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on

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SOME REFLECTIONS ON THE DIFFICULTIES
OF TORT LITIGATION IN INDIA

by

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The Explosion of Wrongs

Tort litigation has not frequented the courts directly, though tortious wrongs of varied nature are being committed regularly with much impunity. Slanderous attacks can frequently be heard. Character assassination has become a national pastime. Libellous writings have been giving sustenance to yellow press. Trespass on persons and properties are well within the regular activities of our law enforcement officers.

Furthermore, the acts of nuisance are abundantly visible even while walking around the urban and industrial areas. The local bodies and public authorities, those dealing with the matters of public utility, are unmindful about the observance of any degree of care while carrying on their functions on roads or highways; or while looking after their routine duties towards health and sanitation, or while required to cater to the community needs for water and power supplies.

The victims of tortious acts committed by government officials find themselves in quagmire, because the judicial dicta indicate that all assorted activities of the government servants can assumably be fitted well within the cliché of "sovereign functions" of the state.¹

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Stunted Growth of Tort Law - Some factors

One may wonder as to what possibly is the reason which induces the victims to acquiesce to the wrongful acts of others. Remedial action is hardly sought in the established legal institutions. Is there always a defence which would nullify the vindication of right? To these inactions Professor Northrop finds answer in the mediational character of the eastern societies where compromises can be effected through friends.² Coupled with this is the culturally conditioned mentality of the Asian people which has shown antipathy to the settling of disputes by recourse to the predominantly right oriented western laws and their processes.³ The net result is therefore meagre litigation in the area of the law of torts.

Skepticism has been shown towards these generalisations by asking for the "need to examine the implications of lack of tort law litigation in India together with a suggestion that the validity of the causes, mainly based on cultural and civilizational differences be tested by empirical studies."⁴ In a recent forthright comment the generalisation of "so broad a character" has been challenged because "it seems to make some a priori assumptions about our way of life...."⁵

It does hardly need any effort to get convinced that qualitative justice is obtainable only at a high price. A man on the street dare not ask for adequate compensatory reliefs for his lawfully entitled losses from a rich or privileged adversary, because no sooner he sets his claim in action he will find himself in a maze of procedural wranglings which will sap out his time, money and energy. Even for initiating claim a plaintiff has to go to the portals of justice equipped with bagful of money to dole out as court fees, lawyer's fees and sundry expenses. The initial cost and the running expenditure on litigation may at times exceed the decretal amount. Failure at trial stage may demand from the plaintiff more money, firstly for appeal and finally for costs.

In terms of time involved the civil litigation is again a costly affair. A study has shown that final outcome in tort litigation has taken in an average a period of six years.⁶ The minimum time

taken is five years and the maximum being 13½ years.⁷ The prohibitive cost of remedial action thus deters a potential plaintiff to resort to civil litigation in a country where the national income per capita is less than a rupee.

Uncertain judicial attitude in the matter of awarding losses has also been helpful in putting further brakes on the incentive of a wronged person. Precedents disclose that a claim for ten thousand rupees has been deemed worthy of Rupee one only.⁸ Two suits of the value of five hundred rupees each were decreed for Rs.60/- and Rs.50/- respectively.⁹ The Nagpur High Court found that a claim for Rs.11,300 can well be satisfied with the award of Rs.315/-.¹⁰ In Madras the plaintiff who demanded Rs.10,000 was successful to the tune of Rs.650/-.¹¹ It has been pointed out that the claims are low, and lower are the sums awarded which become insignificant in the light of the time taken by the courts to decide the claim.¹²

Presumably because of the high rate of court fees, which plaintiff has to bear initially, the claims asked for had been for smaller sums, but the reduction of claims to disproportionate limits by the courts inculcate a belief in the mind of tort victim the futility of resorting to legal action because of its being a kind of highstaked gambling wherein there are odd chances to win and even chances to loose.

Conversion of Tort into Crime - Effects

The claim against a tortfeasor is generally hurdled by economic factors, procedural delays and the existing judicial attitude to minimise the awards. Accordingly, a victim resorts to criminal proceedings to wreak vengeance on the wrongdoer. Seemingly there are several wrongs which are found to be covered both in torts and the crime. It is only with artifice and contrivance that ingredients of a civil wrong are made to fit a criminal offence. The criminal proceedings being less costly and less time consuming are pressed into service by victims in order to gratify their feelings.

The effects of such an attitude are not wholesome. Firstly, the use of criminal process for an essentially civil wrong does not serve the useful purpose of reparation to the wronged person. Secondly, it tends to imbibe retributive sense in a citizen which is capable of developing unhealthy traits of anger and vengeance. Moreover, if remedial action is precluded from civil courts the criminal jurisdictions will be overburdened with criminal proceedings. This has already resulted in congestion of courts, and it is likely to impair the efficiency of criminal justice beyond repair.

Astigmatic Vision Contribute to Tort Situations

Judicial pronouncements have furthered the difficulties of tort litigants in specific areas. Astigmatic judicial vision on personal liberties has given rise to tortious situations, which if brought for action are likely to be dismissed because of the court's nonchalant attitude towards such wrongs generally. This in turn leads to many complications. To illustrate this point let us examine the facts of State v. Babu Ram.¹³ Though the case has no bearing on the law of torts is yet expressive of judicial attitude towards personal liberty of the individual.

In this case an almost blind and old man was seen coming from the canal side, and was seen going hurriedly towards the field. A police officer, accompanied by another person, happened to see this old man. These circumstances were considered enough to arouse suspicion in the mind of the police officer, who called the man and searched out Rs.650/- from his person. The old man could satisfactorily account for this money. The police officer then thought to return the sum to the owner. However, the modus operandi adopted for purposes of returning the sum seems ridiculous. The police officer first counted the currency notes one by one, and then passed it on to his companion, who in turn handed over the same to the old man. The net result was that the old man got back the money which he folded back in his dhoti, and went away home only to discover that Rs.250/- were missing from the lot. He did not take much time to know that he has been tricked away by a functionary of a sovereign power.

No civil action was instituted on these facts. The illiterate poor villager thought it best to report the matter to superior officers which he did; and which laid basis for departmental proceedings against the police officer. The matter was brought up by the police officer before the High Court to seek natural justice. An appeal was consequently brought to the Supreme Court by the State which was an aggrieved party in the case.

It was at the Supreme Court stage that the right of police officer to arrest a person without warrant was also considered. Though the state appeal was disallowed by 3:2 decision, nonetheless there was unanimity of opinion that a "police officer was legally entitled to search a person found under suspicious circumstances."¹⁴

These facts and circumstances have been detailed out to show that astigmatic judicial vision on personal liberties has often led the police officers to assume unwarranted and unauthorised powers to commit trespass on persons and property of individuals, and thus occasion situations for tortious wrongs.

It may be necessary here to state that the Indian laws do not permit search unless it is incidental to lawful arrest.¹⁵ An arrest without warrant is not such an easy thing as has apparently been understood, or has been granted by the courts to police officers for their misuse.

Arrest Law in India

The conditions determined by Indian legislature for the exercise of powers of arrest without warrant are contained in several provisions of the Code of Criminal Procedure 1898.¹⁶ A police officer may arrest without warrant, if he knows of a design to commit any cognizable offence, and it appears to him that the commission of offence cannot be prevented. The preservation of public peace and order may call for exercise of this power. In other words, the powers of arrest on "reasonable grounds" or suspicion or belief imply that the person arrested is committing or is about to commit a cognizable offence, and an exercise of the power of arrest is necessary for the prevention of breach of peace.¹⁷

A police officer may also arrest any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been concerned in any cognizable offence.¹⁸ A specific requisition from a brother police officer can lead to an arrest without warrant provided the cause of arrest and the offence are made known to the arresting officer.¹⁹ Thus, the requirements for an arrest without warrant presuppose the existence of a cognizable offence which must be based on reasonable suspicion that may pointedly be directed towards the person arrested.²⁰ The reasonable suspicion must be founded upon some definite fact, other than the personal feelings, tending to throw suspicion on the person arrested otherwise it is a "serious encroachment upon the liberty of the subject without justification!"²¹

Concluding Observations

Adverting to Babu Rams' case we find that in absence of any information about the existence of a cognizable offence having been committed, the action of the police officer, based on his personal feelings, was quite unauthorised. Consequently, the arrest and search which resulted in a loss of Rs.250/- was in invasion on the rights of the old and almost blind man, which if he had desired to seek remedial action through law of torts would have resulted in disappointment. This can now be believed from the ratio of the Supreme Court decision in Kasturi Lal's case.²²

It may be of interest to note that much confusion that abounds the decision in Kasturi Lal's case could have been avoided had the courts used their power processes to police the police for their unwarranted acts. In Kasturilal's case too the police apparently had no circumstance to detain the bullicon dealer; and it had much less reason to detain the gold for purposes of keeping in unsafe custody for consequential misappropriation by a government servant so as to enable him discharge his unworthy "sovereign function."

In sum, it can be said that by legalising the statutory breaches, e.g. by holding the unlawful arrest as being valid, the courts are unwittingly contributing to factors which, consequently crystallise situations of public torts. And when such problems come up before the courts they are inclined to immunise the government from liability by stretching the doctrine of act of state both in an alogical and illogical manner thereby aggravating the difficulties of tort litigants in India.

Foot-Notes

1. See Dey v. Secretary of State I.L.R. 1 Cal.11; Secy. of State v. Hari Bhanji (1882) I.L.R.5 Mad. 273; Rao v. Advani 51 Bom. L.R. 342, State of Raisthan v. Mrs. Vidyawati AIR 1962 S.C. 933, Kasturi Lal v. State of U.P. AIR 1965 S.C. 1039.
2. Northrop, The Meeting of East and West (paperback ed. 1960) and The Taming of the Nations (1954) Ch. VII, cited in S.M. Hasan, The Law of Torts 1966 An. Sur. I.L. 110, 111 see esp. f.n.5.
3. Ibid.
4. Sharma, G.S.(ed.) "Horizons of Indian Legal Philosophy" in Essays in Indian Jurisprudence 13, 15-16 (1964)
5. Hasan, S.M., The Law of Torts 1966 Ann.Sur. I.L.110, 112.
6. R. Ramamoorthy, Difficulties of the tort litigants in India highlighted through the tort of Malicious Prosecution, 13 (Paper circulated in The Seminar on The Problems of Law of Torts May 1969)
7. Supra n. 6
8. A.I.R. 1953 Pun. 213,
9. A.I.R. 1946 All. 139.
10. A.I.R. 1955 Nag. 265.
11. A.I.R. 1957 Mad. 646.
12. R. Ramamoorthy, supra n.6 at p.12. Detailed tabular analysis of cases for the amount claimed and amount awarded has been ably presented by Mr. Ramamoorthy in his paper noted above.
13. A.I.R. 1961 S.C. 751.
14. Supra n.13 at p. 756.
15. Ramain Rai v. Emperor, A.I.R. 1942 Alld. 424.
16. Ss. 54(2) - 54(8), 55;57, 151,401(3)
17. S. 151 Cr. P.C. 1898.
18. S.54(1) Cr.P.C. 1898.
19. S.54(9) Cr.P.C. 1898.
20. Roshan v. Supdt. Central Jail A.I.R. 1950 M.B. 83, Tribhuwan v. Rex AIR 1948 Oudh 744.
21. Ramprit v. Emperor A.I.R. 1926 Patna 560, Also Ramain Rai v. Emperor A.I.R. 1941 Alld. 424, Muhammad v. Kannan A.I.R. 1943 Madras 218, Jakro v. Emperor A.I.R. 1934 Sind 197, Aley v. Emperor A.I.R. 1922 Allahabad 457, Mahadeo v. Emperor A.I.R. 1924 Alld. 201.
22. A.I.R. 1965 S.C. 1039.

