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**Tort and Consumer Protection Law
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Module 01

Introduction and Principles of Liability in Tort :

THE HISTORICAL DEVELOPMENT OF LAW OF TORTS IN ENGLAND

INTRODUCTION

Tort law is a body of law that addresses and provides remedies for civil wrongdoings not arising out of contractual obligations. A person who suffers legal damage may be able to use tort law to receive compensation from someone who is legally responsible, or liable, for those injuries. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Tort law spans intentional and negligent acts. Tort law has three purposes. The first is to compensate the victim, the second is to punish the wrongdoer, and the third is to deter harmful activities.

Under the Hindu law and the Muslim law tort had a much narrower conception than the tort of the English law. The punishment of crimes in these systems occupied a more prominent place than compensation for wrongs. The law of torts in India is mainly the English law of torts which itself is based on the principles of the common law of England. This was made suitable to the Indian conditions appealing to the principles of justice, equity and good conscience and as amended by the Acts of the legislature. Its origin is linked with the establishment of British courts in India.

The expression justice, equity and good conscience was interpreted by the Privy Council to mean the rules of English Law if found applicable to Indian society and circumstances. The Indian courts before applying any rule of English law can see whether it is suited to the Indian society and circumstances. The application of the English law in India has therefore been a selective application. On this the Privy Council has observed that the ability of the common law to adapt itself to the differing circumstances of the countries where it has taken roots is not a weakness but one of

its strengths. Further, in applying the English law on a particular point, the Indian courts are not restricted to common law. If the new rules of English statute law replacing or modifying the common law are more in consonance with justice, equity and good conscience, it is open to the courts in India to reject the outmoded rules of common law and to apply the new rules. For example, the

principles of English statute, the Law Reform (Contributory Negligence) Act, 1945, have been applied in India although there is still no corresponding Act enacted by Parliament in India.

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

It has also been held that section 9 of The Code of Civil Procedure, which enables the civil court to try all suits of a civil nature, impliedly confers jurisdiction to apply the Law of Torts as principles of justice, equity and good conscience. Thus the court can draw upon its inherent powers under section 9 for developing this field of liability.

In a more recent judgement of **Jay Laxmi Salt Works (p) Ltd. v. State of Gujarat**, Sahai, J., observed: truly speaking the entire law of torts is founded and structured on morality. Therefore, it would be primitive to close strictly or close finally the ever expanding and growing horizon of tortious liability. Even for social development, orderly growth of the society and cultural refinement the liberal approach to tortious liability by court would be conducive.

Meaning of Tort:

The term tort is the French equivalent of the English word 'wrong' and of the Roman law term 'delict'. The word tort is derived from the Latin word *tortum* which means twisted or crooked or wrong and is in contrast to the word *rectum* which means straight. Everyone is expected to behave in a straightforward manner and when one deviates from this straight path into crooked ways he has committed a tort. Hence tort is a conduct which is twisted or crooked and not straight. As a technical term of English law, tort has acquired a special meaning as a species of civil injury or wrong. It was introduced into the English law by the Norman jurists.

Tort now means a breach of some duty independent of contract giving rise to a civil cause of action and for which compensation is recoverable. In spite of various attempts an entirely satisfactory definition of tort still awaits its master. In general terms, a tort may be defined as a civil wrong independent of contract for which the appropriate remedy is an action for unliquidated damages. Some other definitions for tort are given below:

Winfield and Jolowicz- Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.

Salmond and Hueston- A tort is a civil wrong for which the remedy is a common action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other mere equitable obligation.

Sir Frederick Pollock- Every tort is an act or omission (not being merely the breach of a duty arising out of a personal relation, or undertaken by contract) which is related in one of the following ways to harm (including reference with an absolute right, whether there be measurable actual damage or not), suffered by a determinate person:-

- a) It may be an act which, without lawful justification or excuse, is intended by the agent to cause harm, and does cause the harm complained of.
- b) It may be an act in itself contrary to law, or an omission of specific legal duty, which causes harm not intended by the person so acting or omitting.
- c) It may be an act violation the absolute right (especially rights of possession or property), and treated as wrongful without regard to the actor's intention or knowledge. This, as we have seen is an artificial extension of the general conceptions which are common to English and Roman law.
- d) It may be an act or omission causing harm which the person so acting or omitting to act did not intend to cause, but might and should with due diligence have foreseen and prevented.
- e) It may, in special cases, consist merely in not avoiding or preventing harm which the party was bound absolutely or within limits, to avoid or prevent.

The law of torts is fashioned as an instrument for making people adhere to the standards of reasonable behaviour and respect the rights and interests of one another. This it does by protecting interests and by providing for situations when a person whose protected interest is violated can recover compensation for the loss suffered by him from the person who has violated the same. By interest here is meant a claim, want or desire of a human being or group of human beings seeks to satisfy, and of which, therefore the ordering of human relations in civilized society must take account. It is however, obvious that every want or desire of a person cannot be protected nor can a person claim that whenever he suffers loss he should be compensated by the person who is the author of the loss. The law, therefore, determines what interests need protection and it also holds the balance

To constitute a tort,

1. There must be a wrongful act committed by a person;
2. The wrongful act must be of such a nature as to give rise to a legal remedy and
3. Such legal remedy must be in the form of an action for unliquidated damages.

I. Wrongful Act

An act which prima facie looks innocent may become tortious, if it invades the legal right of another person. In *Rogers v. Ranjendro Dutt*, the court held that, the act complained of should, under the circumstances, be legally wrongful, as regards the party complaining. That is, it must prejudicially affect him in some legal right; merely that it will however directly, do him harm in his interest is not enough.

A legal right, as defined by Austin, is a faculty which resides in a determinate party or parties by virtue of a given law, and which avails against a party (or parties or answers to a duty lying on a party or parties) other than the party or parties in whom it resides. Rights available against the world at large are very numerous. They may be divided again into public rights and private rights. To every right, corresponds a legal duty or obligation. This obligation consists in performing some act or refraining from performing an act.

Liability for tort arises, therefore when the wrongful act complained of amounts either to an infringement of a legal private right or a breach or violation of a legal duty.

II. Damage

In general, a tort consists of some act done by a person who causes injury to another, for which damages are claimed by the latter against the former. In this connection we must have a clear notion with regard to the words damage and damages. The word damage is used in the ordinary sense of injury or loss or deprivation of some kind, whereas damages mean the compensation claimed by the injured party and awarded by the court. Damages are claimed and awarded by the court to the parties. The word injury is strictly limited to an actionable wrong, while damage means loss or harm occurring in fact, whether actionable as an injury or not.

The real significance of a legal damage is illustrated by two maxims, namely, *Damnum Sine Injuria* and *Injuria Sine Damno*.

(i) Damnum Sine Injuria (Damage Without Injury)

There are many acts which though harmful are not wrongful and give no right of action to him who suffers from their effects. Damage so done and suffered is called Damnum Sine Injuria or damage without injury. Damage without breach of a legal right will not constitute a tort. They are instances of damage suffered from justifiable acts. An act or omission committed with lawful justification or excuse will not be a cause of action though it results in harm to another as a combination in furtherance of trade interest or lawful user of one's own premises. In Gloucester Grammar School Master Case, it had been held that the plaintiff school master had no right to complain of the opening of a new school. The damage suffered was mere damnum absque injuria or damage without injury. **Acton v. Blundell**, in which a mill owner drained off underground water running into the plaintiff's well, fully illustrate that no action lies from mere damage, however substantial, caused without the violation of some right.

There are moral wrongs for which the law gives no remedy, though they cause great loss or detriment. Loss or detriment is not a good ground of action unless it is the result of a species of wrong of which the law takes no cognizance.

(ii) Injuria Sine Damno (injury without damage)

This means an infringement of a legal private right without any actual loss or damage. In such a case the person whose right has been infringed has a good cause of action. It is not necessary for him to prove any special damage because every injury imports a damage when a man is hindered of his right. Every person has an absolute right to property, to the immunity of his person, and to his liberty, and an infringement of this right is actionable per se. Actual perceptible damage is not, therefore, essential as the foundation of an action. It is sufficient to show the violation of a right in which case the law will presume damage. Thus in cases of assault, battery, false imprisonment, libel, trespass on land, etc., the mere wrongful act is actionable without proof of special damage. The court is bound to award to the plaintiff at least nominal damages if no actual damage is proved. This principle was firmly established by the election case of *Ashby v. White*, in which the plaintiff was wrongfully prevented from exercising his vote by the defendants, returning officers in parliamentary election. The candidate from whom the plaintiff wanted to give his vote had come out successful in the election. Still the plaintiff brought an action claiming damages against the defendants for maliciously preventing him from exercising his statutory right of voting in that election. The plaintiff was allowed damages by Lord Holt saying that there was

the infringement of a legal right vested in the plaintiff.

III. Remedy

The law of torts is said to be a development of the maxim 'ubi jus ibi remedium' or 'there is no wrong without a remedy'. If a man has a right, he must of necessity have a means to vindicate and maintain it and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without remedy; want of right and want of remedy are reciprocal.

Difference between crime and tort:

Being a civil injury, tort differs from crime in all respects in which a civil remedy differs from a criminal one. There are certain essential marks of difference between crime and tort they are:

- Tort is an infringement or privation of private or civil rights belonging to individuals, whereas crime is a breach of public rights and duties which affect the whole community.
- In tort the wrong doer has to compensate the injured party whereas in crime, he is punished by the state in the interest of the society.
- In tort the action is brought about by the injured party whereas in crime the proceedings are conducted in the name of the state.
- In tort damages are paid for compensating the injured and in crime it is paid out of the fine which is paid as a part of punishment. Thus the primary purpose of awarding compensation in a criminal prosecution is punitive rather than compensatory.
- The damages in tort are unliquidated and in crime they are liquidated.

Resemblance between crime and tort:

There is however a similarity between tort and crime at a primary level. In criminal law the primary duty, not to commit an offence, for example murder, like any primary duty in tort is in rem and is imposed by law. The same set of circumstances will in fact, from one point of view, constitute a crime and, from another point of view, a tort. For example every man has the right that his bodily safety shall be respected. Hence in an assault, the sufferer is entitled to get damages. Also, the act of assault is a menace to the society and hence will be punished by the state. However where the same wrong is both a crime and a tort its two aspects are not identical. Firstly, its definition as a crime and a tort may differ and secondly, the defences available for both crime and tort may differ.

The wrong doer may be ordered in a civil action to pay compensation and be also punished criminally by imprisonment or fine. If a person publishes a defamatory article about another in a newspaper, both a criminal prosecution for libel as well as a civil action claiming damages for the defamatory publication may be taken against him. In *P.Rathinam. v. Union of India*, the Supreme Court observed,

In a way there is no distinction between crime and a tort, inasmuch as a tort harms an individual whereas a crime is supposed to harm a society. But then, a society is made of individuals. Harm to an individual is ultimately the harm to the society.

There was a common law rule that when the tort was also a felony, the offender would not be sued in tort unless he has been prosecuted in felony, or else a reasonable excuse had to be shown for his non prosecution. This rule has not been followed in India and has been abolished in England.

Tort and contract:

The definition given by P.H. Winfield clearly brings about the distinction between tort and contract. It says, Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages. A contract is that species of agreement whereby a legal obligation is constituted and defined between the parties to it. It is a legal relationship, the nature, content and consequence of which are determined and defined by the agreement between the parties. According to Salmond, a contract arises out of the exercise of the autonomous legislative authority entrusted by the law to private persons to declare and define the nature of mutual rights and obligations.

At the present day, tort and contract are distinguished from one another in that, the duties in the former are primarily fixed by law while in the latter they are fixed by the parties themselves. Agreement is the basis for all contractual obligations. "People cannot create tortious liability by agreement. Thus I am under a duty not to assault you, not to slander you, not to trespass upon your land because the law says that I am under such duty and not because I have agreed with you to undertake such duty.

Some of the distinctions between tort and contract are given below:

- A tort is inflicted against or without consent; a contract is founded upon consent.
- In tort no privity is needed, but it is necessarily implied in a contract.

- A tort is a violation in rem (right vested in some person and available against the world at large.); a breach of contract is an infringement of a right in personam(right available against some determinate person or body).
- Motive is often taken into consideration in tort, but it is immaterial in a breach of contract.
- In tort the measure of damages is not strictly limited nor is it capable of being indicated with precision; in a breach of contract the measure of damages is generally more or less nearly determined by the stipulations of the parties.

Tort and Quasi-Contract:

Quasi contract cover those situations where a person is held liable to another without any agreement, for money or benefit received by him to which the other person is better entitled. According to the Orthodox view the judicial basis for the obligation under a quasi contract is the existence of a hypothetical contract which is implied by law. But the Radical view is that the obligation in a quasi contract is sui generis and its basis is prevention of unjust enrichment.

Quasi contract differs from tort in that:

- There is no duty owed to persons for the duty to repay money or benefit received unlike tort, where there is a duty imposed.
- In quasi contract the damages recoverable are liquidated damages, and not unliquidated damages as in tort.

Malfeasance, misfeasance and non-feasance

Malfeasance in Tort Law

- Malfeasance is applied when any unlawful act is committed.
- It is relevant to those unlawful acts which are actionable per se
- no proof is required with.
- For example, trespass.

Malfeasance is a broad term covering any act which is illegal and causes physical or financial harm to another individual. It is an intentional act of doing something wrong, either legally or

morally. The term malfeasance is utilized in both common law and criminal law to narrate any act which is unlawful or not identified by law. It is not a different crime or tort but the word malfeasance is used to narrate any act that is criminal or any wrongful act which causes injury to any person. Under tort law, malfeasance has legal effect in civil court and the defendant can be sued by the plaintiff for monetary damages. It is an act done with an immoral purpose and the person has the knowledge that the act which is being committed exceeds the authority of the person doing the act

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In the case of *Dunlop v. Woollahra Municipal Council*, it was held that without malice the claim for misfeasance could not be accepted.

Nonfeasance in Tort Law

Nonfeasance is the failure or omission to perform an obligatory or compulsory act. If a person promises another person to perform a particular act and does not perform it, then it is nonfeasance as the person was responsible for performing the act. Nonfeasance is an act of intentionally neglecting to carry out a duty which is an obligation and because of the failure to perform the duty, someone is harmed or injury has been caused. It harms another person or causes injury to a person's property. It is the lack of ability associated with the failure of the act. Unless and until a person has a pre-existing relationship he will not be held liable for the failure of the act. It describes inaction rather than action. Court believes that if people are not creating a dangerous situation then

also they must take proper care in order to prevent other people from a dangerous situation. The relationships in which a person is forced to do something or is compelled to do something are spouses, family members, school authorities and students, employee and employers, doctor and patients, etc, their duty is to protect each other from danger.

In **Municipal Corporation of Delhi vs. Subhagwanti**, a clock tower fell down in Chandni Chowk, Delhi, many people were injured and many died. The clock tower was not repaired for many years and the municipal corporation was required to maintain it. The Municipal corporation failed to do so and the tower collapsed. The municipal corporation was held liable as it was their duty to repair the clock which they failed to do. It can be called as nonfeasance as there was an omission in performing the compulsory act.

Difference between Malfeasance, Misfeasance, and Nonfeasance

The word “malfeasance” is derived from the French word “malfaisance”, which means “wrongdoing”.

The word “misfeasance” is derived from the French word “misfeasance”, meaning “to mis-do”.

The word “nonfeasance” is derived from the French word “faisance” meaning “action”, and the prefix non– which means not.

It means the “commission of an unlawful Act”. Example: trespass.

It means “improper performance of some lawful act”. Example: negligence.

Failure or omission to perform an act when there is an obligation to perform that act. Example: omission or wrongful act.

Module 02

Liability for the Wrong Committed :

1. Strict liability, absolute liability, no-fault liability; exceptions to these
2. Principle of vicarious liability - nature, scope and justification
3. Doctrine of sovereign immunity
4. Joint tort-feasors, joint and several liability

Rule of Strict Liability

The strict liability principle is an extremely important concept under the law of torts. The basis of this principle basically lies in the inherent harm that some activities can inflict. For example, leaking of poisonous gasses, as it happened in the Bhopal Gas Tragedy, will attract this rule.

The underlying principle of compensation in torts generally depends on the extent of precautions a person takes. Hence, if he takes abundant precautions to prevent some harm, the law may exempt him from paying damages. This principle, however, does not apply to strict liability.

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

Rylands v. Fletcher

The rule of strict liability originates from the famous English case of Rylands v. Fletcher. According to the facts of this case, the defendant owned a mill and wanted to improve its water supply. For this purpose, he employed a firm of reputed engineers to construct a reservoir nearby.

The problem occurred when the reservoir was so full one day that the water from it started over-flowing. The water flowed with so much force that it entered the plaintiff's mine and damaged everything.

The engineers, who were independent contractors of the defendant, were clearly at fault. This is because they were negligent in constructing the reservoir. This is exactly what the defendant also said for avoiding his liability.

The court, however, disagreed and explained the strict liability rule. It said that when somebody keeps something on his property for his benefit, it should not escape and affect others. In case it so escapes, the owner of that thing must compensate the victim even if he was not negligent.

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

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

1. Case- **Crowhurst v. Amersham Burial Board**,:-

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

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

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

Non-natural use of land: Water collected on land for domestic purposes does not amount

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

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

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

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

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

Exceptions/defences to the Doctrine of Strict Liability:-

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

Case: **Giles vs. Walker**, (1890) 24 QBD 656- In the defendant's land, there

was spontaneous growth of thistle plants. The defendant did not check the growth of this undesired vegetation which was extending to the plaintiff's land also only to cause him annoyance and damage. However, the defendant was able to prove that growing of plants is a natural use of land and therefore he won the case against the plaintiff.

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

Case: Peters vs. Prince of Wales Theatre Ltd. Birmingham,

The plaintiff took on rent a shop in the defendant's premises after full knowledge of the fact that the defendant had a theatre and rehearsal room attached to the same premises. The theatre had a water storage mechanism to douse fire in case of an emergency. Unfortunately, the water container burst due to excessive frost and the water leaked into the plaintiff's shop thereby damaging his goods. He sued the defendant for payment of damages suffered by him. The court held the defendant not liable as the plaintiff had impliedly consented to the presence of the dangers of a water storage tank situated right next to his shop by taking the defendant's premises on rent.

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

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

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

liable under such circumstances.

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

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

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

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

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

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

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

Absolute Liability:

Definition: If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are absolutely liable to pay compensation to the aggrieved parties. The industry cannot plead that all safety measures were taken care of by them and that there was negligence on their part. They will not be allowed any exceptions neither can they take up any defence like that of 'Act of God' or 'Act of Stranger'. **M.C. Mehta vs. Union of India**, A.I.R. 1987 S.C. 1086:-

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

Bhopal Gas Tragedy / Union Carbide Corporation v. Union of India, (1991) 4 SCC 548:-

This doctrine was upheld in the infamous Bhopal Gas Tragedy which took place between the intervening night of 2nd and 3rd December, 1984. Leakage of methyl-isocyanide (MIC) poisonous gas from the Union Carbide Company in Bhopal, Madhya Pradesh led to a major disaster and over three thousand people lost their lives. There was heavy loss to property, flora and fauna. The effects were so grave that children in those areas are born with deformities even today. A case was filed in the American New York District Court as the Union Carbide Company in Bhopal was a branch of the U.S. based Union Carbide Company. The case was dismissed there owing to no jurisdiction. The

Government of India enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985 and sued the company for damages on behalf of the victims. The Court applying the principle of 'Absolute Liability' held the company liable and ordered it to pay compensation to the victims.

Vicarious liability:

Vicarious liability means the liability of a person for an act committed by another person and such liability arises due to the nature of the relation between the two. For e.g. A, is a driver who works for B and while driving B's car for taking him to his office, he hits C, a pedestrian due to his negligence in driving. In such a case even though B was not driving the car he will still be liable for the accident which was caused due to the negligence of A.

Relations in which Vicarious Liability arises:

These are the major relations in which vicarious liability of a person arises

1. Master and Servant.
2. Partners in a Partnership Firm.
3. Principal and Agent.
4. Company and its Directors.
5. Owner and Independent Contractor.

Vicarious Liability of Master for torts by Servant

In a Master-Servant relationship, the master employs the services of the servant and he works on the command of master and thus a special relation exists between the two and in case of a tort committed by the servant, his master is also held liable.

There are many cases in which the servant does an act for his master and thus in law, it is deemed that the master was doing that act himself, therefore if the servant commits an unlawful act the master will also be held liable for the same.

This liability of the master is based on the following two maxims

1. Qui facit per alium facit per se: – It means that whenever a person gets something done by another person then the person is viewed to be doing such an act himself.

Illustration: If A is the owner of many trucks and employs drivers to drive them for the purpose of trade and in case one of his drivers gets into an accident because of his rash driving, then even though A did not drive the truck himself, he will be liable for the accident.

2. Respondant Superior: – It means that the superior should be held responsible for the acts done by his subordinate.

These two maxims have played a significant role in the development of the law of vicarious liability of the master.

Essentials of Vicarious liability in Master-Servant Relationship

These essential conditions have to be followed for the vicarious liability of master to arise: –

1. The servant has committed an act which amounts to a tort.
2. Such a tortious act is committed by the servant during the course of his employment under the master.

Reasons for liability of the Master

There are several reasons behind holding the master liable for the acts of his servants which are: –

1. An act which is committed by the servant is considered to be done by the master through him and therefore in the law of torts, it is assumed that if any wrong is done by the servant, it has been committed by his master indirectly and so the master is held liable for these wrongs.
2. The master is in a better financial position as compared to his servant and thus in case of any loss caused by the tortious act of the servant, the master is better suited to pay off the damages to the victim of the act. Also, since the master is made liable he makes sure that all reasonable care and precautions are carried so that he can avoid such liability.
3. When a servant does any act, the benefit from such an act is enjoyed by the master and thus for the liability arising out of the servant's act, the master should also shoulder that liability.

Various ways in which liability of Master arises

A master becomes liable in the following situations:

Wrong done as a natural consequence of an act by Servant for Master with due care

If the employee does an act which is done in pursuance of the instructions of the master, then the master will be held liable for any wrong which arises out of such an act even if all due care is taken by the employee in discharging his work.

In **Gregory v. Piper(1829) 9 B & C 591**, the defendant and plaintiff had some disputes between them and the defendant, therefore, ordered his servant to place rubbish across a pathway to prevent the plaintiff from proceeding on that way and the servant took all care to ensure that no part of it was touching the part of the plaintiff's property but with the passage of some time. The rubbish slid down and touched the walls of the plaintiff and thus he sued for trespass. The defendant was held liable despite his servant taking all due care.

Wrong due to Negligence of Worker

A master is also liable for an act of servant which he does negligently or fails to take due care in carrying out.

In **Pushpabai Purshottam Udeshi & Ors. v. Ranjit Ginning & Pressing Co. (P)**, deceased was travelling in a car driven by the manager of the respondent company and it met with an accident as a result of which he died. The dependents of the deceased filed a claim and the tribunal allowed damages but on appeal to the High Court, it was set aside on the grounds that the accident does not make the respondent company liable. But the Supreme Court in its judgement overruled the judgement of the High Court and held that from the facts of the case it was clear that the accident had occurred due to the negligence of the manager who was driving the vehicle in the course of his employment and therefore, the respondent company was liable for his negligent act.

Illustration: If H works as a house cleaner for K then there is a master and servant relationship between them but, if H instead of cleaning the house decides to cook food even though he has only been hired for cleaning the house and due to his negligence causes a fire which also causes loss to K's neighbour L, then K, will not be liable because H did an act which was outside the course of his employment.

Wrong by excess or mistaken execution of a lawful authority

For making the master liable in such a case it has to be shown that: –

1. The servant had intended to do an act on behalf of his master, which he was authorized to do.
2. The act would have been lawful if it was done in those circumstances which the servant mistakenly believed were true or if the act would have been lawful if done properly.

In **Bayley v Manchester S&L Railway (1873) LR 8 CP 148**, a porter of a railway company while working mistakenly believed that the plaintiff was in the wrong carriage even though he was in the right one. The porter thus pulled the plaintiff as a result of which the plaintiff sustained injuries. Here, the Court held the railway company vicariously liable for the act of

the porter because it was done in the course of his employment and this act would have been proper if the plaintiff was indeed in the wrong carriage.

Wrong committed willfully by a servant with the intention of serving the purpose of the master

If a servant does any act willfully, recklessly or improperly then the master will be held liable for any wrong arising out of such act, if such an act is done in the course of employment.

In **Limpus v. London General Omnibus Co. (1862) EngR 839**, the driver of the defendant company, willfully and against the express orders not to get involved in racing or to obstruct other omnibuses, had driven to obstruct the omnibus of the plaintiff. In the case, the Court held that the defendant company was liable for the act of driver because the driver's act of driving the omnibus was within the scope of the course of employment.

The doctrine of sovereign immunity is based on the Common Law principle borrowed from the British Jurisprudence that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and as such cannot be responsible for the negligence or misconduct of his servants.

Initially in India, the distinction between sovereign and non-sovereign functions was maintained in relation to the principle immunity of the Government for the tortuous acts of its servants. In India, there is no legislation which governs the liability of the State. It is Article 300 of the Constitution of India, 1950, which specifies the liability of the Union or the State with respect to an act of the Government.

An overview of Article 300 provides that the first part of the Article relates to the way in which suits and proceedings by or against the Government may be instituted. It enacts that a State may sue and be sued by the name of the Union of India and a State may sue and be sued by the name of the State.

The Second part provides, inter alia, that the Union of India or a State may sue or be sued if relation to its affairs in cases on the same line as that of Dominion of India or a corresponding Indian State as the case may be, might have sued or been sued of the Constitution had not been enacted.

Pre Constitutional Era –

In India, the story of the birth of the doctrine of Sovereign Immunity begins with the decision of **Peacock C.J. in P. and O. Navigation Company v. Secretary of State for India**, in which the terms “Sovereign” and “Non-sovereign” were used while deciding the liability of the East India Company for the torts committed by its servants.

In this case the provision of the Government of India Act, 1858 for the first time came before the Calcutta Supreme Court for judicial interpretation and C.J. Peacock determined the vicarious liability of the East India Company by classifying its functions into “sovereign” and “non-sovereign”.

Two divergent views were expressed by the courts after this landmark decision in which the most important decision was given by the Madras High Court in the case of **Hari Bhan Ji v. Secretary of State**, where the Madras High Court held that the immunity of the East India Company extended only to what were called the ‘acts of state’, strictly so called and that the distinction between sovereign and Non-sovereign functions was not a well-founded one.

No attempt however has been made in the cases to draw a clear and coherent distinction between Sovereign and Non-Sovereign functions at all.

Post-Independence –

After the commencement of the Constitution, perhaps the first major case which came up before the Supreme Court for the determination of liability of Government for torts of its employees was the case of **State of Rajasthan v. Vidyawati** In this case, court rejected the plea of immunity of the State and held that the State was liable for the tortious act of the driver like any other employer.

Later, in **Kasturi Lal v. State of U.P.**, the Apex Court took a different view and the entire situation was embroiled in a confusion. In this case, the Supreme Court followed the rule laid down in P.S.O. Steam Navigation case by distinguishing Sovereign and non-Sovereign functions of the state and held that abuse of police power is a Sovereign act, therefore State is not liable.

In practice, the distinction between the acts done in the exercise of sovereign functions and that done in non-Sovereign functions would not be so easy or is liable to create considerable difficulty for the courts. The court distinguished the decision in Vidyawati’s case as it involved an activity which cannot be said to be referable to, or ultimately based on the delegation of governmental powers of the State. On the other hand, the power involved in Kasturilal’s case to arrest, search and seize are powers characterized as Sovereign powers. Finally the court expressed that the law in this regard is unsatisfactory and the remedy to cure

the position lies in the hands of the legislature. The Courts in later years, by liberal interpretation, limited the immunity of State by holding more and more functions of the State as non-Sovereign.

To ensure the personal liberty of individuals from abuse of public power, a new remedy was created by the Apex court to grant damages through writ petitions under Article 32 and Article 226 of the Constitution. In the case of **Rudal Shah v. State of Bihar**, the Supreme Court for the first time awarded damages in the writ petition itself.

In **Bhim Singh v. State of Rajasthan**, then principle laid down in Rudal Shah was further extended to cover cases of unlawful detention. In a petition under **Article 32**, the Apex court awarded Rs. 50,000 by way of compensation for wrongful arrest and detention.

State of A.P. v. Challa Ramakrishna Reddy, on the point clearly indicates that the distinction between Sovereign and non-Sovereign powers have no relevance in the present times. The Apex Court held that the doctrine of Sovereign immunity is no longer valid.

Module 03

General Defences / Justifications in an action for Tort :

when the plaintiff brings an action against the defendant for a particular tort and proved the existence of all the essentials of that tort, then the defendant would be liable for the same. The defendant may avoid his liability in such cases by taking the plea of some defence. There is some general defence which may be taken against an action for numbers of wrongs. When the plaintiff brings an action against the defendant and proved the existence of all the essentials of that tort, then the defendant would be liable.

The general defence is an excuse used by the defendant in his favour to avoid the liability for tort. They are as follows-

- **Volenti non-fit injuria**

The plaintiff voluntarily give his consent to suffer some harm, he has no remedy for that in tort and his consent works as a good defence against him. No man can enforce the right which he has voluntarily waived or abandoned. Consent to suffer the harm may be expressed or implied or inferred from the conduct of the parties.

No action can be brought by a person who agrees to the publication of a matter defamatory of himself. Ora player in the games of cricket or football is deemed to be agreeing to any hurt which may be likely to occur in the normal course of the game.

the defence of consent to be available, the act causing the harm must not go beyond the limit of what has been consented.

consent here must be free. If the consent is obtained by fraud or under compulsion. It does not serve as a good defence. For the defence to apply, two points have to be proved:

- The plaintiff knew that the risk is present.
 - He knowingly agreed to suffer that harm.

Merely that plaintiff knows of the harm does not imply that he assents to suffer it.

In the case of **Padmavati vs. Dugganaika (1975)**, while the driver was taking the jeep for the felling petrol in the tank, two strangers took a lift in the jeep. Suddenly one of the bolts fixing the right wheel to the axel gave way toppling the jeep. The two strangers were thrown out and sustained injuries and one of them died as a consequence of the same.

It was held that neither the driver nor his master would be liable firstly, it was a case of a sheer accident and, secondly, the strangers had voluntarily got into the jeep and as such, the principle of Volenti non-fit injuria was applied to this case.

The scope of this defence has been curtailed in the following cases-

- Rescues cases
- By the Unfair Contract Terms Act, 1977 (England).
- Although the plaintiff has consented to suffer the harm, he may still be entitled to his action against the defendant in these exceptional cases.
- Plaintiff, the wrongdoer
- **Volenti non-fit injuria**

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- Plaintiff, the wrongdoer
- **Private Defence**

the law permits people to use the reasonable force to protect one's person or property. If the defendant uses the force which is necessary for self- defence, he will not be liable for the harm he caused thereby.

Ramanuja Mudall v. M. Gangan AIR 1954 the defendant, a landowner had laid some live electric wire on his land. The plaintiff while crossing it at 10 p.m. to reach his land, received a shock from the wire and sustained injuries. The defendant had given no visible warning about such wire. He was, held liable for the injuries caused to the plaintiff.

- **Mistake**

is generally not a defence to an action for tort. When a person willfully interferes with the rights of another person, it is no defence to say that he had honestly believed that there was some justification for the same. When no such justification existed. To this rule, there are some exceptions when the defendant may be able to avoid his liability by showing that he acted under an honest but mistaken belief. In general, when the plaintiff brings an action against the defendant and proved the essentials of that tort, then the defendant would be liable. For eg- mistake of the servant may put his act outside the course of employment of his master and the vicarious liability of the matter may not arise.

- **Necessity**

an act is done under necessity which caused damage to avoid a greater evil is not actionable even though harm was done intentionally. For eg- it would not be actionable to pull out a drowning person from water or for a competent surgeon to operate an unconscious person to save his life.

the case of **Krik v. Gregory**. After A's death, A's sister-in-law removed some jewellery from the room where he lay dead to another room, thinking that to be a safer place. From there, the jewellery was stolen. In an action by A'S executors against A's sister-in-law for trespass to the jewellery. It was held that since the interference was not reasonably necessary, she was liable.

- **Statutory Authority**

damage results from the act, which the legislature authorizes or directs to be done, is not actionable even though it would otherwise be a tort. it is a complete defence and the injured party has no remedy except for claiming such compensation as may have been provided by the statute. Immunity is not provided only for that harm which is obvious, but also for that harm which is incidental to the exercise of such authority.

the case **Hammer Smith Rail Co v. Brand (1869) L.R.H.L.**

The value of the plaintiff's property had considerably depreciated due to the noise, vibration and smoke caused by the running of trains in a railway constructed under statutory powers. The damages being necessarily incidental to the running of the trains, authorized by the statute, it was held that no action lies for the same. In general, when the plaintiff brings an action against the defendant and proved the essentials of that tort, then the defendant would be liable.

Module 04 Torts against Persons :

1. Assault, Battery, Mayhem

Assault and Battery are two terms that are used interchangeably extremely often. In one's mind, the term 'assault' means to physically hit or injure another, but it is not so. They are two distinct legal terms. In reality, it is 'battery' that means the action of physical force upon a person, whilst 'assault' refers to attempting battery or allowing one to believe that an act of battery is about to occur. Both of these torts are criminal offences under criminal law. There is also another tort in relation to Assault and Battery called 'mayhem' which is an offense against the person in which the offender violently deprives his victim of a member of his body, thus making him less able to defend himself. It may also be called as the "intentional maiming". This article delves into the details of these torts, their essentials, and its definitions.

BATTERY

Before we understand what battery is, it is essential to understand the term 'battery', its meaning and its essentials.

Meaning: Battery refers to the intentional application of force to another person without any lawful justification. It is defined in the Indian Penal Code under Section 350.

The essentials of battery are as follows:

- Use of Force – Battery is the use of force against another person without any justification. The wrong is constituted no matter how small or trivial the force may be and even if no such harm is caused to the victim. Force doesn't always
- need to mean bodily harm. It can be caused through use of other things like a stick, bullet, heat, light, etc.
- Without lawful justification – It is imperative that the use of force should be intentional and should not have any lawful justification. It is impossible for humans to survive without having physical contact with each other. Not every physical contact constitutes a battery. When the contact is aggressive, and non required it may become a battery. However, the use of force is justified when it comes to the saving of a person's life.

ASSAULT

Assault is an act of the defendant which causes the plaintiff reasonable apprehension of the infliction of a battery upon him. The wrong of assault is completed when the

defendant creates an impression in the mind of the plaintiff that an act of battery is about to be committed. Assault takes place before battery. A clenched fist is an assault, but throwing a punch and hitting the other person amounts to battery. The Indian Penal Code defines Assault under Section 351

MAYHEM

Mayhem is a tort that causes severe injury to the victim such that he is unable to defend himself from the tortfeasor. It is closely intertwined with assault and battery. While assault refers to the threat of battery, and battery is the physical usage of force against a person, **mayhem deals with the disfigurement or loss of any body part due to physical injury caused by the tortfeasor.** The disabling of an arm, hand, finger, leg, foot, or eye are examples of mayhem. To be guilty of the criminal offense, one must intend to dismember the victim or must assault him so recklessly as to create the danger of dismemberment even though not intending to cripple.

Assault is an action that causes an apprehension in the mind of the victim that an act of battery is about to take place; Battery refers to the act of striking someone with physical force and no lawful justification and mayhem refers to the act of crippling someone and rendering them defenseless. Assault generally refers to only intent to cause harm, whereas both battery, as well as mayhem, inflict physical injury upon the victim.

Assault takes place before the crime of battery is committed and mayhem is a severe form of battery. All these 3 torts are associated with each other and form an integral part of criminal as well as tort law.

Emotional Distress Torts

Tort law protects people from harms which result from the wrongful conduct of others. While we usually associate tort claims with harms to people or to property, the law also recognizes emotional or psychological harm as a distinct form of injury. This recognition was a result of a historical development, as society increasingly understood the severity and the long-lasting consequences of mental injury.

Under the traditional common law, damages for mental harms were only recoverable as part of torts like assault, battery, or false imprisonment. Plaintiffs could include emotional distress as an additional harm if they also suffered physical injury or the threat of physical injury. Eventually, the courts recognized the infliction of psychological injury as its own independent cause of action, even without any accompanying harm to a person or property. Today, most jurisdictions recognize two

torts for emotional harm, the intentional infliction of emotional distress, and the negligent infliction of emotional distress.

Malicious prosecution

Malicious prosecution is the malicious institution of unsuccessful criminal or bankruptcy or liquidation proceedings against another without reasonable or probable cause. This tort balances competing principles, namely freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons. Malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. The foundation lies in the triangular abuse of the court process of the court by wrongfully setting the law in motion and it is designed to encourage the perversion of the machinery of justice for a proper cause the tort of malicious position provides redress for those who are prosecuted without cause and with malice. In order to succeed the plaintiff must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was resolved in the plaintiff's favor. It is necessary to prove that damage was suffered as a result of the prosecution.

In an action of malicious prosecution the plaintiff must prove:

- 1) That he was prosecuted by the defendant.
- 2) That the proceeding complained was terminated in favour of the present plaintiff
- 3) That the prosecution was instituted against without any just or reasonable cause.
- 4) That the prosecution was instituted with a malicious intention, that is, not with the mere intention of getting the law into effect, but with an intention, which was wrongful in fact.
- 5) That he suffered damage to his reputation or to the safety of person, or to security of his property.

Elements of malicious prosecution

1. Institution or continuation of Legal proceedings
2. Termination of the prosecution in the plaintiff's favour
3. Absence of reasonable and probable cause
4. Malice
5. Damages

Wrongful imprisonment occurs when a person (who does not have the legal right or justification) is intentionally restricts another person from exercising his freedom. When someone intentionally restricts another person's freedom, he can be found liable for false imprisonment in civil and criminal courts. The factors which constitute false imprisonment are:

1. Probable cause of imprisonment.
2. Plaintiff's knowledge for imprisonment.
3. Intent of defendant during imprisonment and confinement period matters.

Elements of false imprisonment

1. Wilful detention
2. The intention factor
3. Knowledge of the plaintiff

Defences of false imprisonment

1. Valid Arrest
2. Consent to Restraint
3. Probable Cause

Remedies

1. Action for loss
2. Nominal and compensatory damages
3. Habeas corpus
4. Self help

Bhim Singh vs. State of Jammu and Kashmir.

In this case the petitioner, MLA of J&K was to participate in the Assembly meeting. His opponents in order to prevent him from attending the Assembly session got him arrested wrongfully with the help of some executives and police. The Magistrate also granted remand to police without compliance of the mandatory requirement of production of the accused in the Magistrate's Court before reminding him to police custody. He was released after the Assembly session got over. The Supreme Court held the State liable for wrongful arrest and detention of the petitioner and ordered a compensation of Rs. 50,000 to be paid to the petitioner.

Rudal Shah vs. State of Bihar.

In this case, the petitioner, an under-trial was wrongfully confined in jail for several years despite his acquittal by the Court. The High Court of Patna held that as soon as a person under trial is found not guilty by the court, he should be set free. Any detention after it shall be unlawful. The State had to pay a sum of Rs. 30,000 as compensation.

Module 05 Torts against Reputation

Depending on the manner in which one makes a false statement, defamation may be either libel or slander. Libel basically means defamation in a permanent or written form. For example, a written or printed claim against a person is libel.

On the other hand, slander means a defamatory statement in a transient form. For example, if a person says something defamatory against somebody, he commits slander.

Another difference between libel and slander is the punishment they attract. Under common law, libel is a criminal offence as well as a civil wrong, while slander is just a civil wrong. However, that is not the case in India. According to Indian law, both libel and slander can be criminal offences as well as civil wrongs.

Remedy against Defamation

As we have seen above, defamation is an offence and even a civil wrong. This means that a person suffering defamation can opt for both remedies. He can file a criminal complaint under Section 499 IPC, which defines defamation. Conviction under this provision attracts the punishment of imprisonment upto 2 years or fine or both.

On the other hand, a person suffering from defamation can also file a civil suit claiming damages. The extent of damages depends on factors like the nature of statements, the amount of loss, etc. Many celebrities, politicians and known persons seek crores of Rupees as damages for defamation.

Defences against Defamation

There are certain defences a person can take to escape liability of compensation for defamation. The following are some such defences:

1) Truth

Truth is the most important defence or justification for defamation. This is because only false statements against a person constitute defamation. Hence, if the person making the statements proves them to be true, he can escape liability. However, this defence might not apply in criminal proceedings for defamation.

The burden of proving the truthfulness of a statement always lies on the defendant alone. Furthermore, he must prove the truthfulness in substance and not summarily. If the statement is false, he cannot take the defence of believing it to be true in his own mind.

2) **Fair and bona fide comment**

The defendant in a claim of defamation can take the defence of making a fair and bona fide comment. Thus, making fair and reasonable criticism without any malicious intention does not amount to defamation. For example, making statements against maladministration by a government's cabinet minister might not amount to defamation.

The defendant, in this case, needs to prove that he did not possess mala fide intentions. He must also justify his statements by showing how he had fair or bona fide intentions.

3) **Privilege**

The law sometimes grants certain privileges to particular persons in some situations. Any statements by a person enjoying such privileges cannot amount to defamation.

For example, a Member of Parliament has an absolute privilege for any statements he makes in Parliament. The Constitution grants complete immunity from prosecution for defamation for such statements. Such privileges sometimes exist in judicial proceedings as well.

4) **Apology**

In case the person who makes a defamatory remark later issues an apology, he can escape liability of compensation. For this defence, the person suffering the tort of defamation must accept the apology.

5) **Amends**

Under English law, amends are justifiable defences for defamation. Amends mean correction or retraction of the defamatory statements by the defendant. For example, a newspaper making a false statement against a person may issue a clarification later.

Cyber Defamation

The widely used social media brought a revolution not only in the Indian sphere but also all across the world. The remarkable growth of the Internet has provided people with a platform to express their opinions, thoughts, and feelings through various forms of publications. Nonetheless, the ease of accessibility and publication in this online world has created several risks as these digital platforms are prone to be exploited by unscrupulous Internet users in the name of freedom of speech and expression. Thus this has led to numerous cases of "Cyber Defamation".

Cyber defamation is a new concept but the traditional definition of defamation is injury caused to the reputation of a person in the eyes of a third person, and this injury can be done by verbal or written communication or through signs and visible representations. The statement must refer to the plaintiff, and the intention must be to

lower the reputation of the person against whom the statement has been made. On the other hand, Cyber defamation involves defaming a person through a new and far more effective method such as the use of modern Electronic devices. It refers to the publishing of defamatory material against any person in cyberspace or with the help of computers or the Internet. If a person publishes any kind of defamatory statement against any other person on a website or sends E-mails containing defamatory material to that person to whom the statement has been made would tantamount to Cyber defamation.

Module 06 Torts against Property :

Trespass to land

Trespass to land involves the "wrongful interference with one's possessory rights in [real] property." It is not necessary to prove that harm was suffered to bring a claim, and is instead actionable per se. While most trespasses to land are intentional, British courts have held liability holds for trespass committed negligently. Similarly, some American courts will only find liability for unintentional intrusions where such intrusions arise under circumstances evincing negligence or involve a highly dangerous activity. Exceptions exist for entering land adjoining a road unintentionally (such as in a car accident), as in *River Wear Commissioners v Adamson*.

Subsoil and Airspace

Aside from the surface, land includes the subsoil, airspace and anything permanently attached to the land, such as houses.

Interference

The main element of the tort is "interference". This must be both direct and physical, with indirect interference instead being covered by negligence or nuisance. "Interference" covers any physical entry to land, as well as the abuse of a right of entry, when a person who has the right to enter the land does something not covered by the permission. If the person has the right to enter the land but remains after this right expires, this is also trespass. It is also a trespass to throw anything on the land. For the purposes of trespass, the person who owns the land on which a road rests is treated as the owner; it is not, however, a trespass to use that road if the road is constructed with a public use easement, or if, by owner acquiescence or through adverse use, the road has undergone a common law dedication to the public.

Defenses

There are several defenses to trespass to land; license, justification by law, necessity and jus tertii. License is express or implied permission, given by the possessor of land, to be on that land. These licenses are irrevocable unless there is a flaw in the agreement or it is given by a contract. Once revoked, a license-holder becomes a trespasser if they remain on the land. Justification by law refers to those situations in which there is statutory authority permitting a person to go onto land. Jus tertii is where the defendant can prove that the land is not possessed by the plaintiff, but by a third party. This defense is unavailable if the plaintiff is a tenant and the defendant a landlord

who had no right to give the plaintiff his lease (e.g. an illegal apartment rental, an unauthorized sublet, etc.). Necessity is the situation in which it is vital to commit the trespass.

conversion:

A conversion is an act, or complex series of acts, of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. It is also called as trover.

Essentials of Conversion

According to the definition mentioned above, we can infer that two elements can be said to have been intertwined into it. It can be arranged as under:

- a) Conversion would be caused if the chattel belonging to another person is interfered with in a manner, which is inconsistent with the rights of that person entitled to that chattel.
- b) Another essential is that the intention of the other party interfering with the chattel comes into the way so as to deny that person's (owner's or immediate possessor) right or to assert one's own rights which is, in fact, inconsistent with the rights of the person or in assertion of that right.

Module 07

169. Procedure and powers of Claims Tribunals.

In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. (2 of 1974.)

Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

Liability to pay compensation in certain cases on the principle of no fault.—

(1) 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.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five thousand rupees].

(3) 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 of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for

such death or permanent disablement. 3[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

163A. Special provisions as to payment of compensation on structured formula basis. —

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation. —For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

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

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

Nuisance: A Tort

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

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

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

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

KINDS OF NUISANCE

Nuisance is of two kinds:

• Public Nuisance

Under Section 3 (48) of the General Clauses Act, 1897, the words mean a public nuisance defined by the Indian Penal Code.

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

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

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

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

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

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

Private Nuisance

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

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

Elements of Private Nuisance

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

Thus the elements of private nuisance are:

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

DEFENCES TO NUISANCE

Prescription:

A title acquired by use and time, and allowed by Law; as when a man claims any thing, because he, his ancestors, or they whose estate he hath, have had possession for the period prescribed by law. This is there in Section 26, Limitation Act & Section 15 Easements Act.

Statutory Authority

Where a statute has authorised the doing of a particular act or the use of land in a particular way, all remedies whether by way of indictment or action, are taken away; provided that every

reasonable precaution consistent with the exercise of the statutory powers has been taken. Statutory authority may be either absolute or conditional.

REMEDIES FOR NUISANCE

The remedies available for nuisance are as follows:

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

Damages- The damages offered to the aggrieved party could be nominal damages i.e. damages just to recognize that technically some harm has been caused to plaintiff or statutory damages i.e. where the amount of damages is as decided by the statute and not dependent on the harm suffered by the plaintiff or exemplary damages i.e. where the purpose of paying the damages is not compensating the plaintiff, but to deter the wrongdoer from repeating the wrong committed by him.

Abatement- It means the summary remedy or removal of a nuisance by the party injured without having recourse to legal proceedings. It is not a remedy which the law favors and is not usually advisable. E.g. - The plaintiff himself cuts off the branch of tree of the defendant which hangs over his premises and causes nuisance to him.

Module 08

Remedies in Tort :

When the aggrieved person is taken back to the position that they were enjoying before their rights were infringed, they are said to have been provided with a legal remedy. There are various types of legal remedies.

For instance, if something that belongs to you has been taken away from you by a party, the court can either ask them to pay you back in money, or ask them to return your belongings as they were, and may also punish the party in some cases.

Remedies in Tort Law are of 2 types

1. **Judicial Remedies:** These are the remedies that the courts of law provide to an aggrieved party.
2. **Extra-Judicial Remedies:** If the injured party takes the law in their own hand (albeit lawfully), the remedies are called extra-judicial remedies.

Judicial remedies in tort are of three main types

1. **Damages:** Damages or legal damages is the amount of money paid to the aggrieved party to bring them back to the position in which they were before the tort had occurred. They are paid to a plaintiff to help them recover the loss they have suffered. Damages are the primary remedy in a cause of action for torts. The word “damages” should not be confused with the plural of the word “damage” which means ‘harm’ or ‘injury’.

In torts, the damages which are awarded by Courts to the plaintiff can be classified into several heads.

1. Nominal Damages

Nominal damages are those in which even though the plaintiff has suffered a legal injury at the hands of the defendant, there is no actual suffered by him. These damages are provided in the cases of *Injuria sine damno* in which the Court recognises the violation of the right of the plaintiff but the amount of damages are so nominal or low because of no actual loss to the plaintiff.

Constantine v. Imperial London Hotels Ltd., The plaintiff was a cricketer from West Indies who had gone to the defendant hotel to stay but he was rejected on the basis of his nationality, therefore, the plaintiff stayed at another hotel and did not suffer any actual damage. In the case brought by him, the defendant was held liable because the plaintiff’s legal right was violated despite no actual injury happening and they had to pay nominal damages of five guineas.

In the case of **Ashby v. White (1703) 92 ER 126**, the plaintiff was prevented from voting by the defendant and the candidate for whom the plaintiff was going to vote still won. The plaintiff sued the defendant. It was held that even though no actual damage was suffered by the plaintiff, the defendant was still liable for preventing him from exercising his legal right to vote and thus nominal damages were awarded in this case.

2. Contemptuous Damages

In these type of damages, the Court recognises that the right of the plaintiff is violated but to show that the suit brought by the plaintiff is of such a trivial nature that it has only wasted the time of the Court, the Court awards a meagre amount to the plaintiff as damages. This is similar to the nominal damages but the only difference between the two is that in nominal damages the plaintiff suffers no actual loss and in contemptuous damages, the plaintiff suffers actual damage but it is a trivial one in which he does not deserves to be fully compensated.

Illustration: If A's dog enters B's house and relieves himself and B accidentally steps on it and is disgusted and thus, he brings a suit against A, the Court will rule in B's favour but because of such a trivial nature of this case the damages awarded by the Court will be of a meagre amount.

3. Compensatory Damages

Compensatory damages are awarded to help the plaintiff to reach his original position at which he was before the tort was committed against him. These damages are not awarded to punish the defendant but to restore the plaintiff to his previous situation. These damages are very helpful in cases of monetary losses in which the amount of loss can be easily calculated and therefore that amount can be ordered to be paid to the plaintiff so that he can replace the damaged product or goods with such amount.

Illustration: K takes T's bike and due to his rash driving the bike gets damaged. Here K can be awarded compensatory damages in which the amount for repairing the bike will be payable to K by T so that the bike's condition can be restored back to its original state.

4. Aggravated Damages

These damages are awarded for the extra harm which is caused to the plaintiff which cannot be compensated by the compensatory damages and it is given for factors such as the loss of self-esteem, pain and agony suffered by the plaintiff etc. which cannot be calculated in monetary terms. These damages are therefore additional damages which are awarded to the plaintiff other than the damages awarded for his pecuniary loss.

Illustration: A makes false claims against B as a result of which B's standing in the society is greatly affected and he is also ridiculed by people which leads to him losing his self-confidence and self-esteem. Here Court can award B aggravated damages for the humiliation and loss of confidence because of his suffering which is caused by A's act.

5. Punitive Damages

These damages are also known as exemplary damages and the purpose of these damages is to punish the defendant and to make an example of him so that others are deterred from committing the same act as he did. Thus, whenever a Court feels that the act of the defendant was severely gross, it awards punitive damages against him to the plaintiff.

Illustration: A company advertises that its pill will help in quick weight loss and is made up of natural ingredients, as a result, the plaintiff purchases it. But due to the pills containing certain chemicals, it makes the plaintiff severely ill. Here the Court can not only allow compensatory damages to the plaintiff but because of the company's false claims, it can also award punitive damages so that it does not repeat the act again.

Calculating Damages

There are some rules which are applied in certain conditions for calculating the amount of damages in a case.

Damages in case of a reduction of life span

Whenever due to the tort committed by the defendant, the lifespan of the plaintiff is reduced, the amount of damages which will be awarded to him is calculated without taking into consideration his social status. The damages are not provided for the loss of the years of life but are provided for a happy life.

The happiness of life is calculated according to the subjective expectation of a reasonable man and not of the expectations of the plaintiff or how he thought his life

was going to be. The damages which are awarded to the plaintiff are moderate.

Illustration: B suffers a severe injury due to the tort of A which has caused his life

span to be reduced to 10 years. Here even though B was a rich person and enjoyed a good social status, the damages which will be provided to him will be done with the perspective of the requirements of a reasonable man.

Damages in case of death of a person

In calculating the amount of damages in cases where a person's death is caused, two theories are used by the Courts:

- **Interest Theory**

In Interest theory, the Court determines the loss suffered by the dependant as a result of the death of the person on whom he depended. After such amount is determined, a lump sum payment is made which if deposited should provide that much amount of interest which is equal to the sum which has been determined by the Court.

Illustration: If A dies by the tort of B leaving behind C and the Court determines that the monthly loss suffered by C is Rs.5,000. Then the Court will order the deposit of such amount from which the interest which is earned, is equal to Rs.5,000.

- **Multiplier Theory**

In this theory if there is any loss which is likely to occur in the future as a result of the tort committed by the defendant, that likely loss is multiplied with a multiplier which indicates the number of years for which such a loss is likely to continue and the result of such a multiplication is the amount of damages which is awarded by the court.

Illustration: If A dies due to the tort of B leaving behind C who knows that she has to pay the mortgage money for their house for the next five years. Here, by applying the multiplier theory, the amount of mortgage which has to be paid will be calculated and will be awarded to C.

2. Injunction: Injunction is an equitable remedy available in torts, granted at the discretion of the court. An equitable remedy is one in which the court, instead of compensating the aggrieved party, asks the other party to perform his part of the promises. So, when a court asks a person to not continue to do something, or to do something positive so as to recover the damage of the aggrieved party, the court is granting an injunction.

3. **Specific Restitution of Property:** the third judicial remedy available in the Law of Torts is that of Specific Restitution of Property. Restitution means the restoration of goods back to the owner of the goods. When a person is wrongfully dispossessed of his property or goods, he is entitled to the restoration of his property.

Extra-judicial Remedies in Tort

These are of five main types:

1. **Expulsion of trespasser:** A person can use a reasonable amount of force to expel a trespasser from his property.
2. **Re-entry on land:** In this case, the owner of a property can remove the trespasser and *re-enter* his property by using a reasonable amount of force.
3. **Re-capture of goods:** In this case, the owner of goods is entitled to recapture his/her goods from any person whose unlawful possession they are in.
4. **Abatement:** In case of a nuisance, be it private or public, a person (the injured party) can remove the object causing nuisance.
5. **Distress Damage Feasant:** Lastly, distress damage feasant. In this case, a person's cattle/other beasts move to another's property and his crops are spoiled. The owner of the property is entitled to take possession of the beasts until he is compensated for the loss suffered by him.

Module 9

In India, the consumer movement as a 'social force' originated with the necessity of protecting and promoting the interests of consumers against unethical and unfair trade practices. Rampant food shortages, hoarding, black marketing, adulteration of food and edible oil gave birth to the consumer movement in an organized form in the 1960s. Till the 1970s, consumer organisations were largely engaged in writing articles and holding exhibitions. They formed consumer groups to look into the malpractices in ration shops and overcrowding in the road passenger transport. More recently, India witnessed an upsurge in the number of consumer groups.

The consumer movement arose out of dissatisfaction of the consumers as many unfair practices were being indulged in by the sellers. There was no legal system available to consumers to protect them from exploitation in the marketplace. For a long time, when a consumer was not happy with a particular brand product or shop, he or she generally avoided buying that brand product, or would stop purchasing from that shop. It was presumed that it was the responsibility of consumers to be careful while buying a commodity or service. It took many years for organisations in India, and around the world, to create awareness amongst people. Because of all these efforts, the movement succeeded in bringing pressure on business firms as well as government to correct business conduct which may be unfair and against the interests of consumers at large. A major step taken in 1986 by the Indian government was the enactment of the Consumer Protection Act 1986.

Consumer Protection Act, 1986

It may be mentioned at the outset that any one interested in the task of consumer protection movement has to be well versed in various laws and not merely with the Consumer Protection Act, 1986. He should have knowledge of laws relating to Contract, Tort, Railways, Telegraphs, Telephones, Post, Air Travel, Insurance, Electricity, Water, Housing, Medicine, Banking, Finance, Engineering, Motor Vehicles, Hotel Industry, Entertainment, Cooperative Societies, Tourism Agencies, Sales Tax, Central Excise, Limitation, Transport etc. There is no limit to subjects, which may come before a Consumer Forum / Commission for decision. In addition, one should also be well versed with the laws relating to unfair trade practice and restrictive trade practices. Be it as it may. In India various Acts intended to protect the consumers against different forms of exploitation were enacted.

The Objectives of Consumer Protection Act, 1986 in India

The purpose of the Act is to provide for the establishment of the Commission:

- To prevent practices having adverse effect on competition;

- To promote and sustain competition in markets;
- To protect the interests of consumers and
- To ensure freedom of trade carried on by other participants in the markets, in India.

Complainant

“complainant” means—

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

Complaint:

“complaint” means any allegation in writing made by a complainant that—

(i) an unfair trade practice or a restrictive trade practice has been adopted by⁶ [any trader or service provider

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;(c) displayed on the price list exhibited by him by or under any law for the time being in force;(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used are being offered for sale to the public,—

(a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

Consumer:

“consumer” means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Rights of Consumers

Right to Safety:

According to this right the consumers have the right to be protected against the marketing of goods and services which are hazardous to life and property, this right is important for safe and secure life. This right includes concern for consumer’s long term interest as well as for their present requirement.

Sometimes the manufacturing defects in pressure cookers, gas cylinders and other electrical appliances may cause loss to life, health and property of customers. This right to safety protects the consumer from sale of such hazardous goods or services.

Right to Information:

According to this right the consumer has the right to get information about the quality, quantity, purity, standard and price of goods or service so as to protect himself against the abusive and unfair practices. The producer must supply all the relevant information at a suitable place.

Right to Choice:

According to this right every consumer has the right to choose the goods or services of his or her likings. The right to choose means an assurance of availability, ability and access to a variety of products and services at competitive price and competitive price means just or fair price

The producer or supplier or retailer should not force the customer to buy a particular brand only. Consumer should be free to choose the most suitable product from his point of view.

1. Right to be Heard or Right to Representation:

According to this right the consumer has the right to represent him or to be heard or right to advocate his interest. In case a consumer has been exploited or has any complaint against the product or service then he has the right to be heard and be assured that his/her interest would receive due consideration.

This right includes the right to representation in the government and in other policy making bodies. Under this right the companies must have complaint cells to attend the complaints of customers.

2. Right to Seek Redressal:

According to this right the consumer has the right to get compensation or seek redressal against unfair trade practices or any other exploitation. This right assures justice to consumer against exploitation.

The right to redressal includes compensation in the form of money or replacement of goods or repair of defect in the goods as per the satisfaction of consumer. Various redressal forums are set up by the government at national level and state level.

3. Right to Consumer Education:

According to this right it is the right of consumer to acquire the knowledge and skills to be informed to customers. It is easier for literate consumers to know their rights and take actions but this right assures that illiterate consumer can seek information about the existing acts and agencies are set up for their protection.

The government of India has included consumer education in the school curriculum and in various university courses. Government is also making use of media to make the consumers aware of their rights and make wise use of their money.

Manner in which complaint shall be made.—

(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—(a) the

consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Procedure on admission of complaint. — (1) The District Forum shall, on admission of a complaint, if it relates to any goods,—

refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case

within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

- (a) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;
- (b) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
- (c) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;
- (d) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(e) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (/) and issue an appropriate order under section 14.

(2) the District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.

(3) No proceedings complying with the procedure laid down in subsections [1] and [2] shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under of the following matters, namely:—(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness, and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference

therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

Finding of the District Forum. — (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Appeal. — Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed: Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State

Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less:

Consumer Disputes Redressal Agencies:

The main purpose of Consumer Protection Act is to provide redressal forum to consumers. For this purpose following set up has been provided.

(1) District Forum in each district at least one forum will be established but the State Government can establish more than one forum in a district.

(2) State Commission for redressal of disputes at State level.

(3) National Consumer Disputes Redressal Commission at all India level.

Role and Powers of District Forums: The Act has laid down in detail the qualifications for the President and members of the District Forum. The jurisdiction of the District Forum is within the local limits of the district. The complaint can be filed to the Forum by the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such services provided or agreed to be provided.

The complaint can also be filed by central or state government or by a group of consumers. Thus it is not necessary that complaint is filed by effected person but matter can be taken by others also as defined in Section 12.

Procedure of complaint has also been laid down in detail. The District Forums have been given powers of civil courts for summoning and enforcing the attendance and evidence on affidavit, discovery and production of any documents, issuing of any commission for the examination of any witness. The proceedings before the Forum “shall be deemed to be a judicial proceedings within the meaning of various sections of the Indian Penal Code.

Powers of District Forums:

The District Forums have been given powers to pass verdict which are binding subject to appeal. After the proceedings conducted if District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely;

- (a) To remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) To replace the goods with new goods of similar description which shall be free from any defect;
- (c) To return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer, due to the negligence of the opposite party;
- (e) To remove the defects or deficiencies in the services in question;
- (f) To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- (g) Not to offer the hazardous goods for sale;
- (h) To withdraw the hazardous goods from being offered for sale;
- (i) To provide adequate costs to parties.

It may be observed from the above that the purpose of the verdict is not only to compensate a particular consumer but to stop such dealings in the future to protect other consumers.

Appeal to State Commission:

Any person aggrieved by an order of the District Forum has been given the right to appeal to the State Commission within a period of thirty days from the date of order.

Appeal to National Commission:

Second appeal is allowed before the National Commission within 30 days of order of State Commission but the National Commission can extend the period for appeal beyond 30 days.

Appeal to Supreme Court:

Third appeal is permitted to Supreme Court within 30 days of the order of National Commission.

Thus ample opportunity has been provided for justice and fair play but if someone does not comply with the order of District Forum, State Commission or National Commission there are provisions for strict punishment, including imprisonment. "Such trader or person or

complainant shall be punishable with imprisonment for a term which shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or both”.

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