

THE INDIAN LAW INSTITUTE
NEW DELHI

DISCUSSION MEET
ON
CONTRACT LAW IN INDIA
NAINITAL CLUB
NAINITAL

May 8-13, 1968

May 8, 1968

Inauguration : 4.15 p.m.
Inaugural Address : Mr. P. Govinda Menon, Law Minister,
Government of India
Presidential Address: The Hon'ble Mr. M. Hidayatullah
Chief Justice of India
Vote of Thanks : Dr. G.S. Sharma
Tea

Session I: 6 to 7.30 p.m.

Evolutionary Patterns of Contract Law

Papers by : Mr. B. Sadasivaiah
Mr. J.P. Gupta

May 9, 1968

Session I: 9.30 a.m. to 11 a.m.

Formation of Contract and Problematics of Consideration

Papers by : Mr. K.S.N. Murty (Formation)
Mr. S.P. Tewari (Doctrine of Mutuality)
Dr. R.C. Vyas (Consensus Patterns)
Mr. B.D. Taskar (Consideration)
Mr. V.A. Ramteke (Consideration)

Session II: 11.30 a.m. to 1.30 p.m.

Fundamental Principles of Contract Law; Public Policy

Papers by : Dr. D.N.R. Pande (Reality of consent)
Mr. V. Subramanyam (Restraint of trade)
Mr. Avtar Singh (-do-



May 10, 1968

Session I: 9.30 a.m. to 11 a.m.

Quasi Contract

Papers by : Mr. V.V. Uchgaonkar
Mrs. N.A. Haider

Session II: 11.30 a.m. to 1.30 p.m.

Discharge and Specific Contractual Situations

Papers by : Mr. P. Rao (Discharge)
Mr. V.D. Kulshreshtha (Hire Purchase
Agreements)

May 11, 1968

Session I: 9.30 a.m. to 11 a.m.

Government Contracts

Papers by : Mr. Uday Raj Rai
Mr. I.P. Massey

Session II: 11.30 a.m. to 1.30 p.m.

Consumer Interest Protection, Technological
Developments and Contract Law

Papers by : Mr. V. Ramaseshan
Dr. P.S. Sangal

May 12, 1968

Session I: 9.30 a.m. to 11 a.m.

Adjudicatory Process and Law of Contracts

Papers by : Mr. M. Rangaswamy (Conflictual aspect
Mr. N. Nettar (-do-

Session II: 11.30 a.m. to 1.30 p.m.

Philosophical and Sociological Aspects of Contractualism

Paper by : Mr. U.V. Baxi

Topical breakup for
the
Discussion Meet
on
Contract Law In India
(Nainital:May 1968)

The Seminar will focus on important themes in contract law as presently operative in India. While the primary concern is with the Indian conditions, it is expected that due note will be taken of contemporary developments in contract law of other common-law and civil law jurisdictions and more particularly of the experience of other developing countries.

Papers are invited on the following general topics which are flexible enough to cover specialist interest with specific segments of the theory and techniques of contract law.

I. Evolutionary Patterns of Contract Law

The emphasis here will be on contract law as a specialised technique of adjusting human relations, both in economic and general social ordering. The relation of contract law to economic life, and particularly to the operation and growth of free-economy market conditions, is wellknown. But the basic sociological and philosophical premises sustaining contractualism still remain to be studied integrally on an evolutionary basis in all the legal cultures of the world. More specifically, subjects of immediate relevance under this head are:-

- A. Comparative study of similarities and differences in theory and technique of contract law in the common law and civil law countries, stressing their relevance to contemporary times and to Indian Law.
- B. Impact of the introduction of common law and civil law contractual systems on the indigenous economic and, more generally, on the social systems of colonized countries.
- C. Impact of the introduction of the common law contractual regime in India, in economic and social developmental terms, in the light of existing indigenous patterns of contractual relations.

II. Fundamental Principles of Contract Law in India

Studies of some of the fundamental principles of contract law, under the categories mentioned below, with comparative law referents, and with special emphasis on the judicial process (pre-independence and post independence) can be here undertaken. Studies should be evaluative rather than be merely descriptive of literal provisions and consecutive progression of the sections of the Indian Contract Act and related statutes.

A. Principles Relating to the formation of Contracts

- i) Consensus patterns in offer and acceptance provisions;
- ii) Doctrine of consideration and problems of its obsolescence as a judicial tool with reference to reforms attempted or urged in other common law jurisdictions and a corresponding need for rethinking and reform in the Indian law;
- iii) Capacity limitations to enter into contracts. The need, if any, to develop a doctrine of 'limited incapacities' for individuals and social groups, whose economic and social bargaining status is emasculated by inter-group traditional discrimination and social stratification may be examined.
- iv) Problems surrounding reality of consent, with special reference to adhesion or standardised contracts and the general liberal trend towards redressing the lack of substantial, as distinct from formal, equality of contracting parties;
- v) Legality of contracts and associated problems of "public policy," entailing some study of judicial attempts at evolving appropriate norms in the context of developing societies, probably best typified (at least with respect to countries having common law inheritance) by India;
- vi) Quasi-contracts, or areas where promissory liability is superimposed for reasons of social policy.

B. Discharge of contracts and related Problems

- i) Modalities of discharge of contracts;
- ii) Damages for breach of contracts, with assessment of the adequacy of the norms in Indian conditions.
- iii) Specific situations of specialised contracts disclosing or demanding departures from the accepted norms of formation and discharge of contracts.

III. Contemporary Situation in Developing Societies and Contractual Theories and Techniques, with special Reference to India.

Rapid social and economic change largely through state initiative characterize the developing nations today. The need for understanding the fundamentals of contract law in their relevance (either as facilitating or promoting) social and economic change in India, as well as other developing countries, cannot be overemphasized. Some basic questions about contract as a social institution in a background of development can be best studied by reference to specific topics as listed below.

A. Problems and Perspectives of Government Contracts

- i) What special features characterize government contracts as distinguished from bilateral and corporation contracts? What are the 'windfalls' and "pitfalls" of government contracts?
- ii) Areas of economic activities preempted by the government (whether Union or State) and the impact of this pre-emption on the norms of contract law.
- iii) Problems of public policy in government contracts and patterns of consistency, e.g. labour policies in defence contracts, consistency between the union and state government on standard contracts for public sector activities; pricing and procurement policies.
- iv) Growth of public sector institutions and their impact on traditional contractual procedures and norms.

v) Problems of administrative discretion in government contracts.

B. Protection of Consumer Interests and Contract Law

- i) Existing standards of quality control under Indian Sales law and the need to extend the regime of quality control prescriptions in Indian conditions.
- ii) Patterns underlying Warranty of quality in legislation of developing countries, with special reference to India and India's role and participation in the proposed international measures (such as Uniform Law on the International Sale of Goods.)
- iii) Problems of producer's liability towards the "remote consumer," i.e. products liability, and cases, if any, of the extension of this requirement of liability to Indian conditions.

C. Technological Developments and Contracts Law

A study could be offered here on non-liquet ("no Law") situations under the existing contract law provisions with an analysis of judicial creativeness and legislative expectations of judicial role (signified by lack) of formal statutory changes) in the development of a modernistic contract law (e.g. instantaneous contracts).

IV. Adjudicatory Processes and Law of Contracts

- A. Comparative study of the role of arbitration v. Court adjudication in contract law.
- B. Conflictual aspects of contracts law, e.g. judicial hospitality to prorogation and professio juris (choice of law) stipulations in commercial contracts; problems of recognition and enforcement of foreign arbitral awards and judgments based on them in Indian courts.
- C. Taxation and Contract: judicial and legislative characterization of agreements.

V. Social, Political, and Cultural Implications
of Contractualism

There is a need for reflection on the very nature of contract both as an individual enterprise and as a social institution. A study under this head will take into account the meta-legal aspects of contractualism and will also transcend the basic economic function of contractualism. Attempt, here will be directed towards an evaluation of contractualism as a factor in social change in contemporary world. How far the principle of free contracting has been able to move a hierarchical status-ridden society to one based on the principle of dynamic social equilibrium? How far has contract as a formal legal tool been utilized in preference to incoherent, legally unenforceable understandings, often familial and patriarchal in nature? What are the immediately perceivable cultural values which impede legitimation of contractual roles as modes of individual and social action in India in contrast to the Western countries? What are the sociological determinants of the traditional, non-contractual modes of doing economic activity? What can we deduce in this regard from economic sociology and from mere period studies of the nature and volume of contract litigation in Indian courts over the past quarter century?

G. S. Sharma

