CHAPTER 4
GENESIS OF CONTRACT LAW

4.1. INTRODUCTORY

When we say history, the first question which arises in our mind is, why do we read history? What is the purpose of reading history? The obvious answer to this would be that, we read history to know the roots of subject matter. Another purpose of reading history is to learn from experience of past and not to commit the same mistakes, which were committed by our ancestors. Next obvious question would be why should we read legal history? By reading legal history we try to understand law and how various institutions of law came into existence. Further, it can be said that, modern law can be properly understood only in the light of history.

Same way, here we would be analyzing historical background of contract law. It is worthwhile to mention here that the concept of contract was existed in ancient era, but not in the form which is existed now. In earlier systems contracts were recognized through following transactions sale, mortgage, pledge, bailment and loan. In modern society whole business life revolves around the contracts. But in early system of law there was no scope for rights in personam.\(^1\) In this section we will be investigating genesis of contract law in two jurisdiction i.e. English and Indian law.

4.2. ENGLISH LAW

The history of English Law is not of its own, it is of entire European nations. There is something interesting about English law, that it has a great influence of Roman law on it. The history of English law starts from

Babylonian era and ends up till recent. During Roman Empire the law was based on Twelve Tables. When Christianity became official religion law was being enforced by the Church i.e. papal, that law was called ecclesiastical law. During fifth and sixth century Theodosian and Justinian codified law came into existence. After sixth century it was Anglo-Saxon and Canon Laws which left great impact on the English Law. Truly speaking the history of English law got its identity only after the Norman Conquest. From the eleventh century onwards the common law started taking its own shape. We can say that common law began from this century. The contribution of Glanvill$^2$ and Bracton$^3$ to English common law cannot be neglected. Until sixteenth century, common law played very vital role in development of the English law. For almost five centuries common law was at its zenith. Then from sixteenth century onwards statutory law took upper hand on common law. For our discussion this brief history about English law is enough.$^4$

Now coming to contract law, which is our moot point, the history of English contract law commences with the reign of Henry II. Before that we should consider contributions of Hammurabi code, Roman law, Anglo-Saxon law and then coming to common law.

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$^2$ Ranulf de Glanvill (sometimes written Glanvil or Glanville) (died 1190) was Chief Justiciar of England during the reign of King Henry II and reputed author of a book on English law.

$^3$ Henry de Bracton is famous now for his writings on Law, particularly De Legibus et Consuetudinibus Angliae (‘On the Laws and Customs of England’), and his ideas on mens rea, or criminal intent. According to Bracton, it was only through the examination of a combination of action and intention that the commission of a criminal act could be established.

In Babylon people were governed by Hammurabi Code. It is believed that the Babylonian law of contracts was the first highly developed system on this branch of jurisprudence in the history of the world. During that period many formalities were to be followed in making a contract.5

The lack of slaves in the country made the creation of the relation of master and servant an important branch of contracts. The time of these contracts were generally for one year, and an advance payment was customarily paid to the servant. The labourer acted as a free agent in making the contract, but the law was strict in enforcing them, and an attempt to avoid their performance on the part of servants met with severe penalties (upto death). Partnerships were common, and the law of partnership was very much complete. Future as well as present transactions could be made the subject of contract.6

During Roman Empire the Twelve Tables were law. Prior to establishment of Roman Empire agreements were divided into three kinds based on sanctions7. Those three kinds of agreements were:8

1) **An Entirely Formless Compact**: A formless compact was called *pactum* in the language of the twelve Tables. This kind of compact was merely based on understanding of parties to the agreement.

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5 *supra* Ref. 1 p.36
7 Following were the sanctions against non-enforcement of contract, (a) by the person interested, (b) by the gods, and (c) by the community.
2) **A Solemn Appeal to the Gods**: This kind of agreement was based on religion. The promisor was supposed to take oath on gods.

3) **A Solemn Appeal to the People**: According to this agreement the promisor was supposed to perform his part in view of public at large.

Now let us deal about contracts which were existed during regal period of Roman Empire. Following are the list of contracts which were prevalent:9

- *Ivsivrandum*
- *Sponsio*
- *Nexum*
- *Dotis dictio*

**IVSIVRANDUM**: *Ivsivrandum* is derived by some from *louisiurandum*, which merely indicates that Jupiter was the god by whom men generally swore. According to this contract, promisor had to call upon the gods and declare verbally that he will behold his good faith, in case if he breaches the promise, he shall be punished. The sanction available for breach was the promisor would be subject to withdrawal of divine protection, which means any person would slay him.10

**SPONSIO**: This form of contract is similar to *Ivsivrandum*. But there is slight difference, let us see what it was? This contract grew in three stages:11

- At first stage, it was a sacrifice of wine annexed to a solemn compact of alliance or of peace made under an oath to the gods.

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9Ibid. pp.9-37
10Ibid.
11Ibid.
• Next stage, it became a sacrifice used as an appeal to the gods in compacts not made under oath. Just as *Iesivrandum* for many purposes was sufficient without the pouring out of wine, so for other purposes *sponsio* came to be sufficient without the oath.

• Lastly it became a verbal formula, expressed in language implying the accompaniment of a wine-sacrifice, but at the making of which no sacrifice was ever actually performed.

The sanction for breach was based on the decisions of priests.

**NEXUM:** This form was normally concerned to sales and loans. In loan contract, the borrower was supposed to declare himself as indebted for the some weighed amount. A sale could be made only in the presence of five Roman citizens as witnesses, the amount to be paid was weighed out by an official weigher, and the purchaser could then take possession. The sanctions for breach were violent measures. The creditor was at his option to choose any of the violent measure.\(^{12}\)

**DOTIS DICTIO:** According to this form, dowry was considered as contract. In this form an oral declaration had to be made by, the bride’s father or male cognates, or the bride herself, or a debtor of the bride, setting forth the nature and amount of the property which he or she meant to bestow as dowry, and spoken in the presence of the bridegroom. As such there was no sanction for breach of this contract. Only thing was the bridegroom’s family could force the promisor for performance of contract.\(^{13}\)

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\(^{13}\) Supra Ref.pp.32-37
**Other Contracts:** Apart from above list few more contracts which were prevalent during Roman era. Those are:

- *Lex Mancipi:* This contract was like a covenant for transfer of property.
- *Fiducia:* This form was ancillary to *Lex mancipi.*
- *Uadimonium:* This form was similar to present day law of guarantee.

After seeing various kinds of contracts, now it is time for examining general characteristics of contracts. Basically there were three attributes:

- Firstly, unilateral, in this the promisor alone was bound and he was not entitled to anything from promisee.
- Secondly, consent of parties bearing popular or divine approval.
- Lastly, intention of parties had to be conveyed to each other unequivocally.

### 4.2.3. COMMON LAW

As it is already made it clear that in ancient period the English law of contract was based on Roman law. It was not until Henry III reign the contract of law saw any drastic changes. Even Glanvill and Bracton didn’t deal contract as separate stream of law. Both of them in their works gave little place to law of contract. At this instance the Roman law’s influence on English law was disinterring.

The remedy under common law was based on common law actions or various kinds of writs. Accordingly the discussion of contract is based on

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14 *Ibid.* p.31
five kinds of writs, Accounts, Surety, Debt, Covenants and Assumpsit. Let us discuss them one-by-one.

4.2.3.1. COMMON LAW ACTION OF ACCOUNT

It is not known to us that when the action of Account made its first appearance. But one of the earliest known cases in which it was used was in year 1232. After sometime this writ was superseded by writs of debt and assumpsit. This writ was modeled upon the proprietary writs; the ‘command’ was that the defendant should render the plaintiff an account, while the plaintiff in stating his case must show how the liability to account arose, and how and where the money claimed was received. According to common law, this action existed for only one purpose i.e. to enforce the obligation to account. Following are the essentials of this writ:

- The person on whom the obligation is to be imposed must have received property not his own, of which the person imposing the obligation is owner.
- The receipt of the property must not amount to a bailment.
- The receiver must have possession, as distinguished from custody.
- There must be privity between the parties.

4.2.3.2. COMMON LAW ACTION OF SURETY

Even it is uncertain that when this common law action of surety came into existence. According to O.W. Holmes Jr. this writ plays very vital role in development of history of contract. In his book titled ‘Common Law’ he gave detailed accounts about suretyship. In that book he explained

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action of surety through story of Huou of Bordeaux. Following passages are from Holmes’s Common Law:

In the old metrical romance of Huou of Bordeaux, Huon, having killed the son of Charlemagne, is required by the Emperor to perform various seeming impossibilities as the price of forgiveness. Huon starts upon the task, leaving twelve of his knights as hostages. He returns successful, but at first the Emperor is made to believe that his orders have been disobeyed. Thereupon Charlemagne cries out, ‘I summon hither the pledges for Huon. I will hang them, and they shall have no ransom.’ So, when Huon is to fight a duel, by way of establishing the truth or falsehood of a charge against him, each party begins by producing some of his friends as hostages.

When hostages are given for a duel which is to determine the truth or falsehood of an accusation, the transaction is very near to the giving of similar security in the trial of a cause in court. This was in fact the usual course of the Germanic procedure. It will be remembered that the earliest appearance of law was as a substitute for the private feuds between families or clans. But while a defendant who did not peaceably submit to the jurisdiction of the court might be put outside the protection of the law, so that any man might kill him at sight, there was at first no way of securing the indemnity to which the plaintiff was entitled unless the defendant chose to give such security.

Later in modern days the above concept developed as bail in criminal law. The part of giving surety resembles to modern day law of guarantee. Holmes says, this was the first appearance of law of contract.18

4.2.3.3. COMMON LAW ACTION OF DEBT

Originally Debt included the action of Detinue, and it was not until the reign of Edward I that we find the distinction between Debt and Detinue

18Ibid. at 250
recognised. In Glanvill and Bracton, and even in Britton, the action of Debt was simply the general means for enforcing the duty, howsoever arising, of delivering chattels. No distinction was made between money and other chattels, and none between obligation and property. Any duty to deliver chattels was a Debt, whether the chattel belonged to the debtor or to the creditor, whether it was an ox, a quarter of wheat, or a shilling.

In later period, actions of Debt and Detinue got divided on the basis of property and obligation. Debt became the general remedy for the enforcement of all obligations to pay money or deliver chattels not the property of the plaintiff, while Detinue became the writ of right for chattels.

Now let us deal with nature of action of Debt. This action was used to enforce a variety of claims—for the repayment of a loan, for the price of goods sold, and for the rent reserved in a lease. Or there might have been no ‘contract’ and sum might have become owing in some other way—for example, as customary dues, or by the judgment of a court. These claims were grouped by later medieval lawyers into three classes: Debt on the Record (for the payment of money ordered to be paid by a court and entered upon its record), Debt on an Obligation (where the plaintiff produced a sealed instrument), and Debt on a Contract. Thus in 1410 it was said, ‘each writ of Debt is general and in one form, but the count is special and makes mention of the contract, the obligation or the record, as the case require.’

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19 Britton is the earliest summary of the law of England in the French tongue, which purports to have been written by command of King Edward I.
The description ‘Debt on a Contract’ is, however, rather misleading from a modern standpoint, for a contract would result in a ‘Debt’ being owed to the plaintiff only after he had performed his own part under it. For instance, if the plaintiff had agreed to sell goods, there would be no ‘Debt’ owing to him until he had delivered them. Or to put the same point from the side of the defendant, he would only be liable to an action of debt if he had received some benefit or performance, a *Quid Pro Quo* in return for his promise to pay the money. Mutual promises were thus insufficient to sustain an action of Debt unless the plaintiff had himself performed his side of the bargain. It is possible that the courts might, in time, have modified the conditions of this action and developed out of it a remedy for the enforcement of contracts which were completely executory, but as will see, they invented another, and more convenient, remedy to meet that case.

One reason why action of Debt did not develop in this way was probably because there were certain inconvenient incidents attaching to it which made it unpopular. One of these was that in Debt, the defendant might normally ‘wage his law’ and the action would then be determined, not upon its merits, but by an archaic process known as ‘compurgation’, in which the defendant came into court and declared upon oath that he did not owe the debt, and twelve respectable neighbours, his ‘compurgators’ or ‘oath helpers’ declared also upon oath, that they believed that his (defendant) oath was good. A second was that Debt could only be brought to recover a certain sum of money; and the plaintiff had to recover

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22 By the middle of the fifteenth century, however, the courts had allowed an exception in the case of an executor contract for the sale of goods. The ‘property’ in the goods was deemed to pass upon sale, even though no delivery had been made; and this was of sufficient benefit to the purchaser to enable him to be sued by the vendor for the price. *See Ibid.*

23*Ibid*

24*Supra Ref.20 p.23*
the precise sum claimed, or fail completely. Finally, the recuperatory nature of the action, and the requirement of a *Quid Pro Quo*, stifled its development as a remedy based on agreement, so that it could be very little adapted to meet changing commercial conditions.

4.2.3.4. COMMON LAW ACTION OF COVENANT

The writ of Covenant had emerged by the beginning of the thirteenth century, and by the reign of Henry III, it was a frequently used form of action. It covered consensual agreements of various kinds, and in particular agreements to do something, such as to build a house, other than to pay a definite sum of money. But by the middle of the fourteenth century it was clearly established that Covenant required the production of a sealed instrument. The agreement was enforced not because the parties had exchanged mutual promises, but because it had been made in a particular form to which the law attached a peculiar force.

This requirement of seal confined the action within formal limits. Moreover, it the plaintiff’s claim was for a fixed and certain sum of money, the proper action was that of Debt. Covenant could therefore scarcely be expected to produce a general contractual remedy.

There was yet another action of a ‘contractual’ nature. This action has already been dealt in preceding paragraphs. But still, as matter of flow, we will deal here. The action of Account which could be used against those whose duty it was to account for moneys received by them on behalf of another. Its importance however lies mainly in the field of quasi-contract.

4.2.3.5. COMMON LAW ACTION OF ASSUMPSIT

In pages of history much is written about writ of *Assumpsit*, but here we attempted to give bird’s eye view. The remedy which was eventually
found for the enforcement of informal promises is a curious instance of the shifts and turns by which practical convenience evades technical rules. Such remedy was developed out of two actions - action of Trespass and action of Deceit.

Trespass lay for a direct physical injury to the person or to property, but by some process, the details of which are contentiously obscure, there had developed out of it a modified form of action which would lie for injuries which were not direct or physical, and this came to be known as Trespass on the Case, or simply as Case. It is the parent of many of our modern torts as for instance, nuisance and negligence, but with that side of its prolific development we are not here concerned. Deceit, too, was at first a very narrow and technical form of action, but out of it seems to have developed an action of Deceit on the Case which had a wider compass. The boundaries between these two types of the action on the Case are difficult to trace, but both appear to have been instrumental in the future development of Case in relation to the enforcement of mutual promises.

Case lay originally for damage caused by one man to another by the commission of an unlawful act, a misfeasance, but one not amounting to an actual trespass. But one common occasion of one man injuring another by misfeasance is where he has promised to do something for that other, and has fulfilled his promise so negligently or otherwise improperly that the other has been damned by his conduct. So, for example, where a ferryman undertook to carry a mare in his boat across a river, but so overloaded the boat that it sank and the mare drowned, and where a man promised to cure a horse and yet did it so negligently that the horse died, an action was given to the owner in respect of the damage suffered.

At this stage in the story we begin to see a special form of Case breaking off from the parent stock, applicable to the case where damage has been
caused by the mis-performance of that which a man has ‘assumed’ or promised to do. This is the action of Assumpsit,\textsuperscript{25} which was destined in course of time to supplant the older actions of Debt and Covenant, and to mould the conditions on which mere informal promises were to become actionable in our law. But at this stage the action is still delictual: the promise which the defendant has given has provided the occasion for the wrongful act by which he has injured the plaintiff, but it is for the harmful consequences of that the action is allowed. There still had to be a positive act; and a mere nonfeasance, or failure to carry out a promise, would not suffice. In such a case the judges held that the action, if any, would have to be in Covenant and the plaintiff would have to produce a sealed instrument.

It was perhaps this limitation which led litigants to explore the possibility of Deceit as an alternative remedy. In \textit{Doige's Case}\textsuperscript{26} in 1442, an action of Deceit was brought against Doige before the King’s Bench. The complaint was that the plaintiff had bought from Doige a plot of land for £100 that he had paid this sum to Doige, and that Doige had promised to enfeoff him within fourteen days. In fact Doige had enfeoffed another and so deceived him. It was contended for Doige that the proper cause of action was in Covenant, but the Court of Exchequer Chamber gave a verdict in favour of the plaintiff. The case was clearly one of nonfeasance, and it is thus probable that both Deceit and Trespass contributed to the evolution of that branch of Case known as Assumpsit.

\textsuperscript{25} Assumpsit without ceasing to be used as an action in tort, developed other branches, by means of which contracts expressed and implied, and at length even quasi-contracts, could be enforced.

By this time, however, the obvious inconvenience of there being no remedy for the breach of an executory contract, unless it had been made under seal, was beginning to influence the Courts and there was besides a special reason why the common law Courts could not rest content with the law as it then was. The Chancellor was showing signs of being willing to enlarge a jurisdiction which he already exercised over contracts, and the Courts began to fear that he might annex a subject which they regarded as their own. So we find there, at the beginning of the sixteenth century, they began to allow Assumpsit to be brought for the nonfeasance of mere promise. At first, it seems that Assumpsit was only allowed in these cases of nonfeasance where the plaintiff had paid money under the agreement, but before long it was enough if he had suffered some detriment under it other than payment of money. The way was now clear for the formulation of a general contractual remedy based on agreement and with no requirement of forms.

The next development came after thirty years later in the sixteenth century, when the Court of King’s Bench began to allow Assumpsit to be brought in cases where, in fact, Debt was the proper remedy. It was a cardinal principle of English law at this time not to allow two alternative remedies on the same set of facts. But King’s Bench showed itself prepared to disregard this ‘rule against double remedies’ and to allow a plaintiff to choose between Debt and Assumpsit. This step was bitterly resented by the older actions. Owing to the superior efficacy of the action of Assumpsit, business (and, with it, revenue) began to flow out of Common pleas into King’s Bench to the satisfaction of the latter and the chagrin of the former. For a time, there was an unfortunate conflict between the two

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27The Malt Case, (1505), Y.B. Mich. 20 Hen. VII, f. 8, pl. 18; see Supra Ref 21 p.14
Courts—a conflict which eventually culminated in victory for King’s Bench.

The case which brought about this victory was *Slade’s Case*\(^{28}\) in 1602, which, so Justice Coke tell us, was twice argued before all the justices of England and Barons of Exchequer assembled in the full Court of Exchequer Chamber:\(^{29}\)

Slade had sold wheat to Morley the price to be paid on certain date fixed by the parties. Morley failed to pay. Slade sued on an Assumpsit. The jury found that the defendant had made no subsequent promise to pay. It was decided in favour of the plaintiff. The promise in such circumstances was implied by law and Assumpsit would lie upon any simple debt. This came to be called the indebitatus assumpsit. It was held that, ‘every contract executor imports in itself an Assumpsit, for when one agree to pay money or to deliver anything, thereby he assumes or promises to pay or to deliver it.’

In 1852 it became no longer necessary to mention in the writ by which an action was began the particular form in which it was being brought, and in 1875 the Judicature Act abolished the forms of action altogether. Thus, English law was left with a generalized law of contract—a situation which contrasts favourably with the lack of generality in the companion subject of torts.\(^{30}\)

\(^{28}\) (1602), 4 Co. Rep. 91a; see *Supra* 21 p. 14

\(^{29}\) This seems either to have been an astute manoeuver or, what is more likely, a genuine attempt to place the law on a more stable footing. Normally, the Court of Error from King’s Bench was that of the Exchequer Chamber, composed of the justices of Common Pleas and Barons of the Exchequer. The full Court would also include those of King’s Bench. see *Supra* 21 p. 15

\(^{30}\) *Supra* Ref. 21 p.16
The development of the law of contract during the eighteenth and nineteenth centuries in no way interfered with the basic notions thus laid down. But, during this period, the judges formulated the principles which now appear as those of modern law. This was a gradual one, but it gained momentum with the advent of the industrial revolution and the consequent need for more sophisticated rules to deal adequately with the expansion of trade and commerce. In this period, too, the treaties writers began to expound the judgments of the Courts in a systematic fashion and to impose on the English law of contract a conceptual structure. The nineteenth century, in particular, was a period of great innovation in and expansion of contract law. Nevertheless, this branch of law is today by no means stagnant, and the principles enunciated by the Victorian judges are constantly being modified and adapted to meet the changes in economic and social conditions of the twentieth century.

The last hundred years has also seen a rapid growth in the importance of statute law. There are the great codifying Acts of the nineteenth century, such as the Bills of Exchange Act, 1882 and the Sale of Goods Act, 1893. There are also a number of reforming statutes such as the Law Reform (Frustrated Contracts) Act, 1943, the Unfair Contracts Act and the Misrepresentation Act, 1967, which have been enacted to remedy defects or to make good deficiencies in the common law. But the most important and far-reaching proposal has been one for the codification the entire body of general principles of contract law.

In 1965, the English and Scottish Law Commission announced their intention to codify the English and Scots law of contract. The code as originally envisaged was to be uniform body of the applying throughout
England and Scotland, and it was to embody amendments to the existing law of both countries. Subsequently, however, the Scottish Law Commission withdrew from this enterprise. Presently most of the English contract law is regulated by ‘the Principles of European Contract Law 2003’ and ‘the Contracts (Rights of Third Parties) Act 1999’.

4.3. INDIAN LAW

The tale of Indian law is distinct from the other systems of law. It is not unknown to everyone that India was considered as ‘golden bird’ due to her economic strength. In ancient era almost all foreigners were attracted to the luster of India. She was culturally rich in her nature. India was never ruled by any single ruler, throughout history she was exposed to many invasions by the foreigners. If we look into the ancient period, we come across Greek invasion. Later in medieval era it was invaded by many rulers such as Muhammad of Ghazanvid et al. And lastly it was the European rulers who ruled India. After seeing all this we can come to conclusion that India was exposed to diverse legal systems. Here we attempted to establish history of legal system in nutshell.

At first we will start with ancient legal system. The ancient Indian society was based on duty, which means whole society was bound by ‘Dharma’\(^31\).

\(^31\)Dharma is one of the Trivarga, two other are Artha and Kama. This Trivarga Siddhant was given by Manu Smriti. It is Ch. II ver. 224 & Ch. IV ver.176 which deals about the about doctrine which says:

To achieve welfare and happiness some declare Dharma and Artha are good. Others declare that Artha and Kama are better. Still others declare that Dharma is the best. There are also persons who declare Artha alone secures happiness.

But the correct view is that Trivargam the aggregate of Dharma, Artha and Kama secures welfare and happiness. However, the desire (Kama) and material wealth (Artha) must be rejected if contrary to Dharma.
It is said that the definition of Dharma includes righteousness, duty, justice and truth. The body of Indian law was comprised of system of duties religious and civil.\textsuperscript{32} It was Vedas\textsuperscript{33} which played vital role in emergence of law in Indian society. Almost all sages of ancient era gave prominent place to the Vedas. One can say that the Vedas are the roots of Indian legal system. One of the most prominent codes of India is Manu Smriti or Manu’s Code. During ancient period whole society was well established and people were happy with their lives and thought of wellbeing of entire society.\textsuperscript{34} If any men or women fail in performing his/her duty, he was subject to punishment. The fear of punishment forced people to perform their respective Dharma. For instance, in ancient society, if artisans like blacksmith or carpenters caused any unreasonable delay in handing back finished articles, they were to receive one-fourth less than the proper wages and were to be fined twice the amount of wages.\textsuperscript{35}

The above society continued until invasion of Islamic rulers. During Sultanate and Mughal rules the rulers started using Sharia laws for administration of justice. But in villages above system was in continuation.

During modern era when British invaded, they found that the legal system was at its chaos. So for this they started introducing common law doctrines in administration of justice. They enacted laws on the basis of


\textsuperscript{33} There are totally four Vedas viz Rig veda, Yajur Veda, Sama veda and Atharav veda

\textsuperscript{34} It is worth to cite here that the people in ancient India believed in right to happiness. This right has been incorporated in the most ancient and popular prayers, \textit{Sarve Bhavantu Sukhino} ‘Let all be happy’ and \textit{Loka Samsta Sukhino Bhavantu}: Let the entire humanity be happy. see Justice M. Rama Jois, \textit{Trivarga Siddhanta}, 1\textsuperscript{st} Ed., Bharateeya Vidya Bhavan, Mumbai, 2004, p.3

\textsuperscript{35} Pandurang Vaman Kane, \textit{History of Dharmasastra}, Vol. 3, 2\textsuperscript{nd} Ed., Bhandarkar Oriental Research Institute, Poona, 1973, p. 252
common law doctrines. After independence India continued to follow the system which was established by Britishers.

For the purpose of this work, we are concerned about law of contract; the above discussion was made for better understanding of system. There are references of contract law in Manu Smriti and various other texts. Generalized form of contract was not existed in ancient era. The contract law was existed through various vyavaharapadas, those are debts, deposits and pledges, sale without ownership, mortgages and gifts. We are going to deal about these vyavaharapadas in infra section. In this section we are going to see what the status of law contract was in Hindu law and Muslim law in India.

4.3.1. HINDU LAW

When we say Hindu law the first question which arises in our mind is, whether Hindu law is religious law? The second question arises in our mind, is Hindu a religious? Because if we look into Smritis, Srutis, Puranas and Epics, we don’t find any evidences of Hindu as religion. There is a group of scholars which is trying to demonstrate that Hindu is not religion, but it is a culture and way of life. Here we are not concern about whether Hindu is religion or not, our point of discussion is about position of law of contract in Hindu jurisprudence.

The character of Hindu jurisprudence is different from that of English jurisprudence. The Hindu law is outcome of immemorial customs and works of Smritikaras. The Smritikaras interpreted and explained Vedas for

36 A vyavaharapada means the topic or subject matter of litigation or dispute.
37 Dr. Ramesh Yeshwant Prabhoo v. Shri Prabhakar Kashinath Kunthe, AIR 1996 SC 1113; Sastri Yagnapurushadji v. Meldas Brudardas Vaishya, AIR 1966 SC 1119
general public, from that Hindu law got developed. As it is in the case of English law they gave prominence to right *in personam*, same way in Smritis the prominence is given to Dharma i.e. duty *in rem*. The ancient of sources of Hindu law are:

- Srutis
- Smritis
- Customs and
- Judicial Precedents

In Hindu law prominence is/was given to Srutis or Vedas, because it is believed they are of divine origin. In ancient India the law was divided into two heads, first, *Rajadharma* and second, *Vyavaharadharma*. Rajadharma is equated with current day constitutional law and *vyavaharadharma* with legal proceedings both civil and criminal. As our discussion is limited to the status of law of contract in Hindu law, so we won’t be dealing about *Rajadharma*, contract is part of *vyavaharadharma*.

As it is already pointed out that the contract law was existed through various *vyavaharapadas*, those are debts, deposits and pledges, sale without ownership, mortgages and gifts. Before dealing them one-by-one, we should know what is *vyavaharadharma* and *vyavaharapadas* in brief.

The word ‘*vyavahara*’ is defined by several smritis and commentators. Katyayana gives two definitions, one based on etymology (referring principally to procedure) and the other giving the conventional sense having in view a dispute. Etymologically, *vi* means ‘various’, *ava* means ‘doubts’, *hara* means ‘removing’—so *vyavahara* means, ‘removing of various doubts’. This definition places the administration of justice on a

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high plane. Another definition is, when the ramifications of right conduct, that are together called dharma and that can be established with efforts (of various kinds such as truthful speech & c.,) have been violated, the dispute (in a court between parties) which springs from what is sought to be proved (such as a debt) is said to be vyavahara.\textsuperscript{39}

A \textit{vyavaharapada} means ‘the topic or subject matter of litigation or dispute’. It is the same thing as ‘\textit{vivadapada}’ which word occurs in Kautilya and Narada. Yajnavalkya defines it as, ‘if a person, who is set at naught by others in a manner that is opposed to the rules of \textit{smriti} and to good usage or conventions, informs the king (or his judge), that is a \textit{vyavaharapada}.\textsuperscript{40} Almost all smritikaras have given list of \textit{vyavaharapadas}, but the difference lies in number and nomenclature. In \textit{toto} there are eighteen \textit{padas}, we will classify them according to list given by Manu. They are:\textsuperscript{41}

- \textit{Runadana}—Payments of Debts
- \textit{Nikshepa}—Deposits
- \textit{Aswamy Vikraya}—Sale without ownership
- \textit{Sambhuya Samuthana}—Joint undertaking (Partnership)
- \textit{Dattasyanapakarma}—Resumption of Gift
- \textit{Vetanadana}—Payment of Wages
- \textit{Samvidvyatikarma}—Violation of convention of guilds and corporations
- \textit{Krayavikrayanusaya}—Sale and Purchase
- \textit{Swamipala Vivada}—Dispute between Master and Servant
- \textit{Simacivada}—Boundary Disputes
- \textit{Vakparushya}—Defamation

\textsuperscript{39}Supra Ref.35 p. 247
\textsuperscript{40}Ibid. p.248
- **Dandaparushya**—Assault
- **Steya**—Theft
- **Sahsa**—Offence by Violence
- **Strisangrahana**—Adultery
- **Stripumdharma**—Duties of Husband and Wife
- **Vibhaga**—Partition
- **Dyutasamahvaya**—Betting and Gambling.

### 4.3.1.1. GENERAL PRINCIPLES OF CONTRACTS

As it is mentioned above in ancient India contract law was enforced through titles. The Smritikaras dealt contract law by taking up titles one after another. That doesn’t mean they did not say anything about general principles of contracts. They did say a good deal about the competence of persons to enter into contracts, about fraud vitiating all contracts, about damages for breach of contracts and etc…

**Capacity**

Manu Smriti’s Chapter VIII para 163 gives list of person incompetent to enter into contract. A contract, entered into by an insane or intoxicated person, a cripple, a dependent, an infant (minor) or a very old person or by a person not authorized by the party on whose behalf he entered into the contract, is invalid. Kautilya repeats the same disqualifications and further includes another disqualifications such as a father’s mother, a son, a father having a son, an outcast brother, the youngest brother of a family of undivided interests, a wife having her husband or son, a slave, a hired...

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42Ibid p.175
labourer, any person who is too young or too old to carry on business, a convict (abhisasta), a cripple, or an afflicted person.\textsuperscript{43}

In this regard Narada Smriti says an infant upto eight to an embryo. After that age till sixteen it is boyhood. After sixteen only a person is competent to enter into contract. But one becomes independent after one’s father’s death. From this we can understand that earlier the age of majority was sixteen.\textsuperscript{44}

According to Yajnavalkya, a transaction entered into by a person who is intoxicated or insane or afflicted with disease or in distress etc… should not be upheld.

**Consent**

According to Colebrook, a true assent implies a serious and perfectly free use of power, both physical and moral. This essential is wanting to promises made in jest, or compliment; or made in earnest, but under mistake; or under deception or delusion; or in consequence of compulsion. Therefore, consent not seriously given, or conceded through error, extorted by force, or procured through fraud, is unavailable.\textsuperscript{45}

Manu declares that a fraudulent mortgage or sale, fraudulent gift or acceptance, and any transaction where the fraud is detected, shall be null and void. Further he says, what is given under the threat of force, what is enjoyed under the threat of force, and any document prepared under the

\textsuperscript{45} *Supra* Ref. 32
threat of force—all transactions executed under the threat of force has declared to be void.46

Invalid Contracts

Any agreement which has been entered into contrary to law or to the settled usage can have no legal force through it is proved.47

Breach of Contract

Katyanana says, ‘where there is a failure (to perform a contract) even though an earnest had been given by one party, then (the king) should make the other party (who is in default) pay double (of earnest). The purpose of taking an earnest is to make the party suffer the loss of it when he does not abide by the agreement.’

Having discussed about basic principles of contract law in Hindu jurisprudence, now an attempt is made to discuss about principles of contract law under Mohammedan jurisprudence.

4.3.2. MUSLIM LAW

The Islamic law is considered as divine origin and it is believed that this law is revelation of God or Allah. Most of the law is based upon customs and usages followed during the era of Prophet. Unlike Hindu law, the Islamic law is based on religion. There is doctrine in Islamic law called

46Supra Ref. 42 p.176
‘certitude’ which is same as the doctrine of ‘Good and Evil’ as in the case of Hindu law.\textsuperscript{48}

Islamic belief begins with Prophet Muhammad, the Messenger of God (Allah). The Prophet’s mission was to establish peace in this world based on divine revelations made to him by God (Allah). These divine revelations are recorded in the Quran, the sole scripture of the Muslims. The spiritual and secular practices of the Prophet came to be known as \textit{Sunna}. These two sources constitute the main guidelines for spiritual as well as temporal Muslim conduct in this life as a preparation for the hereafter, and are called \textit{Sharia}. The word \textit{Sharia} means the highway to good life. Over a period of time, two additional sources of \textit{Sharia} came into existence. They are: 1) \textit{Qiyas}, or analogical reasoning, and 2) \textit{Ijma}, or consensus of the Islamic community on a point of law. According to \textit{Sharia}, sovereignty vests in God (Allah), requiring the state to act within the limits of divine law, or \textit{Sharia}. This sovereignty is recognized by incorporation of \textit{Sharia} into the Islamic legal system and community. In this sense \textit{Sharia} is the constitutional law of a Muslim society.\textsuperscript{49}

In \textit{toto} we can come to conclusion that there are four sources of Islamic law those are:

- Quran
- Sunna
- Qiyas and
- Ijma

In this discussion we are not gone explain each and every source of law. Now coming to the development of Islamic law in the world, it is said that the Islamic law is nearer to Jewish law and Canon Law. These laws have left their impact on the Islamic law.\textsuperscript{50} According to Fyzee, the Islamic law originated into two theories, first, \textit{Fiqh};\textsuperscript{51} the Classical theory; and second, \textit{Fiqh}: the Modern Theory.

According to Schacht, the Islamic law saw development in two Islamic states, the Ottoman Empire in the Near East and the Mogul Empire in India; in both empires in their heydays (the sixteenth and the seventeenth century respectively). It said that during Mogul Empire Islamic law enjoyed the highest degree of actual efficiency which it had ever possessed in a society of high material civilization since the early Abbisid period.\textsuperscript{52}

\textbf{4.3.2.1. GENERAL PRINCIPLES OF CONTRACT}

If we clearly focus on the Islamic law, we would find that whole of the civil law comprises of contract itself, e.g. marriage is a contract, and inheritance of property is another contract, like this we can impart many examples. The initial source of Islamic contract law is Quranic revelation in \textit{Surah5. Al-Maida, Ayah 1:}\textsuperscript{53}

\begin{quote}
O ye who believe! fulfil (all) obligations.
\end{quote}

\textsuperscript{50} Joseph Schacht, \textit{An Introduction to Islamic Law}, Oxford University Press, London, 1983, p.2
\textsuperscript{51} The law in Islam is called \textit{fiqh}; it is the name given to the whole science of jurisprudence because it implies the exercise of intelligence in deciding a point of law in the absence of a binding \textit{nass} (command) from the Quran or \textit{sunna}. \textit{Fiqh} literally means ‘intelligence’. As per A.A.A. Fyzee \textit{Supra} Ref. 49 p. 17
\textsuperscript{52} \textit{Supra} Ref.51 p. 4
This Quranic verse is basis for sanctity of wide variety of obligations. The Arabic word ‘uqud’ or ‘aqd’ covers the entire field of obligations, including those that are spiritual, social, political, and commercial. In the spiritual realm ‘uqud’ deals with the individual’s obligation to Allah; in social relations the term refers to relations including the contract of marriage; in the political arena it encompasses treaty obligations, and similarly, in the field of commerce, it covers the whole spectrum of obligations of parties in regard to their respective undertakings. Hence the generic word ‘uqud’ forms the foundation of contract and attendant liabilities.54

Quran doesn’t give direct references to law of contract, but it speaks about sale, loan, hire-purchase, mortgage, gifts, surety ship, agency… In Quran law of contract was never a legal concept. Quran only prohibits those transactions which are coupled with riba (usury)and gharar55.

According to Sura 2 Al- Baqarah, Ayah 27556 of Quran, God permitted trade and prohibited usury i.e. riba.57 Usurious transactions were divided into two kinds: (1) riba al-fâdîl, which produced unlawful excess in exchange of counter values in a contemporaneous transaction and (2) riba al-nâsî’a, which produced unlawful gain by deferring the completion of exchange of counter values, with or without an increase in profit. At later juncture one more kind was added, riba al-jâhîlyya or pre-Islamic riba exemplified by the

54Supra Ref. 50 p.116
55Ghara means, uncertainty that is present in the basic elements of an agreement eg wording, subject matter, consideration and the liabilities.
56Translation of Surah 2 Al- Baqarah, Ayah 275 by Yusuf Ali: Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: “Trade is like usury,” but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever).
57Supra Ref. 54
lender asking the borrower at maturity date if he will settle the debt or increase it. All those transactions which were coupled with usury where considered as void in nature.\(^{58}\)

Another doctrine which is dealt by Quran is *gharar*. According to this, transaction which are coupled with gambling, contingent agreements, wagering agreements are prohibited. The relevant verses in the Quran dealing with the prohibition of *gharar* are *Sura 2 Al- BaqarahAyah 219*\(^{59}\) and *Sura 5 Al-MaidaAyah 93*\(^{60}\)& 94. These verses refer to gambling.

The *gharar* prohibition is applied to whole range of commercial activities involving speculative and aleatory contracts. The doctrine becomes applicable if the subject matter of contract the price or both are not determined and fixed in advance. It is like future performance of contract. Sometimes it can be felt that the doctrine of *gharar* may be equated with modern day concept mistake of fact.

At this stage it is worth to mention here that the concept of *riba* has held sway in Muslim societies from inception. Since *riba* typically applied to deferred transactions, any contract dealing with future performance was suspected to have the double taint of *riba* and *gharar*. The effectiveness of these two concepts has been moderated under the overriding doctrine of necessity; however, they continue to be alive and well and a subject of debate for Muslim scholarship.

\(^{58}\)Supra Ref. 50 p.118

\(^{59}\)Translation of *Surah 2 Al- Baqarah, Ayah 219* by Yusuf Ali:

They ask thee concerning wine and gambling. Say: “In them is great sin, and some profit, for men; but the sin is greater than the profit.” They ask thee how much they are to spend; Say: “What is beyond your needs.” Thus doth Allah Make clear to you His Signs: In order that ye may consider.

\(^{60}\)Translation of *Surah 5 Al-MaidaAyah 93* by Yusuf Ali:

O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination, -of Satan’s handiwork: Eschew such (abomination), that ye may prosper.
This short background of Sharia as the root principle of Islamic law must be kept in mind for an analysis and understanding of Islamic contract law. In contrast to Islamic law, the Western common law of contract, which developed during the eighteenth and nineteenth centuries, grew out of the economic and legal theories of the period in which it was formulated. In its nascence it was formulated by natural law theories and later by laissez faire economic theory. Both these theories have undergone considerable revision over time.\(^{61}\)

Islamic contract law, by contrast, started taking its shape in the seventh century. It is fair to assume that at this time in human history commerce was limited to market overt and that goods consisted of surplus farm products or handicrafts. The Islamic law of contracts reflects and addresses the transactional reality of this period. The Anglo-Saxon common law of contracts was reshaped in the wake of the industrial revolution of the eighteenth century. The Muslim world in general did not experience the challenges of the Industrial Revolution. But in recent years the sudden oil-based prosperity of some Islamic lands has put the Islamic law of contract in full gear. We find that through its history that its responses are reminiscent of the common law tradition. Hence its growth should also be responsive to changing needs and times, as has been the common law.\(^{62}\)

Neither the Quran nor Hadith (Hedaya) specifically deal about the law of contract, these two texts indirectly touches the law, by way of explaining what is the obligation of an individual. The Hedaya deals law of contract

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while explaining concepts such as sale, hire-purchase, gift, *sirf* sale, loans, etc...\textsuperscript{63}

Even *Futawa Alumgeeree*\textsuperscript{64} doesn’t give accounts about the law of contract. It explains about the law of sale. According to *Futawa*, sale is form of contract. It levies certain conditions for fulfillment of contract of sale. Conditions were divided into four broad categories viz., conditions which were necessary to constitute it; to give it operation; to render it valid; to make it obligatory.\textsuperscript{65} Contract of sale was divided into four kinds: Operative (Sahih), Dependent, Unlawful (fasid) and Void (batil).

Abdur Rahim explains concept of contract in following manner: \textsuperscript{66}

The corresponding Arabic word for contract is ‘aqd’ which literally means conjunction, tie. In law it means conjunction of the elements of disposition, namely, proposal (*ijab*) and acceptance (*qabul*). Analysing it in further detail the conception of a contract in the language of the jurists will be found to involve four causes: (1) *fa"lia* or that which appertains to the persons making the contract, (2) *Mad"dia* or that which appertains to the essence, namely, proposal and acceptance, (3) *Suaria* or that which appertains to the outward manifestation and (4) *Ghayia* or that which relates to the result aimed at. In other words a contract requires that there should be two parties to it, that one party should make a proposal and the other should accept it, that the minds of both must agree, that is, their declarations must relate to the


\textsuperscript{64} The *Futawa Alumgeeree* received in India as an acknowledged authority on Muslim Law, and had became celebrated in Arabia and other Moohummudan countries. At Mecca it was known as the *Futawa-i-Hind*, or Indian Expositions. These expositions were compiled by India’s eminent lawyers assembled for the purpose by the Emperor Aurangzeb Alumgeer, from the different parts of his dominions, and placed under the superintendence of Sheikh Nizam.


same matter, and the object of the contract must be to produce a legal result. Proposal and acceptance are the constituents of a contract so that, if either of them be wanting, there can be no contract. For instance, if A offers to sell or to make a gift of certain property to B but B does not accept the offer the sale and the gift will fail.

The dominant idea of a contract in Islamic law is that it establishes a tie of legal relations arising from the consent of the minds of two persons to deal with each other in respect of certain rights of theirs. For instance, when A sells or gives an object to B, the former consents to pass on his proprietary rights therein to the latter who consents to take the property with whatever obligations might be incidental thereto, such as the liability to pay taxes if the subject-matter of the transaction be land, to take care of and to feed if the thing sold or given be an animal and in the case of a sale, also to pay the price. In the case of a gift, on the other hand, there is the moral obligation of gratitude on the part of the donee towards the donor, and the Islamic law does not ignore the moral aspect of a transaction.

The question of creation of legal relations is treated in the Islamic legal theory as distinct from the question of completion of such relations. The latter depends on the nature of particular transactions. For instance, if it is intended, by a transaction to effectuate a transfer of a physical object, the legal relations in such a case will not, strictly speaking, be said to be completed until the transfer has actually taken place. In certain cases, however, the law relaxes the principle taking the declaration of consent by both the parties, as a complete creation of legal relations and compels each party to carry out what he declared he would do. This it does only when a contract involves a mutuality of advantage as in a sale because in such a case generally speaking there is no danger of injury to any one and the necessities of every-day business call for it. For obvious reasons, however, the law does not step in to complete what has been left incomplete by the
parties in a case where there is no mutuality of pecuniary advantage as in a simple gift and leaves it to the party who is making the sacrifice to complete it by actually delivering possession of the thing. But an exception to this is sometimes allowed as in a contract of surety-ship. In such a contract which is defined as the adding of the surety's liability to that of the person originally liable, the consideration that passed to the latter is considered sufficient to support the new promise. The case of a pledge has given rise to a difference of opinion, some holding that the money lent is opposed to the promise to repay and the delivery of the property to the lender is to be regarded as something separate for which there is no consideration; others hold a different view. A waqf for Aukaafis also regarded as a contract and some jurists hold that there should be a mutwalli to accept the grant on behalf of the beneficiaries.

**Formation of Contract**

The formation of a contract according to Islamic law, generally speaking, does not require any formality. All that is required is declaration of consent by each party. The declaration that is first made is called proposal and the second declaration is called acceptance. The proposal and acceptance must be made at the same meeting (mujlis), either in fact or what the law considers as such. Suppose a man proposes face to face to another to sell his horse to him, if the person addressed leaves the place without signifying his acceptance the offer comes to an end, because there is no obligation on the owner of the horse to keep his offer open. But if the offer is communicated by means of a messenger or a letter, the meeting for the purpose of acceptance is held to be at the place and time the message reaches the person for whom the offer was intended. If the promisee then signifies his acceptance the contract is concluded. The acceptance must be
in terms of the proposal, that is to say, the two minds must be in agreement, otherwise there is no real consent.

**Conditions of a Contract**

Following are the condition of contract. These conditions resembles to those given in *Futwa-E-Alamgiri*. They are:

- Capacity
- Minimum two parties
- The acceptance must be made to correspond with the proposal, by the parties accepting and for the consideration proposed
- Subject-matter (*mahal*)
- Unequivocal expression by the parties—Free Consent
- Offer and acceptance be made at same place

**Classification of Contracts**

In Muhammadan law contracts having regarded to their principal features may be thus classified as:67

1) (a) Alienation of property: for exchange, namely, sale, (b) without exchange, namely, *hiba* or simple gift, (c) by way of dedication, namely, *waqf*, (d) to create succession, namely, bequest.

2) Alienation of usufruct: (a) in exchange for property, namely, *ijara*, which includes letting things moveable and immovable for hire, contracts for rendering services, such as for the carriage of goods, safe custody of property, doing work on goods and domestic and professional services, (b) not being in exchange for property, for example, accommodate loan (*a’riat*) and *wadiyut* (deposit).

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67 *Ibid* pp. 288-289
3) Contracts, (a) for securing the discharge of an obligation, namely, pledge, suretyship, (b) for representation, namely, agency and partnership.

4) Alienation of marital services, namely, marriage.

Grounds of Dissolution

In Sharia law ghurar was a possible ground for dissolution of contract. Noel Coulson opines that only two modes of dissolution were known to Islamic law, which were unique in their application from a comparative standpoint and which have a vital significance in contemporary commercial transactions in the Gulf States. The first is the right of a party to rescind the contract unilaterally, and ‘without fault or legal cause’. The second is termination on the legal ground of frustration. But most of the jurists disagreed with the opinion of Coulson. They say Islamic law was known much more grounds for dissolution. The grounds for dissolution of contracts may be categorized in following manner:

1) Dissolution by mutual agreement (iqalah);
2) Automatic dissolution by death, destruction of subject matter, expiry of period, achievement of purpose and stipulated repudiation, etc;
3) Dissolution by revocation and termination (Al-Faskh):
4) Dissolution for impossibility (istihalah) of contractual performance - doctrine of changed circumstances, doctrine of frustration, doctrine of intervening contingencies, doctrine of force majeure and act of God, etc.

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69 Supra Ref.51 pp.148-160
But presently in India the law of contract is uniform in nature. Irrespective of personal laws available the contract law is applied uniformly to each and every person.

4.4. COMPARISON OF LAWS

English System

Under English system, the Common Law played an important role in development of law of contract. The remedy was broadly granted by way of writ in actions for accounts, surety, debt, covenants and assumpsit. After industrial revolution, there was development in trade and commerce. Slowly, courts started to interpret contracts in different ways without altering basic legal characters. This led to enactment of Contract Act of modern times with retaining its essential ingredients.

Ancient Indian System

Under ancient Indian civilization, the concept of “Dharma” played a vital role. This ancient Indian civilization prescribed law consisting as religious duties and civil duties / obligation. Anyone who disobeyed the system was punished and this fear of punishment made people to observe “dharma” scrupulously. Law of contract during that time included debts, deposits and pledges, sale without ownership, mortgages and gifts.

As per Manu Smriti, any contract, entered into by an insane or intoxicated person, a cripple, a dependent, an infant (minor) or a very old person or by a person not authorized by the party on whose behalf he entered into the contract, is invalid. Same disqualification was prescribed by Kautilya. As per Yajnavalkya Smriti, it prescribed a disqualification upon a transaction entered into by a person who is intoxicated or insane or afflicted with disease or in distress etc.
Further, laws of that time prohibited enforcement of contracts executed after obtaining consent by other means.

**Islamic System**

Under Holy Quran, the law of contract was never a legal concept. Quran doesn’t give references of law of contract, but it speaks about sale, loan, hire-purchase, mortgage, gifts, surety ship, agency. Law of contract under this system primarily based on consent of two person relating their rights. Like English Law, it also prescribes certain qualifications and conditions for formation of contracts.

Now coming to the core topic, the sum and substances of English Law, Ancient Indian Law and Islamic Law is almost same. As these laws originated at different time, different place and amongst different people, absolute similarities cannot be expected. Further, the difference or any special prescription has to be understood in the proper perspective of that time. Generally, these three systems provided almost similar broad structure of contract law. Though expression of certain terms may be different under different system, but, upon careful examination, it can be said that all these three system have same structure. Further, when time factor is taken into consideration, it appears that the Ancient Indian legal system was much developed. Whereas, the English system changed rapidly especially to suit growing commercial activities.

Finally, one striking feature of these three systems is the amount of scholarship put in by those great philosophers and jurists of that time. Even though English law is universally accepted to be the law governing contracts, the concepts and themes proposed under Indian System and Islamic system have great jurisprudential values and cannot be overlooked easily.
Under these three different systems, consensus of mind has been given prominence. As time passed by, and due to changes in political and economical conditions, the English system governing law of contract was accepted as a standard throughout the world. After advent of British raj in India, principles of English contract law dominated human transactions. Thus these principles of English contract law made applicable in India. This application of English law substituted Hindu and Islamic law governing contract. The basic principles of offer, acceptance, consideration and capacity to contract became essential elements to the concept of contract in different parts of the world.

The scope of this research is about e-contracts. Therefore, it was necessary to discuss about the principles of contract under different legal systems. Now, developments in information and communication technologies transformed way of life. Contracts are executed using electronic technology. This resulted in application of essential ingredients of contract law to the e-transactions and consequently to e-contracts.

With this background, the above discussion was about genesis of contract law. As principles of contracts are entirely applicable to e-contracts and as this study is about legal regulation of e-contracts specially from Indian perspective, it is necessary to throw light on principles envisioned by Indian Contract Act, 1872.

Therefore, now the discussion would be about Indian Contract Act, 1872 so that e-contracts can be better understood in light of principles of Indian Contract Act, 1872.