

# **RMM LAW COLLEGE SAHARSA**

## **LAW OF TORTS**

### **IIIrd Part**

### **Paper -V**

### **TOPIC- Development of law of Torts in India**

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The word torts' is derived from the Latin expression tortum which means twisted/crooked/wrong. Tort' in French is corresponding to the English word wrong and the Roman expression delict. In a society when an individual diverges from the ordinary course of straight conduct to a crooked alternative, he is believed to have committed tort - a conduct which is twisted or crooked. The person committing such crooked act is tagged as a tortfeasor.

The focal point of discussion about torts will invariably start with Salmond's school of legal interpretation which denotes law to be consisting of rules which are recognized and acted upon by Courts of Justice. However, before the supremacy of the State as the custodian, law was enforced by an individual whose right has been allegedly violated by clans. According to Henry Maine this was the Penal Law of ancient communities which has emerged as the law of wrongs in modern day society and has been attributed as the Law of Torts.

Broadly defining, Tort may be classified as an act of civil wrong which can be redressed by an action for unliquidated damages. In India, the law of torts defines and provides remedies for non-contractual acts which are civil in nature.

Prior to William the Conqueror's 1066 Norman conquest of England, the legal system was rather chaotic, steered on a case-to-case basis. Post 1066, after the Norman conquest, fines for illegality were directed to be paid directly to the courts or the King, instead of intermediaries

and this process quickly became a source of strong revenue generation. A wrong came to be known as a tort or trespass, and a distinctive line was drawn between civil petitions and pleas to the Crown, the later mostly encompassing penal provisions.

After the Norman conquest, once French became the primary language in England's judiciary, it saw many of English law's technical terms having their origin to French, of which tort' is one.

The Indian Scenario:

It is a documented fact that the applicability of the Law of Tort in India is much rudimentary in structure as compared to the British Law. Predominantly, in the Indian Legal system, punitive and corrective remedies are more in vogue than compensation for wrongs. In India, the English Law of Torts has undergone a synthetic Indianization assuaging to the principles of Justice, Equity and Good Conscience which has remained the fundamental philosophy of the country's codified legislative system.

In *M.C. Mehta v. Union of India*, Justice Bhagwati said:

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.

It is pertinent to mention here that Section 9 of The Code of Civil Procedure 1908, as amended, which empowers the Civil courts of the land to try all suits which are civil in nature, impliedly attributes jurisdiction to try cases under the Law of Torts based on the fundamentals of Justice, Equity and Good Conscience. In other words the Civil courts can draw upon its inherent powers for determining liability as defined in a Tort proceeding.

In *Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat*, Sahai, J., held:

...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 society and cultural refinedness, the liberal approach to tortious liability by court would be conducive.

In light of the above 2 judgments, and with an objective to create a specific Indian jurisprudence system, the following diversified branches of Law of Torts have been codified in India amongst others:

Judicial Officers Protection Act,1950

Indian Carriers Act, 1865

Cattle Trespass Act, 1871

Easement Act, 1882

Workmen Compensation Act,1923

War Injury (Compensation Insurance) Act,1943

Fatal Accidents Act,1955

Trade and Merchandise Act, 1958

Specific Relief Act, 1963

Air (Carriage by Air) Act, 1972

Bhopal Gas Leak Disaster (Processing of Claims) Act,1985

The Consumer Protection Act,1986

Motor Vehicles Act, 1988

Landmark Cases of Torts in India:

Pravat Kumar Mukherjee Vs. Ruby General Hospital and ors 2005 CPJ 35

Shashi Tharoor vs Arnab Goswam CS(OS) 253/2017

D.K.Basu v. State of West Bengal

Alka Lamba Trespass case

Ushabti vs Bhagya Lakshmi Chitra Mandi

Khenyei vs New India Assurance Co. Ltd.& Ors

## Jacob Mathew vs State of Punjab & Anr

The law of Torts in India is a relatively a new branch of evolving clustered law which needs to be supplemented by codifying statutes by bringing it under the ambit of one umbrella upon the basis of the maxim *ubi jus ibi remedium*. Improvising on the existing laws will undoubtedly strengthen the faith of citizens, we the people of India, but will also elevate the image of the country in the international arena of legal fraternity.