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Critical Analysis on The Concept of Trespass To Person

Trespass to person is a tort which is frequently committed in everyday life. It is basically unreasonable interference with body of a person which can be committed either by causing actual harm or by just causing an apprehension of force.

The tort of trespass to person has developed as it is today is a result of many changes and modifications. In early English law, a physical interference with the person was given special protection, partly to avoid the unhappy consequences of people taking the law into their own hands by revenge attacks. Until the abolition of the old forms of action in the 19th century; direct attacks upon the person were protected by the action of trespass, which required no proof of damage. Indirect interference with the person was protected by the action on the case, which did require proof of damage.

Today, the basic position is that direct and intentional acts of interference

are still dealt with by the tort of trespass, while indirect and unintentional acts fall under the tort of negligence. However, the situation is more complex than this suggests and some authorities suggest that even in trespass the claimant must now establish intention or negligence in addition to the act of interference.

This appears to suggest that there is a form of negligent trespass, which is almost a contradiction in terms.

Trespass To Person:

Definition:

Interference, however slight with a person's elementary civil right to

security of person, and self-determination in relation to his own body, constitutes trespass to person. Trespass may be done intentionally, deliberately or negligently. The fundamental principle plain and incontestable law is that every person's body is inviolate.

Trespass to person may be categorised as:

- 1. Assault, which is "any act of such a nature as to excite an apprehension of battery";**
- 2. Battery, " intentional and unpermitted contact with the plaintiff's person or anything attached to it and practically identified with it";and**

3. False imprisonment, the "unlawful obstruction or deprivation of freedom from restraint of movement."

Thus, it can be summarized that any unreasonable interference with a person without any lawful justification amounts to trespass to person. The basic idea behind trespass to person is that every person's body is inviolate.

Relevance Of Intention In Trespass To Person:

Under the old law, whenever injury was caused to another by a person by direct and immediate application of force, the plaintiff could sue the

defendant in trespass to person, without alleging negligence, whereas if the injury was only consequential he had to sue in case.

But now instead of dividing the action for personal injuries into trespass (direct damage) or case (consequential damage) the cause of action itself is divided. The thing which is now taken into account is whether the act of trespass was done intentionally or unintentionally.

Thus a person in order to establish a suit for trespass to person need to proof just one thing whether there was an intention to commit the trespass or not.

LORD DENNING in LETANG V. COOPER has recognized the relevance of intention in trespass to person.

Facts

Mr. Cooper (the defendant) negligently ran over Mrs Letang (the plaintiff) in his car while she was sunbathing on a piece of grass where cars were parked. The plaintiff filed a claim in trespass to the person, because the claim in Negligence was time-barred. Trespass to the person is a tort involving wrongful direct interference with another person and traditionally included both intentional and negligent acts.

Judgment

The Court of Appeal, consisting of Lord Denning MR, Diplock LJ and Danckwerts LJ, held unanimously that since Mr. Cooper's actions were negligent rather than intentional, the statute of limitations barring claims actions for damage caused by negligence applied. Mr. Letang could not recover her damages because her claim was late.

Effect

The effect of this case was that an action for trespass to the person can now only be brought for intentional torts, such as assault, battery, false imprisonment, trespass to land or chattels, etc. A claimant wishing to

recover damages to his person or property that were caused by the defendant's negligent action must prove all the elements of the tort of negligence.

Essentials Of Trespass To Person:

Intention:

An act does not constitute trespass to person unless it is done with intention. Thus intention is the chief criteria for trespass to person.

If there is an intention behind committing a trespass then it is actionable per se and the plaintiff need not proof any specific or particular damage.

In negligent commission of trespass to person, plaintiff need to proof that injuries so complaint of are reasonably foreseeable. In case of direct trespass or intentional trespass proof of actual damage is not necessary but in negligent torts, proof of damage becomes essential.

Note:

• Trespass On A Case:

It is actionable per se.:

• Trespass Upon A Case:

They are consequential, indirect and unintentional.

Types Of Trespass To Person:

Trespass to person is constituted basically in three different ways:

(1) Assault

(2) Battery

(3) False Imprisonment

They have been discussed as:

(1) ASSAULT: The act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery amounts to an actionable tort of assault.

Probably mere words don't constitute an assault ; However insulting or menacing; the intent to do violence must be expressed in threatening acts , and not merely in the speech.

The apprehension must be genuine . If there is no reasonable fear there is no assault. For example when a gun is pointed behind his back, then no apprehension lies in this case. Thus, the plaintiff must have the reason to believe that the defendant has capacity to carry out the threat in near future.

Threats on telephone may be an assault provided the plaintiff has reason to believe that they may be

carried out in the sufficiently near future. Malicious silent telephone calls also amount to assault.

Thus, no physical contact is essential for committing the tort of assault. It's essence is conduct which leads the plaintiff to apprehend the application of force.

Essentials of Assault:

- 1. Intent**
- 2. Apparent ability to carry it out**
- 3. Apprehension**
- 4. Knowledge of threat**

The above essentials have been explained through the following cases.

Stephen v. Myers:

In Stephen v Myers (1830), the Claimant was a chairman at a meeting sat at a table where the Defendant was sat. There were six or seven people between the Claimant and Defendant. The Defendant was disruptive and a motion was passed that he should leave the room. The Defendant said he would rather pull the chairman out of his chair and immediately advanced with his fist clenched towards the Claimant but was stopped by the man sat next to the chairman. It seemed that his

intention was to hit the Claimant. The Defendant argued that there was no assault as he had no power to carry out his threat as there were people in between. The court said that not every threat is an assault. There needs to be a means of carrying that threat into effect: it must be a realistic threat of personal violence . The judge directed the jury (as juries were still in use at the time) that if the Defendant could have reached the chairman and hit him there was an assault. But if the Defendant did not have the intention of hitting the Claimant, or it was not realistic that he could reach the Claimant, then there is no assault. The jury found for the Claimant.

Read v. Coker:

In Read v Coker (1853) the Claimant was told to leave the premises where he conducted his business. He refused and the Defendant collected some workmen who stood near the Claimant with their sleeves rolled up and told him that they would not break his neck if he didn't leave. He did leave and later brought a successful claim for assault as there was a threat of violence and the means to carry it out. However, not every conditional threat will be an assault.

Indian Case:

**Bavisetti Venkat Surya Rao v.
Nandipati Muthayya:**

In this case, the plaintiff, a well to do agriculturist, was in arrears of land revenue. The village music , who had duty to collect amount , went to the plaintiff's residence for the collection of the amount. On demand being made the plaintiff pleaded his inability to pay the amount that as the wife had locked the house and gone out for a few days. The defendant insisted to have the payment the very day, that being the last day of the year for collection of the revenue the plaintiff was told that on his failure to pay , his movable property will be distained. Since the plaintiff's house was locked and no other movables were readily available, the defendant told him that the earnings which the plaintiff was wearing would be

distained. The village gold smith was called. On the arrival of the gold smith , one of the persons present there paid off the amount due from the plaintiff by borrowing the same from another person. The defendants than went away quietly. The plaintiff sued the village music stating that apart from other wrongs the defendant had committed assault.

Judgment: It was held that since the defendants, after the arrival of the gold smith said nothing and did nothing and the threat of use of force by the gold smith to the plaintiff was too remote a possibility to have put the plaintiff in fear of immediate or instant violence. There was no assault.

(2) Battery: The application of force to the person of another without lawful justification amounts to battery.

1. Battery constitutes to bring any material object into contact with another person. (intentionally). Example to throw water or spit on somebody.

2. To take something forcibly from another person.

3. To project heat, light ,noise or vapours onto another person so as to cause physical injury or personal discomfort.

Essentials Of Battery

- 1. There should be a physical touch (directly or indirectly) .**
- 2. Intention must be present.**
- 3. The physical contact must be without lawful justification.**
- 4. Use of force**
- 5. Battery must be voluntary.**

Test Of Battery:

Whether the physical contact so persisted in circumstances gone beyond generally accepted standard of conduct.

Exception To Battery:

**Defences available to Jostler,
backslapper, and the hand shaker.**

Cases On Battery:

Fagan v. Metropolitan Police Commissioner:

**In Fagan v Metropolitan Police
Commissioner [1969], a criminal
case, Fagan was asked by an officer to
park his car. He didn't realize that the
car had rolled onto the police officers
foot at which point he was asked to
move the car. He responded with
verbal abuse and turned off the
engine before complying with the
request. The majority of the Court of
Appeal held that there was a
continuing positive act starting from
when he moved the car to when he**

turned it off and as such there was a battery. Whereas Bridge J dissented saying it was an omission as he parked on the foot accidentally (and thus there was no intent at that stage) and then simply omitted to move the car, and so there was no battery.

Wilson v. Pringle:

The Claimant and Defendant were both schoolboys involved in an incident in a school corridor which resulted in the Claimant falling and being injured. The Defendant argued that there was no battery as this involves deliberate touching with hostility and the intent to inflict injury and horseplay did not involve such intent. The Claimant argued that

there merely had to be an intentional touching. The court held that battery involved an intentional touching with hostility, but no intent to cause injury. The court considered whether a better test would be implied consent or a test based on how common the actions are in daily life. These will be useful considerations but ultimately the touching must be 'hostile'.

Indian Case:

Pratap Daji V. B.B. And C.I. Ryl.

The plaintiff entered a carriage on the defendant's railway but by oversight failed to purchase a ticket for his travel. At an intermediate station he asked for the ticket but the same was refused, at another place, he was

asked to get out of the carriage since he didn't have a ticket. On his refusal to get out, force was used to make him get out of the carriage. In an action by him for his forcible removal, it was held that the use of force was justified as he, being without a ticket was a trespasser. The defendants were therefore, not liable.

(3) False Imprisonment: A false imprisonment is complete deprivation of liberty for any time, however short, without lawful excuse.

Exception:

A mere partial interference with freedom of locomotion doesn't amount to imprisonment.

Essentials Of False Imprisonment:

- 1. The total restraint of the liberty of a person.**
- 2. The detention must be unlawful**

Note

- 1. Use of physical force is not important in false imprisonment.**
- 2. Knowledge of plaintiff is not necessary.**

Drunk, asleep or lunatic can also be imprisoned falsely .Lord Atkin has stated that in all such cases damages will be reduced and such award of

damages may be affected on whether the plaintiff is conscious about it.

Cases On Trespass:

Bird v. Jones:

In Bird v Jones (1845), the Defendant's employer had appropriated part of Hammersmith Bridge to watch a race on the river. The Claimant tried to pass through the appropriated part and managed to enter the enclosure. The Defendant put two police officers to block his path and prevent him from entering further into the enclosure. He was told that he could go back but not forward. After half an hour the Claimant tried to push past whereupon he committed an assault

on the Defendant and was arrested. The court said that it is false imprisonment for a person to be forced to stay in a place just as much as locking them in a room. There need not be any touching either. However, it cannot be an false imprisonment to prevent a person from going forward but allowing them to return the way they came, even if it is unlawful to stop them. The person no doubt suffers a wrong but not false imprisonment possibly assault or battery if he is threatened or touched as he tries to get past. "Imprisonment is a total restraint of the liberty of the person, for however short a time and not a partial obstruction of his will, whatever inconvenience it may bring him."

Meering v. Graham:

Meering was held in a room and questioned, because his employer thought him to be a thief. It was a false imprisonment and he got more money because he knew he was being kept there

False imprisonment.

He got more money because he knew he was being kept there.

False imprisonment:

- if they know that they are held they get more money as if they were unaware

- they can sue even if they were drunk, unconscious, asleep.

Defenses To Trespass To Person:

- 1. Consent Of Plaintiff**
- 2. Contributory Negligence**
- 3. Self-Defence**
- 4. Prevention Of Trespass**
- 5. Parental Authority**
- 6. Statutory Authority**
- 7. Necessity**
- 8. Inevitable Accident**
- 9. Preservation Of Public Peace**

• Consent Of The Plaintiff

If the claimant consented either expressly or impliedly to the torts of assault and battery, there will be a complete defense.

However it is unclear whether consent is a true defense or whether it is for the claimant to prove lack of consent in order to succeed in the first place as was decided in *Freeman v. Home Office*.

Facts And Judgment:

A prisoner serving a life term claimed that psychoactive drugs were administered forcibly to him by officials; further, that even if he had consented, his consent was not legally adequate because he was not told the

nature of the treatment or the risks involved. The court rejected the claim of coercion and ruled that the plaintiff had consented to the administration of drugs, since he had been informed in broad terms of the purpose of the treatment

The patient who consents to receiving medical treatment is consenting to the torts of assault and battery and possibly false imprisonment in some cases. This is not the same as consenting to a negligent treatment.

Patients who are about to undergo surgery are asked to sign a standard consent form. Patients who go to the doctor or attend hospital for

treatments other than surgery, for example, for treatment with medicines or various forms of therapy are taken to have given implied consent merely by consulting the doctor.

There are two possible claims available to patients who allege that they have been treated without consent:

1. If a doctor treats patients against their will or by giving a different treatment to that for which consent has been given, he or she commits the torts of assault and battery. It is only in very limited circumstances that these tort claims are available. Thus, if a patient refuses treatment

which doctors consider necessary, it has become the practice to seek the advice of the court.

Thus in order for consent to be real, the patient must be broadly aware of the type

Of treatment and when and where it will be given freely, without duress or misrepresentation as to nature of the treatment..

In Appleton v. garrett in which a dentist carried out extensive and unnecessary treatment.

If the case is one in which the patient has been made aware of the type of treatment but the doctor has failed to give a sufficient detail of the risks involved, the patient would only have a remedy in negligence.

• Contributory Negligence

Contributory negligence is generally assumed to be a defense for trespass to person but there is authority the other way.

• Self Defence

It is lawful for any person to use a reasonable degree of force for the protection of himself or any other person against any unlawful use of

force. The key to successful defense of self-defence is the element of reasonableness, as the defence will operate if the force used by the defendant is proportionate to that being applied by an attacker.

Force is not reasonable if it is either
• Unnecessary- i.e. Greater than is requisite for the purpose.

• Disproportionate to the evil to be prevented.

The relationship of parties may be relevant to the reasonableness of force used.

In revill v. newbury, it was held that the firing of a shot through a hole in a

door in the direction of a trespasser, causing serious injury, was excessive force and the defence of self- defence could not apply.

The defence is probably limited to situations in which the defendant reasonably believes that an attack is likely.

Bici v Ministry of Defence (2004)

Three British soldiers in Kosovo shot two men and wounded two others traveling together in a car. The Ministry of Defence was vicariously liable as the soldiers' employer.

Baci and Baci brought claims in trespass to the Person and negligence, while the soldiers defence was self-defence.

In the case of trespass to the Person, the court held that even though the soldiers had managed to shoot a man they were not aiming at, it was a case of transferred intent and that battery had been committed. The claim for assault on the other men failed because in the eyes of the court there had been no actual intent to make the rest of the party fear for their lives(!). They had missed their target (the man carrying the gun) and shot someone else, but not intentionally.

• Prevention Of Trespass

It is unlawful for any occupier of land, or for any other person with the authority of the occupier, to use a reasonable degree of force in order to prevent a trespasser from entering or to control his movements or to eject him after entry.

This right of using force against a trespasser is available only to the occupier of the land or his authorized agent.

In April, 2003, Tony martin, a landowner who shot and killed a burglar who was trespassing on his property was convicted of murder and sentenced to life imprisonment.

• Parental Authority And Other Authority

A parent is not guilty of an assault if he physically interferes with his child by way of reasonable restraint or chastisement, or for therapeutic reasons-e.g. to take a blood test.

There are special cases which pose particular problems in relation to consent to medical treatment. The case of children under age 16 years don't have sufficient maturity and understanding to take decisions relating to medical treatment or, any other things beneficial for them. If the child lacks such understanding, the parents may be asked It to

provide the consent on behalf of the child, but the court has jurisdiction in some cases to give or refuse consent on behalf of the child.

In a particular case the court decided that immunization is parents' right considering the scientific evidence and risk.

ÿ Statutory Authority

Apart from the statutory powers of arrest, parliament has authorized medical examinations or tests which would otherwise constitute a serious battery. E.g. Breath tests under the road traffic act 1988, section 6, or blood test under sections 20 and 23 of the family law reforms act 1969.

The two things to be taken into consideration :

Consent to the taking of bodily samples from detainees

A number of procedures carried out at police stations to assist criminal investigations can only be undertaken with the consent of the suspect or the permission of a senior officer , at least the rank of superintendent.

Intimate samples, such swabs from bodily orifices may only be taken with the permission in writing, of suspect.

Non intimate samples , such as finger nail scrapings can only be taken after the suspect has given written permission

As long as the correct procedures are followed , there will be a defence to an action brought against the police for assault and battery , and the strict rules concerning written consent are important safeguards for suspects.

Wrongful arrest , detention and stop and search

Lawful arrest doesn't amount to false imprisonment whether it is a citizen's arrest or is carried out by a police officer. Under section 1 of PACE 1984 , the police have a power to stop and search persons whom they reasonably suspect may be carrying stolen or prohibited articles. Such a power to stop people in the street in

full view of the public is regarded as a serious infringement of personnel freedom is seen by many as being unjustifiable.

In Murray vs. ministry of defence it has been explained as what constitutes a lawful arrest.

Thus requirements of arrest includes:

• An arrest made within the powers granted by statute and common law.

• A reasonable suspicion on the part of the person making the arrest. This requirement is also present in case of search and stop

• Force which is used must be in proportion to the amount of force exerted by the suspect.

People may only be kept in custody during the investigation of crimes according to the conditions and time limits laid down in the legislation, until such time as it is possible to charge them. If there is not enough evidence to charge the suspect when regular custody reviews are made, and it is unlikely that further questioning will lead to a charge, the custody officer must order the suspect to be released. If a person is charged with an offence, he or she must be brought a court as soon as possible and will be remanded in

custody or on bail, or, alternatively may be released on police bail.

If excessive force is used in making an arrest , even if the arrest itself is lawful in that it complies with common law or provisions of PACE 1984, there will be grounds for a claim of assault, battery or false imprisonment.

Farell vs. secretary of state for defence

The reasonability of force in a question of fact . This particular fact has been explained in this case.

• Necessity

Necessity could also amount to defence to a claim for false imprisonment. The test for deciding whether measures falling short of arrest could lawfully be taken against individuals was whether there was a reasonable suspicion that that individual was presenting a particular threats. The burden of proof was on the claimant to show that the exercise of discretion to detain was unreasonable.

Fayed vs. metropolitan police commissioner

The claimant's detention didn't amount to a deprivation of liberty within article 5(1) but in this instance

it would be justified under article 5(1)© because the detention was imposed with the purpose of arresting people whom it would be lawful an practicable police to consider that everyone in the cordon , including the claimants , were demonstrators and might be about to commit a breach of the peace. The claimants had been falsely imprisoned, but that measure that had been necessary for the protection of everyone involved , in order to contain the crowd until safe dispersal could be arranged. Although the claimants were vindicated in part, judgment was entered for defendants.

ÿ Inevitable Accident

Inevitable accident provides a good excuse for a prima facie trespass which is otherwise actionable. An inevitable accident has been defined as an event over which the defendant had no control and the effects of which could not have been avoided by the exercise of the greatest care and skill. This may be said to be the generally accepted view since Stanley v. Powell

In this case the defendant while firing at a pheasant accidentally and without negligence shot the plaintiff, who was employed to carry cartridges for a shooting party, with a pellet which ricocheted from a tree at a considerable angle. This case might have been decided on the ground that

the plaintiff had voluntarily accepted the risk by joining the party. But it was held that even if the action was in trespass, not case, the injury being accidental the defendant could not be liable.

ÿ Preservation Of Public Peace

A person who disturbs public worship or a public meeting or a lawful game may be lawfully removed. Here the force used shouldn't be more than what is necessary. Every citizen in whose presence a breach of peace is being or reasonably appears to be about to be committed has the right to take reasonable steps to make the person who is breaking or threatening to

break the peace refrain from doing so; and those steps in appropriate cases will include detaining him against his will.

Remedies:

Damages:

The usual remedies sought for trespass to the person is damages, and as has seen there may be an award of aggravated and exemplary damages in an appropriate case.

Justification for an assault, a person is liable for the direct consequences flowing from the wrongful injury caused. When the assault has been carried to the extent of maiming or crippling or of wounding a person, damages will be greater than those

awarded for a mere assault or battery.

In the case of a joint assault, the true criterion of damages is the whole injury which the plaintiff has sustained from the joint act of trespass.

Lord delving while dealing with a case of false imprisonment has observed that the court is not in this category of case confined to awarding compensation for loss of liberty and for physical and mental distress as it thinks may have been caused. It is also proper for it to make any departure from constitutional

practice, even only a slight one, by exemplary damages.

The more highhanded and less reasonable the detention is the larger may be the damages; and conversely the more nearly reasonably the difference may have acted, the smaller will be the proper assessment. The assessment will include compensation for indignity, mental suffering, disgrace, and loss of social status and reputation.

Self-Help:

It is also a very important remedy available in the case of trespass to person. For example, a person who has been falsely imprisoned may

escape, and someone who has been falsely imprisoned may escape, and someone who has been unlawfully arrested may resist arrest by use of reasonable force.

Habeas Corpus:

The ancient prerogative remedy of habeas corpus is theoretically available for false imprisonment, though this is remedy sought today. This would mean an application to the divisional court for an order to release the person unlawfully detained, and is only sought in emergency cases.

Conclusion:

Trespass to person is a general tort which is faced in our day to day life. People suffer a lot of difficulties because of this acts but due to unawareness they don't file suits of trespass to person even though when a suffer harm due to this interferences. In fact, in Indian society people are so much unaware of their rights that they go on facing problems without protesting. In contrast to these the American society is so litigant society that people file suits even for minor trespass cases also. Since the body of every person is inviolate any person don't has the right to interfere with the body of an individual either directly or indirectly.

In this project an attempt has been made to cover almost each and every aspect related to trespass to person. Every concept has been elaborately explained so that there does not remain a single doubt related to Trespass to person. Special emphasis has been given on the defenses to the trespass to person. Further the most important thing I.e. the relevance of intention has also been explained in this case.

Trespass to person is a tort which is sometimes confused with other torts like Negligence. So in this case it becomes essential to file a right suit to get a right remedy.

Moreover, the defenses to trespass to person is even a more important concept. In Concerning these difficulties certain defenses has been provided under the tort of nuisance which provides immunity to the tortfeasors and to carry out their work smoothly. In everyday life there arises situations when a little bit of physical contact should be tolerated e.g. in a crowd if a person is pushed by another person or while traveling in a bus due to rush a person is pushed all this contact will not amount to trespass to person.

Further tort for personal injuries resulting from a medical negligence is not a case of trespass to person. It is assumed that in all physical contact generally acceptable in the ordinary

conduct of everyday life there exists implied consent. If the contact or interference complained of do not cover the exigencies of everyday life then only a case of trespass will lie where the excuse is to be established by the defendant. E.g. when a person is injured and he requires immediate medical treatment then providing him the medical facilities will not amount to trespass to person.

Thus, it is very necessary to understand the difference between the situations where an act may amount to trespass or where it may not. Through this way only we will be able to exercise our rights and duties.

Thus, knowledge about trespass and its defenses is one of the important concept knowledge of which will be fruitful for the individuals as well as for the society.

Keeping these facts in mind this project is an attempt to explain the various concepts related to trespass to person and its defenses has been explained so that the concept will help people to exercise their rights and duties.

Referred Cases:

- (1) fowler v. lanning**
- (2) latting v. cooper**
- (3) Wilson v. pringle**

**(4) Fagan v. metropolitan police
commissioner**

(5) Stephens v. Myers

(6) read v. Coker

(7) metering v. Grahame

(8) birds v. Jones

(9) Murray v. ministry of defense

(10) lane v. Holloway