Page 1178 - 1195 **DOI:** *https://doij.org/10.10000/IJLMH.112919*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 2

2022

Emerging Trends in Law of Torts: An Overview

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ABSTRACT

During the early years of 14th century a simple procedure for administration of justice was adopted by the British King, there was no compartalisation of wrongs like crime, torts, breach of contract etc. Later on the existence of Tort in Britain came up into writs systems. This writ system was based on the latin maxim 'Ubi remedium ibi jus" it means 'where there was a writ there was remedy in other words' where there was remedy there was right". It must however, be stated in the initial stage the authority of the chancellor to issue write as confined only to a very limited number of wrong, notably injuries caused to person or property of the plaintiff were writ called 'action of trespass' was generally issued. In 1852, through common law procedure Act, the system of writs was modified and certain rights were given to the plaintiff under laws of Torts. Besides this a new maxim i.e. ***'Ubi Jus Ibi remedium'*** *came into the existence, which means where there is a right there is remedy. Thus anybody whose rights violated by others is entitled to get compensation. It is also mentioned that in early stage the number of tortious liability was very limited as well as very specified, but due to development of science and technology etc. and advent of hazardous industrial operations, adulteration, commercialization, consumerism, cyber technology, environmental degradation, new techniques of wrongs and 'development of constitutional tort law, through expanding dimensions of Article 21 of the constitution have substantially contributed to the development of compensatory jurisprudence in the Indian Legal System. Consequently new wrongful acts have been included in torts and thus its dimension is becoming very wide day by day.*

I. INTRODUCTION

The term 'Tort' is a French word derived from the Latin Tortum which means – 'To Twist' this is equivalent of the English word 'wrong' and Roman term 'Delict'. It is similar to Sanskrit word 'Jimha' which as under ancient Hindu law used in the sense of tortious or fraudulent conduct. The literal meaning of Tort is that 'any wrongful or illegal (act or omission) by which one's legal rights are violated. Dr. Winfield says that Tortious liability arises from the breach

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of a duty primarily fixed by the law, this duty is towards persons generally and its breach is redressible by an action for unliquidated damages. Similarly, Salmond says that 'Tort is 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.

In common sense the law of Torts is the branch of law controlling the behaviour of the society. It is growing branch of law and it's main aim is to define individual's rights and duties in the light of prevalent standards of reasonable conduct and public convenience. It provides pecuniary remedy for violations done against the private rights of an individual. The principal aim of the law of Torts is for providing compensation to victims or their dependents.[3] In briefly the characteristics of 'Torts' are as follows :-

(i) It is a civil wrong in which legal right of a person is violated or there is a breach of duty towards him.

(ii) It is different from a breach of contract or breach of trust.

(iii) It is redressible by a civil action for damage, and such damages are unliquidated. The quantum of damages is determined by the court keeping in view the gravity of wrongful act, circumstances of the case and conduct of the defendant.

(iv) In an action for tort, it is not necessary that the plaintiff must have suffered any pecuniary damages due to wrongful act of the defendant, mere violation of any legal right of the plaintiff would render the defendant liable to pay damages.

II. HISTORY OF TORT

During the early years of 14th century a simple procedure for administration of justice was adopted by the British King. Though there was no compartalisation of wrongs like crime, torts, breach of contract etc. the administration of criminal justice was solely vested with the king's court and action for tresspass and other wrongs of civil nature were to be adjudicated by the common law courts which were otherwise termed as the court of common pleas.

In the earlier stages common law was primarily concerned with remedies and not with rights and duties. Under the system of writs, the plaintiff had to comply with a formality of obtaining a writ form the chancellor of the exchequer for instituting a suit against the defendant in common law court. If the wrong called for a remedy the chancellor would issue a writ entitling the plaintiff to file a suit against the defendant in the common law court. However, if the wrong

[3] M.N. Shukla, 'The law of torts', ed. 2018, Central Law Agency (at p. 1)

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complained of was not recognised as wrongful i.e. Tort, the chancellor would refuse to issue the writ and in that case, plaintiff had no remedy though he might have a cause of action against the defendant. This is in other words meant that plaintiff could not move court without a writ having been issued by the chancellor for that purpose. Thus where there was a writ there as a remedy or negatively speaking, there was no remedy without a writ. This represents the first stage of evolution of law of torts in England, under the system writs and has been expressed by the latin maxim ***'Ubi remedium ibi jus'***, its literal meaning being 'where there was a writ there was remedy there was right. It must however, be stated in the initial stage the authority of the chancellor to issue writ was confined only to a very limited number of wrong, notably injuries caused to person or property of the plaintiff where writ called 'action of trespass' was generally issued.

In course of time other types of wrongs such as negligence, nuisance or disturbance in another's possession of chattel etc. also called for a remedy. But these cases were not covered under action of trespass, hence a writ could not be issued by the chancellor as a result of which plaintiff's case remained unredressed. It was, therefore, a realised that the system of writs suffered from certain grave defects and in most cases plaintiff whose right was violated had no remedy against the defendant for want of availability of an appropriate writ. That apart, the formality of obtaining writ before filling a suit against the defendant caused great injustice to aggrieved persons because writ could be available against action of trespass and not for other cases. In short the write system adopted at the evolutionary stage of development of torts mainly suffered from three defects (i) absence of remedy (ii) inadequacy of remedy and (iii) excessive formalism. The existing write system was therefore, modified in order to remove deficiencies.

III. MODIFICATION IN WRIT SYSTEM

As stated above that where there was no remedy available by way of a writ, there was no right for the plaintiff to move the court. The existence of a right was recongnized only if a writ was available. Moreover, the plaintiff had to be very careful in choosing the right kind of writ for the wrong caused to him. If he chose a wrong writ, his cause of action would fail. Thus there was greater emphasis on procedural aspect of the writ rather than the violation of plaintiff's right. This situation continued for over four centuries though some amendments were made in the common law procedure in 1832 and 1833.

A serious attempt was made to remove the discrepancies of the existing writ procedure by Common Law Procedure Act 1852 whereby the system of writs was modified so as to give

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primary to rights of the plaintiff rather than the formality of writ. This does not however, mean that the writ system was abolished. Instead, its procedure was changed. Now it was not necessary for the plaintiff to mention any particular form of action (i.e. writ) under which his causes of action was covered.[4] Afterwards, this change in the common law procedure finds expression in the latin maxim ***'Ubi jus ibi remedium'***, which means where there is a right, there is remedy. However, consequent to the passing of Judicature Act 1873, the writ system was completely abolished and the plaintiff could file his plaint directly in the court without the requirement of writ or a prior permission from the chancellor. The modified system was based on the principle that where a plaintiff has right, he must have means to vindicate and maintain it, and a remedy should be available to him in case he is injured due to violation of his right by the defendant.[5] In other words where there is right it cannot be without a remedy and where there is no right there is no remedy this has clearly been expressed by the maxism **'injuria sine damnum'** and **'damnum sine injuria'**. The first maxim based on legal injury, this is the legal injurry caused to the plaintiff with out any physical injury. This maxim literally means violation of a legal right without causing any harm i.e. physical, or any pecuniary damage to the plaintiff, therefore this maxim is for the legal wrongs which are actionable if the person's legal right has been violated, because **'Damnum sine injuria'** refers to the damages suffered by the plaintiff but no damage is being caused to the legal rights as there is no violation.[6] It is the losses suffered without the infringement of any legal right hence creating no cause of action.

The creation of new torts from time to time evinces that whenever there has been an unjustified interference in the right of a person, the courts have come forwarded to provide remedy for the same. In course of time, the forms of action were abolished and various actions on the case paved way for development torts which now exist with their specific names such as defamation, nuisance, deceit, negligence, assault, false imprisonment, malicious prosecution etc. The principles of absolute liability, vicarious liability, occupiers' liability and manufacturer's liability etc. subsequently found place in law of torts. The shifting trends in the application of doctrine of contributory negligence, expanding dimensions of state liability, abolition of the doctrine of common employment and innovation of new torts like nervous shock, gherao etc are indicative of the fact that efforts are being constantly made to restructure and modify the tort law to suit the exigencies of time and place. While most branches of law e.g. contract, property trusts, crime have been codified, the law of torts yet remains uncodified. The reason

4 Salmond ; Law of Torts (20th Ed. 1992) p. 4 & 5.
5 See also Ashby V. Whyte (1703) 2 Ld. Raym 938 (955)
6 See also Gloucester Grammar School Case (1410) YB 11 Hen. Iv Foli 47 Pl 21, 23, Per H.J.

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being that this branch of law is still in the process of growth and any attempt to codify it would retard its proper development. Dr Winfield was of the view that there as greater scope for the development of law of torts if it remained uncodified.[7] However, certain specific area of torts such as contributory negligence, indemnity among joint tort feasors etc. have directly been codified on the recommendation made by the law reforms committees appointed by lord chancellor from time to time.[8]

IV. LAW OF TORTS IN INDIAN SCENARIO

The perception of Law of Torts in ancient India being different from what it is today, it laid greater emphasis on duties rather than rights of person. The main sources of ancient Hindu law i.e. 'smritis the code of **manu** & **yajnavalkya**' with its commentaries compiled by **narada**, **vyasa**, **brihaspati** and **katyayan** furnish a detailed account of law of private wrong and damages prevalent in ancient India. The ancient Hindu Law recognized the institution of king or state which had complete control over its subjects. The entire scheme of civil and criminal law has been described by 'manu' under eighteen heads[9], such as gifts, sale, partnership assault, deformation, theft, robbery etc. The right to recover compensation was recognized in three cases namely (1) damage caused to crops by trespass of cattle (2) bodily injuries, (3) damage caused to goods whether intentionally or otherwise.[10] There was no scope for private vengeance or retaliation in the ancient scheme of justice. The digest prepared by **'virmitrodaya'** and **'vyavahara mayukha'** contain authoritative details on a variety of topics relating to law of private wrongs (now known as torts, including injuries to person and property, trespass, fraud, deceit, bailment, negligence, law of carriers, measure of damages, defences etc. which form the subject matter of modern law of tort.

The ancient hindu law of torts, however differed from the present law of tort in one distinct aspect. It recognized right to compensation only in cases where plaintiff suffered monetary loss and not in other cases like assault, false imprisonment, insult, adultery, defamation etc., which were regarded as punishable offences and did not give rise to cause of action in Torts.

It must, however be stated that the modern law of Torts in India is based on the English law of torts with necessary modifications to suit the Indian conditions.[11] In fact Sir Federick Pollock had prepared a draft on law of tort for India but the British Government thought it expedient

7 Winfield : Law of Torts (17th Ed. 2008) p. 5
8 Dr. N. V. Paranjape ; Law of Torts, (4th Ed. 2020), p. 9
9 Manu Smriti, Chapter VIII-241
10 Ibid
11 See also Vidyadevi V. M. P. Road transport corporation AIR 1975 MP 89

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not to give statutory recognition and therefore, it was not implemented. However, with the establishment of English courts in India, English laws were introduced with necessary modification to suit the Indian Conditions applying the principle of equity, justice and good conscience and law of tort was no exception to this process of change. Torts being an uncodified branch of law, is mostly based on judicial decisions and in fact it is still in process of development. Therefore, it can'nt say that the law of torts is in static form, but it is always in dynamic. In early time in India the number of cases under Law of Torts were very limited and specified, but due to gradually development of science and technology etc. and advent to hazardous industrial operations, adulteration, commercialization, consumerism etc. have contributed towards the expansion of the scope of Tortious liability. Consequently new wrongful acts are included in torts and thus its dimension is becoming very wide day by day.

V. THE EMERGING TREND OF LAW OF TORTS

As stated earlier the law of torts is not a static like other laws it is also an evolving law, with the passage of time, it has also changed a lot and its ambit and dimension has become expanded. There are certain emerging trends of tortious liability as follows:

(A) Intellectual Property Rights:

Intellectual property is the product of human mind and intellect. Intellectual property, in its literal sense, means the things which emanate from the exercise of Human brain.[12] It is the product emerging out of the intellectual labour of a human being. It involved the visual expression of a mental conception, the work of both brain and hand.[13] Intellectual property means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. The convention establishing the World Intellectual Property Organization (WIPO) concluded in Stockholm on July 14, 1967 provides that 'intellectual property shall include rights relating to –

- literary, artistic and scientific works
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavour,
- scientific discoveries,
- industrial designs
- trade marks, services marks and commercial name and designations.

[12] Introduction to intellectual property law (1986) p. 3 , by Jermy Phillips

[13] Simonds : Natural Right of property in Intellectual production 1 Yale L.J.

- protection against unfair competition, and all other rights resulting from intellectual activity in the industrial scientific, literary or artistic fields.

Intellectual property plays a key role in society, Intellectual Property Rights (IPRS) encourage innovation by protecting intellectual activity and granting their holder, the creator or innovator, the ability to exclude others from certain activities for a defined period of time. Laws protect intellectual property for two main reasons. One is to give statutory expression to moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote as a deliberate act of governmental policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development. The universal declaration of Human Rights 1948 clearly states that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[14] Article 1, Section 8 of the United States Constitution embodies special provision for the protection of intellectual property.[15]

Violation of any intellectual property rights i.e. copy rights, patents rights, trademarks and design manipulation, geographical indication of goods, plant varieties and farmer's rights and violation of rights under the biological diversity act, etc. are both civil as well as criminal wrong, for wich under law of torts a suit for compensation can be file before civil court. Section 55 of the Copyright Act 1957 provides that where copy right in any work has been infringed, the owner of the copy right will be entitled to all such remedies by way of injunction, damages, account and otherwise as are or may be conferred by law for the infringement of right, the proper remedy for the owner of the copyright is to pursue that allowed to him by a civil suit.

(B) Medical Negligence and Law of Torts

Particularly in medical profession the law requires a fair and reasonable standard of care and competence by the medical man towards his patients. A doctor who is consulted by a patient owes him certain duties, namely a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give and duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient against to the doctor.

The liability of a doctor arise not when the patient has suffered any injury but when the injury has resulted due to the conduct of the doctor which has fallen below, that of reasonable care.

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14 Article 27(2) the Universal Declaration of Human Rights, 1948.

15 To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

In other words the doctor is not liable for every injury suffered by a patient. He is liable for only those, that are consequence of a breach of his duty and this breach of duty treated as strict liability.

It is well known that doctor owes a duty of care to his patient. This duty can either be a contractual duty or duty arising out of Tort of law. The law requires fair and reasonable standard of care for treatment of a patient. A medical professional i.e. Doctor who is consulted by a patient, owes him certain duties, namely, a duty of care in his administration of that treatment, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment is to be given, etc., a breach of any of these duties will support action for negligence by the patient, and a doctor shall liable for tortious liability and liable to pay compensation under the law of Consumer Protection act 1986.[16]

(C) Rule of strict and absolute liability

Generally, the liability of a person in Tort emanates from his negligence and therefore, where a person can prove that he was not negligent in doing his act, he is not held liable. In other words, if he can show that he was careful in doing the act which caused damage to the plaintiff, he can be exempted from liability. But this general principle of liability does not apply to cases which fall in the category of hazardous activities and a person is invariably held liable for all the consequences of such acts irrespective of the fact whether he was negligent or not-negligent (that is careful). This has been called as 'strict liability' which is an exception to the general principle of 'liability for fault' in law of tort.[17] Following are some examples of liability even without negligence.[18]

1. Liability for dangerous premises or buildings.

2. Liability for dangerous chattels.

3. Liability for dangerous construction.

4. Liability for collection or storage of dangerous things on own land which may cause mischief for others by escape.

5. Liability for dangerous goods.

6. Liability arising under motor vehicles act 1988

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16 Dr. J. S. Chandpuri – Liability for Medical Negligency under the consumer protection act 1986 : An overview, ISRJ Dec. 2014 Vol. IV, Issue - XI at page 6.

17 Dr. N. V. Pranjape : Law of Torts ed. 2018 at page 150-151.

18 Dr. M. N. Shukla, Law of Torts & Consumer Protection Act (ed) 2016 at page 269.

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7. Liability arising under Consumer Protection Act 1986, etc.

The principle of strict responsibility for hazardous and inherently dangerous activities was for the first time laid down by 'Blackburn J.' in **Rylands V. Fletcher**[19] and therefore, it is also known as Rylands V. Fletcher rule. The court of Exchequer Chamber has observed as follows- "The person who for his own purpose brings on his land and collects and keep there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is primafacie – answerable for all the damage which is the natural consequences of its escape.

Extension of strict liability principle – Twentieth century witnessed extension of the strict principle to a variety of cases involving damage caused due to user and escape of gas, oil, water, vapours, fumes, smoke, fire, poisonous plants and vegetation etc. The reason for this tremendous expansion is of course, the fact that it is unnecessary to prove negligence in such cases. Although the adherence to the principles of strict liability in the Indian context is based on the common law of England, but when any person or industry is involved in any hazardous activity which is likely to endanger the body and health of the people around him at the times, then such industrial operation is carried on by its owner at his peril and he would be under absolute liability, if such accident happens and this would no matter that whether he was negligent or not, this liability is based on 'no fault' (liability without fault) principle.

Absolute Liability – When an enterprise, which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the person working in the factory and residing in the surrounding areas, owes an absolute and non delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it had undertaken.[20] The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results in on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer for the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.[21]

In **M. C. Mehta V Union of India**,[22] popularly known as MIC gas leakage case the supreme court has observed as follows – 'when an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused the anyone on account of the accident in the operation

19 (1868) LR3 (HL) 330

20 See also Association of Victims of Uphar Tragedy V. Union of India AIR (2003) Delhi (DB)

21 Dr. J. S. Chandpuri, Doctrine of 'No Fault liability : its application hazardous industrial operation. A seminar paper presented at Sri Ram College, Muzzarnagar (UP) March 22, 23 2014.

22 AIR, 1987, SC 1086

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of such activity, the enterprise is strictly and absolutely liable to compensable those who are affected by the accident. Such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Ryland V. Fletcher. There are some examples of absolute liability are as follows where liability arises without any mistake or fault.

(a) (i). Section 140 of motor vehicles act 1988 provides as "(i) where death or permanent disablement of any person has resulted from an accident arising out of the use of a 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.

(ii). In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or any other person.

(b) Cases related to environmental pollution, public health and safety decency and morality, defamation, contamination, adulteration of good etc. falls under absolute liability. In many cases of environmental pollution the supreme court has held that applying the doctrine of absolute liability, the 'polluter pays', principle should be applicable against the polluting industrial units and the expenditure incurred on restoring a pollution free environment should be recovered from them even by ordering attachment of their properties, if necessary.[23]

(c) Section 1 of Public Liability Insurance Act 1991 provides award of compensation to victims of dangerous and hazardous substances carried out by the industrial enterprise, despite there being no fault or negligence on the part of industry or enterprise.[24]

(d) Where any person dies due to electrocution, the electricity board shall be liable to pay compensation under absolute liability and the plea of electricity board that utmost care and caution was exercised on its side cannot be pardoned, because supply of electricity is hazardous operations itself, and 'no fault' principle would be applied.[25]

(e) Environment Protection Act 1986 makes provision for prompt payment of compensation to the victims of accident or hazardous operations by the enterpreneurs under 'No Fault' principle.

(D) Liability of Multi-national Company (MNC's) under torts – A Tort committed by

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[23] See also, Indian Council for Enviro-Legal Action V. Union of India AIR 1996 SC 1446, MC Mehta V. Kamal Nath AIR 2000 SC 1997.

[24] See also – Union Carbide Corporation V. Union of India 1991 4 SC 548 etc.

[25] See also, S. Prem Singh and others V. State of J&K and others AIR 2011 J&K 50, M.P. Electricity Board V. Shail Kumar AIR 2002 SC 551, Tamil Nadu Electricity Board V. Sumathi AIR 2000 SC 1603 etc.

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MNC's called as Mass torts, under mass tort's, there are certain striking features on the ground of which a MNC should be held liable. MNC's by virtue of their global purpose structure, organization, technology, finance and resources have it within their power to make decision and take action that can result in industrial disasters of catastrophic proportion and magnitude. This is particularly true with respect to those activities of the MNC which are ultra hazardous or inherently dangerous. A MNC's has a primarily, absolute and non-delegable duty to the persons and country in which it has in any manners caused to be undertaken any ultra hazardous or inherently dangerous activity. This includes a duty to provide that all ultra hazardous or inherently dangerous activities be conducted with the highest standards of safety and to provide all necessary information and warnings regarding the activity involved. For example, the defendant multinational Union carbide company breached this primary absolute and non-delegable duty through its undertaking of an ultrahazardous and inherently dangerous activity causing unacceptable risks at its plant in Bhopal and the resultant escape of lethal MIC carbide further failed to provide that its Bhopal plant met the highest standards of safety and failed to inform the Union of India and its people of the dangers therein. Defendant Union Carbid held primarily and absolutely liable for any and all damages caused or contributed to the escape of lethal MIC from its Bhopal plant.[26] Finally it is concluded that activity of the defendant causing harm to a large number of persons is mass torts and a multinational company is held liable on the grounds of its ultra hazardous activities and the disobedience regarding safety measures and the necessary information.

(E) Cyber Torts – Cyber Tort or Crime is one of the fastest growing crimes in the world today which committed with the use of computer or relating to computers, specially through the internet. Universally, cyber wrong is understood as 'an unlawful act where in the computer is either a tool or a target or both:

Cyber crimes are different from conventional crimes as in cyber crimes, the crime is committed in an electronic medium and here 'mens rea' i.e. criminal intention is not a requirement but is rather a general rule under the penal provisions of Information Technology Act 2000 as well as law of Torts. The Information Technology Act 2000 deals with the following cyber crimes along with others.[27]

(i) Tampering with computer source documents

(ii) Hacking

[26] Legal service India.com, see also, Union Carbide Corporation V. Union of India, 1991 (4SCC) 548.

[27] NC Jain : Cyber Crime (ed. 2008) Allahabad Law Agency.

(iii) Publishing of information, which is obscene in electronic form.

(iv) Child pornography

(v) Accessing to protected system.

(vi) Breach of confidentiality and privacy

(vii) Cyber defamation, financial crimes

(viii) Cyber squatting, forgery, email bombing, e-mail spoofing etc.

Although a cyber crime prima facie is a criminal wrong and punishable by imprisonment or fine or both under Indian Penal Code 1860 as well as the Information Technology Act 2000, but there are certain cyber crimes for which a victim can file a civil suit in civil court for compensation,

(F) Privacy intrusion and law of torts – Right to privacy or right to be let alone is a fundamental human right which is also guaranteed by Article 21 of the constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matter. None can publish anything concerning the above matter without his consent whether truthful or otherwise and whether laudatory or critical. If he does so he would be violating the right to the person concerned and would be liable in an action for damage.[28] Besides this a female who is the victims of sexual assault, kidnapping abduction or a like offence should not be disclosed with her name, if so, then she will be entitled to get the compensation against such disclosure. Right to privacy cannot be as a claim for compensation, where disclosure is indispensable for a large public interest.[29] Disclosure of veneral and dreadful disease can be a public interest of society.

(G) Liability of Govt. of Torts committed by its servant – It was the universal rule of common law that 'a king can do no wrong, therefore, the crown was immune from civil and criminal liability, i.e. no action would lie against the crown for the wrongful acts committed by its servants in the course of their employment. But, in 1947 the parliament has passed "The Crown Proceedings Act 1947" and the status of crown has become like a common man for liability under Torts. Section 11(1) subject to this act provides that the crown shall be subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject:-

(i) in respect of torts committed by its servant or agents, provided that the act or omission of the servant or agent from the act has given rise to cause of action in tort against that servant or

[28] See also R. Rajgopal V. State of Tamil Nadu AIR 1995 SC 264.

[29] See also Mr. XYZ V. I Hospital AIR 1999 SC 495

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agent or against his estate.

(ii) in respect of any breach of these duties which a person owes to his servants or agents of common law by reason of being their employer.

(iii) in respect of any breach of the duty attaching at common law to the ownership, occupation possession or control of property.

Indian Law :- Article 300 of the constitution of India deals with the liability of the government, it runs as follows:- The govt. of India may sue or be sued by the name of Union of India and the Govt. of State may sue or be sued by the name of the state and may, subject to any provisions which may be made by Act of parliament or of the legislature of such state enacted by virtue of powers conferred by this constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian States might have used or been sued if this constitution had not been enacted. Thus the nature and extent of the liability of Govt. would be same as it existed before the constitution i.e. section 176 of Govt. India Act 1935 and this was based on Govt. of India Act 1858, for which the secretary of state in Council were liable to be sued for tortious acts of their servants committed in the course of their employment. Thus the law prevailing before the Govt. of India Act 1958 is material for present discussion. It may be noticed that as early as in 1868 in P&O steam navigation Co. V. Secretary for State of India[30] and Later on in Kasturi Lal V. State of U.P.[31] The court has determined the liability of the state, on the basis of sovereign and non-sovereign activities. Sovereign activity or authority is that authority, when a particular act could be done by only the government under statutory obligation or done by its servant during the course of his employment and common person is not authorized to do such act. While any act which could be done by public servant as well as common man called commercial or non-sovereign activity, the govt. will only be liable for commercial or non-sovereign activities as tortious liability not for sovereign activities. In India, there are many decision has been given based on this principle by the highest court. But in Nagendra Rao and Company V. State of A.P.[32] The Supreme Court has felt the need for a specific legislation regarding the liability of Govt. in Tort. The Supreme Court, regretted that 'the citizen of the independent nation who are governed by its own people and constitution and not by the crown are still faced wellnigh fifty years of independence when they approach the court of law for redress against negligence of officers of the state in private law, with the question whether the

30 (1868-69) 7 Bom. HR App. A. 1
31 AIR 1965 SC 1039
32 AIR 1994 SC 2663

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East India Company would have been liable. Necessity to enact a law in keeping with the dignity of the country and to remove the uncertainty and dispel the misgivings cannot be doubted. The Supreme Court further observed that the principle of sovereign immunity does not apply, when the duty of Govt. or its servants has created under any statutory provisions. The court observed that the principle of sovereign immunity, which is the epitonic of British fedualism, has now been faded away, sovereignty reside in the people of India, the three organs of government have been constituted to serve the people and if there any loss to the people due to the negligence of the Govt., then the Govt. cannot escape from its liability for compensation.

(H) Compensation for infringement of fundamental rights – Part Third of Indian constitution secure some fundamental rights for Indian citizens, for their advancement or betterment. Subject to certain provisions, these fundamental rights cannot be taken away from the individuals. Article 32 and Article 226 guarantees the protection of fundamental rights. Clause (1) of Article 32 declares 'that right to move the supreme court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed, while Article 226 provides that notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, in appropriate cases, any government, within those territories directions, orders or writes including writes in the nature of habeas corpus, mandamus, prohibition, quo warrants and certiorari or any of them for the enforcement of any of the rights conferred by part III and for any other purpose. It is to pointed out that the court has very wider powers to enforcement of fundamental rights as well as to order the compensation under common law.

In **Rudal Shah V. State of Bihar**[33] the plaintiff was awarded compensation of Thirty thousand for his wrongful detention in jail despite his acquittal by the court. The court for the first time held that state or its authorities who violate any person's right to life and liberty as envisaged by Article 21 of the constitution, in course of discharge of official duties cannot claim immunity of sovereign function in their defence.

In **Veena Sippy V. Narayan Dumber**[34] the petitioner was held entitled to seek compensation for violation of her fundamental rights under Article 21 of the constitution on the grounds of her illegal detention by police authorities.

In **State of Andhra Pradesh V. Challa Ramkrishna Reddy**[35] the Supreme Court rejected the state's plea of sovereign immunity holding that the doctrine has no application where

33 AIR 1983 SC 1086
34 2012, 3 SCC AIR Bomb. R. 30
35 AIR 2000, SC 2083

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violation of fundamental rights under Article 21 is involved.

In **Ganeshan V. State of Tamil Nadu & others**[36] the parents of the deceased boy, filed a petition under Article 226 before the High Court Claiming compensation on the ground that their only son was killed in a petrol bomb blast caused by some political party. The High Court allowed the claim holding that the state was bound to protect the life and liberty of its citizens.

In **Neelabati Behra V. State of Orissa**[37] The death of the petitioner's husband in police custody due to police torture were a serious matter involving violation of Article 21 of the constitution, hence the state was directed to pay a compensation of Rs. 1.5 lakh to the petitioner i.e. wife of the deceased.

It is indeed heartening to note that the development of **'Constitutional Tort Law'** through expanding dimensions of Article 21 of the constitution relating to protection of life and personal liberty of person and evolution of PIL writs have substantially contributed to the development of compensatory jurisprudence in the Indian legal system. The judiciary no longer permits the state and its executive authorities to justify their wrongful acts in the name of state immunity. It would be no exaggeration to say the doctrine of state's sovereign power has lost its credence in the new millennium and the real sovereignty now vests in the people of India.[38]

(I) Compensation under law of torts for environmental degradation – Environment Protection and its preservation is today the concern of all. In India the concern for environmental protection has not only been raised to the states of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that it is the basic human right of every individual to live in pollution free environment with full human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the supreme court has held that the essential feature of 'sustainable development' such as the 'precautionary principle' and the polluter pays principle are part of the environmental law of the country which provides the compensation regarding environmental degradation. As the supreme court has observed that right to live is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life, if anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the constitution for removing the pollution of water or air which may be detrimental to

36 2012, 2 CTC 848

37 AIR 1993 SC 1960

38 See also Dr. N. V. Paranjpe. Law of Torts & Consumer protection law. 4th ed. 2019, Central Law Agency, Allahabad.

the quality of life.[39] It is earlier submitted that an act or omission which is contrary to the environment or harmful to the public health, safety or derogatory to the decency and morality or hazardous and inherently dangerous to the public or its vicinity or any wrongful act which infringe the life and liberty of an individuals etc. falls under absolute liability i.e. liability under 'no fault' principle and liable to pay compensation to concerned person. it is to expedient that in the environmental pollution cases the attitude of supreme court has always been to protect the human rights as well as to enforce the principle of 'polluter pays' and 'precautionary' principle.[40] The Polluter Pays Principle (PPP) as interpreted by the supreme court of India, means that the absolute liability for harm to the environment extends not only compensate the victims of pollution but also the cost of restoring the environmental costs as well as direct costs to people or property. Remediation of the damaged environment is part of the process of 'sustainable development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.[41]

(J) Tortious liability under consumer protection laws – The Consumer protection act 1986 came into existence for consumer welfare as well as to protect the consumer's rights. The basic objective of the consumer protection law is to promote welfare of the society by enabling the consumer to participate in the market economy. It seeks to protect consumer against the exploitative tactics of producers, suppliers, manufacturers, retailers etc. who are far more powerful and resourceful than the hapless consumers.

In a country like India, where large population of persons is poor, illiterate and ignorant their exploitation by the manufacturers, sellers, traders etc. is a common phenomenon. Therefore, protection of consumer against the unfair trade practices of trading community and providers of services became the need of the day. Consequently, the Consumer Protection Act 1986 was enacted for protecting the rights of consumer's and providing them relief against the defects in goods and deficiency in services. The act seeks to protect the interacts of consumers as follows:-

(i) protection against goods and products etc. which are dangerous for human health and property.

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39 See also in Subhash Kumar V. State of Bihar AIR 1992, SC 420, Chhetriya Pradushan Mukti Sangharsh Samiti V. State of UP 1990 SCC 452 Virendra Gaur V. State of Haryana (1995) 2 SCC 577, MC Mehta V. Union of India AIR 2005 SC 376.

40 See also : M. C. Mehta V. Union of India (2004) 12 SCC 118, Research Foundation of Science V. Union of India (2005). 13 SCC 186. Karnataka Industrial Areas Development Board V. C. Kenchappa (2006), 6 SCC 371, Vellor citizens welfare forum V. Union of India (1995) 5 SCC 647 (Popularly known as Tamil Nadu Tanneries Case).

41 Indian Council for Enviro-legal action V. Union of India (1996) 3 SCC 212, Karnataka Industrial Areas Development Board V. C. Kenchappa (2006) 6 SCC 317

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(ii) right to information regarding the quality, purity, quantity, potency and market price of products, articles and goods available for sale.

(iii) to appraise the consumers about the competitive prices of goods or services so that they may have the option of choosing the best out of them for consumption.

(iv) right to place their grievance before the appropriate forum for redressal and resolution of consumer disputes through the consumer fora.

(v) right to consumer education so as to generate awareness among the consumers about their rights and legal remedies available to them against defective goods or deficient services.

The consumer protection act is primarily intended to provide better protection to the consumers. Unlike other laws, which are mostly punitive or preventive in nature, the provisions of the consumer protection act are mainly compensatory in nature. A consumer whose rights have been violated under any trading system or who is a victim or aggrieved by any commercial or trade practice is entitled to get compensation against such trader service providers etc. under the law of torts. The consumer protection act focuses on redressal of consumer's problems and grievances providing them reliefs of a specific nature and award of compensation. The Supreme Court explainted the object and philosophy of the consumer protection act 1986 in the landmark case of **Lucknow Development Authority V. M.K. Gupta**[42] and observed; 'Infact of law the consumer protection meets the long fact necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which the faces against powerful business, described as a network of rackets or society in which producers have secured powers to 'rob the rest' and the might of public bodies which are degenerating into store house of in action where papers do not move from one desk to another as a matter of duty and responsibility and for extraneous consideration leaving the common men helpless bewildered and shocked.

(K) Social Media and Liability for Torts – The social media has become the integral part of human being at present. In today's society, the use of social media has become a necessary daily activity. Social media is typically used for social interaction and access to news and information, and decision making. It is valuable communication tool with others locally and worldwide, as well as to share, create and spread information. More than 86% of all business

[42] (1993) 1 CTJ 929 (SC)

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have a dedicated social media platform as part of their marketing strategy. Social media is a big platform not only for promotion or marketing but one can also reach out millions of people and share their views, through social media, every person is aware of what is happening around them. But like any other theory social media platform have certain disadvantages. On social site you can get easy to read false and baseless news, some people creates religious hysteria and hatred, through their thoughts and expression, on social site. Prank videography, on line cheating, fraud, cyber bullying, cyber stalking, misleading advertisements, regarding treatment of incurable diseases or magic remedies, defamation, libel and slander are best examples which happens through social media. These cyber crimes or social media wrongs are the civil as well as criminal proceedings against the accused. The tort of cyber defamation is an act of intentionally insulting, defaming or offending another individual or a party through a virtual medium i.e. social media. Anyone who has been defamed through social media, can file a suit in civil court for compensation against such person. Misleading advertisement in relation to any product or service is punishable as well as a civil wrong and concerned person would be liable to pay compensation for that person who bears losses by such advertisement.

VI. CONCLUSION

Thus we can say that while the scope of law of tort was very limited in the thirteenth century, it expanded in the course of time. Science and technological development gave birth to human prosperity, at the same time hazardous industrial operations had become a great concern to human society. Consequently, it has been an unwanted increase in the cases of environmental pollution, environmental degradation as well as human health and human rights violation. The law of tort has been instrumental in administering all these problems. The twentieth century is witness to intellectual property right, which playing a great contribution in society. The development of law of torts has also been a reason for the protection of intellectual property rights. Therefore, like other laws the development of law of torts is also going on continuously and will continue in future also.

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