street could no understand why if a carpenter did his work badly case lay and not if he failed to do his work at all. The next stage was that a plaintiff could be said to be defrauded by the defendant's nonfeasance as opposed to his misfeasance. Then innkeepers and others enjoying a special status were made liable if they refused to give food and the final stage was reached when assumpsit was also allowed for nonfeasance. The acceptance of assumpsit as a general remedy on an undertaking had the effect of its supplanting the less popular writ of debt. If there was an express and subsequent promise to pay money it was held assumpsit instead of debt lay. This requirement wore a conscious air of unreality and in *Slade's case* the fiction of subsequent promise was discarded. Morley who had purchased wheat from Slade had agreed to pay the price on a certain day and even though there was no subsequent promise to pay Slade successfully sued in assumpsit the court holding that the subsequent undertaking was to be implied from the mere fact of the previous liability. The species of case came to be known as indebitatus assumpsit. Illogically enough, assumpsit was allowed even in the case of money paid by mistake. Lamine, v. Dorrell. It was evolved not in obedience to any apriori conception but as the tentative and reluctant reaction to practical necessity. It produced almost as a byproduct in the processes of litigation a general principle into which the infinite variety of agreement might be resolved without strain or difficulty. It is through the accidental acceptance of assumpsit as a comprehensive remedy that the English law unlike the Roman has been able to think in terms of contract rather than of contracts.

How far Hindu Law of Contract is still in Force. – The Hindu rule of damdupat is still in force in the Bombay Presidency and the town of Calcutta but is not recognised outside Calcutta town or in Madras Presidency. As to whether the rule applies to interest on mortgages there is conflict of opinion. In the case of debt wrongfully withheld after demand of payment has been made, interest becomes payable from the date of demand by way of damages notwithstanding the Interest Act or Contract Act. This rule of Hindu Law has been applied by the Bombay High Court in Saunadanappa v. Shirbasawa but the Madras High Court in Subramania Iyer v Subramania Iyer refused to apply the above rule.

1 Scope of the Act

The Contract Act is not exhaustive, but so far as goes, it is exhaustive and imperative. The Act is not retrospective in its operation. Previous to the passing of the Act, the law generally applied by the High Courts, subject to certain exceptions or qualifications, was the common law of England. But by Status 21 Geo. III c. 70, s. 17 laws and usages prevailing among Hindus and Muslims relating to succession and contract were made applicable and they are still in operation where the Act is silent.

The principle of the Act apply to transfers. Indeed s. 5 of the Transfer of Property Act provides that the chapters and sections of that Act which relate to contracts shall be taken as part of the Contract Act.

4 Acts or Regulations not repealed

The Act does not affect the following enactments bearing on the law of contract:-
Interest Act, 32 of 1839: Usury Laws Repeal Act, 28 of 1855: Bill of Lading Act, 9 of 1856; Artificers Act, 13 of 1859; Merchant Shiping Acts; Carriers Act 3 of 1865.

Where an agreement is approved ratified, confirmed and declared to be valid and binding on the parties thereto by an act of the Legislature, the effect of this statutory confirmation is to render every provision and stipulation of the agreement as obligatory and binding on the parties as if their provisions had been repeated in the form of statutory sections.