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# Need For Codification of Tort

Authored by - Aditya Pandey  
& Humza Ahmad

## **ABSTRACT**

India's legal system is a combination of common law and civil law. The relationship between our court and our legislature makes this clear that how legislature passes laws and rules that take into account the flexibility used by the legal system in interpreting and rulemaking. Here, the Indian legislature passes extensive laws that attempt to account for every conceivable circumstance in both the present and the future, and the court then decides on disputes arising out of these laws and issues its rulings in accordance with the civil law system. Up till this day, India's tort law is still not codified. In Indian case laws, court judgements continue to be based primarily on English ideas, as do the body of rules and principles that govern the enforcement of tort law rights. This study analyzes the benefits and drawbacks of possible tort law codification in India while taking into account the arguments made in favor and against the codification of law generally as well as specifically with regard to tort law. The Supreme Court and the government's efforts are taken into consideration while making this attempt. Whether or not the codification of tort law is a practical alternative for the Indian legal system is the final question that this study aims to address.

## **Tort**

A tort is a body of law that entitles the victim of an injury to compensation from the tortfeasor, the party who committed the tort. A tortfeasor is a person who has committed an unlawful act as a result of which another person has been injured or harmed. The person who committed the wrongdoing may be held accountable for his actions under tort law if the nature of the wrongdoing is such that it affects any particular group of people or people, i.e., a civil wrong, as a result of which any injuries or harm has been suffered by the group of people or people. The harm must be of a legitimate kind or legal in nature. Legal injury is defined as harm that violates a person's legal rights. Therefore, a violation of a person's legal rights that results in that person suffering harm or loss is known as a tort—a civil wrong.

Tort is a nebulous notion that has eluded attempts to define it in a practical way. All torts share the common aspect that someone incurred a loss or harm as a result of another's action or inaction, which the law will remedy through an action for unliquidated damages.

## Essential of torts

The act of committing a tort, often known as a civil wrong, must meet the requirements of at least one of the following three categories:

1. **Wrongful act or omission:** - It is possible for a course of action to violate both the letter and the spirit of the law at the same time. To be considered a legal wrongful act, a person's legal right must be adversely affected by the wrongful act, the wrongful act must be one that is recognised by law, and the act must be done in violation of the law for it to be considered a legal wrongful act. A statement made by an individual that may be prima facie innocent but may also have a secondary meaning that can harm the reputation of another individual in the eyes of the public or the person who comes to know of such information is an example of this. An act that seems prima facie (based on the first impression) innocent may also end up infringing on the legal right of somebody else. An example of this would be innuendo, which is where a statement is made by an individual that may be prima facie innocent but if the wrongdoing that is being complained of amounts to an infringement of a legal private right or a breach or violation of a legal duty, then the person who committed the wrongdoing may be held liable for the tort. It is a violation of a person's legal right to vote if another person prevents them from exercising that right, even if the outcome of the election favours the candidate for whom they intended to vote.<sup>1</sup>
2. **Legal Damages :** - Although the phrases damages and damage may appear to have the same meaning at first glance, they are actually quite distinct from one another and have a number of distinct meanings. The term "damage" relates to an actual loss or injury, whereas "damages" refers to the process of seeking recompense for those losses. The second important component of the concept of a tort is the existence of an injury to one's legal standing. In order to prove a claim for damages in court, the plaintiff is required to provide evidence that there was a tortious act, an act or omission that breached a legal duty or a legal right, or that there was some other type of violation of the law. Because of this, there must be a violation of a person's legal rights in order for there to be a cause of action under tort law; if there is no violation of a person's legal rights, then there cannot be a violation of a person's legal rights. There has been a violation of a legal right, which renders it actionable despite the fact that the plaintiff may or may not have suffered a loss as a result of the infringement. This is summed up in the proverb "Injuria sine damno," in which "damnum" refers to "severe suffering, loss, or damage to that individual," and "injuria" refers to "infringement of the legal right of a person." In Latin, "sine" literally translates to "without." However, even if the plaintiff has experienced loss, harm, or damage as a result of the activities of the defendant, there cannot be a legal action taken if a legal right has not been broken. This is because a legal right must have been violated in order for there to be a legal action.<sup>2</sup>

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<sup>1</sup> 'The-Door-Left-Ajar-Evolution-of-Law-of-Torts-in.Pdf' <<https://www.ijlmh.com/wp-content/uploads/2019/03/The-Door-Left-Ajar-Evolution-of-Law-of-Torts-in.pdf>> accessed 8 October 2022.

<sup>2</sup> ibid.

The factual significance of legal damage is explained by two maxims namely

- Injuria sine damnum, and
- Damnum sine injuria

**Injuria sine damnum:-** Injuria sine damnum is the Latin phrase that translates to "damage without injury." This type of harm is eligible for a legal remedy under the category of tort law. It occurs when a person suffers a legal harm rather than physical one, which means that another party has violated the individual's legal rights in some way. In other words, a person's absolute private right is being violated without the individual actually suffering any kind of negative consequence as a result of the infraction.

**Damnum sine injuria:-** Do damage without causing injury. In contrast to when it refers to harm without injury, the party impacted in this scenario suffers damage—which could be physical—but their legal rights are not infringed in any way. [Cause and effect] To put it another way, it is the occurrence of a real and serious loss to a party where there is no breach of a legal right that has occurred. The fact that the plaintiff's legal rights have not been violated means that he or she has no legal options available to them at this time.<sup>3</sup>

## Origin of Law of Torts

Before the Battle of Hastings in 1066, England's legal system lacked clear guidelines. Because the decisions and judgments in the cases were not based on a clear legal framework, they varied from case to case. Following his victory at the Battle of Hastings in 1066, William the Conqueror made an effort to give England's legal system a clear outline. To accomplish this, a number of eminent judges were chosen and assigned to tour various regions in order to comprehend and research the legal structure and system there. The eminent judges were tasked with carrying out the court cases in a clear-cut manner that is more appropriate for that specific location or region. The court cases that were followed by eminent judges became legal precedents over time, and this legal precedent subsequently became common law. After the Norman Conquest, French took the place of English as the language of official business in the government and the courts. As a direct consequence of this, a significant amount of the legal jargon used in English law, including tort, derives from French.<sup>4</sup>

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<sup>3</sup> *ibid.*

<sup>4</sup> 'Development of the Law of Torts in India' <<https://legalserviceindia.com/legal/article-2161-development-of-the-law-of-torts-in-india.html>> accessed 8 October 2022.

## **Development of law of tort in India**

India's tort laws date back to the country's pre-independence days. Some tort laws existed in Hindu and Muslim law to address individuals' wrongdoings or to shield people from the harm caused by others' unlawful acts, but these laws were not as much clear as English common law. The offence of fraudulent conduct was first codified in ancient Hindu law using the Sanskrit word jimha, which carries with it the connotation of being dishonest.

King George I introduced the Charter of 1726 on September 24 of that year, resulting in the creation of a mayor court in each of the presidency of Madras, Calcutta, and Bombay. The mayor court has the authority to judge civil matters in presidency town and its associated factories under the terms of the charter from 1726. The principles of equity, justice, and good conscience are the foundation of Indian tort law, which was adapted from English common law. Since the common law was created for English society, extra care was needed while applying it to Indian society in order for it to work best.<sup>5</sup>

In popular case of Justice Bhagwati in *M.C Mehta v. Union of India*, we can observed that: "We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence."<sup>6</sup>

## **PRESENT POSITION AND EFFORTS OF INDIAN GOVERNMENT TOWARDS CODIFICATION**

One of the earliest proposals for codifying tort law was made in 1886 by Sir F. Pollock, who expanded his efforts when the Indian Government asked him to do so and proposed the "Indian Civil Wrongs Bill." However, after being created, this bill was not taken into consideration, and the initial attempt at codification was disregarded. Following this, government responsibility has been the exclusive focus of any advocacy for the need for codified tort law. Beginning with the decision of *Kasturilal Ralia Ram Jain v. The State of Uttar Pradesh*, the judiciary first recognised the need for laws dealing to the government's tortious liability in 1964 and recommended that the

<sup>5</sup> legalpaathshala@gmail.com, 'Development of Law of Torts | Origin of Tort Law' (*Legal PaathShala*, 27 September 2021) <<https://legalpaathshala.com/development-of-law-of-torts/>> accessed 8 October 2022.

<sup>6</sup> *M.C. Mehta v. union of India* AIR 1988 SC 1037

Indian Legislature pass such legislation. Following this, an effort was made by the Indian Government in 1965 based on the Law Commission's proposal, but it ultimately failed in 1967.

Since then, a number of instances have discussed the need for such laws. For instance, the court referenced *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and Ors.*<sup>35</sup> to reiterate the need for tort codification when discussing the Corporation's liability in the case of *Vadodara Municipal Corporation v. Purshottam V. Murjani*<sup>3 4</sup>. The court notably discussed the need for law relating to the government's tortious liability and how the absence of a consistent legislation has led to inconsistent rulings. The court also discussed the Indian government's efforts to introduce two bills concerning the culpability of public officers in 1965 and 1967, both of which ultimately failed.

Although these efforts help to highlight how the Indian Government and the Supreme Court of India have realised the need for a comprehensive code in specific areas, it should be noted that these efforts have not been done to create a broad overarching code. Nevertheless, the court's worries about inconsistent rulings and the acknowledgment of the burden of proof point to the continued need for a comprehensive rule.

### **Causes of India's poor progress in developing its tort law**

In comparison to other countries, India's Tort Law is not as developed. There is no codification of the Indian Tort Law. The slow growth of tort law in India is due to a variety of factors, some of which are described below :-

- The law is ambiguous. The fact that the legislation has not yet been codified and is still being developed makes it exceedingly ambiguous for the populace. This is the reason why there are so few cases brought under India's tort law. Additionally, the absence of precedents adds to the uncertainty of tort law. The existing precedents are from English tort law and cannot be used in Indian law.
- The populace lacks political awareness. Tort law is not widely applied in the nation because the people are not even aware of their rights. The widespread illiteracy in India is the cause of this issue, which also prevents people from asserting their legal rights by coming to court. People fulfilling their obligations are given much more weight than those arguing for their rights.

- Poverty is still a problem in India, where tort law is still developing slowly. The majority of Indians are economically underdeveloped, making it difficult for them to afford the hefty costs of litigation. This still stands as the principal deterrent against bringing a tort claim.<sup>7</sup>

The court system is also quite expensive. Both court fees and attorney fees are highly expensive. As a result, the common man chooses to put up with the suffering rather than go to court. Additionally, the cases are handled in a molasses-slow manner. However, in England, justice is administered so quickly and cheaply that cases of this nature are resolved in less than a year. All of these elements contribute to the tort law's gradual evolution.<sup>8</sup>

## **NEED FOR CODIFICATION OF LAW OF TORT**

An important step toward determining the course of Indian tort law is the codification of it. Though India still has a long way to go in terms of establishing its law of tort, codifying is one such action that can greatly benefit society in many ways. In addition to making it easier for courts to issue judgments, codifying the law of torts will improve the plaintiff's access to a quality remedy. As a result of the law's lack of codification, many offenders avoid prosecution by agreeing to settle cases for small sums of money, which is against the principles of a just legal system. Because criminal and civil procedural laws are codified in India, there are far more cases in these areas and they are resolved considerably more quickly than tort suits would have been. There is always the potential to introduce revisions in terms of this Law's evolution, just like with any other Law. Codifying the Law of Tort would not only provide guidance for those in the legal profession but will also promote public understanding of it.

The Law of Tort, which is still a developing area of law, needs to be codified in order to stifle many minor issues that law enforcers currently experience. Like any other law, it is important for it to have a clear act of its own to ease society's burdens. Although its abrupt codification is plainly persistent, starting the process of codification will help in certain ways. The idea of a codified law of torts appears promising and will likely bring about a legal revolution in the near future.<sup>9</sup>

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<sup>7</sup> articlesonlaw, 'Causes for Slow Development of Law of Torts in India' (*ARTICLES ON LAW*, 11 March 2019) <<https://articlesonlaw.in/causes-for-slow-development-of-law-of-torts-in-india/>> accessed 15 October 2022.

<sup>8</sup> Shambhavi Sharan, 'Codification of Tort Law in India: Feasible or Impracticable?' (2021) 24 *Supremo Amicus* [955]

<sup>9</sup> From the Newspaper, 'Codification of Tort Law Is Essential' (*DAWN.COM*, 29 September 2021) <<https://www.dawn.com/news/1649037>> accessed 15 October 2022.

## **ISSUES WITH UNCODIFIED LAW OF TORT**

The tort law is widely discussed in academic and legal literature in India. However, the figures are unexpectedly low when it comes to the rights that result from pure tort law offences. The majority of the enforcement occurs indirectly, either through constitutional torts or other statutes that include elements of tort law. 16 These low numbers are the result of two factors. First, it is because most people are uninformed of their rights under tort law, and second, it is because torts are not codified, which makes it even harder to enforce.<sup>10</sup>

Moreover, there is uncertainty surrounding the interpretation of ideas borrowed from English common law because there is no consistent rule for torts. This is particularly obvious in the instance of slander, where the rules are not strictly enforced. There is additional doubt regarding the parts of tort law that have not been addressed by judges. As the entire weight of lawmaking in that area falls on judges, the pressure on them to make decisions also grows.

It is frequently noted that courts frequently cite precedents and passages from authoritative texts when making decisions, as in the case of a malicious prosecution. However, there is a conflict when two opposing viewpoints are apparent.<sup>11</sup>

## **ADVANTAGES OF CODIFICATION OF LAW OF TORT**

There is a need for a code that enables quick reference for both attorneys and judges because the majority of India's body of tort law is found in case laws and books. The intention behind this is to eliminate any uncertainty that might arise when reading a ruling rendered by a specific court because a code would offer a precise and comprehensive specification of the scope of the applicability of tort law. Additionally, the lack of a code prevents attorneys from specialising in the area of tort law. Roscoe Pound also discussed the benefits of codification, referring to them as "orderly structures" that help establish legal concepts. He added that codification ensures that rights, offences, and their remedies are made public.

When considering the legislative role in codifying tort law, it becomes clear that India's system is advantageous for "deconstructing" the existing tort law in order to eliminate any unnecessary provisions. The legislature will examine all of the tort law concepts that have developed through

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<sup>10</sup> Shambhavi Sharan, 'Codification of Tort Law in India: Feasible or Impracticable?' (2021) 24 *Supremo Amicus* [955]

<sup>11</sup> 'Time We Learnt From Mistakes. Time We Had A Codified Tort Law In India'

(<https://www.outlookindia.com/>, 14 February 2022) <<https://www.outlookindia.com/website/story/opinion-time-we-learnt-from-mistakes-time-we-had-a-codified-tort-law-in-india/352396>> accessed 15 October 2022.

time before creating a code, allowing it to "separate the wheat from the chaff." This lessens the need for a judge to go through decades' worth of precedents to find the relevant principle. Narrowing the scope of establishing legal principles through precedents would save the attorneys, courts, and clients a lot of precious time, especially in light of the fact that tort law has a history that can be traced back several centuries.<sup>12</sup>

Although the scope of judicial interpretation in India will remain unaltered in order to broaden the application of these principles as deemed appropriate, judges' workloads will still be reduced. Last but not least, even if tort law were to be codified in India, the provisions would still largely be interpreted based on pre-existing concepts. The fundamental tenet of "justice, equity, and good conscience" would still be relevant in this situation.

## **DISADVANTAGES OF CODIFICATION OF LAW OF TORT**

S. Ramaswami Iyer, one of the most illustrious figures to oppose the codification of tort law, said, "Undoubtedly, a code is useful, but it is well to acknowledge that this branch of law is still in the process of growth. While it would be challenging to prepare a code, it would not also help a proper development of the law to do so. He continued by saying that, given the dynamic character of tort law, codifying tort law would also be unworkable because it might not cover all potential future circumstances.

Savigny's stance against the codification of law is pertinent in this context. When arguing against the need for codification, Savigny made the following points: codification may hinder the growth of the law; the principles of one code may project on future generations; and, if they are passed quickly, the law may be exposed to numerous flaws. The first two of Savigny's objections are still valid in this situation, even though the third is not immediately applicable. This is done in consideration of the frequently changing nature of tort law's guiding principles.<sup>13</sup>

The simplicity of law is another crucial factor to take into account while thinking about the codification process. But the process of simplification is ambiguous and might possibly result in the modification of essential elements of tort law. On the other hand, in an effort to be all-inclusive and take into consideration every conceivable circumstance, a thorough code may also prove to be highly complicated.

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<sup>12</sup> Prachi Mangla, 'The Need to Codify Law of Tort' (2022) 10 International Journal for Research in Applied Science and Engineering Technology 2846.

<sup>13</sup> *ibid.*

In many cases, this may also cause frustration among the legal profession, which is used to establishing the law based on decades worth of precedents and drawing from them. They may find the tort law to be too brief or difficult to understand.

Regarding judicial discretion, it is a known truth that legislators tend to give judges the least degree of latitude while creating legal rules. This idea of codification originated from the viewpoint of the "tyrannical discretion of a judge." Here, the goal is to create a code that would restrict the range of interpretation so that every conceivable circumstance would be covered. However, a code created with that intention would be terrible, to put it mildly, given the tort law's jurisprudence, which has been largely based on judicial rulings.<sup>14</sup> Judges' ability to effectively implement tort law would be diminished by the legislature's ability to modify the law.

## **A Comparison of Torts Law Codification with International Legal Systems**

We have compared legal systems of three countries namely China, France, United States of America. The purpose of comparing the legal systems of these nations is to determine whether or not the adoption of a code in a nation with a civil law system differs significantly from that of India, which has a mixed system of civil and common law. In order to gain insight from a nation that only practises common law, the analysis of tort law in the USA is also done in order to determine any parallels.

### **1.CHINA: -**

The codified tort law concepts in China are covered under the Civil Code of China, 2020. The many scenarios in which this Code is applicable are outlined in Part 7. Regarding responsibility, the code suggests that a fault-based liability would follow from a breach of another person's civil law rights. When low-quality items harm consumers, there is also additional accountability for the infringement of their rights. Strict liability and fault-based liability are generally covered under the code. It is not obvious which culpability would apply in the application of the code, nevertheless. The court has the authority to determine the situation in which either form of liability would be applied in light of this ambiguity. The court also has additional authority to use its judgement in connection with the issuance of warnings or the imposing of fines under this

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<sup>14</sup> *ibid.*

code.<sup>15</sup>

Additionally, the language of the principles allows for classification as "generic principles," and judicial rulings may establish their exact meaning and range. The Supreme People's Court's previous interpretation may still be used, although that is still up for debate.

## **2. FRANCE: -**

The French Civil Code is the body of law that codifies France's tort law. The fault-based liability as a basis for tort liability is provided for under Articles 1382 and 1383. Additionally, it is argued that under these situations, a man is liable not for his actions but for his negligence. Another article that helps one grasp fault-based liability is article 1384.<sup>16</sup>

According to the Code, the judge's responsibility is confined to strictly uphold the code and its guiding principles. He has very little room for judicial invention in achieving this. However, he must use his judgement in this role of applying fault-based liability, based on his knowledge of the code and also by taking into account societal values. Although the code's requirements in this instance are vague and all-encompassing, its practical execution is fairly strict.

This code's shortcomings include its failure to fully address accidents, and when considering cases involving accidents, judges must also interpret the code in a way that gives the victim access to tort law remedies.

## **3. UNITED STATES OF AMERICA: -**

Similar to India, the United States of America currently lacks a unified code governing tort law. This failure was caused by the states' inability to agree on contradictory rulings about a variety of tort law issues, as well as growing worries about excessive federal control over civil law.

Despite the fact that there is no uniform code, there are certain principles that the Supreme Court of the United States of America has declared apply to all the states. For instance, the concept of a "federal tort of constitutional mandate" was developed in the case of *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*<sup>41</sup>, which later became known as the "Bivens Action." Thus, it is observed that from the perspective of the absence of a code and reliance on

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<sup>15</sup> Henry R Zheng, 'China's New Civil Law' (1986) 34 *The American Journal of Comparative Law* 669.

<sup>16</sup> Walter J Derenberg, 'The Influence of the French Code Civil on the Modern Law of Unfair Competition' (1955) 4 *The American Journal of Comparative Law* 1.

precedents, the law of torts in America is very similar to India. However, in a certain way, the tort law is compiled and codified under the American Restatement of Torts, which is a treatise in the USA which provides for the common law principles of the USA.<sup>17</sup>

## **CONCLUSION**

After reviewing the history of tort law, specific problems with the lack of a tort law code, arguments for and against codification, an analysis of other nations' tort law systems, and the government of India and the Supreme Court of India's efforts to codify tort law, we now move on to discuss the viability of codifying tort law in India. After analysing the various aspects of torts and its codification we can say that India is a suitable option for tort law codification. This is due to the fact that any worries about a code restricting the growth of tort law can be dispelled either by the legislature's capacity to alter the code or by the judiciary's ability to interpret it in a way that broadens the provision's area of applicability. Additionally, the legislative process itself would serve as a check against hasty legislation. Using this method would also guarantee that the legislators draught the code while keeping in mind the tort law system's extremely dynamic nature and allow them to create broad-based, general provisions to account for the ongoing change. Alternatively, the procedure known as "gradual consolidation" may also be used, in which a small number of tort law provisions are collated and made into legislation. When a "sweeping code" is eventually deemed necessary, it may be passed and cover the entirety of tort law.

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<sup>17</sup> Wolfgang Wiegand, 'The Reception of American Law in Europe' (1991) 39 The American Journal of Comparative Law 229.

## **BIBLIOGRAPHY**

### **JOURNALS: -**

1. Shambhavi Sharan, 'Codification of Tort Law in India: Feasible or Impracticable?' (2021) 24 Supremo Amicus [955
2. 'The-Door-Left-Ajar-Evolution-of-Law-of-Torts-in.Pdf' <<https://www.ijlmh.com/wp-content/uploads/2019/03/The-Door-Left-Ajar-Evolution-of-Law-of-Torts-in.pdf>> accessed 8 October 2022'.
3. Introduction to the Law of Torts' 10.
4. Jeremiah Smith, 'Legal Cause in Actions of Tort. [Continued]' (1912) 25 Harvard Law Review 223.

### **URLS: -**

1. <https://www.law.cornell.edu/wex/tort>
2. <https://www.studocu.com/in/document/sri-dharmasthala-manjunatheshwara-law-college/tort/2-essential-elements-of-a-tort/11819201>
3. <https://www.studocu.com/in/document/university-of-mysore/law-of-torts/history-law-of-torts-notes/22382192>
4. <https://www.outlookindia.com/website/story/opinion-time-we-learnt-from-mistakes-time-we-had-a-codified-tort-law-in-india/352396>
5. <https://www.ijraset.com/research-paper/the-need-to-codify-law-of-tort>

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