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SPECIAL DEFENCE IN LAW OF TORTS IN INDIA

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Introduction

The law of torts is an evolving theme which aims to provide remedies to individuals harmed by the wrongful act of others. Special defenses are essential in this framework for establishing liability and upholding justice. The article examines the concept of special defenses in Indian tort law, looking at its types, applications, and legal foundation across a range of tortious claims. The article tries to offer a thorough knowledge of special defenses and their relevance in the Indian legal system through an analysis of case laws and statutory provisions.

Common law concepts serve as the foundation for tort law in India, with additional influences from legislation and court decisions. The primary objective of tort law is to provide relief to those who have suffered harm due to the wrongful conduct of others. But not all wrongdoing carries legal consequences. Defendants may use a number of defenses to escape culpability. There are two categories for these defenses: special and general. Special defenses are limited to certain categories of torts and circumstances, whereas general defenses cover a wide range of tort claims. The latter is the primary subject of this piece of writing, which offers a thorough examination of their applicability and relevance.

Legal Basis for Special Defenses

In tort law, special defenses have their roots in both legislative acts and case law. The Indian legal system acknowledges a number of defenses that might lessen or eliminate a defendant's culpability in cases involving torts. These defenses are based on a number of legislations, including the Motor Vehicles Act, the Consumer Protection Act, and the Indian Penal Code (IPC), in addition to common law grounds.

Types of Special Defenses

Special defenses under law of torts can be broadly categorized into following types:

- i. Volenti Non-Fit Injuria (Consent)
- ii. Statutory Authority
- iii. Inevitable accident
- iv. Vis major (act of god)
- v. Necessity
- vi. Private defense
- vii. Mistake

Further elaborating the above stated special defenses as:

i. Volenti Non-Fit Injuria (Consent)

The principle of 'Volenti non fit injuria' means 'to a willing person, no injury is done,' in essence, if a person voluntarily consents to risk the harm, they cannot claim the damages faced by them later. For instance, in sports such as boxing or sparring, players consent to the risk of injury inherent in the game, they cannot complain about the injury caused by the event and sue each other, medical aids are however provided. This defense is not applicable if the consent was obtained through fraud, coercion or misrepresentation, the consent obtained must be voluntary and not under any undue influence.

In the case *Hall v. Brooklands Auto Racing Club*, two automobiles collided and slammed into the spectator area, injuring the plaintiff, who was watching a motor race. According to the court, the plaintiff accepted the danger by entering the race, thus the defense of "Volenti non fit injuria" applied.

ii. Statutory Authority

When an act is performed under the authority of a statute, it serves as a defense against tortious liability. This is due to the statute's implied protection from lawsuits resulting from actions taken in compliance with its requirements. For instance, this defense can shield government officials' activities conducted in accordance with the legal power granted to them by legislation.

In the case *Vaughan v Taff Vale Railway Co.*, the defendants operated railways under statutory authority. The plaintiff's property adjoining to a passing train caught fire due to the sparks from the passing train. The court held that the railway operated under statutory authority, the defense was applicable and thus the defendants were not liable.

iii. Inevitable Accident

an unforeseen event that could not have been prevented at any cost despite reasonable actions and precautions is known as inevitable accident. The defense is applicable only if the defendant proves that the incident was inevitable at all costs and occurred without negligence. In the case *Stanley v Powell*, the plaintiff was hurt when a pellet bounced off a tree during a shooting excursion. The court held that since there was no negligence involved, the defendant was not accountable because the accident was inevitable.

iv. Act of God (Vis Major)

This defense applies to natural events that are unforeseeable, extraordinary, such as earthquakes, cyclones, tornados, flood and storms. If the harm is solely caused by such natural forces, the defendant can invoke this defense to avoid liability.

In the case *Nicholas v Marshland*, the defendant had constructed artificial lakes on his property. The embankments broke due to an unusual amount of rainfall, which resulted in

flooding and property damage for the plaintiff. The defendant was found not guilty by the court, which determined that the downpour was an "Act of God."

v. Necessity

An act which is tortious, however, is done to prevent greater harm implies the principle of necessity. The defense of necessity is often taken in situations where the action of defendant was necessary to protect lives of several number of people or was in public interest.

In the case, *Cope v Sharpe*, In order to stop a fire from spreading, the defendant entered the plaintiff's property and felled several of the plaintiff's trees. The court determined that the defendant's acts were appropriate, and that necessity supported them.

vi. Private Defense

The right of people to defend themselves, their property, and other people against impending harm is recognized by the law. One may use appropriate force to fend off an attack under the doctrine of private defense. The force employed, nevertheless, ought to be appropriate for the threat being confronted.

In the case, *Bird v. Holbrook*, Without giving any notice, the defendant placed a spring gun in his lawn to scare off intruders. The plaintiff was hurt; she was not aware of the gun. The defense of private defense was deemed inapplicable by the court due to the defendant's extreme acts.

vii. Mistake

When the defendant's conduct is driven by an honest and reasonable belief in a particular set of facts, they may be covered by the defense of mistake. This defense is constrained, and it does not apply to all tortious claims.

In the case *Consolidated Company v Curtis*, The plaintiff's possessions were unintentionally seized by the defendants, who thought they belonged to someone else. The court held that defendants could not take the defense of mistake, and thus were held accountable for trespassing.

Conclusion

In tort law, the use of specific defenses guarantees the just and equitable imposition of responsibility. These defenses shield people and things from unfair responsibility when their conduct were necessary or reasonable. It is clear from a review of several case laws that Indian courts have extensively used these defenses to strike a balance between the interests of plaintiffs and defendants.

Special defenses in the law of torts in India play a vital role in determining the extent of liability in tortious claims. These defenses, which have their roots in both common law and statutes, give defendants a way to reduce or prevent liability in certain situations. When navigating the complexity of tort law, it is imperative that both individuals and legal practitioners have a thorough understanding of these defenses. The article emphasizes the role of special defenses in maintaining justice and equity in the Indian legal system via a thorough examination of legislative provisions and case laws.