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Critical Analysis of Assault and Battery

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ABSTRACT

The purpose of the research paper is to make a critical analysis between assault and battery in the law of torts. It also explains the public opinion on what people think about assault and battery. The entire research paper speaks about the meaning types and defences to assault and battery, and then both are differentiated on a specific basis. In most countries, assault and battery occur when someone intentionally causes bodily harm to another person and behaves in a way that makes the victim worry that they may suffer harm in the future. This offence is also committed when someone behaves in a way that gives the victim reason to assume they may soon sustain harm. The rules of today combine these two violent crimes into a single charge, but in the past, assault and battery were both believed to be quite different offences. In the past, assault and battery were seen as two quite distinct crimes. So it's important to look at remedies and defences against assault and battery. Also, the conclusion speaks about writers who thought about the topic and how important it is to differentiate between assault and battery in the law of tort. The research paper makes use of theoretical facts as well as articles regarding the differences and defences to battery and assault in the law of torts. Both battery and assault are torts committed, but there is the slightest difference, and a line is drawn due to intention.

Keywords: *Offence, Violent Crimes, Guilty, Willfully, Defences.*

I. INTRODUCTION

Assault is defined as an unlawful attempt to do bodily hurt to another, coupled with the present ability and intention to do the act. In the assault, the charges should incorporate lead that is hostile, making someone else the feeling of dread toward their security. Indeed, even if one individual didn't hurt an individual truly, yet their activities professed to hurt, they are liable. If there should be an occurrence of R. v. S. George, guiding a stacked weapon toward one more is considered an attack. Regardless of whether the firearm isn't stacked, in any case, it is an assault. A battery occurs when one person purposefully touches or utilises force on another person or item linked to them without the agreement of the person being battered with the aim of causing them harm. To be considered to injure another person, there must first be actual physical contact between the two parties, which must take place without the consent of the

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victim. The terms "assault" and "battery" are commonly used interchangeably due to the fact that, in most cases, the assault occurs after the battery.

II. ELEMENTS OF ASSAULT

A state of terror must be generated in the victim's mind for an act to be proven as an attack. An accidental attack may be referred to as such.

A valid concern Additionally, for an assault, fear must be instilled in the victim that something the other person is doing would damage them. The victim must be aware that the perpetrator has the power to hurt him or her.

Harm: Physical violence or threat-related harm can both occur. The victim must be made to believe that the other person is capable of utilising force or harm before a verbal threat can be deemed an assault. The primary motivation behind an attack is to instil terror in the victim's mind.

III. ELEMENTS OF BATTERY

The act: The act must result in physical injury to the person, such as hits, cuts, or wounds. Even if there isn't any obvious bleeding, the sufferer may nonetheless claim battery. Another conduct that does not constitute battery is one that is offensive or harmful. For instance, touching someone inappropriately and against their will.

Physical harm must occur in order for there to be a battery, but there is no necessity for the person doing harm to have the desire to do so. Consent can be used as a defence in this situation.

IV. TYPES OF ASSAULT AND BATTERY

(A) Types of assault

a. Civil Assault

In a civil assault case, the respondent must be held liable for all lost wages and future hardship the victim will endure. In this kind of proceeding, the plaintiff has more power, and the district attorney is not present. The case can only be brought before the court by the plaintiff. The guilty are punished with a jail sentence, a fine, or both.

b. Criminal Assault

It is an assault which is prosecuted criminally. Charges of criminal assault are very serious offences. Criminal assault convictions linger in people's minds long after they've completed their sentences. Depending on the kind of attack, the charges will either be categorised as a misdemeanour or a felony, both of which carry harsh penalties like months or years in jail.

V. DEFENSES TO ASSAULT AND BATTERY

The tort of assault and battery are very similar in many aspects. Both of them constitute a direct physical trespass on the person of another. For instance, when a battery is performed against the complainant, an attack is also committed. This is because of the manner in which the petitioner was detained prior to the actual exercise of illegitimate power (assault). This wouldn't occur merely in instances of battery without any background knowledge regarding the victim. As a result, a guard against attack could also serve as a defence against the battery. They are seen together to evaluate their guards as a result of this.

1. Legal Authority

A person who allegedly commits battery or assault while acting legally cannot be held accountable. According to the law, police officers may use physical force if it is required to do their duties. However, they should only take action within the boundaries set forth by the law.

2. Consent

A claimant's suit for battery or assault would be unsuccessful if he gave his consent to the harm that was done to him. The adage "violenti non fit injuria" captures this. As a result, if someone gets hurt while playing a contact sport and it's allowed by the rules of the game, they cannot claim assault or battery

3. Unavoidability

Trespassing on people may be permitted in cases where it is required to avoid harm. It may also be used in medical situations to support the care of a patient without capacity.

4. Self Defense

A person has the right to use reasonable force on his attacker in self-defence. However, the amount of force employed must be appropriate for the threat.

(A) Remedies in Battery

- a. Legal Remedies:** Injuries, anguish, and suffering brought on by the defendant are compensated by the defendant to the plaintiff through legal remedies. The compensation is directly inversely correlated to the plaintiff's loss. They are thought of as tort claims.
- b. Equitable Remedies:** Equitable remedies include temporary restraining orders, which forgo contact between the plaintiff and defendant for a specified time, and temporary or permanent injunctions, which forbid the illegal activities started by

the defendant. These remedies are used when monetary damages cannot bring the victim back to normal.

VI. CRITICAL ANALYSIS OF ASSAULT AND BATTERY

(A) In Australia

Assault charges are taken very seriously in Australia. Assault is considered a crime against the person, so the charges should not be taken lightly, no matter how small the incident may have seemed. There are different punishments for different types of assault, depending on how bad the attack was. However, the maximum punishment for all types of assault is jail time. Whether or not the magistrate or judge gives a prison sentence depends on the type of crime, the circumstances surrounding the crime, and the criminal history of the person who did the crime.

Assault could happen when a person is hit, touched, moved, or forced without their permission or with their permission if they were tricked into giving it. Assault doesn't have to involve a physical injury. A person can be charged with assault if they try to hurt someone or threaten to hurt them and they have the ability or seem to have the ability to do so. Assault can also happen when someone uses light, heat, electricity, smells, gas, or any other substance that hurts or bothers another person.

(B) In the United Kingdom

In Wales and England, there are a lot of laws about the assault in general. So that court decisions and judgments are fairer, and the differences are spelt out and made clear. The final sentence will depend on a number of things. The type of assault is also based on how the person who did it has been charged in the past and what they were trying to do, like being racist. For someone to be charged with common assault and/or battery, they don't have to do anything bad or on purpose. Assault is a general term for things like pushing, spitting, pushing, and making threats with words or actions. No serious injury, also called Grievous Bodily Harm (GBH) and Actual Bodily Harm (ABH), is needed. When ABH or GBH happen, the assault charges tend to be more serious. Under s.39, the most time someone can spend in prison for a common assault is six months.

(C) In America

Assault and battery are the same as in other places. In America, it is defined as a new legal term that combines the charges of assault and battery. Assault means doing something wrong that makes someone feel like they might be hurt soon. This means that the thing they are afraid of is something that a reasonable person would also be afraid of. When someone hurts someone

else physically, this is called a battery. This is how the terms have been used in the past, but in modern times, they can mean many different ways to hurt someone. For example, in state laws, the word "assault" can mean either "common law assault" or "battery," or both at the same time. Also, assault and battery can be an either civil or criminal charges. Depending on the type of charge, the factors and definitions of the charges are different. Check out assault and battery to learn more about the different charges.

In each country, the law for assault and battery is different. There isn't even a clear way to explain what these are. It's different in each country. So the trial, the way the law works, and the punishments all depend on the laws of the country. Before enforcing a law or taking any action, it is important to know what a country's law says about battery and assault. What is wrong in one country might not be wrong in another. So it's important that each country has its own rules.

VII. STATUTORY PROVISIONS FOR ASSAULT AND BATTERY

The terms "assault" and "battery" refer to distinct offences for which distinct charges are established. The Indian Penal Code of 1860 contains specific legal rules regarding battery under sections 349 and 350. The Indian Penal Code's Chapter XVI describes the offences that result in bodily harm. The Indian Penal Code defines force in Section 349, while criminal force is defined in Section 350. The Indian Penal Code's Section 352 specifies the penalty for the battery.

(A) SECTION 349 in Indian Penal Code, 1860 – FORCE²

1. A person applying force should make that person move, change direction, or stop moving.
2. Such motion, change of motion, or stoppage of motion is induced in one of the specified three ways: By his bodily power, by any material that comes into contact with any portion of that other person's body, by his wearing or carrying, or by any of his senses of feeling by getting rid of anything related to that act, by coercing an animal to carry out this behaviour

(B) SECTION – 350³Criminal Force

Criminal force is defined as the use of force against another person with the intent to cause harm, fear, or irritation to that person without the other person's agreement, without the other

² Section 349, Indian Penal Code 1860

³ Section 350, Indian Penal Code,

person's consent, or with the knowledge that such action is likely to result in such outcomes.

In cases of assault, the Indian Penal Code 1860, contains the legal requirements. The definition of assault is found in Section 351 of the Indian Penal Code. Assault and associated penalties are listed below for various IPC cases:

(C) SECTION 353 ⁴Assault or Criminal Force To Deter Public Servant From Discharge Of His Duty

Anyone who assaults or uses criminal force against a public servant while that person is performing their official duties, with the intent to stop them from performing their duties, or as a result of something they have done or attempted to do while performing their official duties lawfully, will be punished with either type of imprisonment for a term up to two years, or with a fine, or both.

(D) SECTION 354 Assault or Criminal Force To Woman With Intent To Outrage Her Modesty

Anyone who assaults a woman or uses unlawful force against her with the intent to offend her modesty or with the knowledge that he will likely do so is punishable by imprisonment of either kind for a time that may reach two years, a fine, or a combination of the two.

(E) Section 355 Criminal Force Or Assault With The Goal To Dishonour A Person, Save In Cases Of Extreme Provocation

Without a serious and immediate provocation from that person, anybody who assaults or uses criminal force against another person with the intent to defame them is punishable by imprisonment of either description for a time that may not exceed two years, by fine, or by both.

(F) Section 356 Using Violence Or Assault To Try To Steal Something That Someone Is Carrying

Any person who assaults or uses unlawful force against another person while attempting to steal from them while they are wearing or carrying property faces a sentence of up to two years in jail, a fine, or a combination of the two.

(G) SECTION 357 Assault Or Criminal Force In Attempt Wrongfully To Confine A Person

Any person who assaults another person or uses unlawful force against them in an effort to detain them unlawfully faces a sentence of up to one year in prison, a fine of up to one thousand

⁴ Section 353, Indian Penal Code,

rupees, or a combination of the two.

(H)SECTION 358 Assault Or Criminal Force On Grade Provocation

Anyone who assaults or uses criminal force against another person after being severely and suddenly provoked by that person faces a sentence of up to one month in jail, a fine of up to 200 rupees, or a combination of the two.

VIII. 18TH CENTURY AND 19TH CENTURY CASE LAWS

According to R v. Constanza[vi] 1997⁵, simple verbal intimidation might also be considered assault. Therefore, verbal abuse qualifies as assault as well. For instance, the action of punching is not necessary for the assertion, "I'm going to punch you." Even a simple statement can incite someone to attack themselves out of fear. According to me what we say matters a lot, so any abuse might result in an assault.

In the case R v. Ireland[vii] 1997, ⁶the defendant made numerous phone conversations but kept quiet during them, inflicting dread and serious psychological harm. As a result, the court ruled that simply remaining silent also constitutes an assault because it causes dread. This shows that even silence can amount to an assault.

In the case of Kader v. K.A. Alagarwamy, 1965,⁷ a policeman handcuffed a prisoner who was receiving treatment at a nearby hospital window. It was said that the police officer would be held accountable for employing excessive force and treating a human being like an animal. According to me, the policeman should not have done that because even a prisoner is a human and has his right.

In the case of Fagan v. Metro Police Commissioner, 1969, ⁸it was decided that hitting someone's foot with an automobile constituted a battery. Actus Reus, or the person's mental condition, was crucial in this situation. But the battery also has some defences, but hitting someone amounts to battery.

In the case of Hopper v. Reeve, 1817, ⁹it was decided that taking a chair away from someone who is about to sit and causing them to tumble to the ground constitutes battery. It is assault if done before the victim strikes the ground. In my opinion, it's very true that an assault can turn into battery on

⁵ R.v. Constanza (1997)

⁶ R v Ireland (1997), UKHL 34

⁷ Kader v K.A. Alagarwamy (1965), MAD 438

⁸ Fagan v Metro Police Commissioner(1969), 1 Q.B. 439

⁹ Hopper v Reeve(1817),

Dailey v. Garratt, 1955¹⁰

In 1955, Ruth Garratt was seated when 5-year-old Brian Dailey pushed the chair out from under her. Adult Ruth was injured when she fell and shattered her hip. Little Brian was accused of purposefully doing the act, which is known as the battery, even though he had no intention of hurting Ruth, and her family sued him for Ruth's injuries. The judge agreed with Dailey's argument that he had no malicious intent while making his decision. However, the judge issued a \$11,000 finding that was reversed on appeal.

Putney v. Vosburg, 1891¹¹

Andrew Vosburg, 14, had a broken leg that was taking a while to heal. One day, George Putney, an 11-year-old student, crossed the aisle with his foot and made contact with Vosburg's leg just below the knee, committing what is known as violence. Due to how little the touch was at first, Vosburg didn't feel anything. However, a few minutes later, he experienced excruciating pain. Vosburg's injuries worsened to the point that he had vomiting, significant swelling, and the need for two operations, during which it was determined that the boy had lost the use of his leg due to severe bone degeneration. The accusation of violence against George Putney was brought by the parents of Andrew Vosburg. Vosburg was given only \$2,800 as a result of the trial court's favourable ruling. Due to a mistake in the first trial, Putney's family filed an appeal, and a second trial was mandated. In the course of the trial, Putney's defence argued that since he was unaware that Vosburg had previously been hurt, he could not have intended to inflict such serious harm. Once more ruling in Andrew Vosburg's favour, the trial court gave him a \$2,500 payout. The common law doctrine known as the "eggshell skull rule," which essentially states that one person (the defendant) takes another person (the plaintiff) as he finds him, is best illustrated by the case of Vosburg v. Putney. It is irrelevant that the defendant was unaware of the plaintiff's earlier damage (an "eggshell skull") since he should have known that his acts may result in another person suffering substantial harm.

IX. 21ST-CENTURY CASE LAWS**Worcester District Court Trial, 2014**

On September 22, 2014, just after midnight, a woman told her off-duty policeman husband that their neighbours were trying to fight on their lawn. He looks out the window at a fight. He calls the police in Shrewsbury, who come. When they get there, the couple is at home. She is crying and shaking when the police arrive. She doesn't speak English as her first language, so it's hard

¹⁰ Dailey v Garratt(1955), 46 Wn.2d 197, 279 P.2D 1091

¹¹Putney v Vosburg(1891), -80 wis.523, 50 N.W. 403, 1891 Wisc. LEXIS 234

for her to talk to people. Police say that many kitchen chairs were broken. Inside the house, the husband and his wife were noticed without their shirts on. The wife told the police that she and her husband had a fight, went outside, and that the husband struck her and pushed her down. She says that the husband said he would blow up the house. There's also a roommate who lives there with her child. She says she listened to the fight, but she didn't leave her room until the police came. The husband is arrested and put in handcuffs. He was held without bail at first because he was a danger to the community. \$25k bail

Multiple Charges – Dismissed After Pretrial Probation Ends – No Record – Wrentham District Court 2019

A patron who was 19 years old was charged with violence and assault on a police officer, as well as disorderly behaviour and resisting arrest. These accusations were brought about because the suspect resisted arrest and engaged in disorderly behaviour. Although the allegation of assault and battery was withdrawn, the defendant was nonetheless placed on pretrial probation for a term of three months for each of the other two offences. The cases represented by Attorney Casale have been successfully handled thanks to his efforts. Following the passage of the allotted time, the charges against the young guy will be dismissed as well, leaving his record as clean as is humanly feasible. This will take place so long as the customer does not have any further run-ins with the law.

Settlement Reached In Fatal Police Shooting Lawsuit 2020

AP — Vancouver, Washington The Vancouver City Council in Washington has authorised a \$725,000 compensation for the April 2020 police shooting of a man who was having a mental health crisis. Three Vancouver police officers shot and murdered 50-year-old William Abbe.

Oklahoma Prison Guard Charged With Striking Shacked Inmate 2022

A prison officer in Oklahoma has been accused of hitting a handcuffed inmate. (AP) MCALESTER, Oklahoma — At the Oklahoma State Penitentiary in McAlester, a shackled prisoner was allegedly struck by an Oklahoma prison officer. According to court documents, Lt. William Graham, 35, was charged on Monday with aggravated assault and battery, producing false evidence, both felonies and obstruction of justice, a misdemeanor.¹²

2 students charged with assaulting a transgender student in 2022

Two high school students in Massachusetts are accused of beating up a transgender student from a rival school after a boy's basketball game last week. The Sun Chronicle said that a senior at

Foxborough High School who is 18 years old and pleaded not guilty on Tuesday was given no bail and put on GPS monitoring. The other suspect, a boy from Foxborough who is under the age of 18, was arraigned in Juvenile Court, which is a closed court. Police say the charges are related to a fight that happened in the parking lot of North Attleborough High School on February 8. The transgender student from North Attleborough was taunted and hurt during the fight, which led to the charges; authorities say that both of them were charged with assault and battery with a dangerous weapon, assault and battery to intimidate, and a violation of civil rights.

During a brawl, a Boston airport employee was stabbed in 2022.

State police said that early on Tuesday at Boston's Logan Airport, an American Airlines employee attacked a coworker with a multifunctional tool. According to The Boston Globe, the argument started around 1:30 in the morning on the ramp side of Terminal B. The alleged attacker, a 34-year-old guy from Leominster, was detained by state police inside the airport while in possession of a Leatherman tool. According to state police spokesman David Procopio, he has been charged with assault and battery with a dangerous weapon. The dead man was a 38-year-old native of Lynn, according to Procopio. He was released from the hospital late on Tuesday, according to Matthew Brellis, a spokesman for the Suffolk district attorney's office. American Airlines took some time to answer when the Globe called them for comment on Tuesday night.

X. SUGGESTIONS

Assault and battery could mean different things to different people. What a conservative, religious country calls assault might be different from what a western country calls it. So the punishments for these kinds of crimes vary. So, if you don't know the law, it's hard to make a clear accusation against someone. To clear things up, it is very important to study the laws of the country in question. People should also be aware of this and not do anything that could be called "assault and battery" in a country, or it could become a serious crime. People should remember it. People should also be told about these things, so they don't do anything wrong.

XI. CONCLUSION

Therefore, assault and battery are both deliberate torts that deal with causing harm to another person or that person's property without that person's consent. If the plaintiff thinks future battery may have been caused, assault may be charged. Because a battery cannot be formed without physical touch, physical contact is crucial in this situation. Since it's nearly hard to avoid making physical contact with other individuals in day-to-day existence, for physical contact to

qualify as battery, it must cause harm or be offensive; nonetheless, this does not qualify as an assault. In order for the conduct to be illegal, physical contact must cause the person enough harm. The victim must be unaware of the impending deed. Hence people should not think that assault and battery are the same thing. Battery and assault are the two sides of the same coin.
