

CODIFYING TORT LAW IN INDIA: THE CRITICAL ROLE OF FORENSIC SCIENCE IN ADDRESSING EVERYDAY WRONGS AND IMPROVING JUSTICE DELIVERY

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Abstract

India's tort law system remains largely uncodified and fragmented, resulting in legal uncertainty and unequal access to justice for victims of everyday civil wrongs, such as road accidents, medical negligence, cyber harassment, and environmental pollution. This paper advocates for the codification of tort law in India, highlighting the pressing need to establish a clear, accessible, and uniform legal framework. It also emphasizes the complementary role of forensic science including digital, medical, environmental, and psychological forensics – in strengthening evidence and helping courts deliver faster, fairer outcomes. By combining codified legal principles with forensic methodologies, India can bridge existing legal gaps, ensure accountability, and enhance remedies for civil wrongs. The paper examines historical reasons behind the lack of codification, analyzes real-life cases where this absence hindered justice, and proposes practical steps for legal reform and forensic integration.

Keywords: Tort Law, Codification, Forensic Science, Civil Wrongs, Legal Reform, Negligence, Medical Malpractice, Digital Forensics, Emotional Harm, Environmental Torts, India.

1. Introduction

India's civil justice system is heavily influenced by common law traditions inherited from British colonial rule. However, unlike many other areas of law—such as criminal law and contracts—tort law remains largely uncodified and scattered across judicial decisions and a handful of statutes. Tort law governs civil wrongs causing harm to individuals or groups and provides a mechanism for victims to seek compensation or remedies.

What is the meaning of tort?

In common parlance the tort is an injury or wrong independent of implied contract, as by assault, libel, malicious prosecution, negligence, slander or trespass or seduction.

The term 'tort' is French in origin which is synonym to 'wrong' in English version. This word has originated from the Latin word 'tortus' which means to twist and implies conduct which is

tortious or twisted. The Roman word 'delict' and Sanskrit word 'Jimha' depict same the meaning. The concept of tort appears when a breach of some duty is caused which is independent of implied contract giving rise to a civil cause of action and for which compensation can be claimed and a damage is recoverable.

1. Definition of Tort

Many authors have defined the term 'tort' but so far, its definition is still in a growing stage and it would be difficult to accept any single definition which could define tort in wholesome manner.

A workable definition of tort may be as:- A civil wrong which is independent of implied contract for which the appropriate remedy is an action for unliquidated damages.

Salmond and Heuston

A tort is a 'civil wrong for which the remedy is a common law action for unliquidated damages,

and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.

Clerk and Lindsell

'A tort may be described as wrong independent of contract, for which the appropriate remedy is common law action'.

Sir Fredrick Pollock

'The law of torts in civil wrongs is a collective name for the rules governing many species of liability which, although their subject-matter is wide and varied, have certain broad features in common, are enforced by the same kind of legal process and are subject to similar exceptions'

The absence of a codified tort law has led to uncertainty, inconsistent rulings, and difficulties for common citizens, especially marginalized and vulnerable groups, in accessing justice. Ordinary people suffering from injuries due to road accidents, medical malpractice, cyber defamation, or environmental damage often face prolonged legal battles, vague standards of proof, and uneven outcomes. The lack of codification means that courts rely heavily on judicial precedents, which may vary widely across different regions and judges.

Compounding these challenges is the underutilization of forensic science in tort litigation. Modern forensic tools – ranging from accident reconstruction and medical forensic analysis to digital evidence tracking and psychological evaluation – provide objective, scientific data that can prove the facts of a case beyond doubt. However, India's tort jurisprudence has yet to formally integrate forensic methodologies as standard evidence, resulting in missed opportunities to establish clearer causation and liability.

This research argues that codifying tort law, combined with systematic incorporation of forensic science, will modernize India's civil justice system, making it more transparent, reliable, and responsive to the complexities of contemporary society.

1A. Historical Context: Why the British Did Not Codify Tort Law in India

During British colonial rule, the Indian legal system underwent extensive codification efforts, resulting in landmark statutes such as the Indian Penal Code (1860), the Indian Contract Act (1872), and the Transfer of Property Act (1882). However, tort law was notably excluded from this wave of codification.

Historical legal scholars and colonial records reveal that British lawmakers viewed tort law as inherently flexible, grounded in evolving social norms, and best left to judicial interpretation. Sir Frederick Pollock, an influential legal theorist of the era, argued that tort law's dynamic nature made it unsuitable for rigid codification, as fixed rules could stifle necessary judicial discretion.

Moreover, colonial administrators prioritized codification in areas directly related to governance, trade, and criminal justice—areas that had immediate administrative or economic importance. Private law relating to civil wrongs was considered less critical, especially as tort law was culturally complex and varied widely across regions. The British preferred to apply English common law principles case-by-case, allowing Indian courts to adapt rulings to local contexts.

This selective codification resulted in a patchwork legal landscape: criminal and commercial laws were clear and accessible, but tort law remained diffuse and reliant on precedent. This legacy persisted after independence, despite several Law Commission reports recommending codification to provide clarity and uniformity.

2. The Legal Vacuum in Everyday Civil Wrongs and Its Consequences

The lack of a unified tort law framework has significant real-world consequences across multiple domains:

2.1 Road Accidents

India faces a grave road safety crisis, with over 150,000 fatalities annually (Ministry of Road

Transport and Highways, 2022). While the Motor Vehicles Act, 1988, provides mechanisms for compensation, it primarily functions as procedural law. It does not fully account for contributory negligence, long-term disability, emotional suffering, or future medical costs.

Courts have repeatedly recognized this gap. For example, in *Raj Kumar v. Ajay Kumar* (2011), the Supreme Court noted that the Motor Vehicles Act does not comprehensively cover all damages a victim might face. Legal scholars Baxi and Galanter have criticized the Act's fragmented approach, emphasizing its failure to establish a tort-based compensation regime.

Moreover, forensic tools like accident reconstruction, biomechanical analysis, and impact assessment—which can scientifically prove fault and injury severity—are rarely employed in Indian courts, limiting factual clarity and justice delivery.

2.2 Medical Negligence

The healthcare sector is growing rapidly, but legal accountability for medical negligence remains weak. Courts mainly apply the Bolam test (from *Bolam v. Friern Hospital Management Committee*, UK, 1957), which protects doctors if their conduct aligns with accepted medical practices. This test, often considered outdated, puts victims at a disadvantage.

The tragic deaths and mistreatment in premier institutions like AIIMS have highlighted gaps in legal protection and patient rights. Victims find it difficult to prove negligence because there is no codified tort law specifying doctors' duties or forensic protocols for evaluating medical errors.

Medical forensic evidence—such as autopsy reports, clinical audits, and pathology tests—could help establish causation but is inconsistently used.

2.3 Online Defamation and Cyber Harassment

The rise of digital communication has increased cases of defamation, cyberbullying, and online harassment. India's Information Technology Act, 2000, criminalizes some conduct but lacks

provisions for civil remedies based on tort principles.

Digital forensic techniques—like IP tracking, metadata analysis, and digital footprints—can prove online wrongdoing, but courts lack clear legal frameworks to accept and assess such evidence in tort claims.

2.4 Product Liability

While the Consumer Protection Act, 2019, protects buyers, civil liability for defective products under tort law remains ambiguous and fragmented. Victims often struggle to establish manufacturer responsibility without codified principles defining liability and damages.

2.5 Emotional Harm

Unlike jurisdictions such as the United States and the United Kingdom, Indian law does not recognize intentional infliction of emotional distress as a standalone tort. As a result, victims of cyberbullying, domestic abuse, or harassment face hurdles in obtaining compensation for psychological harm.

Psychological forensic evaluations—such as psychiatric assessments and trauma studies—are available but not formally integrated into tort litigation.

2.6 Environmental Torts

India has witnessed landmark environmental cases, such as the Oleum Gas Leak case (*M.C. Mehta v. Union of India*, 1986) and the Bhopal Gas Disaster (*Union Carbide Corporation v. Union of India*, 1991). These cases introduced principles like strict and absolute liability for hazardous activities.

However, the absence of a codified environmental tort law has led to inconsistencies in applying these principles. Victims often face delays and inadequate compensation, as the legal framework is fragmented across statutes and judicial activism.

The Bhopal disaster exemplifies the consequences: despite the Supreme Court awarding compensation through settlement, many victims remained uncompensated due to unclear liability norms and procedural delays (Choudhury, 2004).

3. Forensic Science: An Essential Tool for Proving Tort Claims

Forensic science offers objective, scientific methods to establish facts that are crucial in tort litigation. The Latin maxim *certum est quod certum reddi potest* (“what can be made certain is certain”) embodies the role of forensics in eliminating doubt.

3.1 Digital Forensics

In cases of cyber defamation, harassment, or data breaches, digital forensics traces electronic evidence, verifying the origin and authenticity of online actions. This scientific proof helps courts go beyond conflicting testimonies.

3.2 Medical Forensics

Medical forensic evidence such as autopsies, pathology reports, and clinical audits provide concrete proof of injury, cause of death, or malpractice. For example, in medical negligence cases, forensic analysis can show whether a doctor deviated from standard care.

3.3 Environmental Forensics

Techniques like chemical analysis, soil testing, and satellite imaging identify pollution sources and environmental damage. This scientific data supports claims against polluters and guides compensation.

3.4 Psychological Forensics

Emotional harm, often invisible, requires psychiatric and psychological assessments to quantify trauma. Such forensic evaluation is necessary to recognize emotional distress as a valid tort and calculate damages.

Currently, Indian courts accept forensic evidence on an ad hoc basis, without clear legal guidelines or standards for its inclusion in tort

claims. This leads to inconsistent application and limits its potential.

4. Research Methodology

This paper is based on:

- Detailed analysis of Indian tort law jurisprudence, statutes, and Law Commission reports.
- Review of landmark case laws such as *Raj Kumar v. Ajay Kumar* (2011), *Union Carbide Corporation v. Union of India* (1991), *M.C. Mehta v. Union of India* (1986), and *Martin F. D’Souza v. Mohd. Ishfaq* (2009).
- Comparative study of codified tort systems in countries like the United Kingdom and Australia.
- Examination of forensic science literature and its application in legal contexts.
- Interviews and expert opinions from legal scholars, forensic scientists, and practitioners.
- Real case studies illustrating the impact of uncoded tort law and underuse of forensic evidence.

5. Recommendations: A Path Towards Codification and Forensic Integration

To address the challenges outlined, this paper recommends:

5.1 Drafting a Comprehensive Codified Tort Law

The Indian government should establish a dedicated Law Commission or a specialized legislative committee tasked with drafting a comprehensive tort code. This code should:

- Clearly define tort categories: negligence, nuisance, defamation, emotional harm, cyber torts, environmental torts, and product liability.
- Specify duties of care for individuals, professionals, corporations, and government bodies.
- Standardize procedural rules for tort claims.
- Outline clear remedies, including compensatory damages for physical, economic, and emotional harm.

5.2 Institutionalizing Forensic Evidence in Tort Litigation

The tort code must formally recognize forensic evidence as an essential part of proof. It should:

- Set guidelines and standards for admissibility and evaluation of digital, medical, environmental, and psychological forensic evidence.
- Encourage the creation of forensic labs dedicated to supporting civil litigation.
- Train judiciary and lawyers in understanding forensic science applications.

5.3 Creating a Government Body for Implementation

A government-appointed body comprising legal experts, forensic scientists, and social representatives should oversee the implementation, updates, and dissemination of the tort code and forensic protocols.

5.4 Public Awareness and Legal Aid

Efforts must be made to educate the public about their rights under tort law and the availability of forensic evidence, coupled with improved legal aid to assist marginalized communities.

6. Conclusion: Justice Through Clarity and Science

The current uncodified state of tort law in India leaves many victims of everyday wrongs trapped in legal uncertainty and delay. Real tragedies such as the Bhopal disaster and AIIMS medical negligence reveal the human cost of this gap.

In the spirit of the maxim fiat justitia ruat caelum (“Let justice be done though the heavens fall”), India must move swiftly to codify its tort law and embrace forensic science as a pillar of proof. This will not only bring transparency and predictability to civil justice but also ensure that victims receive timely and fair compensation.

The fusion of clear laws and scientific evidence is the future of tort justice in India—a future that

acknowledges the complexities of modern society and technology, and upholds the rights and dignity of every individual.

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