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THE DILEMMA: SHOULD NEGLIGENCE SOLELY BE REGARDED AS A CRIMINAL ACT IN INDIA?

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Abstract

Negligence is defined by our legal system as "the failure to act with the degree of care towards others that a reasonable or prudent person would exercise in the same or similar circumstances."⁶ Negligence is considered as a crime and also as a tort. Criminologist, Mr Paul Tappan defines crime as "an intentional act or omission in violation of criminal law, committed without defense or justification, and sanctioned by the state as a felony or misdemeanor."⁷ Whereas, a tort is unlawful conduct for which recourse may be sought in the form of damages or an injunction but is not a breach of contract.⁸ The principle of negligence, the legal definition of "negligence" generally states that when someone acts recklessly and causes injury to another person, that person will be held responsible for the damages that occur.⁹ This paper will deal negligence, its essentials, case laws and majorly with reasoning and explanation behind the idea that negligence should solely become a criminal act and not as a tort as it is a serious crime. The dilemma has been intriguing and will appear resolved by the end of the research.

Keywords: negligence, dilemma, tort, crime, principle



⁶ What is Negligence, Myers Legal, <https://myerslegal.com/what-is-negligence/>, Last Accessed on 26th June 2023- 11:00 AM.

⁷ Definitions Of Crime, Cliffs Notes, <https://www.cliffsnotes.com/study-guides/criminal-justice/crime/definitions-of-crime>, Last Accessed on 26th June 2023- 11:10 AM.

⁸ Torts, Merriam Webster, <https://www.merriam-webster.com/dictionary/tort>, Last Accessed on 27th June 2023-12:05 PM.

⁹ Elements Of Negligence, Find Law, <https://www.findlaw.com/injury/accident-injury-law/elements-of-a-negligence-case.html>, Last Accessed on 27th June 12:10 PM.

Research Methodology

The research methodology is doctrinal and descriptive. Doctrinal research derives out of studying other research papers and case laws. A population, circumstance, or phenomena is intended to be correctly and methodically described through descriptive study. What, where, when, and how inquiries can be answered, but why questions cannot.¹⁰

Introduction

When there was a duty owed to the plaintiff and reasonable and proper care would have prevented the injury or damages from occurring, it is negligent to fail to avoid loss, harm, or injury. It is simple to file negligence claims against a company. Managers may occasionally be subject to personal liability for their mistakes.¹¹ A lawyer lays out numerous essential factors to show that the responsible party did anything that caused or helped to cause the claimant's injuries in order to establish negligence in an injury claim.

Essentials Of Negligence are:

- **Duty Of Care:** If the defendant owed the plaintiff a duty affects whether a case of negligence is successful or unsuccessful. When the law acknowledges a connection between the person being sued and the plaintiff and calls on the defendant to behave in a specific way, a duty is created. A court often decides whether a defendant obliged the plaintiff a duty of care, and would typically conclude that there is an obligation if a reasonable person would conclude that there is a duty under identical circumstances.

For instance, if a defendant was loading grain bags onto a truck when one of the bags struck a pedestrian, the court is likely to find that the defendant owed the pedestrian a duty if the loading dock was close to a public area where

the pedestrian was passing by, such as a sidewalk.¹²

- **Breach of Duty of Care:** The plaintiff must demonstrate that the defendant is unable to discharge his responsibilities as a result of the defendant's carelessness, which is a crucial need for negligence liability. For example, in the case *Municipal Corporation of Delhi v. Subhagwanti*, AIR 1966 SC 1750, several people perished as a result of the collapse of a clock tower in Delhi's Chandni Chowk. The tower was close to 80 years old, when the typical lifespan of such constructions is 40 to 45 years. As it is in their hands and they are unable to take care of it and carry out their obligations effectively, the Municipal Corporation of Delhi is held accountable.¹³

- **Injuries and Damages:** A plaintiff in a negligence lawsuit must establish a legally recognized wrong, which is typically manifested as bodily harm to a person or to property, such as a car in a collision. It is insufficient that the defendant did not use reasonable care. A person to whom the defendant had a duty of care must actually suffer losses as a result of the defendant's failure to use reasonable care, and a personal injury claim must be filed in court within the necessary time limit.¹⁴

The maxim that negligence deals with is *Res Ipsa Loquitur*, it is a Latin phrase that meaning "the thing speaks for itself," It implies that all that is necessary to understand a certain deed is its context. The idea that some accidents might be considered negligent just by happening is known as the "mere occurrence principle."¹⁵ As a result, the three prerequisites for using this maxim are; The damage-causing item must be under the defendant's or his servants' control, the accident must have been one that, absent carelessness, would not have occurred

¹⁰ Descriptive Research, Scribbr, <https://www.scribbr.com/methodology/descriptive-research/>, Last Accessed on 27th June 2023- 12:20 PM.

¹¹ Harris M.S., Negligence, Science Direct, <https://www.sciencedirect.com/negligence> Last Accessed on 28 June 2023- 10:39 AM

¹² Supra Note 4

¹³ Tort of Negligence, Toppr, <https://www.toppr.com/guides/legal-aptitude/law-of-torts/negligence-tort-law/>, Last Accessed on 28th June 2023- 11:00 AM.

¹⁴ Supra Note 7

¹⁵ Negligence Under Tort Law, Law Bhoomi, <https://lawbhoomi.com/negligence-under-law-of-torts/> Last Accessed on 28th June 2023- 11:20 AM.

ordinarily and there must be no proof of the accident's true cause.¹⁶

Civil and Criminal Negligence

When a person fails to exercise ordinary care, commonly referred to as due diligence, this is referred to as civil negligence. What a reasonable person would have done in the same scenario is used to determine whether or not someone was acting negligently under civil law. Criminal negligence occurs when a person will do something that clearly puts the safety of human life at risk. S.304A deals with the idea of the death of a person due to negligence. A prosecutor must show the following elements for an act to be considered criminal negligence: The person who committed the conduct behaved carelessly and increased the risk of death or serious bodily harm; A wise person would have known the repercussions of such an act. Criminal negligence occurs when a person does an act that clearly puts the safety of human life at risk, whereas civil negligence occurs when a person fails to exercise ordinary care, often known as due diligence. What a sane person would have done in a similar circumstance is the benchmark for determining civil negligence.¹⁷

Reasons why negligence should be solely regarded as a criminal act in India

Any sort of negligence should be a crime for the following reasons:

- As, we can see that lack of care is common in both civil and criminal negligence, which can lead to extremely hazardous results. In my opinion negligence should be solely made criminal whether it causes death or not because if in a case of negligence where death is not an outcome, and less amount of

punishment is given for it, it somehow promotes the possibility of negligence in future as well.

- Also, taking into consideration that a person who is a victim of negligence suffers regardless of his fault.
- The person causing negligence has a prior reasonability that his lack of care might harm someone else in future.

Case Laws

A few cases showing negligence in various situations are listed below:

Case 1: Chiranjilal VS DDA W.P. (C) 12087/2015

BRIEF FACTS:

- The case involved the death of a minor aged eleven years.
- This happened due to falling of an iron gate on the child.
- It was the negligence on the part of the DDA Authorities to not maintain the gate properly.
- A case was filed against the DDA.

JUDGEMENT:

The court advised creating the rules for the exgratia compensation programme. The court-appointed committee, suggested paying 5 lakh Indian rupees in the event of permanent incapacity and 10 lakhs in the event of death. It received DDA approval, and 10 lakh was given to the deceased's parents.

Case 2 MCD VS Subhagwanti

BRIEF FACTS:

In Chandni Chowk, Delhi, a famous tourist attraction and crowded area, was maintained by the MCD. A clock tower was located in its centre. This eighty year old tower collapsed, killing people. Its life was only about 45 years. A suit was filed against MCD.

JUDGEMENT:

The MCD was held liable for negligence by the court. It negligently did not repair the building when it was required.

¹⁶ Lecture on Negligence, Csl University Library, <https://csuniversity.ac.in/bridge-library/pdf/BA-LLB-II-SEM-LAW-OF-TORT-BL-2005-Lecture-on-Negligence>, Last Accessed on 29th June 2023-3:00 PM.

¹⁷ Anushka Hanotiya, Civil and Criminal Negligence, Legal Services India, <https://www.legalserviceindia.com/legal/article-3144-civil-and-criminal-negligence.html#:~:text=Meaning-,Criminal%20negligence%20is%20when%20a%20person%20does%20an%20act%20which,also%20known%20as%20due%20diligence>. Last Accessed on 28 June 2023-10:02 AM

Case 3: Court on Its Own Motion VS Government of NCT of Delhi

BRIEF FACTS:

- A boy aged eleven years, resident of Laxmi Nagar, went on a picnic organized by his school.
- He fell in a water harvesting pit and died, despite the efforts of some people trying to save him.
- Suo moto cognizance was taken by the court on this matter which was the result of a news report.

JUDGEMENT:

The PWD shall deposit 10,00,000 INR along accompanied by 9% interest from the date of the demise of the minor. This was supposed to be done within a month's time. The amount was to be transferred to the mother's account.

Analysis

Any analysis shall consist of a proper reasoning and result, both of which are stated herein. By the combined analysis of the above case facts and judgements of the cases listed and the reasons stated, in my opinion, negligence committed by a person shall only be treated as a crime, thus ending the dilemma of the people and providing more clarity to Indian citizens. By adopting this idea, it shall make the work of the courts easier and lighter, reducing the burden on them. In today's time when there is dearth of judicial infrastructure in India and scarcity of Judges, such ideas will help the judiciary function in a better manner and upscale its position nationally and globally. India has the longest written constitution, and thus, another amendment shall not prove to be a very huge deal for India.

Conclusion

As is well known, English Common Law serves as the foundation for Indian tort law. As a result, Indian courts establish and alter negligence legislation according to the principles of justice, equality, and morality. The Latin word *negligentia*, which meaning "failing to pick up,"

is where the word "negligence" originates. In the legal sense, the term "negligence" refers to the failure to exercise the level of care that a reasonable person would have in a given circumstance. In the wider meaning, negligence is the act of being careless. Only in the 18th century did negligence become a recognised cause of action under English law. Similar to Indian law, the IPC, 1860 did not have a provision for causing someone's death by negligence; nevertheless, in 1870, section 304A was added.¹⁸ And now there is an end to the confusion by the idea suggested in the paper. A new law may be passed ending the dilemma.

¹⁸ Supra Note 11