

# **Tort law in India**

## **WHAT IS TORT?**

Tort is breach of some duty independent of contract which has caused damage to the plaintiff giving rise to civil cause of action and for which remedy is available.

If there is no remedy it cannot be called a tort because the essence of tort is to give remedy to the person who has suffered injury.

### **1. Introduction**

The law of torts or civil wrongs in India is thus almost wholly the English law which is administered as rules of justice, equity and good conscience.

**The Indian courts, however, before applying any rule of English law can see whether it is suited to the Indian society and circumstances.**

Jurists in England and in India have often demanded that the law of Torts be reduced to a statutory form.

The advantage of such a step would be that the law would become definite and compartmentalized.

However, one must not forget that this branch of the law has evolved out of judicial decisions, that its very basis is case law (both English and Indian), and perhaps more harm than good may be done to the development of this branch of the law by reducing it to a statutory code.

**In recent times, some parts of the law of torts have been codified, as for example, The Fatal Accident Act, The**

## **Workmen's Compensation Act, The Employers' Liability Act, etc.**

However, the major portion of the field of this branch of the law is still based on **judicial decision**.

### **2. Nature of Tort**

#### **Definition of Tort The term**

A tort may be defined as a civil wrong independent of contract for which the appropriate remedy is an action for unliquidated damages.

### **Tort and Contract**

**There is a well-distinction between a Contract and a Tort. A contract is founded upon consent: a tort is inflicted against or without consent.**

A contract necessitates privity between the parties to it: in tort no privity is needed.

A tort must also be distinguished from a pure breach of contract.

First, a tort is a violation of a right in rem, i.e. of a right vested in some determinate person, either personally or as a member of community, and available against the world at large: whereas a breach of contract is an infringement of a right in personam, i.e. of a right available only against some determinate person or body, and in which the community at large has concern.

Secondly, in a breach of contract, the motive for the breach is immaterial: in a tort, it is often taken into consideration.

Thirdly, in a breach of contract, damages are only a compensation.

In an action for tort to the property, they are generally the same.

But where the injury is to the person, character, or feelings, and the facts disclose improper motive or conduct such as fraud, malice, violence, cruelty, or the like which aggravate the plaintiff's injury, he may be awarded aggravated damages.

Exemplary damages to punish the defendant and to deter him in future can also be awarded in certain cases in tort but rarely in contract.

## **Tort and Crime**

A tort is also widely different from a crime. First, a tort is an infringement or privation of the private or civil right belonging to individuals considered as individual; whereas a crime is a breach of public rights and duties which affect the whole community considered as a community.

**Secondly, in tort, the wrongdoer has to compensate the injured party: whereas, in crime, he is punished by the state in the interests of society.**

Thirdly, in tort, the action is brought by the injured party: in crime, the proceedings are conducted in the name of the state and the guilty person is punished by the state.

Criminal Courts are authorized within certain limits and in certain circumstances to order payment of a sum as compensation to the person injured out of the fine imposed on the offender.

.

## **Sources of law**

Tort law in India, like her common law counterparts, stems from both statute and common law.

### **Statutes**

Similar to other common law countries aspects of tort law have been codified. Furthermore, the Indian Penal Code criminalises certain areas of tort law.

### **Common Law**

Common law As tort law is a relatively young area of law in India, apart from referring to local judicial precedents, courts have readily referred to case law from other common law jurisdictions, such as **UK**, Australia, and Canada.

## **Categories of torts**

### **Offences to the person**

#### **Assault**

Indian courts have held that to constitute assault it is not necessary that there should be some actual hurt caused. A threat constitutes assault.

#### **Battery**

**Battery** is a criminal offense involving unlawful physical contact, distinct from assault which is the act of creating apprehension of such contact.

Battery is a specific common law misdemeanor, although the term is used more generally to refer to any unlawful offensive

physical contact with another person, and may be a misdemeanor or a felony, depending on the circumstances.

Battery was defined at common law as "any unlawful and or unwanted touching of the person of another by the aggressor, or by a substance put in motion by him."

In more severe cases, and for all types in some jurisdictions, it is chiefly defined by statutory wording. Assessment of the severity of a battery is determined by local law.

The criteria for battery is equivalent to that of criminal force defined in Section 350 ... of the Indian Penal Code.

## **False imprisonment**

**False imprisonment** occurs when a person intentionally restricts another person's movement within any area without legal authority, justification, or the restrained person's permission.

Actual physical restraint is not necessary for false imprisonment to occur. A false imprisonment claim may be made based upon private acts, or upon wrongful governmental detention.

## **Negligence**

### **Breach of the Duty**

The breach of [the] duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

Resulting in injury to the plaintiff's person or property.

## **Professional Negligence**

Professionals may be held liable for negligence on one of two findings:

He was not possessed of the requisite skill which he professed to have possessed.

He did not exercise, with reasonable competence in the given case, the skill which he did possess

## **Contributory Negligence**

Indian Courts recognise the concept of contributory negligence. Contributory negligence means the failure by a person to use reasonable care for the safety of either of himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".

## **Defamation**

The tort of defamation in India has largely followed the approach taken by the UK.

Indian courts have endorsed the defences of absolute and qualified privilege, fair comment and justification.

In UK, if the defendant is only successful in proving the truth of some of the several charges against him, the defence of justification might still be available if the charges not proved do not materially injure the reputation.

While there is no such ... provision in India, the law is possibly the same.

Recently, incidents of defamation in relation to public figures are highlighted.

However, in India, the weight of the authorities is for discarding between libel and slander and making both of them actionable per se. In UK, only libel and certain types of slander is actionable per se. Criminal libel in UK was abolished in 2010, while both slander and libel remain criminal offences in India, making people liable not just to the extent of damages but also undergoing imprisonment. An injunction may also be granted to stop further publication of defamatory material.

## **Economic Torts**

Economic Torts seek to protect a person in relation to his trade, business or livelihood.

While Indian courts has been reluctant to award damages for the economic torts of simple and unlawful conspiracy as well as inducing breach of contract due to the confused state of the law, the court has allowed damages for torts affecting economic interests under the conspiracy to injure, and in doing so, referred to UK authorities on the matter.

## **Land Torts**

Land torts seek to prevent interference with land in the possession of another.

Interference may take the form of entering land or part of it, or of remaining there after the withdrawal of permission, or of dispossessing the occupant.

Nuisance is a form of lesser interference with land. It may be private or public, and private nuisance has come to cover the conduct of the defendants which affects the claimant's interest in the land. This could be done by: Affecting materially his land.

Affecting his use or enjoyment of it. Interfering with servitudes and similar rights over the land.

## **Damages**

In the law of torts in India are premised on the concept of restitutio ad integrum. India adopts a compensatory Heads of claims under personal injury method and advocates "full and fair compensation" in all cases. In determining the quantum of damages, the Indian court will look to similar cases that may enable comparison. India's formulation of damages for tort cases is premised on the multiplier method, awarding compensation based on the degree of compromise to the earning ability of the victim.



