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Address for correspondence:
Meetkumar J Pandit
Research Scholar (Phd), Law, Swaminarayan University
Email:
meetpandit2309@gmail.com

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Parliamentary Silence and Judicial Innovation: A Case Study on Tort Law Development

Meetkumar J Pandit[1] Dr. Aslam Memon[2]
[1]Research Scholar (Phd), Law, Swaminarayan University
[2]Guide, Swaminarayan University, B-2, Riddhi Siddhi Bungalows, Sanand, Ahmedabad

Abstract

In common law jurisdictions, judicial innovation has played a significant role in shaping the development of tort law, especially when parliamentary guidance was lacking. The dynamic relationship between judicial creativity and parliamentary silence in the development of tort principles is examined in this study. Legislators frequently avoid codifying or changing tort doctrines, but courts have used precedent to address new social, economic, and ethical concerns. This paper examines significant court rulings to show how judges have improved liability principles, broadened the definition of the duty of care, and addressed gaps that Parliament has failed to address. Additionally, the study assesses the conflict between judicial activism and restraint, raising the question of whether courts go beyond their constitutional authority when they serve as de facto policymakers. The study, which raises questions about legitimacy, democratic accountability, and predictability, emphasises how judicial innovation has been crucial in ensuring tort law remains responsive to shifting societal needs. It does this by drawing on case law and comparative perspectives. In the end, the study makes the case that the relationship between judicial innovation and parliamentary silence illustrates both the advantages and disadvantages of a common law system in upholding justice, equity, and flexibility in private law.

Keywords: *Parliamentary Silence,Judicial Innovation,Tort Law Development,Judicial Activism,Judicial Restraint,Common Law System,PrecedentDuty of Care,Policy-Making Role of Courts,Legislative Inaction*

Introduction

As a subset of private law, tort law is mostly decided by judges and has developed over time via judicial reasoning as opposed to thorough legislative codification. Legislators have been silent on a number of important liability issues in many common law jurisdictions, leaving courts to handle novel and intricate cases. Judicial innovation has flourished as a result of this "parliamentary silence," with judges using precedent and interpretation to create legal principles that adapt to shifting social, economic, and moral circumstances. In particular, the doctrines of negligence, duty of care, vicarious liability, and product liability have been impacted by the lack of statutory guidance.

In order to defend individual rights and advance social justice, courts have frequently expanded the parameters of liability in addition to filling in gaps. Famous cases like DonoghueFamous cases like Rylands v. Fletcher and Donoghue v. Stevenson show how judges have enlarged the scope of tort law without parliamentary intervention by using creative interpretation. But the balance of power between the legislature and the judiciary is called into serious question by this judicial creativity. Critics contend that judges run the danger of compromising legal certainty and democratic accountability when they assume a policymaking role. However, supporters believe that judicial innovation is necessary to keep tort law flexible and applicable in the face of modern issues like consumer protection, environmental damage, and technological hazards.The purpose of this case study is to investigate the dynamic interplay between judicial innovation and parliamentary silence in the evolution of tort law. It seeks to examine the ways in which judicial activism has influenced the development of legal doctrines, the degree to which courts have taken on the role of policymakers, and the effects of this judicial lawmaking on justice, the rule of law, and democratic governance.

Review of Literature:

1. Classical foundations: the tort's judge-made nature the gradual, common-law expansion of torts is highlighted by early commentators. Salmond and Winfield codify categories while recognising the creative role of courts; Blackstone places private wrongs within judicial remedies; and Holmes frames tort as changing social policy. Cardozo and Goodhart describe how legal innovation without a statute is made possible by appellate technique.

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2. Duty of care: enlargement and reevaluation One example of how parliamentary silence led to doctrinal leaps is the contemporary law of negligence. Donoghue v. Stevenson uses the "neighbour principle" to create a general duty. Later, as seen in Anns v. Merton, Caparo, and the recalibration of public-authority duty in Robinson v. Chief Constable of West Yorkshire, courts alternate between expansion and control. Grant v. Australian Knitting Mills and Cooper v. Hobart are two examples of comparable streams that demonstrate comparable judicial steering.
3. Strict and vicarious liability: policy openly at workJudges extended liability in the absence of fresh statutes: Rylands v Fletcher, refined across jurisdictions; vicarious liability expanded to intentional torts through "close connection" and enterprise-risk reasoning.
4. Constitutional torts, environmental harm, and public law influences Indian courts innovated to fill legislative and remedial gaps. Public law damages emerged in Rudul Sah and Nilabati Behera; custodial norms in D.K. Basu; environmental torts/PIL architecture in the M.C. Mehta line. These illustrate how constitutional values steer tort remedies where statutes are thin.
5. Policy vs. principle: the great debate Whether courts should make policy in private law divides theorists. Corrective-justice scholars argue tort's integrity lies in bipolar rights/correlative duties; civil-recourse theory recasts tort as empowering victims to act. Law-and-economics treats tort as a tool for cost-minimization and deterrence. Cane, Stapleton, and Dworkin debate legitimacy and technique of incremental law-making.
6. Judicial activism, restraint, and democratic legitimacy: Bickel's "counter-majoritarian difficulty," Kavanagh's institutional justification, and Barak's proportionality model frame legitimacy concerns when courts innovate amid legislative inaction.

Objectives of the Study:-

1. To analyze the impact of parliamentary silence on the development of tort law and to identify areas where legislative inaction has left significant gaps.
2. To examine the role of judicial innovation in shaping and expanding tort law principles, particularly through landmark judgments and precedents.
3. To evaluate the balance between judicial activism and judicial restraint, and its implications for democratic legitimacy, accountability, and predictability in law.
4. To examine how various common law jurisdictions address the tort law gaps brought about by legislative silence.
5. To evaluate the socio-legal effects of judicial innovation in tort law, particularly in areas such as strict liability, negligence, environmental protection, and constitutional torts.
6. To draw attention to the difficulties and constraints of judge-made tort law and to make the case for potential legislative action to guarantee uniformity and clarity.

Recommendation:

1. Legislative clarification and codification To lessen an excessive reliance on judicial lawmaking, Parliament should address areas of tort law that are still unclear, especially those pertaining to negligence, product liability, and environmental liability. More clarity and predictability can be achieved by codifying fundamental principles without limiting judicial discretion.
2. Equitable Innovation in the Judiciary Where necessary, courts should continue to innovate to uphold rights and solve modern issues, but they should do so gradually and within the bounds of the constitution. To preserve democratic legitimacy, judicial reasoning must clearly recognise the boundaries of policymaking.
3. Harmonization of Tort and Constitutional Remedies
   In India and similar jurisdictions, clearer legislative guidelines are needed to harmonize constitutional torts with private law remedies to avoid overlaps and inconsistencies.
4. Parliament–Judiciary Dialogue
   Establish mechanisms for better interaction between the legislature and the judiciary, such as law reform commissions or parliamentary committees, to respond to judicially-identified gaps in tort law.
5. Comparative Learning
   Borrow insights from other common law jurisdictions where courts and legislatures have successfully balanced innovation and codification.
6. Judicial Training and Guidelines
   Judicial academies should incorporate comparative tort law and law-making techniques in training to ensure judicial innovation is principled, consistent, and socially responsive.
7. Promoting Academic and Policy Research
   Law reform commissions and universities should undertake empirical studies on the socio-economic impact of judicially developed tort principles, particularly in areas like medical negligence, consumer safety, and environmental harm.

Conclusion:

The dynamic interaction between judicial innovation and parliamentary silence has had a significant impact on the evolution of tort law. Legislators have frequently avoided codifying or amending tort doctrines, which has resulted in notable voids in areas like strict liability, vicarious liability, negligence, and constitutional torts. Courts have been forced to take on a more innovative role as a result of this silence, making sure that the law continues to adapt to new social, technological, and economic issues. Famous rulings like M.C. Mehta v. Union of India in India and Donoghue v. Stevenson in the UK show how judicial reasoning has extended the

boundaries of liability in the absence of legislative action. For tort law, judicial innovation has been both a strength and a challenge. On the one hand, it has protectedIt has filled important legal gaps, advanced justice, and protected individual rights. However, it has sparked worries about democratic accountability, judicial overreach, and unpredictability. To comprehend the validity of judge-made law, the conflict between judicial activism and restraint is still crucial. Ultimately, the study shows that judicial creativity has been essential to the development of tort law, which thrives on flexibility.Nonetheless, increased legislative involvement is required to support judicial innovation in order to maintain stability and coherence over the long run. The best course of action is a balanced strategy, in which Parliament offers structure and clarity while courts maintain the flexibility to apply principles to novel situations. Therefore, rather than being seen as a conflict, the relationship between judicial innovation and parliamentary silence should be seen as a collaboration that is vital to the development and applicability of tort law.

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Conflicts of interest
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