

FALSE IMPRISONMENT

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INTRODUCTION :¹

False imprisonment consist in the imposition of a total restraint for some period ,however short, upon the liberty of another ,without sufficient lawful justification.

To constitute this wrong imprisonment in the ordinary sense is not required. When a person is deprived of his personal liberty ,whether by being confined within four wall or being prevented from leaving the place where he is, it is false imprisonment. If a man is restrained,by a threat of force ,from leaving his own house or an open field , there is a false imprisonment .

For example, an armed bank robber yells at the customers to get down on the floor, threatening to shoot them if they try to leave. Since they know they might be killed if they try to leave, they are being held against their will. The captive bank customers may be able to claim damages, and the bank robber may be charged with the crime of false imprisonment. Even the police may be charged with false imprisonment if they exceed their authority.

In fact, any person who intentionally restricts another's freedom of movement without their consent (and without legal justification) may be liable for false imprisonment, which is both a crime and a civil wrong. It can occur in a room, on the streets, or even in a moving vehicle—just as long as the subject is unable to move freely, against his or her will.

Similarly, "false arrest" is when someone arrests another individual without the legal authority to do so, which becomes false imprisonment the moment he or she is taken into custody.

¹<https://www.lawctopus.com/academike/law-of-false-imprisonment-in-india>.

ELEMENTS OF FALSE IMPRISONMENT :²

The following are the major elements of False Imprisonment:

- **Period of Confinement:**

The tort of false imprisonment arises whatever may be the period of confinement. But the time period is of essence while determining the amount of compensation to be awarded to the injured party. An otherwise lawful detention may become unlawful if the detention is prolonged for an unreasonable period of time.

- **The Intention Factor:**

Normally the tort of false imprisonment must be intentional. A person is not liable for false imprisonment unless his or her act is done for the purpose of imposing a confinement or with knowledge that such a confinement, to a substantial certainty will result from it. Malice is irrelevant to this tort. It is ordinarily for the jury to determine from the evidence, as a question of fact, the intention of the defendant in an action for false imprisonment. Even negligent acts can qualify as false imprisonment. For example, if a person locks someone inside a room without unaware of the fact that there is someone in the room than he is held liable for false imprisonment.

- **Knowledge of the Plaintiff:**

There is no requirement that the plaintiff alleging false imprisonment was aware of the restraint on his freedom at the time of his confinement, If the person is confined in a room, with one of the entries known to the plaintiff closed, and the room has more than one entry-exit door, but the plaintiff has no knowledge about the same, the defendant will still be held liable. Thus, the person confined does not have to be aware of the confinement or be harmed by it as it is actionable per se.

- **Place of Confinement**

²www.legalserviceindia.com/articles/fal_torts.htm.

To constitute the wrong, there may be no actual imprisonment in the ordinary sense -i.e. Incarceration.

Any confinement in the ordinary sense whether be it prison or any place used temporarily for the purpose of confinement constitutes false imprisonment. An unlawful arrest too amounts to false imprisonment. It is enough that the plaintiff in any manner has been completely deprived of his liberty, for any time, however short. To constitute imprisonment the deprivation of the plaintiff's liberty should be complete that is there must be on every side of him a boundary drawn beyond which he cannot pass. It is not imprisonment to prevent the plaintiff from going in certain directions if he is free to go in other directions and thus there will be no action for false imprisonment (Partial Restraint). If a person has induced another to put himself or herself in a place which is impossible to leave without such person's assistance, by words or by other conduct, the refusal to give such assistance, or for the purpose of detaining the other is a sufficient act of confinement to make such person liable.

DEFENCES TO FALSE IMPRISONMENT³

Defences to false imprisonment usually involve one or more of the elements of proof.

- The maxim ***volenti non fit injuria*** applies to the case of false imprisonment. The restraint must be involuntary. There is no imprisonment if the plaintiff agrees of his or free choice, to act in conformity with the request of the defendant. One who enters the premises of others upon terms which involve some restrictions on his liberty cannot complain of false imprisonment.
- **Consent**: Although it has been denied that one may consent to unlawful restraint, on the ground that liberty is an inalienable prerogative of which no one may divest himself, it is frequently held that the consent of the plaintiff to acts which constitute an imprisonment bars the right of recovery thereof. Consent must be free from duress, coercion, fraud or mistake. Consent can also be implied in certain circumstances.
- **Probable Cause**: When the probable cause is established then the action of false imprisonment and false arrest fails completely. It is said that the test for probable cause for imprisonment and arrest is an objective one, based not on the individual's actual guilt,

³<https://indiankanoon.org>

but upon the information of credible facts or information that would induce a person of ordinary caution to believe the accused to be guilty. A defendant who, in a false imprisonment or false arrest action has established the probable cause for the alleged tort than, has no additional obligation to prove. Even malicious motives will not support a claim if probable cause is found to exist.

One of the probable causes can be necessity. If defendant has imprisoned plaintiff but it was necessary for defendant to imprison plaintiff in the way he did than defendant had a lawful justification or excuse of imprisoning plaintiff, the way he did.

Sometimes the imprisonment may be justified on the ground that the defendant was acting in support of the law. The onus of proving a legal justification lies on the defendant.

- **Valid Arrest:** A claim of false arrest is completely invalidated if the detainment was made according to principles of a valid arrest. In some circumstances an ordinary person can make a citizen's arrest. If the person who made the arrest was acting according to instructions from a superior officer, it does not constitute a defence. However, the superior's instructions may be used as a basis for reducing damages awards.
- **Merchant's Privilege:** Shopkeepers may lawfully detain patrons suspected of shoplifting. The store owner or employee must have probable cause for the restraint. They must also witness the shoplifting in progress, continuously observe the shoplifter and their failure to pay for the retail, and must apprehend the suspect outside the premises
- **Restraint of Minor:** Some states allow a person to restrain a person under the age of seventeen, subject to many requirements, such as obtaining the parent's consent. Parents may also have authority to detain their own child if it does not endanger the child.

ANALYSIS OF CASE BIRD V. JONES

FACTS:⁴ In this case, a part of the public footway was wrongfully enclosed by the defendant. Seats were put up and entry was allowed to only those who paid for watching the rowing there. The plaintiff asserted his right to using that footway, climbed up the fence of the enclosure but was prevented to go forward. He remained there for half an hour.

BREIF :⁵A part of a public footway ,as opposed to carriage way ,on Hammer Smith bridge was wrongfully enclosed by the defendant .Seats were put there and entry to the enclosure was allowed only to those who made the payment to watch the rowing there.The plaintiff asserted his right of using this footway, climbed over the fences of the enclosure but was prevented to go forward .He remained there for about half an hour and subsequently brought an action for false imprisonment.

Held ,that there was no false imprisonment as there was no total restraint on the plaintiff's liberty; the plaintiff being free to go back or even to cross the bridge through the carriageway. It was observed by,

JUDGEMENT:⁶

Patterson,J.: "I cannot bring my mind to the conclusion that , if one may obstruct the passage of another in a particular direction.He can be said thereby to imprison him.

Coleridge Judge : In Birds v. Jones ,a person may have its boundary large or narrow ,visible and tangible or through real still in the conception only : it may itself movable or fixed ; but a boundary the party imprisoned must be prevented from passing, he must be prevented from leaving that place,within the ambit of which the party imprisoning would confine him ,except by prison breach. Some confusion seems to be arise from confounding imprisonment of the body with mere loss of freedom.It is one of the part of definition of freedom to be able to go withersoever one pleases, but imprisonment is something more than the mere loss of this power .

For such wrong therefore the place of detention may be common prison ,a room or even a street. Locking a person inside the room is a false imprisonment provided the restrain is total

⁴<https://www.lawctopus.com>

⁵ DR.R.K.BANGIA,LAW OF TORTS(EDITION -24TH, 2017)pg.no.142

⁶*ibid*

and he does not have any way out .Use of physical force is not necessary. Threat to use force if a person from getting out of the certain premises is a false imprisonment but not providing facilities to a workman to get out a mine when there is a no much such obligation to take him out is not false imprisonment.

Commentary : As a researcher in above case of Bird v. Jones ,I came to conclusion that it was not a case of false imprisonment ,because the defendant stop the plaintiff not going on that way ,by saying him that there is a chair to seat a people who pay for it.Toward plaintiff there was another way to go but he didn't go ,he was nearly wait half an hour there.As a result defendant doesn't totally restraint the plaintiff . Hence it cannot became a case of false imprisonment.

CASES RELATED TO FALSE IMPRISONMENT:

Bhim Singh v. State of Jammu and Kashmir:⁷

The petitioner ,an M.L.A. of Jammu and Kashmir was wrongfully detained by the police while he was going to attend the Assembly session. He was not produced before the Magistrate within requisite period.As a consequences of this,the member was deprived of his constitutional rights to attend the assembly session. There was also violation of fundamental rights to personal liberty guaranteed under Article 21 of the Constitution . By the time the petition was decided by the Supreme Court, Bhim Singh had been released , but by way of consequential relief ,exemplary damages amounting to Rs. 50,000 were awarded to him.

Commentary: As a researcher in above case there is a false imprisonment has been done.Because the plaintiff was going to attained the Assembly Session but the police officer restrained him not to go there . In these his right to move freely had been violated.As a result the defendant must be liable for that and the plaintiff must be compensated because the defendant fully restrained the plaintiff. Hence these case comes in an account of a false imprisonment .

Herring v. Boyle :⁸

⁷DR.R.K.BANGIA,LAW OF TORTS(EDITION-24TH 2017)pg.no.18

In Herring v. Boyle ,it has been held that such a knowledge is essential .In that case a schoolmaster wrongfully refused to permit a school boy to go with his mother unless the mother paid an amount alleged to be due from him. The conversation between the mother and the schoolmaster was made in the absence of the boy and he was not cognizant of the restraint. It was held that the refusal to the mother in the boy absence , and without his being cognizant of the restraint to the mother ,could not amount to false imprisonment.

Commentary :

As a researcher in above mentioned case the boy don't have any knowledge about why the school master refused him to go with his mother .Unless his mother paid an amount alleged to be due from him . But this thing happen in the absences of the child. So in my view these case comes under the false imprisonment .

RudalSah v. State of Bihar:⁹

The petitioner was acquitted by the Court in 1968 but was released from the jail in 1982, i.e. 14 years thereafter .The State tried to justify the detention by pleading that the detention was for the medical treatment of the petitioner for his mental imbalance. The plea was rejected.As an ancillary relief, in a writ of habeas corpus by the petitioner ,a sum of Rs.35,000 was granted as a compensation as an interim measure by the Supreme Court ,without precluding the petitioner from claiming further compensation.

Commentary :

As a researcher in a above mentioned case the false imprisonment had been committed. Because he had to release in 1968 by court ,but it didn't happen . He released after 14 years. He had totally restrained .So the above case comes under the false imprisonment .

REMEDIES :¹⁰

1. Action for Damages

⁸ DR.R.K.BANGIA,LAW OF TORTS(EDITION-24TH 2017)pg.no.143

⁹ DR.R.K.BANGIA,LAW OF TORTS(EDITION-24TH 2017)pg.no.144

¹⁰ SUPERANOTE 2

Damages in false imprisonment are those which flow from the detention. The damages for false arrest are to be measured only to the time of arraignment or indictment. There is no legal rule for the assessment of the damages and this is entirely left on the court. The grounds for damages include injury to the person and physical suffering, mental suffering and humiliation, loss of time earnings and interruption of businesses, medical expenses incurred, injury to the reputation etc.

2.Nominal and Compensatory Damages

The general rule in personal tort action is that the plaintiff is entitled to recover such a sum that shall be fair and just, in the absence of circumstances justifying an award for exemplary damages. Mere unlawful detention constitutes the basis for the recovery of at least nominal damages, but an award of only nominal damages may be insufficient and flawed where the facts proved indicate a right to greater damages. It has been held now that the person can now be imprisoned without knowing it. In such cases the plaintiff might obtain only nominal damages. Mental suffering including fright, shame and mortification from the indignity and disgrace, consequent upon an illegal detention, is usually considered an injury for which compensation may be made in an action for false arrest or false imprisonment. The fact that no physical injury was inflicted on one complaining of false imprisonment has been held to be an insufficient ground for denying the recovery of reasonable compensation for mental suffering.

3.Punitive, Exemplary and Aggravated Damages

If an imprisonment is affected recklessly, oppressively, insultingly and maliciously with a design to oppress and injure, the court may award exemplary or punitive damages. Punitive damages are awarded in cases where the defendants conduct is recklessly indifferent to the rights of others or in intentional or wanton violation of those rights, and such damages are awarded to give a deterrent. In some circumstances exemplary damages may be provided as when there is abuse of power by the state. Aggravated damages may be awarded in a proper case as when the imprisonment in itself of a nominal character is offensive or hurt fell to the plaintiff's feelings. Courts have often held that malice will warrant an award for exemplary or punitive damages in an action for false imprisonment or false arrest. Punitive or exemplary damages will not be allowed where the false imprisonment was brought about in good faith, without malice in fact or in law and where there is no element of wantonness or oppression.

4.Writ of Habeas Corpus

This writ is considered to be a golden remedy by the English Law. The Supreme Court of India and High Courts issue this writ under Article 32 and 226 respectively. Subject to the rules framed by the High Courts, an application for habeas corpus can be made by the person in confinement or by any person on his behalf. The writ of habeas corpus is effective means of immediate release from unlawful detention, whether in prison or private custody. Where an unlawful detention is continuing the plaintiff may seek this writ. This writ is also used in criminal cases of false imprisonment.

5.Self Help

A person who is unlawfully detained may use self-help to escape including reasonable force so as to defend him from unlawful arrest. The force used must be proportionate in the circumstances. This is a risky recourse since the power to arrest is likely to depend upon not only in the commission of offence but in the alternative, in a reasonable suspicion thereof. Hence an innocent person who forcibly resists may be liable for battery if the arrester had reasonable grounds for his suspicion.

CONCLUSION :

As a researcher I came to an conclusion that, the tort of false imprisonment is one of the most severe forms of human rights violation. The Indian socio-legal system is based on non-violence, mutual respect and human dignity of the individual. Even the prisoners have human rights because the prison torture is not the last drug in the Justice Pharmacopoeia but a confession of failure to do justice to a living man. In fact Article 21 of the Indian Constitution

also recognizes the same. Article 20 with its sub-clauses re-enforces the same, and seeks to protect convicts from being held down due to ex post facto laws (Art. 20 (a)), double jeopardy (Art. 20 (b)) and self-incrimination (Art. 20 (c)).¹¹

Thereby, after analysing the various case laws and going through the various principles of Tort Law, it can be concluded that: The right of a person to personal liberty, freedom and life with dignity has been guaranteed by the Constitution under Articles 20 and 21 cannot be taken away even during emergency, and false imprisonment is incongruous of the same.

The fact that a convict is imprisoned and has to serve a sentence, doesn't give the jail authorities any right to torment or torture him unnecessarily. It is a false notion that the prisoner subject to intolerable hardships is remedyless. The term of imprisonment is a decisive and vital factor to be taken into consideration in order to compute and award damages. And while awarding damages for false imprisonment physical or mental injury has to be kept in mind.

The mere fact that the person has been imprisoned raises the claim of nominal or compensatory damages if no other injury was caused to the plaintiff.

If the person is unlawfully confined by any police officer or government officer, than he or any person on his behalf can file for the writ of habeas corpus. This writ ensures the liberty of the person who is confined.

The person who is about to be falsely arrested or imprisoned can also use reasonable force in order to prevent false arrest. He can use force for self-defence but has to make sure that the force used is reasonable according to the circumstances.

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