



The chapters are as follows –

### III. Chapter 1 – Preliminary

There are two provisions which falls under this head. The Section 1 deals with the acts scope and applicability whereas the Section 2 deals with its definition clause.

#### a) The Act's Scope and Applicability

The Section 1 of the Act states its title and its enforcement. The title of the Act signifies the broader aspect of the Act by putting the word Environment in place of pollution which emphasizes the legislature's intent that they want to cover every dimension of it. This Act applies to the complete nation of India, which means it covers all territories of India without restriction. The only limitation was that the Central Government choose the date of its implementation in various parts of India by notifying in the official gazette.

#### b) Definition Clause

The Section 2 of the EPA had defined few terms which is being used in the provision. The terms whose definitions are there are Environment, Environment Pollutant, Handling, Environmental Pollution; Hazardous Substance; and Occupier.

### IV. Chapter II – The Central Government's General Powers

Under this head, there are 5 sections which falls under this category. All those sections define the powers of central government in some or other way. As this is a central legislation, so all the powers are aimed towards the central government only. The provisions are as follows –

#### a) Central Government's authority to take actions to conserve and enhance the environment<sup>2</sup> –

The Section 3 of the EPA defines about the power of the central government through which the government can take special measures and steps to protect and improve the environment and its quality. Some powers of the central government are as follows –

- i. Specify the requirements for the environmental quality.
- ii. The authority to limit industrial zones.
- iii. Outline safety procedures and protocols to prevent accidents, as well as remedies in the event that an accident does occur.
- iv. The responsibility for carrying out research and provide funding for environmental pollution research, as well as to establish laboratories.
- v. Compile data about environmental contamination.

#### b) Appointment of officials, their duties, and their authority to issue directives

The Section 4 of the EPA grants the central government the authority to select officials and define their duties for the purpose of managing the affairs related to the environment and the Section 5 deals with the power of giving directions.

Although the Central Government has a great opportunity to significantly improve the nation's environmental pollution problem and even revitalise the lives of the living by eliminating this menace entirely thanks to these expansive powers, it is rare to find instances in which the Central Government has lived up to expectations. It's possible that giving the central government such broad, nearly unrestricted powers might lead to systemic arbitrariness and the promotion and protection of other entrenched interests rather than the realisation of environmentally friendly goals and ambitions.

### V. Chapter III – Environmental Pollution Prevention, Control, and Abatement

The Section 7 to 17 of EPA falls under this category which deals with the prevention, control and abatement of the environmental pollution. The sections are as follows –

#### A. Prevention:

**1. People conducting businesses, operations, etc., are not permitted the release environmental pollutants that are above the standards –**

<sup>2</sup> The Environment (Protection) Act, 1986, § 3, No. 29, Acts of Parliament, 1986 (India).



The Section 7 of EPA<sup>3</sup> deals with it. It aims that the pollution should not be done above the standards. That's why it states that the people who are conducting any businesses, operations, etc. or the people who are not conducting or involved in any of the activity or business will not be permitted to release any environmental pollutants that above the standards in the natural body or in any other source.

## 2. Safeguards needs to be complied in handling of harmful substances –

The Section 8 of EPA<sup>4</sup> states that in any of the circumstances the individuals who are handling dangerous materials must follow all safety procedures. According to Rule 3 of the Environment Protection Rules, 1986, any emissions or discharges of environmental pollutants from businesses, operations, or processes must comply with the standards outlined in Schedule 1 of the rules to protect and improve the environment's quality and to prevent and reduce environmental pollution.

The Section 9 of EPA deals with those furnishing information to authorities in certain cases to the agencies. One of those examples is if any person under Section 8 is handling the harmful substances but fails to take care of them properly which ultimately leads to some discharge of it or damage then that person who is responsible for handling it had to inform the authorities of it.

### B. Control:

#### 1. Power of Access and Examination and taking samples from there in connection with it

The Section 10 of EPA<sup>5</sup> vests power under the Central Government or any other person who is being empowered by the central government to a right to access and examine any unit or place at any reasonable time to such place to perform his/her duties of inspection and to

examine any document, industrial equipment, etc. The Section 11 of the EPA outlines the authority to collect samples and the protocols that must be followed in doing so.

#### 2. Environmental Laboratories and Government Analysts and its reports

The Section 12 of EPA<sup>6</sup> enables the central government to build new laboratories or enables the old existing laboratories as environmental laboratories. Under this Act, the Central Government is authorized to establish one or more environmental labs or to acknowledge any laboratory as an environmental laboratory to fulfil its objectives and obligations.

The Section 13 of EPA<sup>7</sup> deals with Government analysts. They are those persons who are either appointed or designated by the post of it by Central Government to analyse the samples of air, water, soil, or other substances which would be sent to the laboratories. The reports signed by these analysts may be used as a piece of evidence in the court of law too.

### C. Abatement:

#### 1. Penalties for breaching the Act's rules, regulations, instructions, and directives

The Section 15 of EPA<sup>8</sup> states that anyone who violates any of the provisions of this Act, the rules made under it, or the orders or directions issued thereunder is subject to punishment, which may include imprisonment for a term up to five years, a fine of up to one lakh rupees, or both. If the violation persists, additional fines of up to 5,000 rupees may be imposed for each additional day that the violation continues. The offender faces up to seven years in jail if the failure or violation persists after one year from the date of conviction. This section is based on the Polluter Pays Principle.

<sup>3</sup> The Environment (Protection) Act, 1986, § 7, No. 29, Acts of Parliament, 1986 (India).

<sup>4</sup> The Environment (Protection) Act, 1986, § 8, No. 29, Acts of Parliament, 1986 (India).

<sup>5</sup> The Environment (Protection) Act, 1986, § 10, No. 29, Acts of Parliament, 1986 (India).

<sup>6</sup> The Environment (Protection) Act, 1986, § 12, No. 29, Acts of Parliament, 1986 (India).

<sup>7</sup> The Environment (Protection) Act, 1986, § 13, No. 29, Acts of Parliament, 1986 (India).

<sup>8</sup> The Environment (Protection) Act, 1986, § 15, No. 29, Acts of Parliament, 1986 (India).



#### **D. Offences by Companies and Government Department –**

The Section 16 of EPA<sup>9</sup> states that any person who, at the time the offence was committed, was directly in charge of and responsible to the company for the conduct of the company's business, as well as the company, shall be deemed to have committed the offence and shall be subject to legal action and punishment in accordance with the law. As long as the offender is able to show that the act in question was committed without his knowledge or that he made numerous attempts in order to prevent it from taking place, nothing in this section will apply to the offender to any punishment imposed in this Act. When a company violates this Act and it is established that the violation was carried out with the knowledge or complicity of, or as a result of any neglect on the part of, any director, manager, secretary, or other officer of the company, that director, manager, secretary, or other officer shall also be deemed to have violated this Act and shall be subject to prosecution and punishment as appropriate.

The Section 17 of EPA<sup>10</sup> deals with the Offences by Government Department which states that if any government department violates this Act and the department's head is considered to have committed the crime and is subject to legal action and punishment in accordance with the law. However, nothing in this section will be applicable when the Head of the Department has proof that the offence was committed without his knowledge or that he undertook every reasonable measure to prevent it.

#### **VI. Chapter IV –Miscellaneous**

There are total 9 sections under this Section. It contains all those sections which not very much connected with each other. The provisions are as follows –

<sup>9</sup> The Environment (Protection) Act, 1986, § 16, No. 29, Acts of Parliament, 1986 (India).

<sup>10</sup> The Environment (Protection) Act, 1986, § 17, No. 29, Acts of Parliament, 1986 (India).

#### **A. Action taken or done in Good Faith –**

According to Section 18 of EPA, any action taken or intended to be taken in good faith in accordance with this Act or the rules made or orders or directions issued thereunder shall not give rise to a claim, prosecution, or other legal action against the Government, any officer or other employee of the Government, or any authority established under this Act, or against any member, officer, or other employee of such authority.

#### **B. Complaint must be made then only the cognizance of offence will be taken –**

As per Section 19, a complaint has to be made by the aggrieved person to under Central Government or any other authority which are authorised by the Central Government.

#### **C. Civil Court has no jurisdiction –**

In relation to anything done, action taken, order or directive issued by the Central Government or any other authority or official pursuant to any power given by or in relation to his or her activities under this Act, no civil court shall have jurisdiction to hear any suit or process.

#### **VII. Landmark Judgements of The Environment Protection Act, 1986**

There are various judgments given by both Supreme Court and High Court which has changed the whole dimension of the environment protection and also contributed in making the act stricter in its nature by imposing the penalty upon the offenders. Some of the judgments are as follows:

a) In "*M.C. Mehta v. Union of India*"<sup>11</sup> which is famously known as "Ganga Pollution Case", the Supreme Court ruled out in this case that the Central Government has the authority to take any actions under Section 3 of the EP Act, 1986, which it considers necessary or beneficial for the purpose of preserving and enhancing the quality of the environment, in addition to preventing, regulating, and minimising environmental degradation.

<sup>11</sup> AIR 1988 SC 1037.



b) In "*AP Pollution Control Board v. Prof M.V. Nayudu*"<sup>12</sup>, the Court ruled that the authority granted by the Central Government is free to visit the factory's grounds, request papers from the parties or any other organization or authority, as well as from the State or Union governments, and, if necessary, question any witnesses. Additionally, it is capable of obtaining technical information from any source too. The Court also ordered that an authority be constituted under the Section 3 of EP Act, 1986, to enforce the Precautionary Principle as well as the Polluter Pays Principle. Furthermore, it was determined that the new idea envisages that when a danger of significant or irreparable environmental damage is detected, the burden of evidence is on the person seeking to carry out the activity in question.<sup>13</sup>

c) In "*Vellore Citizens Welfare Forum v. Union of India*"<sup>14</sup>, the petitioner "Vellore Citizens Welfare Forum" filed a public interest litigation under Article 32 of the Constitution of India complaining against the pollution which is being produced by massive discharge of untreated waste water by the tanneries and other businesses in the State of Tamil Nadu. After hearing both parties and reviewing the report, the Supreme Court concluded that all efforts should be made to maintain the balance between environment and its development. The Court also recognised that these tanneries are the source of income and it provides employment to a large number of people. But at the same time, it endangers the environment and endangers everyone's health. The Court decided in favour of the Petitioners and directed all tanneries to pay a fine of Rs 10,000 to the Collector's office. The Supreme Court also made a point of emphasising the development of green benches when dealing

with issues concerning environmental preservation.<sup>15</sup>

d) In the case of "*Rural Litigation and Entitlement Kendra vs. State*"<sup>16</sup>, which is popularly known as "Dehradun Quarrying Case", the Supreme Court ordered a halt to excavation (illegal mining) under the Environment (Protection) Act of 1986. The right to live in a healthy environment, guaranteed by Article 21 of the Constitution, was recognised for the first time in this case.<sup>17</sup>

e) In the case of "T.N. Godavarman Thirumalpad (through K.M. Chinnappa) v. Union of India"<sup>18</sup>, the Supreme Court emphasised the need of sustainable development in promoting economic development without endangering the environment. The Court clearly recognised the obligation that citizens have to future generations. The court also observed that these concepts are relevant in the context of India's environmental policy.<sup>19</sup>

### Conclusion

In the age of industrialization, and modernization we are progressing so fast and evolving so much that we have neglected the environment. Even though the need has been felt to protect and prevent it from further depletion but still we are not able to tackle it properly. The legislature had drafted various enactments to impose strict penalties and punish the offender who pollutes the environment but that is not at all enough as the people who are having money can easily pay the fine and get rid of the penalties easily. Even the Act also gives the Central Government sweeping and unrestricted authority to take whatever steps are necessary to ensure that the Act's requirements are followed. Persons with vested interests or political connections may be

<sup>12</sup> AIR 1999 SC 812.

<sup>13</sup> Riya Rupani, *AP. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Others. (n.d.)*, Our Legal World - Law Notes, Legal Research, Law Blog, <https://www.ourlegalworld.com/a-p-pollution-control-board-vs-prof-m-v-nayudu-ret-d-and-others/> (Last Visited on July 01, 2023).

<sup>14</sup> AIR 1996(5) SCC 647.

<sup>15</sup> *Case Analysis: Vellore Citizens Welfare Forum vs Union of India*, LawSisto, <https://lawsisto.com/legalnewsread/OTA0NA==/Case-Analysis-Vellore-Citizens-Welfare-Forum-vs-Union-of-India>. (Last Visited on July 01, 2023).

<sup>16</sup> AIR 1988 SC 2187.

<sup>17</sup> *Environment Protection under Constitutional Framework of India*, [https://pib.gov.in/newsite/printrelease.aspx?relid=105411#:~:text=State,%20AIR%201988%20SC%202187,\(Protection\)%20Act,%201986](https://pib.gov.in/newsite/printrelease.aspx?relid=105411#:~:text=State,%20AIR%201988%20SC%202187,(Protection)%20Act,%201986) (Last Visited on July 01, 2023).

<sup>18</sup> Writ petition (civil) 202 of 1995.

<sup>19</sup> *Right to environment*, IILS Blog, [https://www.iilsindia.com/blogs/right-to-environment/#:~:text=Chinnappa\)%20v.,posing%20danger%20to%20the%20environment](https://www.iilsindia.com/blogs/right-to-environment/#:~:text=Chinnappa)%20v.,posing%20danger%20to%20the%20environment) (Last Visited on July 01, 2023).



able to avoid taking the burden of the consequences by using these unchecked abilities, but they can also be disastrous.

The Environment (Protection) Act was formulated in the year 1986 when the situation was different from today in this fast-growing era. It is also outdated and barely functional in its approach. Thus, the legislature had to make some improvements in it such as the definition lacks a modern, cutting-edge perspective and specifically fails to take into account recent advancements that have the potential to have catastrophic effects on the environment.

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## MINOR CONTRACT: SHOULD IT BE LEGALIZED?

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### Abstract

*In India contract formed by minors is considered invalid from the beginning as it is a necessary condition for formation of a valid contract that the person entering into a contract should be a major. Thus from time to time contract made by minors has been declared as void by the judiciary in India through various decisions. Therefore, it has become necessary for the parties entering into the contract that they should check that whether the other party is competent to enter into the contract or not. But there have been a number of instances in which a minor person has posed as a major and have made the other party believe that he or she can enter into a contract and thus at the end causing loss to the other party as a minor cannot be held liable for a breach of contract. Thus creating a need for changes to be done in the existing contract laws so that any more of such cases or instances can be prevented from happening. This article is aimed understanding the meaning of a contract and competency to contract. It is also aimed explaining the provisions of contract law which determine whether a contract is void or not and the position of Minor Contract in India and in other countries.*

**Keywords** – Minor, Contract, Competency, Capacity, Void, Legal, Enforceable

### Introduction

All the contracts made in India whether written agreement or oral agreement are governed under a single statute or under a single legislation called Indian Contract Act which has come into effect in the year 1872. Indian Contract act contains all the provisions which determine whether a contract entered into by the parties is a valid contract or not. Contracts entered between individuals or groups or organizations or businesses all are governed and regulated under this Act. Contract formation in the recent course of history has gone through some major changes as in starting it used to be typed on papers and now it can be seen in the form of printed documents or even in electronic format, for example – the agreements to which we have to agree when in order to install any software or application on our smart phones or computers. However there are still some changes required regarding who

can enter into a valid contract as there have been various cases where a person who despite of being a minor had enough mental capacity to understand the provisions of a contract in which he or she was entering and was able to deceive the other party regarding his or her competency. So it has become necessary that the contract law in India should be provided with a much wider scope as with the developments which has taken place in the recent years contracts have not only become digitalized or electronic but they have also gone global thereby requiring some changes to be made in the existing contract law so that it can be adapted to the evolved situation in the current period.

### Meaning of a Contract

- A contract can be easily understood as an agreement entered into by two parties in respect of some consideration by both the



parties to each other in order to achieve some purpose. So in other words it means that contract is an agreement entered into between two parties who have made a lawful consideration against each other and they have done so for achieving a lawful purpose or objective and both parties are competent to enter into such an agreement and to perform such an agreement. According to the Indian Contract Act, 1872 a contract is “an agreement enforceable by law”. There are some essential conditions for formation of a valid contract which are mentioned under section 10 of Indian Contract Act, 1872. These conditions are as follows :-

- There must be two parties to enter into a contract.
- There must be an offer made by one party and there must be acceptance of the same offer by the other party
- The acceptance made by the other party must be made out of its free consent.
- The purpose for which the parties are entering into an agreement they (i.e., the parties) must agree to the same thing (i.e., purpose of agreement) in the same sense.
- There must be a lawful consideration between the parties.
- The parties entering into a contract must be competent to do so.
- The contract should be made for a lawful objective.
- The terms of a contract should not be uncertain and the contract should be made with an aim of creating legal relationship between the parties.

So after all these conditions are fulfilled an agreement becomes a valid contract and gains the force of law i.e., it becomes enforceable by law.

### **Competency to enter into a Contract**

In simple words competency can be understood as the capacity of the parties in a contract to understand all the terms and conditions of the contract. In other words it can also be explained as to look into whether the

opposite party which entering on a contract with is having enough capability and capacity to understand the terms and conditions of a contract or not. Competency for a person to make a contract is mentioned under section 11 of the Indian Contract Act, 1872. This section states that a person is competent to make a contract only when he is :-

- Of age of majority – This means that the person who is a party in a contract should have attained the age of majority according to the laws to which he or she is subjected to. In Indian context the age of majority is 18 years for an individual as mentioned by the Indian Majority Act, 1875. Thus in India a person who has attained the age of 18 years or more is capable of entering into or making a contract.
  - Of sound mind – This means that the person who is entering into a contract can understand the terms and conditions of the contract and can easily give his free consent. For example a person who is intoxicated or is suffering from insanity attacks etc., if he gives his consent then such a contract will be a void contract. However if a person enters into an contract when he is not suffering from an attack of insanity then such a contract will be enforceable under law.
  - Not barred by any law for the time being in force to enter into an agreement or a contract – For example a person who is convicted for murder and is going through his sentence in the prison cannot enter into a contract. Another example can be taken of a person who is declared as a terrorist, in such a case no one can make a legal contract with such a person under law of the land.
- After all the above mentioned three conditions are fulfilled then only a person would be considered as competent to enter into or make a valid contract as if any of the three conditions remains unfulfilled or is violated then such a contract will become void or lose its enforceability.



## Status of Minor Contract in Abroad

**USA** – In USA in all the states the legal age for a person to enter into a contract is 18 years. However in case for fulfilling of necessities like food, shelter, clothing a minor can enter into a contract and such contract will be enforceable. However there are also cases in which a minor has presented himself as an adult and even after due checking the party was deceived by the minor. Thus in such cases if the minor still possesses the consideration provided by the other party than the is made to return back such consideration. But if there is a case in which consideration cannot be returned back and because of this there will be a huge loss to the other party then in such case the contract enters into by the minor will applicable on him as it would have been applicable if he would have been an adult. Also in case of non-necessity goods a minor can enter into a contract for such goods after having due consideration of his or her parents and such a contract will be applicable on that minor. For example in entertainment industry if a minor enters into a contract with an entertainment company without his parents due consent than such contract can be cancelled or destroyed if the parents of the minor asks the company to do so.

**UK** – In UK the age of a person to be considered as a major is 18 years according to the Births and Deaths Registration Act 1953. After attaining this age a person becomes bound by the terms and conditions of the contract in which he or she enters or becomes a party. However In UK also a minor person is bound by the contract if such contract is a contract of necessity. It means that if a person who is a minor enters into a contract for fulfillment office needs such as food, shelter, clothing, medicines, education etc., Then such person becomes bound to perform his part of the contract as such contract was only made for his benefit. In UK for a person to enter into a contract three conditions are to be satisfied which are as follows :-

- He or she should not be under the age of 7 years old.
- He or she should not be of having a grave mental health issue.
- He or she should not be intoxicated or should not be drug addicted as it hampers a party's decision making capability.

From these conditions it is clear that a person who is above seven years of age is capable of entering into a contract even if he or she is a minor. Also he or she can anytime make the contract void according to their wish without even giving any reason but this should be done by him or her before becoming 18 years old. Thus contract made by a person who is above 7 years of age but is below 18 years of age is a voidable contract. However this can be resolved if the parents of a minor gives guarantee on that, then if there is a breach of the contract the parents of the minor can be held liable for such breach and damages can be recovered from them.

In India the minor's right to take defense of his minority is not estopped by law and thus in any case he cannot be held liable for breach of a contract. However a minor can enforce a contract in case he has given some money as mortgage money and the mortgage was also made in his favor or was made to him. A minor also has the right to enforce the execution of promissory note made in his favor. However in India if a contract was made with a minor to supply him with necessities such contract can be enforced and the costs of such necessities provided can be recovered from that minor's property.

## Cases relating to the contract made by minors

<sup>20</sup>Mohir Bibee v. Dharmodas Ghosh

This is a very landmark case as in this the plaintiff who was a minor mortgaged his property the defendant a money lender. However later on after making a payment of only Rupees 8,000 the plaintiff refused to make rest of the payment. A case was filed against

<sup>20</sup> [1903] UKPC 12,





the defendant by the plaintiff and in this case plaintiff took defense of his minority. The court in this case held that a contract would only become enforceable after provisions of Section 11 of the Indian Contract Act, 1872 are met.

### <sup>21</sup>**Khan Gul v. Lakha Singh**

In this case a minor by hiding his actual age deceived the other party by presenting himself as a major and thus fraudulently entered into a contract that he will sell his land to the other party. After the other party paid that minor a consideration of Rupees 17,500 the minor refused to sell that land the other party. A case was filed against the conduct of the minor and the court let the minor go under the defense of his minority. However the court in this case ordered the minor to refund the consideration received by him.

### <sup>22</sup>**Jamna Bai v. Vasanta Rao**

The question which arose in this case was whether a minor can be held liable for a contract if he jointly with an adult enters into a contract with a third party. The court gave a decision that even if a minor is a part of such a contract he or she cannot be held liable for that contract and such contract can be wholly enforced against that adult with whom the minor entered into the contract.

### **Conclusion**

In India a person's minority can be easily used as a defense for dodging the enforceability of the contract. There also have been various instances over the years of fraudulent conduct by the minors in a contract. However there also has been a positive change seen that now if the minor has not used the consideration provided to him by the other party than the minor can be compelled by the court to return back such consideration. In abroad parents can guarantee the performance of contract by their child and they will also be held liable if there is breach of contract thus ensuring proper performance of

the contract. In India there has been no such provision but if any such provision is made then it might prove to be useful as it will reduce the possibility of fraudulent conduct by a minor and will also ensure proper performance of the contract thereby making the process of contracting simple and easy.

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## UNDERSTANDING TORTS JURISPRUDENCE

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### Abstract

*Tort law analyses the rules and concepts that regulate civil wrongs and their subsequent responsibility. This abstract presents a basic summary of torts jurisprudence, covering tort elements, negligence, deliberate torts, strict liability, defenses, tort remedies, and public policy's role. Tort law focuses on the components required to establish a tort, such as the duty of care, breach of duty, causation, and damages. One key component determining the standard of care, breach, causation, and resulting harm. Intentional torts include intentional acts that cause harm, including assault and slander. Individuals are held accountable for behaviors or conditions regardless of blame or purpose under strict liability. Contributory negligence and acceptance of risk are tort law defenses that can be used to challenge responsibility. Tort remedies seek to compensate victims and return them to pre-injury condition. Tort law is developed and interpreted with public policy considerations in mind, balancing goals such as deterrence, recompense, and justice. Legal practitioners and researchers must have a thorough understanding of tort jurisprudence. It provides a framework for analyzing civil wrongs, determining liability, and seeking remedies while considering societal ramifications and policy aims.*

**Keywords:** civil, behavior, wrong, liability, remedies, defense.

### Introduction

Tort jurisprudence is an area of legal theory concerned with civil wrongs and the legal principles governing liability for such wrongs. It is a fundamental topic of study within the science of law, providing a framework for understanding and resolving conflicts originating from wrongful conduct, harm, or injury. The term "tort" is derived from the Latin word "tortum," which means "wrong" or "injury." In torts law, a tort is a civil wrong that causes harm or injury to another person or their property, for which the law provides a remedy in the form of compensation. In contrast to criminal law, which deals with offences against society, tort law is concerned with harm between individuals or entities.

The study of tort jurisprudence entails a thorough examination of the elements, theories, and principles that underpin civil liability. It covers a wide range of themes, including negligence, intentional torts, strict liability, defences, and remedies, as well as the relationship between tort law and public policy. In tort law, negligence is a key notion. It entails analysing the level of care given to others by persons or entities, determining whether or not there was a breach of that obligation, demonstrating a causal link between the breach and the harm suffered, and calculating the consequent damages. In negligence cases, considerations such as foreseeability, reasonableness, and the actions or omissions of the individuals involved are frequently examined. Intentional torts are defined as wrongdoing performed with the aim to inflict hurt or injury. Assault, battery, slander, and false



imprisonment are among examples. These torts concentrate on the intentional nature of the behaviors and necessitate a separate set of factors and legal concepts to establish responsibility.

Strict responsibility is a different feature of tort law. It makes individuals or entities liable for particular behaviors or conditions, independent of blame or intent. Strict responsibility is generally applied in circumstances involving inherently harmful actions or products, where the emphasis is on the potential risk rather than the defendant's degree of care. In tort law, defenses are extremely important. Defendants can use them to contest or minimize their liability by claiming elements like contributory negligence, comparative negligence, assumption of risk, or consent. Understanding these defenses is critical for determining total responsibility in a given case. Tort remedies seek to compensate and alleviate the suffering of those who have experienced pain or loss as a result of a civil wrong. These remedies may include compensatory damages, which seek to return the injured party to pre-injury condition, as well as punitive damages in circumstances of severe misbehavior. In some cases, injunctive relief, restitution, and specific performance may be possible as remedies.

Furthermore, public policy factors impact tort jurisprudence. When developing and interpreting legal concepts, courts and legislators consider societal interests, justice, and the overall impact of tort liability. Policy goals may include deterrence, victim recompense, attaining remedial justice, and balancing individual rights with greater community considerations. Legal practitioners, scholars, and politicians who study tort jurisprudence develop a complete understanding of civil wrongs, responsibility, defenses, remedies, and the overarching principles that form this vital area of law. This information serves as the foundation for analysing and resolving disputes in civil affairs, ensuring fairness, accountability, and justice.

## Elements of torts

Tort law is the study of civil wrongs and the legal concepts that regulate liability for those wrongs. While there are many different sorts of torts, there are some basic characteristics that undergo tort law. These elements of torts jurisprudence are as follows:

1. Duty of care: Many torts, particularly those involving negligence, include a duty of care as a key component. Several conditions must be met to prove the existence of a duty of care:

Legal obligation: The first component is the acknowledgement of a legal responsibility owed by the defendant to the plaintiff. When a reasonable person in the defendant's position would anticipate that their conduct or omissions could cause injury to others, this obligation emerges.

Foreseeability of Harm: The defendant must be able to anticipate that their actions would cause harm to the plaintiff. Consider whether a reasonable person in the defendant's situation would have anticipated the possibility of injury.

Proximity: The relationship or proximity between the defendant and the plaintiff is referred to as proximity. It can be physical proximity, such as when the defendant directly interacts with the plaintiff, or relational proximity, such as when professional or contractual contacts are involved.

Reasonable Standard of Care: The defendant must be held to a reasonable standard of care in their actions or omissions. What a reasonable person would do in similar circumstances is used to define the standard of care. This test considers variables such as the defendant's actions, the level of risk involved, and the possible harm that could occur.

Special Relationships: A duty of care may exist in certain situations due to the parties' special relationships. These interactions can include doctor-patient, employer-employee, or landlord-tenant ties, in which the defendant has a greater duty of care to the plaintiff.



It should be noted that the breadth and presence of a duty of care may differ based on the specific tort / authority. The courts are critical in assessing whether a duty of care exists in a specific instance according to the facts and circumstances provided. To determine the existence and extent of the duty of care, they analyze the elements as well as legal precedents and policy issues.

**2. Breach of duty:** Breach of duty is a vital component in tort law, especially in cases involving negligence. It refers to the defendant's failure to provide the required standard of care to the plaintiff. Several components must be met to demonstrate a breach of duty:

**Established obligation of Care:** The defendant must have a recognized obligation of care to the plaintiff. This duty is often assessed based on the facts of the case, the parties' relationship, and the applicable legal norms.

**Failure to Meet the Expected Standard of Care:** The defendant's actions must fall short of the expected standard of care in a particular situation. What a reasonable person would do in identical circumstances, considering elements such as the nature of the defendant's activities, the degree of risk involved, and any special professional or industry norms, determines the standard of care.

**Reasonable Person Standard:** The breach of duty is assessed based on the actions of a hypothetical "reasonable person" in the defendant's position. A breach of duty may be indicated if the defendant's acts or omissions differ from what a reasonable person would do.

**Objective evaluation:** A breach of duty evaluation is normally objective, focusing on whether a sane person in the defendant's situation would have done differently given the circumstances. Subjective intentions or views of the defendant are not considered unless they directly impair their capacity to meet the standard of care.

It is crucial to note that determining breach of duty is frequently a factual question for a judge or court to make decisions based on the facts given. Each case is evaluated on its own merits, considering the unique circumstances and applicable legal norms. The defendant's level of care is context-dependent, depending on different situations and torts.

**3. Causation:** Causation is a fundamental component in tort law that demonstrates a link between the party's neglect of duty and the plaintiff's harm. It entails proving that the defendant's acts or omissions were the true and immediate cause of the plaintiff's injury. In a tort case, the subsequent components are considered to demonstrate causation:

**Cause-in-Fact:** Cause-in-fact causation, also known as "but for" causation, considers whether the plaintiff's harm would not have happened "but for" the defendant's conduct or omissions. In other words, cause-in-fact is shown if it can be demonstrated that the injury would not have occurred if the defendant had done something differently. This requirement necessitates proving a direct causal link between the defendant's actions and the plaintiff's injury.

**Proximate Cause:** Proximate cause, commonly referred to as legal cause, is concerned with the legal and policy constraints on a defendant's accountability for the consequences of their acts. It evaluates whether the plaintiff's harm was an anticipated effect of the defendant's actions. The test for proximate cause depends on if there is an adequate connection between the defendant's breach of duty and the harm suffered by the plaintiff to find the defendant accountable.

The following factors are frequently used to determine proximate cause:

**Foreseeability** refers to whether a sane individual might have predicted what would happen because of their acts.



**Directness:** Whether the defendant's behavior directly caused the harm, with no intervening events interrupting the connection of causation.

The defendant's conduct must fit within the limits of the risks that caused their conduct or error to be irresponsible in the first place.

**Considerations of public policy:** Whether establishing liability in a specific case would serve the basic goals of tort law, such as fostering prevention, fairness, and avoiding excessive liability.

To establish that the defendant's violation of duty was the actual and legal cause of the plaintiff's harm, both cause-in-fact and proximate cause must be established. Even if a breach of duty is demonstrated, the claim made by the plaintiff may fail if causation cannot be established.

It should be noted that the specific requirements for causation may differ based on the authority and the type of tort involved. When evaluating whether causation has been proven, courts look at the circumstances and facts of each case.

**4. Damages:** Damages are a vital component in tort law because they refer to the plaintiff's harm, hurt, or loss because of the defendant's improper conduct or omissions. Several factors must be addressed to demonstrate this element in a tort case:

**Actual Harm or Injury:** Damages need proof of the plaintiff's actual harm or injury. This can include bodily harm, property damage, emotional distress, financial losses, or any other measurable loss caused by the defendant's actions.

**Causation:** There must be a causal link between the defendant's improper actions or omissions and the plaintiff's suffering or injury. The plaintiff must show that the defendant's actions played a direct or material role in causing the alleged damage.

**Compensatory Damages:** The basic goal of tort law is to compensate the damaged person. The goal of compensatory damages is to put the plaintiff back in the position they would have been in if the tortious act had not occurred. This can include both economic and non-economic losses, such as medical bills, property repair costs, and lost wages, as well as pain and suffering, mental anguish, and loss of enjoyment of life.

**Damage Mitigation:** The plaintiff has a duty to mitigate their damages, which means they must take reasonable steps to limit the extent of their losses. If the plaintiff fails to mitigate their damages, the amount of compensation they can receive may be reduced.

**Speculative or Remote losses:** In general, tort law does not provide recovery for speculative or remote losses. Damages must be foreseeable and related to the defendant's wrongdoing. Damages may be limited in some situations to those that are certain and proven.

**Punitive Damages (in some cases):** Punitive damages may be paid in addition to compensatory damages in extraordinary circumstances. Punitive damages are meant to penalize the offender for particularly egregious behaviors and to deter future similar behaviors.

In tort proceedings, damages are normally assessed by the court or jury based on the evidence given and the appropriate legal requirements. The goal of damages is to offer equitable compensation to the affected person while also deterring future wrongdoing and holding those who cause harm accountable for their acts. In tort jurisprudence, these four elements—duty of care, breach of duty, causation, and damages—form the fundamental framework for assessing culpability. While unique torts might include additional features or differences in their usage, these essential aspects are critical for comprehending the foundation of civil wrongs and the legal repercussions in tort law.

### Essentials of torts jurisprudence



The underlying concepts and key elements that constitute the basis of this discipline of legal thought are included in the essentials of torts jurisprudence. These necessities include

**Civil Wrongs:** The concept of civil wrongs, which involve a breach of an individual's rights or interests, is central to torts law. Tort law provides a legal framework for dealing with and resolving disputes stemming from such wrongdoing.

**Duty of Care:** A key tenet in tort law is the duty of care. It creates the legal obligation for persons or entities to take reasonable precautions to avoid causing harm to others. The obligation of care varies based on the circumstances and the parties concerned.

**Breach of Duty:** When an individual or entity fails to achieve the required standard of care owed to others, this is called a breach of duty. It entails deviating from the anticipated degree of behaviour, whether by act or omission. A breach of duty is a critical component in determining responsibility in tort suits.

**Causation** establishes the relationship between the defendant's breach of duty and the plaintiff's suffering or injury. It entails proving that the defendant's actions or omissions were the actual and proximate cause of the plaintiff's harm. In tort proceedings, causation is critical in evaluating responsibility and the extent of damages.

**Damages:** Damages refer to the plaintiff's harm, hurt, or loss as a result of the defendant's improper behaviour. The evaluation of damages seeks to compensate the injured party and, to the greatest extent feasible, restore them to their pre-injury state. Economic losses, such as medical expenditures and property damage, may be included in damages, as well as non-economic losses, such as pain and suffering and emotional anguish.

**Defenses:** In tort law, defenses are extremely important. They enable defendants to contest or limit their liability by relying on considerations

such as contributory negligence, acceptance of risk, or statutory defenses. The availability and applicability of defences are determined by the facts of the case and the applicable legal norms.

**Remedies:** Tort law offers aggrieved parties with remedies to compensate for the harm they have incurred. Remedies can include compensatory damages, punitive damages (in extreme situations), injunctive relief, and restitution. The goal of remedies is to deliver justice, deter misconduct, and restore the wounded individual to the greatest extent feasible.

**Policy Considerations:** Public policy influences tort law. When creating and interpreting legal principles, courts and legislators examine societal interests, fairness, and the overall impact of tort liability. Policy goals may include fostering deterrence, compensating victims, and maintaining a balance between individual rights and society requirements.

By researching these features, legal practitioners, scholars, and policymakers gain insight into how tort law works and its role in ensuring justice and accountability for civil wrongs.

### Types of torts

There are several types of torts, some of the main types of torts are as follows:

**Negligence:** Negligence is a key notion in tort law that holds persons or entities liable for failing to exercise reasonable care, which causes harm or injury to another party. A civil wrong occurs when a person fails to satisfy the standard of care anticipated in a certain scenario, hence infringing a duty of care due to others.

Certain components must be present to demonstrate negligence. To begin, the defendant must owe the plaintiff a duty of care. When there is a foreseeable danger of injury, this obligation often emerges. A driver on the



road, for example, bears a duty of care to other drivers, pedestrians, and passenger.

Second, there must be a violation of that responsibility. The defendant's actions are judged against the standard of care that would be expected in comparable circumstances. If the defendant's conduct falls short of this standard, they are said to have violated their duty of care. A driver who exceeds the speed limit and causes an accident, for example, may be held to have exceeded their duty of care.

Finally, the breach of duty must have been the direct cause of the plaintiff's injuries. This means that the plaintiff's injury must have been a foreseeable result of the defendant's carelessness. If the defendant's actions are too far removed from the harm, they may not be found accountable.

Finally, due to the defendant's negligence, the plaintiff must have suffered genuine damages or injuries. These losses can be physical, emotional, or pecuniary. The plaintiff has the right to seek restitution for their damages, which include medical expenditures, lost wages, pain and suffering, and property damage.

It is crucial to highlight that the expected standard of care may differ based on the circumstances. Because of their specialized knowledge and expertise in their respective industries, professionals such as doctors and lawyers are held to a higher standard. Furthermore, some tasks may contain intrinsically risky conditions, necessitating a higher level of caution.

Overall, negligence is a critical notion in tort law that seeks to safeguard individuals from harm caused by others' irresponsible behaviors. Courts can evaluate whether a person should be held accountable for their negligence and pay the affected party by demonstrating the components of duty, breach, causation, and damages.

**Intentional torts:** are a type of civil wrong recognized by tort law in which the defendant's

conduct is deliberate and causes hurt or injury to another person or their property. These torts entail the intentional infringement of another person's rights, and the injured party may seek compensation for their losses. There are various types of deliberate torts, each with its own set of components and legal ramifications.

Assault is one type of intentional tort in which an individual knowingly causes another person to fear dangerous or objectionable touch. The fundamental aspects of assault are the defendant's intent, the victim's reasonable fear of harm, and the victim's understanding of the imminent harm.

Battery is a type of intentional tort that is like assault. It entails making damaging or offensive physical contact with another individual without their consent. The basic parts of battery are intent, actual physical contact, and the victim's lack of permission.

False incarceration is defined as the purposeful limitation of another person's freedom of movement without justification under the law. Physical confinement or the use of threats, intimidation, or deception to restrain an individual against their will are examples of this tort.

Trespass to land occurs when someone enters or remains on another person's property without permission. Even if no loss or harm is caused, this tort occurs since the interference with the landowner's possessory rights is legally significant.

Conversion is an intentional tort that involves the unfair deprivation or interference with another person's private property rights. It occurs when someone takes control of another person's property without their permission, preventing them from possessing or using it.

Defamation is the act of making false remarks about someone to damage their reputation. This deliberate tort includes both oral (slander) and written (libel) communication, with the



false statement inflicting the victim's reputational harm.

These are only a few examples of torts recognized by tort law. To win in a legal claim, the plaintiff must show specified elements in each tort. If the injury is proven, the affected party may be entitled to monetary damages, injunctions, or other suitable relief as assessed by the court.

**Strict liability** is a tort law principle that holds persons or companies accountable for certain actions or products regardless of negligence or purpose. It establishes liability based on an activity's or product's inherent risk or danger. The main feature of strict liability is that the plaintiff does not need to prove the defendant's negligence or intentional wrongdoing.

Strict liability is frequently applied to ultrahazardous operations, such as storing explosives or carrying hazardous materials, where the danger of harm is considerable. It also applies to defective product instances, making manufacturers, distributors, and sellers liable for injuries caused by product faults, regardless of their level of care.

Furthermore, strict liability may apply to the ownership of dangerous animals, rendering owners liable for any injury caused by their animals.

The rationale behind strict liability is to ensure that individuals participating in high-risk activities or in the manufacture and distribution of products incur the expenses of potential harm, encouraging safety and protecting the interests of harmed parties. Strict responsibility acts as a deterrent, urging individuals and entities to take precautions and maintain a higher standard of care.

**Product liability:** is a legal concept that makes manufacturers, distributors, suppliers, and retailers liable for any harm caused by defective or unsafe products they sell. It is under the authority of tort law, which deals with civil wrongs and compensates aggrieved parties.

Several aspects must be established to establish product liability. To begin, it must be demonstrated that the product was defective, whether because of its design, manufacturing method, or inadequate warnings and instructions. Second, the plaintiff must show that the flaw caused their harm or damage. Finally, it must be proven that the product was utilized as intended or in a predictable manner.

Product liability laws strive to safeguard customers by requiring manufacturers and dealers to assure the safety of their products. They promote responsible manufacturing practices and allow harmed parties to obtain compensation for medical bills, lost wages, pain and suffering, and other damage caused by product-related injuries.

Product liability suits might be based on strict liability, negligence, or breach of warranty, depending on the district. Manufacturers are held accountable for injuries caused by defective products, regardless of fault or carelessness. Negligence requires proving that the producer or seller failed to exercise reasonable care in the product's manufacturing or distribution.

Product liability laws seek to protect consumers by forcing manufacturers and dealers to ensure the safety of their products. They encourage safe manufacturing practices and allow damaged parties to seek compensation for medical bills, lost wages, pain and suffering, and other damages resulting from product-related injuries.

Depending on the authority, product liability actions may be based on strict liability, carelessness, or breach of warranty. Regardless of guilt or carelessness, manufacturers are held liable for injuries caused by defective products. To establish negligence, the maker or seller must demonstrate that the product was manufactured or distributed with reasonable care.

**Nuisance:** Nuisance is a tort law concept that deals with unreasonable interference with





another person's use and enjoyment of their property. It entails the violation of someone's right to quietly and properly enjoy their property because of another party's conduct or activities.

Private annoyance and public nuisance are the two basic categories of nuisance. Private annoyance refers to interference with the use and enjoyment of an individual's property caused by a neighboring property, such as excessive noise, vibrations, Odors, or pollution. In contrast, public nuisance impacts the broader public or a specific community, such as creating a hazardous condition or obstructing public rights-of-way.

Several components must be shown to establish a nuisance claim. First, it must be demonstrated that there was an unreasonable impediment to the use and enjoyment of the property. This usually entails establishing that the interference is significant and unjustified, considering variables including the type of activity, its duration, and its impact on the affected property. Second, it must be proven that the defendant's acts or negligence caused the interference.

**Damages:** Damages and injunctive relief are also remedies for nuisance. Damages are intended to recompense the harmed party for the harm caused by the nuisance, such as property damage or loss of enjoyment. Injunctive remedies try to prevent further interference with the affected party's property rights, such as a court order preventing the continuation of the nuisance.

Nuisance laws are critical in balancing property owners' rights and interests, promoting harmonious cohabitation in communities, and guaranteeing that individuals can enjoy their property without excessive intervention.

**Fraud:** Fraud is a tort in which one party knowingly deceives another, causing them to rely on incorrect information and experience suffering or loss as a result. It entails the intentional misrepresentation or concealment of material information to deceive and

encourage the victim to act in ways they would not have otherwise.

Several components must be shown to support an allegation of fraud. The plaintiff must first demonstrate that the defendant made a false statement of fact or concealed a key fact. The assertion must be made deliberately or recklessly disregarding its veracity.

Second, it must be proven that the defendant meant to deceive the plaintiff and persuade them to rely on false information. Third, the plaintiff must demonstrate that they relied on the misleading statement or omission and incurred real suffering or loss as a result.

Fraudulent behaviors can occur in various settings, including business transactions, contracts, insurance claims, and investment schemes. Financial fraud, misleading advertising, Ponzi schemes, and dishonest misrepresentation of product features are common examples.

Compensation for fraud might include compensatory damages to compensate the victim's actual losses, as well as punitive damages to punish the culprit and deter future fraudulent behaviors. In rare situations, contract rescission or restitution may be sought to return the parties to their former positions before deception.

Fraud laws play an important role in discouraging dishonest behaviors, safeguarding persons, and enterprises from deceptive practices, and preserving the norms of fairness and honesty in civil interactions.

### **Conclusion:**

To summarize, torts jurisprudence is an important branch of law that handles civil wrongs and provides remedies for people who have experienced harm or loss because of the conduct or omissions of others. It includes a wide spectrum of torts, such as carelessness, product responsibility, nuisance, and fraud.



Tort law provides several vital functions. It seeks to compensate harmed parties for their losses, whether physical, emotional, or pecuniary. It also acts as a deterrent by holding individuals and entities accountable for their conduct, discouraging them from engaging in harmful or negligent behaviors.

Furthermore, tort law contributes to the establishment of standards of behaviors and the promotion of social order by defining acceptable boundaries for human interaction and preserving individual rights.

Tort law has changed over time to meet changing societal requirements and conditions. Courts and legislatures have broadened the scope of liability to address new types of harm and account for technological advances. Furthermore, as notions such as corporate responsibility, environmental protection, and consumer rights gain importance in legal discourse, tort law continues to evolve.

Tort law is critical to preserving a just and equitable society. It tries to balance individuals' rights and interests, guarantee accountability for wrongdoing, and provide remedies for those who have been harmed. Tort law contributes to the overall well-being and functioning of a civil society by holding wrongdoers accountable and compensating victims.

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## CASE COMMENTARY – SHAIK AHMED V. STATE OF TELANGANA (2021)

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### I. Abstract:

*On the increasing technologies and the mankind the crimes also advanced and grown to new methods as the crime in talk, the kidnapping also one of the important and the most common crime out there which also gets new and improved as the days moving. Back to 1673, the kidnapping was originated by the American Colonies which carried out the practice of stealing children for selling them as slaves and laborers. In the olden days the kidnapping was only done to make the children as slave. The word in its meaning has two parts kid and the napping which means stealing or snatching the kid for some benefits. The ways the crime happens was purely by the thinking capacity of the criminal or the motive of the kidnapping. If the main motive of the kidnap was for ransom, then the high profile, high earning capacity people would be targeted and they leave the rest others. As the growing period of era, the most common kind of kidnap was kidnapping for ransom. Kidnapping for ransom is one of the main method were the kidnappers ask for money to the victim's family, relatives, friends and the office employer in order to handover the kidnapped person. So as the period evolves and the crime evolves, the judicial also should get evolved and equipped for facing the future of crimes, thus this case would bring out the advanced judicial in the crime of kidnapping.*

**II. Keywords:** Kidnapping, crime, judicial, IPC, Evolves, judgement, case, commentary, victim, criminal

<b>Diary Number:</b>	8048 / 2020
<b>Case Number:</b>	CrI.A. No.-000533-000533 / 2021
<b>Petitioner Name:</b>	SHAIK AHMED
<b>Respondent Name:</b>	STATE OF TELANGANA
<b>Petitioner's Advocate:</b>	Pai Amit
<b>Bench:</b>	HON'BLE MR. JUSTICE ASHOK BHUSHAN, HON'BLE MR. JUSTICE VINEET SARAN, HON'BLE MR. JUSTICE M.R. SHAH
<b>Judgment By:</b>	HON'BLE MR. JUSTICE ASHOK BHUSHAN
<b>Date:</b>	28 Jun, 2021



### III. Introduction:

On 28<sup>th</sup> June, 2021 the case of Ahmed Shah v State of Telangana was decided by the bench of Justice R Subhash Reddy and Justice Ashok Bhushan by the Supreme court of India. The offence of Kidnapping for Ransom was the main crux of this case where the supreme court of India stated that - No conviction under Section 364A of Indian Penal Code, if kidnapper treats victim in "a good manner". In the case of Shaikh Ahmed v State of Telangana, the supreme court decided that the kidnapping for ransom is proven only if it comes under the section 364A of Indian Penal Code, where the section 364A should be satisfied fully of all its provisions in the manner beyond the doubt of the prosecution.

### IV. Facts of the case:

The case's facts centre on Prateek Gupta, a sixth-grade student who was abducted by an auto driver and held captive for ransom. Prateek Gupta, the victim in this incident, was a sixth-grade student at St. Mary's High School in Hyderabad. The address of Prateek's school was Regimental Bazaar in Hyderabad. In the early afternoon of February 3, 2011, Prateek returned to his school from a picnic that had been organised by his school. Prateek's parents had set up a regular car for him, which would regularly pick him up from school and bring him home. Unfortunately, the car that Prateek's parents had fixed did not show up on February 3, 2011. Prateek's parents had set up a regular car for him, which would regularly pick him up from school and bring him home. Unfortunately, the car that Prateek's parents had fixed did not show up on February 3, 2011. After an hour of waiting for his car, Prateek made the decision to call his father on Kumari Sujata Rani, one of his school teachers, using her mobile. Prateek's father gave him instructions to take another car to get home during their talk. In accordance with his father's instructions, Prateek boarded the auto that Shaikh Ahmed Khan, the accused, was driving to take him home. After travelling a short distance, Shaikh Ahmed Khan led Prateek

to an unidentified location. When Prateek questioned the accused about it, Ahmed Shaikh said that it was a shortcut, assuring Prateek that he would drop him off at his house right away and telling him not to worry about it. The accused drove Prateek to his sister's home while promising to return home the following morning. Prateek's father's phone number was taken by Ahmed Shaikh, who said he needed it to call the man to confirm his home's address. The accused called the father of Prateek and informed him that Prateek was in his possession and that in order to free him, he needed to pay a ransom of Rs. 2,000,000. Ahmed answered the accused's call after hearing it. Shaikh, Prateek's father, made the decision to file a police station report. The father of Prateek went to the police station and reported Ahmed Shaikh. After filing the report, the police officer turned over the matter for additional investigation. The accused gave the accused's father instructions to walk to Pillar No. 99, P.V. Narsimha Rao Stadium. When Prateek's father arrived at the specified place carrying the ransom money with him, Ahmed Shaikh, the accused, was already there with Prateek. Ahmed Shaikh was arrested by the police officers who were on the scene wearing mufti covers as Prateek's father attempted to give the accused the Rs. 2,000,00 ransom money. Prateek was discovered inside the car on a short distance from the accused. After carefully examining all of the testimony and evidence, the learned Sessions Judge ruled that Ahmed Shaikh had been found guilty of the crime of kidnapping for ransom as defined by Section 364A of the Indian Penal Code and sentenced him to life in prison and a fine of Rs. 5,000. The prosecution established Ahmed Shaikh's guilt of the crime of "Kidnapping for Ransom" beyond a reasonable doubt, and the High Court dismissed the accused's appeal on the grounds that Ahmed Shaikh must now face punishment for the crime.

### V. Issues:

There were four issues raised in the court



- If section 364A of IPC gives down the basic essentials for the Kidnapping, then what are the essentials
- If the section 364A IPC gives the basic essentials then whether all the essentials of the crime kidnapping should be proven for the doubt of the prosecution.
- If there is any convention under the section 364A of IPC and it doesn't meet the essential ingredient of that section, then it violates the section 364A
- Whether the Judge and High Court recorded any of the evidence and finding that the kidnappers used to threaten the victim to hurt or cause hurt or any of the conduct of a reasonable apprehension given by the accused to putting the victim to cause harm or cause death.

#### VI. Arguments:

The appellant side, learned council stated that all the provisions of the section 364A and all the necessary ingredients provided by the section should be proved beyond all the doubts of the prosecution where in this case it doesn't satisfy all the reasonable doubts of the prosecution under the section 364A IPC, thus the accused conviction was not sustainable. The Council for the Appellant side also argued that the court had not established any proof that the accused had threatened the victim with harm or death and that Ahmed Shaikh's actions had not given rise to a reasonable suspicion that the victim might be killed or injured. Additionally, it was said that the victim, Prateek Gupta, has admitted that the accused did not make any threats against his life or physical harm. Additionally, Prateek's father stated during the recording of the prosecution's witness testimonies that the kidnapper had treated his son nicely. In light of this, the Learned Sessions Judge and High court needs the justification.

#### VII. Judgement:

The following must be proven in order to convict an accused person under Section 364A:

kidnapping or abducting a person, or holding a person in detention after such kidnapping or abduction, and either:

- (a) threatening to kill the person, or
- (b) making the person reasonably fear that he or she will be killed or injured by his or her conduct; or
- (c) inflicting harm or death on the person in order to compel the Government,

the court noted that if the first condition is established, there is still one more requirement to be met because, following the first condition, the "And" is the word used. As a result, either condition (ii) or (iii) must be proven in addition to the first requirement. The court ruled that the Sessions Judge's findings did not demonstrate that requirement (ii) had been satisfied. The High Court has not addressed the arguments the accused brought before it. The victim was not considered to have been assaulted by any evidence found by the court. There was no justifiable concern that the victim may be harmed or killed. The second criteria of Section 364A was not proven to be met by the evidence in the record. The Section 364A conviction and sentence were overturned. He was found guilty of a kidnapping offence under section 363. The court changed the Sessions Judge's decision. the High Court, and. They imposed a seven-year prison term on the appellant as well as a fine of Rs. 5,000.

#### VIII. Conclusion:

In accordance with Section 364A of the IPC, there are three stages: kidnapping or abduction; the threat of death or bodily harm made by the kidnapper in conjunction with the demand for ransom; and the third stage, which occurs when the ransom demand is not met and results in death or bodily harm. Therefore, the prosecution must establish all the elements/conditions specified in Section 364A of the Indian Penal Code beyond a reasonable doubt in order to convict an accused under Section 364A of the IPC.



## IX. Reference:

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## RIGHT TO PRIVACY WITH REFERENCE TO: KHARAK SINGH VS STATE OF UTTAR PRADESH AIR 1963 SC 9235

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### ABSTRACT

*Indian Constitution has faced several constitutional developments over time. Jurists have played a crucial role in shaping the laws and adding essential provisions in it. In order to protect the real essence of the individual's fundamental rights, a number of amendments have been made in the existing laws through judicial decree or a case law. This article emphasises on the right to life and personal liberty and the wide scope of it, which initially did not cover the 'Right to Privacy' under its ambit. Right to privacy which is a basic human right and hence need to be highly recognised in the laws of the land, took several years to get acquainted in the provisions of Indian laws. It is the matter of high concerns how the absence of the provision under the laws affected the life of the people. Due to this, there are many judgements which could not be made in the favour of the petitioners, Kharak Singh vs State of Uttar Pradesh is one those kind of judgements the Indian history. This article with the help of the above mentioned case, highlights the importance of the importance of right to privacy in the lives of the ordinary citizens with a detailed case study.*

**KEY WORDS:** Right to Privacy, Fundamental Rights, Article 21, U.P. Police Regulation Act, Habitual offender

### I. INTRODUCTION

Right to privacy is a fundamental right, guaranteed under Article 21<sup>23</sup> (Right to life and personal Liberty). The major question was to challenge the surveillance of an accused person by the police. The petition filed under article 32<sup>24</sup> of the Indian constitution is to challenge the Constitutional validity of chapter XX of the U.P. Police Regulation Act, Regulation 236<sup>25</sup>, conferring on police officials on various grounds that they are violative of Fundamental rights, i.e. Freedom of speech and expression<sup>26</sup>, Protection of life and personal liberty<sup>27</sup> of the constitution. The issue before the court is to decide whether the power conferred by the

police officials by its provisions is constitutionally valid as they violate the rights guaranteed to the citizens. A Writ of Mandamus was issued by the supreme court, emphasizing some provisions of the act as unconstitutional.

### II. FACTS

In this case, the petitioner, Kharak Singh was arrested on the charge of dacoity in 1941. Due to the lack of pieces of evidence, he was released under (release of accuse when evidence deficient)<sup>28</sup>. Soon after, a history sheet, defined under regulation 238<sup>29</sup>, explaining "personal records of the criminals under surveillance" was opened against him by the police for surveillance- defined 236 regulation<sup>30</sup> of U.P

<sup>23</sup>Constitution of India, 1950, art 21.

<sup>24</sup>Constitution of India, 1950, art 32.

<sup>25</sup>U.P. Police Regulations, regulation 236.

<sup>26</sup>Constitution of India, 1950, art 19.

<sup>27</sup>Constitution of India, 1950, art 21.

<sup>28</sup>Code of Criminal Procedure, 1973 s 169.

<sup>29</sup>U.P. Police Regulations, regulation 238.

<sup>30</sup>U.P. Police Regulations, regulation 236.