

ABSTRACT

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

Any sound tort system encourages people to file suits for assured monetary damages and promise of better service in future. But, the existing system in India has place for remedies based on discretion to determine the amount of compensation or better termed ‘**ex gratia**’ with no guarantee that the wrong would not be repeated. This is mainly the result of the principle of the present Indian tort system which concentrates mainly to correct the past wrongs caused.

Developed countries like United Kingdom, United States of America and China have made an attempt to remove the ambiguities and uncertainties faced in interpretation of the common law principles which were the foundation of tort law by adopting well codified comprehensive legislations for the same, namely, Crown Proceedings Act, 1947, Law Reform (Liability in Tort) Act, 1951, Federal Tort Claims Act and The Tort Liability Law of the People’s Republic of China, 2010.

The core of Indian tort system is the Common Law Principles of England with few new developments like the Principle of Absolute Liability. Regarding the situation of State Liability in India, the researcher could conclude that under ancient Hindu and Muslim Rulers there was no room for Sovereign Immunity in India. Then under East India Company, Secretary of the State for India was liable only for sovereign functions and

East India Company was liable like a body corporate. But under the British Government, the doctrine of 'King can do no wrong' with the enactment of the Government of India Act, 1935 was introduced which granted Sovereign immunity. Under independent India, there is existence of the application of the doctrine of 'King can do no wrong' and it depended on the interpretation given by judges of 'sovereign' and 'non-sovereign' functions. Two major laws governing product liability in India, namely, 'The Consumer Protection Act, 1986' and 'The Sales of Goods Act, 1930', also suffers from some lacunas. The analysis of the recent Consumer Protection Bill of 2018 also indicates towards certain loopholes though it if passed in Parliament will provide a definite legislation for Product Liability in India, which was absent till date. Laws in India dealing with Public Nuisance are The Criminal Procedure Code, 1973 (Cr.P.C), Indian Penal Code (I.P.C), Code of Civil Procedure (C.P.C) and Constitutional Remedy in the form of Public Interest Litigation (P.I.L). Any order made under section 133 of the Criminal Procedure Code, 1973 is to meet with emergency situation and provides remedies such as removal of nuisance or prohibition of nuisance by stopping it. The remedies available under criminal law are only in the form of penalties and there is no room for any nuisance which might be in existence since long. Section 91 of CPC only deals with procedural provisions and puts no bar on alternative remedies available under criminal law or civil law which is violative of the principle of Res Judicata. Further, any claim for public nuisance made under this section by a class representation only pave way to file civil claims, which in turn provide for damages which are ex-gratia in nature. Class action under the concept of tortious liability is allowed by P.I.L in India largely in cases which involve environmental degradation instead of Public Nuisance Litigation as used in America. The gravity of individual damage is mostly ignored under Public Interest Litigation. Some important and landmark judgement highlight the gaps such as uncertainties, ambiguities, limitation of remedies and absence of proper adjudicating authorities along with a well comprehensive legislation in deciding tortious liabilities in India.

This research also made a non-doctrinal study of the present tort system and tried to interpret and analyse the data obtained. The inferences drawn from the analysis of the data also indicated towards the gap in the present tort law in India dealing specifically with State liability, Product liability and Public Nuisance.

Any law to be effective must be adaptable to changing circumstances and the law of torts is no different. Changes in policy need to be reflected in the implementation which is not possible if the law exists in a vacuous state. The law of tort has the potential to empower individuals, to instil respect for the consumer in unscrupulous corporate concerns. It is a law that protects personal autonomy and dignity, even in the absence of appreciable harm or condemnable wrongdoing. In a society that is increasingly fraught with consumer disputes given the growing nature of such transactions, the legislature needs to awaken.

Hence, at the end the researcher suggested a draft legislation dealing specifically with State liability, Product liability and Public Nuisance.