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JUSRISDICTION OF LAW OF TORTS IN INDIA

By *Yash Jain, Aman Monga and Tanishka Valecha*
From Amity Law School, Noida

ABSTRACT

Under this paper the future jurisdiction of law of torts in India is discussed, starting from the introduction of law of torts and basics of law of torts, difference between law of tort and law of torts, discussing theories like pigeon hole theory, and some maxims like jus ubi remedium and case laws like Ashby Vs White & Rylands Vs Fletcher. Then talking about the history of law of torts evolved from the past followed by foreign torts(international scenario) and law of torts practiced in India(national scenario),all the setbacks, limitations, loopholes were thoroughly studied and also examined the reasons of slow development of law of torts India, which were uncertainty of law, illiteracy, poverty, expensive and dilatory legal system. Also theory of economic analysis was studied further, so as to understand the proper working of the authorities in India for future aspects.

INTRODUCTION

The Torts Act provides monetary **compensation** for injuries to a person and property that can be recovered through the due process of law. With the concept of security, it is associated with the risk of wrongful action and demonstrates varying degrees of evaluation for some type of harm call for liability independent of one's fault, while other types are intentional or reckless wrongdoing. Typically, it seeks to transfer the loss from the 'victim' to the person who caused it, but at times, it appears to be a liability to a third party, such as social insurance for wrongdoing, and the inevitable events of modern social life, such as accidents on roads and industrial establishments.

Tort is different from crime because it can be solved by way of compensation and not by punishment or fines, the same mistake can be a torture and a crime at the same time. In the case of a contract, the tort is different from the breach of contract because the rights and duties arise, and can be enforced against the parties concerned. Violation of the Agreement will be resolved by unliquidated damages. **Etymologically**, right or straight, violence is not crooked, harsh, i.e. straight or right. As a separate branch of law, tort has been interpreted differently by different authors and their importance on the subject**. Winfield** puts forward the notion of duty, stating that "**breach of duty determined primarily by law arises out of strict liability: this duty is generally on the part of individuals and its violation is resolved by action for ineligible damages**".

Salmond prefers **the idea of wrongdoing and defines the tort as a civil wrong, for which compensation is a common law action for unliquidated damages**, and not specifically for breach of contract or breach of trust or other similar obligations. All definitions, more or less, emphasize three aspects: (1) an act or omission that violates the law, (2) a legal injury or a legal loss, and (3) a legal remedy for disqualified damages.

Tort, a common law mistake is different from the fault of a breach of trust, which is a breach of the obligation recognized in equity.

Intention and wickedness play little role in the law of torts. If this law does not cause legal injury, it does not result in strict liability, even if it is a misdemeanor or improper purpose. However, in some torts, **malice** is a necessary ingredient.

Keywords:
Etymologically, damages, unliquidated, malice, compensation.

IS IT THE LAW OF TORTS OR LAW OF TORT?

Is it Tort Law or Torts Law? In this regard, Salmond posed the question. Does the Torts Act have a basic general principle that it is wrong to harm other people when there is no specific justification or excuse, or that there are many specific rules that prohibit and quit certain harmful activities? In other words, all the remains outside the scope of legal liability are the question:

A. This is the law of tort, that is, every wrongful act, for which there is no justification or excuse for being considered a tort, or
B. **It is the Law of Torts, that is, there are only a number of specific offenses that cannot arise under the provisions of this Act.**

Salmond, however, preferred the second alternative, and he did not have the Tort Act, but the Torts Act, which arises only when the fault is covered by one or other of the nominated Torts. There is no general principle of liability and if the plaintiff can place his mistake in any of the pigeon-holes, he will succeed if each has a labeled tart. This theory is also known as the **pigeon-hole theory**. Defendant has did not commit any torture if there was no pigeon-hole in the plaintiff's case. According to Salmond, criminal law contains rules that establish a specific offense. The Torts Act therefore contains rules governing the establishment of specific wounds, in one case or another, there is no general principle of liability. Whether I am prosecuted for an alleged offense or sued for alleged torture, it is not for my adversary to prove that the case is under certain and settled obligations, and that I am not defending myself by proving that it is within a certain range, and the rule of justification or excuse, the subject of Winfield's book In the name of the Law of Tort However, Salmond's book 'law of torts' is the name that's been given some support to the theory. **In 1702. Ashby vs. White** is clearly established in favor of the first doctrine, recognizing the principle of **jus ibi remedium**. Holt, CJ, "If a man multiplies wounds, every man who is injured must act." Similarly, in 1762 *Pratt, CJ. Said ': Torts are infinite, not limited or limited. Pollock also supported this view, supporting the theory that courts create new torts.*

KEYWORDS: Pigeon hole theory, jus ubi remedium

Case law: Ashby vs. White (1702);Pasley v. Freeman (1789), inducement of breach of contract in **Lumley v. Gye' (1853)**, negligence as a separate tort in the beginning of the century, the rule of strict liability in **Rylands v Fletcher (1868),** inducement to a wife to leave her husband in **Winsmore v. Greenbank" (1745)**, and the tort of intimidation in **Rookes v.Barnard (1964).**

HISTORY

The substantive law of torts in England arose out of the sorts of common law

procedures. It had its origin in writs issued by Chancery. In theory, the writ couldn't be availed of in felonies but in practice it had been available in every case excluding that of murder if words charging a felony in a complaint were omitted. With the initial stage, the procedure in writ of trespass was having both civil and criminal aspects but in due course civil action for trespass proceeded on different lines from criminal trespass which involved indictment for felony or **misdemeanour**. Again, at first, the action of trespass was available for injuries which were direct, forcible and immediate, and didn't cover indirect and consequential injuries, but later on, these injuries became actionable by the writ of trespass on the case or action on the case by virtue of statute called **consimili cassu in 1285.** and in course of your time the procedure in action on the case became distinct from the action of trespass and hence forward the road of development was clear. In the later a part of the 19thcentury, before the Judicature Acts, the fields of tort was strewn with different sorts of action having their own procedural variations which were finally unified by the Judicature Acts. due to this historical development, we see substantive law secreting itself in procedure and the question has been raised whether this could be called the law of tort or the law of torts , consistent with Salmond, it's law of torts, i.e., constellation of certain specific and limited wrongs recognized by law in course of history and each plaintiff can only avail f the limited 'pigeonhole' categories to classify wrong against him and therefore the doctrine **ubi jus ibi remedium** isn't applicable to seek out remedy for each sort of wrong. Judges too, feel great difficulty in creating new torts and in applying a rule to a novel case.

The other school makes a study of law of torts as an objective science, as something unique among the systems of law and social sciences which makes use of court's power to award damages for regulation of social relations. In other words, emphasis isn't put upon procedure but on general principles and exceptions to them which are applicable to the several species of **tortious** liability. Today, different torts are seen as having certain broad features in common and are enforced by an equivalent quite legal procedure. One school emphasizes the procedural aspects and asserts that forms of action still rule from their graves. the opposite looks for rationalization and optimism whereby judges can create new torts on the basis of general theory. checked out form the **formalistic** and procedural point of view, law of tort is simply law of torts as judges rarely create new torts but from a broader and dynamic viewpoint tort is merely a general theory of law of wrongs, and judges on the idea of this theory are overcoming difficulties from time to time providing remedies in novel cases. One theory asserts **circumscription**, the opposite enlarges frontiers; one is sceptic and records dissatisfaction for limited developments, in other gives contentment and exudes optimism. But both of them are just mere variations of attitude and chosen styles of study of a lawyer on the one hand and of a scholar of law on the other. The lawyer must emphasize more on the formal branch but the student or the theorist stresses the underlying general principles.

FOREIGN TORTS (INTERNATIONAL SCENARIO)

4As for international tenders, the terms of

English law are that they prevail in English courts, so long as the wrong is possible in England and so the country is committed. The English courts do not have jurisdiction to take damages for damages in the case of overseas property. In India this position exists followed by an infringement or other misdemeanor on immovable property, made outside India, does not reside in Indian courts. in the event of any privacy problems or other immovable property the act will disappear if the respondent resides in India as long as the non-compliance is in conflict with the law of the country of law and so is the law of India when the action is brought.

LAW OF TORTS IN INDIA (NATIONAL SCENARIO)

After English traders started Indian soil they were authorized to exercise judicial power to control their workers, e.g., workers of the Malay Archipelago .Complies with the laws of England. By the Charter of 1726, the common law and laws of England were entered into as they stood in 1726. In the Charter of 1774, the Calcutta High Court established and applied English law to all persons living under its law. Outside the city of the Presidency, private law of organizations was administered on such matters as recognition, inheritance, succession, marriage, and religious giving. In some cases, the courts were required to apply the doctrine of justice, equity and good conscience. in the case of ticket sales, the courts tried to abide by the principles of common law that support equality, justice and a good conscience. Any deviation from English law is made only when its use is not deemed appropriate. After the introduction of the high courts by the 1861 Act, no major changes have taken place and even after India became independent, the status quo was maintained by providing a continuation of existing law in article 300 of the Constitution. Another important difference comes from the English law of taxis, which we find in 'felonious tones'. In England, if a person is injured due to an act of equal cause, the plaintiff is not allowed to plead guilty unless he is brought to court. The act of torture will not continue but will be kept in such a state. The Madras high court does not follow the general rule while Calcutta and Bombay High Courts do. within moufussil, the general rule does not apply to the institution of criminal cases are not required to bring a case but with the same facts a serious criminal offense is also committed.

Causes for Slow Development of Law of Torts in India

Uncertainty of law:- Since the ticket law is not encoded, there is no uniformity in the rules and regulations. Of course, even though there are things mentioned about ticket law available in England on many points, that cannot be applied in Indian cases. For this reason, there is a lack of case law in India in relation to ticket law. Indian courts have refused to abide by some of the doctrines of the Torts of English Courts, introduced in the 19th century. The Supreme Court of India introduced a new doctrine in M.C.Mehta Vs. Union of India - The doctrine of absolute responsibility. The Apex court declined to follow the doctrine of 'Strong Debt' seen in Rylands Vs. Fletcher also introduced the new 'Osolute denial' doctrine.

Lack of political consciousness:- Most people in India are unaware of their rights due to illiteracy. Due to a lack of political awareness, most Indian people are unaware of their legal rights. For these reasons, they approach civil courts to find remedies available under the law of taxation.

Illiteracy:- Literacy in India is the key to social and economic development. India's literacy rate has risen to 78.31% (2011 census figures). An old 1990 study estimated that it would take until 2060 for India to reach global learning experience at that time - current progress. Literacy rates increased from 18.33 percent in 1951 to 74.04 percent in 2011. It shows that there is still illiteracy in India. Illiteracy is the main reason for their ignorance of their legal rights.

Poverty:- Apart from being one of the fastest-growing economies in the world, India suffers from a severe poverty crisis, In 2010, 69% lived on less than US $ 2 per day, and 33% less than US $ 1.25 per day. Educational attainment is low, and India accounts for 1/3 of the world's most illiterate. Amendment of Constitution 73 of the Constitution of India mandates that 1 / 3rd of all seats in the Panchayats are reserved for women, bringing more than one million women to elected positions. According to the updated model, the world had 872,3 million people under the new poverty line, India had the third highest number of people living with extreme poverty after Nigeria and Congo in January 2019.

Expensive and dilatory judicial system:- Apart from poverty issues and illiteracy, another important issue is that the judicial system in India is too expensive and costly. The fees and fees of its attorneys are very high. The average person can't put up with it. Thus, poor people are better prepared to abuse their criminal rights instead of going to court to seek remedies. If a poor person is prepared to fight for paying a huge fine in court for violating his right, after a long period of years, he gets only Rs. 500 / - Rs.1000 / - as damages, he considers it to be of no benefit at all. Cases are based on cases dismissed within one year in England but in India, it is not possible to dismiss all such cases within a year.

THEORIES OF TORT LAW: ECONOMIC ANALYSIS

For decades now, economic analysis of tort law has been on the rise, especially (but not exclusively) in American law schools. Instead of exploring a range of economic theories, this entry focuses on the depths of the great complexity of economic analysis: the very theory of restraint. Proponents of this approach, such as economic analysts in particular, see debt primarily as a way of allocating risk costs (although no economic analysis can be explored to cover a purposeful sale, such as an attack on a battery). Their main claim is that torture should be understood as aimed at reducing the sum of the costs of accidents and the costs of avoiding them..

The Economic Interpretation of Fault Liability

Assuming that the relevant social problem is a problem of costly risks, economic analysts consider the paradigmatic tort to be a negligent target. The law forces a person to

be negligent when he or she risks another injury. Incurring a serious injury risk is also a matter of failing to take the precautionary measures one can take. But what safety precautions can one take?

Economists give the following answer: caution is reasonable if it makes sense; caution is reasonable when costing; and caution is allowed for expenditure where the cost of monitoring is less than expected (resulting in the cost of the expected injury reduced by the likelihood of the injury). Imagine being involved in a job that carries a $ 100 benefit and an expected injury of $ 90. Now let's say that the only way to prevent an injury is to stop the job. Other things being equal, it would be absurd to get a $ 100 profit to secure a $ 90 expense. Predicting a profit would not be a reasonable recognition; you better get in harm's way and save $ 10 on the job. Now imagine that things are the other way around: the benefit is $ 90 and the expected damage is $ 100. Under these circumstances, forecasting aid can still be a cost of safety. It would be ridiculous not to put the profit forward, because you would have to get a $ 10 loss to participate in the work. This is a calculation that a reasonable agent can do when the costs and benefits are entirely his own.

The default credit policy has much to commend you from an economic point of view. In particular, it entails all reasonable people - the injured and the abused alike - to take everything and only the proper security measures. If all the injured do not behave badly, the loss will remain where they fall: and the victims. Reasonable victims so we will address all risks assuming they will have to bear the costs. However, they, too, will take all and only costly security measures. Debt law is therefore economically viable: it produces the right amount of risk-taking.

B.The Economic Interpretation of Strong Debt

Since a person facing a strong debt will bear the cost of their conduct or is at fault, one would assume that a potential defendant under a strong debt regime would have no incentive to invest in caution. This is wrong. Let's say I have a strong debt for some of the costs I impose on you - the cost is $ 100. Let's also say that by taking a $ 90 worth of security measures I can eliminate the opportunity to put these costs on you. What makes sense to me? The answer is obvious. It makes sense for me to invest $ 90, because I come out with $ 10 up front to prevent damage and avoid debt. So even under a tight credit regime, potential victims have a motive for this take reasonable precautions. And they will not take any costly preventative measures. If it would cost $ 110 to take a precaution that would eliminate the possibility of injury with an expected $ 100 interest, I would rather pay for your injuries than take precautionary measures. So tight credit does not encourage extra care. Under a tight credit regime, potential attackers have the incentive to take all the costly security measures just as they do under a debt obligation.

In an important respect, the plaintiff's (injured) misery under strict liability is the same as that of the defendant (victim) under the debtor's fault. Considering that the person who is hurting is reasonable, we can say that in the face of debt, he will take all possible steps to save costs. Because of this,

any loss from his behavior will lie where it fell: with the victim. This means that it can be seen that the victim is suffering from some type of strong debt, that is, a strong debt for loss that can be caused by another's fault. (In a nutshell, this is a mistake, because one cannot blame them, but the symbolism is helpful.) The victim cannot turn this loss into an injury because the victim is personally responsible for the debt by taking the necessary precautions. So a reasonable victim will ask himself the following question: what is low - the cost of monitoring or the expected cost of injury? You will take preventive measures if (and only then) taking precautionary measures is less expensive than staying at risk of injury. The conclusion is that a strong debt and debt debt both make reasonable people take it all in and use only defense costs. If efficiency requires people to take all the precautionary measures only at risk, then a strong and flawed debt can work well.

C.The Steps to Economic Analysis

There is no doubt that economic analysis provides valuable insight into the capacity of the tort law to maximize total security and reduce the cost of evil or luck. In all its understanding, however, economic analysis is in danger of challenging debate. These objections speak of both the violation of dominant culture and its symbols of order. We discuss the most important argument here.

CONCLUSION

The law of torts is not much developed in India. But the tort law has provided physical security to the people. "Tort law evolved through the common law. Historically, basic common law principles were applied to solve legal problems. In the nineteenth century, there was a movement towards systematizing tort law." All the above principles of Common Law of Negligence have since become part of the Indian Legal System. So much so that the principles of liability in India in regard to matters of negligence correspond to what they are in English Law. This is so in regard to substantive as well as procedural laws. What needs to be pointed out is that the law in India basically is the same as it is in England, but the Courts today do not follow the English rule where there is a different principle laid down in the Statute or where the principle is not in accordance with the principles of justice, equity and good conscience or where the rule does not suit the socio economic conditions of the people. Subject to certain conditions of this kind the English Law is followed by the Indian Courts. As in the case of civil liability in the case of criminal liability also the development has been such as to allow Negligence to be a kind of crime by itself. The principles have developed not only in regard to substantive but also in regard to procedural matters. As far as criminal liability is concerned the Law in India is not in the form of Common Law as such but in the form of Statutes. The Indian Penal Code, 1860 is the first Statute dealing with the problem of crimes. It contains various offences in which Negligence is one of the elements of crime. For example Chapter XIV of the Code dealing with the 'Offences Affecting the Public Health, Safety, Convenience, Decency and Morals' provide for negligent conduct in regard to certain things to be punishable under the Code. For example, Section 304-A makes causing of death by negligence as a substantive

offence. While the Indian Penal Code is the general law of crimes, there are a good number of Statutes constituting the Special Law of crimes which lay down punishment for negligent conduct. Thus, the Concept of Negligence is the subject matter of the Law of Torts as well as the Law of Crimes. The rules of liability are followed by the Court in the same manner as they are followed by the Courts in England but subject to certain conditions.

TEXT AND REFERENCES

AVATAR SINGH

R.K. BANGIA

LEXIS -NEXIS

EASTERN BOOK COMPANY

SCC-ONLINE

MANUPATRA

CASE MINE

INDIA KANOON

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