



Trespass to Person and Property

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Abstract :

Acts of trespass to the person are generally crimes as well as torts. Criminal proceedings may lead to compensation of the victim by the offender without a separate civil action, for since 1971 the criminal courts have had power to order an offender to pay compensation to his victim, and the court is now required to give reasons, on passing sentence, if it does not make a compensation order. The law has now become more complicated in the area covered by the trespass torts. For example, an adviser may have to consider civil liability under the Protection from Harassment Act 1997 which is in other respects much wider than trespass.

It is often seen that one wants to protect one's body and property, whether movable or immovable. People usually seem anxious as to their person or property being vulnerable to negative elements, who are willing to misappropriate and exploit their wealth with a Mala Fide intention. This apprehension of large sections is what is required to be dealt with the iron hands of the law.

The law takes care of the acts which are to be recuperated with compensation or punishment. These acts can lie from a mere intentional touch to one's person with an evil intention of intrusion into one's property without assigning any reason for the action.

The law is often applied and has evolved to strike a delicate balance between the private rights to the exclusion of others and the socially valuable public and private interests that are sometimes served by permitting unauthorized instances of access. Therefore, it becomes extremely necessary to identify the precise problem and its solution.

Public interest often trumps the private interest and is widely recognized by law to be the distinctive exception to the owner's "Right to exclude." Trespass is a varied topic involving both civil and criminal elements. What distinguishes criminal trespass from civil trespass is that in the former, the entry should be with intent to commit an offence or to intimidate, insult or annoy the person in possession of the property¹.

Trespass is both a civil and criminal wrong because it can cause injury, i.e., violation of legal rights as well as damage to one's person and property substantially if a physical attack takes place.

Trespass law is commonly presented as a relatively straightforward doctrine that protects landowners against intrusions by opportunistic trespassers.

Types of Trespass

Trespass Against Person

It is the causing of apprehension of unreasonable interference with one's person and body as well as a third person and includes usage of force causing damage and impairment in the body. The trespasser, with an ulterior intention, transgresses the right of another and makes an alteration in it with the objective to cause wrongful loss or wrongful gain as the case may be. It is considered as intentional even if the wrongdoer did not know that the property belonged to another.

Assault: It is the causing of unreasonable apprehension of body injury and damage in the mind of another person and usually a prelude to a battery. It can be given effect in a way that would make certain actions and indications as suggestive of assault by another. It can be both direct and indirect. It can be carried out by the person himself or through a third person.

Here, an important factor of foreseeability causing apprehension is required as it is essential that one is able to conceive after seeing something that it is causing unreasonable fear. Section 351 of Indian Penal Code defines assault².

Essentials of assault include:

- Intent
- Apparent ability to carry out the purpose
- Apprehension
- Knowledge of threat

¹ Ram Balak alias Gauri Shanker vs Delhi Administration (1980)ILR 2Delhi1219

² See, Sec 351 of Indian penal Code 1860





An example of foreseeability in trespass: A man directing a gun and about to trigger it, behind a person is not foreseeable to the person. This can't be said to be an assault as there is no apprehension in the mind of that person that somebody is doing such an act which would instill fear in him.

Battery: The use of force on the person of another without lawful justification. Battery consists of touching another person hostilely or against his will directly or indirectly, however, slightly. Direct force can be like slapping a person whereas indirect force is like setting a dog behind a person or spitting on a person. Battery corresponds to 'use of criminal force' according to Section 350 of the Indian Penal Code³. What is necessary is that the wrongful act must involve physical contact.

Essentials of battery include:

Direct or indirect physical contact without lawful justification

1. Use of force
2. It must be voluntary
3. Accidental touch or push in the market is not wrongful and does not constitute battery.

False Imprisonment: When someone's way is restricted unlawfully from all possible directions so as to prevent him/her from moving in a direction for some period, however short, it is called false imprisonment. In the Indian Penal Code, it is defined as wrongful confinement.

cases-of-false- imprisonment Article 22 of the Indian Constitution provides for protection against unlawful arrest and casts an obligation upon the state to follow due procedure while carrying out arrest related activities⁴. Section 43, CrPC provides for arrest by a private person if the offender is a proclaimed habitual offender and is alleged to be liable for a cognizable and non-bailable offence.

Trespass Against Property

Trespass against movable property like goods⁵

It is the taking wrongfully or forcefully interfering with the goods of another. It differs from trespass to land in one important aspect that wrongful intention or negligence is not necessary for trespass to goods. A challenge to ownership of goods amounts to conversion which is different from trespass to goods, which can be elucidated by an example of the damage of goods given by the plaintiff in a cloak room of railways but personnel there instead of giving it, threw it and damaged it.

Trespass against immovable property like land⁶

Trespass is mainly a wrong against possession and is available at times against the owner himself. Court in the case⁷ opined that "The correct position in law may, in our opinion, be slated thus in order to establish that the entry on the property was with the intent to annoy, intimate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering: that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability or something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry".

No one has the right to dispossess the trespasser if he is in a settled possession of a property and he can't be evicted unless due process of law is followed. The possession, which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner⁸.

³ See, Sec 350 of Indian penal code 1860

⁴ D. K. Basu v. State of West Bengal (1997) 6 SCC 642

⁵ <<http://www.legalservicesindia.com/article/article/concept-of-trespass-to-person-1073-1.html>>accessed on 6/06/2016

⁶ S. C. Thanvi, Law of Torts, p. 660

⁷ See, Supra 1

⁸ S.S. Tewari vs Om Prakash Srivastava and Anr., 1979 ACR 419



Under the doctrine of prescriptive easements, for example, a property owner loses the absolute right to exclude (all other persons from taking possession of his land) when a non-owner has used that land openly, peaceably, continuously, and under a claim of right adverse to the owner for a period set forth by a particular state (known as the prescription period).⁹ It was held by the High Court of Bombay in case that a rightful owner who dispossesses another cannot be treated as a trespasser except as provided by Section 9 of the Specific Relief Act, 187.

Case Laws on Trespass

1. **Sentini Cermica P. Ltd. Vs Kunchi Krishna Mohan and Ors** : Statutory Authority: Search and seizure on the premises of appellant do not constitute an act of trespass. It can't be said that any procedure carried out to find the truth on the property will be construed to be an act of trespass if the act is carried out with sufficient legal backing.
2. **Amit Kapoor Vs Ramesh Chander and Anr** : Merely because there was a civil transaction between the parties, it would not by itself alter the status of the allegations constituting the criminal offence.
3. **Samira Kohli Vs. Dr. Prabha Manchanda and Anr**: The performance of hysterectomy and salpingo-oophorectomy on a patient was an unauthorized invasion on her person by the doctor, and it can be deduced to be an assault and consequential battery. Her consent was required as she was an adult and although the doctor acted in the best of patient's interests and can be considered to be mitigating circumstances to reduce compensation, however, in the interests of justice, the patient is entitled to the compensation.
4. **Rajinder Kumar Malhotra vs. Indian Bank & Ors**: Petitioners were licensed to operate kiosks through auction, and their right was taken away by the government corporation after the revocation of license on the expiry of the license period. Here the court made a distinction between license and lease and held that the license does not create possession and it is the discretion of the authority to revoke the license and dispossess the petitioner if any irregularity or discretionary act guides them to do so. A lease creates a possessory, inviolable and a settled right on the person to whom it is granted, whereas a license has a different footing altogether. A leased property can't be trespassed on without lawful justification and exhortation of public need. On the other hand, a license neither creates ownership nor possession rights in favour the person to whom it is granted. As a result, it can't be said that the petitioner's right has been trampled upon by trespassing on the property.
5. **Amit Kapoor Vs Ramesh Chander and Anr**: Merely because there was a civil transaction between the parties, it would not by itself alter the status of the allegations constituting the criminal offence.
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Conclusion

Very common tort that takes place in day-to-day life of the people, especially labourers and hence, there is a need to make the people aware of this tort and seek justice. The tort of false imprisonment is one of the most severe forms of

⁹ Bandu v. Naba, (1890) 15 Bom. 238



human rights violations especially in a nation like India that holds the writ of Habeas Corpus as the “heart and soul” of its Constitution. The assault and battery cases need to be taken more seriously by the courts and should be given a speedy judgement. Since the people have a psyche of the courts taking long time to give a judgement, they prefer to chuck the assault or battery that they suffered from and thus, don't initiate to file a case. Appropriate compensation has to be given to the damages the claimant faced.

References :

- [1] Ram Balak alias Gauri Shanker vs Delhi Administration (1980)ILR 2Delhi1219
- [2] See, Sec 351 of Indian penal Code 1860
- [3] See, Sec 350 of Indian penal code 1860
- [4] D. K. Basu v. State of West Bengal (1997) 6 SCC 642
- [5] <<http://www.legalservicesindia.com/article/article/concept-of-trespass-to-person-1073-1.html>>accessed on 6/06/2016
- [6] S. C. Thanvi, Law of Torts, p. 660
- [7] S. C. Thanvi, Law of Torts, pp. 658-660
- [8] See, Supra 1
- [9] S.S. Tewari vs Om Prakash Srivastava and Anr., 1979 ACR 419
- [10] Bandu v. Naba, (1890) 15 Bom. 238
- [11] Sentini Cermica P. Ltd. Vs Kunchi Krishna Mohan and Ors., 2015(2)RCR(Criminal)150
- [12] Amit Kapoor Vs Ramesh Chander and Anr.(2012)9SCC460
- [13] Samira Kohli Vs. Dr. Prabha Manchanda and Anr, AIR 2008 SC 1385
- [14] <<https://indiankanoon.org/doc/96343465/>>accessed on 5/06/2016
- [15] AIR 1964 AP 382
- [16] (1845) 7 QB 742