

ECONOMIC TORTS: AN OBSCURE BRANCH OF LAW OF TORTS

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ABSTRACT

The growth of economic torts has been guided by issues of unfair competition and need to frame a system of acceptable behaviour in the marketplace. In common law there wasn't any general torts that deals with unfair competition, it's the economic tort that represented the method to attack excessive competition either through diversion of custom or attacking the commercial link. Most of the analyst focus on the torts of passing off to assess the potential for the growth of tort of unfair competition. But, till now Economic torts are untouched and unexperimented area of law of torts and it existed with so many loopholes, without any Judicial Precedent or any designed legal framework for easy understanding. There is no demarcation between economic torts and other torts, any civil wrong may go against the economic interest of individual, hence a proper framework is needed. In this article some case laws, related directly or indirectly, are scrutinized to have proper understanding, also it has been linked with Negligence to have more clarity.

KEYWORDS – Economic torts, unfair Competition, Negligence, Proper framework.

INTRODUCTION TO TORTS

The word 'Tort' is originated from Latin word 'Tortum' which means 'twist'. A tort is a civil wrong, for which we have remedy through filing a suit for unliquidated damages. Law of torts is based on maxim 'Ubi Jus Ibi Remedium', which states that 'where there is a right, there is a remedy'. It is evolved from common law principle. It came to India during colonial period as this law was prevalent in England. This law can be grouped in different categories:

- **Wrong against property:** In legal sense property is something over which one have right either as ownership or right of possession. So, a tort against property is done when one infringes that right. For example: Trespass, Nuisance.
- **Physical tort:** In this a wrong is caused against the human body, for example: battery, assault, false imprisonment.

- **Psychiatric Injury:** Mental health is very important for well-being of overall health. So, if any injury is caused to mental or emotional well-being then it comes under psychiatric torts.
- **Torts against Reputation:** When injury is done to the image of a person in the mind of right-thinking person, then it is considered as wrong.
- **Economic torts:** It is also known as Business torts and it can be understood from its name that when injury is done to financial well-being of person. Its main function is to protect economic interest of public. Torts of conspiracy, inducing breach of contract, intimidation, deceit, and many more are wrongs under this branch of law of torts.

It can be divided into two categories: the general economic torts which include conspiracy, inducing breach of contract,

intimidation, and unlawful interference with trade, and second one is the misrepresentation economic torts comprising of deceit, malicious falsehood, and passing off.

ECONOMIC TORTS

Right to business and trade is a basic right of every individual and securing this right is necessary especially when the trend of unfair trade practices is increasing day by day in the market. This branch was introduced to ensure free competition, but problem with this law is that cases involving economic torts get finished at interlocutory stage, and no detailed study of law is needed. This law is surrounded by uncertainties. As a part of common law, this branch of tort has been given a powerful place in UK's Judicial system. In *Allen v Flood*, the House of Lords adopted the abstentionist agenda for the general economic torts: even where intentional and unjustified economic harm was inflicted, liability would only follow where unlawful means were used. Network appeared to shift these torts from the abstentionist to interventionist track, resulting in further mess. Below are the cases discussed that are considered to have great importance.

The House of Lords' decisions in *OBG v Allan* the petitioner was a civil engineering firm along with two of its affiliate firms, and the defendants were an unsecured creditor, a solicitor, and receivers. When the receivers took over the claimants' firm, it was alleged that they cancelled the majority of the subcontracts they had entered into. Additionally, a few of the claimant's contracts were settled by them. Due to this the claimants went into liquidation. The petitioners claimed that the appointment of receivers was invalid, that they had improperly interfered with their contracts, and that they had also meant to convert them. As a result, the case was found to involve two economic torts: conversion and wrongful interference. In the case of *Douglas and others v. Hello! Ltd and others*, the third claimant—the publisher of an English celebrity magazine—had a contract with other two claimants, who were both celebrities.

Both celebrities made the decision to keep their wedding private, and no one was permitted to take or publish photos of the event. However, the defendant—a freelance photographer and the third claimant's adversary—decided to covertly disclose the pictures. On the basis of this, the plaintiffs requested an injunction from the court and the breach of confidence was established. The case of *Mainstream Properties Ltd v. Young* involves purposefully causing a contract to be broken. The respondent was sued for contract breach by the appellants company, Mainstream. The agreements under consideration here are those between the firm's two employers. It was claimed that the respondents' actions helped to finance a joint business venture in order to assist it. Although they believe it to be their obligation, there was a blatant contract violation and the appellant company's economy suffered as a result.

Economic torts were also introduced to protect ownership rights of the entity. In case of *Amway India Enterprises pvt Ltd v. IMG Technology pvt Ltd and anr.* Amway, the complainant, claimed that many e-commerce platforms were showing and selling different Amway products without having the proper authorization. Amway's products are supposed to be sold directly to customers in accordance with the rules, and any approach that is inconsistent with those rules is illegal. In the market, it has led to unfair competition. One of these e-commerce sites, IMG, which is the defendant in the lawsuit, further asserted that he acted in good faith and had no malicious purpose towards the plaintiff. To protect the rights and honour of various sellers, the market must be free of unfair competition.

By employing similar names or logos, a practise called as passing off harms competing businesses. The protection of diverse trades' and businesses' legal rights is once again a key concern. It was discovered that both the plaintiff and the defendant in the matter of *M/S Cadila Laboratories pvt Ltd v. M/S Kamath Atul & Co* were marketing skin ointments that were the

same size and packaging. Additionally, with the exception of one letter, the names of the two ointments were nearly identical. The defendant was involved in the sale of 'Herbinol' where the plaintiff was selling 'Hurbinol'. The plaintiff in this case has a proprietary firm, while the defendant is a worldwide corporation, the court said. Consequently, the plaintiff's economic interests have been clearly violated and needed to be protected.

The petitioners in the case of *Sodan Singh v. New Delhi Municipal Committee* were street vendors who used to squat on the pavements of Delhi and New Delhi to sell their wares. They asserted that by paying the respondents, the Municipal Committee, a sum of money known as 'Tehbazari', they were given permission to do so. The respondents, however, later forbade them from conducting their trade and commerce on the typical pavement. The petitioners claimed that their right under Article 19(1)(g) and Article 21 was infringed. The court decided that although article 19(1)(g) provides each citizen the right to carry on business or engage in any vocation, certain limitations can be imposed under article 19(6) as long as they are subject to justifiable and valid restrictions. Additionally, the court determined that article 21 was not infringed because it only remotely affects the right to trade and employment. The court further noted that the petitioner's economic interests had been brought up in the discussion. Even though there hasn't been any claim of economic degradation or unlawful interference, the court cannot disregard such a crucial problem. If the PIL is dismissed, the petitioners would undoubtedly lose their financial interests, which will be unfair. Although the petitioners' claims cannot be fully upheld, the Delhi Municipal Corporation Act's policy can be changed in a way that accords fair justice and equitable to both the petitioner and respondents. As a result, the court ordered the respondents to modify the relevant Act's plans in a way that would benefit the petitioners.

NEGLIGENCE AND ECONOMIC TORT

Economic torts and Negligence are different. The issue of free competition originated economic tort. On the other side Negligence is imposed for pure economic lost, various reason have been given as to why the defendant must be duty bound towards plaintiff. So, negligence is about dependency, whereas economic torts are about unlawful acts. To prevent negligence from undermining the limited role of economic torts, no liability is imposed for negligently interfering with trade. This shows that there were no intentions of providing a general principle for negligently caused economic harm. It was always the economic tort that played important role in cases of maintaining commercial link.

The main function of economic torts is to protect claimant economic interest. Negligently interfering with someone's economic interest can be actionable, but labelling it as economic tort can be misleading. In some circumstances it functions like economic torts, but it is important to know about what those circumstances are and how economic torts relates to tort of negligence. Cases of negligence start rising in early nineteenth century, through *Donoghue v. Stevenson*, it was determined that categories of negligence are never closed. Lord Atkin stated that, "the tort was not limited to special categories of duties of care but rather became 'a fluid principle of civil liability'."

Negligence never became a mainstream economic tort because of two reasons, first is limitless and disproportionate liability and in the case of *Hedley Byrne and Co. Ltd. V. Heller and Partner*, it was pointed out that, "economic protection has lagged behind protection in physical matters where there is injury to person and property. It may be that the size and the width of the range of possible claims has acted as a deterrent to extension of economic protection". Through Hedley Byrne principle it was concluded that duty of care to avoid economic loss may exist but the liability cannot

be imposed on the same basis as that of duty of care to avoid physical harm and was pointed out that 'voluntary assumption of responsibility' is the key factor. After this principle the need to put some restriction over liability rising out of negligent misstatement, dominated this area of torts. The test of universal application is inapplicable for imposing liability.

CONCLUSION

The case of *Sodan Singh v. New Delhi Municipal Committee* exhibits the judges' pragmatic approach in that, despite the petitioners' lack of any such claims, the judges were able to connect the matter to an economic perspective. Giving this perspective to the case ultimately resulted in them receiving justice and serving as an example for the legal system. The instances of *OBG Ltd and another v. Allan and others*, *Douglas and ors v. Hello! Ltd and ors*, and *Mainstream Properties Ltd v. Young* were determined to be the landmark common law cases. It outlined the components of economic torts. The most crucial component for establishing responsibility under the law of wrongful interference is intent. Simple action is not required. In the highly competitive market, the case of *Amway India Enterprises pvt ltd v. IMG Technology pvt ltd and others* is crucial. Selling another company's goods without getting their permission or knowledge is unfair trading, which is not acceptable in any form. Every trader has a right to protection from illegal trade, and that protection must be provided. The ruling in *M/S Cadila Laboratories pvt ltd v. M/S Kamath Atul & Co.* was excellent since it defended the interests of the smaller firm in compared to the large corporation. When considering this option from an economic perspective, it is extremely justifiable.

It can be concluded that Economic torts are difficult to understand. Economic torts were discovered to be an untested area of tort law, with numerous gaps in its practicality and applicability. Common law has also disregarded the significance of this tort, in addition to the Indian legal system. Although

economic torts serve the general public's interests best, they have not yet been codified. The Indian legal system lacks appropriate laws and judicial precedents. This is also true because it is unclear how to assign blame for economic torts. In some circumstances, economic torts are mistaken for negligence torts. It is in such a complicated situation because of absence of proper framework. The related issues tend to start and finish at interlocutory stage, due to which a need of study and analysis of law never raised. The factors that constitute pure economic tort is still not determined. This may because of uncontrolled Judicial expansion of such liability in conflict with caution of past.

A proper framework for these torts should be constructed. That should be held on the principle that economic behaviour should be commanded by common law but on narrower basis. Lesser the flexibility of economic tort, the outcome will be in favour of public interest. It is considered that these torts are somehow related liberty. Although there is a statutory interference, which allows peaceful protest, but tort may arise in other protests. A clear framework will help to understand when to make someone liable while allowing the freedom of speech and expression.

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