

An Insight into Law of Torts in India

Introduction

One fine day, you are walking on a road and you fell down in a manhole. Where will you lodge a complaint? What if, someone throws water on you, what will your recourse be? What if, your neighbour throws garbage in your garden? You are sitting in a class and someone pulls your chair. What will your course of action be? A driver negligently knocks you down on the road, whom will you sue: the driver or the master? All these cases are covered in the Law of Torts. A statement that a lady has given birth to a child can also constitute a tort if the lady was unmarried. Matters related to daily lives are covered in the Law of Torts. The concept of Torts in India is an old concept though is still developing.

Meaning of Torts

Tort is a civil wrong, i.e. it is a wrong against an individual. The word Tort is derived from a Latin word '*tortum*' which means crooked or twisted. In this sense, it is equivalent to the English word 'wrong.' Law is divided into two – Civil and Criminal. Civil Law is further divided into two – Tort and Contract. It is basically a breach of the duty imposed by law. It is a violation of others' legal rights. A tort occurs when someone deliberately or through carelessness causes harm to someone.

Origin of Tort Theory

Law and civilisation co-exist. One cannot exist without another. If one flourishes, the other one develops too and with the decline in one, the other suffers. So, for offences related to day-to-day affairs, tort law was formed.

The origin of the Law of Torts can be traced to Roman precept *alterium non-laedere*. The maxim means "not to injure another" i.e. not to hurt anyone by deeds or words. This maxim is similar to *honesty vivere* which means "to live honourably" and *suum clique tribuere* which is explained as to render to every man that belongs to him or it is a general expression to provide justice to each person. All these three maxims can be attributed for the development of Law of Torts.

What is Tort according to jurists?

- Salmond defined Torts as, "It is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of the contract or the breach of the trust or other merely equitable obligation."
- Winfield mentions, "Tortious liability arises from the breach of duty primarily fixed by the law: this duty is towards the persons generally and its breach is redressable by an action for unliquidated damages."

Winfield and Salmond's definition are contradictory to each other. Salmond's definition has the practical point of view while Winfield's definition has the theorist point of view. Lawyers prefer Salmond's point of view but the students prefer Winfield point of view. Also, Salmond's view can be said to be narrower one but Winfield's view can be said to be a broader one.

Law of Torts in the United States

English lawyers accepted the code of conduct and began to form remedies for violations of certain legal duties. It further led to the development of the modern Law of Torts. [1]

The Law of Torts has its origin in England but it is followed and adopted in the United States, Dominions of British Commonwealth of Nations and India. Torts in the US developed through four main stages, described by Professor White as

- 1) Legal science
- 2) Realism
- 3) Consensus thoughts
- 4) Neo-Conceptualism

The law has radically reformed itself in the last 50 years in the US as before it used to deal with cases related to minor accidents but now it deals with major social activities in the US.

For the early years- common law, private law, contract law and property law served a minor role in the lives of Anglo- American people. Seeing the diversity in decisions and cases, jurists and lawyers decided to develop the law of torts. So, in 1923 other branches of the law of torts was developed. The first volume was placed in 1934 and the fourth, and the last volume was placed in the year 1939. Though the tort law is uncoded in almost every nation yet it is codified in American law.

Law of Torts in England

- The English law of Torts is a branch of English Common Law. Common Law is the precedents or case laws which differs from the statute law or law enacted by Acts of Parliament.
- In fact, the word tort was introduced by the French-speaking lawyers and judges of the Courts of Normandy and Angevin Kings of England. The law of Torts consists of various judgements that are derived from legal principles and statutes. The acts made by parliament cannot be tested and remains undoubted.

Application of English Law of Torts in India

Law of Tort in India is basically English Tort law.

- The English Law of Torts has a lot of dominance on the Indian Tort law, though the act was modified according to Indian legislation. When the British were ruling India, they introduced their own rules and regulations to administer justice in the country. In ancient Hindu law, the Sanskrit word, Jimha which meant crooked was considered to be equivalent to "tortious or fraudulent conduct." [2] The scope of British tort was narrow at that time.
- As the Indian people were completely unaware of the English Laws, the laws proved to be unfair for them and created injustice. In the early days of British laws, it proved very difficult to administer Indians as there was an English Judge who had to deal with a foreign language case.
- So, in order to avoid the chaotic situation, they decided to draft an Indian Tort Law inspired by English doctrines. In the 18th century,

after going through the then laws of India and getting the required permission, they decided to set up courts in India.

- The first court started by the Britishers in India were Mayors Courts in the Presidency Towns of Calcutta, Madras and Bombay. These courts came under the jurisdiction of English statute and Acts which were then enforced in England.
- The courts established that time worked on the principle of "justice, equity and good conscience." The expression "justice, equity and good conscience" was interpreted by the Privy Council to mean rules of English Law so far as they are applicable to Indian society and circumstances.[3] All this stated, that the High Courts of Bombay, Calcutta and Madras followed Common Law of Torts and the other courts administered the principle of justice, equity and good conscience.
- The Law of Torts in India is still uncodified and is still based on Common Law of England. In absence of Common Law, Indian Courts apply the principles of justice, equity and good conscience.

Also, when we have a look on Indian judgements, in *M.C. Mehta v. Union of India* [4], Justice Bhagwati mentioned,

"We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence." By the statements, we can infer that Justice Bhagwati realised the value of having one's own law and how it helps in the growth of the nation."

The Main purpose of Law of Torts in India

- The main purpose of Law of Torts is to provide compensation to the person who has suffered injuries. Though in modern times, the aim is to distribute the losses among people who are in a way connected to each other.
- Also, some writers believe that Tort Law objects to punish than to compensate. Every person has his point of view for the objective of Torts.
- In both crime and torts, the common element is of violation of general duty. The state controls serious crimes like murder, robbery, burglary etc. In Law of Torts too, the state has control over all the common wrongs. It is believed that harm to an individual is equivalent to society.

Thus, the main purpose of Law of Torts is to punish the wrongdoer and promote peace in the society.

Reasons for the slow development of Law of Torts in India

The Law of Torts is not much developed in India as compared to other nations. Even the Indian Tort Law is not codified. There are many reasons for the slow development of Tort Law in India, some are listed below-

1) The law is uncertain. As the law is not codified and still in its developing stages, it proves to be very uncertain for the people. This is the reason why a very few numbers of cases are filed under Tort Law in India. Also, there is a lack of precedents which increases the ambiguity of Tort law. The precedents available belong to English Tort law and cannot be applied to Indian Law.

2) There is a lack of political consciousness among the people. The people are not even aware of their rights due to which Tort law is not used much in the country. This problem is because of the vast illiteracy in India which also lead to people not going to court for exercising their rights. A lot of importance is placed on people performing their duties than people demanding their rights.

3) Now, why do people ignore their rights? This is because of ignorance of their rights and the huge rate of illiteracy in the nation. Due to illiteracy they do not have knowledge of their rights and hesitate to go to courts for the remedy.

4) Poverty also remains an issue for the slow development of Tort Law in India. The population in India is mostly economically backward and as a result, they are incapable of meeting high costs of litigation. This remains a prime reason for refraining from filing a Tort case.

5) Furthermore, the judicial system is very expensive. The rate of court fee and lawyers fee is very high. As a result, the poor man decides to suffer the pain than to approach the court. The cases are also dealt in as slow as molasses manner. On the other hand, the administration of justice is so inexpensive and fast in England, that these types of cases are decided in within a year. All these factors add up to the slow development of Tort law.

Here is a chart which shows the number of pending cases in India as on 13 October 2018.

The chart has been taken from National Judicial Data Grid. A large number of cases still remain pending which owes to the slow development of laws in India.

5 Principles of Tort Law every Indian must know

There are few principles or important points of tort law that every Indian should be aware of, as these will help the Law of Torts to develop and also enhance the judiciary system.

- *Injuria Sine Damnum and Damno Sine Injuria* – These are two Latin maxims which mean legal injury without damage and the other one means damage without legal injury. Damage should be in the form of money, comfort and health. Mere loss of money or property does not come under 'damage'. The injury should be legal injury i.e. infringement of your legal rights. Violation of legal rights is actionable even if it has not caused any real harm or loss.
- Vicarious liability – Man is liable for the torts committed by him. But under this, a man will become liable even if he has not done any wrong. In India, many people are working under someone. So, this concept becomes necessary. Under Vicarious liability, the employer has to suffer for the harm done by an employee. This liability shifts the burden from servant to master.
- *Volenti Non-fit Injuria* – This principle simply relates to the person who voluntarily consents to the risk. If the person voluntarily consents to the risk, knowing about the consequences, he has no claim against the injuries received. This principle is mostly applicable to the point of view of players and viewers. Players consent to the normal risks involved in the game, if they get hurt they don't have any claim. Similarly, the spectators, on buying the tickets consent to all the risks they may face while watching the match. It follows the rule that if one is willing, then no harm is followed.

- Defamation – Defamation is an oral or written statement that can hurt someone's reputation. In India, defamation is a civil and criminal offence. Defamation can occur if a person publishes, writes or speaks a wrong statement. The main part for defamation is that the statement published should be false. Most of the cases filed under tort law in India are related to defamation.
- Minors – India has the highest number of youth. So, one of the important parts of Tort law is related to minors. A minor is a person who is not called an adult. A minor can be called as a person who is under 18 years of age. A minor has the right to sue like an adult but he has to file the case through his "Next friend." Also, unlike crime, minority is no defence in the law of torts. Minor can also be sued. Therefore, minority is no defence under the law of torts.

New Interests in Tort Law

Law of Tort is still in its developing stage in India. New principles are developing every day.

- **Confidentiality** is an emerging concept in Tort Law. According to Black Law Dictionary, "the term that applies to something that has the quality of being confidential, secret or privileged."
- In the United Kingdom, a breach of confidence is an independent tort. However, there is no such concept in Indian Law. But when we look at the cases filed in Indian Judiciary, there are a lot of cases related to Confidentiality breach.
- Breach of Confidence may be related to data, ideas or simple breach of the health of patients or leaking the account information by banks. In India, the concept has received awareness in recent years.

A look in the recent case will provide a better understanding of the topic.

Zee Telefilms Limited and Another Vs. Sundial Communications Private Limited and Others.[5]

- In this case, the suit was brought up by the plaintiffs because of misuse of confidentiality principle and breach of copyright.
- The company's business was of video programming and television programming. The plaintiff worked on the concepts and conveyed it to the defendant and decided with the price negotiations.
- But they didn't hear from defendants afterwards. Assuming the deal is cancelled, they moved forward. The defendants breached the confidentiality principle and started working on the project solely.
- The court emphasized that the principle of confidentiality is different from the law of copyright as the law of confidentiality also includes unpublished ideas. This case is a landmark judgement that showed the principle of breach of confidentiality in case of copying ideas.
- Especially in India, there is a need for this principle between employer and employee, doctor-patient and bank- customer relationship.

Landmark Judgements under Law of Tort

The tort law in India is uncodified. The ambit of the tort law is wide in India. Though in recent years not many cases are filed under tort law, yet there are a few landmark judgements that need to be considered for better understanding.

- As many people in India travel from buses and trains and that too sitting on the top of it.

Rural Transport Service v. Bezlum Bibi [6], is such a case. Here, the conductor allowed the people to travel on the roof of the bus. During the journey, one of the passengers got hit by a branch of a tree and as a result, fell from the bus and got injured. The court mentioned that the conductor was liable as –

- - - Firstly, the act of allowing people to travel on the top of the bus was rash and negligent. He should have stopped people to travel on the roof. Inviting them to travel on the roof of an overloaded bus proved his negligence.
 - Secondly, the person who consented to travel on the top of the bus contributed to the accident. Hence, it was contributory negligence. The consequences of an act were foreseeable.
- *Bhim Singh v. State of Jammu and Kashmir [7].*

In this, the police wrongfully detained the plaintiff from attending the Assembly election. The plaintiff was an M.L.A. of Jammu and Kashmir assembly. He was deprived of his personal life and liberty to attend the assembly session. To this, the court awarded the plaintiff a sum of fifty thousand rupees as a relief.

Why cases related to Law of Torts are not frequently found in the Indian Courts nowadays

The Law of Tort is based on morality. For social development and growth of the society, the law of torts is very necessary. If one wants to have complete knowledge of the necessity of Tort law, one can look into the growth of Tort Law in England. The tort litigation has grown three times in England and Indian Tort Law has largely been borrowed from English law. Though we have borrowed a large portion from the West, we need to make use of it too. Also, we need to adopt the law according to our needs i.e. according to the morals of our society.

Therefore, it will be unnecessary to state that the law is not of use. Law of Tort is completely necessary in India as many cases are filed under defamation, nuisance, negligence etc.

Conclusion

- The tort law in India is not unnecessary but definitely requires development. The reasons for slow development should be looked upon and further amendments must be made.
- The fee involved in filing a case should be reduced so that every individual who suffers has a court to approach. As of now, poor people don't even complain about the wrongs that happen to them.
- The elimination of difficulties will help in the growth of the nation
- If these lacunae are removed, tort litigation will certainly witness a growth in India.

[1] Anand and Sastri, Law of Torts, 3rd Ed. by C. Kameswara Rao, p.1.

[2] Text of Narada cited in Priyanath Sen Hindu Jurisprudence, p 211.

[3] Waghla Rajsanji v. Shekh Masludin, (1887) 14 IA 89 ; Ratan Lal v. Vardesh Chander, AIR 1976 SC 588.

[4] AIR 1988 SC 1037.

[5] 2003 (5) BomCR 404.

[6] AIR 1980 Cal 165.

[7] AIR 1986 SC 494.