



LAW OF TORT (2006). By S.P.Singh. Universal Law Publishing Co. C-FF-1A, Dilkush Industrial Estate, G.T. Karnal Road, Delhi-110033 Pp. liv + 376. Price Rs. 250/-.

TORT IS a subject that is English in its moorings. The book under review¹ radiates the height of an astute academician who knows the Indian educational consumer and demystifies this subject. This is reflected in the lucidity of language, the felicity of expression and the adaptation of the simple illustrations suffusing the same with the Indian situations and case law. That the book is onto the fourth edition is in itself a striking testimony of the popularity of the book. The illustrations and case law from the Indian judicial pages reflect the honesty of endeavor to convey to the Indian reader the nuances of a subject cradled abroad.

The book reveals a comprehensive treatment of the subject covering the topics of nuisance, negligence, trespass, defamation, state liability, vicarious liability, malicious prosecution — to name the usual topics identified with tort. The book encompasses 20 chapters with topics that range from a comprehensive treatment of the rudimentary basics to discussion of complex developments in tort principles in current times.

The law of tort is yet to see seriously profuse litigation in India. However, the author has not pondered on these aspects in the book. In that respect an assessment of the practical state of tort litigation and its problems is left unaddressed and the book floats at the theoretical level.

The Indian case law is not equally strewn in every chapter. Sometimes the lack of Indian juristic viewpoint can be a significant deficiency particularly when tortious litigation is not a regular feature at the Indian courts. For instance, the chapter on “Remoteness of Damages” fails to shed light on the Indian standpoint through case law (in certain instances the case law is confined to the footnotes) and vacillates between *Re-Polimis*, other English and foreign precedents. No doubt these are profound benchmarks of unavoidable relevance in the story of damages but the benefits are immense if they are wound into the Indian socio economic milieu. Surely, direct consequences and norms of foreseeability will not be the same all over.

Sometimes the discourse appears to betray an oversight of the target readership – the book being also recommended for LL.B should cater to novices (read first time students of law). However the erudite author at times rushes into comments (vignettes of his mastery over the nuances

1. S.P. Singh, *Law of Tort* (2006).



of the discipline which are no doubt insightful and profound) without first discussing the case law in detail, presuming the reader either to have known it or pushing the reader into a reference track. This can be particularly disconcerting for the beginner as every law school need not have the relevant reports from England nor enabling teachers.

The work exudes the deep insight, erudition and experience of a professor. The references to American and the English law are equally supplemented by the author's observations. Though there are only a few significant references to the African case law or statutes there are discernable hints about the state of affairs in those countries. It points to the universality of principles and reveals the lack of approbation of some the world over.

A cause of dejection is the absence of a chapter on the "Right to Privacy" and the "Right to Publicity", disciplines that have grown to amazing proportions based on unfair competition norms in the United States of America. In particular, the latter has been looked upon with considerable circumspection by the Anglo-Saxon regime. In contrast the courts and principles have grown to such an extent in the United States (in Australia too) that it has become both a lucrative and challenging area to specialize on. The need for initiating students into the discipline is further confirmed with the Indian case law desisting to follow the British conservatism and instead accommodating the remedy of right to publicity of the American genre into the Indian juristic folds. Therefore, the stimulating trend in one of the most litigious and financially promising areas — for the client as well as the lawyer — is conspicuous by its absence.

It is indeed important to keep abreast of developments that have truncated or supplemented or modified the tort landscape in any manner. The incorporation of a chapter on the "Consumer Protection Act" and "Motor Vehicles Act" are relevant in this regard. However, the discourse fails to shed light on the interface between the proceedings invoking the principles of tort and those under the new statutory regimes with a profundity that would enhance the appreciation of the subject. Are statutory inroads into the realm of torts beneficial or does it constrict the subject and its possibilities? Would acceptance of free service from a government hospital and consequent injury owing to deficiency of service have had the same impact or consequence under the tort law pure and simple as under the Consumer Protection Act? The discourse fails to build a bridge between the two and rather takes the reader on a cursory sight seeing of the statute and all relevant case law on the burgeoning subject.

The topic of negligence has been treated wholesomely with the native juristic philosophy woven deftly using contemporary case law. For the discerning academician, the chapters on vicarious liability of



the state and absolute liability involve him on a higher plane of debate—particularly the discussion of the introduction by the Supreme Court of absolute liability without exception in *M.C. Mehta v. Union of India*.²

That the author was a co-traveller in the tort odyssey is evident in his recollection of his indignant interjection when the principle of absolute liability fashioned to Indian requirements propounded in the *M.C.Mehta* decision which restricted the liability to the financial capacity of the corporation. The author wanted it to be directly proportional to the injury inflicted. However, it would have been befitting to discuss, in the circumstance of this form of liability being a no fault liability without exceptions, whether alter forms of damage redressal should be attempted or whether the state having provided the license for the inherently dangerous enterprise be made to contribute to the damage that is in excess of the capacity of the company.

The Bhopal gas tragedy brought in its wake a spate of endless litigations and to top it all a legislation³ that would end all litigation. However, it exposed a method to end a tort war; crude but self-righteous declaration through the principle of *parens patriae*.⁴ The *Charan Lal Sahu*⁵ attempt could not stem the judicial assent to this legislative addition to tort attrition in what is otherwise sacredly a crusade for a private legal right. The case had also raised the question whether the state could be the self-declared protector, as the question of state liability in the disaster remained to be resolved. However, the book falls short and does not carry the story that far.

But for these trifle shortfalls in the discourse that can be effortlessly plugged by the master craftsman in the future editions, the book is genuine in its scholarship and an indispensable addition to the law library of every law student, researcher and teacher of the subject. The publishers have competently priced the book at Rs.250/-. However, the lay out and the typography in the inside pages could be improved, in particular the font size could be increased to make it more reader friendly.

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2. AIR 1987 SC 1086.

3. Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

4. In *Charanlal Sahu v. Union of India*, AIR 1990 SC 1480, while addressing the question of constitutionality of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and eventually upholding it, Sabhyasachi Mukherjee J elucidated the concept of *parens patriae* as follows, “According to Indian concept *parens patriae* doctrine recognized King as the protector of all citizens as parent. The Government is within its duty to protect and to control persons under disability. Conceptually, the *parens patriae* theory is the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations”. (para 3.2).

5. *Ibid*.

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