A Critical Evaluation of the Tort of Alienation of Affection in Light of Shelly Mahajan

*Declaration***:** The author has not used AI for writing this paper. All research, analysis, case law interpretation, arguments and conclusions presented in this manuscript is the author's own work.

ABSTRACT

The Tort of Alienation of Affection (AoA) has recently attracted attention in India following the Delhi High Court's order in *Shelly Mahajan v. Bhanushree Bahl & Anr. (2025).* Although Indian courts have referred to the possibility of such a Tort, its exact scope and legal basis continue to remain unclear. This raises important questions regarding the nature of liability under AoA and the person against whom such liability should properly lie. The present article examines the issue by looking at the conceptual foundations of Tort law, relevant judicial observations, and the treatment of similar claims in other jurisdictions. Particular attention is given to the common assumption that a third party who is alleged to have interfered in a marriage can be made liable for alienation of affection. The article argues that this understanding is difficult to justify when examined in light of established principles of Tort law. Since, marital rights and obligations exist primarily between spouses, they are generally enforceable only against the spouse who owes those obligations. On this reasoning, the imposition of liability on a third party appears conceptually weak. The article therefore suggests that, if AoA is to be recognised as a Tort in India, liability should be confined to the spouse whose conduct results in the breach of marital obligations. Such an approach would be more consistent with the idea of rights in personam and would better align Tort law with the existing framework of Matrimonial law.

Keywords- Tort Law, Alienation of Affection, Shelly Mahajan, Rights in Personam, Rights in Rem, Tort of Negligence

I. INTRODUCTION

The law of Torts in India occupies a distinctive position within the legal system. Unlike codified statutes such as the Indian Penal Code,1860, Code of Criminal Procedure,1973, or the Code of Civil Procedure, 1908, Tort law is not contained in a single legislative instrument. It is primarily a body of judge-made principles derived from common law, developed through judicial precedents. As a result, Tort law lacks a statutory definition, with notable jurists such as Salmond, Winfield and Fraser offering varying conceptualizations of what constitutes a Tort. Yet, the general consensus is that a Tort is a civil wrong, actionable through an action for unliquidated damages, which does not fall within the domains of contract, trust, or other special civil enactments.

The foundational requirement for any tortious claim is the existence and subsequent violation of a legal right. Such legal rights may be *"rights in rem"* enforceable against the world at large or *"rights in personam"*, which bind only specific persons. This distinction becomes critical when determining whether a particular wrong can be treated as a Tort warranting a suit against the given defendant. For instance, in negligence, liability arises only when a defendant owes a legal duty of care to the plaintiff and breaches that duty by an act or omission. Tortious liability is rooted not merely in harm, but in the breach of a legally recognized duty coupled with legal injury.

This foundation becomes particularly relevant in the context of the Tort of Alienation of Affection (AoA), a civil action long recognized in Anglo-American common law but largely abandoned in contemporary jurisdictions. Indian courts have not explicitly recognized this Tort, yet recent judicial pronouncements especially the 2025 Delhi High Court order in *Shelly Mahajan v. Bhanushree Bahl & Anr*.[1] have shown an emerging willingness to entertain AoA claims in theory. The court held that a civil suit for AoA is maintainable where a third party intentionally interferes with the marital relationship, provided the plaintiff establishes a prima facie case of wrongful and intentional conduct on the part of the third-party defendant.

[1] *Shelly Mahajan v. Bhanushree Bahl & Anr.,* CS(OS) 602/2025 (Del. HC Sept. 15, 2025) (India)

This paper makes an attempt by arguing that Indian courts have misconstrued the nature of the right involved in marital consortium. The right to affection between spouses is inherently a right in personam, arising solely from the marital bond and enforceable only between the spouses themselves. Consequently, imposing liability on a third party who owes no legal duty to protect the marital relationship misaligns with fundamental principles of Tort law. The erring spouse, not the outsider, should logically bear liability for depriving the other spouse of marital affection. While codified matrimonial statutes offer remedies such as divorce and maintenance, these remedies do not preclude a distinct Tortious action for damages arising from the breakdown of marital consortium.

This paper critiques the Delhi High Court order, analyses the conceptual inconsistencies in recognizing third-party liability for AoA, and proposes a refined doctrinal approach harmonizing essentials of AoA with established Tort principles. The research aims to contribute to the evolving discourse on whether, and how, AoA should be incorporated within Indian Tort jurisprudence.

II. WHAT IS A TORT?

It is pertinent to understand that unlike other laws like IPC, CrPC or CPC, which are enacted by the Parliament or the State legislatures, there is no codified law or written statute for the law of Torts. It is completely based on common law which means that it survives just on or has its basis in legal precedents. Since, Tort law is not codified, this also means that there is no single definition of Torts. Various jurists have defined Torts in their own ways, out of which definitions given by Salmond and Winfield are the most widely accepted and recognized ones.

According to Salmond, “It is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation”[2]

[2] R.K. Bangia, *Law of Torts 4* (26th ed. 2021)

According to Winfield, "Tortious liability arises from the breach of a duty primarily fixed by the law: this duty is towards persons generally and its breach is redressable by an action for unliquidated damages"[3]

The basic conclusion after reading the above definitions as to the definition of Tort is that, firstly, Tort is a civil wrong and secondly, every civil wrong is not a Tort. There are other civil wrongs also, like breach of contract or breach of trust which are dealt with by special statutes like Indian Contract Act, 1872 and the Indian Trusts Act, 1882. In other words, it can also be said that Tort has a residual definition, that is when a wrongful act has been done, it has to be first seen whether it comes under civil wrong or criminal wrong. If not exclusively dealt under any other civil or criminal statute, then we can label it as a Tort and the remedy would lie in filing a common law action for unliquidated damages.

So, to constitute a Tort, there are two essential conditions:[4]

1. Some act or omission on the part of the defendant; and
2. Violation of that legal right (this is referred to as injury)

When the above two essentials are fulfilled, we can say that the aggrieved has the right to claim damages for the legal injury caused to him. It is pertinent to understand what is a legal right. I have a legal right to not be assaulted or defamed. I have a legal right to enjoy my property peacefully without any trespasser violating that right of mine. These are legal rights. People often confuse legal rights by moral obligations. Can I say that a person starving on the street has a legal right to get food from the people passing by? Or can it be said that the people passing by will be liable if they don't give food to the starving person?

In this case there is no legal right, law does not confer this right or impose a duty on the public in general to obey it. This is purely a moral obligation at best. So, not obeying it would not constitute a civil wrong.

[3] Id.
[4] Id. at 16.

III. RIGHT IN REM v RIGHT IN PERSONAM

"Right in Rem" is the right which one enjoys against the entire world. In other words, anyone has the tendency or ability to violate this right of a person. For example, the right to not be defamed (Tort of Defamation) is there against the entire world. If tomorrow, any random person defames me, I will be legally entitled to claim for damages. So, this right is enforceable against the entire world and hence is called as *"Right in Rem"*

"Right in Personam" is the right which is only enforceable against a specific person and not against the entire world. For example, if I have a Contract with B, that B will deliver me his car and in exchange I will give him Rs 10,000, then in this case I have a right created by virtue of having a contract to get the car. This right to get the car is not directly conferred by any law or statute but is created with the creation of the contract. This right created has backing of law once created but is not directly conferred by any law. Now, if B does not deliver me the car by the time stipulated in the Contract, then B will be violating my right to get the car. In this case, I can get my right enforced against B only and not against the entire world. This is referred to as "Right in Personam", right against a specific person. Even though this would not be considered as a Tort as this wrong is specifically dealt with under the Indian Contract Act but it is enough to understand what "*Right in Personam"* means.

IV. NEGLIGENCE AS A TORT

The essentials of Tort of negligence are:[5]

1. There is a legal duty of care owed to the Plaintiff
2. Breach of that legal duty
3. Damage caused to the Plaintiff

A person can be held liable under the Tort of negligence only if he has a legal duty of

[5] Id. at 228.

care owed to the Plaintiff and not otherwise. For example: A life-guard by the beach has a legal duty of care owed to the visitors to protect them in case someone's life is in danger. Let's imagine a person A, playing by the beach and suddenly due to a high tide gets swept away. Now it will be the legal duty of the life-guard to try to save that person. If the life-guard chooses to do nothing, then he will be liable under the Tort of negligence. Whereas, do you think other people also would be liable for the Tort of negligence who are present there but do nothing to save him? The answer is an unequivocal 'No', as there is no duty of care owed by them towards the drowning person. So, it is clear that this Tort of negligence is not enforceable against the entire world, but is only enforceable against the person who owes a legal duty of care towards the Plaintiff. The visitors on the beach have a Right in Personam against the life-guard. Similarly, a patient has a Right in Personam against the Doctor who conducts a surgery on him to not to be negligent while performing the surgery.

V. JUDICIAL POSITION ON THE TORT OF AOA IN SHELLY MAHAJAN V. BHANUSHREE

The judicial position on the Tort of Alienation of Affection in India can be understood from the recent order of the Delhi High Court in *Shelly Mahajan v. Bhanushree Bahl & Anr. (2025)*[6]. Before examining the legal principles emerging from the decision, it is necessary to briefly consider the facts and issues involved in the case.

Facts:

- The civil suit was filed by Shelly Mahajan (wife) seeking damages on the premise that the plaintiff was entitled to affection and companionship of the defendant no. 2 (husband), and that such affection was allegedly withdrawn on account of the active and mala fide conduct of defendant no. 1 (3rd party).
- While seeking damages for the Tort of AoA, the plaintiff has alleged that defendant no.1 knowingly and intentionally interfered with her marital relationship with defendant no.2, thereby causing its breakdown.

[6] Shelly Mahajan, supra note 1.

Observations of the Court:

- The Tort of AoA belongs to a category of so-called "heart-balm" Torts, a concept derived from Anglo-American Common Law. Heart-balm actions remain nascent in India. The apex court in the case of *Pinakin Mahipatray Rawal v. State of Gujarat*[7], observed that in India, whenever a marital relationship is strained and spouse starts living separately, the main and the most commonly used remedy is the claim for maintenance.
- The court also laid emphasis on the strict evidentiary standards that would apply in case of such suits. Mere association or acquaintance with a spouse is insufficient to establish a case under Tort of AoA. There must be clear evidence of active and wrongful interference, with acts that are intentional and calculated to entice one spouse away from the other.
- Furthermore, in the case of *Indra Sarma v. V.K.V. Sarma*[8], The Apex court opined that if a woman knowingly enters into a relationship with a married man, such conduct would amount to an intentional Tort, namely, interference with the marital relationship by alienating the husband from his wedded wife and children.
- The court further noted that such interference results in loss of affection and breaks the social bond and thus gives rise to a cause of action for the affected spouse and children against the third party at least in theory.
- In England and Wales, by 1857 both Torts related to "criminal conversation" and AoA had been extinct for all practical purposes. The position today is that contemporary UK courts recognize no cause of action for interfering with marriage and this just focuses on divorce settlements, not punishing extramarital associations. In Canada, the Supreme Court unequivocally rejected a suit solely based on AoA.
- The court held that, for the suit to be maintainable, the plaintiff must establish a prima facie case that an injury has been caused due to interference of a third party. It was held that, if the spouse has a protectable interest or right in marital

[7] *Pinakin Mahipatray Rawal v. State of Gujarat,* (2013) 10 SCC 48 (India).
[8] *Indra Sarma v. V.K.V. Sarma,* (2013) 15 SCC 755 (India).

consortium, then the correlative duty would be that any third party must not intentionally interfere with that relationship in order to take that right of affection away from the spouse, which the spouse is legally entitled to.

- The court also made a clear distinction with regards to the possibility of the spouse himself voluntarily entering into an extra marital relationship. In such cases, a suit for Tort of AoA would not be maintainable against the third party.
- The court categorically held that such suits for Tort of AoA do not exclusively fall under the jurisdiction of Family courts as the relief sought under such suits is inherently distinct from the reliefs sought under purely matrimonial disputes under the Matrimonial Laws (Judicial Separation, Restitution of Conjugal Rights, Divorce, Maintenance). The key point is that these remedies are against the erring spouse and not against the third party because of whose interference the marital bond has come to an end.
- The claim of damages in a suit for Tort of AoA is founded solely on the alleged acts of the third party and not based on any cause of action arising because of any acts between the wedded couple per se. So, in that sense the cause of action is independent of the marital tie and is premised on the tortious interference of the third party with the plaintiff's legally recognized relationship. Considering the above ratio, the court held that the suit was maintainable in a Civil court and issued notice to the husband (defendant no. 2) and the third party (defendant no. 1).

Issues:

The Hon'ble Delhi High Court basically dealt with two crucial questions of law.

a. Whether the suit was maintainable before a Civil Court? Or was a Civil court barred to try the suit given Family Court has exclusive jurisdiction over the subject matter?
b. Whether a prima facie case was established for the Tort of AoA? Whether a civil action for the wrongful interference is analytically sustainable?

Ratio:

Both the questions were answered in the affirmative. As far as the second issue is concerned the court listed the essentials for a civil action under the Tort of AoA to be sustainable viz.:

- Plaintiff to establish intentional and wrongful conduct by the defendant directed at alienating the marital relationship of the plaintiff.
- Clear causation link between the conduct of the defendant and the injury caused to the Plaintiff.
- The loss claimed must be ascertainable and susceptible to rational assessment.
- The relationship between the erring spouse and the third party must not be formed voluntarily due the actions of the erring spouse himself/herself.

In the light of above ratio, one thing is certain that Indian Courts have acknowledged the Tort of AoA, at least in theory and have shown inclination towards dealing with such actions and providing relief to the aggrieved spouse.

VI. CRITIQUE AND RE-EVALUATION OF THE INDIAN APPROACH

In my considered view, the Tort of Alienation of Affection (AoA) has not been correctly conceptualized in Indian jurisprudence. I respectfully diverge from the prevailing judicial position on the question of the appropriate defendant in actions alleging AoA. It is my submission that liability should not be fastened upon the third party, rather, the errant spouse alone should be held answerable for the violation of marital consortium.

There is no dispute that a spouse possesses a legally cognizable interest in the affection, companionship, and consortium of the other spouse. However, the nature of this right warrants closer scrutiny. This marital right, in my opinion, is a *"right in personam"*, enforceable only against the other spouse, and not a *"right in rem"* imposable upon the world at large. The right to affection arises exclusively out of the marital relationship.

Just as contractual rights are enforceable only against parties privy to the contract after the birth of the contract, the rights and obligations flowing from marriage bind only the spouses inter se. The right to affection exists because the marriage exists and not the other way around. So, it makes sense to hold that the right exists against the spouse.

It is well accepted that where a legal right exists and a statutory remedy is absent, the law of Torts may supply a compensatory remedy, following the maxim *"Ubi Jus Ibi Remedium"*. The issue here is not the existence of the right to affection, but against whom that right is enforceable against.

This distinction becomes clearer when viewed comparatively against other existing widely recognized Torts. In the Tort of negligence, a civil action lies only when the defendant owes a duty of care towards the plaintiff. A defendant who owes no such duty cannot be held liable, even if injury results. The mere occurrence of a legal injury is insufficient without a corresponding legal duty.

Similarly, I submit that in the context of AoA, the only person who owes a legal duty of affection, fidelity, and companionship is the spouse. At most, a third party may be under a moral obligation not to interfere in a marriage, but this moral expectation does not crystallize into a legal duty enforceable by damages. Therefore, attributing liability to a third party who is not a custodian of the marital right amounts to shifting responsibility away from the very person who is legally bound to protect that right.

The inconsistency and drawback in the present understanding of the Tort of AoA by the Indian Courts becomes even more evident when examining the following two categories of situations:

a. Where the spouse voluntarily engages in an extramarital relationship without any inducement by the third party; or
b. Where the third party intentionally and knowingly interferes with the marital relationship.

Indian courts allow a claim of damages only in the second scenario. Yet, in both instances, the spouse suffers the same legal injury, the loss of consortium. If the purpose of Tort law is to compensate for the violation of a legal right when no codified law addresses the injury, it is unclear why liability should arise only when the third party actively induces the spouse and not otherwise. The principle of *"Ubi Jus Ibi Remedium"* appears inconsistently applied, particularly when the injury stems from the spouse's voluntary breach of marital duty. The goal in law of Torts is to compensate the aggrieved for the damage caused when others statutes are silent on it. But as per current understanding of the essentials of Tort of AoA, no damages will be granted in case spouse voluntarily enters into a relationship with the third party, even though the Plaintiff has still suffered legal injury. This goes right against the foundational principles on which the law of Torts survives: *"Ubi Jus Ibi Remedium"*. In the former case there is a legal right and its violation but no remedy available for the aggrieved spouse.

The spouse, as an adult and as a party to the marital relationship, is fully aware of his legal obligation to preserve marital affection. If a spouse voluntarily or involuntarily violates this duty, he should be the primary bearer of the liability arising therefrom. To impose damages upon a third party instead of the erring spouse is, in effect, to hold legally responsible a person who is not the holder or guarantor of the marital obligation in the first place.

It may be contended that the affected spouse already has remedies under matrimonial statutes such as the Hindu Marriage Act against the erring spouse—e.g., divorce, judicial separation, maintenance and therefore a Tort action against the husband is unnecessary or barred because Tort law is residual in nature (only applies when no other codified civil law in place providing remedy for the legal injury). I respectfully disagree. Maintenance or alimony serves an economic function; it compensates for financial dependency, not the emotional and dignitary harm arising from the breakdown of marital consortium. A Tort action for AoA against the spouse would serve a distinct compensatory purpose and should therefore not be precluded merely because other matrimonial remedies exist.

Accordingly, a more coherent doctrinal position would recognize exclusive spousal liability for the Tort of Alienation of Affection, aligning the law with both the nature of marital rights and foundational principles of Tort liability.

VII. CONCLUSION

The Tort of Alienation of Affection occupies a nascent and uncertain position within Indian jurisprudence. While Indian courts, as exemplified by the Delhi High Court in *Shelly Mahajan v. Bhanushree Bahl & Anr*., have recognized the theoretical possibility of AoA claims, the current application particularly imposing liability on a third party misaligns with the fundamental principles of Tort law. The right to marital affection is inherently a *Right in Personam*, arising exclusively between spouses and enforceable solely against the erring spouse, not against unrelated third parties.

The current judicial approach, which extends liability to a third party, risks diluting the core purpose of Tort law, which is to provide remedies for legal injury when no statutory provision exists, while respecting the boundaries of legal duty versus personal moral responsibilities. By analogizing AoA with established Torts such as negligence, it becomes clear that liability should attach only to those who owe a direct duty to the injured party which in the present context, is the spouse who violates the duty of marital affection.

In light of these considerations, this paper contends that Indian courts should reorient the Tort of AoA to focus exclusively on the erring spouse, thereby aligning the doctrine with the principles of rights in personam, duty of care, and the residual character of Tort law. Such a recalibration would preserve the protective function of Tort law, allow for meaningful remedies for aggrieved spouses, and maintain doctrinal consistency with both established Tort principles and existing matrimonial statutes.

Ultimately, a refined approach to AoA would strike an appropriate balance between providing redress for legal injury and preventing the extension of liability to parties who

owe no enforceable duty, ensuring that Tort law serves its remedial and corrective purpose without overreaching into moral obligations.