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Confluence of the Law of Torts and Law of Crimes

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The fields of the law of torts and the law of crimes are myriad; not many pieces of literature seem to draw a parallel between the two. It is evident that while the former deals in civil remedies, the latter is concerned with criminal activities. Both of them share different episodes of origin and development. Just like any other law both also have different sets of criteria that need to be fulfilled before a legal claim can arise in either of them. Alongside, both also share different courses of proceedings. One may wonder amidst so many differences, is it possible to draw a line of similarity or discover a point of convergence between the two? This article aims to discuss the points of origin of both laws and trace their points of divergence before finally discovering their points of convergence. After all, both the laws beyond the surface seem to share certain common threads, which this article aims to highlight.

Keywords: *tort, crime, origin, divergence, convergence.*

INTRODUCTION

India has a robust set of rules and well-defined statutes for ironing out grievances that are criminal as well as non-criminal in nature. This responsibility is shouldered on the legal system of our country which deals with redressing conflicts of citizens at the individual as well as societal levels, videlicet infringement of private rights of a citizen besides the harm to the society at large. Broadly speaking, civil law in our country deals with the infraction of the private rights

of a citizen, while criminal law handles the crime committed against the society at large. These aspects, when seen on the surface level, interplay at contrasting stages, intervening at a disparate set of actions. However, when closely looked upon, despite sharing a plethora of dissimilarities, they are woven together under the garb of the legal system, gradually converging in certain events to meet the vigorous nature of our society. With rapid advancements today, the legal system itself is metamorphosing, adapting to meet the dynamic needs of the general public. In *P. Rathinam v Union of India*[1], the Honorable bench held that 'In a way, there is no distinction between crime and tort, since a tort harms an individual whereas a crime is supposed to harm society. But then, a society is made of individuals, harm to an individual is ultimately harmful to society'. From the aforementioned judgment, it is crystal clear that both fields have their pieces of likeness and unlikeness. This article explicitly talks about the relationship between the law of torts and crime, while exploring the diversity, yet acknowledging the confluence of the two fields to suit the purpose of granting justice. To understand this, we must first acquaint ourselves with the illustrious origin of the two, the principles they are based on and the comprehensible differences both carry, which will finally aid us to realize how today both are working nearby, suggestive of their convergence.

ORIGIN

a) Law of Torts:

The word 'Tort' is derived from the Latin term '*Tortum*' which implies 'Twist'. It is congruent with the Sanskrit term 'Jimha' which means 'crooked'. Etymologically, Tort suggests an action that is considered to be 'twisted' or 'crooked' in society. In the words of Fraser, 'It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party.'[2] This field of law finds its birth in the royal writs which were issued by the Chancery in periodic England out of common law procedures. After the passing of the Statute of Gloucester during the reign of King Edward I, the writ of trespass emerged as writs against

[1] *P. Rathinam v Union of India* (1994) 3 SCC 394
[2] Hugh Fraser, *A Compendium of the Law of Torts* (Sweet and Maxwell 1914)

an individual comprising of force and arms or *vi et armis*.[3] It was supposedly created to include both the civil and criminal aspects. Much later, the criminal aspect of it was dropped, suggestive of the fact that the civil action for trespass and indictment for felony and misdemeanor both emerged on different lines. This writ included cases that correspond to modern-day torts of assault, battery, and false imprisonment. However, a major catch with this writ was that there was an increase in the number of complaints that did not even use force or involved arms and hence either they were neglected on the grounds of being fiction or the facts of the case were twisted to falsely include the usage of "force or arm" to make it actionable.[4] One such case was *Rattlesdene v Grunestone*[5] where the plaintiff claimed that the wine was adulterated with salt water before its delivery. He further claimed that the act was done using force and arms as the plaintiff pleaded that the defendant used 'arrows, swords and bows' for the same. However, academics Mark Lunney and Ken Oliphant argue that the facts of the cases were fabricated to include the requirement of *vi et armis*, and in reality, it was a simple case of a shipping accident. Henceforth, the writ of trespass on the case or action on the case was created later, to make the indirect and consequential injuries actionable, namely the ones left out by the former in question. One such case was *Waldon v Mareschal*[6], where it was alleged that a doctor negligently treated a horse. This was accepted by the court of common pleas, and thereafter there was an increase in the number of complaints filed in the court where there was no use of force or arms. These were finally unified by the judicature acts post-19th century along with having a well-established procedural course. After the Normandy conquest in 1605, French became the common language in most of the English courts back in England.[7] Thus, the word 'tort' itself is of French origin. The same was introduced in India by the Englishmen practicing in the early mayor courts of presidency towns of Bombay, Madras, and Calcutta, and was continued even after the establishment of the Supreme Court and later the High Court. The governing principle behind

[3] John Baker, *An Introduction to English Legal History publisher* (4th edn, Oxford University Press 2019)
[4] *Ibid*
[5] *Rattlesdene v Grunestone* [1317]
[6] 'THE HISTORY OF CONTRACT LAW' (*The Supreme Court of New South Wales*, 9 November 2016) < https://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2016%20Speeches/Bathurst%20CJ/Bathurst_20161109.pdf> accessed 30 January 2023
[7] Azhar A. Alkazwini, 'The Linguistic Influence of the Norman Conquest (11th Century) on the English Language' (2016) 8(3) International Journal of Linguistics

this was that the Indian courts had to administer justice along the lines of the prevailing English laws according to 'justice, equity, and good conscience' as prescribed by the Privy Council, the highest legal authority back in time. While doing so, however, they were required to cross-check its applicability in the Indian scenario. In the words of Chief Justice Bhagwati, 'We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for that matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our jurisprudence.'[8] This is how the law of torts originated and made its way to the Indian soil, continuing to multifariously bloom to suit the society's needs in the present world.

b) Law of Crime:

The origin of the law of crime dates back to Mesopotamian civilization, the first known settlement of mankind. The Sumerians are credited with making the first distinction between criminal and civil wrongs, through their Urukagina's code (around 2100-2050 BC)[9]. This code is believed to contain provisions that provided stringent punishments for certain acts (for instance, the goons were pelted with stones until they died, while inscribing their tomb with the name of the crime they were charged with) creating the notion that serious acts against the society need serious punishments.[10] The code of Ur-Nammu (2050 BC) also known to be the earliest known legal code, contained provisions of punishments proportionate to the crime committed. In Greece, the Draconian laws (621 BC) were the first written law. The word literarily corresponds to harsh laws for it brought in the concept of the death penalty by the state and not any private party. This was evident in the trial of Socrates, the Athenian philosopher who was announced the death penalty by the jurors for allegedly corrupting the youth and spreading atheism.

[8] *MC Mehta v Union of India* (1987) 1 SCC 395
[9] Samuel Noah Kramer, *The Sumerians: Their History, Culture, and Character* (University of Chicago 1971)
[10] *Ibid*

AN INDIAN CONTEXT

Ancient India:

While looking at it through the lenses of ancient India, we find that the Hindu criminal laws were a product of the combined efforts of Gautama, Vasistha, Apastamba, and Baudhayana in the primitive stages.[11] Much later, the marked territory between civil and criminal laws was carved out by the laws of Manu in his well-acclaimed Manusmriti, which highlighted the responsibility of the state to eradicate crime in the society by subjecting it to higher punishments, considered to be reasonable and practical.[12] The punishments for the crimes or vyavahara padas were akin to the four Varnas (Brahmins, Kshatriyas, Vaishyas, and Shudras). This stratified allotment of punishments has been explained by the pollution theory of punishment supported by anthropologists and the power theory of punishment held by historians.[13] The former is based on the underlying principle that 'Punishment, among other things, is an institutionalized restoration of the original state of the polluted ego. All things being equal, the greater the loss of purity (or increased impurity), the greater the punishment.'[14] This school believes that a crime is an act that involves pollution to the criminal using forbidden contact or injury to others. The higher the purity level of the victim, the more pollution is incurred by injuring him.[15] Manu attributed levels of punishments according to the purity of an individual, which was in ancient India determined by the Varna they belonged to; the level of purity decreased from top-to-bottom. Thus, a crime committed against a Brahmin was punished more harshly than the same being committed against a Shudra. The rationale behind this theory as given by Tambiah was that the higher Varnas were more vulnerable to attacks of pollution (direct order of reckoning) and had a tough time protecting their purity (inverse order of reckoning) hence; they were given higher immunity, legal privileges, and protection as opposed to the lower Varnas.[16] In contrast

[11] Patrick Olivelle, *DHARMASUTRA PARALLELS Containing the Dharma sutras of Apastamba, Gautama, Baudhayana, and Vasistha* (Motilal Banarsidass Publishers 2015)
[12] Patrick Olivelle, *Manu's Code of Law* (Oxford University Press 2005)
[13] Ariel Glucklich, 'Karma and social justice in the criminal code of Manu' (1982) 16(1) Contributions to Indian Sociology <https://doi.org/10.1177/006996678201600103> accessed 01 February 2023
[14] *Ibid*
[15] *Ibid*
[16] *Ibid*

to this, the latter theory is based on the principle, as Bougle puts it: The rate of punishment varies as a function of a social situation; it reaches its maximum when the offended is of the highest caste and the offender of the lowest[17]. This simply means that the people born under the twice-born caste (members of the upper caste) are not only highly privileged but also highly protected because of the social status they carry. This school bases its argument on the principle of domination, being the core reason for the varied distribution of punishments across castes. The laws of Vishnu which came much later than the laws of Manu were less demanding for it was responsible for bringing in the concept of humane punishments in the forms of fines and imprisonment. Though his recommendations corresponded more or else to the ones outlined by Manu, he is conceived to be the first lawmaker who attempted to "humanize punishments. This could then be seen vividly in Kautilya's Arthashastra, during the Mauryan regime, where the laws related to crime became much more sensitive.[18]

Colonial India:

However, the criminal laws applicable during the time of colonial India present a different picture. After the settlement of the British East India Company in Surat in 1612, under the reign of the Mughal emperor Jahangir, it was evident that the Hindu criminal laws were replaced with Muslim criminal laws.[19] Later on, it was Warren Hastings, who identified the flaws in the Mohammedan criminal law and tried to bring a balance.[20] Lord Cornwallis in 1790 circulated questionnaires amongst the magistrates and realized how the death penalty was the most frequent punishment.[21] There was overcrowding in jails and the condition was deplorable. It was finally Lord Bentinck, who did away with the Courts of the circuit and established Commissioners of Revenue and Circuit along with the introduction of separate sessions and district court in 1831.[22] Finally, the 1st Law Commission of India was set up in 1833 whose most

[17] *Ibid*
[18] B. Sihag, *Kautilya on Administration of Justice During the Fourth Century B.C.* (29(3), 359-377, Journal of the History of Economic Thought, 2007) doi:10.1080/10427710701514760.
[19] N. Chatterjee, *Introduction: Law in Many Forms. In Negotiating Mughal Law: A Family of Landlords across Three Indian Empires* (Cambridge University Press 2020)
[20] *Ibid*
[21] Shree Govind Mishra, *The legal history of India, 1600-1990* (South Asia Books 1993)
[22] *Ibid*

notable contribution was the drafting of the Indian Penal Code under Lord Macaulay.[23] This was followed by the 2nd commission (1853) which proposed substantive laws tailor-made to Indian circumstances and the 3rd commission (1861) and 4th commission (1879) both of which suggested codification of the criminal laws and passing of acts such as the Indian Evidence Act 1872.[24] Thus, the draft of the Indian Penal Code was finally adopted in 1860, followed by the Code of Criminal Procedure in 1861. Both replaced the existing Mohammedan law and were formulated on English law suited to the Indian context.[25]

WHAT ARE THE GUIDING PRINCIPLES OF THE TWO?

Law of Torts:

It would be unfair to not talk about the Winfield v Salmond approach while trying to understand the principles on which the law of torts is built. This approach poses two eminent questions in front of us[26]-

- Is it the Law of Tort i.e., Is every wrongful act, for which there is no justification or excuse be treated as a tort? Or
- Is it the Law of Torts, consisting only of several specific wrongs beyond which the liability under this branch of law cannot arise?

Winfield opined on the first approach, and argued all harm done is a tort unless otherwise justified by law, irrespective of whether there exists a label for the harm in question. It is like a growing tree; ever-expanding to include the scope of inclusion of newer torts according to society. If I injure my neighbor, he can sue me in tort whether the wrong happens to have a particular name like assault, battery, deceit, slander, or whether it has no special title at all; and I shall be liable if I cannot prove lawful justification.[27] On the other hand, Salmond argued for the second approach, for he believed that only those actions are actionable and fit in any of the

[23] *Ibid*
[24] *Ibid*
[25] James Y. Bryce, *Studies in history and jurisprudence* (Oxford University Press 2002)
[26] Dr. R K Bangia, *The Law of Torts* (Allahabad Law Agency 2019)
[27] James Goudkamp & Professor Donal Nolan, *Winfield and Jolowicz on Tort* (20th edn, Sweet and Maxwell 2020)

pigeon-holes and there is no general principle of liability. According to Salmond, 'Just as the criminal law consists of a body of rules establishing specific offense, so the law of torts consists of a body of rules establishing specific injuries. Neither in the one case nor in the other, there is any general principle of liability.'[28] Both these theories when looked upon from different angel seem to be correct, for the first one considers the scope of development and creation of newer torts, thus widening the approach, while the second one highlights the present nuances of the law, narrowing it down to the present, thus avoiding confusion. The Supreme Court of India in *Jay Laxmi Salt Work (P.) Ltd. v State of Gujarat*[29] observed: 'Law of torts, being a developing law, its frontiers are incapable of being strictly barricaded.' Both these approaches revolve around the centripetal point of the famous legal maxim *ubi jus ibi remedium* - Where there is a right, there must be a remedy. This principle is suggestive of the fact that when there is an infringement of a legal right, it is redressed via a legal remedy. The opposite of this also stands true (though not conclusive) – 'Where there is no right, there is no remedy.' This is true for the general perception is that the law is responsible enough to provide a remedy for the violation of all lawfully valid rights, so if there is no remedy available it is to mean no legal right was violated in the first instance.[30] This was recognized in the famous case of *Ashby v White*[31], where the honorable bench held that "If man will multiply injuries, action must be multiplied too: for every man who is injured ought to have recompense."[32] It brought in the basic idea of "reciprocity between want of right and want of remedy."[33] Both rights and duty are the two sides of the same coin- there is a general duty of care to not infringe upon the rights vested in another. This can be understood by the phrase 'Thou shall not harm thy neighbour'.[34] Thus, this forms the guiding light for the law of torts.

[28] R.F.V. Heuston & R. A. Buckley, *Salmond and Heuston on the Law of Torts* (Sweet and Maxwell 1996)
[29] *Jay Laxmi Salt Work (P.) Ltd. v State of Gujarat* (1994) 4 SCC 1
[30] *Ibid*
[31] *Ashby v White* [1703] 92 ER 126
[32] *Ibid*
[33] *Ibid*
[34] *Ibid*

Law of Crime:

The liability in case of crime is however different than it is in torts. Here the 5 important elements are - *actus reus*, *mens rea*, concurrence, causation, and harm.[35] Actus reus corresponds to a guilty act involving the physical components of an action leading to a crime. It includes several components[36]- Conduct, being the wrongful act itself (lying under oath leads to actus reus of perjury); Result, which represents the consequence of conduct is the crime and not the conduct itself (possessing a knife in the kitchen is not a crime, but using it to murder someone is) and State of Affairs, for instance, (being an illegal alien). In occasional cases, omission of an act also leads to actus reus. In cases where there is a breach of a duty imposed by the law, statutory duty, or even contractual duty, it leads to the commission of actus reus.[37] On the other hand, *mens rea* represents the guilty mind of an act. It involves[38]- Intent, which is the conscious desire to commit an illegal act (a person stealing a bike to sell it to gain money is showing criminal intent); Knowledge, which is that aspect where a person has the requisite idea and is aware that his actions will have negative consequences (in a wedding a person may open fire to celebrate the occasion which might lead to the death of someone in the crowd, though his initial goal was not to kill someone, but this act of shooting in the open shows that he had the criminal knowledge); Recklessness, which is the aspect displaying the commission of action despite knowing the consequential risks (a person driving a vehicle under the influence of alcohol may knock down someone, in such a case he did not intend to nor did he expect the consequence) and finally Negligence, which is the failure to meet a specific standard (a doctor leaving a metal piece inside the body of a patient while operating). Concurrence is the state where active actus reus and mens rea are essentially happening around the same time. The general rule in the law of crime requires both the involvement of the guilty act and the guilty mind while determining the liability. The guilty act itself is not enough to punish someone for a crime. It has to be equally done with a guilty mind. The famous legal maxim also explains this - *actus non facit reum nisi mens sit rea* which explicitly mentions 'An act does not make anyone guilty unless there is a

[35] P. S. Atchuthen Pillai, *Criminal Law* (14th edn, Lexis Nexis 2019)
[36] *Ibid*
[37] *Ibid*
[38] *Ibid*

criminal intent'. This was also held by the Supreme Court in *Bapu @ Gajraj Singh v State of Rajasthan*[39] where the court held that "Section 84 of Indian Penal Code, 1860 embodies the fundamental maxim of criminal law, i.e., actus non reum facit nisi mens sit rea; (an act does not constitute guilt unless done with a guilty intention)[40]. Causation means the causal relationship between the conduct of a person and its resulting outcome of it. Generally, it must be the act of the accused that leads to harm, the fifth element of a crime.

POINTS OF DIVERGENCE

Both laws of torts and crime can be differentiated on many grounds. The key point of difference between the two is that- torts are a violation of a private right, whereas crime is a violation of a public right. The former leads to injury at an individual level, inflicting a legal right vested in another. Thus, the suit is brought by the individual against whom the wrongful act is committed (plaintiff). For instance, everyone has the right to enjoy their property wholly, without any unwarranted interference from another. Now, someone can illegally enter your property and may cause harm to it. This leads to the tort of trespass, as this act caused injury or violation of a legal right vested in someone. However, it must be understood that not all harm to an individual is actionable in cases of torts. Only those acts which lead to infringement of a legal right can be questioned in court. The word '*Injuria*' and '*Damnum*' is highly significant, the former meaning 'violation of a legal right' whereas the latter signifying "harm suffered or loss, which can be fiduciary, and so on." The legal maxim '*Injuria sine damnum*' represents a violation of a legal right of an individual without the sufferance of any actual harm. In the famous case of Ashby v White, we saw the honorable bench recognizing this maxim. Here, the defendant was a police officer who maliciously restrained the plaintiff, who was allegedly an eligible voter, from casting his vote in the parliamentary elections. This refusal, though it did not lead to any "harm" suffered by him, however, violated his legal right, and hence was actionable in the court. Similarly in *Municipal Board of Agra v Ashrafi Lal*[41], the defendant's name (latter) was wrongfully omitted from the electoral roll thus depriving his legal right to vote. The court again held that

[39] *Bapu @ Gujraj Singh v State of Rajasthan* (2007) 8 SCC 66
[40] *Ibid*
[41] *Municipal Board of Agra v Ashrafi Lal* (1922) ILR 44 ALL 202

even though no harm was suffered, there was a violation of a legally vested right and thus ruled the case in favor of the defendant.

The contrast to this is explained by the maxim '*Damnum sine Injuria*' where no action lies in the court. In *Gloucester v Grammar School*,[42] the defendant was a former teacher at the plaintiff's school. After some dispute, he left the place and set up a rival school in the neighborhood. The defendant considerably reduced his school fee which attracted a lot of students including from the plaintiff's school. The court held the case in favor of the defendant and directed that even if there is the suffering of harm, no action lies in the court of law until it is proven, beyond doubt, that there is a violation of a legal right. Similarly, in *Chasemore v Richards*,[43] the defendant dug up a well on his land, due to which the water supply to the land of the plaintiff was stopped. He thus pleaded in court as he suffered substantive losses. However, the court denied this and reasoned that there exists no cause of action whatsoever until he can prove his legal right is infringed. Thus, we saw how laws of torts lead to violation of private rights and only those actions have a due course in court which directly attacks our legal rights irrespective of any harm done. However, the case is not similar to the law of crime. Here, the right violated is public, for besides causing harm to an individual, it affects the entire society altogether. In consequence, the action is not brought by the aggrieved party, but by the state.

Another clear distinction between the two is that intent is comparatively irrelevant in determining liability in torts, but is quintessential in determining punishment for crime. It is necessary to establish the meaning of motive and intention for both are north-south poles of a magnet. Motive is the cognitive aspect behind an action whereas intention is the wrongful act committed itself. For instance, stealing food is the intention whereas the motive behind it can be to feed his family. In the case of torts, a wrongful act done with a good motive does not make the act inaction able in a court of law. In the case of *South Wales Miners' Federation v Glamorgan Coal Company*,[44] the federation was a trade union working towards regulating and protecting the distribution of wages of coal miners. The wages were paid according to the fluctuating price

[42] *Gloucester Grammar School* [1410] YB 11 Hen IV, fo. pl. 201, 23, f.
[43] *Chasemore v Richards* [1859] 7 HLC 349
[44] *South Wales Miners' Federation v Glamorgan Coal Co.* [1905] AC 239

of coal. The federation thus apprehended that this might lead to a wage below the minimum and hence ordered the workers to stop their work for several days which led to a breach of contract of more than 1,00,000 workers altogether. The court held that though the motive of the federation was good, still the actions were unjustified and illegal since no notice of abstention was circulated. Thus, the court ruled in favor of the company. The opposite of this is also true any legal action done with malice or an ill motive does not make the conduct actionable. In the case of the *Town Area Committee and Ors. v Prabhu Dayal and Anr*[45] the plaintiff constructed around 16 shops on the foundation of an old building that was demolished by the defendant. The plaintiff held that the defendant did not follow the proper guidelines, as Section 302 of the UP-Municipality Act provides for a reasonable time; however, the notice issued under Section 182 of the said act gave only 2 hours when the plaintiff was out of the station.[46] The defendant then claimed that the plaintiff did not give the notice to erect these shops according to Section 178 of the act.[47] Furthermore, they reasoned that the notice was given to the plaintiff much before and demolition was carried out only after the plaintiff failed to follow the orders of the district magistrate. The court held that even though the defendant's act was motivated by malice, there are no grounds on which the act led to a legal injury to the plaintiff, hence there lie no action in the court. On the other hand, in cases of law of crime, the intent is the cornerstone. To successfully proceed with a criminal action in court, it is necessary to establish that there was the presence of *mens rea* or that the criminal intent was intact. In *State of Gujarat v Acharya D. Pandey and Ors.*,[48] the court held that 'element of *mens rea* should be imported in the definition of the crime unless a contrary intention is expressed or implied.'

POINTS OF CONVERGENCE

In the case of *OPG Power Generation Pvt. Ltd v Gulbarga Electricity Supply Co. Ltd*[49] the court held that theft of electric power could be both a tort and a crime; if an act is a crime, it is not that it

[45] *Town Area Committee and Ors. v Prabhu Dayal and Anr* AIR (1975) All 132
[46] *Ibid*
[47] *Ibid*
[48] *State of Gujarat v Acharya D. Pandey* (1970) 3 SCC 183
[49] *OPG Power Generation Pvt. Ltd. v Gulbarga Electricity Supply Co. Ltd.* (2021) 5 Kant LJ 38

can never be a tort; 'Winfield and Jolowicz on Tort' would say[50]: 'Many torts are also crimes, sometimes with the same names and with similar elements and sometimes a civil action in tort is deduced from the existence of a statute creating a criminal offense… but the scope of tort is wider… there is no real difficulty in distinguishing criminal prosecution from tort claims, if only because they are tried in different courts by different procedures.'[51]

This speaks volumes about the fact that torts and crime do intervene at certain junctions. Their first point of contact is that certain torts that need the element of intent which is foremost in determining liability in crime. Torts like that of deceit, and malicious prosecution require the element of intent as a precondition in determining the liability. Similarly, even in crime, some offenses do not require the element of *mens rea* for punishment. One such example is strict liability in crime, which does not require the guilty intent to be proved beyond reason to punish a person. In *Singapore Airlines Ltd v Union of India*,[52] the court held that 'True that generally speaking, mens rea is an essential ingredient of a criminal offense but there are offenses where guilt may not be there in the mind before the offense is committed. Even the aims and objects of particular legislation may necessarily exclude the application of the doctrine of mens rea. In this context, the following passage from Russell on Crime is very apt: 'In the large numbers of modern statutes, many have been interpreted by the courts as using language which, in prescribing punishment for specified deeds (each of which is thus an actus reus), has excluded any requirement of mens rea at all. Where this is so, the question of whether the accused may have committed the deed intentionally, recklessly, negligently, or by mistake, is irrelevant so far as his liability to conviction is concerned. Such crime is often, and suitably, termed a crime of strict liability, or absolute liability.'

Another point of convergence can be seen in the way the wrong is redressed in both fields. In the law of torts, the general remedy available is damages or compensation, whereas, in the law of crime, it is punishment. However today we see that arrests are made in the commission of torts and compensation out of fines is asked in cases of crime too. In the former case, detention

[50] James Goudkamp & Professor Donal Nolan (n 27)
[51] *Ibid*
[52] *Singapore Airlines Ltd. v Union of India* (2004) 109 DLT 880

in a civil suit can be made in a few cases to pressurize a party into doing something or abstaining from doing something. In such cases, the party is usually released when the said goal is achieved. For example, in civil cases, a judgment debtor may be arrested in the execution of a decree under Sec. 57[53] Such a person is released even before the expiration of the fixed term if the decree is satisfied. On the other hand, in the law of crime in certain exceptional cases, as provided by Section 357[54] even a criminal Court while passing judgment may order that the injured party may be paid compensation out of the fine imposed. On another point, we see that few offenses find their mention in both spheres of law. Offenses such as defamation, trespass, assault, and the like find their mention in both places. The nature of these offenses remains the same, the only difference being in the way they are filed and settled down.

Logically speaking calling 'A+B' or 'B+A' does not change the value of the aggregated total. Thus mere labeling of the acts is not suggestive that they become different for a just structural difference in no way is absolute. Even in cases where the court rewards exemplary damages where the accused has acted outrageously while committing a tort, we see the element of punishing and deterring the wrongdoer which is the central force in determining the liability in crime. In the case of *Bhim Singh v State of J&K,*[55] the plaintiff was illegally detained and due process was not observed as he was not produced before a magistrate within the stipulated time frame. He was also prevented from attending a legislative assembly session and thus could not exercise his vote in the process. The court in the case awarded exemplary damages worth rupees 50,000 to the plaintiff for violations of his rights protected under article 21.[56] In another instance, compounding is generally available in torts and is a popular practice; however, we do find a list of offenses that can be compounded under section 320[57] in the law of crime too. The interrelation of the two is that commission or omission of an act can lead to both tort and crime. In *Muthu Krishna Naidu v Dharmaraja*,[58] the court reasoned that 'It is quite true that there is no clear distinction between criminal and civil offenses. The two have been called a viscous intermixture.

[53] Code of Criminal Procedure 1973, s 57
[54] Code of Criminal Procedure 1973, s 357
[55] *Bhim Singh v State of J&K* (1985) 4 SCC 677
[56] *Ibid*
[57] Code of Criminal Procedure 1973, s 320
[58] *Muthu Krishna Naidu v Dharmaraja* (1978) 1 MLJ 351

They are not sharply separated groups of facts and as has been well said, to ask whether a particular matter is a tort or a crime, is no wiser than to ask a man whether he is a father or a brother, as he might well be both.'[59] Thus, even though the claim for certain common offenses lies in both civil and criminal courts, the aggrieved party can approach either. However, it must be noted that for a different set of actions occurring under one common action, he may approach both. For instance, A enters into the property of B without any permission, thus committing the tort of trespass. Upon seeing the pet dog of A, he is reminded of his poverty-stricken life. Thus, he intends on stealing the pet with the sole purpose of selling it for money, thus committing theft. Under such a scenario, both acts are actionable independently- A can sue B for the tort of trespass in the civil court and can also sue him for theft in criminal court.

CONCLUSION

One of the formidable points which unite the two seemingly different branches of law is that both directly strike at the right vested in a person, leading to the sufferance of an individual. In either of the two, there is no remedy until suffering in any form is proven. Thus, both undertake the vehement responsibility of protecting and upholding one's rights. The mere fact that both follow a different course of action and have relatively different points of identification in the court of law does not make it conclusive that both are poles apart. Rather it brings us to a point that is often overlooked, why is there even a need to draw a line and have discrete demarcations? To understand this maybe we have to revert to square one and make a coherent comprehension of why are there different types of law where the focal point in all at the core is the same. It all comes down to the basics of "classification" and its vital role in avoiding chaos and confusion. To me, these demarcations are and can never exist in complete isolation for these are human creations that make them susceptible to not only subjective perceptions but also to the risk of instability and alterations. Thus, we can truly never say that the law of torts and crime is like chalk and cheese. They are just like two constellations in the sea of stars; though structurally

[59] *Ibid*

different yet made up of the same substance at the core, that is, created to protect the rights of all citizens and make sure that the light of justice is never out.