

# Parties in Torts: Capacity to Sue and be Sued

## Introduction

Capacity refers to status of a person to sue or to be, sued under violation of a law. These laws can either be codified or uncodified. In case of Torts, the capacity to sue or to be sued lies with all persons or parties. But this statement is not absolute; there are always reasonable restrictions alongside any liberty, similarly there are restrictions upon parties to sue or be sued. Indian law follows the English law of tort in the matters of disability of parties to sue or to be sued. [1]

A party to tort refers to any person who is directly involved or shows interest in any act that leads to either:

1. commission of a civil wrong
2. being victim of such wrong

Such person shall become a party to tort and shall be referred as plaintiffs and defendants. The article will elaborate upon the restrictions on people to sue any person or to be sued by any person and how a sued person has the right to seek contribution from other joint tortfeasors.

## Parties to Torts

Those persons against whom any action of civil wrong is initiated or instituted may file a civil suit for recovery against the person who has committed the same. The person who files the suit shall be called Plaintiff and the one who has the right to defend himself shall be called, defendants. The term parties to torts includes everyone interested directly in the matter, who have right to defend, control proceedings, or appeal in court. Anyone who does not have these rights shall be a privy i.e. stranger to the case. [2]

One of the major elements here is the requirement to initiate a civil suit with the right person. In case the plaintiff brings in wrong party or the plaintiff includes too many too less number of parties, the case shall possibly not land in favor of the plaintiff in such situation.

Who does not have capacity to be sued?

The below mentioned are the parties in torts that cannot be sued:

1. Government
2. Foreign sovereign

3. Ambassador
4. Public official
5. Minor
6. Lunatic
7. Corporation
8. Trade union
9. Married women(earlier)
1. **Married women**

The common law does not permit a married woman to sue or to be sued all alone. It is necessary to be in association with her husband only then it shall be valid. This was the rule because earlier under the law in England, husbands and wives were considered as single entity in the eyes of law. Thus married women could not be sued all alone. This difficulty was later removed by Married Women's Property Act and later a married woman can be sued independently without joining her husband as a party to the suit.

- **Minor**

The infant/ minor can be sued for the act committed by them as an adult. Thus a minor can be sued for assault, false imprisonment, libel, slander, fraud etc. but where intention, knowledge or some other condition of mind are essential ingredients of liability then in that cases minor/ infant can be exempted due to their mental incapacity. In the later case a minor/infant cannot be sued.

In *Walmsey vs. Humonick* (1954 2 D.L.R. 232) – Two little boys were playing cowboy related games. One boy hit the arrow and it hit another boy in his eye. The court gives the judgment in defendant's favor as a five-year child doesn't even think about it. Hence the defendant is not liable.

- **Municipality, centre or state government**

They cannot be held liable for misfeasance of their officers if they are exercising their duties. Therefore the blunders of judicial officers cannot be charged from state's accounts, even if they commit a mistake while exercising their powers.

In *U.O.I vs. Sugrabai* – A, military driver of the school of Artillery, once assigned a task to transport the machine, hit B, as a result, B died. Here the government is liable as the work is assigned to him and the act committed during the discharge of the duty. [4]

- **Lunatic**

When any action is committed by a lunatic person mad he is not in his stable state of mind, such person cannot be sued. However if such person commits a crime when he is in a stable state of mind and can interpret the meaning or consequences of his actions, then he can be sued.

- **Alien enemy**

Alien enemy means a person belonging to a hostile country or a person residing in or carrying business in enemy territory [5]. In India an alien enemy cannot be sued by any person in India without the prior permission of the central government. If the central government allows so, only then they can be sued by a person.

- **Corporations**

Corporations have distinct legal personality and they can be sued like any other legal person in India. This can happen when any servant commits an act of civil wrong on behalf of the corporation. Private corporations can sue and get sued for torts. But A charitable organization is not liable in tort for injuries done by physicians, employees or servants when it has exercised due care in their selection, but it is liable for corporate misconduct and negligence. [6]

*In Poulton vs. London and S.W. Rly. Company (1867 L.R.2 Q.B. 534)*

The railway master was employed by the defendant company, arrested a man for not paying the freight charges of the horse he is carrying with him. The petitioner filed a case against the corporation. It was held that the railway master was employed to arrest the person only if the person does not pay the freight of himself. No order was given to him to arrest a person if he is not paying the freight charges for the goods carried by him. Here, he is acting in his private capacity so a corporation cannot be held liable, only the station master can be held liable [7].

- **Foreign Sovereign**

Civil procedure says, a foreign sovereign can only be sued in India if the central government allows so and not otherwise. Similarly foreign ambassadors and their families cannot be sued in India unless they waived off their privilege by submitting to the jurisdiction of the court. They can only be sued in Indian court with the consent of Indian government.

Who does not have capacity to sue?

Every person is competent to be a party to the suit, if he has the right to sue, if his legal right is infringed. But some people do not have capacity to be the plaintiff; this simply means that they cannot sue a person. They have legal disability in the eyes of law. These people are:

1. Convict
  2. Alien enemy
  3. Married woman
  4. Corporation
  5. Unincorporated association
  6. Infant
  7. Insolvent
1. **Convict**

Initially a person, a convict whose sentence is in force could not sue anyone for injury to his property. But later in 1948 the criminal justice act was passed and this difficulty was removed and a convicted person could sue for injury to his property.

- **Alien enemy**

Alien enemy is a person of enemy nationality or a person from enemy territory of any nationality. An alien enemy cannot sue in his own right. In India, an alien enemy can sue only after obtaining permission from the central government under Sec. 83 of the civil procedure code. But the moment this enmity comes to an end this disability to sue also ends along with it.

- **Married woman**

Initially under English law husband and wife both were constituted as single legal integrated personality; therefore wife had no right to sue her husband earlier for any wrong committed by him. Even she could not sue or be sued unless her husband joined her as a party to the suit but later came, the married women's property act 1882 and the law of reform (husband and wife) act 1962 which changed the entire situation. Now a married wife can sue her husband. She can sue a person without joining her husband as party. In India, today wives and husbands are regarded as different entities and therefore they can sue each other independently.

- **Corporation**

A corporation is a legal/juridical person. Therefore it can sue another person. It may bring action for those civil wrongs which affect its property but a corporation cannot sue for those wrongs which do not affect its property.

In *Manchester Vs Williams* it was held that a corporation has a right to sue, not only for the property but also for its personal reputation.

- **Unincorporated association**

An unincorporated association has no legal personality and therefore law gives such associations no right to sue anybody.

- **Infant**

Minors in India are regarded as incapable to sue anyone henceforth they do not have any right to sue but at the same time the minor can sue another person by the way of a guardian or friend (who is of the attained the age of majority). In case there is no such person, the court can appoint a legal guardian for such child, so that, he can fight for his rights.

In *walker Vs Great Northern Railways*, In this case, a pregnant woman injured due to a train accident, as a result of which her child was born deformed. The Court held that the minor cannot maintain a remedy for the injury sustained when he was in his mother womb. But in a case having similar facts, the supreme court of Canada provided the remedy to the infant. [8]

- **Insolvent**

Insolvent is any person who cannot or could not satisfy his liabilities. A person must be declared as insolvent by the court of law only then he has not right to sue anyone in future and not otherwise. During insolvency proceedings, a receiver is appointed by the court therefore insolvent person cannot sue for wrong to his property but he can sue for wrong to his person.

## Conclusion

The capacity to sue and to be sued is very essential in deciding whether a case stands before the court or not. There are number of factors that decide whether or not a person can sue or be sued like friendly relations with the state(alien enemy), fairness(lunatic), efficiency in maintaining law and order (municipality and public corporations ),etc . while the law with respect to married woman has changed over time, releasing the restrictions on spouses to sue each other, other restrictions remain the same, ensuring that people who are themselves

incapable, do not sue any other person in the court of law and to ensure that people who are exempted from being sued do not get sued by any person.

### **Endnotes**

[1] POLLOCK, Frederick, and Philip Aislabie LANDON. 1951. Pollock's Law of Torts ... Fifteenth edition. By P.A. Landon. Pp. xlv. 480. Stevens & Sons: London

[2] How. St. Tr. 538, n.; Greenl. Ev. Sec. 523

[3] Walmsey vs. Humonick.1954

[4] U.O.I vs. Sugrabai

[5] Scotland VS South African Territory Ltd.1971

[6] Williamson vs Louisville Indus. School, 95 Ky.251[7] Poulton vs. London and S.W. Rly. Company.1867[8] Walker Vs Great Northern Railways