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The Need to Codify Law of Tort

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Abstract: Law of tort is the branch of law dealing with cases where one party suffers from a legal damage and as a remedy, compensation is provided to that party. Law of Tort in India, is one such branch which has high influence from foreign law , making a deep impact on Indian Judiciary for how to deal with Tort cases. In India, Law of Tort is currently uncodified due to it's dynamic nature and such differentiability in the nature of it's cases. The branch is also not very popular among people and it's Litigation is low in the country primarily because of it's uncodified nature. Although whatever number of Tort cases the Judicial system of India have witnessed, it is shaping the future of Law of Tort .With hundreds of years of Law being the sole protector of people's rights , the shifting times demand notable changes in it , and one step closer in achieving it is to codify Law of Tort.

I. INTRODUCTION

The word "Tort" has been derived from the French which possess a same meaning as of something which is 'crooked' or 'twisted' in nature. Law of Tort primarily deals with all the "civil" wrongs in the society and as a remedy provides compensation to the one who suffered from damage. The compensation thus provided is not pre-decided as Law of Tort being dynamic in nature , the damages or compensation is unliquidated. Unliquidated Damages means compensation or the remedy to be provided to the aggrieved party cannot be pre-decided and can only be decided after all the facts of the case have been analysed well , with an eye on the severity of the case , the compensation is thus decided afterwards.

II. LAW OF TORT

Law of Tort lies on the concept that everyone has certain rights in the society. Unlike Criminal Law, where the sole purpose is to punish the culprit, Tort Law is aimed to bring the sufferer or the plaintiff in a state he/she was before the commencement of the tort against him , rather than only providing him with compensation. Whereas Law of Tort deals with cases that have been committed against one person harming his property, self- esteem, body, mind etc. A crime is done against the whole society whereas A civil wrong is done only against one person.

Law of Tort although has been defined by various Jurists over the years but the most notable definitions were given by Sir John Salmond and Winfield.

Salmond defined Law of Tort as 'The branch of law which deals with civil wrongs , the damages are that of Unliquidated and also there must be few pre-existing laws which would be followed for every future case of Tort.' Moreover he called it 'Law of Torts' not 'Law of Tort' because there are only few Torts for which people can be held liable for. The nature of Law of Torts is not dynamic according to his understanding.

On the other hand Winfield defined Law of Tort as 'The branch of law which deals with civil wrongs , the damages are that of Unliquidated but the laws can be created whenever necessary to provide relief to the plaintiff according to the uniqueness of his case'. He called this Law as 'Law of Tort' because there can be no amount of laws that can be predefined , and the very purpose of Law is to evolve whenever a person suffers from any damage. The nature of Law of Tort is dynamic based on the expression '*Ubi Jus Ibi Remedium*' which means wherever a legal right has been infringed , one must be provided with a remedy for the damage caused.

Both the definitions have been looked over , criticized positively and negatively by various readers as they believe the one given by Salmond has a narrower view but is practically critical and important for the society. On the other hand the one given by Winfield is believed to have a broader view but is only confined to theory and is not much applicable in real society.

III. NATURE OF LAW OF TORT

Law of Tort is uncodified in nature which in simpler term means it does not have any bare act. It is so because the tort cases that the society has identified over the years , always have a new characteristic etched to it and the specifics of any case varies from the other. The Uncodification of Law of Tort is based on the expression "No One Size Fits All" which basically explains that how the facts of various cases differ from each other , and the damages to be provided to the plaintiff will also vary from case to case. The society believes that this Law is still in process of Growth and has a lot of scope for improvement in the nearer times.

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If the Law is still under the action of evolution then codifying it would hamper it's development. But as Lawyers , it is very keen for us to raise the issue of 'Codifying Law of Tort' , the reasons for which are mentioned further in the paper. There are numerous reason why codifying Law of Tort will not only help readers to look at this Law with ease but also give a meaning and foundation to this Law.

IV. LAW OF TORT IN FOREIGN LAND

Law is Tort is believed to be originated from England. French was the main language used in England's Judiciary system and thus numerous technical terms in legal system are French , 'Tort' being one of them. The main essence of Law of Tort is that every person in a society must be given certain rights necessary for protecting their dignity.

Precedents which are basically previous judgements or decisions of courts given in a case, used for future cases that may possess similar facts are one major factor on how Law of Tort has travelled through the world.

V. LAW OF TORT IN INDIA

Law of Tort in India is based on 'Common Law' whose idea has been taken from the English Law. Most popularly , it's evolution in India has been majorly because of laws looked over from United Kingdom. Although despite of taking ideas from English law , the Indian Judiciary makes sure that the variation in cases we have here are unlike to what cases the foreign land have , and are dealt in a manner how Indian Tort cases should be handled.

In India Law of Tort is also called as 'Judge made Law' as it has no codification and with every unique case , there arises a distinctive judgement. As the society witnesses new cases , they also look over at new type of facts, which gives birth to new ideas on how cases can be dealt. The Indian Judiciary takes due care that this law is in accordance with Indian customs , traditions and conditions.

VI. UNCODIFICATION AND IT'S DISADVANTAGE

One of the major reason for the slow development of Law of Tort in India is it's uncodification. Uncodification creates a sense of uncertainty in courts whether to consider an act a Tort or not. Due to this uncertainty courts takes a longer time to provide the plaintiff and defendant with a judgement making it a slow process. Most of the decisions made by courts rely on Precedents hampering it's development. Even relying purely precedents is not accurate because most of the precedents are taken from English Law and as discussed above English Law cannot be adopted by India. The slow process of giving judgements creates a sense of furiousness amongst the society , half of them deciding not to file cases related to it. As cases are not filed , it is significantly difficult for people to have knowledge about this law again resulting in it's slow development.

VII. NEED TO CODIFY LAW OF TORT

Codification of Law of Tort is one step closer to shaping the future of this law in India. Although India has a long way to go in developing Law of Tort , but codifying is one such act that will enormously help the society in many ways. Codifying Law of Tort will not only help courts in giving judgements with ease but will also result in quality of remedy the plaintiff would get. The law not being Codified concludes in many tortfeasors bypassing the charges by paying minimum damages which is a factor in not how a fair justice system should be.

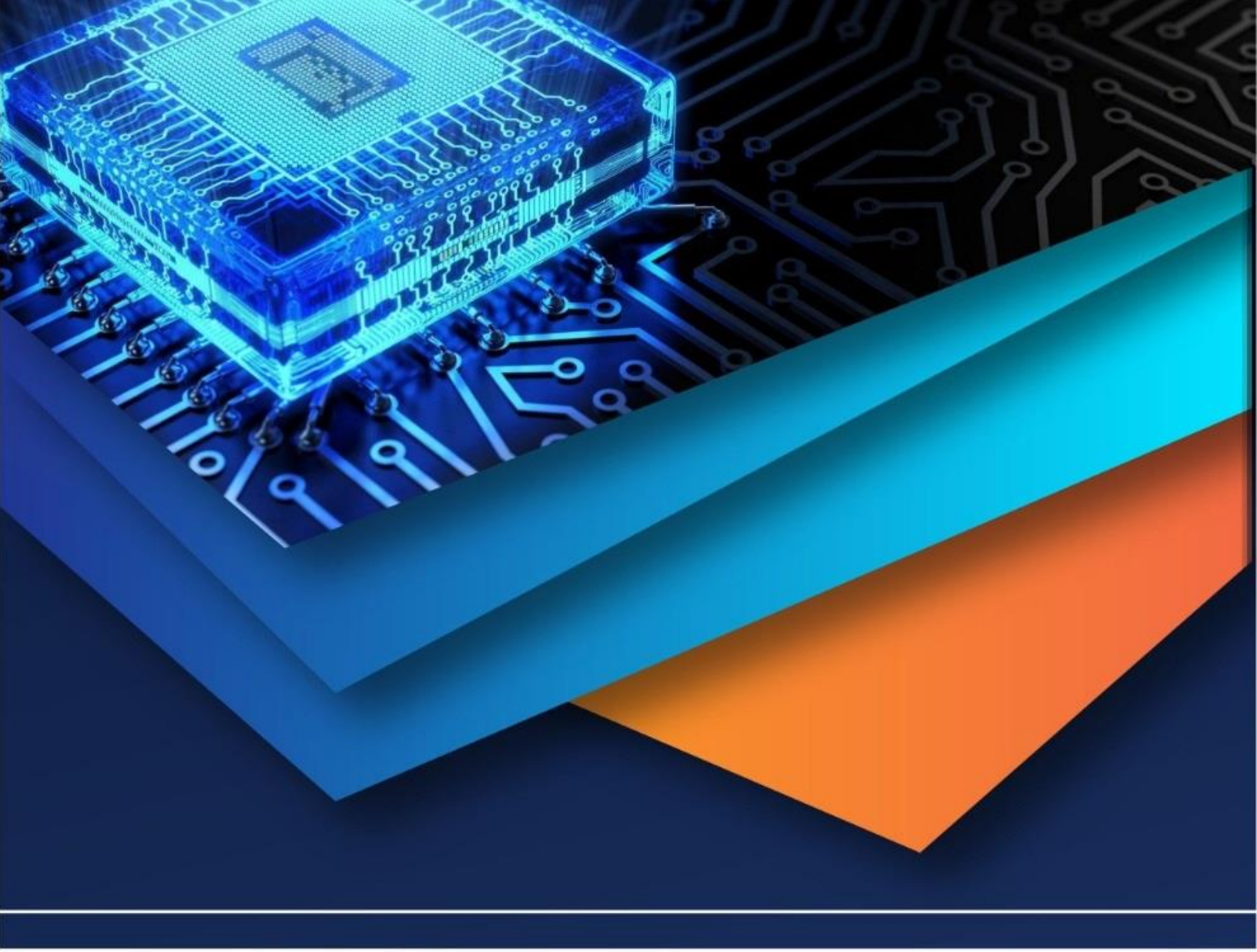
Laws such as criminal or civil procedure are codified in India , thus the number of cases we have in these are comparatively higher and are resolved on a much quicker rate compared to how a Tort case would have been solved. As far as development of this Law is concerned , there is always an option to bring out amendments , just like any other Law.

Codifying Law of Tort will not only give a direction to people associated with legal profession but will also encourage it's clarity amongst the general public.

VIII. CONCLUSION

Law of Tort as an emerging law demands for it's codification which will supress a lot of minute problems the law bearers are facing. Just like any other Law, it is prominent for it to have bare act of it's own , providing ease to the society. It's sudden codification is obviously persistent but by initiating the idea to codify it will do some of the job. In the nearer future ,the proposal of A Codified Law of Tort seems bright and will be a revolution in the field of Law.

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