

Difference Between Equity and Equitable Remedies

1. **Equity** is the name given to the set of legal principles, in jurisdictions following the English common law tradition, which supplement strict rules of law where their application would operate harshly. In civil legal systems, broad "general clause" allow judges to have similar leeway in applying the code.

Equity is commonly said to "mitigate the rigor of common law", allowing courts to use their discretion and apply justice in accordance with natural law. In practice, modern equity is limited by substantive and procedural rules, and English and Australian legal writers tend to focus on technical aspects of equity. There are 12 "vague ethical statements" which guide the application of equity, and an additional five can be added.

2. **Equitable remedies** are judicial remedies developed and granted by courts of equity, as opposed to courts of law. Equitable remedies were granted by the Court of Chancery in England, and remain available today in most common law jurisdictions. In many jurisdictions, legal and equitable remedies have been merged and a single court can issue either-or both remedies. Despite widespread judicial merger, the distinction between equitable and legal remedies remains relevant in a number of significant instances. Notably, the United States Constitution's Seventh Amendment preserves the right to a jury trial rights in civil cases over \$20 to cases "at common law".

The distinction between types of relief granted by the courts is due to the courts of equity, such as the Court of Chancery in England, and still available today in common law jurisdictions. Equity is said to operate on the conscience of the defendant, so an equitable remedy is always directed at a particular person, and his knowledge, state of mind and motives may be relevant to whether a remedy should be granted or not.

Equitable remedies are distinguished from "legal" remedies (which are available to a successful claimant as of right) by the discretion of the court to grant them. In common law jurisdictions, there are a variety of equitable remedies, but the principal remedies are:

1. Injunction
2. Specific performance
3. Account of profits
4. Rescission
5. Declaratory relief
6. Rectification
7. Equitable estoppel
8. Certain proprietary remedies, such as constructive trusts or tracing
9. Subrogation
10. In very specific circumstances, an equitable lien

The two main equitable remedies are injunctions and specific performance.

3. In India, the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However it was in 1963 that the "Specific Relief Act" was passed by the Parliament of India following the recommendation of the Law Commission of India and repealing the earlier "Specific Relief Act" of 1877. Under the 1963 Act, most equitable concepts were codified and made statutory rights, thereby ending the discretionary role of the courts to grant equitable reliefs. The rights codified under the 1963 Act were as under;

- Recovery of possession of immovable property (ss. 5 - 8)
- Specific performance of contracts (ss. 9 - 25)
- Rectification of Instruments (s. 26)
- Rescission of Contracts (ss. 27 - 30)
- Cancellation of Instruments (ss. 31 - 33)
- Declaratory Decrees (ss. 34 - 35)
- Injunctions (ss. 36 - 42)

With this codification, the nature and tenure of the equitable reliefs available earlier have been modified to make them statutory rights and are also required to be pleaded specifically to be enforced. Further to the extent that these equitable reliefs have been codified into rights, they are no longer discretionary upon the courts or as the English law has it, "Chancellor's foot" but instead are enforceable rights subject to the conditions under the 1963 Act being satisfied. Nonetheless, in the event of situations not covered under the 1963 Act, the courts in India continue to exercise their inherent powers in terms of Section 151 of the Code of Civil Procedure, 1908, which applies to all civil courts in India. There is no such inherent powers with the criminal courts in India except with the High Courts in terms of Section 482 of the Code of Criminal Procedure, 1973. Further, such inherent powers are vested in the Supreme Court of India, in terms of Article 142 of the Constitution of India which confers wide powers on the Supreme Court to pass orders "as is necessary for doing complete justice in any cause of matter pending before it".

4. Thus after referring to the above said propositions, we can say that equitable equity are those set of rules, which is in fact discretionary in nature, which helps/supplement the courts of India to adjudge matters while maintaining balance in the interest of justice whereas legal equity are the express set of rules/laws enacted expressly by the legislature.

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