

CHAPTER 1

Introduction

“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.”

-Justice Bhagwati

1.1- Introduction

Law is basically a recognized and accepted form of human conduct which is enforced by the State for the well being of the society. In broader perspective it included all types of rules controlling human actions such as religious, political, social or moral. Among these only those which are recognized and enforced by the State are the law of the land which is divided into two main types, namely, civil and criminal. Tort, which is the subject matter of this research work, is an important branch of civil law which is defined by **Salmond** as “a civil wrong for which the remedy is an action for unliquidated damages and which is not exclusively the breach of contract or the breach of trust or the breach of other merely equitable obligation”. Thus, making it clear that tort claims are more related to individual special right to claim for compensation not merely for the sake to gain meager compensation but more to bring the claimant back to his original position had the injury been not caused. In simple words, tort law is based on the principle that one who causes harm to another must compensate the other for the harm caused. In other words, it penalizes the wrongful interference with the holdings of another. Hence, due to the unique nature of tort law and its profound impact on rights of an individual, this research was an attempt to scrutinize the exact position of Indian tort law in providing remedies and determining tortious liabilities and to find out the ambiguities in the present Indian tort system.

1.1.1-Importance of tort

In this era of globalization and liberalization tort law has evolved and grown tremendously in economically progressive countries like United Kingdom, United States of America and China. Many new species of torts have evolved such as toxic tort or torts affecting the rights of Alien. Hence, countries with developed legal systems have well and sound codified legislation to remove any uncertainty and provide a subtle ground for tort claims making it as one of the favored branch of litigation. India in spite of being one of the countries which presents to the world one of the most comprehensive legal framework has yet to develop and adopt a well profound and subtle codified legislation covering all the aspects of tort law. The present law of torts in India is still modeled on the pre-independent British model which is turn based on the common law principles of England. Indian tort law is still in a developing nascent state mostly dependant on the judicial interpretation. Thus, keeping room for differences of opinions which indicates towards an absence of stable and certain tort system in India.

It would certainly be wrong to say that tort law has been completely ignored. Instances like the development of the absolute liability rule in the M.C. Mehta case and the Supreme Court's direction on Multinational corporation Liability, recognition of Governmental tort by employees of government, principles on legality of State, evolution of tort of sexual harassment, grant of interim compensation to a rape victim, and award of damages for violation of human rights under writ jurisdiction, including a recent Rs.20 crore exemplary damages in the Upahaar Theatre fire tragedy case by the Delhi High Court are some significant application of tort law in India.

There have been a number of enactments such as the Public Liability Insurance Act, 1991, Environment Protection Act, 1986, Consumer Protection Act, 1986, Human Rights Protection Act, 1998, Pre-Natal Diagnostics Techniques Regulations and Prevention of Misuse Act, 1994, embodying the new principles of tortious liability in India. The Motor Vehicles Act, 1988 and judicial interpretation continue to contribute to development of accident jurisprudence. The unfortunate Bhopal Gas Leak disaster had triggered a new path of tort jurisprudence, leading to environment tort, toxic torts, governmental torts, MNCs liability, congenital torts, stricter absolute liability, etc. Still the Indian Law Reports furnish in this respect a striking contrast to the number of tort cases before the Courts.

While most branches of law, e.g., crimes, contracts, property, trusts, etc, have been codified, it is interesting to observe that there is yet no code for torts in India. Most

of the development in tort law is the contribution of the Indian Judges and lawyers. Though recommendations for an enactment on tort law were made as early as in 1886 by Sir F Pollock, who prepared a bill known as the '**Indian Civil Wrongs Bill**'¹ at the instance of the Government of India, it was never taken up for legislation. 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 growth of tort law in India does not even compare to other progressive countries which have put it to much better use.

Some of the valid and vital lacunas of the Indian tort law around which this research revolves are stated below:

1.1.2-Lack of definite law to tackle high tortious claims

There is absence of any definite law to handle cases with high tortious claims in India. One of the most appropriate cases is that of the Bhopal Gas Tragedy case. Everyone is aware of the devastating harm caused to the victims. But still when one study this case, the most offensive and dishonouring act which adds to the misery of the victims is the compensation awarded that too after a span of time elapsed. Lack of a comprehensive tort system which includes the benefits of having expertise to handle the case, definite adjudicating body and a well defined model to determine the amount of compensation, dragged the case from India to American court at the first instance. Finally, after being rejected to be heard there and decreed first by the District Court then by High Court, was appealed in the Supreme Court. Under the social pressure, Supreme Court told both sides to come to an agreement in November 1988. Eventually, the alleged company agreed to pay 470 million dollars which is just the 15% of the original claim. To add on value to the argument that the award of compensation was determined without any specific scheme but mere on the basis of bargaining skill, the Government of India had to provide an explanation in an official statement.

Had there been a well evolved written law determining tortious liabilities of transnational corporation, the time frame of the Bhopal Gas Case would have been substantially lessened. The Bhopal gas tragedy proved two things. Firstly, in the absence of a written law a class action (even one with governmental support) would not survive as an alien claim against the bedrock of judicial precedent in a country like America. Secondly, that the damages paid highlight the unequal bargaining power that

¹ Indian Civil Wrongs Bill, *available at*: <https://www.manupatrafast.com> (Last visited on 12.10.18)

developing countries have against corporations operating out of developed nations. Both these lacunae can be leveraged if a detailed tort law exists. One of the reasons that Union Carbide chose to set up operations in India was because India's legal system did not have a system accommodating corporate accountability. Class action suits, a principle regulator of corporate ethics, were entirely absent. While this disaster prompted a number of legislations, the law of torts was conspicuously ignored. As a result India stands judicially unable to litigate major tort claims from large scale industrial accidents.

1.1.3-Absence of effective remedies in product liabilities

Any sound tort system encourages people to file suits for assured monetary damages and promise of better service in future. But, the existing system in India has place for remedies based on discretion to determine the amount of compensation or better termed '**ex gratia**' with no guarantee that the wrong would not be repeated. This is mainly the result of the principle of the present Indian tort system which concentrates mainly to correct the past wrongs caused. In this context, qua-product liability in India needs to be discussed which is mainly covered by The Consumer Protection act, 1986. Under this Act, a consumer has only one remedy i.e. to file a civil suit before a district court or a Consumer Disputes Redressal Commission under the Consumer Protection Act, 1986. The Act has been established for the purposes of safeguarding consumer interests by setting up Consumer Councils and other authorities for the settlement of consumer disputes. Consumer Councils set up at the District, State and National Level function as quasi judicial bodies that seek to promote settlement in an informal fashion. Proceedings before the same do not qualify as being competent to act as a *sub judice* bar to cognizance by a Civil Court. These Councils are also prohibited from exercising jurisdictions in cases "involving complex questions of law and fact" since the councils can only exercise summary jurisdiction. This in essence disqualifies the same from hearing any class action suits and ensures that only petty cases can be adjudicated before the same. This is a principal disincentive to litigate, since Torts requires a separate circuit given its specialized nature qua determining causation, modes of liability, *locus standi*, unliquidated damages and the enunciation of objective calculation parameters for the same. Further, when dealing with product, including service, liability cases, tort law operates on the rationale that the cost of the damage must be passed on to the manufacturer with such effect that it acts as an insurance against similar complaints in the future. Manufacturers have better information about dangerous products and better

means to address the problem than the consumers. Manufacturers or sellers of products can also spread the loss across society through increased purchase prices for products, or pass on the costs to others in the distribution chain. As can be observed, this rationale is not served in any way by the existing system.

1.1.4-Public Interest Litigation (P.I.L) favoured against Public Nuisance Litigation in environmental damages

Class action covering the concept of tortious liability is allowed by P.I.L in India mostly in cases involving environmental damages instead of Public Nuisance Litigation as used in America. It has been mostly seen that damages awarded in this P.I.L involving interest of a class are mostly limited to repair the damages caused and compensating the damages caused at large. The gravity of individual damage is mostly ignored. On the other hand, a well defined tort law would place such a high cost on repeating the behaviour that it would operate as an insurance against the same being repeated.

State Liabilities for Tortious acts-

The waters of judicial interpretation become even murkier as one moves to the liability of the State for tortious acts. Since the State acts through its agents, it is primarily held liable through the doctrine of vicarious liability, a doctrine that holds the commanding superior liable. The Indian position is moulded on the British position, as it is adopted by most countries in the commonwealth.² The British position granted the Crown unquestioned immunity until the enactment of the Crown Proceedings Act in 1947 to bring it in line with the accepted idea of the 'Rule of law'. In India, this position of qualified immunity still prevails.

Currently, the only provision that an aggrieved party can rely upon to hold the Government liable is Article 294(b) of the Constitution, which provides for the liability of the Union Government or State Government as it may arise 'out of any contract or otherwise'. The word 'otherwise', in its broad sweep, is meant to include tortious acts. Article 300(1) fixes the extent of such liability as being co-extensive with that of the Dominion of India and the Provinces prior to the commencement of the Constitution. This iteration refers to the distinction being made between sovereign and non-sovereign functions with the State being held liable for any liability incurred in the exercise of the latter.

² Bhuvana Veeraragavan, *Tort in India-Tortuous Liability*, available at: <http://www.legalserviceindia.com>

But as often happens with an uncodified maxim, this principle is subjected to judicial interpretation. While interpreting the same, the Supreme Court in the case of *State of Rajasthan v. Vidhyawati* following the *Stemship Navigation Co.* case, diluted the principle considerably by its judgment in the case of *Kasturilal v. State of UP*. In this case a police officer misappropriated and ran off with confiscated goods belonging to the plaintiff. The bench applying what can at best be said to be specious reasoning said that the same was in exercise of a sovereign act (confiscation) and, therefore, not open to challenge in a court of law.

This decision is recognized as being bad in law and has been departed from in subsequent judgments. Unfortunately, little cause exists for relief for two reasons. Firstly, in most cases the lower courts including the High Courts have decided the matter in favour of the government, the same being amended by the Supreme Court on appeal. Secondly, the decision in *Kasturiala* is still a valid law since the matter was decided by a Constitutional Bench of five judges, a number that has not been equalled since. Thus, in the absence of a legislation providing clear cut guidelines on the liability of the State, the judgment still subsists as a binding precedent.

However, it is also impracticable to continue with a distinction depending solely upon sovereignty. No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as long as it is sovereign in nature. The illusory and ill-defined distinction between sovereign and non-sovereign functions has resulted in a notorious lack of uniformity in judicial interpretation. Matters arising from similar cause of actions have been treated differently by different High Courts. Given the expanding nature of State functions it is best to do away with an inhibiting distinction to truly safeguard public interest. This in itself is not a novel suggestion. It was put forward as early as 1956 in the First Law Commission Report. The Report suggested that the distinction between sovereign and non sovereign acts be removed on the ground that there existed “no convincing reason” for its continuance. A more apt test would be one that determines liability based on the “nature and form” of the activity undertaken.

In sum, the argument in favour of legislating definitions and guidelines can be summarized in the following terms: One that such a classification will nullify the effect of the *Kasturilal* decision and will put an end to arbitrariness in terms of interpretation. Two, that such legislation will clearly delineate the realm of sovereign and non-sovereign acts if not do away with such distinction entirely.

Any law to be effective must be adaptable to changing circumstances and the law of torts is no different. Changes in policy need to be reflected in the implementation which is not possible if the law exists in a vacuous state. The law of tort has the potential to empower individuals, to instil respect for the consumer in unscrupulous corporate concerns. It is a law that protects personal autonomy and dignity, even in the absence of appreciable harm or condemnable wrongdoing. In a society that is increasingly fraught with consumer disputes given the growing nature of such transactions, the legislature needs to awaken and take action because now more than ever codification of tort law is needed in India. Hence, this research was an attempt to study and analyse the present Indian Tort system.

1.2- Statement of Problem

A Study of Tort Law in India with special reference to State Liability, Product Liability and Public Nuisance Litigation

1.3- Rationale of the study

The rationale of the study is summarised under the following points:-

1. While some countries like the United Kingdom, United States of America and China have codified law on torts, recognising civil wrongs as grounds for a lawsuit, India does not have one. Indian courts depend on provisions in a variety of statutes to entertain claims arising in cases relating to torts.
2. Indian tort is still based on the pre-independence British model with respect to tortious liability of the State.
3. State can be made liable only under Article 300 of the Indian Constitution that too only for sovereign acts. There are many cases where judges have expressed discomfort in determining state liability based on the thin line difference between sovereign and non-sovereign acts.
4. Due to scattered remedies available for tortious wrongs under various statutes litigation for tort claims are less favoured in India.
5. Tort in spite of being one of the most effective laws to provide remedies for individual injuries is less used and developed law in India as compared to other advanced countries.

6. In India remedies under product liability is provided under The Consumer Protection Act, 1986 which suffers from many lacunas.

7. In India there is no system to deal with high tortious claims as in Bhopal Gas Tragedy case.

8. While most branches of law, e.g., crimes, contracts, property, trusts, etc, have been codified, it is interesting to observe that there is yet no code for torts in India. Most of the development in tort law is the contribution of the Indian Judges and lawyers.

9. A recommendations for an enactment on tort law were made as early as in 1886 by Sir F Pollock, who prepared a bill known as the 'Indian Civil Wrongs Bill' at the instance of the Government of India, it was never taken up for legislation.

10. Tortious acts are rampant in the field of municipal administration and one does not witness much action in recourse.

11. The common man in the country is not familiar with the reaches of Tort liability involving governmental administration in the context of a welfare state.

To sum up the rationality of this study is nothing more but the paramount need to highlight and bring forth the lacunas in the present Indian Tort laws when compared with the codified laws and statutes of other developed countries and also to bring forth the need and importance of codified tort laws involving specific civil wrongs under torts and liability of the sovereign.

1.4- Object of the Study

The main purpose of this research was to know whether the existing laws, enactments and regulations dealing with civil wrongs and liabilities under tort law in India is effective and well developed to provide remedies and determine the liabilities of individuals as well as the State in true sense. While finding out this the researcher also conducted the study with the following objectives:

1. To study and examine the existing Indian mechanism dealing with determination of rights, liabilities and remedies for Public Nuisance under law of tort.

2. 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.
3. 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.
4. To find out the legal position of the laws dealing with civil wrongs and liability of the Sovereign and to examine if they could provide a sound comprehensive legislation to encourage litigation under law of Torts in India.
5. To find whether a codified Tort Law would make the State liable for tortious acts.

1.5- Scope and Delimitation of the Study

This thesis dealt with the meaning, definition, source, injuries and damages of law of torts. The scope of the study included determining if the Tort Law of developed countries like United Kingdom, United States of America and China is self sufficient and complacent to determine tortious liabilities and provide remedies for wrongs under tort. The scope of the study also includes critical overview of the laws and regulations of India covering tort and the important cases laws on the same.

Tort being a vast field of law the researcher has limited the study only to analyse the existing Indian tort law in the field of State liability, Product liability and Public Nuisance.

Among the numerous enactments on torts worldwide the researcher has limited the scope of this research only to three major developed countries, namely, United Kingdom, United States of America and China.

The researcher has mainly limited the study on the laws, regulations and regulatory authorities controlling and preventing certain specific tortious wrongs like public nuisance, product liability and liability of the State among various topics under law of tort.

1.6- Orientation to some Basic Concepts

Tort- A tort is a civil wrong in the sense that it is committed against an individual (which includes legal entities such as companies) rather than the state which is redressable by unliquidated damages. The gist of tort law is that a person has certain interests which are protected by law. These interests can be protected by a court awarding a sum of money, known as damages, for infringement of a protected interest or alternatively, by the issuing of an injunction, which is a court order, to the defendant to refrain from doing something.

Unliquidated damages- It refers to the amount of compensation which is awarded as a remedy in a claim against tortious act and it is not pre-determined but is determined on the basis of the injury suffered by the victim.

Vicarious liability: A form of strict secondary liability arising from respondeat superior. The responsibility of the superior for the acts of their subordinates, under which, they are responsible for negligent acts committed by their employees during the course of their employment.

State Liability: The liability of the State for the tort committed by 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.

Strict liability torts: In tort law, strict liability is the imposition of liability on a party without a finding of fault (such as negligence or tortious intent). The claimant need only prove that the tort occurred and that the defendant was responsible. The law imputes strict liability to situations it considers to be inherently dangerous. It discourages reckless behaviour and needless loss by forcing potential defendants to take every possible precaution. It also has the effect of simplifying and thereby expediting court decisions in these cases.

Product liability: The area of law in which products manufacturers, distributors and sellers are held responsible for the injuries caused by their products. Generally, a products liability claim is based on a design defect, a manufacturing defect, or a failure to warn. This topic is closely associated with negligence, breach of warranty and consumer protection.

Nuisance-

Nuisance: Denial of quiet enjoyment to owners of real property. Under the common law, persons in possession of real property (land owners, lease holders etc.) are entitled to the **quiet enjoyment** of their lands. However this doesn't include visitors or those who aren't considered to have an interest in the land. If a neighbour interferes with that quiet enjoyment, either by creating smells, sounds, pollution or any other hazard that extends past the boundaries of the property, the affected party may make a claim in nuisance.

Nuisance can be of two types:

A public nuisance is an unreasonable interference with the public's right to property. It includes conduct that interferes with public health, safety, peace or convenience. The unreasonableness may be evidenced by statute, or by the nature of the act, including how long, and how bad, the effects of the activity may be.

A private nuisance is simply a violation of one's use of quiet enjoyment of land. It doesn't include trespass.

Public Nuisance Litigations: are 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.

1.7- Significance and Utility of the Study

Tort law, in its most rudimentary form, is a law based on the premise that an individual who causes harm to another person should have to provide compensation for that harm. It encompasses several different categories of civil wrongs, which can empower a judge to impose monetary damages on a tortfeasor if he is found to be liable for the given damages. In other words, it penalizes the wrongful interference with the holdings of another. Given the unique nature of tort law and its profound impact on individual rights, the significance of this research is quite evident.

Further this research is significant because a well comprehensive legislation is an essential element of a sound and developed tort system which in turn is important for the following reasons-

-The tort system gives average people a way to influence powerful businesses and institutions and change their dangerous practices and policies.

-The tort system deters companies from putting profits ahead of safety.

-The tort system limits the government's role and also limits sovereign immunity.

This study can be utilized as a tool to highlight the unsung issues and problems of Indian Tort system while comparing with that of developed nations and to be judgemental while finding out the possible remedies.

This research pertaining to ascertain the need to codify the present Indian Tort law is important to various research scholars as it is an important field which involves the study for the protection of the individual civil right and legislation regarding the protection of the same.

It is an important study to refer for the legislatures who wish to legislate, modify or repeal the laws of their states or country regarding tortious liability and remedy under tort laws.

1.8- Hypothesis/Research Questions

The research was conducted on the basis of the following hypothesis:

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?
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?
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?
4. Whether there is lack of definite law to provide remedy against high tortuous claims in India leaving transnational corporations largely unsupervised?
5. Whether there is absence of efficacious remedies and the existing system suffers from infirmity in cases of product liabilities under Indian Tort Law.

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.

1.9- Research Methodology

The methodology adopted in this study was both doctrinal and non-doctrinal. The research concerned dealt with the legislations at national as well as international level and its provisions on Law of Torts.

The method of the research adopted for Objective No. 1, 2 and 4 was descriptive and analytical method. The sources of data was secondary sources such as secondary data, books, case laws, expert articles and journals written by eminent authors, editorials of newspapers, websites etc.

Lastly, the research methodology which the researcher adopted for Objective No.3 and 5 was non-doctrinal method and the research tool used was a questionnaire which was filled in by judges, professionals and academicians from legal field. The questionnaire had both structured and non-structured questions. The researcher had used Convenience sampling which is a non-probability sampling technique where subjects are selected because of their convenient accessibility and proximity to the researcher.

1.10- Scheme of the Study

The researcher divided the research study in seven chapters to come to a conclusion. The seven chapters of the research have been discussed in brief as below.

CHAPTER 1: INTRODUCTION

In this chapter the researcher has discussed the introduction or the synopsis for the research carried out. This included General introduction to the research topic, object, scope, basic concepts, significance and utility, hypothesis, research methodology, scheme of the study and literature review.

CHAPTER 2: MEANING, HISTORICAL EVOLUTION AND GENERAL PRINCIPLES OF LAW OF TORTS

In the beginning of this chapter the researcher has discussed meaning, definition, nature and scope of tort law. The researcher discussed the meaning and definition of tort with

the help of definitions given by various eminent jurists like Winfield, Salmond, Sir Frederick Pollock and many others. This helped to understand the exact nature of tort law which is a civil law different from contract or breach of trust. The research then concentrated on the classification of various types of torts as with the nature of tort, the incidence and the principles of liability also changes. This chapter discussed the historical background and evolution of the tort law and regulations providing remedies under tortious liabilities worldwide. It is very important to know the gradual development and history of a developed tort system in order to understand the various laws on the same and develop a critical mind set to examine the necessity to codify tort law in India. In doing so the research analyzed the evolution of tort law era wise namely in Roman times, Medieval period, 19th Century and in modern times. This chapter also discussed the theoretical aspect of the topic which included the discussion on specific tortuous wrongs and the available remedies for better understanding of the effectiveness of the laws and to suggest possible remedies.

CHAPTER 3: LAWS ON TORTS WITH GLOBAL PERSPECTIVE

This chapter of this research work aimed to study and interpret the codified laws on tort of three countries namely United Kingdom, United States of America and China. The reason behind analyzing the law of torts of these three countries was that United Kingdom i.e. the English Law is the model law for almost all the Indian legislations, United States is one of the most developed and modern countries in the present era and lastly China was chosen because it is quite similar to India in terms of population and demography. The researcher made a study of various legislations of these countries. Namely Law Reform (Liability in Tort) Act, 1951, Crown Proceedings Act, 1947 and Torts (Interference with Goods) Act, 1977 of U.K, Federal Tort Claims Act of U.S.A and The Tort Liability Law of the People's Republic of China, 2010.

CHAPTER 4: ANALYSIS OF PRESENT TORT SYSTEM IN INDIA

In this chapter the researcher studied the various enactments and provisions involving tort under Indian law. In the introductory part the researcher studied the tort law in ancient India, British India and Independent India. Thereafter, the chapter focused upon the various present Indian Legislations on State Liability, Product Liability and Public Nuisance. The study on State liability revolved around State liability in ancient India, under the British and post independence. For product liability the researcher studied the

present laws on it namely The Consumer Protection Act, The Sales of Goods Act and other statutes. The third part of the chapter dealt with laws on Public Nuisance in India.

CHAPTER 5: PRECEDENTS AND JUDICIAL PRONOUNCEMENTS ON INDIAN TORT LAW

This chapter dealt with the important case laws highlighting the benefits of a well codified and comprehensive legislation on tort. Case laws were important to discuss because they showed the actual face and implication of the prevailing law of the land. The purpose of this chapter was to find the law in force; but also on a wider scale, to find out how the different principles of the previous chapter had been balanced against each other and if the current legislation allows a shift in this balance. In this chapter the researcher studied various judicial pronouncements deciding State liability, Product liability and Public Nuisance in India.

CHAPTER 6: DATA ANALYSIS AND DATA INTERPRETATION

This chapter dealt with the analysis and interpretation of data collected during the research work based on the questionnaires filled in by eminent jurists, lawyers, advocates and academicians.

CHAPTER 7: CONCLUSION AND SUGGESTIONS.

This chapter dealt with a summary of the discussions done in the previous chapters. An attempt was made to reach to conclusions to the hypothesis made in the introductory chapter. Later portion of the chapter dealt with all possible suggestions and a draft legislation to provide a better legal tool to encourage litigation seeking remedies under law of torts in India.

1.11- Review of Related Literature

For this study researcher had reviewed various books, research works, journals and publication to get the proper understanding of the basic principles of tort, trend of global laws on tort and applicability of tort law in India.

To develop a strong understanding of the basic principles of tort the researcher referred to some basic books on tort. Some of the related literatures are as follows:

Owen (1990) - In this study titled '**Philosophical Foundations of Tort Law**' the researcher has studied the philosophical fundamentals of tort law and has explained conjunction of law and philosophy. This study explains how tort law derives from Aristotle, Aquinas, and Kant to the latest economic and rights-based theories of legal responsibility. It illuminates how tort law enables philosophers to observe the abstract theories of their discipline put to the concrete test in the legal resolution of real-world controversies based on principles of right and wrong.

Markesinis & Deakin (1993)- In this study the author describes the English law of torts with as much clarity and completeness as is possible remains its prime aim. The study also goes beyond description to criticism. It states that tort law is not as some would like to believe, becoming unmanageable wide but, on the contrary, is being restricted by a number of developments. Some stem from the perennial fear of opening the floodgates of litigation. Others are the result of extending immunities to an ever growing number of State agencies on the grounds, not always convincing, of economic efficiency. It suggests that a final group of restrictions of tort liability can be traced to the effective killing of all attempts to let strict liability develop as it has in other systems.

Mauro Bussani and Anthony J. Sebok (1995)- In this work titled '**Comparative Tort Law Global Perspectives**' the researchers studied on the Global Perspectives of tort law as it provides a framework for analyzing and understanding the current state of tort law in most of the world's legal systems. The study examines tort law theories, rules and cultures. It looks at general issues at play throughout the globe, such as causation, economic and non-economic damages, product and professional liability, as well as the relationship between tort law and crime, insurance, and public welfare schemes. It also provides insightful case studies by analyzing specific features of selected tort systems in Europe, USA, Latin America, East Asia, and sub-Saharan Africa.

McClurg, Koyuncu and Sprovieri (1997)- In this work titled '**Practical Global Tort Litigation**' the researcher deals with tort cases in the U.S., Germany, and Argentina. The study compares how a prototypical products liability case would be handled in the U.S. common law system and representative civil law nations in Europe and Latin America. It analyzes from a real world perspective issues such as fact gathering and presentation, expert witnesses, burdens of proof, theories of recovery and defenses, and damages and attorneys' fees.

Patil (1998)- In this work titled '**Tortious Liability Of The State With Emphasis On Constitutional Torts**' the author has turned the focus on the subject of State Liability in Tort and has successfully come out with expositions deeper in their reach and comprehensive in treatment. State Liability was totally unknown to ancient Hindu Jurisprudence. Righteous Benevolence of Hindu Kings did not in fact necessitate such laws, for the King never considered himself above Law that in India was called Dharma. There was a set of laws for the King, Raja Dharma as were codified by Manu. But with the advent of British Rule in India the principles of liability as existing in the United Kingdom were blindly applied. The master law on the subject is enshrined in Article 300 of the Constitution of Independent India and much of applied law derives from the Judgement of the Supreme Court delivered in its interpretative jurisdiction from time to time. The author also highlights in his work that the subject caught the attention of the Law Commission of India, which came out with its exhaustive Report in 1956. Its Recommendation resulted in the introduction of The Government (Liability in Tort) Bill, 1967 that was introduced in the Lok Sabha in that year, but was allowed to lapse. The paper stresses that it appears by and large that Judge-Made law on the subject is adequately covering the ground. This owes itself partly to the situation that the common man in the country is not familiar with the reaches of tort liability involving governmental administration in the context of a welfare state. The simple understanding at that level is that the Government takes care of every need of the people. The paper states that they would learn the inadequacies only when they, per advice, take to legal recourse and here again they find themselves on a slippery ground. Tortious acts are rampant in the field of municipal administration and the researcher is of the opinion that one does not witness much action in recourse. Indian Law has not clearly set the boundaries of State Liability and Officer Immunity and by far goes by the principles accepted in the U.K and the U.S.A. This paper also suggests that Torts are actionable civil wrongs that are remedied by damages. State is no exception to the principle of liability for the wrongs committed by its employees. Thus, there is need to familiarize this branch of law to the society-at-large in order that disciplined administration fostered best.

Narayanrao (1999)- According to this research work titled '**Tortious liability of Government of India enshrined under Article 300 of the Constitution**' Tortious Liability of Government of India arises, when its agencies or instrumentalities or its

Government Servants, omit to act in implementing or enforcing laws, passed by the Government or they act in excess of powers conferred on them by law and under either of the circumstances cause legal injury to the persons or loss or damage to their properties. Article- 300 of the Indian Constitution says that, Union of India or its States i.e. Governments can sue and can be sued as obtained in the earlier Dominion Status. According to this study when the position of the dominion status is examined, the reference will be found back to the Government of India's Act 1935; when that is referred to, it makes reference to 1915 Act of Government of India, which in turn, refers to 1858 Act and this Act ultimately refers to the position of East India Company and the King of England in Parliament. The dual functions discharged by East India Company throws some light on the sovereign and non-sovereign powers of the company in India. When the company carried on the administration as agents of the Crown, they were said to have exercised sovereign powers, not liable to tortious actions. Their functions were said to be non-sovereign when they related to their commercial activity. These non-sovereign powers exercised by the company attracted tortious liability. In England by Crown Proceedings Act, 1947, the King is answerable to the English Parliament and the Crown is accountable to legal wrongs of its Government Servants for Tortious Liability. The researcher adds that in India, even after 50 years of independence, no specific law is passed fixing responsibility and accountability of the Government Servants for their legal wrongs holding them tortiously liable if they act in excess of discretionary powers or those conferred on them by law.

Davies and Hayden (2000)- In this study the authors explain several facets of tort law from a global perspective, including the tort law of other countries, as compared to U.S. law; U.S. statutes with an international tort law aspect (such as the Alien Tort Statute, the Anti-Terrorism Act, and the Foreign Sovereign Immunities Act); and international tort treaties, such as the Warsaw Convention. The material adds depth to one's views of the U.S. tort system and the larger legal world.

White (2002)- In this study the researcher shares in his work titled '**Tort Law in America: An Intellectual History**' that Tort law is a field that encompasses material of considerable breadth and diversity and whose existence, as reflected in individual actions seeking civil redress for injuries not arising out of contractual relations, can be traced back to primitive societies. This work focuses on the intellectual history of tort law in America, and its coverage is limited largely to those years during which Torts has been

conceived of as an independent common law subject. It might be more accurate to say, in fact, that this work is not so much a history of tort law as a history of the way the subject of Torts has been conceived. Although the researcher traced the development of the rules and doctrines that lawyers currently consider staples of tort law, his interest was less in narrating changes in those rules and doctrines than in speculating about why they changed and who did the changing. He traced the shifting character of tort law in nineteenth and twentieth century America as deriving from the shifting ideas of legal scholars and judges--especially ideas about the civil responsibilities of a person to his or her neighbours in society and about the manner in which society should respond to injuries and injured people. A "tort" is simply the Norman word for a "wrong," but "torts" have typically been distinguished from crimes and from "wrongs" identified with contractual relations. Tort law, then, is concerned with civil wrongs not arising from contracts.

Reddy (2002)- According to this research work titled '**Liability of the state for the torts committed by its servants**' the law relating to liability of State for the torts committed by its servants are not in conformity with the goals of modern welfare State. In the absence of a statute, the courts have endeavoured to reduce the brunt of archaic precedents through liberal interpretation. Their contribution in evolving the compensatory jurisprudence for violation of fundamental rights is invaluable. However, the research found that the compensation objective of liability is given precedence over the deterrent objective. The researcher also suggest that the principles governing State liability should make the message of liability percolate to the minds of errant officers in order to increase efficiency in administration and provide good governance.

Schuck (2003) – In this work titled '**Tort Law and the Public Interest: Competition, Innovation, and Consumer Welfare**' the researcher highlights that The United States has traditionally pioneered advances in medicine, science, and industry. Innovation and research in these fields have allowed this country to provide its people and the people of other nations with a steadily improving quality of life. In recent years, however, pioneers in medicine, science, and industry have faced an increasing potential for tort liability arising from the introduction of new products, technologies, and procedures. Some authorities feel that this is having a chilling effect on progress and on this country's ability to maintain its competitive edge in the world market. At the same time, the threat of tort liability has undoubtedly had a therapeutic effect on the quality and safety of

products developed over the past several decades. Tort remedies have also allowed citizens who have been injured through the use of defective products to seek redress. The great controversy swirling around the effects of tort law on the process of scientific and technical innovation, the competitiveness of American industry, and the safety and wellbeing of consumers has emerged as a major concern of this nation. Inherent in this controversy is the larger debate over the proper social roles of three systems for controlling risks to health and safety: tort law, public regulation, and the market.

Sinha (2003)- This dissertation titled '**A Comparative Study Of The Environmental Laws Of India And The UK With Special Reference To Their Enforcement**' is a comparative study of environmental law and policy in India and the UK. The study uses research methodology based on comparative law method, concepts of lesson drawing and policy transfer from political science, and socio-legal approaches. This study concludes that India should take measures to improve enforcement of various environmental laws, including adopting a revised policy on pollution prevention, developing an integrated approach to pollution abatement, developing a policy on prosecution and enforcement, restructuring various environmental laws to meet treaty obligations, introducing incentive based instruments for pollution abatement and adopting a cooperative approach to enforcement of the environmental laws. India may positively draw lessons from the UK in these areas. The UK may draw inspiration from the novel environmental jurisprudence developed by the Indian Supreme Court. This study also favours establishment of an environmental court in each jurisdiction.

Application of tort law in environmental protection in India The remedy of tort as a measure of environmental protection has not developed or been used in India on the scale as used in England. However, India being one of the main common law countries and its judicial and legal system founded on English system, tort has been used to provide, a clean and healthful environment. The inalienable common law right of every person to a clean environment was traced by the Supreme Court in *Vellore Citizens Forum v Union of India* by quoting from the Blackstone's Commentaries on English Law of Nuisance published in 1876: "...since the Indian legal system was founded on English common law, the right to live in a pollution free environment was a part of the basic jurisprudence of the land." Common forms of tort developed in India for environmental protection are nuisance, negligence and strict liability. But the Supreme Court of India has added a new class of tort based on the principle of 'absolute liability' following the

Bhopal gas tragedy. A plaintiff in tort action may sue for damages or injunction or both. The Supreme Court in Shriram Gas Leak case has while commenting on damages to act as deterrence observed the following: "That compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it". Temporary injunction is governed by section 94 and 95 and order 39 of the Code of Civil Procedure 1908 and may be granted by courts on an interlocutory application. Perpetual injunction is governed by sections 37 to 42 of the Specific Relief Act 1963. The test of balance of convenience is normally applied by courts while granting injunction, which has proved more potent a weapon in abatement of pollution than the damages, which are often paltry.

Jayakumari (2006)- According to this research work titled '**Liability of the State in Torts: With special reference to human rights violations**' at present the Universal Declaration of Human Rights has got wide recognition at the world level. Many of the countries have included the human rights instruments in to their constitution. When it comes to enforcing the right against government and public authorities, the principle and procedure seem to need further development. According to this paper, when one refers to the same problem in India, the violation of human rights by the state agencies and the public authorities are on the rise. If the violation is committed by the enforcing authorities it seems more acute. This dangerous situation resulting in gross human rights violation or defective action of the state agencies has to be curtailed by introducing changes in the law relating to state liability and by introducing an effective implementation mechanism.

Ramanathan (2008)- In this study titled '**Tort law in India**' the author has mainly analysed the constitutional tort like custodial death, encounter killing and illegal detention. The paper suggest that the development of constitutional tort which had begun in the early eighties and was cemented into judicial precedent in *Nilabati Behera* has profoundly influenced the direction tort law has taken in the past decade. It is in recognising state liability, and in denuding the defence of sovereign immunity, that the constitutional tort has taken wide areas around previously established practices in tort law. Its influence on the recognition of wrongs and of the vicarious liability of the state is in evidence the cases thereafter. The quantum of compensation has acquired a centrality in accident law. The author is of the opinion that an exploration into an area of

pre-emptive action in tort law, found in a case concerning the tort of nuisance presents a potential for the legal imagination.

Xiang and Jigang (2011)- In this study titled ‘**Concise Chinese Tort Laws**’ the authors explain the theories, legislative processes and applications of China's modern tort law from three different standpoints (academic, statute and case law perspectives), providing a comprehensive view of the law's past, present and future. The explosive economic development in China over the last three decades has created social challenges unprecedented in the country's history. In response, China has overhauled its existing tort laws and even created new tort laws. By exploring its principles, theories and history, this book provides international readers a fresh outlook on China's tort law system. Granted that some concepts or theories in China's modern tort laws were "borrowed" from the west, the principles behind them can nevertheless often find their roots in ancient Chinese philosophies, concepts or even laws. This study also uses real cases to explain the courts' application of China's tort laws and the meaning of the corresponding statutes.

Binding (2012)- The book titled ‘**The Tort Liability Law of the People's Republic of China**’ provides a comprehensive analysis of the Tort Liability Law of the People's Republic of China. For many years, Chinese Tort Law has been a controversial issue among Chinese legal scholars. This book examines the status quo of the discourse in the literature and provides specific illustrations of how general Tort principles such as causation, negligence and damages are applied in Chinese courts. Since the availability of Chinese case law is limited and many opinions lack reasoning, the book analyses representative cases to provide a basic understanding of how Tort Law functions within the Chinese legal system. This book has seven chapters. First (chapter A), this book presents an overview of the Tort Liability Law of the People’s Republic of China in context of the civil law reform of China and summarizes the most important disputes within the legislative procedure. Second (chapter B), the book addresses the conflicts between the Tort Liability Law of the People’s Republic of China and the General Principles of Civil Law in the PR China and special tort laws. Third (chapter C), the book examines in detail the scope of Tort Liability Law of the People’s Republic of China’s protection. In this chapter, 'General Principles' such as causation, justification, intention/negligence and damages are discussed. In addition, this chapter presents the concept of the joint and several liability factors that reduce and eliminate liability and

general injunctive relief. To conclude the general part of the book, questions concerning the burden of proof and the limitation of liability are discussed due to their importance in court proceedings. To follow the general part of the book, chapter D introduces the general liability clauses. Chapter E analyses the liability of special legal persons and individuals. Part E of this book provides an overview concerning product liability, liability for traffic accidents, liability for medical malpractice, environmental liability, liability for high risks, liability for animals and liability for special items. The book concludes with a discussion of the overarching themes of Chinese Tort Law that emerge from the above analysis.

Bublick (2012)- This study titled ‘**China’s New Tort Law: the Promise of Reasonable Care**’ enters the unfolding dialogue about Chinese and American tort law. The paper addresses some similarities and differences between the written provisions of China’s Tort Liability Law and U.S. tort law provisions. It then commends a principle that has become central to American tort law—building a tort system that functions to encourage reasonable care for the physical safety of others. Finally, the paper suggests a way in which American tort law could be improved by considering China’s adoption of uniform guidelines for certain issues that do not require individuation—an approach which could reduce litigation costs and increase consistency.

Sharma (2012)- According to this research work titled ‘**Civil Liability For Environmental Damage: An Assessment Of Environmental Claims Under Private And Public Law In India**’ the role of civil liability including tort law in addressing environmental claims in India had until recently been minimal. Tort law remedies with its limited scope had not been pursued or seriously considered for environmental claims until the Bhopal gas disaster in 1984-85. It is only after 1995 that tort law remedies have been explored to overcome inadequacies of the existing environmental liability regime based predominantly on public law liability tools in India. .Notwithstanding the difficulties in the use of tort law for addressing environmental claims, in recent years the Supreme Court, and most recently, the Parliament, have categorically re-engaged with tort law to utilise its functions and remedies to address environmental claims. Although the Supreme Court of India has used the public law liability tools to address most environmental claims by recognising a constitutional environmental right, reiterating a constitutional duty and statutory liability it has simultaneously recognized an environmental constitutional tort within the same case. As research indicates, tort law

remedies and functions have been increasingly adopted by the Supreme Court to vindicate environmental claims by allowing for compensatory and reparative award of damages. In addition, the National Green Tribunal Act 2010 [NGTA] recognizes civil liability for environmental damage arising from the violation of the seven specific laws enumerated under Act. It allows the victims to seek compensation for personal injury and damage to property arising from violation of the person's environmental right and/or regulatory laws listed under the Act. This new liability regime for environmental claims, therefore, includes features of public law liability and private law liability for vindication of environmental claims. The mixed liability approach adopted by the Supreme Court as discussed above indicates a reengagement with tort law. In this context, the question that this thesis addresses is the extent and ambit of civil liability and tort law to address environmental claims and interests in India. The thesis examines the role, function and nature of tort law within environmental context. It emphasises the inadequacies and gaps within the existing legal liability instruments and processes and highlights the potential advantages, limitations and connections that tort has in dealing with certain environmental claims. It establishes that the manner in which tort functions of compensation and deterrence have become amalgamated with the objectives of environmental law, the boundaries between public and private law have blurred. It is argued that within the current environmental jurisprudence, civil liability instruments including tort can play a positive role to supplement the public law liability tools used to address environmental claims in India.

Engel and McCann (2014)- In this study titled '**Fault Lines: Tort Law as Culture Practice**' the authors very well made an attempt to highlight the lacunas of Indian Tort Law.

Khan (2015) - in this paper titled '**The Law of Torts and the Case for its Codification**' the author has very well analysed the need to codify Indian tort law while depicting the lacunas. But this article has limited its study only to analyse the Indian laws on the same and has not extended its study to analyse the various acts and enactments on tort of other developed countries.

Srinivasan (2015) - In this research work titled '**The extent of liability and immunity of the state under Article 300 of the Indian Constitution, a comprehensive study**' the researcher analyses the existing statutory provisions with regard to liability of State

for torts of its servants. It is a detailed comparative study regarding the Constitutional and Statutory provisions of State liability for torts of its servants in U.K, U.S.A, France, Canada and Australia. This research work brought out the judicial decisions to demarcate over sovereign and non-sovereign functions. It also examines the nature of judicial function in expanding Article 21 to provide compensation for Constitutional Tort and diluting Article 300 in the guise of Sovereign function.

Implication of the Reviewed Literature for the Present Study

On the basis of the review of the related literature the researcher had come to the conclusion that there is a need to know whether the existing laws, enactments and regulations dealing with civil wrongs and liabilities under tort law in India is effective and well developed to provide remedies and determine the liabilities of individuals as well as the State in true sense or not. Moreover, the researcher had not come across any study related to Product liability and Public Interest Litigation in India or any non-doctrinal research work related to tort law of India. Therefore, the researcher through her present study wanted to make an attempt to highlight and bring forth the lacunas in the present Indian Tort laws when compared with the codified laws and statutes of other developed countries and also to bring forth the need and importance of codified tort laws involving specific civil wrongs under torts and liability of the sovereign.