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# Need for Codification of Tort Law

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## ABSTRACT

*In contrast to nations like the United Kingdom, the United States, and China, India does not recognise civil wrongs as grounds for a lawsuit. In tort proceedings, Indian courts rely on provisions in a number of legislation to determine whether a claim is admissible. When it comes to the State's tortious responsibility, Indian tort is still based on the pre-independence British paradigm. Only under Article 300 of the Indian Constitution may the state be held accountable, and only for sovereign actions. The narrow border separating sovereign and non-sovereign activities has caused numerous judges to express unease when deciding state accountability. Litigation for tort claims is less popular in India than it should be because of the dispersed remedies provided for tortious wrongs under numerous legislation. As a result, tort law, which is one of the most successful means of resolving personal injury claims, is underutilised in India. The Consumer Protection Act, 1986, which was passed in India in 1986, outlines remedies for product liability claims, however, it has several gaps. High-tort cases, such as the Bhopal Gas Tragedy case, are not handled in India. In contrast to other disciplines of law, such as crimes, contracts, property, and trusts, torts have yet to be codified in India. In tort law, Indian judges and lawyers have made a significant contribution. Tort liability in the setting of a welfare state is unfamiliar to the majority of the populace.*

**Keywords:** Codification, Tort, Law.

## I. INTRODUCTION

In its most basic form, law is a social contract between individuals that is enforced by the government in the interest of the community as a whole. In a larger sense, it included all kinds of moral, religious, political, and social codes that guide human behaviour. There are two basic categories of law in the nation, civil and criminal, which are recognised and enforced by the State. A civil wrong whereby the remedy is a lawsuit for unliquidated damages and what is not primarily a violation of agreement, a betrayal of trust, or a breach of another simply equitable duty, is known as a tort, and it is the focus of this study. Determining that damages in tort cases are primarily about restoring a victim's status in the absence of the harm is important because it shows that plaintiffs' rights to compensation go beyond a simple quest for a pittance.

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To put it another way, tort law is predicated on the idea that someone who harms another must make up for the damage they have caused. To put it another way, it punishes anybody who interferes with another person's property without their consent. Thus, this research is an effort to examine the precise position of Indian tort law in required and determining and deciding tortious obligations and to find out the ambiguities in the current Indian tort system because of the unique nature of tort law and its massive impact on the rights of people.

Tort law has changed and expanded considerably in economically advanced nations like the United Kingdom, the United States, and Australia in this period of globalisation and liberalisation. Toxic torts and torts impacting the rights of aliens are examples of new species of torts. Because of this, nations with established legal systems have codified law that removes any confusion and provides a solid premise for tort claims, rendering it one of the most popular branches of litigation in these countries. Even though India has one of the most extensive legal frameworks in the world, it has yet to establish and pass a codified statute covering all areas of tort law. Despite the country's independence, the tort law in India is still based on the British model, which is based on English common law. There is still a lot of work to be done in tort law in India, which relies heavily on the interpretation of the courts. Thus, there is a lack of a solid and guaranteed tort system in India since there is space for disagreement. To claim that tort law has been entirely neglected would be a gross exaggeration. A few examples include: a ruling by the Supreme Court on Multinational Corporation Liability, a ruling on absolute liability for a government agency, a ruling on the evolution of sexual harassment as a tort, a ruling on interim compensation for a rape victim, and a ruling awarding damages for human rights violations under writ jurisdiction, such as the Rs. 20 crore ex-parte award.

Public Liability Insurance Act, 1991, the Environment Protection Act, 1986, the Consumer Protection Act of 1986, Human Rights Protection Act of 1998, Pre-Natal Diagnostics Methodologies Regulations and Prevention of Misuse Act, 1994, are examples of enactments that embody the principles of tortious liability that have been introduced in India. Judgment and the Motor Vehicles Act, 1988, continue to play a role in the evolution of accident law. In the wake of the tragic Bhopal Gas Leak, a new avenue in tort law has opened up, leading to environmental torts, toxic torts, government torts, the culpability of multinational corporations (MNCs), congenital torts, and a tighter version of absolute liability, among other things. Despite this, the Indian Law Reports provide a dramatic contrast to the amount of tort cases pending in the courts.

In contrast to other disciplines of law, such as crimes, contracts, property, and trusts, torts have yet to be codified in India. In tort law, Indian judges and lawyers have made a significant

contribution. The 'Indian Civil Wrongs Bill,' which Sir F Pollock presented for the Government of India in 1886, was never adopted for legislation despite Sir F Pollock's proposals for an enactment on tort law. The absence of a tort law code serves as a deterrent to the practise spreading as a preferred mode of litigation. The expansion of tort law in India pales in comparison to that of other forward-looking nations that have made greater use of it.

"We must develop new principles and put down new standards which will effectively deal with new difficulties which occur in an industrialised economy," Justice Bhagwati said in *M.C.Mehta vs. Union of India*. We cannot allow our judicial thought to be created by reference to English law or any other foreign law. We'll take any light that comes our way, but we'll have to construct our own jurisprudence first." The following are some important and genuine gaps in Indian tort law that will be the focus of this investigation:

## **II. LACK OF DEFINITE LAW TO TACKLE HIGH TORTIOUS CLAIMS**

In India, there is no specific statute to deal with situations involving substantial tort claims. The Bhopal Gas Tragedy is one of the most applicable examples. Everyone is aware of the devastation that has been inflicted on those who have been affected. However, if this issue is examined further, the most insulting and dishonourable conduct that adds to the suffering of the victims is the compensation paid, even after some time had passed. At the outset, the case was dragged from India to the United States because of a lack of complete tort system that includes the advantages of having experience to manage the case, a clear adjudicating body, and a well-defined model to calculate compensation. Finally, after being denied a hearing in the District Court and then the High Court, an appeal to the Supreme Court was finally successful. When the Supreme Court was under societal pressure to reach an agreement in November 1988, it instructed the parties involved to do just that. To make matters worse, just 15% of the initial claim was paid by the accused corporation. An formal declaration from the Government of India has to be issued to back up the claim that compensation was awarded based only on the ability to negotiate. <sup>3</sup> The Bhopal Gas Case would have taken a lot shorter time to resolve if there was a well-developed written law governing the tort liability of multinational corporations. Two lessons may be learned from the Bhopal gas catastrophe. Class actions (even with government assistance) would not be able to stand as an alien claim against the bedrock of court precedent in the United States without a codified statute. Aside from that, the damages paid reveal the asymmetrical negotiating strength that underdeveloped countries have over multinational firms based in rich nations. If a thorough tort law is in place, both of these gaps may be exploited. As a result, Union Carbide picked India as a location for its Indian activities because of the lack of

corporate responsibility in India's legal system. There were no class action lawsuits, a key regulator of corporate ethics. The law of torts was strikingly overlooked in the wake of this calamity. This means that serious tort claims from large-scale industrial catastrophes cannot be litigated in India because of a judicial incapability.

### **III. ABSENCE OF EFFECTIVE REMEDIES IN PRODUCT LIABILITIES**

People are more likely to bring lawsuits under a strong tort system because of the certainty of monetary compensation and the promise of improved service in the future. Indian law allows for remedies predicated on the discretion to choose the amount of restitution or better known as "ex gratia," but there is no assurance that the mistake will not be repeated. This is largely due to the current Indian tort system's emphasis on righting wrongs that have already been done.

When discussing qua-product liability in India, the Consumer Protection Act of 1986 comes into play. A consumer's sole option under the Consumer Protection Act, 1986, is to file a civil claim in district court or with a Consumer Disputes Redressal Commission. Under this Act, consumer interests are protected by establishing up Consumer Councils and other agencies for resolving disputes. District, State and National Consumer Councils are quasi-judicial authorities that work to facilitate informal settlements. Civil Courts are barred from taking notice of proceedings before them as a matter of sub-judice. Because they may only exercise summary jurisdiction, these committees are unable to exercise jurisdiction in matters "containing intricate problems of law and fact.". When it comes to class-action lawsuits, this effectively disqualifies the same from adjudicating any of them and assures that only minor matters may be heard. An important barrier to litigation is that torts need their own circuit since they are so specific in identifying causation, responsibility modes, jurisdiction, unliquidated damages and the formulation of objective calculation factors. Tort law also functions on the idea that the expense of the harm must be passed on to the maker in order to serve as an insurance from similar claims in the future when dealing with goods, including service, liability claims. There is more information and resources available to manufacturers than there is to customers when it comes to unsafe items. For example, manufacturers or dealers of items might raise the price of their products, or pass the costs on to others in the supply chain. As you can see, the current system does not accommodate this logic in the least.

### **IV. PUBLIC INTEREST LITIGATION (P.I.L) FAVOURED AGAINST PUBLIC NUISANCE LITIGATION IN ENVIRONMENTAL DAMAGES**

P.I.L. in India allows class actions based on tortious responsibility in situations involving environmental harm, rather than Public Nuisance Litigation as utilised in the United States. The

damages awarded in this P.I.L incorporating class interest have typically been considered as being restricted to repairing the harm caused and repaying the harm caused in general. [\*] There is a general disregard for the significance of the harm done to each person. A well-defined tort law, on the other hand, would make it prohibitively expensive to engage in the same behaviour, so serving as a safeguard against it happening again.

## **V. CONCLUSION**

Legislating definitions and recommendations may be summarised in the following phrases, as follows: As a result, the Kasturilal ruling will be overturned and interpretations will no longer be arbitrary. There are two reasons to believe that this law will clearly identify the boundaries between sovereign and non-sovereign activities, if not eliminate them altogether.

Adaptability to changing conditions is a need for any legislation, and tort law is no exception. It is impossible for policy changes to be reflected in the implementation if the legislation exists in a void. As a result of tort law, consumers may be empowered, and unethical corporations can be made to respect the consumer's rights. Personal autonomy and dignity are protected even if there is no evidence of injury or wrongdoing. Due to the rising nature of consumer disputes, the legislature must take action and codify tort law in India since today more than ever codification is required in India.

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