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# **TORT LAW AS A LEGAL FRAMEWORK IN INDIA: A CRITICAL ANALYSIS**

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## **Abstract**

The tort law in India remains uncoded, largely depending on judicial interpretations and Common law precedents. This non uniform nature of law makes it a matter of legal uncertainty, inconsistent rulings and delays in justice delivery. There are limitations in application of the law, making it difficult for individuals to seek remedies as it is unstructured and its application remains vague.

This paper examines the shortcomings of the current system, such as ambiguous compensation guidelines, insufficient state liability provisions, and the lack of recognition for emerging torts like privacy violations, workplace disputes, and environmental hazards. By analyzing legal frameworks from other jurisdictions, this study proposes codifying tort law through a dedicated statute, establishing specialized tribunals, and incorporating structured liability principles to enhance efficiency and accessibility.

A well-defined tort law code would improve legal clarity, ensure fair compensation, and promote accountability, making civil remedies more accessible to victims. The study concludes that codification is essential for modernizing India's legal system and addressing contemporary challenges in civil liability.

## ***Keywords:***

Tort law, legal codification, judicial consistency, compensation framework, state accountability, strict liability, absolute liability, environmental law, data privacy, legislative reform.

## Introduction

This is a doctrinal research paper to establish the necessity for codification of the law of tort in India by stating relevant facts and meanings.

The word 'tort' is derived from the latin term, 'tortum', which means to twist, and implies a conduct that is twisted or tortious. It is a French word, which is equivalent to the word 'wrong' in English and the Roman Law term, 'delict'. A tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.<sup>1</sup>

The Tort Law is based on the principle of "*Ubi Jus Ibi Remedium*", which translates to "Where there's a right, there's a remedy." The main objective of the law is to protect the fundamental rights of an individual from the inevitable wrongs that occur due to the conduct of usual interactions between all social beings.

Codifying a law is a process of collecting and organizing laws that fall under the similar ambit to form a clear and precise structure of relevant laws. When the laws are scattered in various documents, one might find it confusing to understand the rights and liabilities clearly. Codification gathers such laws and clarifies the legal principles by forming a well-defined code. For e.g: If an individual wants to know about any contract law, they may refer to the specific contract law code of their respective country.

It becomes a necessity for a country like India, where the population is the highest and the most diverse, to codify its law of tort into one single code to bring consequentiality in its enforcement. Unfortunately, mostly only criminal cases are prioritized whereas commitment of tort brings no cause for action in the courts. This has led to a rise in violation of fundamental rights of the people of India.

## Origin of Tort Law in India

The history and evolution of the tort law in India traces back to the pre-independence period. The Hindu Law made use of the Sanskrit word, "*Jimha*", implying, "slanted" in the sense of

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<sup>1</sup> Salmond & Heuston, *Law of Torts* 14 15, (20th Edn, Sweet and Maxwell 1992)

“tortious or fraudulent conduct”.<sup>2</sup> Such misconducts were answered through community-based dispute resolution that highly focused on *dharma* (duty) rather than individual rights. Additionally, Muslim or Sharia Law during the reign of *Mughals* focused more on restitution than punitive damages. During the pre-colonial era, the grievances were addressed primarily through religious practices rather than a comprehensive legal framework.

The Charter Act of 1726 enforced during the rule of the British, introduced common law and the tort principles in India through the establishment of three Presidency towns, namely, Madras, Bombay and Calcutta. This was followed by the set up of Supreme Courts in the Presidency Towns which followed the parliamentary statutes or judicial precedents in the United Kingdoms. The British applied the English common law principles of Justice, Equity and Good Conscience as per the requirement of the colonial administration in India.

The Indian legal system in its entirety was derived from the British common law and The Crown. It may be aptly said that the advent of tort laws in India was largely a product of the colonial leverage and linkage of the country.<sup>3</sup> The development of tort law in India was however, leaden-footed due to multiple hindrances. One such hindrance was the uncertainty of the law of tort as it remained uncodified. It lacked certainty and uniformity in its rules and doctrines. Additionally, the backward masses of the Indian population played a significant role in hindering the exercise of the tort law in India.

A renowned English jurist, legal historian and scholar, Sir Frederick Pollock, attempted to codify the tort law, through one of his works, “*Law of Torts*”<sup>4</sup> in 1887. This was a part of his broader movement to clarify the principles of tort as they were largely based on common law precedents rather than a formal code. However, his attempt to codify was unsuccessful at that period of time and the rules related to the tort law were largely judge-made depending on case laws as references.

A major positive transformation in the Indian legal system related to the tort law came along

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<sup>2</sup> George L. Priest, *The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law*, 14 J. Legal Stud. 461 (1985).

<sup>3</sup> J.N. Pandey, *Law of Torts with Consumer Protection and Motor Vehicles Act*, 8th ed. (Central Law House, 2011).

<sup>4</sup> Frederick Pollock, *The Law of Torts*, 1st ed. (Stevens & Sons, 1887).



with the Bhopal Gas Tragedy<sup>5</sup> which established one of the most essential tort of absolute liability. It had a profound impact on the law of torts in India, leading to significant legal reforms and judicial developments, especially in the areas of absolute liability, environmental law, and corporate accountability.

### **Codification of tort law- A necessity**

Even after significant efforts, the tort law remains uncoded leading to major hindrances in enforcement of the rights of the individuals. Unlike the progressive private laws in the UK and the US, the tort law in India remains uncertain. Due to its uncertain nature, the people of India remain blind to the rights available to them. There are only a few tort claims filed as compared to any other codified law as the first step before filing a suit, i.e., knowledge of the rights invested with the citizens, is absent. This has led to widespread wrongs being caused at interactional level without any resistance. Litigation for tort claims is less popular in India than it should be because of the dispersed remedies provided for tortious wrongs under numerous legislation. As a result, tort law, which is one of the most successful means of resolving personal injury claims, is underutilised in India<sup>6</sup>.

It becomes essential, the codification of the law of tort, in order to ensure that people can draw a clear line between what actions are distinguished as wrongs in the eyes of law and what actions are acceptable within a society. It would lead to less ambiguity in exercising the principles of justice and equity as people would be very well informed about the actionable deeds. People would be updated about the rights that they hold against other people in the world and also, their obligations towards them in order to maintain order in the society.

It is popularly believed by the law-makers that the codification of the law would lead to rigidity and make it inflexible in bringing changes according to the dynamic society. Contradictorily, the codification would only bring the loopholes present in the current legal system in dealing with tort claims to the surface level and aid judges and legislation to amend the existing and current laws in order to prevent exploitation of the loopholes, create an enhanced culture of uniformity and stability in the judicial system of India. The code need not necessarily make the law rigid, rather it would provide a basis for foundation of the law and its exercise. The process would lead to speedy or quicker disposal of justice with clear and precise remedies being

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<sup>5</sup> *Union of India v. Union Carbide Corp.*, (1991) 4 SCC 584.

<sup>6</sup> Anjali Lakhwani, "Need for Codification of Tort Law," 5 (5) IJLMH 1547-1552 (2022).

provided for the commitment of tort as per the law.

In his work, “The Law of Torts and Codification in Israel”, G. Tedeschi emphasizes on how the case specific nature of the English Common Law became unsuitable for their developing legal system, leading to confusion and uncertainty and how they attempted to combine it with the French Civil Code that provided a single, broader principle of liability<sup>7</sup>. This article provides a deeper understanding of how the Israeli judiciary identified the lackings in their existing law and brought about necessary changes to improve their access to justice.

Most importantly, the codification of law will encourage the evolution of the law of torts by providing a clear, structured framework for the application and development of legal principles. It will ensure that the laws are accessible, transparent and consistent with societal norms. The law may leave room for amendments, improvements and refinement of the tort law enabling it to be relevant and aligned to the evolving societal needs.

### **Inadequacies in Indian Tort Law**

Even after so many years of introduction to the tort law, India significantly lacks behind in its evolution. Why so? There are a number of contributing factors as a reason behind the stagnant growth of the Indian Tort Law. In this section, we'll analyse each factor to build a comprehensive reasoning.

One major factor is the underreported civil cases in India. Unlike the countries of the UK and the US, India has a very low persuasion of civil cases by the courts. The Indian Judicial system largely focuses on judicial decisions by the Supreme Court and the High Courts. There is a huge gap in reporting of decisions by trial courts, leading to gaps in reporting of tort law<sup>8</sup>. During the year 1954, according to the Fourteenth Report of the Law Commission of India, 10,55,553 civil suits<sup>9</sup> were instituted but in the same year only 5,193 civil appeals<sup>10</sup> were filed. This shows how the Indian judiciary solely focuses on reporting decisions that they believe are “fit for reporting”, which involves a new principle of law.

<sup>7</sup> G. Tedeschi, "The Law of Torts and Codification in Israel" 27 Int'l & Comp. L.Q. 319 (1978).

<sup>8</sup> S.K. Bhatia, "Specific Problems of Law of Tort in India" 11, No.4 JILI 510-519 (1969).

<sup>9</sup> Law Commission of India, *Fourteenth Report* 253 (1958)

<sup>10</sup> Law Commission of India, *Fourteenth Report* "Table A", at 366 (1958)

Uncodified as it is, the Indian Tort law heavily depends on the English common law precedents whose application in courts remain uncertain. There has always been a confusion and vagueness in the extent of application of the Common law and its alignment with the Indian realities. For example, the courts in the Presidency towns of Calcutta, Bombay and Madras followed the English legal principles more extensively as compared to the rural areas or mofussils. Additionally, there were a few Common law doctrines such as maintenance and champerty that were not applied in India, leading to further uncertainty<sup>11</sup>.

Due to the prevailing uncertainty within the scope of the law, people lack legal consciousness and awareness regarding their rights and their obligations, resulting in very few tort litigations. Even lawyers struggle to provide clear legal advice and guide the plaintiffs in understanding the rights available to them. Judges find it difficult to decide on tort claims as there lies ambiguity in interpretation of the law<sup>12</sup>.

It is a fact that poverty is a major hindrance in any kind of development in India, including the legal development of the law of torts. Expensive legal services act as a demotivating factor for the financially unstable population, which constitute the majority. Lengthy and slow judicial processes and trials make justice even more inaccessible for the claimants. Judiciary often takes years to serve justice, draining the finances of the poor, who cannot afford such constraints<sup>13</sup>. Cultural barriers also do not allow the victims of tort to file a suit in the court of law.

It becomes very essential that these problems are imminently addressed by the judiciary and the legislation to ensure a complete legal justice system in India.

### Suggestions

There are certain suggestions that could be applied in order to streamline the claims for law of torts in India.

Firstly, there should be an enactment of a statutory framework that comprehensively composes the general principles of tort of specific torts like negligence, nuisance, etc. The Indian Law Commission or a special legislative body should provide a clear, structured and a formal code

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<sup>11</sup> R. Ramamoorthy, "*Difficulties of Tort Litigants in India*" 12 JILI 313-321 (1970).

<sup>12</sup> *Ibid.*

<sup>13</sup> S.K Bhatia, "Specific Problems of Law of Torts in India" 11, No.4 JILI 510-519 (1969).

incorporating domestic judicial precedents and best global practices, including inspirations from the Restatement of Torts in the U.S. and the Civil Codes for European Countries.

Secondly, there should be an increased focus on government negligence. There must exist a mechanism for compensation for failure on the part of the government. The outdated principle of “sovereign immunity” must be reformed to enhance state accountability especially in matters of public service, administrative negligence and police misconduct. The current legal scenario, it is almost impossible to find the administration responsible for any misconduct on their part itself. It is necessary to democratize the legal process in India.

Uncertainty among citizens regarding tort law also rises from the fact that the compensation for tort claims remain varied in all cases. It lacks uniformity and this issue could be addressed by establishing minimum and maximum compensation ranges for torts and harsh and punitive damages for the cases of intentional harm. There should also be a vigil non tolerance policy for mass disasters due to the happening of a tort, for example, The Bhopal Gas Tragedy.

Another suggestion would be to develop tort-specific tribunals that would only deal with tort claims like product liability, medical negligence, and environmental torts. Tribunals dedicated to cases related to only tort law just as consumer protection tribunals would reduce backlogs of cases and significantly reduce the burden upon civil courts.

Lastly and most importantly, it is necessary to focus on the emerging trends in tort law in this ever-evolving society of India. Modern torts like privacy violations and data breaches related to the current technological advancements need to be recognized. A safeguard must be provided against both online and offline modes of tortious harassment like workplace discrimination, and wrongful termination to create a space for the Indian citizens that stands by all the fundamental rights provided under its Constitution.

### ***Conclusion***

Codifying tort law in India is essential to ensure legal clarity, accessibility, and the consistent enforcement of civil rights. The current system, which relies heavily on judicial precedents and common law principles, often results in unpredictability and delays in justice. A structured legal framework would enhance uniformity in judicial decisions and streamline the resolution of disputes.

Addressing the gaps in the existing system—such as underreporting of tort claims, lack of legal awareness, judicial inefficiencies, and limited government liability—requires comprehensive legislative action. Implementing a statutory tort law, defining compensation guidelines, and establishing specialized tribunals would significantly improve the effectiveness of the tort system in India.

As legal and societal challenges evolve, tort law must adapt accordingly. Recognizing contemporary issues like data privacy violations, workplace harassment, and environmental damage within a codified legal framework would make the system more responsive to modern concerns. Ultimately, codification would bring greater justice, certainty, and accountability, ensuring a well-defined legal system that upholds individual rights and societal interests.

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