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Volenti Non-Fit Injuria - A Critical Analysis

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ABSTRACT

The term "tort" comes from the Latin word "tortum," which literally means "to twist." It refers to twisted, deformed, or illegal behaviour, as well as behaviour that is not straight. The tort law that is currently used in India is based on English law that has been adapted to Indian situations and amended by Indian legislative acts. Its beginnings may be traced back to the creation of British courts in India. The harm that is caused willingly does not establish a legal injury and therefore is not actionable. This notion is encapsulated in the maxim volenti non fit injuria, which directly translates to "anything which a man consents to cannot be reported of as an injury." The theory is only applicable to the risk that a reasonable person would have accepted as a result of his or her activities. Voluntary harm does not create a legal injury and is thus not actionable. A right that has been freely relinquished cannot be enforced. In this paper, the researcher will be discussing the application of maxim at different places during covid – 19. Furthermore, it also emphasises the various elements of this maxim, its limitations, and its impact on laws with different interpretations through each case law. In tort law, the defence of volenti non-fit injuria is one that has a restricted scope. At times, the defendant's carelessness may preclude the employment of the defence of volenti non-fit injuria. Other times, the extent of the defence is constrained by other limits outlined earlier in the article. Lastly, this paper suggests the wider clarification on the assent of knowledge in this maxim.

Keywords – *laws, risk, knowledge, covid – 19.*

I. INTRODUCTION

A tort is described as a civil wrong that can be redressed through an action for unliquidated damages and is not merely a breach of the contractual relationship or a breach of trust. A/q to Salmond "It is a civil wrong for which the remedy is a common-law action for unliquidated damages and which is not entirely the breach of a contract, breach of trust, or other merely balanced obligation". Winfield also defines a tort as, "tortious liability emerges from the breach of a primary legal duty: this duty is owed to all people, and its breach is redressable by an action for unliquidated damages." [2]Trespass to person (which includes wrongful arrest, assault,

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[2]Prachi Verma, Volenti non fit injuria' :A CRITICAL ANALYSIS, DR.RAM MANOHAR LOHIYA NATIONAL LAW UNIVERSITY, LUCKNOW, (June 17th, 2022, 7 : 42 PM), https://www.academia.edu/36502183/Tort_Law_project_on_VOLENTI_NON_FIT_INJURIA_CRITICAL_AN

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and battery), trespass to land, negligence, defamatory remarks, and nuisance are examples of torts. When a plaintiff files a complaint against a defendant for a tort and seeks damages, the defendant is made responsible if all of the elements of the tort are present. Even in this situation, the defendant may be able to avoid liability. This can be accomplished by making a defence plea. *Volenti non-fit injuria*, the act of God, complainant's own fault, statutory authority, the act of state, and other defences may be used. The harm that is inflicted voluntarily does not establish a legal injury and is therefore not actionable. This principle is enclosed in the maxim *volenti non fit injuria*, which literally explains that "that which a man consent to cannot be complained of as an injury." The claimant is not permitted to complain of injury to the possibilities to which he has willingly and knowingly subjected himself, and as a result, his consent is a very strong defence against him. The doctrine only pertains to the risk that a rational person would have assumed as a result of his or her actions. Voluntary harm does not contain a legal injury and is therefore not actionable. A right that has been voluntarily denied or neglected cannot be enforced. If the assent is to the imposition of harm on or, at the very least, to the use of the plaintiff's property, it is more commonly referred to as the plaintiff's "leave and licence." To be able to qualify for the defence of *volenti non-fit injuria*, the act causing the damage must not go further than the scope of what has been agreed upon. In the event that a person is unable to give his or her consent due to insanity or minor status, the consent of the person's parent or guardian is likely to justify the doctrine available as a defence. In order for the defence to be available, the defendant must show that the plaintiff was fully aware of the consequences involved, including both the scope and nature of the risk.

Second, the complainant should have either clearly and explicitly (in a statement or in writing) or, through his actions, agreed to waive all compensatory damages. It's also worth noting that simply knowing about the risk doesn't imply consent, i.e., *sciens non est volens* ("knowing isn't volunteering"). The appearance of unrestricted consent is required. It is clear that consent can be inferred from conduct as well as expressed in words, so the defendant can avoid liability if he was reasonable in implying that the claimant confirmed even if he did not do so secretly.

II. KNOWLEDGE DOES NOT NECESSARILY IMPLY ASSENT

Even if the plaintiff makes no attempt to prevent or avoid the wrongful act or the occurrence of a wrongfully created danger, mere knowledge of the incipient wrongful act or the presence of a wrongfully caused hazard does not constitute assent. In and of itself, knowledge is not a sufficient defence. However, in situations where knowledge assumes that the risk was

ALYSIS.

 [ISSN 2581-5369]

voluntarily accepted, the defence is complete. Simply because someone was aware of the risk does not mean he agreed to take it. Two points must be proven in order for the maxim of *volenti non-fit injuria* to pertain.

i. The plaintiff was aware of the potential danger.

ii. Knowing this, he consented to suffer the consequences.

The plaintiff in Smith v. Baker[3] was hired in the defendant's granite quarry and had worked there for months with a clear awareness that he was in danger as a result of the defendant's negligent exercise of swinging stones over the quarrymen's heads with a crane. The harm caused to the plaintiff by the dropping stone, and it was decided that his knowledge of and assent to the danger did not preclude him from exemplary damages but rather served as evidence to the judges on the question of if he had agreed to take the risk. So we can conclude that knowledge of the risk involved and its acceptance both are a different thing.

The defendants in South Indian Industrials v. Alamelu Ammal[4], a case of Madras, were in the industry of splitting up cast iron by dropping massive loads on it, resulting in broken parts of cast iron falling at a distance of 4 to 5 yards. One of those pieces hit the plaintiff from a distance of more than 70 yards. Because the plaintiff was a worker there, the defendant entered a plea of *volenti non-fit injuria*. The defendant was found liable because he was unable to show that the plaintiff had independently and willfully accepted the risk after fully comprehending it.

In T.C. Balakrishnan Menon v. T.R. Subramaniam[5], a combustible made of a coconut shell packed with combustible substance, rather than rising into the sky and exploding there, rushed at a tangent, fell in amongst the crowd, and exploded, in result, it caused injury to the respondent. The minor, who his father represented, filed a lawsuit for damages due to injury he suffered as a result of the explosion. The lower court also determined that the damage was caused by the defendant's, the independent contractor's, negligence. In this case, the defence of *volenti non-fit injuria* was not raised. A section of the area surrounding the fireworks display had been walled off. Court held that "If the first respondent get inside the area within the perimeter and was injured, he might be considered a volunteer; but to assert that everyone who stood anywhere in the field, a very large and open area open to the public, is a volunteer, is to confront for something encroaching on the preposterous,". As a result, the case was dismissed. The decision implies that just because the plaintiff was aware of the danger, he could not be

[3] (1891) AC 325.
[4] (1932) 17 LW 495.
[5] AIR 1968 Ker 151.

 [ISSN 2581-5369]

said to have accepted and supposed the risk and acted as a volunteer. Because there was no actual consent, the maxim *volenti non-fit injuria* could not be applied.

III. VOLENTI NON-FIT INJURIA AS A DEFENCE TO ESCAPE LIABILITY ARISING OUT OF COVID – 19 AT THE WORKPLACE

Evaluating participant potential exposures, the place of the sporting event, and risk mitigation strategies that can be incorporated are all part of a safe return to sport. Implementing the appropriate policies, practises, and standards to reduce the spread of infections is the key to reducing legal liability. While Canadian courts have yet to address assertions against sporting organisations for injuries sustained as a result of transmission of disease, case law suggests that such a claim could be justified. In general, when organising and monitoring activities, the operator of a sporting event or facility has a duty to exercise reasonable precautions to avoid harm to participants.

Occupiers liability laws may also expose sports organisations to liability. The Occupiers Liability Act in Ontario, for example, involves a "occupier" to exercise reasonable care for the safety of persons entering its premises – a responsibility that extends to risks posed by the situation of the grounds and/or the activities conducted there. Because a venue can have multiple "occupiers," the owner, the tenant, and the contractor may all be held liable for failing to keep people safe. As a result, failing to take appropriate steps to prevent COVID-19 transmission could expose sporting organisations to liability from a wide range of people who may enter the venue, including players, spectators, coaches, and others. Here the organisation can't take the defence of *volenti non fit injuria* if they has no proof that reasonable care hadbeen taken from their part.[6]

When it comes to implementing return-to-play plans, Canadian law offers additional protection for Canadian sporting organisations. As previously stated, Canadian negligence law recognises that participants in sporting activities voluntarily accept some level of associated risk, which could serve as a complete defence to accusations of negligence under COVID-19. The law of negligence also takes into account whether a participant's own activities attributed to his or her injuries (i.e. the concept of contributory negligence). However, because the courts have yet to rule on these issues under COVID-19, their universality is largely speculative.

[6]Jahmiah Ferdinand-Hodkin and Wudassie Tamrat, Canada: Safe Sport During COVID-19 – Liability Considerations For Canadian Sporting Organizations, mondaq, (June 18th, 2022, 10 :03 PM), https://www.mondaq.com/canada/sport/969400/safe-sport-during-COVID-19-19-liability-considerations-for-canadian-sporting-organizations.

 [ISSN 2581-5369]

IV. LIMITATIONS

There are few limitations in its application for which this doctrine has been curtailed :

- When someone agrees to do something illegal, the doctrine has no place in the equation. An unlawful act cannot be said to have been legalised by consent. In Lane v Holloway[7], the defendant, who was 23 years old at the time, owned a cafe near the plaintiff's home. Late at night, young people regularly visited the cafe. The plaintiff raised objections to the youths' behaviour, and their relationship was strained. The plaintiff hurled insults at the defendant's wife from outside their home one night. The defendant rose and walked outside. The claimant struck the defendant because he thought he was about to be hit. The defendant then struck the claimant in the eye, causing him to receive eighteen stitches as a result. It was determined that neither *volenti non fit injuria nor extur pi causa non oritur actio* implemented, and that the plaintiff was legally entitled to get reimbursement for his injuries.
- When a case comes because of a violation of a statutory duty, the maxim does not implement. The defendants in Wheeler v. New Merton Board Mills Ltd.[8] implanted an unsafe machine in their factory - as part of the plant with the specific intent that it will be used by their employees - that was not enclosed or protected as required by the Factory and Workshop Act 1901. The plaintiff, a defendants' employee, was wounded badly on the job as a result of the machine's ailment. It was determined that the machine was permitted to be used in the first place not due to the defendants but for the' foreman's negligence instead of poor condition of machine. The trial judge ruled that the defence of *volenti non fit injuria* did not apply to an action depends on a breach of statutory duty.
- The plaintiff can't met with the defence of *volenti non fit injuria* when voluntarily confronted with the risk of rescuing someone from an imminent threat created by the defendant's unlawful act. In Haynes v. Harwood[9], the defendants' servant left a two-horse wagon on the street unmonitored. A boy purposefully threw a stone at the horses, potentially cause them to bolt, putting women and children on the road in severe danger. When a police constable on duty at a local police station saw the situation, he attempted to prevent the horses, but in the process, he injured himself and suffered serious injuries. Because it was a rescue case, the defendant was unable to assert the defence of *volenti non fit injuria*. So he is liable here.

[7] (1967) 3 All ER 999(HL).
[8] (1933) 2 KB 297.
[9] (1935) 1 KB 146.

 [ISSN 2581-5369]

- It is essential to show that the defendant was not neglectful in his actions in order for the defence of *volenti non fit injuria* to be accessible. When the plaintiff agrees to take a risk, the defendant is presumed not to be negligent. For example, if the plaintiff had to undergo with the surgery, he would have no right to sue if the operation was unfruitful because he had agreed to risk. However, if the operation fails as a result of the doctor's negligence, he will almost certainly be entitled to compensation.
- When the complainant's act for which the defence under the maxim must be claimed is the same act that the defendant had a responsibility to protect, the defendant's scope is also limited. Mr Kirkham was a heavy drinker and depressed when he sued the Chief Constable of Greater Manchester in Kirkham v. Chief Constable of Greater Manchester[10]. He had attempted suicide twice before. He was hospitalised, but he was released the next day. He became a tyrant at home. The cops were summoned. They were notified of the situation by his wife, and it was decided that he should be held in custody for his own security. The police, on the other hand, failed to notify the prison officials that Mr. Kirkham was a suicide risk. While on remand at Risley Remand Centre, he attempted suicide. His wife filed a lawsuit alleging that the police were negligent in failing to pass on the information. The defence of *volenti non fit injuria* was not granted to the police because they obligated to pay a greater duty of care to the public and had acted negligently; thus, the maxim was not relevant in this case.

V. CONCLUSION

The maxim, first and foremost, assists the defendant in ignoring liability for wilful acts that might otherwise be tortious. Second, the doctrine of *volenti non fit injuria* applicable when consent is given to take the risk of certain harm that might otherwise be prosecutable. When the defence of *volenti non fit injuria* holds true, it operates as a full defence, acquitting the defendant of all liability because the claimant voluntarily agreed to run the risk of harm induced in the procedure of taking action or due to it. To summarise, the defence of *volenti non fit injuria* is one with limited scope in tort law. At times, the defendant's negligent conduct may preclude the use of the defence of *volenti non fit injuria.* At other times, the extent of the defence is hampered by other limitations outlined above in the paper. When the maxim is applied, it assists the defendant in totally ignoring liability.

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[10] (1935) 1 KB 146.

 [ISSN 2581-5369]