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# SHAPING INDIA'S TORT LAW THROUGH JUDICIAL INNOVATION AND ITS CONSEQUENCES FOR LEGAL REFORM

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## ABSTRACT

Law of Torts, derived from English common law, has primarily developed through judicial precedents, yet not codified in India. This branch of law developed gradually and various heads of wrongs are covered within it through various case laws. Yet its development in India is very slow due to a number of circumstances and factors. No doubt legislature has aimed to codify and to provide statutory recognition to various torts such as by introducing the Motor Vehicle Act, National Green Tribunal Act and various other environmental laws. Rather none of them deals with the issue exhaustively. This research investigate the factors which lackadaisical the development of law of torts in India while discussing judicial innovation in this discipline. It addresses

- how the judges have explored, interpreted and applied the legal principles to address the emerging socio-legal issues in absence of a statutory framework. Our judiciary has not blindly followed the principles of English jurisprudence rather modified and then applied in context to the Indian scenario. This research based on the existing papers that deal with the issue of non-codification but falls short in the judicial role in development tort with specific examples, which is aimed to address here. For that, this paper analyze the significant rulings like *M.C. Mehta v. Union of India* and stance of court in dealing with tortious action through other authorities as well. It evaluates the dual facets of such judicial innovation first by celebrating and appreciate the efforts to protect and upholds the rights of sufferer and then analyzing its shortcomings and limitations. This gives a balanced and unbiased horizon to the paper. Finally, this research advocates for harmonizing the segregated legal provisions on tort law by providing certain suggestion, which again provides an opportunity for future research on these suggestions for facilitating development of tort law in India.

**Keywords:** Torts, Common Law, India, judiciary, Uncertainty, Codified, wrongs.

## **Research Objective**

This research study ensures the following objectives:

1. To analyze the judicial contribution which shaped the traditional law of torts to solve the new emerged problems amidst legal lacuna.
2. To assess the legal consequences of these judicial innovation.
3. To propose the recommendations regarding judiciary's role and codification of such laws.

## **Research Methodology**

The study adopts a doctrinal legal research, involving the analysis of scholarly research, books, statutes, judicial authorities and legal commentary. Existing research deals with the problems pertaining to non-codification of tort law however this research focuses on role of judiciary in upholding and protecting civil rights of the people. It tries to explore the courts ways to develop new principles in absence of statutory framework and their socio-legal impacts.

## **Introduction**

Law of Torts in India is a major branch of civil law still lacks the comprehensive statutory framework. It evolved significantly through judicial authorities primarily from English common law and addresses only certain kinds of civil wrongs such as negligence, nuisance, defamation, trespass and assault thereby enabling a person to seek remedies against the tortfeasor. It bears the foundation on the well-known maxim "Ubi jus Ibi remedium" by addressing the personal rights of the individuals. Diving into its definition, the term 'tort' is a French word which means "twisting out", however, the word 'tort' itself derived from a latin term 'tortum' which again means "twisted" apparently, in common parlance it stands as any twisted, crooked or wrongful act. According to the Salmond "Text is a civil wrong for which the remedy in common law is action for unliquidated damages, and which is not exclusively the breach of contract or the trust or the breach of other merely equitable obligation." (J.N. Pandey, 2022) Also in the words of Winfield "Tortious liability arises from breach of duty primarily fixed by law. This duty is towards persons generally and its breach is redressable by an action for unliquidated damages. Since it is a part of uncodified law no universal definition exists. There

exist no comprehensive definition of tort in India just section 2(m)<sup>1</sup> which merely states “tort as a civil wrong which is not exclusively the breach of trust or breach of contract.” Thus based on the above given contexts tort may be understood as a branch of civil law other than mere breach of trust or contract, on commission or omission of certain acts which result in injury to the victim provides unliquidated damages.

Absence of codification grants considerable flexibility to the courts for granting appropriate relief to the righteous party if violation of their legal rights has been proved. Yet this judicial innovation (interpreting or establishing legal principles by the courts in absence of clear statute or provision) introduces challenges as well and creates an uncertainty. All these matrices are discussed in later sections of this paper.

### **Historical Background and Development of Law of Tort in India**

Law of torts bear its origin from Roman percept where certain rules under a common shed exist which governs conduct of people living in the society. These percepts were given by Ulpian, which imposes a duty on man not to have an unlawful conduct (R.k.Bangia, 2023). Law, In India, grew slowly after the English rule, Initially all civil wrongs were taken under a single head and treated similarly whether it may be breach of contract, of trust or any other wrong. But with the passage of time, gradually laws of tort started to develop as a separate breach. Through judicial precedents. Common law started to be followed in the presidency of Bombay, Calcutta and Madras only and in rest of the Indian Courts for certain civil wrongs rule of equality, justice and good conscience ways still prevalent. Yet still law of torts remains non-codified. Sir Pollock made an attempt to draft the code on law relating to tortious act but it was never been legislated. (R.k.Bangia, 2023).

### **Development of Law of Torts**

Law of torts started to develop very late in India. As discussed, initially rules of English Common Law was followed in the presidency of Bombay, Calcutta and Madras only; and in other court rule of equity was prevalent. Mainly it started developing with the development of the modern scientific rules. Only the traditional wrongs which were given by English Common law used to be followed since years but with the emerging era of globalization these traditional heads were unable to serve the ends of justice since theory of Salmond solely recognized wrongs

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<sup>1</sup> The Limitation Act, 1963

which suit in the pigeon-hole and none other. But as the era of industrialization grew, many new branches of wrongs such of copyright patent, trademark, no-fault liability principle came onto its sphere. Although it is not codified at present time but various wrongs has get a present time but various wrongs has get a legal recognition and provisions for the same

### **Reasons For Slow Development and Non-Codification:**

Till date, in countries like England, USA tort law has been framed yet the scenario is quite different in India since it is still not codified here. Certain causes which are preventing its codification exists; for brevity some of them are discussed here since other research are dealing with it comprehensively these are-

#### **i) Heavy Reliance on English Common Law**

India's legal system primarily evolved through English rules and precedents and continued to be followed even after independence. This has created an inertia in the mind of legislature that existing framework is sufficient and does not require any comprehensive legal backing.

#### **ii) Diverse Nature of Law of Tort**

Law of tort covers a wide amplitude of civil wrongs having various dimensions and broad spectrum. Codification of such a diverse and dynamic discipline creates significant challenges since simplifying the diverse law is a tough task requires a lot of political conscience and involves the risk of adoptability as per the societal change.

#### **iii) Uncertainty of Legal Provision**

Being uncodified, law of torts does not have a straight forward and similar approach for the same wrong. Absence of legal provisions, gives a discretion to judges where with the variation of facts and circumstances judgment on the same point also varies, which finally creates a lot of uncertainty and chaos and hindered its development in India.

#### **iv) Justice Delayed**

Hefty number of civil cases are pending making the courtrooms over-burdened and work-pressured. A civil suit takes 10-12 years and sometimes more as well, to decide the claim. It leads wastage of money and unnecessary agony to parties.

**v) Lack of Political Conscience:**

Again the legislature lacks in political will and not motivated to draft a codified and comprehensive law relating to tort. Again in a developing country like India, legislature primarily focuses on the socio- legal precedents and criminal law and not on the laws like tort.

**vi) Lack of Awareness**

Most of the people in India are illiterate and uneducated. They are unaware about their rights and remedy. It finally lacks in public demand for codification on this branch of law” (Sharan).

**Judicial Innovation in Tort Law in India**

Judicial Innovation is a transformative and creative act of the judiciary in India adopted to fill the existing lacuna in any statute or to develop new principles in absence of the statute or to harmoniously interpreting the statute to fill the right – remedy gap and to protect rights of citizens for achieving the vision of welfare state. This act reflects the court’s proactive role in filling the existing lacunae and shaping the existing framework to address the socio- legal problems. Here we shall specifically discuss this innovation in shaping the tortious law of India and giving a way to the English principles to show a progressive remark for our country.

In the remarkable authority *M.C. Mehta v. Union of India*<sup>2</sup>; the court treated the letter addressed by Delhi legal aid as petition for protecting rights of victims and finds it appropriate for proceeding under article 32. The court relaxed the traditional rule of locus standi where interest of the larger section of society is involved, and in para 3 of the judgment observed, “Where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing regular writ petition under [Art. 226](#) in the High Court and under [Art. 32](#) in this Court, but also by addressing a letter to the Court. Even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided of course it is by or on behalf of a person in custody or on behalf of a woman or a child or a class or deprived or disadvantaged persons. Letters addressed to individual Justices of this Court should not be rejected

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<sup>2</sup> 1987 AIR 1086

merely because they fail to conform preferred form of address nor should the Court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the Court were to insist on an affidavit as a condition frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court. *Bandhua Mukti Morcha v. Union of India & Ors.* 1984 SCR 67; *S.P. Gupta v. Union of India*, [1981] (Suppl) SCC 87 and *Union for Democratic Rights & Ors. v. Union of India*, [1983] 1 SCR 456, relied upon.” (M.C. Mehta And Anr vs Union Of India & Ors on 20 December, 1986, n.d.)

The court while formulating the principle of absolute liability highlighted that an enterprise engaged in an inherently dangerous activity which possess a serious threat to health and safety of persons dwelling owes an unconditional and non- delegable responsibility against any harm caused irrespective of its occurrence even without any negligence on their part. (Dhirajlal, 2023)

Hon’ble J. Bhagwati observed “Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in America and U.K.” while dealing with the amount of compensation held “The measure of compensation in such kind of cases must be co-related to the magnitude and of the enterprise because such compensation must have a deterrent effect. The rule in *Rylands v. Fletcher* (supra) laid down a principle of strict liability applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. This rule evolved in the 19th century at a time when all these developments of science and technology has not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry on as part of developmental program, the Court need not feel inhibited by this rule merely because the new law does not recognize the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity.” (M.C. Mehta And Anr vs Union of India & Ors on 20 December, 1986, n.d.)

Similarly, court innovated the stricter liability for state for the faulty acts of its officials and addressed the gap in areas where violation of human rights by officials are involved. In *Jai Laxmi*

Salt Works (p) Ltd. V. State of Gujrat<sup>3</sup>, court addressed the applicability of Limitation Act on tortious liability. Court held art.36 of the Act does not apply to all kinds of tortious wrongs thereby allowed the applicant to claim his remedy against the state, court held- the state owes an absolute duty against injury caused due to the negligence of its servants. Similar views were earlier laid down by apex court in 1884' Vidyawai Case.<sup>4</sup>

In Indian Council for Enviro-Legal Forum v. Union of India,<sup>5</sup> Supreme Court formulated a new doctrine for dealing with the fault or harm committed to the environment and to the people depending on such environmental sources, famously named as 'polluter-pay principle' wherein who produces or causes the pollution, may be any individual or an enterprise, must bear the cost of handling, managing and removing it to prevent the damage caused to the environment and humans till a fair and optimum level.

In Balaram Prasad v. Kunal Saha<sup>6</sup>, the apex court significantly shaped the law on medical negligence in India and set new benchmark for determining the award of compensation when medical negligence resulted the death of patient. The court justified the claim for enhancement of compensation to include the claim for the pain and suffering caused to the patient. Court observed "non- pecuniary damages as the gratuitous service rendered by the wife or mother with true love cannot be replaced by the maid. However, some pecuniary estimation has to be made out. The court hold the right to health as a fundamental right guaranteed under article 21". The court awarded a record compensation of Rs.5.96 crore to the petitioner by reinforcing the petitioner right under the Consumer Protection Act, 1986 setting new avenues for dealing with medical negligence under the horizon of 1986' Act.

Again SMC Pneumatics (India) Pvt. Ltd. v. Jogesg Kwatra is a significant ruling where delhi court for the first time grant the appropriate relief, herein perpetual injunction, to the petitioner against cyber defamation. The court figured- the existing defamation to be applied in similar way if it is done through electronic communication. This tort of cyber defamation was again cited in **Kalandi Charan Lenka v. State of Odisha**<sup>7</sup> and the high court while distinguishing between defamation and cyber- defamation opined that in cyber defamation character assassination of a person is done by using new and efficacious ways in cyberspace or via internet using electronic

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<sup>3</sup> 1994 (3) SCC 492

<sup>4</sup> Vidyawati v. State of Rajasthan 1984 AIR 933

<sup>5</sup> 1996 SCC (3) 212

<sup>6</sup> AIRONLINE 2013 SC 528

<sup>7</sup> 2017 BLPL No. 7596

gadgets.

### Consequences of such Innovations for Legal Reform

Nonetheless, the absence of a specific statutory framework, our judiciary has significantly shaped the traditional tort law acting as a dynamic force for legal reform. Judiciary, by significantly moulding traditional law to address the lacunae for protecting the interest of the marginalized party, has sufficiently proven that it is not just a mute spectator rather an agency of the state and thereby not paralyzed to act due to insufficient legislation. This approach was later seen by the constitutional scholars and judges as 'judicial activism' or the judge performing the function of a legislature. Following this approach judiciary has remarkably acted out of the way for safeguarding the human rights and civil liberties of the citizens. Profound case of *Vishaka v. State of Rajasthan*<sup>8</sup> did followed the same approach and in non- presence of specific statutory provision, court in exercise of its inherent jurisdiction under Article 142 of the constitution, applied international treaties and conventions thereby framed comprehensively guidelines for dealing with the evil practice of sexual harassment of women at workplace (*Vishaka & Ors. v. State of Rajasthan & Ors., n.d.*).

Afterwards courts applied the principle of 'no-fault liability' in motor accident claims as well even the accident occurred without any fault or negligence on his side. This no fault based principle was initially covered under **section 140 of the Act**<sup>9</sup>, which was later in 2019<sup>10</sup> substituted under **section 164** with a 'non obstante clause' that owner or an insurer of vehicle has to make a compensation of rs.5 lakhs or rs.2.5lakhs incase death or grievous hurt has been occurred even without any fault or negligence on his behalf; this is a significant reform incorporated in our motor vehicle laws.

On the similar footing, certain principles of environmental jurisprudence developed by the apex court through its judicial reasoning have been later incorporated as fundamentals principles in dealing with the environmental issues under section 20 of National Green Tribunal Act, 2010 stated as, "The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle, polluter pays principles."

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<sup>8</sup> (1997) 6 SCC 241

<sup>9</sup> Motor Vehicle Act, 1988

<sup>10</sup> By Act 32 of 2019 (w.e.f. 1-9-2019)

Also the horizon of sovereign immunity, again a concept of traditional law of tort, has been narrow down in every aspect to hold the state accountable for indictable act done by the officials and now almost obliterated by our judiciary through its catena of judgments which were discussed in a separate research study. (Poonam, 2025)

These judicial innovation has enabled the judiciary to adopt law of tort according to the modern challenges bridging the legislative gap for a progressive change. These contribution has also played a significant role in framing the laws based on the principles and reasoning given by the courts. However, without a codified framework, law of torts still remains fragmented lacking a consistent application of these innovation.

### **Challenges and Criticism:**

Judicial innovation in dealing with the law of tort in India has extend without boundaries, significantly influencing the legal reform and social welfare changes. Through such significant rulings, judiciary has acted for public good, enhanced accountability, followed natural justice and thereby protected rights and liberties of marginalized people. Despite above all efforts and positive outcome consequences of such innovation are double-edged and possess many criticism, limitations and unintended consequence. These critiques focus on the key points like inconsistency and unpredictability in judicial decisions and limited role of judiciary as well. Judiciary is meant for upholding rights and liabilities rather than legislating it and cannot encroach the field of other institution; constitutional scholars define it as 'Judicial Overreach'

Another major criticism is the inconsistency of rulings as every case has different facts and evidences therefore, without a codified law, similar issues are dealt differently such as standard of applying negligence in medical torts differs often a times. This lack of uniformity creates confusion among litigants thereby weakening the public trust and reliability in the court of law.

Again, unpredictability of case laws is also a major concern. Judiciary itself overrule its earlier decisions and may hold or create something new which unnecessary makes it complicates and not worthy to serve justice. The evolving nature of tortious liability by judicial innovation may be challenging to deal with anticipate legal risk. For instance- sudden shift from strict to absolute liability in M.C. Mehta Case unexpectedly altered the industrial obligations which adversely

affected the economic structure of these industries.

And finally, expensive litigation of tort cases is also a major concern. As tort is a civil wrong at first the matter is adjudicated by the civil courts which requires hefty court and pleader's fees while taking years of time to be decided. It restricts the judiciary capacity to reform as only few percent of claims would be addressed to it and many wrongs still remains untouched by the court of justice. This exclusivity limits the ability of courts to serve as a broader tool of justice.

### **Suggestions:**

It cannot be denied that judiciary has played a pivotal role in shaping the traditional tort law. Above discussed cases demonstrate the capacity to address the legal lacunae to address the societal needs and promoting justice. However it has certain challenges and limitations as well. Despite these limitations judiciary role as protector of rights cannot be denied. The existing lacunae and problems of non- codification can be addressed and tackled in following ways:

#### **(a) Codifying in parts:**

Since the entire law of tort being based on the case laws has a wide amplitude therefore instead of codifying the entire law at once, at first we should address and codify the existing core concepts such as negligence, defamation, nuisance etc. by defining these coherently with their essential requisites, underlying judicial principles and also by attaching illustrations with them to avoid incertitude.

#### **(b) Analysis the statutory framework of other nations and their adaptability as- per Indian scenario:**

To tackle with the issues of tortious law we need to analyze and research the model of tortious law applied in other countries specifically of America and U.K. And to brainstorm the Indian legal and social environment that how far and in what way that laws may be applied in India.

#### **(c) Judicial training:**

Tort law in India is an underrated law by the advocates and judges so specialized training programs to develop and standardize the understanding of tortious law should be carried out, by reducing inconsistencies and ensuring its coherent application across the country.

**(d) Laws for emerging issues:**

Statute in the new emerging areas like cyber torts, intellectual property wrongs, wrongs using artificial intelligence should be framed. It shall not only tackle with these emerging torts but also alleviate the burden of judiciary so to ensure innovation and timely response by the courts in the matters involving individual rights and public interest.

**Conclusion:**

No doubt exist that law of torts is still not fully developed in India. However many wrongs were addressed by the court and provided a legal backing through judicial precedents. In India, law of torts stands at a crossroads situation, where one side shows that in spite of the non-statutory framework judiciary has responded in a creative way thereby laid a strong foundation to address the socio- legal problems. While on the other side, it has certain limitations. All this finally requires a balanced approach to be followed to do codification and to strengthen the justice system. By implementing certain reforms followed with legislative will, India can frame its own tort law which should be just, fair and equitable to serve as an instrument for justice and societal progress.

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