NOTES

All about Origin and Development of the Law of Torts in India

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Introduction

The Law of Torts is a branch of civil law that deals with civil wrongs which are not breaches of contract or criminal offences. Its primary objective is to provide compensation to a person who has suffered injury due to the wrongful act or omission of another. Unlike many other branches of law, the law of torts in India is uncodified and has evolved through judicial precedents, common law principles, and constitutional developments.

Meaning of Tort

The term **"Tort"** is derived from the Latin word *tortum*, meaning **"twisted" or "wrong."** It entered English law through the French word *tort*, meaning a wrongful act.

According to **Winfield**:

> *"Tortious liability arises from the breach of a duty primarily fixed by law."*

According to **Salmond**:

> *"A tort is a civil wrong for which the remedy is a common law action for unliquidated damages."*

Origin of the Law of Torts

1. Roman Law

The earliest concepts of tortious liability can be traced to **Roman Law**.

- Roman law recognized civil wrongs such as:
  - Assault
  - Battery
  - Trespass
  - Damage to property
- The principle of compensation rather than punishment gradually developed.
- The famous Lex Aquilia (286 B.C.) laid down rules for compensation for wrongful damage to another's property and greatly influenced later tort law.

Although Roman law influenced European legal systems, English tort law developed independently.

2. English Common Law

The modern law of torts originated in **England**.

(a) Writ System

Initially, there was **no separate law of torts**. A person seeking relief had to obtain a **writ** from the King's Court.

Important writs included:

- Trespass
- Trespass on the Case
- Nuisance
- Detinue
- Conversion

If no suitable writ existed, no remedy was available.

This gave rise to the famous maxim:

> *"Where there is no remedy, there is no right."*

(b) Expansion through Judicial Decisions

Over time, English judges expanded tort law by recognizing new wrongs.

Major developments included:

- Negligence
- Defamation
- Nuisance
- Strict Liability
- Occupiers' Liability
- Vicarious Liability

Thus, tort law became **judge-made law** based on precedents.

Development of the Law of Torts in India

1. Ancient Indian Law

Ancient India did not have a separate branch called "Law of Torts."

However, Hindu and Muslim laws recognized several principles resembling tortious liability.

Under Hindu Law

Texts like Manusmriti, Yajnavalkya Smriti, Narada Smriti provided compensation for:

- Assault
- Defamation
- Injury to property
- Damage caused by animals
- Trespass

Liability often depended on **moral duty (Dharma)**.

Under Muslim Law

Islamic law recognized liability for:

- Wrongful injury
- Damage to property
- Defamation

Compensation (Diya) and restitution were available in certain cases. Thus, although no separate law of torts existed, civil liability was recognized.

2. British Rule and Reception of English Law

The modern law of torts entered India during British rule.

Charter of 1726

The **Mayor's Courts** established in Bombay, Madras, and Calcutta began applying **English common law** wherever suitable.

Charter Act of 1774

The **Supreme Court at Calcutta** administered English common law subject to:

- Justice
- Equity
- Good conscience

This principle became the foundation of Indian tort law.

Principle of Justice, Equity and Good Conscience

Where Indian statutes were silent, courts applied English legal principles **only if suitable to Indian conditions**.

Thus, English tort law was **not blindly adopted**. Instead, it was modified according to Indian social realities.

Development through Judicial Decisions

Indian courts gradually developed tort law through landmark cases.

1. Ashby v White (1703)

Although an English case, it strongly influenced Indian courts.

Principle:

> *"Where there is a legal right, there must be a legal remedy."*

This is expressed by the maxim: **Ubi jus ibi remedium.**

2. P&O Steam Navigation Co. v. Secretary of State (1861)

This was the **first important tort case in India.**

Facts: A servant of the Government negligently caused injury to the plaintiff.

Held: The Government could be liable for acts done in **non-sovereign functions**.

Importance:

- Introduced the doctrine of governmental tort liability in India.
- Distinguished sovereign and non-sovereign functions.

3. Rylands v Fletcher (1868)

Though an English decision, Indian courts applied the rule of **Strict Liability** in several cases.

Rule:

A person who keeps dangerous things on his land is liable if they escape and cause damage.

4. M.C. Mehta v. Union of India (Oleum Gas Leak Case, 1987)

This case revolutionized Indian tort law.

Facts: Leakage of Oleum gas from Shriram Industries caused injuries.

Held: The Supreme Court evolved the principle of **Absolute Liability.**

Difference from Strict Liability:

- No exceptions.
- Enterprises engaged in hazardous activities are absolutely liable.

Importance:

India developed its **own principle**, going beyond English law.

5. Rudal Shah v. State of Bihar (1983)

The petitioner remained in jail for several years after acquittal.

The Supreme Court awarded compensation under **Article 32**.

Importance: Constitutional remedies became an important part of tort law.

6. Nilabati Behera v. State of Orissa (1993)

The Court awarded compensation for custodial death.

Importance: Expanded the concept of **constitutional torts**.

Constitutionalization of Tort Law

One of the unique features of Indian tort law is its constitutional development.

Violation of **fundamental rights**, especially:

- Article 21 (Right to Life)
- Article 14 (Equality)
- Article 32 (Constitutional Remedies)
- Article 226 (High Court Writ Jurisdiction)

may result in compensation by constitutional courts.

This is known as **Public Law Compensation** or **Constitutional Tort**.

Thus, India has moved beyond traditional private law remedies.

Features of the Law of Torts in India

- Uncodified law based primarily on judicial precedents.
- Derived largely from English common law.
- Modified according to Indian conditions.
- Guided by principles of justice, equity, and good conscience.
- Includes modern doctrines such as:
  - Strict Liability
  - Absolute Liability
  - Constitutional Tort
- Aims to compensate victims and protect legal rights.

Present Position

Today, the law of torts in India continues to evolve through judicial decisions.

Important modern areas include:

- Environmental pollution
- Medical negligence
- Consumer protection
- Motor accident claims
- Industrial disasters
- Human rights violations
- Data privacy and cyber torts

Although India still lacks a comprehensive **Tort Code**, the judiciary has successfully developed the law to meet changing social and economic needs.

Conclusion

The Law of Torts in India has evolved from ancient notions of civil wrongs to a sophisticated system of judge-made law influenced by English common law and constitutional principles. While its roots lie in Roman and English legal traditions, Indian courts have adapted these principles to suit local conditions and have introduced innovative doctrines such as Absolute Liability and

Constitutional Tort. Today, the law of torts serves as an essential mechanism for protecting individual rights, ensuring accountability, and providing compensation for civil wrongs.