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Tort Reform: A Critical Analysis of its Implications on Access to Justice

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ABSTRACT

Tort law stands as a cornerstone of civil jurisprudence, significant for administering justice to individuals who have endured injury due to the negligent actions of others. It operates on the fundamental principle encapsulated by the maxim, 'Ubi Jus Ibi Remedium', signifying that where there exists a right, there must be a corresponding remedy. Each individual possesses inherent rights, accompanied by the responsibility to uphold the rights of others and refrain from their violation. This obligation termed the duty of care, forms the bedrock of tort law, with breaches thereof constituting tortious acts. This paper delves into the intricacies of tort law, outlining its various types and tracing their evolution through landmark cases such as Donoghue v. Stevenson and Rylands v. Fletcher. Despite significant strides, the system remains plagued by inefficiencies, prompting a call for reform initiatives. Thus, the paper advances practical suggestions aimed at refining the tort law framework, fostering a more equitable and efficient legal landscape.

Keywords: Civil Jurisprudence, Obligation, Ubi Jus Ibi Remedium

I. INTRODUCTION

The Law of Tort is a branch of law that helps with the governance of civil wrongs². It provides remedies to people who have been harmed or injured by another person's wrongful acts or omissions. It comprises any violation of the rights of an individual, that has caused certain harm, loss, or injury to the individual, and has civil liability. The Law of Tort does not deal with the civil wrong of breach of contract as the Law of Contracts deals with the same. It can include any type of harm, just the important aspect is that the harm should be a civil wrong and must not have criminal liability³. To delve deeper into the definition of a tort, it's necessary to understand that a tort can constitute a variety of harms or injuries to the person whose legal right is violated, such as monetary loss, mental distress, physical hurt, reputational damage, or even property loss.

Tort law has three main types: Intentional Torts, Negligent Torts, and Strict Liability Torts. As

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² Civil Wrongs- occur when a person wrongly suffers a loss caused by another person, a business, or government

³ Criminal Liability- Holding individuals responsible for the criminal act they have committed

the name suggests, Intentional Torts are those infringements of legal rights that have been committed intentionally to cause injury or harm to someone. In the Intentional Tort of Battery, the defendant purposefully tries to harm the plaintiff through intentional physical touch. Another example of Intentional Tort is False Imprisonment, where the defendant intentionally restricts the physical freedom of the plaintiff and confines the plaintiff against their will or consent. The next type of tort, Negligent Tort, occurs when the duty of care towards others is breached by the defendant which ends up harming the plaintiff. These actions occur due to the carelessness or irresponsibility of the defendant where the defendant does not intend to harm the plaintiff. The Last type, Strict Liability Torts are those actions for which the defendant is held liable irrespective of whether it was intentional or negligent. This means, that the defendant does not have to cause harm to the plaintiff to be held liable. If person A has a pet dog that is of a dangerous, legally banned breed, and it bites person B, then person A will be strictly liable even if he was not directly involved in the harm. The compensation provided to the injured person in tort law is usually in the form of damages. The principle of, ‘Restitutio in Integrum’⁴ plays a huge part in this as it states that the damages should be of such nature that they should bring the victim back to the condition they were in before the particular tort occurred.

This paper aims to examine the inefficiencies in the system of tort law and also aims to understand the various reasons for the requirement of certain reforms. The Concept of Tort Reform throws light on the various measures that should be taken to make the tort law more coherent and methodical. It aims to implement certain modifications and guidelines that will help ease the process of justice delivery and also ensure the smooth functioning of the legal system of the country.

II. EVOLUTION OF TORT LAW

The Law of Tort is uncodified⁵ in our nation and has developed through landmark cases and their judgments. Over the decades, the development of tort law through case law has been a complicated and intricate process. Tort law has developed as a result of a mix of judicial rulings, legislative actions, and social changes. It has its roots in the English Common Law⁶. Some early Landmark cases developed its basis and it has been governed through these landmark precedents ever since. Gloucester Grammar School Case (1410) forms the basis of tort law. The case stated an infringement of legal rights needed to occur for the defendant to be held liable.

⁴ Restitutio In Integrum- Latin Maxim for, “Restitution to the original position”

⁵ Uncodified Laws are those laws which are unwritten and unconsolidated, and have not been formally adopted by the legislature.

⁶ Common Law refers to the legal structure followed by countries which were once British Colonies

In this particular case, even though the plaintiff suffered certain losses due to some actions of the defendant, the defendant cannot be asked to give damages to the plaintiff as the defendant never violated any legal rights of the plaintiff. This case held the distinction between *Damnum Sine Injuria*⁷ and *Injuria Sine Damnum*⁸, where the latter counts as an offense and the former does not.

The same principle was applied in the Indian context in the case of *Bhim Singh Vs. The state of Jammu and Kashmir*⁹, where an MLA was arrested and kept in jail, and several of his legal rights were violated. Even though he did not suffer any injury, this would still amount to an offense under the tort law due to the principle of *Injuria sine Damnum*.

Negligence is considered to be one of the most essential and most basic torts. It developed in the case of *Donoghue Vs. Stevenson* (1932)¹⁰ through which the ‘Neighbour Principle’ was also established. The judgment gave birth to the tort of negligence and it was established that the breach of duty of care which everyone has towards others amounts to negligence, and in such cases, the party liable has to pay certain damages to the party suffering. It was also held, that all manufacturing units owe a duty of care toward their consumers, and could be held liable for any injuries caused to the consumers by the breach of this duty of care.

Over time, courts have expanded the definition of tort liability to cover additional categories of injuries and types of harm. For example, the concept of strict responsibility emerged, which imposes liability on defendants regardless of negligence for damages caused by particular activities or products that are inherently dangerous. The tort of Strict Liability came into light through the case of *Rylands Vs. Fletcher* (1868)¹¹, in which it was held a person would be held liable, even if he has not been negligent. In the case of *Rylands Vs. Fletcher*, Rylands was held liable as he had committed all the acts that are essential for strict liability (Accumulation of anything beyond its natural usage, non-natural use of land for its storage, escape of the thing in storage, and harm caused to someone because of that escape), even if he hadn’t directly caused any harm to the plaintiff.

Nuisance¹² is another important tort and was developed in India through the case of *Ram Baj Singh Vs. Babulal*¹³ (1981) where the two pillars of nuisance were established, Special damage

⁷ *Damnum Sine Injuria* is the latin maxim for, “Damage without Injury”

⁸ *Injuria Sine Damnum* is the latin maxim for, “Injury without Damage”

⁹ *Bhim Singh, Mla vs State Of J & K And Ors*, AIR(1986)SC(494)

¹⁰ *Donoghue v Stevenson* [1932] AC 562, 578-599 (Lord Atkin)

¹¹ *Rylands v Fletcher* [1868] LR 3 HL 330

¹² Nuisance- An act which gives rise to unlawful, unwarranted or unseasonable annoyance or discomfort to the plaintiff

¹³ *Ram Baj Singh Vs Babulal* [1981] AIR 1982 ALL 285

and Substantial injury, and the defendant was held liable for nuisance.

Tort law aims to make up for the losses suffered by the victims and avoid similar acts from happening in the future. In circumstances of severe wrongdoing, courts have placed a greater emphasis on making sure that victims receive punitive damages in addition to compensatory damages. All things considered, the development of tort law through case law illustrates the dynamic interaction of judicial rulings, legislative actions, and social values. To meet new difficulties and defend the rights of people and companies, tort law will continue to change as new industries, technology, and societal issues arise.

III. THE IDEA OF TORT REFORM

The term, Tort Reform refers to the change that is required in the system of Civil tort law to not only make it efficient but also more just. The Tort law is an uncodified law and the main reason for that is that it is always developing. It is not something that can be made through some statute or legislation, it develops with the development of society and technology. As Winfield¹⁴ stated, it is a dynamic law and is always growing because wherever there is any right, there is a remedy (Ubi Jus Ibi Remedium).

In India, efforts to modify and enhance the laws and processes pertaining to tort are referred to as tort reform. Tort law is one of the many areas where India's legal system has been undergoing reforms to reduce inefficiencies, increase access to justice, and strengthen legal remedies for people who have been harmed. One of the biggest issues in the country where the law of tort could be reformed is the very narrow scope of the tort law. The fact that the tort law is not codified creates an issue that can lead to inconsistency or ambiguous laws. Codification will not only make the Tort law clear and precise but will also help the common public to understand the law. Since it is a developing law, amendments can always be made to the codified statute to add more Tort principles as they come with new cases.

Another Tort Reform that should be put into place is providing adequate compensation and damages to the victim who suffered losses. There should be initiatives to guarantee just and sufficient compensation for those injured in torts, such as steps that accelerate the lawsuit procedure and improve the damages computation process according to the severity of injuries sustained. It is also essential to establish and enforce stricter guidelines on fault, negligence, and liability in tort cases to make sure that people and organizations are held responsible for their deeds or inactions that cause harm to other people. The same has been elucidated in the

¹⁴ Percy Henry Winfield was a jurist and a professor of English Law

Neighbour Principle, in the case of *Donoghue Vs. Stevenson*, that one must take reasonable care to avoid acts or omissions that could reasonably be foreseen to cause harm to others.

Another Tort Reform that can be put into place is the speedy resolution of tort cases. India has a huge problem of pendency of litigations that leads to prolonged trials and delayed justice. Arbitration is a way through which pending litigations can reduce but a lot of tort cases are not arbitrable in nature. Hence, the legal administration should consider shifting arbitrable cases to arbitration so that cases of tort and other offenses can be resolved by the courts. The establishment of Tort Tribunals can also be considered as an option to reduce pendencies in the courts. By embracing reforms that prioritize fairness, accountability, and swift resolution, the legal system can better serve society and uphold the fundamental principles of justice for all.

IV. CONCLUSION

Tort law serves as a cornerstone of civil jurisprudence, providing a legal framework for individuals to seek remedy when they suffer harm due to the negligent actions of others. It is based on the principle, 'Ubi Jus Ibi Remedium', which highlights the fundamental notion that every right must be accompanied by a corresponding remedy. This principle forms the basis of the duty of care, which states that individuals have a responsibility to refrain from actions that could harm others and to uphold their rights.

Throughout history, tort law has evolved through landmark cases that have shaped its principles and applications. One such case is *Donoghue v. Stevenson* (1932), which established the 'Neighbour Principle' and laid the foundation for the modern concept of negligence. This case highlighted the duty of care owed by manufacturers to consumers, setting a precedent for holding parties liable for injuries caused by breach of this duty. Similarly, *Rylands v. Fletcher* (1868) introduced the concept of strict liability, holding individuals accountable for damages resulting from inherently dangerous activities or conditions on their property, regardless of negligence. This case expanded the scope of tort liability, emphasizing the importance of ensuring accountability for harmful actions.

Despite these advancements, the tort law system faces significant inefficiencies that necessitate reform. One key aspect is the lack of codification, leading to ambiguity and inconsistency in legal principles. Codifying tort law would provide clarity and precision, making it more accessible to the general public and facilitating a more efficient legal process. Additionally, reforms are needed to ensure that victims receive adequate compensation for their losses. This includes measures to speed the litigation process and improve the calculation of damages based on the severity of injuries sustained. By streamlining procedures and enhancing compensation

mechanisms, tort law can better serve the interests of justice and provide meaningful relief to those who have been wronged.

In conclusion, while tort law has made significant strides in providing remedies for civil wrongs, reforms are necessary to address inefficiencies and enhance its effectiveness. By embracing initiatives such as codification, expedited case resolution, and stricter liability standards, we can strengthen the legal framework of tort law and uphold the principles of justice and accountability in society.
