

Inland Fisheries

Until now this paper has been focussing upon the liability arising in tort as a consequence of injury caused to a water right when water is used as a resource. But what about an infringement of a right vested or created in a water-based resource? Hydro-electricity is a water-based resource. So is fishery. Can any violation of rights invested in these resources give rise to a civil cause of action?<sup>91</sup>

electricity. As far as tort law is concerned there are very few cases falling under Inland fisheries that have given rise to an action in tort.

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In Maung Thit Sa v. Maung Net, the plaintiff and the defendant were lessees of adjoining fisheries. During the peak season defendant obstructed the passage of fish by erecting in his fisheries certain akases. As a result the plaintiff's catch of fish was greatly affected. He sued the defendant for damages. It was held that the defendant was liable for damages in tort. In Paramanda Mohanty and others v. Bira Behra,<sup>93</sup> the Orissa High Court had to decide whether proceedings conducted under

section 145 of the Criminal Procedure Code, 1973, can give rise to a tortious action under the given circumstances. In this case the plaintiff had acquired in auction the lease rights of fishery in a tank. Anticipating a breach of peace over the tank on the basis of information given by the defendant, the Magistrate attached the tank under section 145 Criminal Procedure Code. The plaintiff sued the defendant for damages for the loss suffered due to deprivation of his fishery rights by reason of the attachment. The court held that the defendant was not liable for the loss because the deprivation of the plaintiff's right to possess the tank was due to the order of attachment passed by the Magistrate. The Magistrate's order was an intervening factor which broke the chain link between the plaintiff and the defendant. The dispute in the case revolved around the possession of lease rights in fishery. The defendant claimed his right while the plaintiff claimed his. The case was ultimately dismissed as the court could find no evidence implicating the defendant in tort.

The aforementioned cases reflect a very important point which is that the courts do acknowledge an action in tort for a violation of an individual's right

to catch fish even if it is a lessee's right and a personal or a natural right. As the situation common man is left with stands today the /very few natural fishery rights since the right to catch fish has been nationalised by the Government. The personal and natural rights to catch fish have been considerably curtailed under the (Central) Fisheries Act 1897 and various state enactments. Under these legislations lease rights are granted to the people and criminal sanction are issued against persons offending the Acts. There is no statutory right for remedy in these Acts which means that though an offender can be punished he cannot be subjected to tortious liability. This does not however rule out an action in tort at common law which as mentioned above is already recognized by the courts. For the development of tort law in this area support from the judiciary as well as the government is extremely necessary. At least from the Government side this support is not coming because the policy of the Government instead of allowing the fish industry to thrive is jeopardising its very existence by sanctioning the construction of huge dams across rivers in different parts of the country. In such situations the people whose right to catch fish is displaced thereby can only seek compensation at common-law and the judiciary which is

often torn between furthering the implementation of Governmental policies vis-a-vis the interests of the common fisherfolk would be slow to grant the relief prayed for. Therefore, the fisherfolks right to hold the Government liable in tort is beset with problems. Further/<sup>more</sup> even if the right to seek compensation exists in law the fact that not many fisherfolk are aware of their right to claim damages for violation of their customary and common-law rights greatly prevents the growth of tort law in this regard. The penal and civil sanctions provided under the various fishery statutes for ~~offences~~ committed to fishery rights are not adequate enough to check the corruption and exploitation suffered by millions of fisherfolk on account of actions of the Government which indiscriminately continue to support the policy of constructing huge dams and rivers in different parts of the country. Arent these peoples common law rights affected. The fact that to date there is very scanty case-law on the subject is because the people of India are unaware of their common-law rights or even their customary rights in fisheries. Only when the people become conscious of their rights can they bring an action in court and it is only then that the judiciary can play an active role in controlling the deteriorating condition of the fisheries and the fisherfolk through the operation of tort law.