

**LEX SCRIPTA MAGAZINE OF LAW AND POLICY**  
**ISSN-**

**VOLUME-1 ISSUE-1**  
**YEAR: 2023**

**EDITED BY:**  
**LEX SCRIPTA MAGAZINE OF LAW AND**  
**POLICY**

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Scripta Magazine of Law and Policy), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of Lex Scripta Magazine of Law and Policy Issues holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Scripta Magazine of Law and Policy.

[© Lex Scripta Magazine of Law and Policy. Any unauthorized use, circulation or reproduction shall attract suitable action under application law.]

**EVOLUTION OF INDIAN CONTRACT ACT: A DETAILED STUDY**

**Author: Sneha Sharma, BBA.LL.B(H) 1<sup>st</sup> Year, Student of Amity University Ranchi,  
Jharkhand.**

**ABSTRACT**

We assume that Indian Contract act 1872 was derived from English Law (England), but we should not forget that before England Law or I can say that before the existence of English law, there was society which was following Law. The society was governed through laws, which we can see in medieval times that, when there was no existence of law or contract law the remedy was given to the people. Either by Kings or Tribal Chief, we should think about this if there was no existence of law than how the remedy/punishment/fine was given? And if there was no existence of law the crime must be committed at the peak. So I can say that there was rules/Laws which was 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 bare act of contract, how people already made the principle by which the society was running in ancient and medieval period? Indian history has very vast concept, which had already established the contract Act. There are proofs existed and ruled over centuries.

*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 of different laws which collided with each other, and there was also Mohammedan Law which was different from Hindu Law. So, to overcome from this situation English law/ Common Law was enforced.

We had history of judiciary that started on 2<sup>nd</sup> Century BCE. The Brihaspati Smriti which includes detailed hierarchy of judiciary during that era. And the hierarchy which we follow today that is Supreme Court that lies at the top which is very similar to hierarchy mentioned in Brihaspati Smriti that includes emperor court at the top as today. Though on eighteenth century Courts of justice was established by Charters at Madras, Calcutta and Bombay, so it was applicable according to Indian circumstances which shows indiscriminate behaviour of English Law towards Hindu and Mohammedan Law. “Dharma” 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.<sup>1</sup>

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 governs contract that is Vyavaharmayukha the Arthshastra 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.<sup>2</sup> We Indian are famous for our culture and history that we have. So in this paper I am going to derive the contractual relation between religious and historical texts with Indian Contract Act and it's derivation from English Law.

### **RELIGIOUS TEXTS, POLLOCK & MULLA CONTEXT & ENGLISH LAW**

#### ➤ **Hindu Period**

Hindu law is the combination of numerous customs and Vedas which contains various aspect of Hindu law. Manu Smriti deals with incompetence that is essential part of contract law.

It laid down about the valid contract, that talks about which party is not competent to the contract that is minor, intoxicated person, old man, during insanity period. This mean no one can form contract with them if so, it will be not considered as 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.<sup>3</sup>

#### ➤ **British Period**

---

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> Sujoy, Historical Background of Indian Contract Act, 1872, *Legal Service India*, <https://www.legalserviceindia.com/legal/article-7749-historical-background-of-indian-contract-act-1872.html#:~:text=The%20Indian%20Contract%20Act%20as,%2C%20Agency%2C%20Partnership%20and%20bailment>

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,<sup>4</sup> 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 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 formation of promise becomes desirable to enforce.

But in the case if any one of the party 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 town. 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 introduction of high court, the judgement started establishing by the help of personal law in contract cases.

➤ **The Advent of Indian Contract Act**

The Indian Contract bill which defines law related contract sale of moveable property, indemnity, guarantee, agency, partnership and bailment was drafted by the third law commission in 1861 in England.<sup>5</sup>

➤ **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 Paroshottamdas** is a landmark case by 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 non-instantaneous mode of communication was justified by **Justice Denning LJ** with exceptions.

While drafting the Indian Contract Act, 1872 there was collision between the Indian Legislature and the commission, and the Commission resigned. Some of the proposals were rejected from

---

<sup>4</sup> Sujoy, Historical Background of Indian Contract Act, 1872, *Legal Service India*, <https://www.legalserviceindia.com/legal/article-7749-historical-background-of-indian-contract-act-1872.html#:~:text=The%20Indian%20Contract%20Act%20as,%2C%20Agency%2C%20Partnership%20and%20bailment>

<sup>5</sup> Sujoy, Historical Background of Indian Contract Act, 1872, *Legal Service India*, <https://www.legalserviceindia.com/legal/article-7749-historical-background-of-indian-contract-act-1872.html#:~:text=The%20Indian%20Contract%20Act%20as,%2C%20Agency%2C%20Partnership%20and%20bailment>

the Commissioners and some were derived from the **New York Code of 1862** and many other countries which generally sound and useful one.

➤ **Ramayana**

We know that it is a religious epic book based on life of Lord Sita and Ram. We saw that how Lord Ram went to exile, left her wife to follow dharma that means duty. He was the son of king and himself a king, he had the option not to have this sorrowful life, but he followed all this to set an example in the society. So that everyone must follow their duty, he set an example that, if a king himself follow his duty so delicately that he is even ready to abandon his love his palace than what are we, we are nothing in front of him so we must follow the duty, the law, the dharma. Here is the fact that shows that our religious texts were ahead of times and advanced.<sup>6</sup>

➤ **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.<sup>7</sup> They even established law that has another name that is “Dharma” 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 into 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.

---

<sup>6</sup> Krish Bhatia, Contract Law Through the Lens of Ancient Indian Religious Texts, *Indian Journal of Law and Legal Research*, Vol IV Issue III 4 (2022).

<sup>7</sup> 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).