

## CHAPTER 7

### Conclusion and Suggestions

#### 7.1 Conclusion-

In this research work the researcher intended to study the tort law in India with limiting the study to State liability, Product Liability and Public Nuisance Litigation. This research was done with the following objectives-

- To study and examine the existing Indian mechanism dealing with determination of rights, liabilities and remedies for Public Nuisance under law of tort.
- To determine whether the Councils and Redressal Forums constituted under the Consumer Protection act, 1986 to adjudicate and provide remedy for product liability under Indian Tort system have sufficient and independent authority.
- To examine the scope and ambit of the Tort Law to deal with disputes and liabilities related with civil wrongs seeking unliquidated damages and also includes the study of Tort laws of United Kingdom, United States of America and China on the same.
- To find out the legal position of the laws dealing with civil wrongs and liability of the Sovereign and to examine if they provide a sound comprehensive legislation to encourage litigation under law of Torts in India.
- To find whether a codified Tort Law would make the State liable for tortious acts.

The researcher to achieve the above mentioned objectives of the study studied the basic meaning, evolution and general principles of Tort Law in **Chapter 2**. The researcher made an attempt in this chapter to represent all the concepts of tort law in brief so that it becomes easier to analyse the law in latter chapters. While studying the historical evolution of tort law the researcher could conclude that tort in its nascent form comprised mainly of negligence cases where there was breach of duty. Tort basically evolved from common law principles of England which was based on justice, equity and good conscience. Only with few scholarly publications on 'private wrongs' it was seen that even by the mid of 19th century tort was considered to be an undeveloped branch of law. It was only after the industrial revolution that tort law had become significant with increased scope and ambit. Principles like strict liability developed with the famous **Ryland v. Fletcher** case. Thereafter, with the developments and advancement of the society in all aspect new concepts like product liability, liability for medical malpractice,

environmental liability, liability for torts in the marketplace, extended liability of the corporation have developed in tort law. Thus, the first part of the **objective No.3** of this research ‘**To examine the scope and ambit of the Tort Law to deal with disputes and liabilities related with civil wrongs seeking unliquidated damages**’ was achieved by the researcher.

The researcher in the next chapter titled ‘**Laws on Torts with Global Perspective**’ studied the tort system prevalent in modern and developed Countries namely United Kingdom, United States of America and China which was the second part of **Objective No.3** of this research work. The researcher also studied and interpreted the codified laws on tort of the above named countries. The researcher could infer that tort law in United Kingdom was also initially based on common law principles. But with the evolution of the society a need was felt to adopt definite enactments in the then existing tort system in United Kingdom namely:

- 1) State Liability for Tort after Crown Proceedings Act, 1947
- 2) Law Reform (Liability in Tort) Act, 1951
- 3) Torts (Interference with Goods) Act, 1977
- 4) Product Liability under The Consumer Protection Act 1987

The researcher could conclude that in United Kingdom the use of old and outdated maxims like ‘king can do no wrong’ in establishing State liability was totally abrogated with specific statutes and provisions. Further other concepts under tort law like joint tortfeasor, negligence, product liability are also defined under specific statutes.

The researcher made a detail study of **Federal Tort Claims Act** of United States of America and found that the trend in United States of America is also towards establishing liability of State for torts committed by its servants not from common law principles but from specific statute. The liability of the manufacture for their product is also covered by statutes. As far as Public nuisance is concerned in United State Public nuisance was mostly dealt with common law but after the Second Restatement of Tort Law, public nuisance has been well defined in the draft which though is not a statute or law but is a treatise issued by the American Law Institute.

The researcher also studied the tort law in China and found that China has a specific statute namely: **The Tort Liability Law of the People's Republic of China, 2010**. The researcher made a detail analysis of the statute and could conclude that it is a well comprehensive law covering almost all the important aspects of tort law and removes the ambiguities in the interpretation of the concepts like product liability, nuisances, negligence and extends of liabilities. China opted for one single well drafted statute instead of scattered remedies under various statutes.

The researcher in **Chapter 4**, titled '**Analysis of Present Tort System in India**' studied the development of Indian tort law. The researcher also studied the present laws and legislations dealing with State liability, Product liability and Public Nuisance in India. The researcher could infer that the core of Indian tort system is the Common Law Principles of England with few new developments like the Principle of Absolute Liability. Regarding the situation of State Liability in India, the researcher could conclude that under ancient Hindu and Muslim Rulers there was no room for Sovereign Immunity in India. Then under East India Company, Secretary of the State for India was liable only for sovereign functions and East India Company was liable like a body corporate. But under the British Government, the doctrine of 'King can do no wrong' with the enactment of the Government of India Act, 1935 was introduced which granted Sovereign immunity. The researcher found out that under independent India, there is existence of the application of the doctrine of 'King can do no wrong' and it depended on the interpretation given by judges of 'sovereign' and 'non-sovereign' functions. Thereafter, the researcher analyzed two major laws governing product liability in India, namely, 'The Consumer Protection Act, 1986' and 'The Sales of Goods Act, 1930'. After analysing the Consumer Protection Act, 1986, the inference which the researcher could draw is that the legislation has the following lacunas:

- Alternative Remedies other than compensation prescribed under section 14 of CPA and compensation in case of negligence only.
- Availability of liability limited clause
- Quasi-judicial authorities and summary procedures
- No Sub-judice bar and No power to review or stay orders
- No Status of 'court of records'

The researcher also analysed the recent Consumer Protection Bill of 2018, which if passed in the Parliament shall replace the Consumer Protection Act, 1986. The new Bill of 2018 has specific provisions dealing product liability which was earlier missing and by this bill the consumer forums have been granted power to review their order. But the researcher has found the following gaps in the Bill of 2018:

- Consumer Forums are still quasi-judicial authorities
- Violates the Principle of Judicial Independence
- Violates the Principle of Separation of Power
- Uncertainties in Composition and role of the Consumer Protection Councils
- Conflict of Jurisdiction

The gaps which the researcher could find in the Sales of Goods Act, 1930 also dealing with product liability in India are as follows:

- Remedies are returning of the goods or to claim damages (mostly liquidated)
- Principle of Caveat emptor limits the seller's/manufactures' liabilities.

In the last part of the chapter, the researcher analysed the laws in India dealing with Public Nuisance which are The Criminal Procedure Code, 1973 (Cr.P.C), Indian Penal Code (I.P.C), Code of Civil Procedure (C.P.C) and Constitutional Remedy in the form of Public Interest Litigation (P.I.L). On analysing the above named legislations, the researcher could conclude that any order made under section 133 of the Criminal Procedure Code, 1973 is to meet with emergency situation and provides remedies such as removable of nuisance or prohibition of nuisance by stopping it. The remedies available under criminal law are only in the form of penalties and there is no room for any nuisance which might be in existence since long. The researcher could infer that Section 91 of CPC only deals with procedural provisions and puts no bar on alternative remedies available under criminal law or civil law which is violative of the principle of Res Judicata. Further, any claim for public nuisance made under this section by a class representation only pave way to file civil claims, which in turn provide for damages which are ex-gratia in nature. Lastly, the researcher inferred that class action under the concept of tortious liability is allowed by P.I.L in India largely in cases which involve environmental degradation instead of Public Nuisance Litigation as used in America. The gravity of individual damage is mostly ignored under Public Interest Litigation.

The researcher in **Chapter 5**, titled '**Precedents and Judicial Pronouncements on Indian Tort Law**' has studied and analyzed several judgments in order to determine the actual status of the various laws and regulations on State liability, Product liability and Public Nuisance in India. The inferences that were drawn are as follows:

**Summary of Inferences that can be drawn after the analysis of the cases:**

The researcher in order to analyse the development of laws on State liability analysed some important and landmark judgements in three parts, namely, State Liability in Pre-independent India, in Independent India and finally in Present India. The researcher could make the following inference:

- Under the British Rule the doctrine of 'King can do no wrong' was absolutely applicable in deciding cases where liability of the State had to be decided for tortious wrongs committed by the employees or servants of the State.
- Post Independence the State was held liable in those cases only where the tort was committed while discharging Non-Sovereign functions.
- From the analysis of later cases it could be inferred that for those torts committed by State servant that infringed fundamental rights the public law remedy of granting ex-gratia compensation by writs was encouraged and permitted. But the doctrine of Sovereign immunity still was uncertain and existed while seeking remedies under private law.
- The recent judgements indicate that even though the approach of the Indian Courts are to grant compensation to the victims for torts committed by the servants of the State by establishing the State liable for infringement of fundamental rights but it also suffers from uncertainties in absence of any express provisions.

Then, the researcher analysed cases dealt under The Consumer Protection Act, the primary legislation that deals with Product liability, although the existing legislation nowhere expressly defines product liability. The researcher has inferred that the legislation suffers from some loopholes which are summed up below:

- **Conflict of Jurisdiction-** Consumer Protection Act which is a general law to protect interest of consumers often suffers from conflict of jurisdiction with other specific statutes like Sales of Goods Act, Motor Vehicle Act, Railway Tribunal Claims Act etc.

- **No Sub-Judice Bar-** Section 3 of the Consumer Protection Act makes this Act in addition to and not in derogation of any other law. While interpreting this section the Apex Court has held that ‘the remedies provided under the CP Act are in addition to the remedies provided under other statutes’ and that ‘.....the said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities’. It means that filing of a suit before consumer forum does not act as sub judice bar on filing on same cause of action in a civil court. This often leads to duplicity of proceedings and multiplicity of litigation on same cause of action.
- **Remedies restricted to Section 14-** This means that if an aggrieved party files a suit claiming an unliquidated damage under CPA which is the essential attribute of tort law, then the authorities have number of alternatives to substitute the relief claimed. Secondly, according section 14, compensation can be awarded for the loss or injury suffered by the victim only if there is negligence on the part of the defendant.
- **Availability to limit the liability by clauses-** Product liability under CPA is very much influenced by contractual liability. The limit of damages depends upon the terms of the contract and facts in each case.
- **Limitations of Quasi-judicial Redressal Forums-** The Redressal agencies under CPA being a quasi-judicial forum suffers from limitations like it can try only those matters which are of summarily nature. Cases where huge amount of evidences is required the forums are not considered to be appropriate authorities to decide the matters. Hence, the Consumer Dispute Redressal Agencies falls short of jurisdiction if the matter cannot be decided summarily.
- **Lack of inherent power-** since the forums set under CPA are quasi-judicial bodies and are not court, they cannot have any inherent powers. The redressal agencies under CPA lack power to review or recall order and nowhere they are declared as the ‘Courts of Record’, nor is there any provision, which invests these *higher consumer forums* with precedent creating power.
- **Rigid compliance for Class action suits-** Class action suits under CPA are only permitted on the fulfilment of all the requisite conditions in terms of Section 12(1)(c) of the Consumer Protection Act read with Order I Rule 8 of the Code of Civil Procedure . Thus, making class action difficult under CPA.

- **Strict interpretation by the forums-** it is only after the intervention of the Apex Court that the deserved liberal interpretation is made, CPA being a beneficial legislation which is often not done by the forums.

Hence, it can be concluded that the Consumer Protection Act which deals with Product Liability in India has some inherent defects and gaps that need to be plugged. A well comprehensive legislation is needed.

In the last part of the Chapter, the researcher has studied and analysed cases on Public Nuisances and could draw the following inferences:

- The proceedings under Section 133 Cr.P.C are just to maintain peace and tranquility in emergency situations and provides no remedy if the nuisance has been in existence for a long period. It nowhere provides damages (compensation) for the nuisance caused to the victim.
- Section 91 of CPC had gradually emerged to be an important tool to remove the public nuisances by issue of mandatory orders and injunctions. But it still never can be a substitute for exemplary remedies that are possibly available by opting for private law in for public nuisances as well.
- Remedies under PIL are mostly in the form of some mandatory orders to stop the nuisance and follow directions to prevent any future nuisance. The compensation awarded by PIL is only limited to repair the damages caused to the victims at large. The gravity of individual damage is mostly ignored under Public Interest Litigation.

At the end of the analysis made by the researcher in this chapter, it can be well assumed that tort law in India dealing with State Liability, Product Liability and Public Nuisance definitely needs some changes and improvements to achieve a more subtler way for determining the liabilities to provide remedies in the form of compensation under tort which is a sign of a developed legal framework of any modern country.

Thus, with **Chapter 4 and 5** the researcher achieved **Objective No. 1, 2 and 4** of this research work.

The researcher had used non doctrinal method for **Objective no. 2 and 5** and to meet this end the researcher used questionnaire has a research tool which was filled in by judges, professionals and academicians from legal field. The data collected from **one**

**hundred and ten (110)** respondents were analysed and interpreted in **Chapter 6: Data Analysis and Data Interpretation** of this research work. Some of the important inferences drawn in that chapter are listed below:

- 85.2% of the responses stated that there is no specific legislation dealing with tortious liabilities in India.
- 75.4% of the responses stated that India does not have a well comprehensive legislation to deal with Product Liability.
- 84.9 % of the responses stated that there is no specific legislation dealing with State Liability in India.
- 77.6% of the responses stated Public Interest Litigations are not sufficient to restore the individual victims to their original position in case of injuries caused by Public Nuisances.
- 88% of the responses stated that the codification of tort law can be an alternative to the present Indian Tort Law which is based on scattered remedies and English Common Law Principles.

#### **Conclusions drawn on the Hypothesis**

Lastly, on the basis of the above discussion and inferences the researcher has drawn conclusions on the **Hypothesis** of this research work as follows:

- **Hypothesis No. 1:** Whether the law of torts in India presently, is mainly the English law of torts based on the principles of the common law of England and being modelled on the pre-independent British model it remains in a nascent and underdeveloped stage.

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**

- **Hypothesis No. 2:** Whether Courts continue to award compensation on simplistic understandings based primarily on the degree of compromise to the earning ability of the victim or on even more simplistic formulations of negligence?

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**



- **Hypothesis No. 3:** Whether lack of a code for the law of torts acts as a deterring factor for it to branch out as a favoured form of litigation?

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**

- **Hypothesis No. 4:** Whether there is lack of definite law to provide remedy against high tortious claims in India leaving transnational corporations largely unsupervised?

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**

- **Hypothesis No. 5:** Whether there is absence of efficacious remedies and the existing system suffers from infirmity in cases of product liabilities under Indian Tort Law?

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**

- **Hypothesis No. 6:** Whether the principle that is applied in India to determine the liability of the State in tort suffers from lack of uniformity and a codified Tort Law would make the State liability for tortious acts subtle?

**The said Hypothesis has been affirmed by the inferences drawn in this research study.**

*Hence, it can be concluded that the tort law in India dealing with State Liability, Product Liability and Public Nuisance has some inherent defects and gaps which can be possibly resolved by adopting a well comprehensive legislation, which is definitely the need of time.*

The Researcher has suggested below a Draft Legislation for the codification of tort law on State Liability, Product Liability and Public Nuisance.

## **7.2 Suggestion-**

After analyzing the gaps on the present Indian Tort system, the researcher has suggested the following Draft Legislation on the same:

### **The Indian Torts (Miscellaneous Provisions) Act**

An Act to unify and amend the law relating to State Liability, Product Liability and Public Nuisance in respect to torts.

*Preamble: Whereas it is expedient to remove ambiguities, to unify the remedies and law related to State Liability, Product Liability and Public Nuisance and to promote social harmony by preventing and punishing tortuous conduct.*

## **1. Short Title, Extent and Applicability**

- (1) This Act may be called The Indian Torts (Miscellaneous Provisions) Act.
- (2) It shall extend to the whole of India.
- (3) It shall extend to all matters related to State Liability, Product Liability and Public Nuisances in respect to torts.

## **2. Definitions**

In this Act, unless the context otherwise requires-

- a) “Tort liability” includes any liability incurred independent of any contract, due to infringement of civil rights and interests of another person and which is redressal by compensation which is not pre-determined.
- b) “State Liability” means liability of the State for the tortious acts of its servants which includes any act or omission, voluntary or involuntary and brings the State before Court of Law in a claim for unliquidated damages.
- c) “Product Liability” means the liability of the manufacturer, producer or vendor of goods or services to compensate for injury caused to person or property due to defects in goods or deficiencies in services provided for sale.
- d) “Public Nuisance” means “Public Nuisance” as defined under section 268 of The Indian Penal Code, 1860.
- e) “Public Nuisance Litigation” includes public interest tort litigation which are Government sponsored lawsuits when mass tortious claims are made against a particular public nuisance affecting a large area or large number of public in general.
- f) "District Court" means, in any area for which there is a City Civil Court, that Court, and in any other area the principal Civil Court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of matters dealt with in this Act.

### **3. State Liability for torts committed by its servants**

(1) The State shall be subject to all those liabilities in tort to which if it were a private person of full age and capacity it would be subject.

Provided in case of vicarious liability of the State for the tortious wrongs committed by its servants, if the servant himself could not be sued in respect of the tort committed by him, the State would not be liable.

### **4. Product Liability**

(1) The manufacture or the producer shall be liable for any injury caused to an individual for a defect in the goods or products.

(2) It shall be the liability of the seller if the harm is caused due to his fault and in cases where the seller cannot specify the manufacture or the supplier for the defective product it shall also be his liability.

(3) The victim can claim for damages for the loss incurred by him due to defect in product either from the manufacture or from the seller. Further if the defect is caused by the manufacture and seller had to pay the compensation, then he shall be entitled to get reimbursement from the manufacturer and vice-versa.

(4) The manufacturer or seller is entitled to be reimbursed if the defect was caused due to the fault from third party.

(5) It shall be the duty of the manufacturer or seller to take remedial measures in event of circulation of defective products and issue warning and recall it within time. If they fail to do so and some harm is caused then it shall be their liability.

### **(4) Public Nuisance Litigation**

(1) Under Public Nuisance Litigation, Union or State or Local Government can file suit under tort law claiming compensation for the injuries caused to the public in general for the nuisance caused by the defendant.

Provided to bring a public nuisance claim, the plaintiff must show that the conduct of the defendant was unreasonable.

Explanation: Unreasonable interference shall include:

- a) any conduct which significantly interferes with the public health, safety, peace, comfort or convenience; or
- b) any conduct which is prohibited by any statute, ordinance or regulation; or
- c) any conduct which is of a continuing nature or has produced a permanent long lasting effect on the public right and the defendant knows or has reason to know.

#### **(5) Jurisdiction and Remedies**

**a) Court to which petition shall be presented-** Every suit under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:

- (i) cause of action arises wholly or in part; or
- (ii) the plaintiff resides
- iii) the immovable property is situated, when a suit is filed to obtain relief respecting, or compensation for wrong to that immovable property; or
- iv) the defendant resides, or carries on business, or personally works for gain, where a suit is for compensation for wrong done to the person or to movable property; or

**b) Appeals from decrees and orders-**(1) All decrees made by Court in any proceeding under this Act shall, be appealable as decrees of the Court made in the exercise of its original civil jurisdiction and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

(2) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.

**c) Enforcement of decrees and orders.-** All decrees and orders made by the Court in any proceeding under this Act, shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction for the time being enforced.

**d) Remedies-** The remedies which a court may grant in any suit under this Act shall include an injunction (subject to such terms, if any, as the court thinks fit) or damages

with general guiding principle of full compensation with the idea that the amount of damages awarded should return the claimant to the position they would have been in had the tort not occurred.

In addition to the above draft legislation, the researcher has made the following suggestions:

- Like other developed countries like United Kingdom, United States of America and China, India should also develop a definite tort system based on specific legislations and provisions instead of old doctrines and certain general principles.
- The old doctrine of ‘Sovereign Immunity’ should be clearly abrogated by enacted statute with expressed provision that would make the State vicariously liable for torts committed by its servants like any other individual.
- Though the recent Bill of 2018 on Consumer Protection Act if passed in the Parliament shall give a specific legislation for product liability in India, but still the problems faced due to quasi-judicial authorities remains. Instead of quasi-judicial forums proper court should deal with matters related to product liability.
- Instead of Public Interest Litigation to deal with Public Nuisance, there should be enactments of laws allowing Public Nuisance Litigation.
- A well comprehensive legislation should be drafted and adopted to provide remedies for torts in India in place of scattered remedies available under multiple legislations and statutes.

Lastly, the researcher ends this research work with the following words:

***“It is not wisdom but Authority that makes a law.”***

***-Thomas Hobbes.***