

PART - A GENERAL PRINCIPLES

1. ORIGIN AND DEVELOPMENT OF LAW OF TORTS IN INDIA

SYNOPSIS:

- A. Introduction**
- B. Law of torts in India**
- C. Development of law of torts in India**
- D. Recent developments in law of torts in India**
- E. Reasons for slow development of the law of torts in India**

A. INTRODUCTION:

The term '**tort**' is derived from a latin term '**tortum**' which means '**twisted**' (not straight or lawful).

The term 'tort' was introduced in the English law by the Norman jurists. Initially, the term 'tort' was used for certain special wrongs by English Courts and later on, it was used all civil wrongs.

Further, the tortious wrongs owe their origin to the writs of trespass granted by the English Courts, when there was trespass by one person in the land of another person.

The main reason for the growth of law of torts in English Law was due to the reason that the system of

administration of justice was simple, inexpensive and fast and hence, even for small violations of legal rights, the English people approach the Courts for remedy.

B. LAW OF TORTS IN INDIA:

In India, the origin of law of torts can be linked with the establishment of the British Courts in India. The law of torts, for the first time, was introduced in India through the British Mayor Courts.

The Mayor Courts were established by the British Parliament through the Charter Act of 1726 in the three presidency towns of Calcutta, Bombay and Madras.

Later on, these Courts were replaced by the Supreme Courts in these three presidency towns. The Supreme Courts also had jurisdiction to hear tort cases.

In India, the law of torts, as followed in English law, is still being followed by Indian Courts. The English law of torts has been modified to suit the Indian conditions.

Further, in India, since there are only a few Indian Case Laws in law of Torts and that the law has not been fully codified, the Indian Courts still depend on the English judgments.

Thus the Law of Torts in India is still based on the Common law of England. In absence of any codified law in Torts, the Indian Courts apply the rules of justice, equity and good conscience in deciding the tort cases.

C. DEVELOPMENT OF LAW OF TORTS IN INDIA:

In India, the development process of law of torts was very slow and it started very late. The development of law of torts in India started only after the development of the modern science in the seventeenth century.

The main reason for the slow development of law of torts is that the majority of the Indian population were poor, illiterate and lived in villages. They neither had formal education nor had any knowledge about their legal rights.

Further, they were unaware of how to establish their rights in any Court of Law. Since the cost of litigation in India was very expensive and there was delay in deciding the cases by the Courts, the poor litigants rarely approached the Courts for remedies.

Instead, they were reconciled as if it were their fate to suffer. This is the main reason for the slow growth of law of torts in India.

D. RECENT DEVELOPMENTS IN LAW OF TORTS IN INDIA:

1. In the last 50 years, especially after independence, the law of torts in India has been fairly growing. It is mainly because of the higher rate of literacy and also the wide circulation of news media both through press and electronics.

Now, the people are becoming more conscious of their legal rights and also the means of remedies through Courts of law.

2. The process of codification of many tortious laws have made the law more certain and easily accessible by the people.

For e.g.: The Motors Vehicles Act, 1988 is a very useful legislation in the tort of negligence and the affected victims can easily approach the Motor Accident Claim Tribunals for compensation.

The Court fee is nominal and the process of claim settlement is speedy. There is a provision for compulsory compensation to be given in 'hit and run cases' under the principle of 'no fault liability'.

3. In ***M.C. Mehta Vs. Union of India (Bhopal Tragedy Case)***, the Supreme Court of India have distinguished and further advanced the doctrine of absolute/strict liability from the already existing strict/absolute liability doctrine laid down in Ryland Vs. Fletcher in 1868.

The Supreme Court observed that if an industry is engaged in a hazardous or inherently dangerous activity and if harm/injury results to anyone on account of an accident in the operation of such hazardous activity - for e.g., escape of toxic gas, etc., then such industry is strictly and absolutely liable to compensate all the victims affected by the accident.

The Court held that such absolute liability is **not subject to any of the exceptions** as laid down in the rule in Rylands Vs. Fletcher.

Further, the Indian Parliament has codified many of the civil wrongs.

For e.g.: The Indian Carriers Act 1865, The Copyright Act 1957, The Patent Act 1970, The Trade Marks Act 1999, The Sale of Goods Act 1930, The Consumer Protection Act 1986 etc., which shows that there is growth of law of torts in India.

E. REASONS FOR SLOW DEVELOPMENT OF THE LAW OF TORTS IN INDIA:

Despite the above growth and progress of law of torts in India, still the law of torts is not growing in India at a faster rate as it grows in England and other Western Countries.

The following are the main reasons -

1. The law of torts is not a codified law and it is still a developing law. Because the law is not codified, there is no uniformity and certainty in the various rules of tort.

Further, the judgments in law of torts are not uniform. Since the number of Court cases in law of torts are very few, there is lack of precedents. Many of the 'English law precedents' could not be made applicable to Indian cases because of the different situations, varied life style, etc.,

In other words, the English judgments are not pragmatic nor suited to the living conditions in India.

2. The majority of Indian population are illiterates and have no knowledge of their legal rights. They rarely approach the Courts to seek remedies against the violation of their rights.
3. Most of the Indian population is economically backward and they are so poor that they cannot meet the high cost of litigation for enforcement of their rights through legal forums.
4. The cost of litigation in Indian Courts is very expensive. The Court fees and the lawyer fees, etc., are very high. Besides, there is undue delay in deciding the cases by Courts.
5. Tort is a civil wrong and it is not a major crime. The remedy is claim for unliquidated (unspecified) damages (compensation).

Generally, for small torts like - assault, battery, slander, tort to domestic relations, trespass to immovable property etc., the people in India rarely seek judicial remedies.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *Explain the origin and development of law of torts in India.*
2. *The growth of law of torts in India is slow - Discuss*
3. *Write short note on : Origin and development of law of torts in India.*
4. *Explain origin and development of the Law of Torts in India and distinguish between Torts and Crime.*

