

LAW OF TORT (1987). By B.M. Gandhi. Eastern Book Company, Lucknow. Pp. xlviii+1012. Price Rs. 200.

THE AUTHOR of a book on the law of tort in India must undergo a peculiar experience. He cannot, in the very nature of things, avoid a reference to English cases because to a large extent, Indian doctrines in the field of tort law are based on English law. But the great problem is: how much of English law is to be cited? Another connected problem of magnitude is: how should one approach English statutes which have modified or codified rules on the subject of law of tort? Yet another problem is derived from Indian statute law. How much space should be devoted to a discussion of Central Acts which touch on the fringes of the law of torts? To give one example, the Fatal Accidents Act 1855 modifies the common law rule that death does not give rise to a cause of action and provides for compensation to the specified relatives for loss caused to them. But there has gathered around this Act, a large bulk of case law and one who writes a text-book on the law of tort is faced with the recurring problem of how much space should be devoted to a discussion of such cases.

These problems must have been confronted by the author of the book¹ under review. It may be said that its volume is largely due to a desire to do justice to the materials mentioned above. The author has made a valiant effort to cover the topics usually dealt with in the law of torts and the book offers considerable material which could be of use to the practitioner in solving thorny problems of this growing branch of law. In so far as the statutory and judicial material on the various topics has been attempted to be covered, the result appears to be very satisfactory. The method of treatment adopted is to deal with, (i) history and definition and classification in the first three chapters; (ii) parties to a tort, defences, vicarious liability, extinction of liability and remedies in the next five chapters; and (iii) various species of torts which range over chapters 9 to 21. Alternative remedies and foreign torts come towards the end. As regards the specific torts themselves, the author deals with, (a) torts affecting the person, reputation and family; (b) torts to tangible and intangible interests in property; and (c) torts by negligence, its offshoots and various manifestations. Finally these are followed by economic torts.

While the content is useful, a number of comments could be made about the style, grammar, diction and other linguistic aspects, as also regarding points of detail. *First*, as to style headings and sub-headings. Sometimes, numerous headings and sub-headings reduce the enjoyability of the book. Thus parties to a tort has three topics,² namely, (i) the diverse categories of parties to a tort; (ii) variations in the general rules of liability;

1. B.M. Gandhi, *Law of Tort* (1987).

2. *Id.*, ch. 4.

and (iii) persons who cannot sue. These topics are prefixed by arabic numerals. Topic 2, variations in the general rules of liability, has eight sub-topics, such as sovereigns, ambassadors, corporations and so on, prefixed by capital letters A,B,C, and so on. These sub-topics themselves have, what one may call sub-topics; for example, sub-topic A dealing with sovereigns has been sub-divided into points concerning, (i) (position) in England; (ii) foreign sovereign; (iii) act of State; (iv) the Indian position; (v) constitutional provisions; and (vi) modern judicial activism. These are indicated by italicised numbers in brackets. Still carrying the scheme further, such numbers themselves subsume under letters put in brackets certain points of detail. It is a matter for consideration whether some simplification in this respect would not be possible when the next edition of this useful work is prepared.

At places, a point is placed under one topic or sub-topic though it could have been placed more appropriately under another topic or sub-topic. *E.g.*, when discussing the "suing capacity" of corporations,³ the case of *Vadi v. Vijayawada Municipality*⁴ is mentioned. But according to the text, what it decides is that "a Hindu temple is considered as a legal person and accordingly it can be sued for the wrongs of its manager, trustee or servant and can sue as a corporation".⁵ The case thus also deals with the liability to be sued, which is the next sub-topic. Incidentally, this case under the name of *V.M. Vadi v. Vijayawada Municipality* is later dealt with in some detail and it is stated that the case "lays down the final analysis showing the liability of a corporation to be sued".⁶

At some places, the heading and the text suffer from lack of harmony. *E.g.*, while dealing with corporations, the leading case of *Poulton v. G.N. Railway* is mentioned under the heading (iv) but the text which immediately follows gives the names as *Poulton v. London and South Western Rail Co.*⁷ In dealing with defences to the action for false imprisonment, *etc.*, it is mentioned in the text, "As contemplated by the *Code of Civil Procedure* a person who has committed an offence can be arrested".⁸ Obviously, the reference should have been to the *Code of Criminal Procedure*.

From the point of view of grammar and diction, some improvements are possible. Thus, one of the sentences reads, "Hinduism, Buddhism, Confucianism, Islam and the Judaco-Christian ethical ideas are by no means different."⁹ The scope for improvement is undeniable. Another example is the sentence, "However, if they arise we may follow the suit

3. *Ibid.*

4. *Id.* at 113

5. *Ibid.*

6. *Id.* at 117.

7. *Id.* at 114.

8. *Id.* at 429. (Emphasis added).

9. *Id.* at 62.

in absence of any specific enactment on the subject."¹⁰ The article "the" before the word "suit" would not be needed. Then, sometimes, there are apparent contradictions. While dealing with lunatics and drunken persons, and the presumption of sanity and standard of liability in respect of such persons, the statement occurs, "In tort and matrimonial, capacity to be held liable is tested by standards, similar to those *invoked in respect of criminal liability.*"¹¹ Also, it is stated¹² that *unlike the rule in criminal law*, a man may be held civilly for assault where he knows the nature and quality of his act, even though he has no power to appreciate that it is wrong. Cross references are also badly needed on some matters. For example, the case of *Rangaragulu* is considered in detail in at least two places¹³ and a cross reference would have been useful. There are other examples of scope of improvement in style, *etc.*

The utility of the book would be increased if the author finds time when preparing the next edition, to look into them. On the whole, it is a useful addition to the literature on the subject which promises to be of practical importance in near future.

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10. *Id.* at 127.

11. *Id.* at 128.

12. *Ibid.*

13. *Id.* at 130-31, 160-61.

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