The Door Left Ajar: Evolution of Law of Torts in India

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Abstract:

A "tort" is "[a] private or civil wrong or injury, including an action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages."[1]

The pages of the history unveil the inevitability of the common law system for ages that has been based on judicial precedents that tackled problems on case to case basis. There are codified laws for most of the offenses but it is impractical to foresee all the wrongdoings and create laws for the same in advance.

This paper deals with the emerging and evolutionary form of law that came into existence with the increasing toll of unpredictable cases. There has been a shift towards a relatively new form of law, 'The Law of Torts' as a means to protect the public. The well-being of humanity is gaining its pace, making way for the Law of Torts which focuses on bringing forth harmony in every sphere. This paper explains the significance of this required harmony and thereby of the Law of Torts.

The paper also seeks to highlight the nature and essential prerequisites of the Law of Torts. The objective of the paper is to trace the historical evolution of the Law of torts and its current status and importance in the Indian Society. Furthermore, it establishes on the growth of this law in India. Lastly, the paper delves into analyzing the need for codified legislation in India and concludes by suggesting the necessary reforms and an international comparative study with the way Law of Torts is founded in other countries

I. INTRODUCTION

Law of Torts is still an unexplored charter or at least not a thoroughly explored one, even till date especially in developing countries. For a majority of commoners, it still remains an enigma, probably one of the roads untraveled by Robert Frost[2]. This uncodified law is a chamber of riddles for people in growing countries like India itself.

A simple illustration might make us understand this law better. One minute you are strolling out and about and on the next you slip into the pit left open. Without having a look around, you stand up rapidly to conceal the shame you have confronted. Be that as it may, what would you be able to do? This happens often, particularly in a nation like India. Is there any individual who could be rebuked for this? You must feel like, "I have maintained wounds so I ought to be more cautious about such scenarios next time". You often forget that it is Municipal Corporation's duty to cover the pit. They were careless in satisfying their obligation. This is what the law of torts throws a light upon.

[1] Garner, Bryan A., and Henry Campbell Black. "Black's Law Dictionary." *Black's Law Dictionary*, Thomson Reuters, 2016.

[2] "Robert Frost." *Poetry Foundation*, Poetry Foundation.

The individual who causes such mischief shall be made liable to pay remuneration to the harmed party (plaintiff); this compensation can be in the form of cash. The monetary compensation is known as 'damages'. Keeping in mind the end goal to assert harms, there must be some break of obligation towards the offended party which brought about such damage. Regardless of whether the damage caused was not deliberate but rather because of inconsiderateness or carelessness, at that point additionally the other party can be sued. Tort enables individuals to consider the other individual responsible for the wounds endured by them.

II. Nature of Torts and its Conceptualization

The term 'tort' owes its origin to the Common Law system of England which means 'wrong'. The word tort is derived from the Latin word 'tortum'[3] which implies twisted and is as opposed to straight. Everybody is expected to act in a specific way and when one veers off from this conventional path into warped ways, he has committed a tort. As a specialized term of English law, tort has gained an extraordinary significance as a type of civil injury. It is an uncodified form of law.

According to Salmond[4] "A tort is a civil wrong for which the remedy is an action for liquidated damages and which is not exclusively the breach of a contract, or the breach of a trust, or the breach of other merely equitable obligation"

Winfield[5] opines that "Tortious Liability arises from the breach of duty primarily fixed by law; this duty is towards persons generally and its breach is redress able by an action for unliquidated damages."

The law of tort is the far-reaching body of rights, duties, and cures connected through the courts in civil procedures. It gives remedies to help the individuals who have endured misfortune or damage following the wrongful or careless actions of others.

III. Essentials of Law of Torts

- **Act/Omission and a Breach of Duty**:

To constitute a tort there must be a demonstration which can either be negative or positive. There must be some rupture of obligation to constitute such wrongful act or omission. It implies that there was an obligation to do or not to complete a specific activity, or to carry it on in a defined way in which a sensible man is relied upon to act in specific situations. For instance, an industry working for toxic plants has merely put a stop sign for children, however, neglects to put legitimate fencing and one of the kids eats a product from that toxic plant and kicks the bucket, at that point the company can be held responsible for such

[3]Bangia, R. K., and Narender Kumar. *R.K. Bangia's the Law of Torts: Including Motor Vehicles Act, Consumer Protection Act and Competition Act*. Allahabad Law Agency, 2018

[4]"Nature and Scope of the Law of Torts – Explained." LAW MANTRA (Registration No 150 in Book No.4 Vol No 3, 603 0f 2018)

[5] Jolowicz, J. A., and T. Ellis. Lewis. *Winfield on Tort*. Sweet & Maxwell, 1963.

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recklessness and neglect. A man can't be held accountable for social or good off-base. For instance, in the event that an individual neglects to help a starving man then he can't be held responsible since it is ethically wrong except if some legitimate obligation can be demonstrated.

- **Legitimate Damage**:

The final ingredient in constituting a tort is the rupturing of lawful obligation. The legitimate right(s) vested with the offended party ought to have been broken i.e. certain acts or oversight have brought about the transgression of lawful duty. When there is an omission or violation of legal duty by an act, the party who has incurred damages is eligible to seek relief from court and claim damages for their loss. Legitimate damage can be understood clearly with the assistance of following maxims:

- **Injuria sine damnum:**

"Injuria" implies unapproved obstruction with the privileges of the offended party. "Damnum" implies damage or misfortune endured as far as solace, monetary terms, and wellbeing and so on are considered. At the point when there is an infringement of lawful appropriate with no damage to the offended party, the offended party can approach the court.

In Ashby v White[6], the offended party was kept away by the respondent, a returning officer. The offended party was a qualified voter at the parliamentary election but because of detainment, his voting right was abused. The offended party sued the litigant for infringement of his lawful right. Since there is an injury in that spot, it is likewise that a cure must exist for it.

Also, in Bhim Singh v The State of J&K[7], the offended party was an MLA of J&K who was kept wrongfully by the police while he was going to the Assembly session. The basic right of individual freedom was disregarded and besides this he was not exhibited before the judge inside the essential time frame. Here the wrongful and malevolent act of the respondent was significant so the court granted exemplary damages of Rs. 50,000 to Bhim Singh.

- **Damnum sine injuria:**

According to this maxim, there is some damage caused to the offended party with no breach of duty towards offended party's legitimate right. A man cannot seek relief in law regardless of whether the damage is caused because of the ponder act of the respondent, as long as the other party is practicing his legitimate right.

In a leading case[8], a litigant set up a school precisely before the school of the offended party. The offended party endured misfortune in view of the adversary school as he needed to bring down the expenses and

[6]Ashby v White (1703) 92 ER 126
[7]Bhim Singh, Mla vs State Of J & K And Ors. AIR 1986 SC 494
[8]Gloucester Grammar School 1410 Y.B. 11 Hen. IV of 47

numerous understudies took confirmation in litigant's school. There is no cure accessible for the misfortune endured by him. The respondent has not done anything in abundance of his legitimate right.

IV. Historical Evolution

- **The system of Common Law and the beginning of Precedents**

Before the French, during the triumph of William the Conqueror's 1066 Norman Conquest[9], the legitimate framework was to some degrees random, led on a pretty much case-by-case premise. After 1066, prominent judges were designated to transfer about a given district so as to retain those town laws which had been created more than two centuries ago. Profiting by this data, these judges noted and implemented statutes they considered most reasonable into their own particular court discoveries. When they were often alluded to, these cases progressed towards becoming what is currently called ‘legal precedents’. Sessions amid which these judges conducted trials were named as "assizes", or in current terms, "sittings". Indeed, even now, the place from which a judge renders decisions and sentences is called "the bench". Once settled, these legal precedents were intended to be connected similarly to each individual from society, from a master to a serf, achieving the term common law.

- **Torts and the Common Law System**

The French speaking lawyers and judges of the Courts of Normandy and Angevin Kings of England[10] introduced the term 'tort' in English Law. As a specialized term of English law, the tort has procured an extraordinary significance as a type of common damage or off-base. Till about the mid seventeenth Century, tort was a dark term when the technique was viewed as more meaningful than the privilege of a person. This accentuation on a procedural basis for deciding the accomplishment of a case proceeded somewhere in the span of 500 years, till 1852, when the Common Law Procedure Act[11] was passed and supremacy of substance over the methodology created firmer ground. Today a prominent maxim dominating legal arena is 'Ubi jus ibi remedium'[12], i.e. “where there is a right, there is a remedy”.

V. Nature of Application of Law of Torts in India

In India, the term tort has been in presence since the pre-independence period. The Sanskrit word “Jimha”, which implies ‘slanted’ was utilized as a part of old Hindu law message in the sense of 'tortious of fraudulent conduct'[13]. Tort had a not-so significant inception under the Hindu law and the Muslim law

[9]Swan, Colleen. “Evolution of Tort Law.” *Owlcation*, Owlcation, 8 Feb. 2017

[10]Pollock, Frederick, et al. *The History of English Law: before the Time of Edward I*. Liberty Fund, 2010.

[11]Participation, Expert. “Common Law Procedure Act 1852.” *Legislation.gov.uk*, Queen's Printer of Acts of Parliament, 31 Dec. 1974.

[12]“Ubi Jus Ibi Remedium – For Every Wrong, the Law Provides a Remedy.” *Indian News, Law News on Indian Law, Latest Indian Law News*, 18 Feb. 2016.

[13] George L. Priest, *The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law*. The Journal of Legal Studies Vol. 14, No. 3, Critical Issues in Tort Law Reform: A Search for Principles (Dec., 1985), pp. 461-527

compared to English Law. The discipline of tort in these frameworks possessed a more conspicuous place than pay for wrongs. The law of torts in India is, for the most part, the English law of torts which itself depends on the standards of the customary law of England. However, the Indian courts before applying any control of English law can see whether it is suited to the Indian culture and conditions. The use of the English law in India has in this way been a specific application. In the case M.C. Mehta v Union of India[14], Justice Bhagwati observed, *"We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized 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."*

Amid British control, courts in India were ordered by Acts of Parliament in the UK and by Indian establishments to act as per equity, justice, and good conscience if there was no particular lead of instituted law pertinent to the debate in a suit. Concerning suits for harms of torts, courts took after the English customary law seeing that it was in consonant with equity, justice, and good conscience. An English statute managing tort law is not by its own constraint pertinent to India but rather might be taken after here unless it is not acknowledged for the reason aforementioned.

The jurisdiction of section 9 of the Civil Procedure Code[15] which allows the civil court to try all cases of civil nature also includes tortious cases and liabilities. In the case of Jay Laxmi Salt Works (p) Ltd. v the State of Gujarat[16], Justice Sahai observed,

"Truly speaking the entire law of torts is founded and structured on morality. Therefore, it would be primitive to close strictly or close finally the ever-expanding and growing horizon of tortious liability. Even for social development, orderly growth of the social and cultural the liberal approach to tortious liability by the court would be conductive."[17]

The perception made by Hon'ble Justice Sahai in the Salt Works case dissipates any deceptions with regards to the need for the law of torts. His perceptions likewise imagine the development of tort prosecution in India. To completely asses the feigned party by tort law in an advanced society, it is informational to swing to the history of England during the last three centuries. This is for two reasons firstly, tort case in England has developed essentially, making it a fascinating study and besides, the law of torts in India has been to a great extent obtained from the English law of torts.

[14] AIR 1988 SC 1037
[15] Section 9 of Civil Procedure Code, 1908
[16] (1994) 4 SCC 1
[17] Iyer, S. Ramaswamy, et al. *Ramaswamy Iyer's the Law of Torts*. LexisNexis Butterworths, 2007.

It is perceptible that we cannot stand to disregard any office which can manage a singular lead in similarity with the requirements of social peace and satisfaction which are the essential elements on which our arrangements of national headway can rest. It is not really important to include that while embracing English standards and speculations, we need to make adjustments and adaptations. These are demands of conditions in India, as observed by different Indian Judges[18] who furthermore noted the immense changes in this branch of law that are occurring somewhere else.

VI. International Perspective

The remarkable truth of International advancement of law of torts is the history pertinent to the present setting in the development of their own tort law from little beginnings to the stature and status of a different branch of law. This was the work of the legal counselors and judges who built up the activity for damages as a solution for infringement of rights and obligations and molded it as an instrument for making individuals stick to models of sensible conduct and to regard the rights and interests of each other.

- **The U.K.**

In The U.K., Law of Torts predominantly takes the form of judicial precedents, and a few regulations within the ambit of law of torts have been codified for the welfare of the citizens, a lot similar to that of India since that is where the Indian Judicial system draws its inspiration from. 'Tort' is a private, civil wrong and is primarily of two types- intentional torts and negligent torts. There is also a new developing branch of vicarious liability. The key elements to be proved for a tort are the existence of a duty, the breach of that duty and damages as consequence to that. The idea of 'duty' was summed up in the well-known judgment of Donoghue v Stevenson[19]. The latest judgment on the subject of building up an obligation of care is Caparo v Dickman[20]. Its development all through the late nineteenth and twentieth century mirrors the weights which the ascent of modern and urban culture has conveyed to endure the conventional classifications of legitimate change for obstruction with ensured interests.[21]

- **The U.S.**

The U.S. tort law has its starting point in the British customary law framework. A section of U.S. tort laws was created by judges through lengthy judgments and observations written in particular cases.[22] The assortment of law is liquid, literally changing consistently as new cases make judges rethink and insist or overhaul earlier sentiments, and in addition address issues that already got away with mediation. Tort law in the United States exists to change damages caused to a person by the lead of another that falls below a

[18] M.C Mehta v. Union of India AIR 1988 SC 1037, Jay Laxmi Salt Works (p) ltd. V. State of Gujrat (1994) 4 SCC 1
[19] [1932] AC 562
[20] [1990] 2 AC 605
[21] Deakin, Johnston and Markesinis Markesinis and Deakin's Tort Law, Oxford University Press, 5th edition, 2003
[22] "Tort Law in the United States." *Fairfield and Woods P.C.*

standard of care characterized by the civil courts. The different types of torts identified are negligence, intentional, vicarious, product, and others.

We need to make a far more prominent utilization of the law of torts than we do now to make it fulfill the needs like which the general population of different nations like U.S.A, Canada, and Australia has utilized it. The utilization made of it in these nations in proving not just by the case law in their courts but also by the ceaseless intrigue manifested by their attorneys, judges, and teachers in the advancement of this branch of law by a method for their commitments to the developing volume of writing on it.

VII. Modern Day Application

The major isolating line between past laws and laws of today is the detachment of what a respondent may have done, and his intentions in doing as such. Initially, just acts were considered. As indicated by Chief Justice Brian[23] "The thought of man shall not be tried, for the devil himself knoweth not the thought of man."

In any case, the impression of the aftereffects of an act, instead of whatever aim may have started it, was voiced in the year 1146[24] a situation where a judge held, on the off chance that if anybody commits an act, anyway adequate in itself, which may affect upon others, he has an obligation to lead this demonstration, to the most extreme level of his capacity, in a way which causes no individual damage or property damage to another. To reword his legal conclusion, the judge clarified if during the time spent lifting timber with a specific end goal to develop a building, the person drops a piece of that timber, hurting his neighbor's home, he will have a substantial case against him. It won't make any difference that the respondent's development was completely lawful, or that he didn't mean the outcome to happen. Henceforth, inferentially, the litigant owes the offended party the money related remuneration expected to repair the damage, and additionally the cost of the work included.

As far as tort frameworks are considered, the intent is essential in about each legal choice. For example, where the dropping of timber is appeared to be deliberate, or because of outrageous carelessness, it is probably going to bring about punitive and also compensatory damages. As their words infer, compensatory damages are intended to compel the litigant to pay for the genuine mischief, maybe supplanting a rooftop as well as various smashed windows. Then again, reformatory damages are planned to rebuff, where expectation or carelessness achieving the edge of purpose can be found by a judge. Coming back to our empirical woven artwork, as hundreds of years passed, the significance of plan ended up perceived, despite the fact that at first likely, with a feeling of vulnerability. Hence, in a 1681 case[25], a judge decided, the law does less worry about the aim of the performing artist similarly as with the misfortune and damage of the

[23] Yadav, R. D. *Law of Crime and Self-Defence*. Mittal Publications, 1993.
[24] Swan, Colleen. "Evolution of Tort Law." *Owlcation*, Owlcation, 8 Feb. 2017
[25] Ibid

people who have endured harm. This shows expectation had started to be viewed as a power which, if not yet focal, could never again be rejected, as without the scarcest importance.

VIII. Tort Law Reforms in India

Marc Galanter, who has considered India's legitimate framework widely, has inferred that India has a tort law deficiency, which he ascribes to a few reasons, including steep court expenses (at first acquainted by the British with check hostile lawsuits), exorbitance of lawyers' charges, delays in mediation, bids, low honors of damages, and poor implementation of judgments, and also a culture of watchfulness to bring down lower civil courts[26].

The law of torts in India is certainly not superfluous but rather simply expects establishments to make it more ascertainable.[27] The disappointment of bothered people to affirm their legitimate rights is maybe to be credited not simply to inadequate valuation for such rights but rather to different causes too, e.g., challenges in demonstrating claims and getting a dependable declaration, high court expenses, and postponement of courts. The disposal of troubles which hinder wronged parties in looking for or acquiring cures which the law accommodates them is an issue which is deserving of thought. In the event that these lacunae are evacuated, India could likewise witness a development in the tort case.

IX. Need for Codification?

Law specialists in England and in India have frequently requested that the law of Torts be diminished to a statutory framework. The benefit of such a frame would be, to the point that the law would end up unequivocal and compartmentalized. Nonetheless, one must not overlook that this branch of the law has advanced out of legal decisions, that its exceptional premise is case law (both English and Indian), and maybe more harm than good might be done to the improvement of this branch of the law by diminishing it to a statutory code.

In the modern era, some parts of the law of torts have been codified, as for example, The Fatal Accident Act, The Workmen's Compensation Act, The Employers' Liability Act, etc. Still, the major portion of this branch of the law is still based on legal precedents.

While most branches of law, e.g., crimes, contracts, property, trusts, and so on, have been systematized; it is fascinating to watch that there is yet no code for torts in India. The majority of the advancement in tort law is the commitment of the Indian Judges and lawyers. In spite of the fact that proposals for an institution on

[26]Marc Galanter, India's Tort Deficit, in FAULT LINES: TORT AS CULTURAL PRACTICE 53–55 (David M. Engel & Michael McCann eds., 2009); Bussani & Infantino, supra note 1, at 81; Marc Galanter, Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy, 20 TEX. INT'L L.J. 273, 274 (1985)

[27]Timothy J. O'Neill, Through a Glass Darkly: Western Tort Law from a South and East Asian Perspective, 11 RUTGERS RACE & L. REV. 1, 11–13 (2009)

tort law were made as early as 1886 by Sir F Pollock[28], who arranged a bill known as the 'Indian Civil Wrongs Bill'[29] at the occurrence of the Government of India, it was never taken up for enactment.

There is no doubt that a code is very valuable. However, it is well to perceive that this branch of law is still developing and that since it is hard to set up a code, it would not accordingly help a legitimate advancement of the law to do as such. The fact that the law of torts is not codified increases its ambit to encompass various cases. The development of tort law in India does not come close to other dynamic nations which have put it to much better use as talked about already. Recognizing the way that a code on torts would be untimely for the reasons previously mentioned, it maybe savvier, to begin with, for institutions on specific subjects on which the case-law in India is unsuitable and must be corrected. One of the principal proposals for enactment made by the Law Commission[30] delegated by the Government of India is regarding the matter of obligation of the government for torts of its servants.

X. TORTIOUS LITIGATION

India regardless of being frequently referred to as a litigious nation, the rate of the suits instituted is low, because of constraints, for example, long postponements, overwhelming costs and pitiful harm grants. There has clearly been an expansion in cases finished in the previous years, particularly with cases including the administration. This has been said to happen because of India's financial development and the resultant sensitization with regards to lawful rights.

Researchers and attorneys have recognized conflicting aims for the law of tort, to some degree reflected in the distinctive kinds of harms granted by the courts: compensatory, punitive and exemplary or aggravated. Glanville Williams saw four conceivable bases “In The Aims of the Law of Tort”[31], on which distinctive torts rested: conciliation, equity, deterrence, and remuneration.

From the late 1950s, a gathering of lawfully arranged financial experts and monetarily situated legal advisors accentuated motivating forces and prevention and distinguished the point of tort just like the productive appropriation of hazard. They are frequently depicted as the law and financial matters development. Ronald Coase, one of the development's primary defenders, submitted in his article The Problem of Social Cost[32] (1960) that the aim of tort ought to be to reflect as nearly as conceivable risk where exchange expenses ought to be minimized.

[28] Mittal, Jitendra Kumar. *Indian Legal History*. Central Law Agency, 2005.
[29] Ibid
[30] Latest law steam. “Law Commission Report No. 1- Liability of the State in Tort.” *Latest Laws*.
[31] Glanville Williams *"The Aims of the Law of Tort"* [1951] CLP 137
[32] Coase, Ronald H. “The Problem of Social Cost.” *Economic Analysis of the Law*, pp. 1–13., doi:10.1002/9780470752135.ch1

XI. Conclusion – A future discourse

Each individual in our nation is qualified for appropriate legal right. Law enforces an obligation on each person to regard the lawful right offered on others and any individual meddling with another person's happiness regarding their legitimate rights is said to have committed a tort. The fundamental rule of the law of tort is that each individual has certain interests which are ensured by law. Any demonstration of exclusion or commission which makes harm the legitimately ensured enthusiasm of an individual will be thought to be a tort, the solution for which is an activity for unliquidated harms. Tort is, for the most part, a break of obligation. In India, the law of tort is uncodified even after so much development.

The law of torts in India simply obliges authorization to make it more ascertainable. The disappointment of abused people to attest their lawful rights is maybe to be credited not simply to deficient valuation for such rights but rather to different causes too, e.g., troubles in demonstrating claims and getting a dependable declaration, high court expenses, and deferral of courts. The disposal of challenges which block distressed gatherings in looking for or acquiring cures which the law accommodates them is a matter which is deserving of thought. On the off chance that these lacunae are evacuated, India could likewise witness a development in tort litigation.

In spite of the fact that there are contrasts in assessment among the distinctive legal scholars with respect to the risk in torts, the law has been produced and has made firm roots in the legitimate showground. There are all around characterized components and states of risk in tort law. This limb of law empowers the residents of a state to guarantee redressal for the minor or real harm caused to them. Accordingly, the law has increased much certainty among the laymen.

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