

THE DEVELOPMENT OF THE LAW OF TORT IN INDIA

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ABSTRACT

The tort is considered a civil wrong and the tort is also concerned about the liability of the person which is for the breach of the own person's duties with another person. The tort law is almost a new chapter in India it expands the mixed law these law needs a supplemented and it is also codifying the relative statutes which bring it under the ambit of the one umbrella. The term 'tort' derives from the word 'tortum' this term means the twisted/crooked/wrong. In the French language, the word tort states correspond to the word wrong in English, and in the language of the nation of Roman, it states the expression delict. In this paper, we try to discuss the tort, evolution of the law of tort in India, is it the law of tort or the law of torts? Its origin, and reasons for the slow development of the law of tort in India? Classifications of a tort, etc.

INTRODUCTION

Tort defines its meaning in the word civil wrong. The tort is concerned about a person's liability which is for the torts or the breach of the own duties with the other. The tort relates to the interest which recognizes civil law in the absence of the contractual relations between the person by which the act is done and the person by who suffered.

The tort law is almost a new chapter in India it expands the mixed law these law needs a supplemented and it is also codifying the relative statutes which bring it under the ambit of the one umbrella. This quote is based on the one legal maxim i.e., the "ubi jus ibi remedium" The meaning of the maxim is "where there is a right there is a remedy". If we think and talk about the improvisation of existing laws of India, undoubtedly, we can say that the present laws will strengthen the beliefs of the persons of our country, but we also expand the image of our nation internationally of the legal fraternity.

The term 'tort' comes from the Latin term 'Tortum' this term means the twisted/crooked/wrong. In the French language, the term tort means corresponds to the English word wrong, and in the language of Roman it states the expression delict. In society there are many people available in which some persons directly turn into a person who causes

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harm to another from the natural person, then, in this case, he is considered as that he committed a tort. The act or conduct done by his/her is called twisted or crooked. Those people who involve in committing such types of acts or we can say such devious acts then that person is marked or known as a tortfeasor.

The tort is different from all other concepts such as contract breach and trust breach. The meaning of tort is when any one person or any party can act or conduct by which it causes some harm to another party because of some negligence, or carelessness it is all on the behalf of other party. The person who sues is considered or called the person who filed the case this person is termed as the or denoted by the name 'plaintiff' and the person who sued is considered or called the person against which the case was filed the person termed as or denoted by the name 'defendant'.

The tort law concept is the one important or we can say that it is the main obligation of the civil law. When the right of the person is violated which is legal at the time when the person causing or doing any act which harms the person in that case such act is termed as Tort. In simple short, the term tort is called a 'civil wrong'. The one important thing in the law of tort is the person who committed a tort is not considered guilty or may assume that he/she never committed or considered guilty and also, that person can be seen as that he/she is not liable for such act or omission.

CASE: - Gordon vs Lee¹

ORIGIN OF THE TORT LAW

Since the year thousand sixty-six, the one philosopher which is known as the French William was a defeater of Norman big win England's the country of which the legal system was destroyed or in other words, we can say that the disorganized, which was done based on the more or a less case by case. After 1066, they assimilate the laws of the village which were developed in the two countries the well-known or reputed judges that delegate the visit to these areas these judges were benefitting from this information they are noted and applied by these judges of their courts which is most impartial findings on which they are believed. Later, these principles were termed the legal precedents or these principles known as the legal precedents. The tort law in India comes from England.

After the Norman Conquest, French was a language used as a speaker in the England Judiciary and after that, a lot of technical terms originate in the English Law from the French

¹ 208 Miss. 21, 43 So. 2d 665 (1949)

in which one is the tort. The main motto of this atrocity law is to enforce the people's rights and the people's duties.

EVOLUTION OF TORT LAW IN INDIA

The evolution of this law in our nation was seen in the 3 phases which are as follows: - Ancient Era, Medieval Era, and Modern Era.

1. Ancient Era
2. Medieval Era
3. Modern Era

ANCIENT INDIA

In ancient India, it is assumed that the key and basic mode of the peaceful progression in the life of people is the state. These people are believing on that the king cannot act anything wrong. There are a lot of materials that talk about legal foundation, and also about the liability and unsusceptibility of the king concept which is related to the origin of the state, The individual's responsibilities are supreme, about the ordeal system through the smitten people about the equitable remedy.

MEDIEVAL ERA

In India, we observed that the development or growth of the tort law was not good when we compared it with the law of crimes and others at that time when our nation was ruled over by rulers who belongs to Islam like Delhi Sultanate. The cause which is behind this principle was that n eye for "an eye and the tooth for a tooth."

MODERN ERA

Modern era under the eighteenth & nineteenth Centuries.

The emperor Britishers established three presidential courts through the efforts of Sir Henry Mane, and Sir James Stephens at that time the British Emperor introduced the common law and the tort law in India. In the year 1886 one of the jurists Sir Fredrick Pollock. He tried to codify the laws in the form of the civil wrongs Bill. But this civil wrongs bill was never passed in the parliament of that time.

During the time of the Ruled Britishers in India, the courts administered through the parliament statutes which are established in the United Kingdom. The enactments of the Indians supposed that such act was based on the three principles of the law and these three

principles are defined or mentioned or termed as Justice, Equity, and Good conscience which are commonly called the "General Principles of Law". In the cases of the torts damages the court first considered the principles of the Common Law of English such as the harmony of the General Principles of law.

HOW THE TORTS LAW DEVELOPED IN THE INDIA

The principle of tort law is based on the common law this law is known as the English Law. The law of torts is selectively enforced in courts in Indian Law if the lawsuits in the Indian courts by the situations of the Society of India. The term tort existed since the time of pre-Independence. In the Hindu and Muslim laws, the law of torts did not have a good beginning in comparison with the English Law.

In India, most tort laws were adopted from the English tort law. In India before the making of any laws or application or any law adopted, from the English Law, we see that this is suitable for the Indian Culture and the Circumstances of the society. The origin of the tort in India is related to the Charter's Act of 1726. In the charter of 1726, the English courts were established in the form of the three presidencies which were also known as the 'Mayor Courts'. The three presidencies are Bombay, Calcutta & Madras. These courts work under the principles of the English law. In the common law application, they mentioned their three principles and they followed them. This law is considered as it is not separated or is an indivisible part of the common law. The Hindu and Muslim laws for dealing with the malicious behavior of the people the law existed in both Laws. But it is considered that the tort laws are formally introduced through the Crown in India.

Case: - *M.C Mehta v Union of India*²

Facts: - Shriram Food and Fertilizers Ltd. This is a fertilizer plant located in the area of Delhi and privately owned, which was in the city's where most populated area of Delhi, where almost 20,000 people reside. Private Ltd. Company emitted the hazardous substances that caused a public nuisance. Here M.C. Mehta was represented on behalf of the public interest, and he filed a writ petition under the article which talks about the person's life and liberty, and article 32 of the constitution of India to the Apex Court of India dated December four and six of 1985. Demands the closure of the factory and or it may be relocated to other places.

The suit which was filed by M.C. Mehta was pending in the court and the incident of the oleum Gas leak occurred at one of the factory's plants of Shriram Food & Fertilizers Ltd.

² 1987 AIR 1086, 1987 SCR (1) 819

which caused grievous harm to the persons who inhaled the gas. Due to the gas leakage, several people also died including the lawyers who practiced in the court of Delhi which is known as the Tis Hazari Court.

The Delhi magistrate took instant action as per Section 133 of the sub-section (1). The court said the organization or a company to close the manufacturing of the lethal substances which includes dangerous items such as chlorine, oleum, phosphate, etc. Because they are harmful to people's life. And then everyone has the right to their life under section 21 of our Constitution.

OBJECTION

The court should not proceed to decide these constitutional issues since there was no claim for the compensation originally made in the writ petition and these issues could not be said to arise in the writ petition.

JUDGEMENT

In this case, the Supreme Court of India initiated the 'Absolute Liability Principle'. The principle stated that the industry owner would be liable for any inherently hazardous acts on their property.

REASONS FOR THE SLOW DEVELOPMENT THE TORT LAW IN INDIA

In India, the stability of tort law is due to the English Law. In the Indian courts the applicability of the tort law since 1726. But the development process of tort law is slow because of some reasons: -

- The tort law is not codified
- Ignorance of the law
- Due to the poverty
- Lack of Shortage of Political will power.
- The Judicial System is expensive and the process is delayed.

WHAT ARE THE ESSENTIALS OF THE LAW OF TORT

ACT/Omission: For the constituting a tort there must need an act, this act may be either -ve or +ve. There also needs to be a breach of duty for constituting such an act or such wrongful omission. There is a certain duty to do or not to do a certain act, or to behave in a specified manner.

Legal Damage: For the constituting of a tort, the breach of a legal duty must be there. The right vested with the person who files the suit or complaint should have been reached i.e., a particular act or maybe a certain omission that results in the breach of such types of legal duty.

- **Injuria Sine Damnum**
- **Damnum Sine Injuria**

THEORIES ON THE LAW OF TORT OR THE LAW OF TORTS?

Winfield defines or gives his theory on the law of "tort" as *all the unjustifiable harm for which there is no excuse will be treated as a tort.*

Case: - *M.C. Mehta v. Union of India.*

Salmond defines or gives his theory on the law of "torts" as *the liability under this law arises only when the wrong is covered under one or the other nominate torts. Salmond's theory is also known as the pigeonhole theory.*

Hence both theories are correct from their point of view and it depends upon the question of the approach to things from a particular angle.

TORTS CLASSIFICATION

INTENTIONAL TORT

- Assault
- False Imprisonment
- Trespass
- Defamation

TORT BASED ON NEGLIGENCE

Elements

- Duty
- Breach
- Causation (Cause in fact)
- Proximate Cause
- Damages

CONCLUSION

The tort law is defined or considered as a civil wrong in the tort the punishment for the act or omission is not defined. In simple words, we can say that in tort law the person gets compensation for the negligence or the act done due to the negligence, etc. In India, the tort has existed or the tort law used in the court since the pre-Independence of India. And since the charter of 1726. The tort law was coming through the Britishers during the rule of the British emperor in India. Tort law evolved in three phases which are the Ancient Era, the Medieval Era, and the last one is Modern Era. Tort law originated before 1066. In India, the law of tort is developed from the English common law. There were also some reasons for the quiet growth of the tort law in our nation which are termed the tort law is not codified, Ignorance of the law, Due to the poverty, etc. The defense of the tort is *Injuria sine damnum*, *damnum sine injuria*.

