

# Codifying The Law Of Torts -A Necessity For Clarity And Justice

Mrs. Sonali Sharma

Assistant Professor

TMV's Lokmanya Tilak Law College

Kharghar

Mobile – 9967009879

[sonalisharma9967@gmail.com](mailto:sonalisharma9967@gmail.com)

Mr. Amitraj Kushwaha

LLB. Second Year

TMV's Lokmanya Tilak Law College

Kharghar

Mobile – 9930211372

[amitrajkush@gmail.com](mailto:amitrajkush@gmail.com)

## Abstract

The term Tort comes from the Latin word "tortum," which means "to twist." It refers to actions that are not straight or lawful. The law of Torts is rooted in English Law. In India, this area of law has developed over time mainly through court decisions and is often overlooked compared to other legal fields. Tort law deals with civil wrongs and allows for compensation for injuries classified as unliquidated damages.<sup>1</sup> Law changes based on needs, as seen in recent laws like the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhniyam(BSA). Since Tort law lacks a formal code, it acts as a supplement to other legal codes, leading to long legal battles for justice, leaving many claims unheard. This paper uses secondary data to urge for the need to codification for Tort law in India.

**Keywords** Codification, Compensation, Injury, Liability, Legal

## Introduction

The law of torts encompasses civil wrongs and continues to expand and evolve with time. It is a dynamic and ever-developing field of law; however, it remains one of the least explored legal branches. In India, the law of torts traces its roots to English Common Law and, like its English counterpart, remains uncoded. Over the years, it has primarily developed through judicial precedents set by Indian courts as well as the House of Lords in England. Despite significant advancements, the law of torts in India remains fragmented and lacks a formal codification.

The term "tort" originates from the Latin word *tortum*, meaning "twisted," "crooked," or "unlawful." According to Winfield, tortious liability arises from the breach of a duty imposed by law, which is owed to the public at large. If such a breach occurs, the aggrieved party is entitled to seek compensation in the form of unliquidated damages. The principle underlying tort law is reflected in the legal maxim *ubi jus ibi remedium*, which translates to "where there is a right, there is a remedy." This ensures that individuals whose legal rights have been violated can seek redress through monetary compensation or other legal remedies.

The law of torts is an ever-evolving legal field that continues to develop with changing societal needs. Its application in India dates back to the British colonial period when English common law principles were introduced. However, Indian courts have taken a more adaptive approach, incorporating only those elements of tort law that is relevant to the Indian legal and social framework. While English tort

<sup>1</sup> (R.K.Bangia)

law precedents are often referenced, judges apply it with the modification in Local jurisdiction. Instead, they modify or diverge from them when necessary to establish principles that better suit local conditions.

The necessity for codifying tort law in India is evident in its fragmented nature and limited enforcement. A comprehensive legal framework would provide clarity, ensure consistency in judicial decisions, and enhance access to justice for victims of civil wrongs. Codification could also help address modern challenges, such as corporate negligence and environmental hazards, by establishing clear legal principles and remedies.

Salmond

R.K.Bangia, D. (n.d.). Introduction. In *Law Of Torts*. Allahabad Law Agency.

(n.d.). Rules of Strict and Absolute liability. In D. R.K.Bangia, *Law of Torts*.

Wagner, G. (n.d.). file:///C:/Users/TMV/Downloads/Tort\_Law\_and\_Human\_Rights.pdf.

the profounder of the Pigeon Hole Theory, defines tort as a civil wrong for which the remedy is an action for unliquidated damages, provided it does not fall under breaches of contract, trust, or other equitable obligations. This theory aims to determine whether tort law should be limited to specific recognized wrongs or if any wrongful act without justification should be considered a tort.

Salmond argued that liability in tort law cannot be determined by a single principle; rather, only well-established wrongs should be recognized. According to a pigeon hole system, where each hole represents a specific tort—such as assault, battery, defamation, or malicious prosecution. If a wrongful act fits into one of these predefined categories, the plaintiff can seek a legal remedy. However, if the act does not fit into any existing "pigeon hole," no claim can be made. This theory restricts tort law to established categories and places the burden of proof on the plaintiff to show that their case aligns with a recognized tort. The theory opposed a broad or open-ended approach to tort law, emphasizing those new torts should only emerge through judicial decisions or legislative enactments.

Pigeon Hole Theory has faced criticism for its restrictive approach to tort law as it fails to accommodate newly emerging wrongs that do not fit into pre-existing categories of torts. Over time, various wrongful acts have arisen that were not legally recognized and did not resemble any previously established torts. By limiting tort law to a fixed set of defined wrongs, this theory hinders the evolution of legal principles and the development of justice. The rigid classification prevents courts from addressing novel wrongs that may cause significant harm but lack a recognized legal remedy.

Tort law governs wrongful acts or omissions that cause harm to individuals or property, providing a legal framework for addressing such injuries. Its primary objectives are to compensate victims for their losses. Torts generally fall into three categories: negligence, strict liability, and intentional torts. Negligence, the most common type, requires proof that the defendant had a duty, breached it, and directly caused injury to the plaintiff—such as in cases of reckless driving or medical malpractice. Strict liability, on the other hand, does not consider intent or carelessness but holds individuals or businesses responsible for damages caused by inherently dangerous activities or defective products. In contrast, intentional torts involve deliberate actions that cause harm, such as battery, defamation, or intentional infliction of emotional distress. When a plaintiff successfully proves a tort claim, they may be awarded compensatory damages to cover financial losses, medical expenses, and pain and suffering, as well as punitive damages in cases of particularly egregious misconduct.

Despite globalization and the increasing influence of international legal frameworks, the application and jurisdiction of tort law remain limited. It would be evident from the tragic incident of 2013 Rana Plaza collapse in Dhaka, Bangladesh. The disaster resulted in the deaths of over 1,100 garment factory workers and left around 2,500 others injured. The factory owner neglected visible structural cracks and compelled workers to continue working despite safety concerns. This case highlights a common issue in the global supply chain, where workers in regions with weak safety regulations suffer due to the negligence of local employers, while multinational brands—operating under stricter regulatory frameworks—profit from such exploitative conditions.

The rule of Strict Liability, laid down under *Rylands v. Fletcher* was subjected to the certain exception. However a significant example of this judicial innovation is the landmark case of *M.C. Mehta v. Union of India*, well known with the name The Bhopal Gas Leak Disaster on December 2/3 1984, in which the Supreme Court introduced the principle of Absolute liability, which was not restricted by the exception. Justice P.N. Bhagwati emphasized the need for India to develop its own legal doctrines, stating that courts must evolve new principles and establish legal norms that effectively address emerging challenges in an increasingly industrialized economy. He further stressed that Indian jurisprudence should not be confined by foreign legal traditions but should instead be shaped by the country's unique requirements.

The absence of a codified law of torts in India allows courts to refine and introduce equitable principles suited to contemporary societal changes. This flexibility enables the judiciary to adapt legal doctrines in response to new legal and economic challenges, ensuring that justice remains accessible and relevant. However, the lack of codification also presents challenges. While judicial discretion allows for progressive legal development, the absence of a structured legal framework can lead to inconsistencies in judgments. Codifying tort law could bring clarity and uniformity, making legal recourse more predictable for litigants.

On the other hand, codification may also limit the adaptability of tort law in India. A rigid legal structure might constrain judicial discretion, preventing courts from responding effectively to evolving social and economic conditions. If the law of torts were strictly codified, there is a risk that it could become outdated, leading to situations where justice is hindered by the inflexibility of the legal system.

### **Benefits Of Codification**

Codification is the process of turning current customs, traditions, and court decisions into a formal legal code, to adapt the societal change.

- It makes the law simpler and clearer.
- It increases certainty in the legal system by providing a clear and detailed statement of the law.
- It helps update the law, allowing it to adapt to society's changing needs through interpretation.
- Past examples of successful codification include the Indian Penal Code, Civil Procedure Code, and Criminal Procedure Code. These laws have been updated to meet the current demands of society. Therefore, there is a strong case for establishing a codified law for torts.

### **Attempts To Codify Law Of Torts**

Over the past few years, there have been several attempts by parliamentarians to codify the law of torts, but these efforts have ultimately been unsuccessful. The first proposal for codifying tort law came from F. Pollock in 1886, who introduced the "Indian Civil Wrongs Bill" however, it would not be implemented. In 1965, a bill for the codification of tort law was presented, but it lapsed in 1967 without any statutory laws being passed. In 2010, the proposal was expressed concerns about the need for codification, emphasizing that it would help ensure adequate compensation for victims and establish clear liability and the effort proved futile.

Although efforts to codify the law of torts in India have been unsuccessful, certain areas of Law of tort are being read and incorporated them into various statutes. the Consumer Protection Act, 2019; Motor Vehicles Act, 1988; Workmen's Compensation Act; and Employers' Liabilities Act, among others, establish tortious liability for wrongdoers, holding them accountable for paying adequate damages. However, these laws alone are not sufficient to address all the needs of plaintiffs' claims. For certain types of torts, there is a clear need for a comprehensive, unambiguous, and written body of tort law. This would ensure that tortious liability is easily determined, compensation is fairly provided, and justice is fully achieved.

## The Need for the Codification of Tort Law in India

During the pre-independence era, India inherited the English common law system, including the law of torts. Unlike other legal domains, tort law in India remains largely uncoded, similar to the situation in the United Kingdom. The primary reason for this is the evolving nature of tort law, which allows it to adapt to emerging legal challenges and provide remedies for injuries not explicitly covered by statutory laws. The flexibility of tort law ensures that courts can formulate new legal principles, such as absolute liability, the tortious liability of the state, and public torts, to address contemporary issues.

One of the significant domains covered by tort law is insurance liability. The reluctance to codify tort law arises from the concern that codification may restrict its adaptability. A rigid codified structure could limit judicial discretion and hinder the development of new legal doctrines. As tort law primarily aims to provide remedies for the violation of legal rights, restricting its flexibility could weaken its effectiveness in addressing novel legal issues.

However, the lack of codification has also resulted in numerous challenges, particularly in cases where victims have struggled to receive adequate compensation. Several landmark cases in India highlight the disadvantages of an uncoded tort law system:

1. **Bhopal Gas Tragedy (1984):** A catastrophic gas leak from the Union Carbide plant led to thousands of deaths and long-term health consequences for many survivors. Despite settlements and court interventions, many victims remained uncompensated, demonstrating the inefficiencies of the existing tort system.
2. **M.C. Mehta v. Union of India (1987):** The Supreme Court, in this case, addressed the oleum gas leak from Shriram Food Fertilizers Industry. Departing from the traditional strict liability principle, the court introduced the doctrine of absolute liability, holding the defendants responsible without exceptions.
3. **Uphaar Cinema Fire Case (1997):** A fire at the Uphaar Cinema in Delhi resulted in the deaths of 59 individuals. The prolonged litigation, lasting nearly two decades, underscores the need for a structured and codified tort law system to expedite justice.
4. **Vizag Gas Leak Case (2020):** The leakage of styrene gas from the LG Polymers plant caused significant harm to nearby residents. The National Green Tribunal applied the absolute liability principle, reinforcing the necessity of a well-defined legal framework to handle such industrial disasters efficiently.<sup>2</sup>

The absence of a codified tort law in India has led to numerous hazardous incidents over the years, impacting both human lives and the environment. Industry operators often exploit legal ambiguities, resulting in inconsistent legal procedures, prolonged litigation, and lack of uniformity in compensation awards. A structured legal framework would help address these concerns by:

- Establishing clear legal procedures for tort claims.
- Defining fixed minimum compensation standards.
- Setting time limits for resolving claims.
- Ensuring uniformity in the awarding of damages.

Codifying tort law in India would enhance legal certainty, provide better protection to victims, and ensure timely compensation. While maintaining some degree of flexibility for judicial interpretation, a codified framework could help balance justice and efficiency in addressing tortious claims.

## Conclusion

A well-structured and codified law of torts is crucial for ensuring justice and accountability in civil wrongs. While the existing framework provides remedies, the lack of codification often results in inconsistencies, delays, and limited awareness among the public. Establishing a comprehensive and adaptable legal structure would not only streamline tort litigation but also guarantee fair

<sup>2</sup> (Rules of Strict and Absolute liability)

compensation to victims while holding wrongdoers accountable. By incorporating judicial interpretation and evolving with societal changes, a codified law of torts would strengthen legal protection, promote fairness, and enhance public confidence in the justice system.

Mahratta