Volenti non-fit Injuria: An Analysis

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Introduction

The word 'Tort' comes from the Latin term 'Tortum' which means 'to twist. Tort means a civil wrong that is not exclusively a breach of contract or breach of trust.[1]According to Salmond, "Tort is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or the breach of a trust or other merely equitable obligation."

When the plaintiff brings an action against the defendant for a particular tort, providing the existence of all the essentials of that tort, the defendant would be liable for the same.[2]However, there are certain situations where the defendant can avoid his/her liability by taking the defenses available. These defenses are categorized under two different heads i.e. General Defences and Specific Defences. General Defences are those which are available for several wrongs whereas Specific defenses are available for a particular specific tort to which it relates. For example, defense of consent (*Volenti non-fit injuria*) may be taken for trespass, defamation and many other wrongs hence it is General Defence. The lists of General Defence available for the tort committed by the defendant to avoid his/her liability are as follows:

1. *Volenti non-fit injuria*
2. Plaintiff, the wrongdoer
3. Inevitable accident
4. Act of God
5. Private Defence
6. Mistake
7. Necessity
8. Statutory Authority

This research work analyzes the defense of consent i.e. Volenti non-fit injuria in Detail.

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[1]The Limitation Act, 1963, S.2(m), No.36, Act of Parliament, 1963(India)

[2] R.K. BANGIA, THE LAW OF TORTS, 29, Allahabad Law Agency 2020

Meaning

The doctrine of *Volenti non-fit injuria* means*, "to a willing person, no injury is done[3]"* It means if a person willingly consents to the infliction of harm upon itself he/she is not entitled to get any remedy under the Law of torts. Any harm suffered voluntarily by anyone does not amount to legal injury and the same is not actionable by the law of torts. In cases where the plaintiff gives his consent to suffer some harm upon himself in such cases, he is not entitled to remedies and his consent acts as a good defense for the defendants.

For example, A invites B to his home for dinner, so here A cannot sue B for trespass. As A has voluntarily inflicted some harm upon itself. However, it has to be kept in mind that an act causing harm must not go beyond the consented limit. In the game of Football players impliedly consents to the normal course of injury but it does not mean that they cannot sue for an injury that is caused deliberately by other players.

An action of defamation cannot be brought by a person who voluntarily agrees to the publication of a matter defamatory of himself.[4]No man can enforce a right that is voluntarily waived or abandoned.[5] Consent of waiving his/her right can be express or implied. For the defense to be available it has to be proved by the defendants that the plaintiff was fully aware of the risk involved and its extent. Mere knowledge of the risk is not enough; the plaintiff needs to give his consent for sustaining that harm.

The defense of *Volenti non-fit injuria* was successfully pleaded in the case *Padmavati v Dugganika*[6]. In this case, two strangers took a lift in a jeep while the driver was taking jeep for filling petrol. Unexpectedly, one of the bolts fixing the right front wheel came out resulting in two strangers were thrown out of the jeep and were seriously injured. One of them even died as a consequence of the incident. It was held by the court that neither driver nor master is liable due to two reasons i.e. First, it was a clear accident. Second, the strangers voluntarily entered into a jeep due to which defense of *Volenti non-fit injuria* can be successfully pleaded. Similarly, when a trespasser is aware of the presence of spring guns, he is not entitled to recover damages when he is injured by spring guns.[7]

Essential elements of *Volenti non-fit injuria*

To take the successful defense of *Volenti non-fit injuria,* it becomes necessary to have certain essentials elements. These are as follows:

- ***Free Consent***

  To have this defense available it is important to prove that the consent of the defendant was free and was not influenced by anything. If the consent of the plaintiff has been obtained by fraud or under compulsion or some mistaken impression, such consent does not serve as a good

[3] CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/volenti_non_fit_injuria#:~:text=Definition%20from%20Nolo's%20Plain%2DEnglish,sue%20for%20any%20resulting%20injuries. (last visited May 26, 2021)
[4] Chapman v. Lord Ellessmere, (1932) All E.R. 221
[5] SALMOND, TORTS 47 14th ed.
[6] Padmavati v Dugganika, MANU/KA/0061/1974.
[7] Illot v. Wilkes, (1820) 3B & Ald 304

defense.[8] Additionally, it is also to be kept in mind that the act performed must be the same for which consent was given. In simple words, an act performed and the consent given for the act must be the same. For example, if a guest is requested to sit in a drawing-room and without any authority or justification, he enters the bedroom, he would be liable for trespass and he cannot take the defense of your consent to his visit to your house.[9]

This was clearly explained in *Lakshmi Rajan v. Malar Hospital Ltd.*[10]In this case the complainant i.e. Lakshmi Rajan had a painful lump in her breast. The lump had nothing to do with the uterus but during surgery, her Uterus was removed without any prior justification or consent. The defendant took the defense of Volenti non-fit injuria but was rejected. It was held by the court that the defendants were liable. As the court said that the patient's consent for the said operation does not amount to the removal of the uterus.

- **Consent must not be obtained by fraud**

  Consent obtained by fraud does not serve as a good defense. However, mere concealment of facts may not be such a fraud as to vitiate consent.[11] The most famous case under this head is *R. v. Williams*[12]. In this case, the accused music teacher was held guilty of rape. He had sexual intercourse with a girl student of 16 years by making her believe that his act will improve her voice. The victim misunderstood the nature of the act and gave her consent believing that the act will improve her vocal cord. The court held the accused guilty of rape and the defense of *Volenti non-fit injuria* was not allowed as the consent was taken by fraud.

- **Consent must not be obtained under compulsion**

  There are circumstances when an individual does not have freedom of choice and consent given under such circumstances does not amount to proper consent. For example, a person may be compelled by some situation to knowingly undertake some risk that he would not have undertaken if he had a free choice.

  These types of situations generally arise in a master-servant relationship. Servants generally face a dilemma of either accepting the risky task or losing their job. In this situation, if the servant agrees to undertake the risky job then it does not necessarily imply that he also agreed to suffer the consequences of the risky job. In the *Imperial Chemical Industries*[13]case, it was held that if a workman adopts a risky method of work, not because of any compulsion of his employer but of his own will then the defense of *Volenti no fit injuria* can be successfully pleaded by the defense.

- **The defendant must not be negligent**

  Generally, when the plaintiff consents to take some risks the normal presumption is that the defendant is not going to be negligent. If there is any sort of negligence from the defendant's

[8] R.K. BANGIA, THE LAW OF TORTS, 32, Allahabad Law Agency 2020
[9] Ibid
[10] III (1998) CPJ 586 (Tamil Nadu SCDRC)
[11] Hegarty v. Shine, (1878) 2 L.R. Ir. 273
[12] (1923) 1 K.B. 340
[13] Imperial Chemical Industries Ltd. V. Shatwell, (1956) A.C. 656

side then he can be made liable for the act and the doctrine of *Volenti non-fit injuria* is not applicable. For example, if an individual consent to an operation and the operation is unsuccessful because of the surgeon's negligence then the surgeon can be made liable for this, as an individual has not consented to Surgeon's negligence.

This was more clearly explained in the *Slater*[14] case, In this case, the plaintiff was hit and injured by a train while he was walking along a narrow tunnel on a railway track owned by the defendants. The defendants knew that the tunnel was generally used by General Public due to this the company had instructed drivers to whistle and slow down while entering into the tunnel. The accident had occurred due to negligence from the Driver's side as he failed to follow the instructions. The honorable court held that the defendants were liable and cannot take the plea of *Volenti non-fit injuria.*

- ***Mere Knowledge does not imply assent***

  To have the correct application of the doctrine of *Volenti non-fit Injuria* two important points needs to be proved by the defendants. i.e. Plaintiff was aware of the risk present there and had consented for the same to suffer the harm. In case the plaintiff was only aware of the risk but has not given his consent then in such a situation the defense of *Volenti non-fit Injuria* cannot be taken. In simple words just because the plaintiff was aware of the harm does not imply that he/she has consented to suffer the harm.

  It is better explained in the *Bowater*[15]case where the plaintiff i.e. Cart Driver was asked by the defendants to drive a horse which both were aware that the horse is likely to be bolted. The plaintiff was not willing to drive the horse and protested to the same but later took out the horse in obedience to order. As a result, a horse bolted and the plaintiff was injured. It was held by the court that the doctrine of *Volenti non-fit Injuria* is not applicable and the plaintiff was entitled to recover the compensation amount.

  In *Smith v. Baker*[16]case too this issue was raised. Here the plaintiff was a worker employed by the defendants on working a drill to cut rock. Crane was used for carrying stones from one side to another and every time the crane passed it passed over the plaintiff's head. With time while he was busy continuing his work a stone fell from the crane resulting in the injury of the plaintiff. The plaintiff was generally aware of the risk but the employers were negligent on their part as they did not warn him about the recurring danger. The House of Lords held that in this case there was a mere knowledge of risk without any assumption of it. Hence, the doctrine of *Volenti non-fit Injuria* is not applicable and the defendants were liable.

[14]Slater V. Clay cross Co. Ltd. MANU /UKWA/0052/1956
[15] Bowater V. Rowley Regis Corporation, (1944) K.B. 476
[16] (1891) A.C. 325

Limitations of the Doctrine

The scope of the applicability of the doctrine i.e. *Volenti non-fit injuria* has been limited by certain things. The limitations of this doctrine are as follows:

I. Rescue Cases
II. Illegal Acts
III. Breach of Statutory Duty

Rescue Cases

The rescue case is one of the exceptions to the applicability of the doctrine of *Volenti non-fit injuria.* Under this head, when the plaintiff willingly faces a risk to rescue someone from the danger which has been created by the wrongful acts of defendants then the defendant cannot take the defense of *Volenti non-fit Injuria.* For example, A voluntarily jumped into a well to save B, B had fallen due to the negligence of C. A while saving B suffered some personal injuries and sued C for the same. Here C cannot take a defense of *Volenti non-fit Injuria* and will be liable for the same.

This limitation has been clearly stated in the case of *Haynes v. Harwood*[17]*.* In this case, the defendant's servant left a two-horse van unattended in a street. Then a teen boy threw a stone on the horses and they bolted, causing extreme danger to women and children on the road. A police constable who was on duty in a nearby Police Station saw those horses ran to stop them and managed the same. But while doing so he suffered terrible personal injuries. The defendant took the defense of *Volenti non-fit injuria* but was not accepted as being the rescue case. In the *Cutler*[18] case, it was held that a person who is injured in an attempt to stop a horse that creates no danger will be without remedy.

When the defendant by his negligence has created a danger to the safety of A and he can foresee that somebody else, say B is likely to rescue A out of that danger, the defendant is liable to both A and B. Each one of them can bring an action independently of the other.[19]

Illegal Acts

No consent can legalize any unlawful act. This is one of the prime exceptions of this maxim i.e. *Volenti non-fit injuria.* It doesn't matter that every other essential are completely fulfilled even then the defense of *Volenti non-fit Injuria* cannot be taken.

For example, A shoots B then A cannot escape by saying that B had given his consent for the same to B. A cannot take the defense of *Volenti non-fit injuria.* In simple words, any illegal and Unlawful act cannot be justified by taking the defense of *Volenti non-fit injuria.*

Breach of Statutory Duty

[17] (1935) 1 K.B. 146
[18]Cutler V. United Dairies, (1933) K.B. 297
[19]R.K. BANGIA, THE LAW OF TORTS, 32, Allahabad Law Agency 2020

This doctrine is not applicable in a situation where action relies on the breach of statutory duty. This limitation was clearly explained in *Wheeler v. New Merton Boards ltd.*[20]In this case, the defendants installed a dangerous machine in a factory plant to be used by the employees. The machine was not fenced or maintained as said in Factory and Workshop Act, 1901. Due to its bad condition, a workman herein plaintiff was injured during the course of his employment work. The plaintiff sued the defendants for the same. It was held by the court that the maxim *volenti non fit injuria* was not a defense to a personal injury claim against an employer when there is a breach of statutory duty from the employer's side.

Difference between Volenti non-fit Injuria and Contributory Negligence

When both parties are ignorant then there is Contributory negligence involved. The differences between *Volenti non-fit injuria* and Contributory negligence are as follows:

- The doctrine of *Volenti non-fit injuria* is a complete defense in case of contributory negligence the liability of defendants is based on the proportion of his/her fault. Basically, in contributory negligence, the damages which the plaintiff can claim will be reduced to the extent to which he/she was to blame.
- In the case of Contributory negligence, both i.e. plaintiff and defendant are negligent. Whereas in *Volenti non-fit Injuria* it may be a situation that the plaintiff may have voluntarily entered at the same time he/she is exercising the due care of his safety.
- The next difference is about the awareness of the nature and extent of danger which the plaintiff is going to encounter. In the case of *Volenti non-fit injuria, the* plaintiff is completely aware of the nature and extent of danger which he/she is going to encounter. Whereas in Contributory negligence plaintiff did not know although he ought to have known about it.

Landmark Cases of *Volenti non-fit Injuria*

Although there are many landmark cases relating to *Volenti non-fit injuria*. Describing all those cannot be possible, so I will be describing only a few of them. The lists of landmark cases are as follows:

- Padmavati v Dugganika
- Woolridge v. Sumner
- Thomas v. Quartermaine
- Hall v. Brooklands Auto Racing Club
- R v. Williams

***Padmavati v. Dugganika*[21]**

In this case, a driver gave a lift to two strangers in a jeep while going for a petrol filling. Suddenly one of the bolts fixing the right front wheel to the axle came out and the Jeep went out of control resulting in the

[20] (1933) 2 KB 297
[21] Padmavati v Dugganika, MANU/KA/0061/1974.

accident. Both the strangers were tossed away and one of them died while the other suffered serious injuries.

It was held by the court that the defendants cannot be held liable for the act as it was a sheer accident and the plaintiff voluntarily entered into a Jeep. Hence, the defense of *Volenti non-fit injuria* can be successfully pleaded.

***Woolridge v. Sumner*[22]**

In this case, a photographer hereafter called Plaintiff was at a Horse show and was just standing in the boundary of the arena. Suddenly one of the Horses in the show hastily took around due to which the plaintiff was frightened and fell into the arena. Due to which he suffered serious injuries.

The plaintiff sued the defendants for the injury suffered.

The court held that defendant was not liable as Plaintiff impliedly gave his consent to the risk involved. Hence the defense of *Volenti non-fit Injuria* was successfully pleaded.

***Thomas v. Quartermaine*[23]**

In this case, the defendant owned a brewery and the plaintiff was an employer in his brewery. In an instance, while trying to remove the lid from a boiling tank, the lid got tightly stuck and he applied extra force to pull the lid out. Due to that extra force, he was tossed into a container that was filled with very hot liquid and suffered serious injuries.

The plaintiff sued the defendant but the court held that the defendant was not liable as the risk was visible and the plaintiff voluntarily took that risk. Hence, the defense of *Volenti non-fit injuria* was successfully pleaded.

***Hall v. Brooklands Auto Racing Club*[24]**

This case is somewhat similar to the *Woolridge* case. In this case, was a spectator at a car racing event that was organized on the track which was owned by the defendant's company. During the course of the race, a collision occurred between cars, and the plaintiff was injured as one of the cars landed on the spectators.

The plaintiff sued the defendants claiming compensation. It was held by the court that the plaintiff gave implied consent for taking the risks. Hence, the defendant was not made liable and the defense of *Volenti non-fit Injuria* was successfully pleaded.

***R v. Williams*[25]**

[22] (1963) 2 Q.B. 43
[23] (1887) Q.B.D. 685
[24] (1932) 1 K.B. 205

In this case, the accused was a music teacher and he obtained the consent of her student by fraud. He raped a 16-year girl student under the pretense that this act of sexual intercourse was an operation to improve her voice. Here the victim misunderstood the nature of the act as she gave her consent in the belief that the act was a kind of surgical operation.

The court found the accused guilty of rape and the defense of *Volenti non-fit injuria* was discarded by the court

Conclusion

The doctrine of *volenti non-fit injuria* acquires a vital position in the general defense when it comes to the law of torts. Defendants can make use of this doctrine for escaping their liability by proving that the plaintiff has voluntarily consented for the same. However, there are certain essential which needs to be fulfilled for the successful applicability of the doctrine.

Conclusively, the defense of this doctrine is not complete in nature but has a limited scope. There are situations when the application of *Volenti non-fit Injuria* can be ruled out such as when the defendant is negligible. There are other limitations which are mentioned above in the paper. Overall, the defense of *Volenti non-fit injuria* is a very good defense when it comes to escaping liability.

[25] (1923) 1 K.B. 340