



INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

ECONOMIC TORTS IN SODAN SINGH V. NEW DELHI MUNICIPAL COMMITTEE - A CRITICAL ANALYSIS

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ABSTRACT

Economic Torts is one of the areas of Torts Law which has remained untouched and unexperimented since a long time in India. There has been no judicial precedent or designed legislature for the easy and direct interpretation of Economic Torts. The researcher has picked this topic in reference to an Indian case law which has no straight connection to this area. However, the observation of court and the judicial interpretation in looking at the narrower and hidden aspects of the case is really remarkable. The researcher has critically analyzed the topic of Economic Torts and tried to establish its relation with the judicial interpretation of the concerned case. Also, ten more case laws have been minutely scrutinized to have a proper understanding of the subject matter. The research questions have been framed accordingly and all the objectives have been fulfilled in reference to the perspective and understanding of the researcher. Further, the scope of study has not been limited to India. Although, the case laws picked fall under the Indian jurisdiction, but the topic has been sincerely correlated to the Common Law. This research paper is useful for students, academicians or any person associated to the legal fraternity. However, the language of the paper is kept simple and easy to comprehend. Therefore, people associated to other scholar areas can also have an insight of the matter. At last, the outcome of the research has been summarized in the conclusion.

KEYWORDS: Economic Torts, Unfair Competition, Trade, Business, Deceit, Economic Interest

INTRODUCTION

Economic torts also known as business torts is designed to protect plaintiff's business or trade, that is, their economic interest. The areas included under it are: Deceit, Unlawful Interference, Conspiracy, Intimidation, Malicious falsehood, Passing off and tort of

Negligence. The principle of economic torts in one word is based upon tortious interference which is known as causing loss by unlawful means. Trade or business is the basic right of every person and it needs to be secured. Preserving freedom and maintaining a competitive market is necessary.

The judges of common law in 18th century started pointing out the interference of third parties in the master servant relationship. They found the intervention as disrupting and actionable. The judge noted that even a minimal attempt of party to breach any contract will come under tortious law. The condition of breach of contract by means of third party is also actionable.

The scenario of tortious interference in Indian law is not very specific and prominent. Economic torts not being a matter of Legislature subject does not hold a proper position. It can only be strengthened in applied form and proper interpretation through the judicial precedent. Also, the case regarding tortious interference is very few and have not yet reached to the Supreme court. Only a few cases have been handled till today which have somehow failed to give a Clear View of Indian law regarding economic torts.

It is clearly understood that protecting an individual's business environment is necessary. With the advent of cut throat competition between enterprises, it has become alarmingly important to distinguish between tortious conduct and fair competition. The economic torts are lesser recognized and non-actionable in certain cases of India. The literature of precedent is a clear proof of it. But for the present business environment a robust and appropriate law is necessary. This will ensure the right to trade and hold the count of the wrong. In the case of *Sodan Singh v. New Delhi Municipal Committee*¹, there was injury to economic interests of the petitioners because of the respondent. The petitioners were not allowed to squat over pavement and sell articles. Since right to trade and occupation is protected under fundamental rights in constitution and the acts of respondent were causing injury to the economic interests of petitioner, the court observed that protecting such interests is very important for fair running of trade in the market and subsequently ordered the respondent to alter the policies in favour of petitioner subjected to reasonable restrictions.

¹Sodan Sing v. New Delhi Municipal Committee, (1989) 4 SCC 155

Therefore, in this research paper the researcher is going to critically analyse Economic torts and its liabilities along with its scope in India. This research paper will also emphasis upon the evolution of economic torts and discuss its importance.

RESEARCH OBJECTIVES

- To observe the elements of the case given.
- To understand different aspects and categories of Economic Torts.
- To analyze the applicability of Economic Torts in India.
- To suggest views about the need of Economic Torts in present scenario of Indian trade and market.

RESEARCH METHODOLOGY

The thorough analysis for this paper demands for a doctrinal research. Views and reports of scholars have been critically analyzed. The viability of economic torts in English law as well as Indian law has been minutely studied. The important cases and their judgements have been referred. Various research papers and critical study has been the main source of gathering information. The researcher, with utmost sincerity, has tried to cover all the important aspects of Economic torts, its liabilities and current scenario in India. For this, various definitions have been studied and evolution of economic torts over time has been firmly examined. Thus, the researcher puts forward a well-constructed doctrinal research for the current case analysis.

SCOPE OF THE STUDY

This research paper wants to highlight the applicability of Economic Torts in India. As being a part of Common law, Torts law has a great prominence in the UK Laws and the area of Economic Torts has been given equal importance in the law books. But the viability and position of Economic Torts in India is not up to the mark. The legal precedence of India lacks clarity and compatible regulations. Economic torts is the need of new business environment and its scope must be extended to the laws of India. Lack of approach and knowledge can be harmful to the Indian markets. The researcher, with the help of this study, mainly wants to focus upon the critical need of Economic Torts in Indian legal system.

RESEARCH QUESTIONS

1. Why are Economic torts not codified and lack importance in the current legal system?
2. What are the difficulties in imposing liabilities under Economic torts?
3. What is the position of Economic torts in Indian law and Common law?
4. How can Economic torts protect economic interests of people?

LITERATURE REVIEW

In the article *Unfair Competition: An essay on Economic Torts*², the writer A. A. Owolabi has focused on scope of economic torts in general as well as according to Anglo-American legal system. The article has emphasized on the historical background of common law where there was no doctrine for unfair competition. Free competition without any restraint was considered to be in the best interest of general public. However, this view was doomed since the beginning. Protecting the rights and dignity of traders is the duty of law. The common law recognized the view quite late which resulted in weak base of economic torts and injustice to the public at large. The article also elaborates the concept of passing off, deceit and injurious falsehood. It is seen that proper codified laws are very necessary for imposing liabilities under torts law. Lack of rules and regulations has segregated it from the other codified laws. Hence, economic torts need to be recognized through legislations and code of conduct.

In the article *The Illogicality and Obscurity of Economic Torts*³ written by Lee Eng Beng, the tort of conspiracy, which is correlated to economic torts, is discussed laying importance on two types of conspiracy, i. e, conspiracy by lawful means and by unlawful means. When two or more people come together to commit an unlawful act with malicious intention and harm any person or property is said to be conspiracy by unlawful act. Similarly, when two or more people come together to do a lawful act but somehow results in harming any person or property is said to be conspiracy by lawful act. However, this definition and concept stands as a loophole in the system of law. Mere presence of multiple people cannot be said to be an act of conspiracy. The writer has thus pointed out this illogical concept under economic torts which needs to be reconsidered and reframed.

² A. A. Owolabi, *Unfair Competition: An essay on Economic Torts*, JOURNAL OF THE INDIAN LAW INSTITUTE (jili) 512, 512-517 (2001)

³ Lee Eng Beng, *The Illogicality and Obscurity of Economic Torts*, SINGAPORE ACADEMY OF LAW JOURNAL (sacj) 427, 428-432 (1997)

In the research paper *Rethinking the Economic Torts*⁴ written by Simon Deakin and John Randall published in the 72nd volume of *The Modern Law Review Journal*, the emphasis has been laid upon how economic torts can be based upon economical interest of the person. Not all economical loss harms the interest of the person inferring loss. Thus, rethinking economic torts on the basis of interest of the person concerned will simplify imposing liability. The paper has also focused upon the history and evolution of economic torts with the span of time. The point that there is no solid legal basis of this tort is clearly prominent in the paper. Also, the demerit of lack of judicial intervention has also been focused. Judiciary has taken enough years to interpret the advent of economic torts.

In the research paper *A Perspective on the Economic Torts*⁵ written by Lee Eng Beng published in *Singapore Journal of legal studies*, basis of liability of economic torts has been discussed. It is seen that economic torts have not been equally protected under law as similar to other torts. Also, imposing liability is quite ambiguous under this tort. Many times, it is a difficult task to correlate between harm inflicted and harm caused in terms of economic interests. Also, the claim of economic torts is often shrugged off by putting the cause of action under torts of negligence. Due to this, the liabilities under economic torts remain unaddressed. Also, Rewarding damages does not ensure protection of economic interest. It only corrects the harm done already.

In the 9th edition of book of *Law of Torts with Law of Statutory Compensation & Consumer Protection*⁶ written by P. S. A. Pillai published by Eastern Book Company, chapter 21 Economic Torts talks about nature and essentials of conspiracy. When two or more persons are involved with an intention to harm others is said to be the torts of conspiracy. When this harm affects economic interests of persons then torts of economic comes under picture.

In the 4th edition of book of *Law of Torts with Law of Statutory Compensation & Consumer Protection*⁷ written by B. M Gandhi published by Eastern Book Company, chapter 21

⁴ Simon Deakin, John Randall, *Rethinking the Economic Torts*, 72, THE MODERN LAW REVIEW (mod law rev) 519, 519-525 (2009)

⁵ Lee Eng Beg, *A perspective on the Economic Torts*, SINGAPORE JOURNAL OF LEGAL STUDIES (sjls) 482, 483-485 (1996)

⁶ P. S. A. PILLAI, LAW OF TORTS WITH LAW OF STATUTORY COMPENSATION & CONSUMER PROTECTION 339-341 (Eastern Book Company 2004)

⁷ B. M. GANDHI, LAW OF TORTS WITH LAW OF STATUTORY COMPENSATION & CONSUMER PROTECTION 390-392 (Eastern Book Company 2019)

Liability for Negligent Misrepresentation under Economic Torts says for falling liabilities under misrepresentation and negligence.

ANALYSIS

Economic Torts, also known as business torts, is derived from the common laws. It was basically designed to protect the economic interests of the claimant. Law of torts is framed for protecting the civil rights of general people. Economic torts have been a prominent field under torts law but its demarcation from other fields of torts has not been made. Any wrong of civil nature can harm the economic rights of people and thus it is very necessary to protect such rights and frame laws for it. Further, economic torts have been divided into various categories which deals with separate issues.

The case of *OBG ltd and another v. Allan and others*⁸, combined with *Douglas and ors v. Hello! Ltd and ors*⁹ and *Mainstream properties ltd v. young*¹⁰ is considered to be the leading and most important case on economic torts in English law. In the case of *OBG ltd v. Allan*¹¹, the petitioner was a civil engineering company along with its two associate company whereas the defendants were unsecured creditor and solicitor and receivers. It was claimed that the receivers, upon taking control of the business of the claimants, terminated majority of the subcontracts undertaken by the claimants. Also, they settled some of the contracts made by the claimant. Then subsequently the claimants went into liquidation. It was alleged by the petitioners that the receivers were invalidly appointed and they have wrongfully interfered with their contracts and also intended to convert them. Thus, the case turned out to be of Conversion and Wrongful Interference which are considered as economic torts. Also, the other areas under this are Breach of confidence and economic loss by Unlawful Means which has been clearly seen in the case of *Douglas and ors v. Hello! Ltd and ors*¹². In this case both the claimants were celebrities who entered into contract with the third claimant who was the publisher of an English celebrity magazine. Both the celebrities decided to keep their wedding private and no one was allowed to click or publish the photographs. However, the

⁸ *OBG ltd and another v. Allan and others*, [2005] QB 762

⁹ *Douglas and others v. Hello! Ltd and others*, [2005] QB 125

¹⁰ *Mainstream properties ltd v. young*, [2005] IRLR 964

¹¹ *Supra* Note 8

¹² *Supra* Note 9

defendant who was a freelance photographer and also the rival of third claimant decided to secretly leak the photographs. The claimants, on learning of this, went to court for injunction and that breach of confidence has been made. The case of *Mainstream Properties ltd v. Young*¹³ refers to intentionally inducing a breach of contract. The appellants company Mainstream sued the respondent for breach of contract. The contracts considered here are between the two employers of the company. The acts done by the respondents were alleged to facilitate a joint business venture by providing financial aid. Although they mistake it to be their duty but there was a clear breach of contract and economic depreciation of the appellant company.

The case of *Lumley v. Gye*¹⁴ is considered to be one of the landmark cases of Economic Torts where it was seen that enticing a person to break contract with some other person is a tort. According to the fact, a singer was appointed by Benjamin Lumley to sing for Her Majesty's Theatre for three consecutive months. She was also debarred from singing at Covent Garden Theatre whose coordinator Frederick Gye later on insisted the singer to sing for him. He also her promised to pay extra. The court held that he has committed economic torts and is liable for interfering in performance of someone's contract. The torts of economic loss also protect the people from unfair competition in market and ensures their ownership rights. In the case of *Amway India Enterprises pvt ltd v. IMG Technology pvt ltd and another*¹⁵, the plaintiff was Amway company who alleged that several e-commerce platforms are displaying and selling various Amway products without any proper consent. According to the guidelines, the products of Amway are sold directly to the customers and any method in violation of the prescribed guidelines falls under the violation of law. It has given rise to unfair competition in the market. One such e-commerce websites IMG who is the defendant in the case further claimed that he did so in a bonafide intention and does not mean to harm the plaintiff. However, preventing unfair competition in the market is necessary to preserve rights and dignity of different sellers.

Passing Off which in general terms is known as causing harm to rival trade by adopting identical names or logos. This is again a serious concern in protecting rights of various trades

¹³Supra Note 10

¹⁴ Lumley v. Gye, EWHC QB J 73

¹⁵ Amway India Enterprises pvt ltd v. IMG Technology pvt ltd and another, 2019 SCC OnLine Del 9061

and businesses. In the case of *M/S Cadila Laboratories pvt ltd v. M/S Kamath Atul & Co*¹⁶, it was seen that both plaintiff and defendant were selling skin ointments of similar size and packing. Also, the names of both the ointments were almost same only with a difference of one letter. Where the plaintiff was selling Hurbinol, the defendant was involved in selling Herbinol. The court observed that the plaintiff here carries a proprietary business whereas the defendant is a multinational company. So, there is a clear infringement of economic interests of plaintiff and it needs to be protected. In the case of *Ram Avtar Gupta v. Gopal Das Taliwal and ors*¹⁷, the tort of misrepresentation and dishonest intention was addressed in a manner so as to preserve the economic rights of the appellant. The appellant was Transport corporation of India who was assigned to carry a consignment to the respondent M/S Badridas Jagdish Kumar by the consignor M/S Jagannath & sons. It was seen that the respondent ordered 101 bags of copra and were supposed to pay bill in the favor of State Bank of India. However, they misrepresented the bill so as to receive the consignment. The appellants alleged that intention to deceit and misrepresentation was exhibited by the respondent because of which the appellants had to settle the due by paying extra sum of money. The court observed that the respondent has acted in an unacceptable manner and there has been economic loss to the appellant which needs to be safeguarded.

In *Pepsi Foods Ltd and ors v. Bharat Coca Cola Holdings pvt ltd and ors*¹⁸, multiple allegations were made on the respondent stating that they have tried to interfere with the business of appellant in many ways. The claim of tortious interference, conspiracy, unlawful inducement of unethical practices was made. Pepsi and Coca cola are the leading brands of beverages in India and other countries as well. It was stated by appellant that respondent has tried to influence some of his workers to leave Pepsi and join coca cola. The similar incident has been seen in places of India. This has hampered business of appellant and they requested for injunction. In *Microsoft Corporation v. MS. K. Mayuri and ors*¹⁹, the plaintiff owned 'works' and supplementary user instructions and manuals which were here original literary works published and registered in USA, recognized in several countries including India. It was also protected under Indian laws. The plaintiff claimed that there has been copyright

¹⁶ *M/S Cadila Laboratories pvt ltd v. M/S Kamath Atul & Co*, ILR 1990 KAR 2576

¹⁷ *Ram Avtar Gupta v. Gopal Das Taliwal and ors*, (1983) 2 SCC 431

¹⁸ *Pepsi Foods Ltd and ors v. Bharat Coca Cola Holdings pvt ltd and ors*, 1999 (50) DRJ

¹⁹ *Microsoft Corporation v. MS. K. Mayuri and ors*, ILR (2007) 11 Delhi

infringement of her works. The defendants were involved in piracy of the copyright works. They downloaded and misused plaintiff's original work. The court directed summons to the defendants and they were held liable for infringing intellectual property rights of the plaintiff. In *Kartar Kaur and another v. Milkho and ors*²⁰, a very remarkable case of forgery came out and it was observed that this is a general mishappening of society which harms economic purpose of innocents. In the case, the appellants are the wife and daughter of the deceased Atma Singh who claim to be the real successors of the 1/3rd of land which was earlier owned by Atma Singh. However, the will has been made in favor of the respondents who are the sister and nephew of the deceased. It is alleged by the appellants the will has been forged by the respondents and they (appellant) acquire the legal right to claim the land. It was thus held by the court that the will has been forged on account of acquiring land by the respondents and the appellants hold merit to be the legal successors of the will.

SODHAN SINGH V. NEW DELHI MUNICIPAL COMMITTEE AND ORS- CASE LAW ANALYSIS

In the case of *Sodan Singh v. New Delhi Municipal Committee*²¹, the petitioners were hawkers who used to sell items by squatting over the pavements of Delhi and New Delhi. They claimed that they were allowed to do so by the respondents, Municipal Committee, by paying a certain amount of charge commonly known as Tehbazari. But later on, the respondents denied them to carry on their trade and business on the usual pavement. It was

²⁰ *Kartar Kaur and another v. Milkho and ors*, (1996) 11 SCC 622

²¹ *Supra* Note 1

alleged by the petitioners that the respondents have violated their fundamental rights under article 19(1)g and article 21. According to them, carrying on their occupation is an inherent part of their life and squatting over pavements is just to facilitate their trade. Also, this denial has infringed their right to personal liberty which is considered to be the most important right of any person.

However, the respondents denied the imposed allegations and stated that the petitioners were allowed to carry on their trade by moving all around the roads. However, they were never permitted to squat and occupy a certain area of pavement permanently. Besides denying the facts, the respondents also asserted that no one has a legal right to occupy a particular area on the road. No fundamental right allows a person to do so and hence no such claim is maintainable. The roads are meant for passing and re-passing of general public and cannot entertain private business. Also, the municipal committee has control over such issues under Delhi Municipal Corporation Act.

The court, after hearing the arguments of both petitioner and respondent, held that although article 19(1)g guarantees any citizen to carry on trade or any occupation but certain regulations can be imposed under article 19(6) as subjected to reasonable and valid restriction. Also, the court held that there has been no violation of article 21 as it is remotely connected to the right of occupation and trade. Also, the court observed that the economic interests of petitioner has been involved in the matter. Although, there has been no claim made out of economic depreciation or illegal interference but the court cannot neglect such issue of importance. Dismissing the PIL will certainly deprive the petitioners of their economic interests which will result in injustice. The demands of petitioners cannot be affirmed wholly however certain changes in the policy of Delhi Municipal Corporation Act can be made in accordance with fair justice and equity to both the petitioner and respondents. Thus, the court adjudged the respondents to make changes in schemes of the concerned Act so as to benefit the petitioners.

CRITICAL ANALYSIS

The case of *Sodan singh v. New Delhi municipal committee*²² represents the practical approach of the judges where they were able to relate the case to the economic perspective although there were no such allegations made by the petitioners. Providing this angle to the case ultimately gave them justice and set an example for the judicial system. The case of *OBG ltd and another v. Allanand others*²³ combined with *Douglas and ors v. Hello! Ltd and ors*²⁴ and *Mainstream Properties ltd v. Young*²⁵ proved to be the historical cases of common law. It laid down elements of economic torts. Intention is the most important element for imposing liability under the tort of wrongful interference. Mere action is not necessary. Absence of intention on the part of respondent does not subject them to the liability. Also, mere knowledge is not sufficient. There must be the presence of intention apart from the knowledge for establishing liability under interference and inducement of breach of contract. From the case of *Lumley v. Gye*²⁶, it can be deduced that enticing a person to break contract with some other person is wrong under economic torts. This has direct relation with hampering economic interests of other persons. This cannot be neglected as economic interests of people needs to be protected. The case of *Amway India Enterprises pvt ltd v. IMG Technology pvt ltd and another*²⁷ hold very importance in the competitive market. Selling other company's products or items without their knowledge or consent amounts to unfair trade which cannot be supported in any way. Protection from illegitimate trade is right of every trader and it needs to be ensured. In the case of *M/S Cadila Laboratories pvt ltd v. M/S Kamath Atul & Co*²⁸, the judgement given was very apt as it protected the rights of smaller entity in comparison to the multinational company. This is very justifiable decision when looked from an economic point of view. In *Pepsi Foods Ltd and ors v. Bharat Coca Cola Holdings pvt ltd and ors*²⁹, it is clearly understood that protecting economic interest of people should not result in economic terrorism. The employees of any enterprise are free to look for better opportunities. They cannot be restrained to work according to the economic interest of

²²Supra Note 1

²³Supra Note 8

²⁴Supra Note 9

²⁵Supra Note 10

²⁶Supra Note 14

²⁷Supra Note 15

²⁸Supra Note 16

²⁹Supra Note 18

enterprise. Thus, for protecting the rights of one the rights of other cannot be compromised. In *Microsoft Corporation v. MS. K. Mayuri and ors*³⁰, the judgement made it very clear that copyright and patent issues are of great relevance. Also, this is the demand of time in the era of new inventions and discoveries. In *Kartar Kaur and another v. Milkho and ors*³¹, the court saw that cases of deceit and forgery also comes under the economic torts if it hampers the financial interest of any person. The case was entirely analyzed from the perspective of monetary benefits.

CONCLUSION

After analyzing the given case law *Sodhan Singh v. New Delhi municipal committee and ors*³², the researcher has observed that it draws economic torts under its ambit. The researcher has examined the topic along with ten other case laws of similar nature to understand its applicability scope. It was found that Economic Torts is an unexperimented area of Law of Torts and there are many loopholes in its applicability and practicality. Not only the Indian legal system but common law has also neglected the importance of this tort. Although economic torts work in the best interest of general public but it has not been codified yet. There are no proper legislations or judicial precedents in Indian legal system. This is also because imposing liability under economic torts is ambiguous. There are cases where economic torts are misinterpreted as tort of negligence.

Economic torts cover almost every area of Torts law and this becomes a hindrance in imposing liability purely on the basis of economic torts. The Indian legal system is based upon the common law. Although there are some remarkable cases available in common law but its extent has nevertheless been ambiguous and uncertain. Also, there are certain cases where there has been conflict in protecting economic rights between plaintiff and defendant. The frame of protecting financial interest can sometimes be conflicting and granting economic interest to one on the behest of others is not justified.

However, the position of economic torts can be improved by judicial interpretation. It is one of the most beneficial aspect of law which, if applied justifiably, can give a new angle to the

³⁰*Supra* Note 19

³¹*Supra* Note 20

³²*Supra* Note 1



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judicial system which will ultimately work in the favor of general public. Also, legislations should be drafted so as to practically implement economic torts in Indian legal system.

