



Subject :

Torts

Paper : 1.1



MIES
R.M. Law College

Affiliated: **Vidyasagar University**

Approved by: **Bar Council of India**

SONARPUR

Near SBI
Kolkata-700 150

☎ 2428 3510



INTRODUCTION TO THE LAW OF TORTS

The word tort is of French origin and is equivalent of the English word wrong. It is derived from the Latin word *tortum*, which means twisted or crooked. It implies conduct that is twisted or crooked. Tort is commonly used to mean a breach of duty amounting to a civil wrong.

Salmond defines tort as a civil wrong for which the remedy is a 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.

A tort arises due to a person's duty to others which is created by one law or the other. A person who commits a tort is known as a tortfeasor, or a wrongdoer. Where they are more than one, they are called joint tortfeasor. Their wrongdoing is called tortious act and they are liable to be sued jointly and severally.

The principle aim of the Law of tort is compensation for victims or their dependants. Grants of exemplary damages in certain cases will show that deterrence of wrong doers is also another aim of the law of tort.

Evolution of Law of Torts in India

The law of torts in India is mainly the English law of torts which is based on the principles of the '**common law**'. This was made suitable to the Indian conditions in accordance with the principles of justice, equity and good conscience. However, the application of tort laws in India is not a very regular event and one can even go to the extent of commenting that tort as a law in India is far from being looked upon as a major branch of law and litigation. In the Indian legal system, the concept of '**punishment**' occupies a more prominent place than '**compensation**' for wrongs.

It has been argued that the development of Law of Tort in India need not be on the same lines as in England.

In *M.C. Mehta v. Union of India*, Justice Bhagwati said, "we have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence."

Objectives of Law of Torts to determine the rights between parties to dispute

- ◆ to protect certain rights recognized by law
- ◆ to prevent the continuation or repetition of a harm
- ◆ to restore the property to its rightful owner

Scope of Tort

Tort & Contract

1. In a contract, the parties fix the duties themselves whereas in torts, the law fixes the duty.
2. A contract stipulates that only the parties to the contract can sue and be sued on it (privity of contract) while in tort, privity is not needed in order to sue or be sued.
3. In the case of contract, the duty is owed to a definite person(s) while in tort, the duty is owed to the community at large i.e. duty in- rem.

4. In contract remedy may be in the form of liquidated or unliquidated damages whereas in tort, remedies are always unliquidated.

Tort & Crime

1. In tort, the action is brought in the court by the injured party to obtain compensation whereas in crime, proceedings are conducted by the state.
2. The aim of litigation in torts is to compensate the injured party while in crime; the offender is punished by the state in the interest of the society.
3. A tort is an infringement of the civil rights belonging to individuals while a crime is a breach of public rights and duties, which affect the whole community.
4. Parties involved in criminal cases are the Prosecution versus the Accused person while in Torts, the parties are the Plaintiff versus the Defendant.

Constituents of Tort

The law of tort is an instrument to enforce reasonable behavior and respect the rights and interests of one another. A protected interest gives rise to a legal right, which in turn gives rise to a corresponding legal duty. An act, which infringes a legal right, is wrongful act but not every wrongful act is a tort.

To constitute a tort or civil injury therefore :

1. There must be a wrongful act or omission.
2. The wrongful act or omission must give rise to legal damage or actual damage and;
3. The wrongful act must be of such a nature as to give rise to a legal remedy in the form of an action for damages.

The wrongful act or omission may however not necessarily cause actual damage to the plaintiff in order to be actionable. Certain civil wrongs are actionable even though no damage may have been suffered by the plaintiff.

01. Wrongful Act

An act or omission that prejudicially affect one's legal right. Such legally violative wrongful act is called as actus reus. Thus, liability for a tort arises when the wrongful act amounts to either an infringement of a legal private right or a breach.

An act, which at first, appears to be innocent may become tortuous if it invades the legal right of another person e.g. the erection in one's own land which obstructs light to a neighbors' house. Liability for a tort arises when the wrongful act amounts to an infringement of a legal right or a breach.

02. Damage

The sum of money awarded by court to compensate damage is called damages. Damage means the loss or harm caused or presumed to be suffered by a person as a result of some wrongful act of another. Legal damage is not the same as actual damage.

The real significance of legal damage is illustrated by two maxims namely : *Injuria sine damno* and *Dam- num sine injuria*

***Injuria sine damno* (Injury without damage)**

It means violating of a legal right without causing any harm, loss or damage to the plaintiff. There are two kinds of torts: firstly those torts which are actionable per se, i.e. actionable without the proof of any damage or loss. For instance, trespass to land, is actionable even though no damage has been caused as a result of the trespass.

Secondly, the torts which are actionable only on the proof of some damage caused by an act. For successful actions the only thing which has to be proved is that the plaintiff's legal right has been violated, i.e. there is injuria.

Case Law : Refusal to register a voter was held as an injury per-se even when the favorite candidate won the election - *Ashby Vs. White (1703)*. This rule is based on the old maxim of law, *Ubi jus ibi remedium*, which means that where there is a right, there is a remedy.

Damnum sine injuria (Damage without injury)

It means "There may be an injury inflicted without any act of injustice". There is another term like it that is "damnum absque injuria", which means damage or harm without an injury in the legal sense. In other words a loss or injury to someone which does not give that person a right to sue the person causing the loss.

Case Laws :

In the case of *Mayor & Bradford Corporation Vs. Pickles (1895)*, Pickles was annoyed by the refusal of Bradford Corporation to purchase his land for their water undertaking. Out of spite, he sank a shaft on his land, which had the effect of discoloring and diminishing the water of the Corporation, which percolated through his land. The House of Lords held that the action of Pickles was lawful and no matter how ill his motive might be he had a right to act on his land in any manner that so pleases him.

In the case of *Mogul Steamship Co. Vs. Me-Gregory (1892)*. Certain ship owners combined together. In order to drive a ship-owner out of trade by offering cheap freight charges to customers who would deal with them. The plaintiff who was driven out of business sued the ship-owner, for loss caused to him by their act. The court held that a trader who is ruined by legitimate competition of his rivals could not get damages in tort.

03. Remedy - Development of Ubi jus ibi Remedium

The law of torts is said to be a development of the maxim *ubi jus ibi remedium* (there is no wrong without a remedy). Whenever the common law gives a right or prohibits an injury, it also gives a remedy. It is an elementary maxim of equity jurisprudence that there is no wrong without a remedy.

The maxim means only that legal wrong and legal remedy are correlative terms.

A tort is a civil injury, but all civil injuries are not torts. The wrongful act must come under the category of wrongs for which the remedy is a civil action for damages. The essential remedy for a tort is an action for damages, but there are other remedies also e.g., injunction, restitution, etc.

Case Law : In the case of *Abbot v. Sullivan*, the court held that there is a right to receive a time-barred debt but there is no remedy to recover it.

FOUNDATIONS OF TORTIOUS LIABILITY

Tortious liability arises from the breach of a duty primarily fixed by the law: such duty is towards persons generally and its breach is compensated by an action for unliquidated damages.

- **Theory 1 : By Winfield - Law of Tort - General Liability :** all injuries done to another person are torts, unless there be some justification recognized by the law
- **Theory 2 : By Salmonds - Pigeon Theory - Law of Torts :** there is a definite number of torts (assault, battery, defamation) outside which liability in tort does not exist

Case Law : *Rougher, J.*, described in the case of *John Munroe (Acrylics) Ltd. v. London*

Fire and Civil Defence Authority, “It is truism to say that we live in the age of compensation. There seems to be a growing belief that every misfortune must, in pecuniary terms at any rate, be laid at someone else’s door, and after every mishap, the cupped palms are outstretched for the solace of monetary compensation”.

GENERAL ELEMENTS OF TORTS

Act & Omission

To constitute a tort, there must be a wrongful act. The word "act" is used to include both positive and negative acts i.e., acts and omissions. Wrongful acts which make a person liable in tort are positive acts and sometimes omissions. They must be distinguished from natural calamities, and even from mere thoughts and intentions.

Failure to do something in doing an act is a bad way of performing the act. For example, if a lawyer gives an opinion without taking notice of the change in law brought about by a reported decision of the Supreme Court, he would not be guilty of an omission but of performing the act of giving his opinion in a bad way.

Where as an omission is failure to do an act as a whole. Generally, the law does not impose liability for mere omissions. An omission incurs liability when there is a duty to act. For example, a person cannot be held responsible for the omission of not rescuing a stranger child whom he sees drowning even though he can rescue him without any appreciable exertion or risk of harm to himself. But the result would be different if a parent or guardian is failed to attempt to rescue the child. In that case, it would be an omission as there is a duty to act.

Voluntary Acts & Involuntary Acts

A voluntary act may be distinguished from an involuntary act as only voluntary acts have liability. Voluntary act can be understood based on its willed muscular contraction, its circumstances and its consequences. For example, an act of murdering a person by shooting at him is one act and not merely the muscular contraction of pressing the trigger.

An involuntary act does not give rise to any liability. For example, an involuntary act of trespass is not a tort. Omissions like positive acts may also be voluntary or involuntary.

In the case of *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court held that the encroachments committed by those persons are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice.

Mental elements

A voluntary act can be held in strict liability if there's a presence of required mental element i.e., malice, intention, negligence or motive in addition to the other necessary ingredients of the torts are present.

o Malice in Law and in Fact

Malice means spite or ill-will. However, in law malice has two distinct meanings such as: 1. Intentional doing of a wrongful act and 2. Improper motive. In the first sense, malice is synonymous with intention and in the second sense, malice refers to any motive which the law disapproves.

Malice with an intention of wrongful act is called as Malice in Law. It is also called as implied malice. In a legal sense, malice means a wrongful act, done intentionally, without just cause or excuse. For example, if a person give a perfect stranger a blow likely to produce death, the person do it out of malice because, he do it intentionally and without just cause or excuse.

Malice with an improper motive is called as Malice in fact. It is also called as express malice. Malice in fact is liable for malicious prosecution.

Wrongful acts of which malice is an essential element are :

- Defamation
- Malicious prosecution
- Willful and malicious damage to property

○ **Intention, Negligence and Recklessness**

Intention is an internal fact, something which passes in the mind and direct evidence of which is not available. There's a popular saying that it is common knowledge that the thought of man shall not be tried, for the devil himself knoweth not the thought of man.

In general terms, negligence is "the failure to use ordinary care" through either an act or omission. That is, negligence occurs when:

- somebody does not exercise the amount of care that a reasonably careful person would use under the circumstances; or
- somebody does something that a reasonably careful person would not do under the circumstances.

In the case of *Dulieu Vs. White & Sons (1901)*, the plaintiff, a pregnant woman, was sitting behind the counter of her husband's bar when suddenly a horse was driven into the bar. Fearing her personal safety, she suffered nervous shock and gave birth to a premature baby. In the circumstances, the court held that the plaintiff was entitled to recover in negligence.

Recklessness is also called as gross negligence. Gross negligence means conduct or a failure to act that is so reckless that it demonstrates a substantial lack of concern for whether an injury will result. It is sometimes necessary to establish "gross negligence" as opposed to "ordinary negligence" in order to overcome a legal impediment to a lawsuit. For example, a government employee who is on the job may be immune from liability for ordinary negligence, but may remain liable for gross negligence.

○ **Motive**

Motive is the ulterior object or purpose of doing an act. It differs from intention in two ways. First, intention relates to the immediate objective of an act, whereas, motive refers to the ulterior objective. Secondly, motive refers to some personal benefit of satisfaction which the actor desires whereas intention need not be so.

For example, when A poisons B, the immediate objective is to kill B and so this is A's intention. The ulterior objective of A may be to secure B's estate by inheritance or under a will executed by him and this objective will be A's motive. Motive is generally irrelevant in tort.

In the case of *Mayor & Co. of Bradford v. Pickles*, A sank a well on his land and thereby cut off underground water-supply from his neighbour B, and B's well was dried up. It was not unlawful for a land-owner to intercept on his own land underground percolating water and prevent it from reaching the land of his neighbour. The act did not become unlawful even though A's motive in so doing was to coerce B to buy his land at his own price. A, therefore, was not liable to B, however improper and malicious his motive might be.

○ **Malfeasance, Misfeasance, Non-feasance**

The term "Malfeasance" applies to the commission of an unlawful act. It is generally applicable to those unlawful acts, such as trespass, which are actionable per se and do not require proof of intention or motive.

The term “Misfeasance” is applicable to improper performance of some lawful act for example when there is negligence.

The term “non-feasance” applies to the omission to perform some act when there is an obligation to perform it. Non-feasance of gratuitous undertaking does not impose liability, but misfeasance does.

- ***M.C. Mehta v. Union of India***

- **Fault**

If mental elements such as intention, negligence, malice or motive together with an act or omission which is violative of a right recognized by law plays an important role in creating liability. Such tortious liability has an element of fault to support it. But there is a sphere of tortious liability which is known as absolute or strict liability, where the element of fault is conspicuously absent.

In the case of *M.C. Mehta v. Union of India*, the rule of strict liability is laid down that an enterprise engaged in a hazardous or inherently dangerous activity is strictly and absolutely liable for the harm resulting from the operation of such activity.

NEGLIGENCE

MEANING : In everyday usage, the word 'negligence' denotes mere carelessness. In legal sense it signifies failure to exercise standard of care which the doer as a reasonable man should have exercised in the circumstances. In general, there is a legal duty to take care when it was reasonably foreseeable that failure to do so was likely to cause injury. Negligence is a mode in which many kinds of harms may be caused by not taking such adequate precautions.

II. DEFINITION :

- **WINFIELD AND JOLOWICZ :** According to Winfield and Jolowicz- Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff [Ref. Winfield and Jolowicz on Tort, Ninth Edition, 1971, p. 45].

- In *Blyth v. Birmingham Water Works Co., (1856)* LR 11 Exch. 781; ALDERSON, B. defined negligence as, negligence is the omission to do something which a reasonable man would do, or doing something which a prudent or reasonable man would not do.

- In *Lochgelly Iron & Coal Co. v. Mc Mullan, 1934* AC 1; LORD WRIGHT said, negligence means more than headless or careless conduct, whether in commission or omission; it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.

III. ESSENTIALS OF NEGLIGENCE : —

In an action for negligence, the plaintiff has to prove the following essentials :

1. **DUTY TO TAKE CARE :** One of the essential conditions of liability for negligence is that the defendant owed a legal duty towards the plaintiff. The following case laws will throw some light upon this essential element.

- In *Grant v. Australian Knitting Mills Ltd., 1935* AC 85; the plaintiff purchased two sets of woolen underwear from a retailer and contacted a skin disease by wearing an underwear. The woolen underwear contained an excess of sulphates which the manufacturers negligently failed to remove while washing them. The manufacturers were held liable as they failed to perform their duty to take care.

2. **DUTY TO WHOM : *Donoghue v. Stevenson, 1932 AC 562*** carried the idea further and expanded the scope of duty saying that the duty so raised extends to your neighbour. Explaining so as to who is my neighbour LORD ATKIN said that the answer must be "the persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question".

3. **DUTY MUST BE TOWARDS THE PLAINTIFF** : It is not sufficient that the defendant owed a duty to take care. It must also be established that the defendant owed a duty of care towards the plaintiff.

- In *Bourhill v. Young, 1943 AC 92*; the plaintiff, a fishwife, alighted from a tram car. While she was being helped in putting her basket on her back, a motor-cyclist after passing the tram collided with a motor car at the distance of 15 yards on the other side of the tram and died instantly. The plaintiff could see neither the deceased nor the accident as the tram was standing between her and the place of accident. She had simply heard about the collision and after the dead body had been removed she went to the place and saw blood left on the road. Consequently, she suffered a nervous shock and gave birth to a still-born child of 8 months. She sued the representatives of the deceased motor-cyclist. It was held that the deceased had no duty of care towards the plaintiff and hence she could not claim damages.

4. **BREACH OF DUTY TO TAKE CARE** : Yet another essential condition for the liability in negligence is that the plaintiff must prove that the defendant committed a breach of duty to take care or he failed to perform that duty.

- In *Municipal Corporation of Delhi v. Subhagwanti, AIR 1966 SC 1750*; a clock-tower in the heart of the Chandni Chowk, Delhi collapsed causing the death of a number of persons. The structure was 80 years old whereas its normal life was 40-45 years. The Municipal Corporation of Delhi having the control of the structure failed to take care and was therefore, liable.

- In *Municipal Corporation of Delhi v. Sushila Devi, AIR 1999 SC 1929*; a person passing by the road died because of fall of branch of a tree standing on the road, on his head. The Municipal Corporation was held liable.

5. **CONSEQUENT DAMAGE OR CONSEQUENTIAL HARM TO THE PLAINTIFF** : The last essential requisite for the tort of negligence is that the damage caused to the plaintiff was the result of the breach of the duty. The harm may fall into following classes :—

- ◆ physical harm, i.e. harm to body;
- ◆ harm to reputation;
- ◆ harm to property, i.e. land and buildings and rights and interests pertaining thereto, and his goods;
- ◆ economic loss; and
- ◆ mental harm or nervous shock.
- ◆ In *Achutrao Haribhau Khodwa v. State of Maharashtra (1996) 2 SCC 634*; a cotton mop was left inside the body by the negligence of the doctor. The doctor was held liable.

IV. **DEFENCES FOR NEGLIGENCE** : In an action for negligence following defences are available :—

1. **CONTRIBUTORY NEGLIGENCE** : It was the Common law rule that anyone who by his own negligence contributed to the injury of which he complains cannot maintain an action against another in respect of it. Because, he will be considered in law to be author of his wrong.

◆ *Butterfield v. Forrester, (1809)* 11 East 60; the defendant had put a pole across a public thoroughfare in Durby, which he had no right to do. The plaintiff was riding that way at 8'O clock in the evening in August, when dusk was coming on, but the obstruction was still visible from a distance of 100 yards, he was riding violently, came against the pole and fell with the horse. It was held that the plaintiff could not claim damages as he was also negligent.

2. **ACT OF GOD OR VIS MAJOR** : It is such a direct, violent, sudden and irresistible act of nature as could not, by any amount of human foresight have been foreseen or if foreseen, could not by any amount of human care and skill, have been resisted. Such as, storm, extraordinary fall of rain, extraordinary high tide, earth quake etc.

◆ In *Nichols v. Marsland, (1875)* LR 10 Ex.255; the defendant had a series of artificial lakes on his land in the construction or maintenance of which there had been no negligence. Owing to an exceptional heavy rain, some of the reservoirs burst and carried away four country bridges. It wa held that, the defendant was not liable as the water escaped by the act of God.

3. **INEVITABLE ACCIDENT** : Inevitable accident also works as a defence of negligence. An inevitable accident is that which could not possibly, be prevented by the exercise of ordinary care, caution and skill. it means accident physically unavoidable.

◆ In *Brown v. Kendal, (1859)* 6 Cussing 292; the plaintiff's and defendant's dogs were fighting, while the defendant was trying to separate them, he accidentally hit the plaintiff in his eye who was standing nearby. The injury to the plaintiff was held to be result of inevitable accident and the defendant was not liable.

◆ In *Holmes v. Mather, (1875)* LR 10 Ex.261, 267; a pair of horses were being driven by the groom of the defendant on a public highway. On account of barking of a dog, the horses started running very fast. The groom made best possible efforts to control them but failed. The horses knocked down the plaintiff who was seriously injured, it was held to be an inevitable accident and the defendant was not liable.

◆ In *Stanley v. Powell, (1891)* 1 QB 86; the plaintiff and the defendant, who were members of a shooting party, went for pheasant shooting. The defendant fired at a pheasant, but the shot from his gun glanced off an oak tree and injured the plaintiff. It was held that the accident was an inevitable accident and the defendant was not liable.

Vicarious Liability

Generally, a person is liable for his own wrongful acts and one does not incur any liability for the acts done by others. In certain cases, however, vicarious liability, that is the liability of one person for the act of another person, may arise. In order that the liability of A for the act done by B can arise, it is necessary that there should be certain kind of relationship between A and B, and the wrongful act should be, in certain way, connected with that relationship.

The common examples of such a liability are :

- (1) Liability of the principal for the tort of his agent;
- (2) Liability of partners of each other's tort;
- (3) Liability of the master for the tort of his servant.

So Vicarious Liability deals with cases where one person is liable for the acts of others. In the field of Torts it is considered to be an exception to the general rule that a person is liable for his own acts only. It is based on the principle of *qui facit per se per alium facit per se*, which means, "He who does an act through another is deemed in law to do it himself". So in a case of vicarious liability both the person at whose behest the act is done as well as the person who does the act are liable. Thus, Employers are vicariously liable for the torts of their employees that are committed during the course of employment.

Reasons for vicarious liability

Several reasons have been advanced as a justification for the imposition of vicarious liability:

- (1) The master has the 'deepest pockets'. The wealth of a defendant, or the fact that he has access to resources via insurance, has in some cases had an unconscious influence on the development of legal principles.
- (2) Vicarious liability encourages accident prevention by giving an employer a financial interest in encouraging his employees to take care for the safety of others.
- (3) As the employer makes a profit from the activities of his employees, he should also bear any losses that those activities cause.

Constituents Of Vicarious Liability

So the constituents of vicarious liability are :

- (1) There must be a relationship of a certain kind.
- (2) The wrongful act must be related to the relationship in a certain way.
- (3) The wrong has been done within the course of employment.

Servant And Independent Contractor

A servant and independent contractor are both employed to do some work of the employer but there is a difference in the legal relationship which the employer has with them. A servant is engaged under a contract of services whereas an independent contractor is engaged under a contract for services. The liability of the employer for the wrongs committed by his servant is more onerous than his liability in respect of wrongs committed by an independent contractor. If a servant does a wrongful act in the course of his employment, the master is liable for it. The servant, of course, is also liable. The wrongful act of the servant is deemed to be the act of the master as well. "The doctrine of liability of the master for act of his servant is based on the maxim *respondet superior*, which means 'let the principal be liable' and it puts the master in the same position as he if had done the act himself. It also derives validity from the maxim *qui facit per alium facit per se*, which means 'he who does an act through another is deemed in law to do it himself'." Since for the wrong done by the servant, the master can also be made liable vicariously, the plaintiff has a choice to bring an action against either or both of them. Their liability is joint and several as they are considered to be joint tortfeasors. The reason for the maxim *respondet superior* seems to be the better position of the master to meet the claim because of his larger pocket and also ability to pass on the burden of liability through insurance. The liability arises even though the servant acted against the express instruction, and for no benefit of his master.

For the liability of the master to arise, the following two essentials are to be present :

- (1) The tort was committed by the servant.
- (2) The servant committed the tort in the course of his employment.

A servant is a person employed by another to do work under the direction and control of his master. As a general rule, master is liable for the tort of his servant but he is not liable for the tort of an independent contractor. It, therefore, becomes essential to distinguish between the two.

A servant is an agent who is subject to the control and supervision of his employer regarding the manner in which the work is to be done. An independent contractor is not subject to any such control. He undertakes to do certain work and regarding the manner in which the work is to be done. He is his own master and exercises his own discretion. And independent contractor is one “who undertakes to produce a given result, but so that in the actual execution of the work, he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand.”

Example :

My car driver is my servant. If he negligently knocks down X, I will be liable for that. But if he hire a taxi for going to railway station and a taxi driver negligently hits X, I will not be liable towards X because the driver is not my servant but only an independent contractor.

The taxi driver alone will be liable for that.

Traditional View : Test of Control

A master is one who not only prescribes to the workmen the end of his work but directs or at any moments may direct the means also; retains the power of controlling the work.

The traditional mode of stating the distinction is that in case of servant, the employer in addition to directing what work the servant is to do, can also give directions to control the manner of doing the work; but in case of an independent contractor, the employer can only direct what work is to be done but he cannot control the manner of doing work. This was stated by MCKARDIE, J. by taking the writings of Pollock on Torts in a case of *Performing Right Society Ltd. v Mitchell, etc. Ltd.*

In *Short V. J. & W. Henderson Ltd.* LORD THANKERTON pointed out four indicia of a contract of service:

- (1) Master's power of selection of his servant;
- (2) Payment of wages or other remunerations;
- (3) Master's right to control the method of doing the work, and
- (4) Master's right of suspension or dismissal.

The important characteristic according to this analysis is the master's power of control for other indicia may also be found in a contract for services.

This was the traditional test. In *Collins v Hertfordshire* HILBERY J said; “the distinction between a contract for services and a contract of service can be summarised in this way: In one case the master can order or require what is to be done, while in other case he can not only order or require what is to be done, but how it shall be done.”

Liability For Independent Contractors

In *Alcock v Wraith*, NEILL LJ stated: where someone employs an independent contractor to do work on his behalf he is not in the ordinary way responsible for any tort committed by the contractor in the course of the execution of the work.

Judicial Pronouncements

♦ *Performing Right Society Ltd. v Mitchell, etc. Ltd., (1924) 1 K.B. 762.*

The defendants engaged a band called 'The Original Lyrical five' to play at their dance hall, and the band played two songs without the permission of the claimants, the owners of the copyright. It was held that the members of the band were employees of the defendants who were liable for the breach of copyright.

◆ **MCCARDIE J.** : The nature of the task undertaken, the freedom of action given, the magnitude of the contract amount, the manner in which it is to be paid, the powers of dismissal and the circumstances under which payment of the reward may be withheld, all these bear on the solution of the question ... it seems, however, reasonably clear that the final test, if there be a final test, and certainly the test to be generally applied, lies in the nature and degree of the detailed control over the person alleged to be servant. This circumstances, of course, one only of several to be considered, but it is usually of vital importance. The point is put well in Pollock on Torts, 12th ed., pp. 79, 80.

“The relation of master and servant exists only between persons of whom the one has the order and control of the work done by the other. A master is one who not only prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or, as it has been put, ‘retains the power of controlling the work’. A servant is a person subject to the command of his master as to the manner in which he shall do his work, and the master is liable for his acts, neglects and defaults, to the extent to be specified. An independent contractor is one who undertakes to produce a given result, but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand.”

Market Investigation Ltd. v Minister of Social Security, (1969) 2 QB 173.

In this case the issue was whether an interviewer, who was engaged on a casual basis, was employed under a series of contracts of service or under a series of contracts for services. Market Investigations Ltd was a market research company. It employed a small number of full-time interviewers but, for the most part, drew on a panel of casual interviewers and the case concerned this latter group. The facts found included the following :

- ◆ all interviewers were issued with or had access to the company's 'Interviewer's Guide' which outlined inter- viewing techniques
- ◆ there was no obligation to accept work when it was offered
- ◆ interviewers were usually asked to work for two or three days during a 10 or 14 day period
- ◆ interviewers were free to work for other firms during this period
- ◆ the company did not allow interviewers to send a substitute without prior permission of the company
- ◆ on some occasions a briefing meeting was held prior to the start of the assignment
- ◆ during a period of 81 weeks Mrs Irving worked for 61 full days and 8 half days and was paid on a daily basis plus expenses
- ◆ on the first few assignments Mrs Irving was accompanied by one of the company's supervisors
- ◆ the contract did not provide for time off, holidays or sick pay
- ◆ the company thought they could not dismiss Mrs Irving in the middle of an assignment

- ◆ The mutual intention was for contracts for services.

Conclusion

Vicarious Liability deals with cases where one person is liable for the acts of others. In the field of Torts it is considered to be an exception to the general rule that a person is liable for his own acts only. It is based on the principle of *qui facit per se per alium facit per se*, which means, "He who does an act through another is deemed in law to do it himself". So in a case of vicarious liability both the person at whose behest the act is done as well as the person who does the act are liable. Thus, Employers are vicariously liable for the torts of their employees that are committed during the course of employment. In order that the liability of A for the act done by B can arise, it is necessary that there should be certain kind of relationship between A and B, and the wrongful act should be, in certain way, connected with that relationship. So a master is liable for the acts of his servant if the act is done in the course of employment. But where someone employs an independent contractor to do work on his behalf he is not in the ordinary way responsible for any tort committed by the contractor in the course of the execution of the work except in certain exceptional cases as dealt above.

So the servant and independent contractor are under contract of service and contract for service respectively. The traditional view to distinguish between the two was the control test exclusively. But in modern scenario this is not sufficient test as there is no single test. The significant outcome can be achieved only by balancing different factors with the help of different tests like: The nature of the employment test, the 'integral part of the business' test, Allocation of financial risk/ the economic reality test/ multiple test along with the control test.

A Critical Analysis of Strict and Absolute Liability

Definition : The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape - Blackburn, J.

Absolute Liability

Definition : If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are absolutely liable to pay compensation to the aggrieved parties. The industry cannot plead that all safety measures were taken care of by them and that there was negligence on their part. They will not be allowed any exceptions neither can they take up any defence like that of 'Act of God' or 'Act of Stranger'.

Strict Liability

The earlier stated definition remains half done if the following terms are not emphasized upon :—

➤ **Dangerous Thing :** According to the above mentioned rule, the liability of scape of a thing from a person's land will arise only when the thing or substance collected is a dangerous thing i.e. a thing which is likely to cause mischief or damage to other people in person or their property on its escape. In various torts cases filed worldwide, the ones involving the doctrine of strict liability have held large body of water, gas, electricity, vibrations, yew trees, sewage, flag-pole, explosives, noxious fumes, rusty wires, etc. as dangerous things.

➤ **Escape :** The thing that has caused damage or mischief must 'escape' from the area under the occupation and control of the defendant. This can be better explained by bringing in two examples-

1. *Case- Crowhurst vs. Amersham Burial Board, (1878) 4 Ex. D. 5; Cheater vs. Cater, (1908) 1 K.B. 247 :—*

If the branches of a poisonous tree that is planted on the defendant's land spreads out to the neighbouring plaintiff's land, this amounts to the escape of that dangerous, poisonous thing from the boundaries or control of the defendant and onto the plaintiff's land. Now, the issue arises, if the cattle of the plaintiff nibbles on these leaves, then the defendant will be held liable under the mentioned rule even when nothing was done intentionally on his part.

2. Case- *Read vs. Lyons and Co.*, (1947) A.C. 156 :—

The plaintiff worked as an employee in the defendant's shell manufacturing company, while she was on duty within the premises of the company, a shell being manufactured there exploded due to which the plaintiff suffered injuries. A case was filed against the defendant company but the court let off the defendant giving the verdict that strict liability is not applicable here as the explosion took place within the defendant's premises, the concept of escape of a dangerous thing like the shell from the boundaries of the defendant is missing here. Also negligence on the part of the defendant could not be proved.

➤ **Non-natural use of land** : Water collected on land for domestic purposes does not amount to non-natural use of land but storing it in huge quantity like that in a reservoir amounts to non-natural use of the land (*Rylands vs. Fletcher*). This distinction between natural and non-natural use of land can be made possible by its adjustment to existing social conditions. Growing of trees is held natural use of land but if the defendant is found to grow trees of poisonous nature on his land, then it is non-natural use of the land. If the land has been used naturally yet a conflict has risen between the defendant and the plaintiff, owing to natural use of land, the court will not hold the defendant liable.

➤ **Mischief** : To make the defendant liable under the doctrine of strict liability, the plaintiff needs to prove that the defendant made non-natural use of his land and escape of the dangerous thing caused mischief/damage to him. The resultant damage needs to be shown by the plaintiff after successfully proving that unnatural use of the land was done by the defendant.

Case :— In *Charing Cross Electric Supply Co. vs. Hydraulic Power Co. (1914)* 3 KB 772, the defendants' duty was to supply water for industrial works but they were unable to keep their mains charged with the minimum required pressure which led to the bursting of the pipe line at four different places resulting in heavy damage to the plaintiff which was proved with evidence. The defendants' were held liable in spite of no fault of theirs.

Brief Summary : Essentials for a tort to be held under the Doctrine of Strict Liability

- a) Non-natural use of land must have taken place.
- b) Escape of a dangerous thing from that land on which it was kept must have taken place.
- c) The dangerous thing must have

caused mischief. A few instances where this rule is

applicable :—

- a) Activities involving non-natural use of land.
- b) Activities involving dangerous operations such as blasting, mining, etc.
- c) Liability arising out of keeping or taming dangerous animals.
- d) Liability for dangerous structures e.g. building, ship, rail, etc.
- e) Liability for dangerous chattels such as crackers, explosives, petrol, etc.

Inception of this rule : The Strict Liability principle is also called as 'No Fault Liability'. This is contradictory to the general principle of negligence in torts where a person can be held liable for commission of a tort only when the plaintiff can prove negligence on his part and the defendant himself is unable to disprove it. In the cases that I will now mention, the onus of being negligent can be ignored. In spite of all due care taken by the defendant, he will invariably be held for the consequences of the damages caused to any person outside of the boundary of the defendant's land by any hazardous thing that he maintained on the same stretch of land i.e. in spite of no intentional or unintentional fault of his, the defendant can be held liable hence, explaining the term 'No Fault Liability'.

This principle was first applied in the House of Lords in respect to the case '*Rylands vs. Fletcher, (1868)*'.

Rylands vs. Fletcher, 1868 : The defendant (Fletcher) an owner of a mill in Answorth with an aim to improve water supply for his mill employed independent and efficient engineers for the construction of a reservoir. During their excavation of the ground underneath, they came across some shafts and passages but chose not to block them. Post construction of the reservoir when they filled it with water, all the water flowed through the unblocked old shafts and passages to the plaintiff's (Rylands) coal mines on the adjoining land and inundated them completely. The engineers kept the defendant in the dark about the occurrence of these incidents. On a suit filed before the court by the plaintiff against the defendant, the court though ruled out negligence on the defendant's part but held him liable under the rule of Strict Liability. Any amount of carefulness on his part is not going to save him where his liability falls under the scope of 'No Fault Liability'.

A few cases outside the purview of the Doctrine of Strict Liability :—

1. ***Cambridge Water Co. vs. Eastern Counties Leather, (1994) 1 ALL ER 53 :*** The defendants had a tannery in operation at Shawston near Cambridge. They used perchloroethane (PCE) for degreasing the pelts essential for the tanning process. Till 1976, the PCE was delivered to the defendant's tannery in drums which lead to regular spillage of the PCE in limited amount. Over the next few years, this spillage amounted to one thousand gallons. The PCE was soaked by the concrete floor and got dissolved in the underground water. This contaminated water used to flow to the plaintiff's bore hole at his mill about 1.3 miles away from the defendant's tannery. Due to this, the plaintiff sued the defendant and wanted charges of strict liability to apply on him. But the court's verdict was in the favour of the defendant. The court upheld that for strict liability to apply, the defendant must be aware that the thing kept on his land will cause damage or 'mischief' to the plaintiff's land on its escape, this is an essential element. However, in this case, it could never be comprehended or foreseen by any reasonable supervisor at the tannery that spillage of PCE at the tannery would damage the water at a distance of 1.3 miles away and would lead to an environmental hazard. It could not be imagined that the PCE would dissolve in the underground water by getting soaked through the 'concrete floor'. The defendant was not aware that such a kind of damage could be caused by the PCE that he brought to use in his tannery. Therefore, the rule of Strict Liability is not applicable here.

2. ***Jai Laxmi Salt Works vs. State of Gujarat, (1994) 4 SCC 1 :*** In this case the defendants to manufacture salt from sea-water constructed a dam on a large portion of the land. Due to negligent construction of the dam, water overflowed from it and spread all around and damaged the plaintiff's factory due to water entering into it. A suit was filed in the court but the court held that the rule of strict liability will not apply here even though it is a non-natural use of the land as the damage arose not due to construction of the dam but due to improper construction of the same. It held the defendant guilty of breaching its public duty by exposing the residents of that area to risk.

According to Winfield in Winfield and Jolowicz, Tort, (Sweet & Maxwell: 13th Edition, 1989) at p.443, the presence of several defences allows the defendant to get saved from bearing the onus of any liability as if he can prove that any of the said defences apply to his case, the case will not stand and he shall not be held liable. To quote him, “we have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principles of negligence”.

Further exceptions/defences to the Doctrine of Strict Liability :—

n **Damage caused due to natural use of land :—** Where the defendant is able to prove before the court that he made natural use of his land, he will be exempted from the rule of strict liability applying on him.

Case : *Giles vs. Walker, (1890) 24 QBD 656* — In the defendant’s land, there was spontaneous growth of thistle plants. The defendant did not check the growth of this undesired vegetation which was extending to the plaintiff’s land also only to cause him annoyance and damage. However, the defendant was able to prove that growing of plants is a natural use of land and therefore he won the case against the plaintiff.

n **Consent of the Plaintiff :—** When the plaintiff has either expressly or impliedly consented to the presence of a source of danger and also there has been no negligence on the defendant’s part, the defendant will not be held liable. It is basically the defence of ‘Volenti non fit injuria’ taken by the defendant in the court.

Case : *Peters vs. Prince of Wales Theatre Ltd. Birmingham, (1942) 2 ALL ER 533* — The plaintiff took on rent a shop in the defendant's premises after full knowledge of the fact that the defendant had a theatre and rehearsal room attached to the same premises. The theatre had a water storage mechanism to douse fire in case of an emergency. Unfortunately, the water container burst due to excessive frost and the water leaked into the plaintiff's shop thereby damaging his goods. He sued the defendant for payment of damages suffered by him. The court held the defendant not liable as the plaintiff had impliedly consented to the presence of the dangers of a water storage tank situated right next to his shop by taking the defendant’s premises on rent.

Plaintiff’s Own Default : When damage is caused to the plaintiff solely due to his own fault, he shall receive no remedy in such cases.

Case : *Ponting vs. Noakes, (1894) 2 QB 281* — In this case, the plaintiff's horse had nibbled on some poisonous leaves by reaching over the boundary of the defendant's land and had eventually died. The court held that the vegetation on the defendant's land had not spread over to the plaintiff's side but it was the intrusion of the plaintiff's horse in the defendant's land when it chewed on the leaves of the plant sowed in the defendant’s plot. It was a case of the plaintiff himself being at fault, therefore he could not demand any remedy for the loss caused to him.

n **Act of Stranger :** When damage is caused due to wrongful act committed by a third party or any stranger over whom the defendant had no control, the defendant will not be held liable under such circumstances.

Case : *Rickards vs. Lothian, (1913) AC 263* — Some strangers blocked the waste pipe of a wash basin, which was otherwise in the control of the defendant and left the tap open. The water overflowed because of this mischief caused by the strangers and damaged the plaintiff's goods. The defendant was not held liable as this was an act of the stranger which could not be foreseen by the defendant. However, when the act of the stranger can be foreseen by the defendant and damage can be prevented from happening, proper care and duty must be exercised by the defendant to prevent the act from occurring.

Act of God or Vis Major : For acts which are beyond human control and contemplation, caused due to superior natural forces, the principle of strict liability does not apply.

Case : *Nichols vs. Marland*, (1876) 2 Ex D 1 — The defendant had some artificial lakes that he had formed by damming up a natural stream for several years. However, an extraordinary rainfall that year greater and more violent than any rainfall ever witnessed there broke the artificial embankments by the stream and the rushing water carried away with it four bridges of the plaintiff. When sued for damages, the court held the defendant not liable as she was not negligent and this being an act of God was beyond her control.

Common Benefit of Plaintiff and the Defendant : Where the act or escape of the dangerous thing was for the common benefit of the defendant and plaintiff, the defendant will not be held liable.

Case : *Box vs. Jubb*, (1879) 4 Ex D 76 — The defendant's reservoir overflowed partly due to his act and partly due to the acts of the neighbouring reservoir owners damaging the property of the plaintiff who was also a resident of the same multi-storied building as the defendant. The defendant was not held liable as the water reservoirs were installed keeping the common benefit of all the residents of the multi-storied building in mind including the plaintiff and the defendant.

Statutory Authority : If any act done under the authorization of the law/statute like the government of a country or a state government causes any damage to a person, it acts as a defence to an action for tort.

Case : *Green vs. Chelsea Waterworks Co.*, (1894) 70 L.T. 547 — The defendant company was under a statutory order to maintain continuous water supply. A main belonging to the company burst without any negligence of the defendants and flooded the plaintiff's premises with water. It was held that the company would not be liable as it was engaged in performance of a statutory duty.

ABSOLUTE LIABILITY

Inception in India : The following modifications in the existing *Doctrine of Rylands vs. Fletcher* led to the following Doctrine of Absolute Liability that prevented the defendants from taking up any defence against payment of compensation :—

If an industry or enterprise is involved in any inherently dangerous activity, then for any damage arising out of the conduction of that activity, the defendants (the owners of the industry) will have no access to any defence or exception and will be absolutely liable to pay compensation to the aggrieved parties.

The enterprise will be held responsible for all possible damages or consequences resulting from the activity. This will make such industries provide safety equipments to its workers to prevent any mishap. Therefore, this will safeguard the interests of the workers and will give them a refined, safe working atmosphere.

The element of escape which is an essential in strict liability may be ignored here as this restricts the application of this Doctrine of Absolute Liability as often incidents may arise where escape of the dangerous thing like poisonous fumes may not take place outside the industry premises but may damage the workers inside. In this case, the workers' right to compensation will not be ignored. Therefore, the extent of this principle is to be applied in a wider context ruling out the element of escape.

In cases where strict liability applies, compensation paid is according to the nature and quantum of damages caused but in cases of absolute liability, compensation or damage to be paid is exemplary in nature. The amount decided upon should be more than the damage caused as industrial hazardous accidents generally causes mass death and destruction of

property and environment.

A few cases where Absolute Liability was upheld :—

M.C. Mehta vs. Union of India, A.I.R. 1987 S.C. 1086 :— The S. C. of India was dealing with claims of leakage of oleum gas on the 4th and 6th December, 1985 from one of the units of Shriram Foods and Fertilizers Industries, Delhi. Due to this leakage, one advocate and several others had died. An action was brought against the industry through a writ petition under Article 32 of the Indian Constitution by way of a Public Interest Litigation (PIL). The judges in this case refused to follow the Strict Liability Principle set by the English Laws and came up with the Doctrine of Absolute Liability. The court then directed the organizations who had filed the petitions to file suits against the industry in appropriate courts within a span of 2 months to demand compensation on behalf of the aggrieved victims.

Bhopal Gas Tragedy / Union Carbide Corporation v. Union of India, (1991) 4 SCC 548 :— This doctrine was upheld in the infamous Bhopal Gas Tragedy which took place between the intervening night of 2nd and 3rd December, 1984. Leakage of methyl-iso-cyanide (MIC) poisonous gas from the Union Carbide Company in Bhopal, Madhya Pradesh led to a major disaster and over three thousand people lost their lives. There was heavy loss to property, flora and fauna. The effects were so grave that children in those areas are born with deformities even today. A case was filed in the American New York District Court as the Union Carbide Company in Bhopal was a branch of the U.S. based Union Carbide Company. The case was dismissed there owing to no jurisdiction. The Government of India enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985 and sued the company for damages on behalf of the victims. The Court applying the principle of 'Absolute Liability' held the company liable and ordered it to pay compensation to the victims.

Indian Council for Enviro-legal Action vs. Union of India, AIR 1996 SC 1446 :— A PIL filed under Article 32 of the Indian Constitution voiced protests of the petitioners over the presence of industries that was causing large scale environmental pollution and endangering the lives of the villagers who resided in the vicinity of the industries. It violated their right to life and liberty given under Article 21 of the Indian Constitution as they were unable to live in a healthy environment. The Supreme Court initiated instant action and ordered the Central Government and the Pollution Control Board to constitute strict measures against the said industries. The court upheld the Doctrine of Absolute Liability here stating that the polluted environment must be restored to a pollution free one conducive for healthy living by utilizing anti-pollution scientific appliances. The expenditure so incurred in this process must be paid by the industries even if their properties need to be attached for this purpose. The industries were made absolutely liable for paying monetary damages for restoration of the environment.

Absolute Liability can also be upheld by the courts in case of a single death without any mass destruction of property or pollution of the environment.

Klaus Mittelbachert vs. East India Hotels Ltd., A.I.R 1997 Delhi 201 (single judge) : In this case, the plaintiff, a German co-pilot suffered grave injuries after diving into the swimming pool of the five-star restaurant. Upon investigation, it was seen that the pool was defectively designed and had insufficient amount of water as well. The pilot's injuries left him paralyzed leading to death after 13 years of the accident. The court held that five-star hotels that charge hefty amounts owe a high degree of care to its guests. This was violated by Hotel Oberoi Inter-continental, New Delhi when the defectively designed swimming pool left a man dead. This made the hotel absolutely liable for payment of damages. The hefty amounts taken from the guests by the hotel owners guaranteed them to pay exemplary damages to the deceased or in any such further cases. It was decided that the plaintiff would receive Rs. 50 lakhs for the accident caused.

However, with the death of the plaintiff while the suit was still pending in the court, the cause of action also died and the aforesaid decision was reversed on appeal by the defendant party (A.I.R., 2002 Delhi 124 D.B.)

Differences :—

Strict Liability Absolute Liability (modified version of Strict Liability)

1. The nature and quantum of damages that are payable to the plaintiffs are compensatory in nature payable to the plaintiffs are exemplary, the compensa-

i.e. in accordance to the amount of loss suffered by the plaintiff, damages will be paid equivalent to the amount that is the damages paid are more as in amount lost. such cases people lose their lives and environmental conditions become life threatening.

2. The defendants can take the help of several defences like the following :—

- Damage caused due to natural use of land
- Consent of the Plaintiff
- Plaintiff's Own Default

3. In this case, it is an absolute liability put upon Act of Stranger the defendants where the scope of any defence

- Act of God or Vis Major being taken is not allowed. They are held
- Common Benefit of Plaintiff and the Defendant liable for payment of damages under all
- Statutory Authority circumstances.

If any of the defences apply to a particular case correctly as decided by the presiding Judge, then the defendant will not be held liable.

Nuisance:A Tort

The word “nuisance” is derived from the French word “nuire”, which means “to do hurt, or to annoy”. One in possession of a property is entitled as per law to undisturbed enjoyment of it. If someone else’s improper use in his property results into an unlawful interference with his use or enjoyment of that property or of some right over, or in connection with it, we may say that tort of nuisance occurred. In other words, Nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it. Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property.

Stephen defined nuisance to be “anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to a trespass”.

According to Salmond, “the wrong of nuisance consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g. water, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals”.

DISTNCTION BETWEEN NUISANCE AND TRESSPASS

Trespass is direct physical interference with the plaintiff's possession of land through some material or tangible object while nuisance is an injury to some right accessory to possession but no possession itself. e.g. a right of way or light is an incorporeal right over property not amounting to possession of it, and hence disturbance of it is a nuisance and not trespass.

Trespass is actionable per se, while nuisance is actionable only on proof of actual damage. It means trespass and nuisance are mutually exclusive.

Simple entry on another's property without causing him any other injury would be trespass. In nuisance injury to the property of another or interference with his personal comfort or enjoyment of property is necessary.

They may overlap when the injury is to possessory as well as to some right necessary to possession. e.g. trespass of cattle discharge of noxious matter into a stream and ultimately on another's land.

To cause a material and tangible loss to an object or to enter another person's land is trespass and not nuisance; but where the thing is not material and tangible or where though material and tangible, it is not direct act of the defendant but merely consequential on his act, the injury is not trespass but merely a nuisance actionable on proof of actual damage.

If interference is direct, the wrong is trespass, if it is consequential, it amounts to nuisance. e.g. Planting a tree on another's land is trespass, whereas when one plants a tree over his own land and the roots or branches project into or over the land of another person, act is nuisance.

ESSENTIALS OF NUISANCE

In order that nuisance is actionable tort, it is essential that there should exist :

- wrongful acts;
- damage or loss or inconvenience or annoyance caused to another. Inconvenience or discomfort to be considered must be more than mere delicacy or fastidious and more than producing sensitive personal discomfort or annoyance. Such annoyance or discomfort or inconvenience must be such which the law considers as substantial or material.

In *Ushaben v. Bhagyalaxmi Chitra Mandir*, AIR 1978 Guj 13, the plaintiffs'-appellants sued the defendants-respondents for a permanent injunction to restrain them from exhibiting the film "Jai Santoshi Maa". It was contended that exhibition of the film was a nuisance because the plaintiff's religious feelings were hurt as Goddesses Saraswati, Laxmi and Parvati were defined as jealous and were ridiculed.

It was held that hurt to religious feelings was not an actionable wrong. Moreover the plaintiff's were free notto see the movie again.

In *Halsey v. Esso Petroleum Co. Ltd. (1961) 2 All ER 145* : The defendant's depot dealt with fuel oilin its light from the chimneys projected from the boiler house, acid smuts containing sulphate were emittedand were visible falling outside the plaintiff's house. There was proof that the smuts had damaged clotheshung out to dry in the garden of the plaintiff's house and also paint work of the plaintiff's car which he kepton the highway outside the door of his house. The depot emanated a pungent and nauseating smell of oilwhich went beyond a background smell and was more than would affect a sensitive person but the plaintiffhad not suffered any injury in health from the smell. During the night there was noise from the boilers whichat its peak caused window and doors in the plaintiff's house to vibrate and prevented the plaintiff's sleeping. An action was brought by the plaintiff for nuisance by acid smuts, smell and noise.

The defendants were held liable to the plaintiff in respect of emission of acid smuts, noise or smell.

KINDS OF NUISANCE

Nuisance is of two kinds:

Public Nuisance : Under Section 3 (48) of the General Clauses Act, 1897, the words mean a public nuisancedefined by the Indian Penal Code.

Section 268 of the Indian Penal Code, defines it as “an act or illegal omission which causes any common injury, danger or annoyance, to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.”

Simply speaking, public nuisance is an act affecting the public at large, or some considerable portion of it; and it must interfere with rights which members of the community might otherwise enjoy.

Thus acts which seriously interfere with the health, safety, comfort or convenience of the public generally or which tend to degrade public morals have always been considered public nuisance.

Examples of public nuisance are Carrying on trade which cause offensive smells, *Malton Board of Health v. Malton Manure Co.*, (1879) 4 Ex D 302; Carrying on trade which cause intolerable noises, *Lambton v. Mellish*, (1894) 3 Ch 163; Keeping an inflammable substance like gunpowder in large quantities, *Lister's case*, (1856) 1 D & B 118; Drawing water in a can from a filthy source, *Attorney General v. Hornby*, (1806) 7 East 195.

Public nuisance can only be subject of one action, otherwise a party might be ruined by a million suits. Further, it would give rise to multiplicity of litigation resulting in burdening the judicial system. Generally speaking, Public Nuisance is not a tort and thus does not give rise to civil action.

In the following circumstances, an individual may have a private right of action in respect a public nuisance.

1. He must show a particular injury to himself beyond that which is suffered by the rest of public i.e. he must show that he has suffered some damage more than what the general body of the public had to suffer.
2. Such injury must be direct, not a mere consequential injury; as, where one is obstructed, but another is left open.
3. The injury must be shown to be of a substantial character, not fleeting or evanescent.

In *Solatu v. De Held*, (1851) 2 Sim NS 133, the plaintiff resided in a house next to a Roman Catholic Chapel of which the defendant was the priest and the chapel bell was rung at all hours of the day and night. It was held that the ringing was a public nuisance and the plaintiff was held entitled to an injunction.

In *Leanse v. Egerton*, (1943) 1 KB 323, The plaintiff, while walking on the highway was injured on a Tuesday by glass falling from a window in an unoccupied house belonging to the defendant, the window having been broken in an air raid during the previous Friday night. Owing to the fact that the offices of the defendant's agents were shut on the Saturday and the Sunday and to the difficulty of getting labour during the week end, no steps to remedy the risk to passers by had been taken until the Monday. The owner had no actual knowledge of the state of the premises.

It was held that the defendant must be presumed to have knowledge of the existence of the nuisance, that he had failed to take reasonable steps to bring it to an end although he had ample time to do so, and that, therefore, he had “continued” it and was liable to the plaintiff.

In *Attorney General v. P.Y.A. Quarries, (1957) 1 All ER 894* : In an action at the instance of the Attorney General, it was held that the nuisance from vibration causing personal discomfort was sufficiently widespread to amount to a public nuisance and that injunction was rightly granted against the quarry owners restraining them from carrying on their operations.

Without Proving Special Damage

In India under Section 91 of the Civil Procedure Code, allows civil action without the proof of special damage. It reads as follows :

“S. 91.(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted by the Advocate General, or with the leave of the court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act. (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

Thus a suit in respect of a public nuisance may be instituted by any one of the followings :

- By the Advocate-General acting ex officio; or
- By him at the instance of two or more persons or
- By two or more persons with the leave of the Court.

Private Nuisance

Private nuisance is the using or authorising the use of one's property, or of anything under one's control, so as to injuriously affect an owner or occupier of property by physically injuring his property or affecting its enjoyment by interfering materially with his health, comfort or convenience.

In contrast to public nuisance, private nuisance is an act affecting some particular individual or individuals as distinguished from the public at large. The remedy in an action for private nuisance is a civil action for damages or an injunction or both and not an indictment.

Elements of Private Nuisance

Private nuisance is an unlawful interference and/or annoyance which cause damages to an occupier or owner of land in respect of his enjoyment of the land.

Thus the elements of private nuisance are :

1. unreasonable or unlawful interference;
2. such interference is with the use or enjoyment of land, or some right over, or in connection with the land; and
3. damage.

Nuisance may be with respect to property or personal physical discomfort.

1. Injury to property

In the case of damage to property any sensible injury will be sufficient to support an action.

In *St. Helen Smelting Co. v. Tipping, (1865) 77 HCL 642* : The fumes from the defendant's manufacturing work damaged plaintiff's trees and shrubs. The Court held that such damages being an injury to property gave rise to a cause of action.

In ***Ram Raj Singh v. Babulal***, AIR 1982 All. 285 : The plaintiff, a doctor, complained that sufficient quantity of dust created by the defendant's brick powdering mill, enters the consultation room and causes discomfort and inconvenience to the plaintiff and his patients.

The Court held that when it is established that sufficient quantity of dust from brick powdering mill set up near a doctor's consulting room entered that room and a visible thin red coating on clothes resulted and also that the dust is a public hazard bound to injure the health of persons, it is clear the doctor has proved damage particular to himself. That means he proved special damage.

In ***Hollywood Silver Fox Farm Ltd v Emmett***, (1936) 2 KB 468 : A carried on the business of breeding silver foxes on his land. During the breeding season the vixens are very nervous and liable if disturbed, either to refuse to breed, or to miscarry or to kill their young. B, an adjoining landowner, maliciously caused his son to discharge guns on his own land as near as possible to the breeding pens for the purpose of disturbing A's vixens.

A filed a suit for injunction against B and was successful.

In ***Dilaware Ltd. v. Westminster City Council***, (2001) 4 All ER 737 (HL) : The respondent was owner of a tree growing in the footpath of a highway. The roots of the tree caused cracks in the neighbouring building. The transferee of the building, after the cracks were detected, was held entitled to recover reasonable remedial expenditure in respect of the entire damage from the continuing nuisance caused by the trees.

In ***Datta Mal Chiranji Lal v. Lodh Prasad***, AIR 1960 All 632 : The defendant established an electric flour mill adjacent to the plaintiff's house in a bazaar locality and the running of the mill produced such noise and vibrations that the plaintiff and his family, did not get peace and freedom from noise to follow their normal avocations during the day. They did not have a quiet rest at night also.

It was held that the running of the mill amounted to a private nuisance which should not be permitted.

In ***Palmar v. Loder***, (1962) CLY 2233 : In this case, perpetual injunction was granted to restrain defendant from interfering with plaintiff's enjoyment of her flat by shouting, banging, laughing, ringing doorbells or otherwise behaving so as to cause a nuisance by noise to her.

In ***Radhey Shyam v. Gur Prasad Sharma***, AIR 1978 All 86 : It was held by the Allahabad High Court held that a permanent injunction may be issued against the defendant if in a noisy locality there is substantial addition to the noise by introducing flour mill materially affecting the physical comfort of the plaintiff.

In ***Sturges v. Bridgman*** (1879) 11 Ch D 852, A confectioner had for upwards of twenty years used, for the purpose of his business, a pestle and mortar in his back premises, which abutted on the garden of a physician, and the noise and vibration were not felt to be a nuisance or complained of until 1873, when the physician erected a consulting room at the end of his garden, and then the noise and vibration, owing to the increased proximity, became a nuisance to him. The question for the consideration of the Court was whether the confectioner had obtained a prescriptive right to make the noise in question.

It was held that he had not, inasmuch as the user was not physically capable of prevention by the owner of the servient tenement, and was not actionable until the date when it became by reason of the increased proximity a nuisance in law, and under these conditions, as the latter had no power of prevention, there was no prescription by the consent or acquiescence of the owner of

the servient tenement.

DEFENCES TO NUISANCE

Following are the valid defences to an action for nuisance. It is a valid defence to an action for nuisance that the said nuisance is under the terms of a grant.

Statutory Authority

Where a statute has authorised the doing of a particular act or the use of land in a particular way, all remedies whether by way of indictment or action, are taken away; provided that every reasonable precaution consistent with the exercise of the statutory powers has been taken. Statutory authority may be either absolute or conditional.

In case of absolute authority, the statute allows the act notwithstanding the fact that it must necessarily cause a nuisance or any other form of injury.

In case of conditional authority the State allows the act to be done only if it can be without causing nuisance or any other form of injury, and thus it calls for the exercise of due care and caution and due regard for private rights.

In *Vaughan v. Taff Vale Rly (1860) 5 H.N. 679*, The defendants who had authority by Statute to locomotive engines on their railway, were held not liable for a fire caused by the escape of sparks.

In a suit for nuisance it is no defence :

1. Plaintiff came to the nuisance: E.g. if a man knowingly purchases an estate in close proximity to a smelting works his remedy, for a nuisance created by fumes issuing therefrom is not affected. It is not valid defence to say that the plaintiff came to the nuisance.
2. In the case of continuing nuisance, it is no defence that all possible care and skill are being used to prevent the operation complained of from amounting to a nuisance. In an action for nuisance it is no answer to say that the defendant has done everything in his power to prevent its existence.
3. It is no defence that the defendant's operations would not alone amount to nuisance. E.g. the other factories contribute to the smoke complained of.
4. It is no defence that the defendant is merely making a reasonable use of his own property. No use of property is reasonable which causes substantial discomfort to other persons.
5. That the nuisance complained of although causes damages to the plaintiff as an individual, confers a benefit on the public at large. A nuisance may be the inevitable result of some or other operation that is of undoubted public benefit, but it is an actionable nuisance nonetheless. No consideration of public utility should deprive an individual of his legal rights without compensation.
6. That the place from which the nuisance proceeds is the only place suitable for carrying on the operation complained of. If no place can be found where such a business will not cause a nuisance, then it cannot be carried out at all, except with the consent or acquiescence of adjoining proprietors or under statutory sanction.

REMEDIES FOR NUISANCE

The remedies available for nuisance are as follows :

- **Injunction** — It may be a temporary injunction which is granted on an interim basis and that may be reversed or confirmed. If it's confirmed, it takes the form of a permanent injunction. However the granting of an injunction is again the discretion of the

Court.

- **Damages** — The damages offered to the aggrieved party could be nominal damages i.e. damages just to recognize that technically some harm has been caused to plaintiff or statutory damages i.e. where the amount of damages is as decided by the statute and not dependent on the harm suffered by the plaintiff or exemplary damages i.e. where the purpose of paying the damages is not compensating the plaintiff, but to deter the wrongdoer from repeating the wrong committed by him.
- **Abatement** — It means the summary remedy or removal of a nuisance by the party injured without having recourse to legal proceedings. It is not a remedy which the law favors and is not usually advisable. E.g. - The plaintiff himself cuts off the branch of tree of the defendant which hangs over his premises and causes nuisance to him.

CONCLUSION

The law of nuisance is almost an uncodified one. Yet it has grown and expanded through interpretation and through a plethora of judgments. The concept of nuisance is one that arises most commonly in a man's daily life and the decision regarding the same has to be delivered on a case to case basis ensuring that neither the aggrieved plaintiff goes back uncompensated nor the defendant is punished unnecessarily. Indian Courts in the matters of nuisance have borrowed quite intensively from the English principles as well as from the decisions of the common law system along with creating their own precedents. This has resulted in a sound system of law being developed that ensures fairness and well being of all i.e. the parties and the society at large.

Defamation

“Balance between one person's right to freedom of speech and another's right to protect their good name”.

Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard or confidence in which a person is held; or induces disparaging, hostile or disagreeable opinions or feelings against a person is known as defamation.

Defamation is the act of making untrue statements about another which damages his/her reputation. It is a statement that injures someone's reputation. Defamation is the act of saying false things in order to make people have a bad opinion of someone. Defamation may be defined as a communication to some person, other than the person defamed, of the matter which tends to lower the plaintiff in the estimation of right thinking persons or to deter them from associating or dealing with him. Defamation is a wrong done by a person to another's reputation by words, written or spoken, sign or other visible representation.

In the words of Dr. Winfield “Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of the society, generally or, which tends to make them shun or avoid that person.”

Defamation is of two kinds Libel and Slander. If the statement is made in writing and published in some permanent and visible form, then the defamation is called libel. Whereas, if the statement is made by some spoken words then the defamation is called slander.

Defamation may be a civil charge or a criminal charge under Section 499 and 500 of IPC.

Section 499 Of IPC :— Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said to defame that person.

Section 500 of IPC :— Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or both.

What the victim must prove to establish that defamation occurred ?

If the victim has to win a lawsuit relating to defamation, then the victim has to prove the following essentials:

- 1) **Statement :** There must be a statement which can be spoken, written, pictured or even gestured.
- 2) **Publication :** For a statement to be published, a third party must have seen, heard or read the defamatory statement. If there is no publication there is no injury of reputation and no action will arise.
- 3) **Injury :** The above statement must have caused an injury to the subject of the statement. It means that the statement must tend to injure the reputation of a person to whom it refers.
- 4) **Falsity :** The defamatory statement must be false. If the statement is not false then the statement will not be considered as defamatory statement.
- 5) **Unprivileged :** In order for a statement to be defamatory, it must be unprivileged. There are certain circumstances, under which a person cannot sue someone for defamation.

Defences available under defamation

The following are the defences taken in an action for defamation :—

- 1) **Justification of truth :** If the defendant proves that the defamatory statement is true, no action will lie for it, even if the statement is published maliciously. It is not necessary to prove that the statement is literally true, it is sufficient if it is true in substance.
- 2) **Fair and bonafide comment :** A fair and bonafide comment on a matter of public interest is a defence in an action for defamation. The essentials of a fair comment are:
 - i) That it is comment or criticism and not a statement of fact,
 - ii) That the comment is on a matter of public interest,
 - iii) That the comment is fair and honest.
- 3) **Privileged statement :** Law makers have decided that one cannot sue for defamation in certain instances when a statement is considered privileged. Whether a statement is privileged or unprivileged is policy decision that rests on the shoulders of the lawmakers.

Conclusion :

Defamation is tort resulting from an injury to one's reputation. It is the act of harming the reputation of another by making a false statement to third person. Defamation is an invasion of the interest in reputation. The law of defamation is supposed to protect people's reputation from unfair attack. In practice its main effect is to hinder free speech and protect powerful people from scrutiny. Defamation law allows people to sue those who say or publish false and malicious comments.

The Consumer Protection Act, 1986 (COPRA) has enacted to protect the interests of consumers in India. It was replaced by the Consumer Protection Act, 2019. It is made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and matters connected with it. The act was passed in Assembly in October 1986 and came into force on December 24, 1986. The statute on the right was made

before this COPRA act.

Significance of the Act

This Act is regarded as the 'Magna Carta' in the field of consumer protection for checking unfair trade practices, 'defects in goods' and 'deficiencies in services' as far as India is concerned. It has led to the establishment of a widespread network of consumer forums and appellate courts all over India. It has significantly impacted how businesses approach consumers and have empowered consumers to a greater extent.^[1]

Consumer Protection Council

Consumer Protection Councils are established at the national, state and district level to increase consumer awareness.

On 15th July, 2020, the Government of India has notified the Consumer Protection Act, 2019 ('**New Act**'), effective from 20th July, 2020. The old consumer protection legislation i.e. The Consumer Protection Act, 1986 ('**Old Act**') has been overhauled keeping in mind the advent of technology, boom of the e-commerce sector and various other mechanisms of conducting business in order to protect consumers on both online as well as offline modes.

Salient features of the New Act:

- **The New Act has widened the definition of 'Consumer'**: The definition of 'Consumer' now includes any person who buy any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. E-commerce transactions have now also been brought under the purview of the New Act.
- **E-filing system for Complaints**: A Complainant/Consumer can now institute a Complaint within the territorial jurisdiction of a commission where the Consumer resides or works for gain. Earlier, under the Old Act jurisdiction of filing a complaint was at the place of purchase or where the seller has its registered office address. The New Act further simplifies procedure for the Consumers by enabling provisions to file complaints electronically and allowing hearing and/or examination of parties through video-conferencing.
- **Revised Pecuniary Jurisdiction**: The revised pecuniary limits under the New Act are as follows: -
 1. District Forum - Rs. 20 lakhs to Rs. 1 crore.
 2. State Commission - Rs. 1 crore to Rs. 10 crores.
 3. National Commission - above Rs. 10 crores which earlier was above Rs. 1 crore under the Old Act.
- **Renaming the District Forum**: The erstwhile District Consumer Disputes Redressal Forum ("**DCDRF**") has been renamed as District Consumer Disputes Redressal Commission ("**DCDRC**"/"**District Commission**").
- **Pre-deposit for filing of appeals**: In case of Appeals, the Party against whom any amount is ordered by the District Commission, is now under the New Act, required to deposit 50% of the amount ordered by the District Commission, before filing an appeal before the State Commission/State Consumer Disputes Redressal Commission ("**SCDRC**"). Earlier, the ceiling for the pre-deposit amount for filing appeals was a maximum of Rs. 25,000/-, which has now been removed.

- **Revision of limitation period:** The limitation period for filing of appeals to the State Commission from an order of District Commission/DCDRC has been increased from 30 days to 45 days. However, the power to condone the delay has been retained.
- **Alternate Dispute Resolution (ADR):** ADR has been introduced for the speedy resolution of matters with the Parties now being allowed to settle the disputes through mediation.
- **Revision in sitting members:** The SCDRC shall now have a minimum of 1 President and 4 Members.
- **Second Appeal to NCDRC:** There is now a provision for a Second Appeal to the NCDRC, in the event where there is a substantial question of law involved.
- **Power of review:** The NCDRC, SCDRC and DCDRC can still exercise their powers of Review which have been conferred to them under the New Act.
- **Power to hear the appeals against the orders of the Central Authority:** The NCDRC is empowered to hear appeals against orders of the Central Authority.
- **Powers regarding administrative control:** The New Act provides for administrative control of the SCDRC over the DCDRC and that of the NCDRC over the SCDRC. It also provides for an investigation into any allegations against the President and members of a particular SCDRC / DCDRC. The provision also provides for submission of an inquiry report to the State Government concerned along with a copy to the Central Government for their needful action.
- **Action for product liability:** An action for product liability may now be brought by a Complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.
- **Liabilities of Celebrities:** Celebrities are no longer immune for the products/ brands they endorse as now they can be held accountable in case misleading advertisements featuring them make vague claims.

Consumer Protection Redressal Agencies

The Consumer Protection Act, has established three redressal Agencies,

- Consumer Dispute Redressal Forum, to be known as “District Forum”.
- Consumer District Redressal Commission, to be known as “The State Commission”
- National Consumer Disputes Redressal Commission, known as “The National Commission”

DISTRICT CONSUMER FORUM

Introduction:

- A district consumer forum, also known as the District Commission, is a consumer dispute redressal commission established by the State Government, by a notification, in each district of the state, under the section 28(1) of the Consumer Protection Act, 2019.
- These consumer forums are established with the purpose of protecting and enforcing the rights of the consumers and providing them with an additional way, along with the action in civil courts, to seek redressal. These consumer forums are quasi-judicial bodies,

established by the act of the Parliament which run parallel to the civil courts.

- The consumer's right to seek redressal against unfair trade practices or restrictive trade practices or their unscrupulous exploitation is protected by these forums.
- Along with the district consumer forum, the Consumer Protection Act (hereafter referred to as "the act") also provides for the establishment of the State Consumer Disputes Redressal Commission, also known as the State Commission, by the State Government and the National Consumer Disputes Redressal Commission, also known as the National Commission, by the Central Government, each of
- these commissions having varying jurisdictions.

Section 10 Composition:

- The District Forum would be composed of:
 1. President—a person who is, or has been, or is qualified to be a District Judge,
 1. Not less than two other members—one of the two members shall be a woman. The two members shall have the following qualifications:
 2. 35 years of age is bare minimum;
 3. having a bachelor's degree from a university which is recognised;
- Integrity, ability and standing is essential and have adequate knowledge and experience of at least 10 years of dealing problems related to economics, public affairs, industry, commerce, accountancy, law or administration.
- As an assistance for the District Commission, certain officers as well as employees may be provided by the Government of the State. Under the general superintendence of the President of the District Commission, their functions would be discharged by such officers.
- A member would be disqualified from the appointment on the following grounds:
 1. Having convicted for an offence involving moral turpitude; or
 2. is of unsound mind; or
 3. dismissed from the service of the government or any corporate body under the government; or
 1. Having a financial interest, according to the State Government;
 2. is an insolvent; or
 3. has such other disqualifications as notified by the State Government.
- Every appointment as mentioned shall be done by the State Government on the advice of a selecting committee consisting of:
 1. President of the State Commission
 2. Consumer Affair Department's Secretary
- State's Law Department Secretary
- Each member will hold the office for a period of 4 years or till the age of 65 years, whichever is earlier and would also be eligible for a re appointment, if not reached the age of 65 years.

Section 11 Jurisdiction:

- The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees one

crore. If the Central Government feels necessary, it would

- t would provide other values as it deems fit.
- A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:

1. the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business, or has a branch office or personally works for gain; or

2. any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given;

- the cause of action, wholly or in part, arises; or

1. Residence or the workplace of the complainant.

- Mere dealing with claim by some at Regional Office would not furnish part of cause of action.

- In cases of vacancy, the State Government may extend the jurisdiction of a particular district commission, beyond that district to the one with a vacancy.

- The functions of the District Commission would be ordinarily performed at the headquarters or any other place as notified by the State Government.

Section 12-14 Powers:

- The district commission has the power to entertain complaints and charge fee in relation to the goods sold or agreed to be sold or the services provided or agreed to be provided by:

1. The consumer of such goods or services; or

2. Any recognised consumer association; or

- One or more consumers in case where numerous consumers have the same interest; or

1. the Central Government, the Central Authority or the State Government, as the case may be.

2. Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together and on receipt of a complaint made, the District Commission may, by order, admit the complaint for being proceeded with or reject the same (After an opportunity to be heard is given to the complainant).

3. If it appears to the District Commission that there are elements of settlement which would be acceptable to both the parties, it may direct the parties to give in writing consent to have their dispute settled by mediation.

4. Where the complaint is in reference to any goods, the commission would pass the copy of the complaint to the opposite party named in the complaint to get their version of the case. The same applies in case of the services provided.

5. In case of an allegation of a defect in a good which cannot be ascertained without a test or proper analysis of the substance, the commission may obtain a sample of the goods from the complainant, seal it and provide it to the appropriate laboratory for analysing or testing, as the case may be, for which a fee must be deposited by the complainant.

6. The District Commission may also seek to settle the consumer dispute ex parte, on the basis of evidence provided by the complainant, in the case the party mentioned in the complaint fails to respond within the prescribed time period

- Where the complaint is in reference to any goods, the commission would pass the copy of the complaint to the opposite party named in the complaint to get their version of the case. The same applies in case of the services provided.

- In case of an allegation of a defect in a good which cannot be ascertained without a test or proper analysis of the substance, the commission may obtain a sample of the goods from the complainant, seal it and provide it to the appropriate laboratory for analysing or testing, as the case may be, for which a fee must be deposited by the complainant.

- The District Commission may also seek to settle the consumer dispute ex parte, on the basis of evidence provided by the complainant, in the case the party mentioned in the complaint fails to respond within the prescribed time period.

- The commission may also provide for adjournment of the case, where sufficient cause has been shown and recorded by the commission in writing. It may also provide an interim order, if necessary, depending upon the facts and circumstances of the case.

- The commission would have the same powers as vested under the CPC, 1908 in a civil court in matters namely:

1. Summoning of any witness or defendant or issuing of commissions for examination of documents or any witness.

2. Requiring production of a material or object as evidence or the analysis/test report from the concerned laboratory.

- Matters prescribed by the Centre.

- In cases where the allegations of the complainant are proved, the commission may order the opposite party:

1. To remove the defect as have been pointed out or to replace the goods with new goods which are defect free

2. To return the complainant the price or the charges paid along with interest and also provide the complainant with the compensation awarded, for the loss and damage suffered due to the negligence of the opposite party

- To pay an amount as a compensation in product liability

1. To remove the defects in the goods and deficiency in the services and discontinue the unfair or restrictive trade practices.

2. To stop the manufacture, sale and offer of hazardous goods and services.

3. To pay a sum as determined by the commission in case of a large number of consumers that might be affected but are not easily identifiable.

- To provide corrective advertisement and desist from issuing any misleading advertisement.

- The Commission has the power to review the orders passed by it if they have an error apparent on the face of the record, either by self-evaluation or by an application of any of the parties.

- The District Forum would also have the power to grant punitive damages depending upon the circumstances of the case.

This was the Composition, Jurisdiction and Power of the District Consumer Forum.

The State Commission – Composition and Power

Every State has a State Commission under, Consumer Protection Act and according to Section- 17 of this Act, the pecuniary jurisdiction of the State Commission states that the complaints and issues where the value of goods or services and the value of the compensation claim may exceed to Rs. 20 lakhs it should be less than Rs. 1 crore.

Section 16 Composition of the State Commission The State Commission shall consist, the following-

1. A President, who is or has been a judge of a High Court and he shall be appointed by the State Government and
2. Two other members, out of which one of them shall be women. The two members shall have the following qualification.
 - Members should not less than 35 years of age.
 - Possess a bachelor's degree from a recognized university.
 - Be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, accountancy, commerce, public affairs, industry or administration.

Section 17 Jurisdiction of the State Commission. — (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

- (a) to entertain—
 - (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees *twenty lakhs* but does not exceed rupees *one crore*; and
 - (ii) appeals against the orders of any District Forum within the State; and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) *A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—*

- (a) *the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or*
- (b) *any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or*
- (c) *the cause of action, wholly or in part, arises* vided that 50% of the members should have judicial background.

Establishment of Benches-Section 16(1B)(i) *The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.*

(ii) *A Bench may be constituted by the President with one or more members as the*

President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

In the case of, Justice Debendra Mohan Patnaik v. State of Orissa, the question came out that , related to the reduction of salary of the President of the State Commission, to the extent of pension he received as retired judge of High Court . Holding the reduction as illegal and a constitutional infraction in view of Article 221(2) of the constitution of India, the Odisha High observed , that pension is not a bounty but it is a part of one's own earning , which is retained and given after superannuation as per rules and thus indefeasible right is created. The right cannot be taken away or abridge in any manner in course of a subsequent employment unless statute under which the employment is made specifically provide such abridgement .

Section 19 Appeals.—Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

2. Composition of the National Commission.—(1) The National Commission shall consist of—

3. a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;

4. Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

5. *not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—*

6. *be not less than thirty-five years of age;*

7. *possess a bachelor's degree from a recognised university; and*

8. *be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:*

9. *Provided that not more than fifty per cent. of the members shall be from amongst the persons having a judicial background.*

10. *Explanation. — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.*

11. *Provided further that a person shall be disqualified for appointment if he—*
12. *has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or*
13. *is an undischarged insolvent; or*
14. *is of unsound mind and stands so declared by a competent court; or*
15. *has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or*
16. *has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or*
17. *has such other disqualifications as may be prescribed by the Central Government :*
18. *Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—*
19. *a person who is a Judge of the Supreme Court, — Chairman;*
20. *to be nominated by the Chief Justice of India*
21. *the Secretary in the Department of Legal Affairs — Member;*
22. *in the Government of India*
23. *Secretary of the Department dealing with consumer — Member.;*
24. *affairs in the Government of India*
25. *The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.*
26. *A Bench may be constituted by the President with one or more members as the President may deem fit.*
27. *if the Members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.*
28. *The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.*
29. *Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:*
30. *Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:*
31. *Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) :*
32. *Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person*

who has resigned.

33. *Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.*

34. *Jurisdiction of the National Commission. — Subject to the other provisions of this Act, the National Commission shall have jurisdiction—*

35. *to entertain—*

36. *complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and*

37. *appeals against the orders of any State Commission; and*

38. *to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.*

39. *Power of and procedure applicable to the National Commission. — (1) The provisions of sections 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.*

40. *Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.*

41. *Power to set aside ex parte orders. - Where an order is passed by the National Commission ex parte against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.*

42. *Transfer of cases - On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission.*

43. *Circuit Benches [y1]- The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.*

44. *Vacancy in the Office of the President - When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the case may be:*

45. *Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person among such members, shall preside over the National Commission in the absence of President of that Commission.*

46. *Qualifications, terms and conditions of service of President and Member - Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President and other members of the National Commission appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), shall be*

governed by the provisions of section 184 of that Act :

47. *Provided that the President and member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.]*

48. Appeal. — Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:

49. Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

50. Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

51. Finality of orders. — Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

52. Limitation period. - (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

53. Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

The Motor Vehicles Act 1988

is an Act of the Parliament of India which regulates all aspects of road transport vehicles. The Act provides in detail the legislative provisions regarding licensing of drivers/conductors, registration of motor vehicles, control of motor vehicles through permits, special provisions relating to state transport undertakings, traffic regulation, insurance, liability, offences and penalties, etc. For exercising the legislative provisions of the Act, the Government of India made the Central Motor Vehicles Rules 1989

Objects-

- The fast-increasing number of both commercial vehicles and personal vehicles in the country.
- The need for encouraging adoption of higher technology in automotive sector.
- Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials
- Need for effective ways of tracking down traffic offenders.
- Rationalization of certain definitions with additions of certain new definitions of new types of vehicles.
- Stricter procedures relating to grant of driving licences and the period of validity thereof.
- Laying down of standards for the components and parts of motor vehicles.

- Provision for issuing fitness certificates of vehicles also by the authorised testing stations.
 - Enabling provision for updating the system of registration marks.
 - Liberalised schemes for grant of stage carriage permits on nonnationalised routes, all-India Tourist permits and also national permits for goods carriages
 - Maintenance of State registers for driving licences and vehicle registration.
 - The Bill also seeks to provide for more deterrent punishment in the cases of certain offences
- The constitution-makers of India have made this constitution both rigid and flexible. The most evident feature of this flexible nature of our constitution is the amendment procedure as provided under Article 368. This helps the laws to be effective in consonance with the changing times. The Motor Vehicles (Amendment) Act 2019, was a major attempt towards the fulfilment of this spirit of the constitution, amending the old Act of 1988. This amendment provides some major changes to the old Act. This article is an attempt to provide the reader with a greater insight into the main amendments, benefits and disadvantages of this recent amendment to the old Act.

Motor Vehicles (Amendment) Act, 2019

The Motor Vehicles (Amendment) Act, 2019, came into effect on 1st September 2019 and made rules more stringent for offenders, therefore creating a more rigorous punishment for them. This amendment has made it difficult for those in the habit of breaking traffic rules. Some examples of the change that have been brought about are- imprisonment of up to a month for driving errors and a provision for imprisonment of up to 6 months for accidents caused by rash drivers etc.

Objective

With every step towards increased urbanisation, it is evident that the traffic on roads has increased. Nowadays, each household in almost every city or town has at least one motor vehicle. With this increasing traffic on roads the probability of accidents increases. This probability matches with the reality. The number of road accidents is on the rise.

The reasons are many, like negligent and rash driving, dishonouring the traffic rules, unavailability of an efficient enforcement mechanism for traffic rules, inefficient traffic police force etc. The Motor Vehicles Act's recent Amendment was done keeping in view these factors.

This Act majorly aims at ensuring road safety, compensation for the victims of accidents, third party insurance and the health of the vehicles.

Salient Feature Of The Amendment

The important features of the Motor Vehicles (Amendment) Act, 2019 are as under-

Road And Environment Health

In case the vehicles are not fit to be used on roads as they cause environmental damage and hence harm the health of others, they have to be returned to the manufacturers of the respective vehicles. The manufacturers through this amendment are directed to take back these vehicles and have the choice to either reimburse or replace the defective vehicle with

one of similar make.

Road Safety

This Amendment vehemently propagates the increase in the penalty for traffic rule offenders. This is done in the hope that this increased fine would force the drivers to be more alert and careful on the roads. This amendment provides more stringent rules for offences like juvenile driving, drunken driving, over speeding, overloading and driving without a license. Stricter punishment for those driving without helmets is also made in this Amendment.

Fitness Of Vehicle

This Amendment has provisions mandating the automated testing of vehicles for doing a fitness check. This would help improve road safety by removing from the traffic unfit vehicles. This Amendment makes specific provision for those who deliberately violate environment and safety regulations.

This Amendment promoted certification of automobiles after they were successfully tested. The regulation of this process of certification was also proposed via this Act. In addition to this, Amendment of 2019 aims at setting testing standards and bringing the agencies issuing automotive approvals under the Motor Vehicles Act.

National Road Safety Board

Another major feature of this Act is the provision for setting up of a National Road Safety Board under the central government. This board is supposed to advise governments of all the states in addition to the central government on matters of traffic management and road safety.

Compensation For Victims Of Road Accidents

Provisions have been made for cashless treatment of victims of road accidents, during the golden hour. Golden hour is the time period up to one hour from the time of the accident. This is the time period in which the chances of survival if proper treatment is given, are maximum. An effort to make this whole process cashless is also made by this Act.

Protection Of Good Samaritan

This Act defines a Samaritan as a person who stands up for helping out a road accident victim immediately after such mishappening takes place. It is often seen that these generous people are the ones who end up being the victim of harassment for their acts of kindness. This Amendment provides for these people too. It ensures that they are not harmed in any manner whatsoever. It also protects them from any kind of civil or criminal proceedings, even in cases where they negligently cause the death of the victim.

Compulsory Insurance

This Act instructs the union government to establish a Motor Vehicles Accident Fund providing compulsory insurance to all drivers of India.

Taxi Aggregators

These are defined by the Bill as the intermediaries using a digital platform for connecting

drivers to passengers. These according to these new provisions, are to be provided with licenses from the governments of the respective states. Also, they are instructed to follow the rules and regulations of the Information And Technology Act, 2000.

National Transportation Policy

This Act promotes the idea of the formation of a National Transportation Policy. This is to be made by the Central government in collaboration with the governments of all the states. This policy would structure a framework for road transport. In addition to this, priorities for the transport system would be specified.

Training of drivers

This Amendment strengthens the process of driving training. This would lead to a faster issuance of licenses. This Amendment comes in the wake of a shortage of commercial drivers in the country. It propagates the opening up of more driver training institutes for ensuring the production of better commercial drivers in India.

National Register for Driving licence and Vehicle Registration

This Amendment puts forth harmonisation and integration of issuance of driving licence with vehicle registration. This would be done by the creation of a National Register for Driving Licence and National Register for Vehicles with the online portals of 'Sarathi' and 'Vahan'. This process would ensure the creation of a uniform system of licences and vehicle registration throughout the country.

Online Driving Licences

This Act makes a provision for online issuance of learner's license, mandating an online identity verification. This would improve efficiency and limit to a large extent issuance of fake licenses. In addition to increasing transparency, this Act also provides commercial licenses to be valid up to a period of five years instead of three years. There would now be driver training schools for the production of better drivers on roads.

Motor Vehicles Accident Fund

A Motor Vehicles Fund would be constituted to provide compulsory insurance to all drivers on- road by the central government. This fund would be set up to compensate victims of road accidents and their legal heirs in case of their death.

Better Insurance Facilities

This Act states that there exists no cap on liability for insurers. In fact, drivers attendants are now to be included in third party insurance. There would now be up to ten times increase in compensation by insurance companies. Provisions have been made to ensure that if the victim's family agrees to compensation of five lakhs, the family gets it within a month. The process of claiming compensation has also been simplified. The minimum compensation for hit and run cases and cases where the grievous injury is caused has also been increased.

Fault And No Fault Liability Under Motor Vehicle Act

Introduction :-

The Motor Vehicles Act came into existence in 1988. It laid down rules and regulations on all aspects of road transport, including registration of motor vehicles, controlling their permits, traffic regulation, insurances and penalties. Also, the Motor Vehicle Act makes it compulsory for a driver to have a valid driving licence. Also, no vehicle can be used without a registration number.

The new Motor Vehicle Act 2019 or the Motor Vehicle (Amendment) Act 2019 was implemented in September last year. With the introduction of the new act, several traffic fines have increased substantially and it is believed that the stricter penalties will not help the authorities curb the menace of road accidents caused due to negligent driving. Ubi jus ubi remedium the Latin maxim states that, where there is wrong, there is remedy. It is an essential maxim of law of torts, where one's right has been invaded, the law provides for the remedy to safeguard the right of the aggrieved. It was in the case of Ashby V. White, where the court held that: When a person is vested with a right, he must have a means to safeguard and have a remedy if someone violates it, and it is useless to think of a right without providing for any remedy for its violation. The Motor Vehicle Act, 1988 was enacted on July 1, 1988. The original Act, i.e. The Motor Vehicle Act, 1939 was amended numerous times to keep it according to the phase of technology and development. Later, a committee was set up to draft a comprehensive legislation as per the various suggestions. In the amended act, Section 140 to section 144 under chapter-X lays the provision for no fault liability. Section 145 to 164 under Chapter -XI deals with the insurance provision pertaining to third party claims, and Section 165 to 176, Chapter XII, deals with claims tribunals. This act was said to be a great benefit to society as it primarily aimed to provide relief to persons who encounter accidents and then are not paid adequate compensation, that they should have to make good to their damages.

To point out some of the welfare provisions, the act provided the driving license to be mandatory to drive a motor vehicle, and registration of the vehicle to be valid only for the period of fifteen years, which can be further renewed for another five years. The act also includes various other provisions for the benefit of road accident victims.

Compensation under motor vehicle act :-

Rules for payment of compensation can be discussed under two sub-headings;

- a. Fault based liability and
- b. no fault liability

The cases of motor accidents constitute a major bulk of tort cases in India. To prevail in a suit generally, a victim must also demonstrate that the injurer has breached a duty he owes to the victim. When an injurer breaches a legal duty he is said to be "at fault" or negligent. Breach of a duty is caused by doing something which a reasonable man should do under the circumstances.

The rule of negligence with the defence of contributory negligence holds the injurer liable if and only if he was negligent and the victim was not. In India, this rule requires proportional sharing of liability when both parties were negligent. That is, the compensation to the victim

receives gets reduced in proportion to his or her negligence. The rule of strict liability always holds the injurer liable irrespective of the care taken by the two parties. Before 1988 for motor vehicle accidents liability of injurer was predominantly fault-based liability. However, the 1988 amendment to the Act brought in an element of strict liability.

The following provision (section. 140) was introduced in the amendment: “where death or permanent disablement of any person has resulted from an accident arising out of the use of the motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.” In simple terms, this amendment implied that the injurer or the insurance company of the injurer has to pay a certain amount as compensation to the victim irrespective of whose fault it is.

The Act was further amended in 1994. As a result of this amendment, liability of injurer became even stricter. According to section 163-A: “Notwithstanding anything containing in this Act or any other law for the time being in force, the owner of the motor vehicle or the authored insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation as indicated in the second schedule, to legal heirs or the victim s the case may be.”

The claimant shall not be required to plead or establish that the death or permanent disablement was due to any wrong full act or neglect or default of the owner of the vehicle or the vehicles concerned or any other person. While filing the damage awards (i.e the liability payments to be made by the injurer to the victim), courts should take into account the entire loss suffered by victim. A court may entitle the victim to over or under compensation. Such court errors can cause various effects depending upon the liability rule in force.

Motor Vehicles Act,1988, however, recognizes limited ‘no fault liability’ but only in the cases of death and permanent disablement. While deciding on compensation, courts have applied rule of negligence with defence of contributory negligence. For instance, if the liability is limited to Rs. 50,000 in the case of death and Rs.25,000 in the case of permanent disablement. Such compensation can be claimed without establishing any negligence on the part of owner or the driver of the vehicle. The compensation claimed exceeding the amount can prevail only if negligence is proved.

No Fault liability

It was brought to the bench of Acting Chief Justice A. Sambaiva Rao , in the case of Haji Zakaria V. Naoshir Cama, whether the liability to pay the compensation can be levied upon owner , even when there was no fault on his behalf or negligent act. This was over-ruled b the Hon’ble Supreme Court of India, it was of the opinion that, where there is no fault or negligence by the owner, there could be no liability be imposed uponhim.

Anyhow, the principle of No Fault was developed to provide the victim with some sort of relief in case of hit and run and such cases. Being welfare state, denial of the compensation over the fact that there was a contributory negligence on part of the victim or where the negligence of the driver of a vehicle was not established beyond the reasonable doubt, defeats the idea of social justice, and so the provision was made that driver or the owner should be held without taking the fact of contributory negligence into consideration.

There was doubt as to in which way does the principle of No-fault liability differs from the principle of Strict liability. In the case of the No-fault liability the compensation is fixed, on the other-hand , in the case of Strict liability liability is not fixed, but is upon the discretion of the court. The former principle is different from the common law principle which says that the claimant should establish the act of negligent and rash driving on the part of owner or the driver to claim the compensation. However, the section 140 to section 144 of the Motor Vehicle Act, 1988 provides exception to such rule.

In case of Minu B. Mehta V. Balkrishna, the apex court overruled the verdict of the Andhra Pradesh High Court and Bombay High Court , and ruled that the owner of the vehicle or the company of the vehicle insurer can not be held liable unless there's a negligence on the part of the owner or the driver of the vehicle.

In Shridhar V. United India Insurance Company, the apex court was of view that where an accident is caused due to oil spilled on the road, negligence would be on the part of the driver only , not upon the owner , or the other . In such a circumstances, the insurer would not be liable, the computation of the liability shall be on the basis of no fault principle.

While adjudicating in the case of Ishwarappa v/s. C.S. Gurusthantappa, the court held that section 140 of the act is intended to provide an immediate relief to the victim or heirs and legal representative of the deceased person in an event of an accident. And so the claim under section 140, is paid at the threshold of the case proceedings.

Section 140 of The Motor Vehicle Act 1988-

The act provides the provision for the payment of the compensation to the aggrieved , in case of death or permanent disability by the vehicle of defendant , by himself or the driver of any such vehicle. According to section 140, No fault liability is to be invoked when a death or permanent disability has been resulted from an accident arising out of a motor vehicle.

In any claim made under this act, the amount of compensation be payable as follows:

- Where the accident causes the death of the a person, a fixed sum of Rs. 50,000/- &
- If causes permanent disability of any person, a fixed sum of Rs.25,000/-.

The sub-section (3) of the act makes it clear that, the burden of the pleading and fact whether or not wrongful act, negligence, or default was committed by the claimant or his heir or representative, the compensation under this section is not subjected to any burden of proof on the shoulders of the claimant. The compensation under this section is governed by No fault liability principle.

By reading section 140 and 163-A together, the intent of the act is crystal clear, that any claim raised under the section 163-A of this act, need not be subjected to be examined based on any proof or pleading at the hands of the claimants, and shall be provided relief under section 140.

Is the Section 140 to be applied retrospectively? The matter of consideration regarding date for the determination of the compensation is the date of the accident. The amendment to increase the amount payable under the act was increased on 14/11/1994 from Rs.25,000/- to Rs.50,000/- for causing death. The following provision is not retrospectively, and so if any accident occurs before 14/11/1994, the compensation shall be paid Rs. 25,000/- only. For filing claim under sec. 140, it is not mandatory for precedent that the primary claim petition under section. 166 be filled. Even though the claim petition is not filled under or if the claim is dismissed failing the limitation period, an application for claim under sec. 140 cannot be dismissed on the similar ground.

Manjit Singh Vs. Rattan Singh, the court in the following case held that amended section.140 . 14/11/1994 which has raised the amount of the compensation is applicable retrospectively. And so, for an accident leading to death, before the amended was made, the compensation was computed by the Tribunal for Rs.30,000/- was raised to Rs. 50,000/-. This verdict however needs reconsideration. The compensation shall be payable as per the law applicable as the time of accident took place.

Case Law:

The Oriental Insurance Co. Ltd. Vs. Seela Ratnan And Ors

Facts:-

The issue was brought to the bench regarding amendment made to Section 140 in year 1994 in The Motor Vehicles Act, 1988. The amendment aim to increase the compensation of accidental death and permanent disability. The accident in the concerned case took place before the date of the amendment came to force.

Issues:-

It is before the Hon'ble bench to decided that whether, Section 140 of the Motor Vehicles Act is applicable retrospectively?

Judgement:-

The court in the above case ruled that, Section 6(c) of the General Clause Act would be applied in the concerned case and the amendments made as in Section 140 of the Motor Vehicles Act, 1988 cannot be applied in the case retrospectively. And so any claim made before the amendment came into the force shall not be governed as per the amendments made, meanwhile shall be subjected to the compensation as per earlier provisions. "When an accident has occurred before the commencement of 1988 Act no fault liability can be granted as per Section 92-A of the repealed Act and not under Section 140 of the 1988

Act.

Supreme Court had considered the applicability of Section 6 of General Clauses Act to the provisions of the repealed Act in Gurcharan Singh Baldev Singh Yashwant Singh (1991) 6 JT (SC) 256: (AIR 1992 SC 180). An application was filed by an operator for renewal of his permit under Section 58 of the Motor Vehicles Act, 1939.

Conclusion :-

The Motor Vehicles Act came into existence in 1988. It laid down rules and regulations on all aspects of road transport, including registration of motor vehicles, controlling their permits, traffic regulation, insurances and penalties. Also, the Motor Vehicle Act makes it compulsory for a driver to have a valid driving licence. Also, no vehicle can be used without a registration number.

The new Motor Vehicle Act 2019 or the Motor Vehicle (Amendment) Act 2019 was implemented in September last year. With the introduction of the new act, several traffic fines have increased substantially and it is believed that the stricter penalties will no help the authorities curb the menace of road accidents caused due to negligent driving.

There arise two kinds of liabilities Fault liability and No fault liability.

No-fault liability or absolute liability arises due to accidents over the road. It basically means another party who was involved in the accident has to pay compensation to the victim. He can't sidestep himself from the liabilities by arguing that it was not his negligence or mistake. Whether it was the negligence of the victim or not, the driver or owner of the car will pay compensation to the suffering party. Section 140 to section 144 of the Motor Vehicle Act, 2019 deals with no-fault liability. Section 140 of the Motor Vehicle Act, 2019 states that if a person died or permanently disabled due to the accident then the owner of the vehicle would be equally liable to pay compensation. A sum of 50,000 shall be paid on the death of any person while 25,000 rupees to those who became permanently disabled. This section is claimant centric as they are not required to prove that the act was done wrongfully or was due to the negligence of the owner or owners of the vehicle. S. Kaushnum began v. New India Assurance Co. Ltd (2001):can be the case for it. While the fault liability arises when one is at a fault or is negligent.

Compulsory Insurance

Insurance is a contract whereby one party, the insurer, undertakes in return for a consideration, the premium, to pay the other, the insured or assured, a sum of money in the event of the happening of a, or one of various, specified uncertain events.

Insurance developed from the fourteenth century as a means of spreading huge risks attendant on early maritime enterprises; life and fire insurance developed later. The main classes of insurance are life and other personal insurance, marine insurance, accident or property insurance and liability insurance when the sum becomes payable when legal liability is incurred as for personal injuries or professional negligence to another.

What is Third Party Insurance?

There are two quite different kinds of insurance involved in the damages system. One is Third Party liability insurance, which is just called liability insurance by insurance companies and the other one is first party insurance.

A third party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the second party, and the person you (the insured) injure who claims damages against you is the third party.

Section 145(g) "third party" includes the Government. *National Insurance Co. Ltd. v. Fakir Chand* [1], third party should include everyone (other than the contracting parties to the insurance policy), be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of insurance policy.

The Motor Vehicles Act, 1988 which came into force on 1st July, 1988 and which is divided into XIV Chapters, 217 Sections and two schedules, makes it compulsory for every motor vehicle to be insured. Chapters X, XI and XII of the 1988 Act deals with compensation provisions. Sections 140 to 144 (Ch.X) deal with liability with out fault in certain cases. Chapter XI (Ss. 145 to 164) deal with insurance of motor vehicles against third party risks.

Relevant Provisions of Motor Vehicles Act, 1988 for compulsory insurance

Chapter 11 (Section 145 to 164) provides for compulsory third party insurance, which is required to be taken by every vehicle owner. It has been specified in Section 146(1) that no person shall use or allow using a motor vehicle in public place unless there is in force a policy of insurance complying with the requirement of this chapter.[3] Contravention of the provisions of section 146 is an offence and is punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both (section 196). Section 147 provides for the requirement of policy and limit of liability. Every vehicle owner is required to take a policy covering against any liability which may be incurred by him in respect of death or bodily injury including owner of goods or his authorized representative carried in the vehicle or damage to the property of third party and also death or bodily injury to any passenger of a public service vehicle. According to this section the policy not require covering the liability of death or injuries arising to the employees in the course of employment except to the extent of liability under Workmen Compensation Act. Under Section 149 the insurer have been statutorily liable to satisfy the judgment and award against the person insured in respect of third party risk.

Hit and Run

The Motor Vehicles Act, 1988 is a piece of social legislation and its provisions are designed to protect the rights of road accident victims where the identity of motor vehicle causing the accident cannot be established. The relevant legal provision is enshrined in Section 161 of Motor Vehicles Act where a "hit and run motor accident" is defined as an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. This Scheme came into force from 1.10.1982.

This Section provides for payment of compensation (solatium) as follows:

- In respect of the death of any person resulting from a hit and run motor accident, now a fixed sum of Rs.25,000
- In respect of grievous hurt to any person resulting from a hit and run motor accident, now a fixed sum of Rs.12,500

HIT & RUN CLAIMS PROCEDURE

The victim of the “hit-and-run” vehicle or his legal representative shall make an application to the Claim Enquiry Officer in each Taluka. After due enquiries, the Claims Enquiry Officer will submit a report together with certificate of post mortem or injury certificate to the claims settlement commissioner who will either the District Collector or the Deputy Commissioner at the District level. He will process the claims and sanction the payment within 15 days from the receipt of report from Claim Enquiry Officer and communicate sanction order to the nominated office of the Insurance Company. The compensation under Hit and Run Accident cases are made from a Solatium Fund which is contributed by General Insurance industry under an agreed formula. The administration of claims is done by New India Assurance Co Ltd which has nominated one Divisional Manager in each district at District Level Committee which is headed by District Collector.

The Motor Vehicles (Amendment) Act, has been passed by the Parliament and approved by the President. The amended regulations and fines will be applicable from the 1st of September 2019.

Following is a tabular representation of the increase in compensation for hit-and-run victims as per Section 161 of the Act–

Instances	Compensation	Compensation
of the victim	000	0000
of Injury of the victim	500	000

References:

1. www.lawcolumn.in/state-commission-under-consumer-protection-act-composition-and-powers/
2. <https://www.lawcolumn.in/district-consumer-forum-composition-jurisdiction-and-powers/#:~:text=The%20District%20Forum%20shall%20have,values%20as%20it%20deems%20fit>
3. https://en.wikipedia.org/wiki/Consumer_Protection_Act,_1986
4. <https://www.lexology.com/library/detail.aspx?g=9b08f797-5899-4bef-a355-b8a98095e28e>
5. http://ncdrc.nic.in/bare_acts/consumer%20protection%20act-1986.html
6. <https://blog.ipleaders.in/overview-motor-vehicles-amendment-act-2019/>
7. <https://www.legalserviceindia.com/article/1264-Third-Party-Insurance.html>
8. https://www.policyholder.gov.in/hit_and_run.aspx
9. <https://www.royalsundaram.in/hit-and-run-case-fine-now-and-then#:~:text=According%20to%20Section%20161%20of,hit%2Dand%2Drun%20incidents.>
