



FUNDAMENTALS AND URGENT REFORMATION IN LAW OF TORTS

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ABSTRACT

We live in an ever-evolving society and Indian society is no exception to that. Being a country with such a vast diversity is obviously subjected to requiring changes. Be it political, legal, social, or cultural field changes are required for the betterment of the society. One such field that requires fundamental and urgent reformation is Law of Torts.

Tort can be understood as an act by a person towards another which causes harm to the other person. The wrongful act done causes either injury or harm to the other person. Law of torts is based on the idea that everyone in our society has certain rights and duty to respect other's rights. When these rights are infringed compensation is recoverable. The main objective of this law is to compensate the aggrieved party. The present tort law in India is still based on the pre-independent British model which is turn based on England's common law principles. Indian tort law is still largely dependent upon judicial interpretation. However, in India law of torts is not codified which again causes certain problems while giving judgements. The significance of the matter lies in the fact that this law prevails in every legal system yet it is somehow underrated in India. There are certain fundamental and urgent changes that needs to be done in the law of torts in order make it more useful and helpful. The paper explores the present condition of law of tort in India. The paper intends to bring into light

the present scenario and analyse the fundamental elements regarding torts which needs to be reformed urgently. The paper aims to have a detailed study of changes required and also suggest reforms which will help in making the law more functional and practical. It also includes certain case laws which will help us in better understanding of the topic. In this paper research paper, I have used doctrinal method of research. Secondary data collected from books, articles, journals and internet is used in this research.

Keywords- wrongful act, infringes, compensation, not codified, fundamental, urgent changes, reforms.

INTRODUCTION

Every person is entitled to certain rights and with every right there also comes a duty. Tort can be understood as an act by a person towards another which causes harm to the other person. Law of torts is based on the idea that everyone in our society has certain rights and duty to respect other's rights. When these rights are infringed compensation is redeemable. When a right is infringed, simultaneously a duty is also infringed. The main objective of this law is to compensate the aggrieved party. This law is based on obligation which means that every person has an obligation to respect other people's rights. Every country has its own law of torts which from country to country. Every country has their own enactments, regulations, and rules attached to their country's law of torts. There are certain elements recognized by the country which should be present to constitute a tort, and these elements vary from one country to another. But, the basic understanding of the law is same all over the world. Similarly, India also have its own law of torts. The torts law in India has been in



existence for a long time. However, the law is not as efficient as it should be in India. In India, the law of torts is not codified which gives rise to other certain problems. There is an urgent need of reforms in law of torts in India to make it more efficient and practical. There are always question arising like whether the law of torts really necessary in India? Is the torts law overlooked in India? And many more such questions. India is still in its pre-mature stage when it comes to tort laws however, steps such as codification of certain portions of law are been taken for increasing the efficiency of the law.

TORT- MEANING

The term tort has been derived from the Latin word 'Tortum', which means to twist or to crook or a wrongful act which is not lawful. The word tort is equivalent to the word 'wrong' in English language. Norman jurists are the one who introduced it in English law. A wrong can be civil or criminal. Tort falls into the category of civil wrong which is different from breach of contract or breach of trust. Everyone in the society are expected to behave in a straightforward way and when someone gets diverted from that way, the act becomes crooked and the person is said to have committed a tort. Tort can be understood as an act by one person towards another person which causes harm to the other person. The wrongful act done causes either injury or harm to the other person. Tort is considered to be a private wrong and so the injured party has to file a suit as a plaintiff. The person who commits the tort is known as the tortfeasor and the person against whom the tort is done is the aggrieved party. When comes to tort the most important remedy is damage. Once a tort is committed it is

impossible to undo the harm caused by it but it is possible to reduce the harm by compensating the injured party. For example, if the reputation of a person has been attacked, there is nothing that can be done to restore the reputation, but a compensation equivalent to the reputation can be paid to the injured party. The damages awarded to injured party in torts are in the form of unliquidated damages. Unliquidated damages mean that the damages given to the injured party are not predetermined by the parties involved and are left on the discretion of the court.

"civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or the breach of trust or other merely equitable obligation." – Salmond¹

The definition given by Salmond gives a fair idea about tort but it has certain shortcomings. The definition fails to underline the essential features of a tortious act. It talks about wrong but does not explain what is a wrong? Also, it says tort to be a civil wrong but the term 'civil wrong' itself needs explanation which is not given. The definition is informative but it is not perfect.

The essential elements of torts are:

- Wrongful act or omission
- Legal damage
- Legal remedy

The law dealing with torts is known as Law of Torts. Law of torts is based on the idea that everyone in our society has certain rights and duty to respect other's rights. The right of a person is the duty of the other, it means that when a person is having a right it is the duty of the others to respect his/her right. This law

¹ DR. R.K. BANGIA, R.K. BANGIA'S LAW OF TORTS 4 (24th ed. 2017)



aims at enforcing these rights and duties. When these rights are infringed compensation is recoverable. The justice in this law is provided by compensating the injured party and the idea behind this is to make good the loss suffered by the party. The main aim of law of torts is to compensate the aggrieved party and not to punish the wrongdoer.

LAW OF TORTS AND THE WORLD

USA

In USA the law of torts is based on common law along with strict norms imposed by the respective State. Each State have their own Civil Codes that deals with the law of torts. Their law is well organised, better-schemed and with an aim to have payment of compensation. The law in USA is more categorized in its form which mainly recognizes it under three heads:

- 1) Intentional torts- which requires intention for an act.
- 2) Negligent torts- it is based upon failure to fulfil a duty with reasonable care by a prudent mind.
- 3) Liability defined torts- it includes principles of strict liability, product liability and other such liabilities.

The one thing that is common between the entire law of torts in USA is that they understand the mental trauma one goes through when a tort is committed against them. This probably one of the main reasons why number of litigations in torts is high in number over there. The common objectives

to be secured by the law of torts in USA are as follows:

- To create a social environment where everyone is aware of their responsibilities.
- To create a peaceful method for resolving the disputes.
- To be able to take action and curb the wrongful actions.
- To reinstate the injured party to its original shape by means of providing compensation.

UK

The law of torts in UK, predominantly take the form of judicial precedents. However, a few regulations have been made within the ambit of law for the betterment and welfare of the citizens. The law of torts recognized in UK is primarily of two types:

- 1) Negligent torts
- 2) Intentional torts

Also, a new developing branch of vicarious liability is present there. The key elements to be proved in UK for tort are:

- Existence of duty
- The breach of that duty
- Damages as consequence of that breach.

Thus, we can say the whole idea of law of torts in UK mainly revolves around the concept of duty.

FRANCE

The French law of torts is a codified one. They the general rule as set forth by Article 1382 of the French Civil Code proclaimed the fault principle: one must make reparation for injuries caused by one's fault². . The three

² Edward A. Tomlinson, Tort Liability in France for the Act of Things: A Study of Judicial Lawmaking, Edward A. Tomlinson (July.,1988),

<https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=5129&context=lalrev>



elements recognised in French law of torts are:

- 1) A fault
- 2) A damage
- 3) A link between the two

In French law, one does not necessarily need to be conscious of the wrongful nature of one's behaviour in order to commit a tort. Their main principle is that all rights and interests are protected. Another principle governing the French law is that there should be full compensation. The idea is to make the compensation match the harm suffered by the person as much as possible. Thus, the full compensation covers all the material injury caused to the person's body, his property and his estates as well as non-material injury such as pain, agony, suffered by the injured party.

AUSTRALIA

Australian law of torts is mainly running on precedents rather than on legislations. Australia mostly refers and relies on laws and judgements pronounced by UK. They have attempted from time to time to create their own identity in this respect.

LAW OF TORTS IN INDIA

The term tort in India has been in existence since the pre-independence era. The Sanskrit term 'jimah' meaning crooked was used in ancient Hindu law texts in the sense of 'tortious fraudulent conduct'³. However, the concept of tort had very narrow conception under Hindu law and Muslim law as compared to the English law. The punishments for crime had more prominent place in those systems as compared to compensation for wrongs. The present law of

torts in India is mainly based on English law of torts which itself is based on the common law of England. This was created appropriate to the Indian conditions appealing to the principles of justice, equity and good conscience and as amended by the Acts of the assembly. However, before applying any control of English law, the Indian courts can check the suitability of those law in Indian conditions. In the case of *M.C. Mehta v Union of India*⁴, Justice Bhagwati observed, "*We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence.*"

The jurisdiction of section 9 of the Civil Procedure Code⁵ which allows the civil court to try all cases of civil nature also includes tortious cases and liabilities. In the case of *Jay Laxmi Salt Works (p) Ltd. v. the State of Gujarat*⁶, Justice Sahai observed, "*Truly speaking the entire law of torts is founded and structured on morality. Therefore, it would be primitive to close strictly or close finally the ever-expanding and growing horizon of tortious liability. Even for social development, orderly growth of the social and cultural the liberal approach to tortious liability by the court would be conductive.*"

³ Perna Deep, *The Door Left Ajar: Evolution of Law of Torts in India*, IJLMH, Mar.2019, at 4.

⁴ *M.C. Mehta v. Union of India*, AIR 1988 SC 1037 (India)

⁵ Section 9 of Civil Procedure Code, 1908

⁶ *Jay Laxmi Salt Works (p) Ltd. v. the State of Gujarat*, (1994) 4 SCC 1 (India)



The law of torts in India does not come from a statute and is not codified. Irrespective of this fact, it has been in existence for a very long time, however the number of cases registered under torts has been reducing. If we compare the number of cases filed under tort laws in US and UK, the tort litigation is very low in India.

It is often questioned whether law of torts is needed in India? The courts in India has time and again expressed their stand that law of torts is essential in India and is very important for the development and growth of the society. The courts and therefore the government have recognized the importance of torts in their ruling by recognizing governmental torts, providing damages in case of negligence, finding on constitutional torts, victim compensation schemes, evolution of tort of sexual harassment, etc.. Although, the government and judiciary has realised the importance of law of tort, a large part of the general public is yet to understand its necessity. The law of torts is one subject that prevails in legal spirit of India but it is not appreciated enough even after the fact that it is universally applicable. Even after the great relevance and applicability of this law, it is still somehow underrated in India.

Another question that comes up is that just because it is underrated in India, is it correct to say that it is simply overlooked? Well, it will not be correct if we say that law of torts is completely overlooked in India. The development of 'theory of absolute liability' in case of *M.C. Mehta v. Union of India*⁷ is a very significant explain to justify that law of torts is not simply overlooked in India.

So, we cannot simply say that law of torts is not necessary or is overlooked in India. One thing that can be said surely is that the law is not fully developed in India and reforms are need to make it more efficient and effective.

FUNDAMENTALS AND URGENT REFORMATION IN LAW OF TORTS

Society is never stagnant or still and demands change. When society changes, certain changes are required to be made by the countries in order to keep up with changing society. Similarly, changes in the existing laws becomes essential and amendments are to be made or new laws are to be enacted.

India is a vast country with an ever-growing population. In India, the Parliament never made strict norms in respect to the law of torts and maybe that's the reason why this law is not properly developed in the country. Law of torts is not that popular among the people in India and still has a huge scope for development. There are certain loopholes in the torts law in India and reforms are much needed. The reforms will not only help in increasing the efficiency of the law but it will also create awareness among the people regarding this law.

Some fundamental and urgent reforms in law of torts are as follow:

The law of torts in India is not codified. It does not come from any statute. This may be seen as a reason behind its lack of development and unpopularity among the people. Since it is not codified it is difficult for the people to be aware of all the acts following under the category of torts and the relief provided for them. Time and again the courts have faced the need of codifying the law for increasing its efficiency. In modern

⁷ *M.C. Mehta v. Union of India*, AIR 1988 SC 1037 (India)



time, some part of parts of the law of torts have been codified, as for example, Motor Vehicle Act, Fatal Accidents Act, Sales of Goods Act, Indian Patents and Designs Act, etc. Still, a major part of this law is based on legal precedents. It has been observed that the proper codification of the law of torts in order to facilitate its greater use.

- The amount of compensation ordered by the court to be paid by the defendant is the 'damages. Since there is no fixed rule on this behalf, filing a suit and approaching court becomes expensive for the plaintiff. In addition to the suit expense, a high rate is charged by the legal petitioners. Many foreign countries have passed a regulation according to which the legal petitioners are entitled to receive only a fixed amount from the compensation received. However, in India there is no such regulation. There is a need to enact a regulation for fixing an amount to which the legal petitioner will be entitled.
- There is a difference between the amount of damages. Our system takes into account the concept of basic necessity while deciding the compensatory amount. Necessity does not only include just bare essentials but also the conditions the claimant was used to before the occurrence of the incident. Since, there is a difference in economic conditions of separate claimants, different amount is awarded which cause disparity. Due to this disparity, there a loss of faith in the justice delivery system. In order to maintain the faith of people, courts should stop taking into account the basic necessity concept and some other method or concept should be developed which will consider all the claimants to be equal irrespective of their background or any other such factor.
- One thing that India is always known for is having a systematic procedure in field of

litigation. Because of this system we have come to a situation where the judiciary is overburdened with cases. The judiciary has to work overtime and overnight studying these cases, a major portion of which are just filed to create pressure on the defendant. What needs to be done is that a stagnant rule should be made not only for tort cases but for across the whole judiciary that, the person who files the case shall also pay the fees for the other party in case he/she loses the case. This way with the fear of losing money, only genuine cases will be filed by the people.

It is seen that law of torts is clearly being ignored by the legislature. The reason behind this may be that the amount of litigation attracted under torts would be large in number and litigation often seen as negative from the eyes of common Indians. However, this cannot be a legitimate reason to avoid law of torts. The legislature should not ignore the law but should take measures make it more applicable in the society.

The above mentioned are the few of the many reforms that are urgently required in India to make the law of torts more an efficient and practical. In short we can say there are lot of reforms required including increasing the number of commissions dealing with specific tort cases, litigation expenses need to be reduced and also the litigation duration is not short. If the reforms are taken seriously then definitely the law will develop at a fast pace. As we can see that law of torts is an ever growing subject and should be changed as the society changes.

CONCLUSION

Even though there are a large number of problems and difficulties, it would not be correct to say that the law of torts is not at all developing in India. The law is definitely



developing but at a slow rate. The law is without any doubt necessary in the country its just that it needs enactment and few reforms to make it more efficient.

Law of torts is the subject that has not got enough appreciation in India. The reason behind the lack of appreciation is merely that people till now are not fully aware about it. Even after the lack of awareness the necessity of the law is very well understood by the courts and the government. The law is not simply overlooked and from time to time theories in torts are developed as and when required. The law of torts is still in premature stage in India, with proper reforms and changes it can be made as efficient as any other codified law present today.

Thus, it can be concluded that the codification of the law of torts will help in the development and growth up to a great extend in India. Remaining few problems can then be solved with certain reforms in the law. Thus, India is on its way to make this law more structured, well-planned and systematic.

