



Critical Analysis of Personal Capacity in Law of Torts

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ABSTRACT

A person's capacity is described as their ability to bring a legal action against another person or have one brought against them for breaking the law. These guidelines might or might not be codified. In the framework of torts, any person or party may bring a lawsuit or be brought to court, depending on the circumstances. That being said, there are still valid limitations that go along with any freedom, just as there are constraints on who can file a lawsuit and who can be sued. In terms of a party's inability to file a lawsuit or be sued, Indian law is influenced by English tort law.

There are some categories of people who are not eligible to sue anyone for damages, and there are others who are not suable at all. These include non-native enemies, children, sovereigns, foreign diplomats, and government representatives. However, anybody who suffers an injury has the right to make a claim against the person who caused him harm. There are some groups of people who are not permitted to sue another person for their loss. There are some restrictions on how often and where these groups of persons can sue or be sued, though. These restrictions are only effective if the parties involved have not consented to the court's jurisdiction, which requires central government approval.

This study's goal is to explore the components that make up the category of personal competence and to provide our findings. Personal capacity is safeguarded by tort law's numerous legal frameworks. Over the course of this study, the type, scope, precedent, and literary works that fall under the heading of personal capacity will be examined and discussed. It will also clarify a number of the author's research queries and provide answers as well as strong evidence to back up the assertions.

The subject of discussion in this research paper is a person's capacity to file or participate in a tort lawsuit. In most cases, there are no limitations on who can file a lawsuit or be prosecuted in court for a tort. There are a few notable exceptions to this general rule, though.

Keywords: *Lawsuit, restrictions, limitations, sue, sued, personal capacity.*

INTRODUCTION

In tort law, everyone has the right to bring claims and to be sued. This is a general norm, though, and it can be changed in regard to some groups of people. In a tort, a person who suffers harm normally has the option of suing the party responsible, however there are some categories of people who are not permitted to do so and other people who are not permitted to be sued at all.

The topic of why some persons are immune from these lawsuits while other groups of people are not is raised as a result.

Any reasonable individual who is of sound mind and is not prohibited from doing so by the law, including a businessperson, an organisation, a government, and other people, may file a lawsuit.

When someone's legal rights are violated, they file a lawsuit in court as the plaintiff. The person who breached the plaintiff's legal rights is the one who is being held accountable in court as the defendant. The general norm is that "all persons have the capacity to sue and be sued in tort." There are a few exceptions to this general rule, though.

A person must have the required legal ability to take part in a lawsuit. Some people are considered *non sui juris*¹, which means that not all of their civil and social rights are fully protected by the law. The legislation will try to protect youngsters from their own carelessness by making them non sui juris as long as they are under the age of majority. If a person is a minor and under the age of majority, they have a legal impairment.

People with mental illnesses, those who are mentally retarded, and those who are declared mentally incompetent as a result of disease, ageing, or infirmity are among individuals who share this legal limitation. However, a legal disadvantage does not prevent members of these groups from filing civil actions. A non sui juris party's claims or defences are normally brought out by a legal representative, such as a parent, guardian, trustee, or executor.

Prisoners also have very limited rights when participating in legal proceedings. They have the right to challenge the legitimacy of their incarceration by filing *Habeas Corpus*² petitions and appealing their judgments. A writ of habeas corpus is essentially a request that the person holding someone bring them before the court so that the court can determine why they are being held in custody and release them if there is no valid reason for their imprisonment.

They may file a complaint for prisoners' rights if their federally protected civil rights are violated. Most jurisdictions prohibit prisoners from filing civil lawsuits against any third parties while they are detained,

¹ Non sui juris: B.M.Gandhi "Law of Torts" Edition: 2011, Publisher: Eastern Book Company, ISBN: 9789350280256, 9350280256 .

² Habeas Corpus: B.M.Gandhi "Law of Torts" Edition: 2011, Publisher: Eastern Book Company, ISBN: 9789350280256, 9350280256 .

however some states let prisoners to defend themselves in cases that potentially result in the loss of their property. A total loss of rights, including the ability to take part in legal procedures, is known as civil death and can occur for those who have been convicted of a crime or are serving a life sentence in prison.

LITERATURE REVIEW

➤ **ARTICLES:**

➤ **Can a Child Sue His Parent in Tort? by D. L. Mathieson (Jan 1967)**³

- In this article, the author discusses how a child can file a lawsuit against his father for property-related torts including conversion and detinue. In a specific instance, the Court of Appeal ruled that a parent who is actually responsible for watching over and caring for a young kid on a roadway at night owes the child a duty of care. There is no restriction on a young child bringing legal action against his in accordance with the Law Reform (Married Women and Tortfeasors) Act of 1935, insurance companies may choose to request indemnification or contribution from the parent. A parent may have neglected to properly care for a kid while in their care, and as a result of both this neglect and the defendant's carelessness, the child may have been damaged. According to the Appeal Court, a young child's filing of a tort claim against his father is not barred.

➤ **Recent Developments in Animal Tort and Insurance law by Barbara J. Gislason and Julie I. Fershtman (Winter 2006)**⁴

- In this article, the author analyses a number of recent case laws that pertain to animal law, including those that involve veterinarian malpractice, the injury or death of animals, financial damages, and insurance claims. In this particular instance, it was decided that wild animals might bring a claim against the government on their own behalf. In this particular case, the court was asked to decide whether or not the world's cetaceans have the legal authority to file a lawsuit in their own names in accordance with the Administrative Procedure Act, the National Environmental Protection Act, the Marine Mammal Protection Act, and the Endangered Species Act. Specifically, the court was asked to determine whether or not the Administrative Procedure Act, the National Environmental Protection Act, the Marine Mammal Protection Act, and the Endangered Species Act all Cetaceans oppose the United States Navy's use of Surveillance Towed Array Sensor System Low-Frequency Active Sonar (SURTASS LFAS) at times of war or high threat. According to the district court's ruling in Citizens to End Animal Suffering & Exploitation, Inc., "Congress and the President might, and should, have said so openly if they meant to take the unprecedented step of permitting animals as well as people and legal entities to sue." The district court's judgement that the Cetaceans lacked standing was upheld by the court in this instance.

³ D. L. Mathieson; "The Modern Law Review," (Jan. 1967), Vol. 30, ISSN NO: 00267961
JSTOR: <http://www.jstor.com/stable/1093134>

⁴ Barbara J. Gislason and Julie I. Fershtman; "Tort Trial & Insurance Practice Law Journal," Vol. 41,(WINTER 2006), ISSN NO: 15433234
JSTOR: <https://www.jstor.org/stable/25763764>

➤ **When Can You Sue Those Who Sue You? By A. M. Tettenborn (Jul, 1986)**⁵

- Without good cause, A sues B; he loses and incurs additional costs. When is the right time for him to bring a tort action against A? The tort of malicious process was once limited to actions that were brought with malice, were unsubstantiated, or had a negative impact on someone's credit. First, a defendant who is being sued without good reason shouldn't have to take steps to remove that culpability before taking legal action against the person who wrongfully imposed it upon him in the first place.

➤ **BOOKS**1. **Ratanlal & Dhirajlal: Law of Torts by Dr Vikram Kr. Sharma**⁶

- In this book the author uses an integrated method to explain complex legal concepts, referring to the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. Since 1875, the Indian Penal Code has served the legal community. This timeless classic is one of the subject's most authoritative assessments. Changes in criminality have led to the development of new criminal statutes, but the Indian Penal Code, the leading legislation in criminal law, remains unchanged. The 35th edition has been extensively revised to reflect new legislative modifications and court decisions. In addition to Supreme Court and High Court judgements, major themes are treated separately:
 - Investigation exceptions' scope.
 - The Nirbhaya case and death penalty constitutionality.
 - Legal men's rea.

Authenticity, originality, and reliability have always been hallmarks of our publication, and every effort has been made to maintain the original excellence, style, and quality. As with earlier editions, the current one includes a summary at the end to enable students and professionals get a rapid overview. Students, scholars, legal practitioners, judges, administrators, public prosecutors, police officers, and police trainees will find this book essential.

2. **Law of torts by Dr.Ashok K.Jain:**⁷

In this book the author talks about who cannot sue and who cannot be sued.

- Who cannot sue:
 - Unlike in England, a lawsuit filed by one spouse against the other may be upheld in India. A personal injury lawsuit could be filed by a bankrupt. A company may bring a claim for a liability that affects its resources or business activities. Newborns and insolvent people are the only exceptions to this rule.
- Who cannot be sued:
 - Certain classes of people, including foreign sovereigns and ambassadors, elected officials, and the state, are immune from lawsuits. However, public officials may be sued for their private actions, Likewise, the government may be held liable for its nonsovereign actions. In general, an infant is responsible for his actions in the same way as an adult; nevertheless, if intents, knowledge, or malice are necessary elements of accountability, infancy can be a defence, just as an insane or intoxicated person can be held accountable. Married women are entitled to legal action and legal defence on their own. A husband is not responsible for his torts in India.

⁵ A. M. Tettenborn; "The Cambridge Law Journal," Vol. 45, (Jul,1986),ISSN NO: 00081973
JSTOR: : <https://www.jstor.org/stable/4506869>

⁶ Dr Vikram Kr. Sharma "Ratanlal & Dhirajlal: Law of Torts," 28th edition, ISBN: 9789388548410, Publisher: Lexis Nexis

⁷ Dr.Ashok K.Jain "Law Of Torts," Edition: 2018, Publisher: Ascent Publications, ISBN: 9788193555606, 8193555600

3. Law of torts by B.M.Gandhi⁸

- The author discusses who is immune from suit and who cannot be sued in this book. There are various exceptions recognised in favour of or against average members of the community, but generally speaking, people who have been injured can seek legal action against wrongdoers. The following particular groups of people are taken into account when determining liability: ambassadors, corporations, unincorporated associations, criminals, and intoxicated people.

STATEMENT OF PROBLEM

The objective of this paper is to ascertain the various parameters under the ambit of personal capacity. Tort Law provides provisions for personal capacity under its legislations. This paper will be analysing and commenting on the nature, scope, precedents, and literary pieces which come under personal capacity. It will also be shining light on various research questions put forth by the author and provide solutions and substantive evidence to back the claims.

RATIONALE OF STUDY

In this research paper, the ability of a person to bring or receive a tort claim is discussed. In general, there are no limitations on who can file a claim or be sued for a tort. There are, however, certain exceptions to this general rule. This research paper's initial portion will discuss parties who are immune from legal action due to their public position. In the last section, we'll talk about the people and groups whose ability to sue or be sued is limited by something personal or private about them.

RESEARCH OBJECTIVES

The purpose of this research is:

- To study who can sue whom.
- To investigate the challenges face by minors and adults in personal capacity.
- To analyse the various issues and challenges faced by the parties.
- To analyse the relevance of present law with current situation with respect to personal capacity.

RESEARCH METHODOLOGY

The methodology that would be applied for carrying out this research is Doctrinal, Analytical and Comparative research. In this research the primary sources of data are the Constitution, Rules, Government Orders, Judicial Precedents, Report of various Committees. The secondary sources of data comprise of published books, journals, scholarly articles, news releases, print media, online journals, research reports and others were used.

⁸ B.M.Gandhi "Law of Torts" Edition: 2011, Publisher: Eastern Book Company · ISBN: 9789350280256, 9350280256 ·

RESEARCH QUESTIONS

- Who cannot be sued?
- Who can be sued?
- Can a minor sue his parents?
- Why some people are exempt from lawsuits and why other kinds of people are not?

CHAPTER 1: MEANING NATURE AND SCOPE OF PERSONAL CAPACITY

Having the capacity to sue or be sued for breaching the law is referred to as having the capacity. These regulations may or may not be formalised. All parties or individuals have the right to bring a claim or be sued in the framework of torts. This claim, however, is not unqualified; just as there are reasonable restrictions on every kind of freedom, there are also restrictions on the power of parties to bring or defend legal claims. Indian law is similar to English tort law in that parties can't sue or be sued.

- **Parties to torts:**

A civil lawsuit for compensation may be filed by the individual who started or initiated a civil wrong action against the wrongdoer. The person who registers the complaint is referred to as the plaintiff, and those who have the option of self-defense are referred to as the defendants. Anyone who is directly engaged in the matter and has the legal right to defend themselves, control the case, or file an appeal is referred to as a "party to torts." A privy, or stranger in this situation, is someone who does not have these privileges.

The responsibility to bring a civil lawsuit against the right party is one of the most crucial elements in this situation. In such a scenario, the lawsuit could not go in the plaintiff's favour if the incorrect party is involved, or if there are too many or too few parties involved.

- **Who has the legal capacity to sue?**

Any reasonable person, including a businessperson, an organisation, a government, and other people, may file a lawsuit as long as they are of sound mind and are not legally banned from doing so by the law.

- **Who does not have the legal capacity to sue?**

The following are the tort parties who cannot be sued:

1. **Government:**

They are not responsible for the misconduct of their officers while they are doing their duties. As a consequence, even when court personnel misuse their position, their mistakes cannot be attributed to the state's funds.

2. Foreign sovereign:

A foreign sovereign may only be sued in India in accordance with Indian civil process with the central government's permission. Similar to this, foreign ambassadors and their families are immune from suit in India unless they consent to the court's jurisdiction by waiving their immunity. In order to sue them in Indian courts, the Indian government must consent.

3. Minor:

The minor/infant may be held accountable for their actions in court as an adult. A juvenile may thus be held accountable for violence, false imprisonment, libel, slander, fraud, etc. However, a toddler or newborn may be excused from prosecution due to mental incapacity where purpose, knowledge, or another mental state is necessary. An newborn or toddler cannot be sued in this circumstance.

4. Lunatic:

A lunatic who commits a crime while not in a healthy state of mind is shielded from punishment. However, if such a person engages in criminal activity while mentally sound and mindful of the consequence of his acts, he may be held accountable.

5. Corporation:

Like any other legal person, a corporation in India has its own legal personality and is subject to civil litigation. This might happen if any employee violates the law on the company's behalf. For torts, private companies may bring and receive claims. On the other hand, a nonprofit organisation is accountable for corporate malfeasance and negligence but not for injuries caused by doctors, workers, or servants where care was given in their selection.

6. Married Women:

A married woman cannot file a lawsuit or be sued on her own, according to common law. It won't be legitimate unless she is still married to her spouse. This was the norm since, according to English law, men and wives were treated as one legal entity. Married women were thus unable to file lawsuits on their own. A married woman may now be sued alone without implicating her husband according to the Married Women's Property Act, which eventually removed this barrier.

7. Alien Enemy:

An alien adversary is someone who is from a hostile nation, someone who lives in enemy territory, or someone who works there. No one in India may file a lawsuit against a foreign adversary without the prior approval of the national government. An individual may only sue them if the central government approves of it.

CHAPTER 2: JUDICIAL PRECEDENTS IN 18th AND 19th CENTURY

➤ Claxton v. Pool, (1917)⁹

- The Supreme Court of Missouri held that the husband was not liable for his wife's affections note. The opinion clearly upheld the husband's liability, but it is said to be dictum. The other cases since seem to have been based on statutes rather than precedents.

➤ Janusis v. Long, Janusis v. Sdamski, (1933)¹⁰

- The plaintiff was injured when struck by an automobile operated on the public way by defendant. Defendant contested his right to sue on the ground that he was in the country admittedly in violation of the immigration laws. They offered the further objection that his illegal presence made him a trespasser on the highway. The court held that an alien's unlawful residence in the country was no bar to these actions, nor was he a trespasser on the road. The defendant's right to bring actions in federal courts is guaranteed by the Constitution, and the various States have generally recognized his right to do the same in state courts.

➤ Mir Sarwarjan vs Fakharuddin Mahomed Chowdhury (1906)¹¹

- A contract that has been legally entered into on behalf of a minor and is mutually beneficial may be strictly enforced. But according to Chief Justice John Swinney of the High Court for England and Wales, "each unique case must rely upon its own specific circumstances." The Full Bench could not have concluded that a kid in this nation cannot bring a lawsuit for the particular fulfilment of a contract that his guardian entered into on his behalf. The majority of the Full Bench has said that the case was appropriately determined if the facts were as described in the report. But in reality, the guardian of the minor signed into the contract, a fact that seems to have gone unnoticed.

➤ Shri Vasudeva Bank Ltd. vs Union of India (1800)¹²

- The right to a dignified death is now recognised as a fundamental right by India's Supreme Court. The contrast between various forms of euthanasia, notably active and passive euthanasia, was emphasised by the court. The concept of advance medical directives has clearly been adopted in India, according to available information. According to a judgement by India's Supreme Court, maintaining one's moral integrity while making decisions about dying in private is required by their right to privacy. The Court decided that protecting the basic rights to privacy extended to protecting the rights to life and personal liberty.

➤ N.Nagendra Rao & Co vs State Of A.P (1994)¹³

- The High Court of Andhra Pradesh ruled that the State was held vicariously accountable for the officials' failure to uphold their statutory obligations. According to the Court, the case included "substantive legal issues of broad relevance." The appellant was not entitled to any compensation for the products that were required to be returned. The Indian Law Commission has said that rather than the sovereign or non-sovereign status of the State, liability in tort cases should be determined by the type and manner of

⁹ Claxton v. Pool, (Dec, 1917), 197 S. W. 34 , <https://www.jstor.org/stable/1275113>

¹⁰ Janusis v.Long, Janusis v.Sdamski, (1933). ISSN. E. 228. (Dec, 1934),<https://www.jstor.org/stable/1280784>

¹¹ Mir Sarwarjan vs Fakharuddin Mahomed Chowdhury (24th August, 1906)

¹² Shri Vasudeva Bank Ltd. vs Union of India (1 January, 1800)

¹³ N.Nagendra Rao & Co vs State Of A.P (6 September, 1994)

the action in issue. The issue of whether the East India Company would have been held accountable for torts committed by its employees remains before the nation's citizenry.

CHAPTER 3: JUDICIAL VIEW IN 21ST CENTURY

➤ **Joseph Shine v. Union of India(2018)**¹⁴

- Joseph Shine filed a writ petition to contest the legitimacy of the situation. This was initially submitted as an adultery PIL.
- According to the petitioner, the definition of adultery in the statute was arbitrary and biased against women. A law like that, in the petitioner's opinion, tramples on a woman's dignity. The constitutional bench's five judges would hear the petition.

➤ **Central Pollution Control Board vs News Item Published In ,(2022)**¹⁵

- In response to a newspaper article on the ranking of industrial clusters in terms of pollution and the inaction of Statutory Regulators, an appeal was filed on the Tribunal's suo moto initiative. Original Application is the result of the initial processes.
- Without a doubt, adultery is morally reprehensible in terms of the spouse and the family. The question is whether society as a whole exhibits enough wrongdoing to fall under the purview of the criminal code. In situations where there is a public element of wrongdoing, criminal sanctions may be appropriate.

➤ **Daiichi Sankyo Company,Limited vs Malvinder Mohan Singh And Ors. (2020)**¹⁶

- The Delhi High Court rejected Daiichi Sankyo's request to implement an international arbitration award against the erstwhile Ranbaxy Promoters in order to recover Rs. 3500 crores. According to the court's ruling, Section.48 of the act forbids the court from reevaluating the merits of an award or the weight of the evidence.

➤ **Deepti Kapur v. Kunal Julka(2020)**¹⁷

- This case is around whether or not a conversation that was covertly recorded can be used as evidence in a divorce procedure. The petition raises objections to an order that was issued by the Family Court in connection with the parties' continuing divorce proceedings. It contends that the husband's activity of surreptitiously recording the wife's conversation using a CCTV camera that was installed in the bedroom is a violation of her right to privacy and constitutes an invasion of her personal space. The legal representation for the respondent maintained that although though the right to privacy is one of the most fundamental rights, there are exceptions to this rule. The spouse is responsible for providing all of the required evidence in order to validate the grounds for the divorce. Because of the potential breach of an individual's right to privacy, an issue of admissibility would not be taken into consideration by a Family Court.

¹⁴ Joseph Shine v. Union of India on (27 September, 2018)

¹⁵ Central Pollution Control Board vs News Item Published on (29 August, 2022)

¹⁶ Daiichi Sankyo Company, Limited vs Malvinder Mohan Singh And Ors. on (15 October, 2020) ¹⁷Deepti Kapur v. Kunal Julka on (January 30,2020)

➤ **P. Ganesan v/s M. Revathy Prema Rubarani (2021)**¹⁷

- Under Article 227 of the Indian Constitution the case was filed. Petition seeks to nullify started under the 2005 Protection of Women from Domestic Violence Act. Section 468 of Cr.PC applies for taking cognizance of Protection of Women from Domestic Violence Act, 2005 offences. Petitioner's Senior Counsel's argument should be rejected.
- The petitioner in says he and the respondent were married on, but owing to a disagreement, the respondent split from the petitioner and they've been living apart for 10 years. The respondent has filed a petition. The file of Court of Judicial Magistrate No.I, Tirunelveli shows that the respondent has already taken the petitioner's valuables. The petitioner has been paying the respondent Rs.10,000/month in maintenance and the respondent has been receiving it. The respondent has filed a petition with the Chief Judicial Magistrate in Tirunelveli for an increase in maintenance, which is pending. The respondent has also initiated proceedings under the Domestic Violence Act, abusing the process of law.

CHAPTER 4: CRITICAL ANALYSIS

Any person who is the subject of a civil wrong action that is currently active or has been initiated against them has the legal right to file a civil lawsuit in order to obtain damages from the person who committed the civil wrong. The person who initiates the legal action is known as the plaintiff, and those who are afforded the opportunity to present an impartial defence are known as the defendants. A person is said to be a party to a tort if they have a direct stake in the case as well as the legal right to defend themselves, control the case, or seek an appeal about the case. Those individuals are referred to be privies or strangers in this circumstance because they do not possess these rights. One of the most important aspects of this scenario is the fact that you absolutely have to take legal action against the proper party, in the form of a civil lawsuit. In the event that the plaintiff names the wrong party, an insufficient number of parties, or an excessive number of parties, it is possible that the case will not be ruled in the plaintiff's favour.

Back then, English law prohibited husband and wife lawsuits. Under the 1882 Married Women's Property Act, a woman sues her husband. Husband can't sue wife.

An alien adversary is a foreign national or resident. This individual isn't liable for wrongdoing. English law prohibits suing without a council order. Section 83 of the Code of Civil Procedure prohibits suing in India without central government authorisation.

Convicts are those sentenced to death or imprisonment by a court. Convicts are those sentenced to death or imprisonment by a court. A person whose term hasn't expired can't seek property damage or compensation under English law. 1948's Criminal Justice Act ended this practise.

In India, a land forfeiture defendant had no legal appeal until 1921. Under English law, a guilty person retains full civil rights while in jail.

¹⁷ P. Ganesan v/s M. Revathy Prema Rubarani (27 September 2021)

CHAPTER 5: SUGGESTIONS AND CONCLUSION

The capacity to bring a lawsuit or to defend oneself against one is a significant factor in deciding whether a matter will be considered in court. The capacity of a person to sue another or be sued by another is decided by a range of conditions, such as favourable relations with the state (alien enemy), fairness (lunatic), and effectiveness in maintaining law and order (municipality and public companies), amongst other things. Other restrictions have remained the same over time, ensuring that people who are themselves incapable of suing anyone else in a court of law do not sue any other person in a court of law, and that people who are exempt from being sued do not get sued by anyone. While the law regarding married women has changed over time, allowing spouses to sue each other, other restrictions have remained the same.

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