

LAW OF TORT

UNIT I

MEANING OF TORT:

- **Section 2(m) of Limitation Act:** As per the limitation Act 'tort' means a civil wrong that is not exclusively the breach of a contract or the breach of a trust.
- **Salmond:** "A civil wrong for which the remedy is a common-law action for unliquidated damages, and which is not exclusively the breach of a contract, or the breach of a trust, or other merely equitable obligation".
- **Winfield:** "Tortious liability arises from the breach of a duty primarily fixed by law, this duty is towards persons generally and its breach is repressible by an action for unliquidated damages".
- **Fraser:** "an infringement of a right in rem of a private individual, giving a right of compensation at the suit of the injured party".

A tort means a civil wrong (other than a breach of contract or breach of trust) for which the law provides a remedy, usually in the form of damages (compensation).

☞ in simple words, a tort is a wrongful act done by one person that causes injury, harm, or loss to another person, and the injured person can bring a civil suit against the wrongdoer.

Key Points:

- It is part of civil law (not criminal law).

- The remedy is compensation to the injured party, not punishment of the wrongdoer.
- The main principle: "Ubi jus ibi remedium" (where there is a right, there is a remedy).

Examples of Torts:

1. Negligence- e.g., doctor's careless treatment causing injury.
2. Defamation -harming someone's reputation by false statements.
3. Nuisance-unlawful interference with someone's use of land (like excessive noise, pollution).
4. Trespass-entering another person's property without permission.

In short, tort law protects individual rights by providing remedies when someone's wrongful act causes harm to another.

EVOLUTION OF LAW OF TORT

1. Origin of Torts in England

- The word tort comes from the Latin term 'tortum', means "twisted" or "wrong."
- The law of torts in its modern sense did not exist in early medieval England. Instead, wrongs were addressed through a system of writs (royal commands allowing a person to approach the King's Court).
- At first, remedies were mostly criminal in nature, where compensation was less important than punishment.

2. Early Development (12th – 14th Century)

- With the expansion of royal courts after the Norman Conquest, civil wrongs began to be distinguished from crimes.
- Trespass became the earliest form of tort: any direct, forcible injury to person, land, or goods was actionable without proof of damage.
- Over time, trespass on the case developed, allowing claims for indirect or consequential injuries (e.g., negligence).

3. Growth in the Common Law Courts

- By the 15th–16th centuries, torts expanded beyond trespass:
 - Negligence
 - Defamation (libel and slander)
 - Nuisance
 - Deceit (fraud)
- The courts shifted focus from rigid forms of action (writs) to the principle of liability for wrongful conduct, regardless of the specific writ.

4. 17th – 18th Century: Refinement

- The law of torts became more individualistic, protecting private rights over collective ones.
- Rise of negligence law: in *Coggs v. Bernard* (1703), Lord Holt recognized liability for negligence in bailment.
- Expansion of strict liability, e.g., *Rylands v. Fletcher* (1868), where a person keeping hazardous things was held liable for escape and damage.

5. 19th – 20th Century: Modern Principles

- Industrial Revolution increased accidents and injuries → tort law expanded, especially in negligence, occupiers' liability, and employer's liability.
- Tort law shifted from only protecting property rights to also protecting bodily integrity, reputation, and personal dignity.
- Development of defenses (volenti, necessity, statutory authority).

6. Evolution in India

- India follows English common law principles of torts (introduced during British rule), but without a codified Tort law.
- Indian courts apply English precedents unless inconsistent with Indian statutes or conditions.
- Leading cases like *M.C. Mehta v. Union of India* (Oleum Gas Leak, 1987) gave birth to absolute liability, stricter than English liability.
- Law of tort in India continues to evolve through judicial creativity, especially in areas of environmental law, consumer protection, constitutional torts (compensation for violation of fundamental rights).

7. Modern Trends

- Expansion from individual wrongs to collective and social wrongs (environmental pollution, mass torts, human rights).
- Emergence of constitutional torts: state liability for violation of fundamental rights (*Rudal Shah v. State of Bihar*, 1983).

- Growing importance of public interest litigation (PIL) and compensation jurisprudence.

NATURE AND SCOPE OF LAW OF TORTS

A. Nature of law of tort:

1. Civil Wrong

- Tort is a civil wrong (as opposed to a crime).
- The remedy is compensation (damages) or injunction, not punishment.

2. Private Wrong

- It is generally a wrong against an individual's private rights (e.g., reputation, property, bodily safety).
- But some torts (like public nuisance) also affect the public at large.

3. Independent of Contract

- Tortious liability arises from breach of duties fixed by law, not from agreement between parties (unlike contract law).

4. Unliquidated Damages

- Damages are not pre-determined but are assessed by the court depending on the injury.

5. Based on Duty in General

- The duty in law of tort is owed to all persons in general (e.g., duty not to defame, not to cause nuisance, not to be negligent).
- Breach of this duty gives rise to liability.

6. Fault and Strict Liability-

- Traditionally, liability arises from wrongful intention (malfeasance-wrong done by authorized person) or negligence.
- But modern law also recognizes no-fault liability (e.g., Rylands v. Fletcher strict liability; in India – Absolute liability in M.C. Mehta v. Union of India).

Rylands v. Fletcher (1868) case:

Facts of the Case:

Fletcher (the plaintiff) owned a coal mine.

Rylands (the defendant) built a reservoir on his land to store water. Due to negligence of the contractor, water from the reservoir escaped and flooded Fletcher's coal mine.

Fletcher suffered heavy losses and sued Rylands.

Judgment:

The House of Lords held Rylands strictly liable, even though he did not act negligently himself.

Legal Principle (Rule in Rylands v. Fletcher):

"A person who brings and keeps on his land anything likely to do mischief if it escapes, must keep it at his peril. If he fails, he is liable for all the damage which is the natural consequence of its escape."

Even if there is no negligence or wrongful intention, if a dangerous thing escapes and causes damage, the person who kept it is liable.

M.C. Mehta v. Union of India case:

Fact:

After the Bhopal Gas Tragedy (1984), another gas leak took place in Shriram Foods and Fertilizers Ltd., Delhi (Oleum gas leak). The gas leak caused death of an advocate and health issues to many people. M.C. Mehta (environmentalist and lawyer) filed a writ petition under Article 32 of the Constitution for protection of the Right to Life (Article 21).

Judgment (Supreme Court):

The Court, led by Justice P.N. Bhagwati, evolved a new Principle of Absolute Liability:

If an enterprise is engaged in hazardous or inherently dangerous activity and harm results to anyone because of an accident in the operation of such activity. The enterprise is absolutely liable to compensate all those affected.

No exceptions are allowed (unlike Rylands v. Fletcher, where exceptions such as act of God or plaintiff's fault were possible).

7. Judge-Made Law

- The law of torts is not codified in India (unlike Contract or IPC).
- It is case law-based, evolved through judicial precedents.

B. Scope of Law of Torts

The scope of tort law is very wide and flexible. It expands with changing social, economic, and technological conditions. It covers:

1. Protection of Person

- Assault, battery, false imprisonment
- Defamation (libel, slander)

- Negligence causing personal injury
- Medical negligence

2. Protection of Property

- Trespass to land
- Trespass to goods (conversion, detinue)
- Nuisance affecting enjoyment of property

3. Protection of Reputation & Economic Interests

- Defamation
- Malicious prosecution
- Unfair trade practices

4. Emerging Areas in Modern India

- **Constitutional Torts-** State liability for violation of fundamental rights. In *Rudal Shah v. State of Bihar*, Rudal Shah was acquitted by a court in 1968, but he remained in jail for 14 more years without any legal reason. He was released only in 1982 after a habeas corpus petition was filed in the Supreme Court under Article 32. He demanded compensation for his illegal detention. The Court held that Article 21 (Right to Life and Personal Liberty) was grossly violated. Merely releasing him was not enough, monetary compensation must also be given. Court ordered the State of Bihar to pay compensation of ₹35,000 immediately plus additional legal costs.

In *Nilabati Behera v. State of Orissa* Supreme Court ruled that the State is liable to pay compensation for custodial death as a public law remedy under Article 21.

- Environmental Torts- Pollution, hazardous industries.

In *Bhopal Gas Tragedy case*:

Fact: In Bhopal, Madhya Pradesh in Dec 1984, Union Carbide India Limited (UCIL) USA based company, due to poor safety measures and negligence, leaked out Methyl Isocyanate (MIC) gas, and thousands of people died and more than 5 lakhs people got permanent disability, blindness, lung damage and other major health issues.

Legal aspect of the case:

Criminal case: Indian Government files criminal case against the responsible chairman of the company who never faced the trial and later on other officials were convicted and got less punishment.

Civil case for compensation: Government of India passed the Bhopal gas leak disaster (Processing and claim Act 1985) taking over representation of victims and in 1989 Supreme Court approved a settlement of \$470 million paid by UCC.

Legal impact:

1. It highlighted the need for stricter environmental and industrial safety laws.
2. The principle of absolute liability inspired in *M.C. Mehta vs Union of India* (oleum gas leak 1986 case)

3. Led to new legislations: Environment (Protection) Act, 1986, Stricter industrial safety norms and Creation of National Green Tribunal (NGT).

M.C. Mehta vs Union of India (oleum gas leak 1986 case)

Fact: oleum gas leaked from Shriram Food and Fertilizers Ltd., Delhi (Dec 1985). One advocate died and several injured. M.C. Mehta filed writ petition under Art.32.

Issues:

1. What is the extent of liability of enterprises engaged in hazardous activities?
2. Does the principle of strict liability (Rylands v. Fletcher) apply in India?
3. Can the Court award compensation under Article 32 for violation of Article 21?

Judgment: (Justice P.N. Bhagwati, CJI)

1. The Court rejected the limitations of Strict Liability from English law,
2. Evolved the doctrine of Absolute Liability:
3. An enterprise engaged in hazardous or inherently dangerous activity is absolutely liable to compensate all those affected by any accident, without exceptions.

Principles applied:

1. Absolute Liability (no exceptions like act of God or third-party fault).
2. Article 21 (Right to Life) includes right to live in a safe environment.
3. Courts can award compensation under Article 32 for violation of fundamental rights.

4. Introduced idea of deep pockets principle- the larger the enterprise, the greater the liability.

- Mass Torts- Civil wrong that causes harm to a large group of people by single wrongful act. (industrial disasters, defective products). Eg. Bhopal gas leak tragedy, Oleum gas leak case, injury by chemical company, environmental pollution like water, air pollution by company.
- Consumer Protection- Deficiency in services, unfair trade practices.
- Cyber Torts- Online defamation, data theft, cyber frauds.

TORTS DISTINGUISHED FROM CONTRACT AND CRIME:

The nature of the tort can be understood by distinguishing

1. Tort and crime
2. Tort and contract

TORT AND CRIME

Aspect	Tort	Crime
Definition	Civil wrong causes harm or loss to the person	An act or omission that violets a law and is punishable by the State
Nature	Private wrong	Public wrong
Seriousness	Less serious	More serious
Relief	Compensation to victim	To punish the offender and maintain law and order

Concerned parties	Plaintiff vs defendant	State vs Accused
Legal procedure	Balancing evidence	Beyond reasonable doubt
Examples	Defamation, trespass, negligence	Murder, theft, assault, fraud
Action by	Suit by person	Complaint by State

TORT AND CONTRACT

Aspect	Tort	Contract
Definition	Civil wrong causes harm or loss to the person	An agreement between parties enforceable by law.
Source of duty	Duty is imposed by law to protect rights and interests	Duty is voluntarily assumed by agreement between parties.
Nature	wrongful acts or negligence causing harm.	Involves failure to fulfil agreed obligations
Example	Usually between a wrongdoer and the person harmed.	Between parties who have entered into an agreement
Purpose	To compensate for harm or loss caused.	To enforce promises/agreement and ensure performance.
Proof Required	Must show duty, breach, and harm caused.	Must show valid agreement, breach, and damages/loss.
Remedy	Compensation (damages) or injunction.	Damages or specific performance.

Concerning party	Public interest or rights	Party to the agreement
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DEVELOPMENT OF *UBI JUS IBI REMEDIUM*

Elements in law of tort

Introduction:

There are certain condition or elements on the basis of which the person held liable in tort. The elements or conditions are as below-

- a. Wrongful act
- b. Legal damages
- c. Legal remedy

a. Wrongful act-

Wrongful act means an act done by the person without lawful justification. It is violation of legal right of another. An act which does not violates legal right is not tort. Violation of moral, social or religious duties not a tort since they are not enforceable by law. Eg.

1. **Moral duty:** If X refuses to help poor man on the road, X is morally wrong but poor man has no legal right to compel X help, there is no tort.
2. **Social Duty:** If X don't attend a friend's wedding, X may breach social expectations but is not actionable in law because there is no legal right is violated.
3. **Religious Duty:** If a person does not observe fasting or perform rituals, such person may be religiously wrong but it does not violate another's right.

Thus, the plaintiff has to prove that his legal rights have been violated by act of defendant.

Tortious liability may arise by act or omission-

An act means to do something and omission means failure to do something which a person is legally bound to do. Thus, where legal rights of another violated by act or omission, in both cases tortious liability arises.

Rights may be divided in to two parts-

Public right and public right. A public right is a right which belongs to the public at large or a community as a whole. These rights are protected by the State, and their violation is usually a public wrong (crime). Eg. Right of the public to use highways, rivers, parks. Whereas, a private right is a right that belongs to an individual person. Its violation causes a private wrong (civil wrong/tort) eg. Right to reputation, Right to property. When public wrong is there no legal action by individual in tort unless there are special damage. Eg. 'A' person fixes big stones and blocks whole road and people passes by taking long turn, no individual can file a suit against A. but, B while passing there in the night, strikes against such stone and get injury, here B suffered special damage and can file a suit against 'A'.

b. Legal damage-

Damage means harm. Damage is a direct result of the defendant's wrongful act, whereas damages mean compensation given to the plaintiff. The main object of law of tort is to protect person from damage or harm caused to the person, property, reputation etc. Thus, action for damages lies where breach of right occurs. Where legal damage is not

caused to person, action in tort not maintainable. Thus, where the legal right is violated, action in tort is lie whether he suffers any loss or not. There can be a violation of legal right without damage but there cannot be a damage without breach of legal right.

For examples through two *maxims* “**Damnum sine injuria** and **Injuria sine damno**”

I. Damnum sine injuria:

‘Damnum’ means damage in the form of money or kind, ‘injuria’ means violation of legal rights and ‘sine’ means without. Thus, it means harm without violation of legal right which is not actionable in law of torts.

Mere loss of money or property does not cause any damage. Many act though harmful but not wrongful and give no right of action.

Every person has right to carry trade or business and in competition may cause loss to other but such loss is not actionable in tort. As per this maxim, damage is not actionable unless there is breach of right.

In **Gloucester Grammar school case** (Damnum sine injuria (loss without legal injury))

Fact: A teacher set up a rival school in the same town of Gloucester, near an already established grammar school. Because of this competition, students left the old school and joined the new one. The old school’s teacher suffered a loss of fees and sued the new teacher, claiming damages.

Issue: Whether opening a rival school (which causes loss to another) is a tortious wrong? Is causing loss alone sufficient to make a person liable in tort?

Judgment: The court held that no action lies against the new teacher. The act of opening a school was lawful. Although the old teacher suffered loss (damnum), there was no violation of a legal right (injuria).

Conclusion: Mere loss or damage, without violation of a legal right, does not constitute a tort. Competition in trade or profession, though it may cause loss to others, is not wrongful if done lawfully.

In Ushaben v. Bhagyalaxmi Chitra Mandir

Fact: A Hindi movie titled “Jai Santoshi Maa” was released. In the film, Goddess Santoshi is shown as the daughter of Lord Ganesha. In some scenes, other goddesses (like Lakshmi, Parvati, and Saraswati) are shown jealous and mocking Santoshi Maa. Ushaben claimed that such portrayal hurt religious sentiments of Hindus, especially devotees of Lord Krishna and the goddesses. She filed a suit seeking a permanent injunction against the exhibition of the film, arguing it amounted to public nuisance and injury to religious feelings.

Issues: Whether exhibition of a film that allegedly hurts religious feelings constitutes nuisance or legal wrong? Can the court grant injunction to stop screening of such a film?

Judgment: The Court dismissed the suit observing that, the plaintiff’s religious feelings being hurt does not amount to legal injury, mere hurt to sentiments, without infringement of a legal right, is not actionable in tort. freedom of expression (including description in films) cannot be curtailed unless there is a clear legal violation.

Legal Principle Established:

Hurt to religious feelings, without infringement of legal rights, is not actionable in tort.

II. “Injuria sine damno”

Injuria means violation of legal right. **Sine** means without, **damnum** means damages in the form of money. Thus *Injuria sine damnum* means violation of legal right without any damage or harm to plaintiff. Violation of legal right is actionable whether it has caused any real harm or loss to him or not.

In **Ashby v. White**.

Fact: In election, Ashby, qualified voter, was wrongfully refused the right to vote by White. Ashby filed a suit for damages, claiming violation of his legal right to vote, even though he could not show any actual financial loss.

Issue: Can a person sue for violation of a legal right even when no actual damage/loss is caused? Does refusal to allow a qualified voter to vote amount to an actionable wrong?

Judgment: It is violation of plaintiff's legal right to vote, whether he has suffered any loss or not. Breach of statutory right was an injury, for which he must have remedy and was actionable without proof of pecuniary damage.

C. Legal remedy:

“Ubi jus ibi remedium”

A tort is civil wrong for which the remedy is an action for unliquidated damages. Thus the legal remedy is damages, however, other remedies

like restitution of chattel (restoration of movable property) or injunction are also there. **“Ubi jus ibi remedium”** means where there is right there is remedy. Whenever the right is violated the person whose right is breached has a remedy against such breach. This principle has been developed first time in *Asbhy vs White* case. But the maxim does not mean there is legal remedy for every moral or political wrong. Eg. A request B for advance of Rs.1000 for marriage expenses. B agrees but failed to pay. A has no remedy for such wrong.

UNIT II

GENERAL DEFENCES (Exceptions/justification of tort)

A. Introduction:

In the law of torts, a defendant is generally held liable when the plaintiff proves that there has been a wrongful act or omission, causing legal injury to his rights. However, in certain situations, even if all the elements of a tort are present, the defendant may escape liability by taking the plea of general defenses. General defenses are legal justifications that enable a defendant to avoid liability for an alleged tort, despite the plaintiff proving the wrongful act. The following are the general defenses-

B. General defenses:

1. Volenti non fit injuria (Consent):

Means: "To one who consents, no harm is done." If the plaintiff voluntarily agreed to suffer harm, he cannot later complain. The consent is of two kinds ie express consent and implied consent.

a. Express consent:

Salmond- no man can enforce a right which he has voluntarily give up.

Express consent is when a person gives clear, direct, and explicit permission (orally or in writing) to another to do an act that might otherwise amount to a tort.

Example:

1. A patient signs a written consent form before surgery. Even if there are side effects, the doctor is protected from a tort claim (unless there is negligence beyond consented risk).
2. A player entering the WWE match gives express consent to being hit under the rules of the game.

b. Implied consent-

Means consent inferred from a person's conduct or circumstances, even without express words. It acts as a defense under the maxim *Volenti non fit injuria*, protecting defendants where the plaintiff voluntarily accepted ordinary risks, such as in sports, emergency medical care. Where implied consent is there for any particular act but excessive force applied there the wrongdoer cannot take the plea of this maxim. The consent cannot make an illegal act legal if it is beyond scope of implied consent.

In Hall v. Brooklands Auto Racing Club

Facts:

Plaintiff was a spectator at a motor race.

A car crashed into the crowd due to an accident, and he was injured.

He sued the organizers.

Held:

The organizers were not liable.

By attending the race, the spectator gave implied consent to the ordinary risks of the sport.

Defense of *Volenti non fit injuria* applied.

c. Conditions for application of maxim *Volenti non fit injuria*-

- i. **Free will/consent:** Consent must be voluntary, not obtained by fraud, coercion, or misrepresentation. Consent must be given with

knowledge of the risk involved in the act. Consent given under compulsion is no consent. The consent is not a free consent until one has the freedom to choice between the 'act with risk' and 'act without risk'.

In R vs Williams

Fact: The music teacher had intercourse with 16-year girl student under the deception that his sexual act was an operation to improve her voice. The girl was not aware about his such act is amounting rape. She gave him consent in view to improve her voice and not to commit a rape since she did not know the nature of act. The person held guilty of rape.

Issue: Did the girls submission amount to valid consent under law?

Decision: The court held that there was no real consent, because the girl was deceived about the very nature of the act. Consent obtained by fraud or misrepresentation is not valid consent. The teacher was found guilty of rape.

- ii. **Knowledge of risk:** The plaintiff must fully understand the nature and extent of the risk.
- iii. **Act must be within the scope of consent-** Anything beyond (like excessive force in a game) makes the defendant liable.
- iv. **Act must be lawful (No consent to illegal acts):** A person cannot validly consent to an unlawful act (e.g., dueling). Otherwise such consent will not be a good defense.
- v. **Maxim volenti, non scienti non fit injuria-** mere knowledge of risk is not a consent. The law requires free and informed consent and not just awareness.

In Smith vs Baker

Facts:

Smith, the plaintiff, was an employee working in a quarry. His job was to drill rocks. At workplace, a crane was frequently used to swing heavy stones over his head. Smith had complained about the danger but continued working because it was his job. One day, a stone fell from the crane and injured him.

Issue: Could the employer (Baker & Sons) escape liability by arguing that Smith knew the risk (*scienti*) and thus consented (*volenti*)?

Judgment: The employer was liable. Mere knowledge (*scienti*) of risk is not consent (*volenti*). Smith did not freely and voluntarily accept the danger, he simply continued working under economic pressure (fear of losing his job). Therefore, the defence of *volenti non fit injuria* did not apply.

vi. Exceptions to legal maxim *Maxim volenti, non scienti non fit injuria*-

In below cases the principles of maxim *Maxim volenti, non scienti non fit injuria* does not apply-

- a. **Rescue cases-** In rescue situations, the courts hold that a rescuer's consent is not truly voluntary, but given under a moral or social compulsion. A rescuer acts to save life or property in imminent danger. Law does not treat this as "free consent to risk," because he had no real choice. Therefore, the defense of *volenti non fit injuria* fails, and the defendant remains liable.

In *Haynes v. Harwood*

Fact-Defendant's servant left horses unattended in a busy street.

Horses bolted; a policeman tried to stop them to save women and children, and was injured.

Held: Defendant liable. Policeman's act was a rescue, not free consent to risk.

b. Unfair contract terms Act 1977 (England)-

Under the Unfair Contract Terms Act, 1977, consent given through unfair or unreasonable contractual clauses is not valid. Thus, defendants cannot escape liability by relying on *volenti non fit injuria* when the "consent" was forced or obtained under unequal bargaining power.

2. Act of God-(Vis Majeur)-

Act of God is a defense in tort where damage is caused directly and exclusively by natural forces, without human intervention, and could not have been prevented by any amount of foresight or reasonable care.

Sir Frederick Pollock- "Act of God means an operation of natural forces so unexpected that no human foresight or skill could reasonably be expected to anticipate it."

Salmond- Act of God includes those acts which a man cannot avoid even by taking reasonable care.

In **Nichols v. Marsland (1876)**: Extraordinary rainfall caused artificial lakes to burst. Defendant not liable because the event was extraordinary and unavoidable.

In **Shriram education trustees of trust vs Mitaben Anilbhai Patel**:

Fact: 32 students of 11th class were died after collapsing school building due to earth quake.

Plaintiff: The school building was badly constructed, with poor materials, no soil test, no compliance with building standards/codes/byelaws, no building-use permission, etc.

Defendant: Building collapse was due to the earthquake, a natural calamity or act of God, arguing they were not negligent.

Issue:

Whether the defendants could rely on the defense of act of God / Vis major to escape liability?

Whether there was negligence in construction which made the building vulnerable?

Quantum of compensation?

Decision:

The court found that despite the earthquake, the building collapsed because of negligence: poor quality materials; absence of soil test; non-compliance with bye-laws; lack of proper supervision.

The defense of act of God was rejected because the defendants did not prove that they had taken all necessary precautions and complied with statutory requirements.

The claimants were awarded Rs.2,00,000 per deceased student, plus interest and costs; cross-appeals for enhancement of compensation partially allowed.

3. Inevitable accident:

Sir Frederick Pollock - "An accident not avoidable by any such precautions as a reasonable man, doing such an act then and there, could be expected to take."

If a mishap is inevitable despite reasonable foresight and care, no tortious liability arises.

Stanley v. Powell (1891) – During a shooting party, a pellet from the defendant's gun ricocheted off a tree and injured the plaintiff. Held: Defendant not liable, as it was an inevitable accident.

Olmes v. Mather (1875) – Defendants’ horses bolted due to barking dogs, knocking down the plaintiff. Held: Not liable, as the accident was unavoidable despite proper control.

4. Private defense-

Private defense means that a person is legally justified in using reasonable force to protect:

- Their own body,
- Another person’s body, or
- Property (own or another’s)

against unlawful aggression or harm. It rests on the principle of “self-help is the first rule of law”- a person need not always wait for state protection in emergencies.

Conditions – To apply this principal of defense below conditions must be fulfilled-

- Imminent Threat- There must be an immediate danger of attack on body or property.
- Unlawful aggression- The threat must come from an unlawful act (not from a lawful authority).
- Reasonable force- Only such force as is necessary to repel the threat is allowed.
- Proportionality- The force used must not be excessive compared to the harm threatened.
- No time to seek protection of authorities- The situation must be urgent.

Limitations-

- Cannot use force once the threat has ended.
- Cannot claim defence if the harm caused is greater than necessary.
- Defence is not available against lawful acts (e.g., arrest by police).

Case Laws

1. **Cockcroft v. Smith (1705)**

A person attempted to poke out the defendant's eye with a finger; the defendant bit off his finger.

Held: Force used (biting finger) was excessive; not justified.

2. **Bird v. Holbrook (1828)**

Defendant set up a spring gun in his garden without notice to protect flowers; plaintiff was injured.

Held: Defence not valid as the force was excessive and without warning.

3. **Munir Ahmad v. State (1958, India)**

The court held that private defence includes the right to cause even death if there is imminent danger of death or grievous hurt.

5. Acts of necessity-

- a. **Salus populi suprema lex-** The welfare of the people is the supreme law. Damage caused by acts preventing greater damage is not actionable even though harm is caused intentionally. Necessity is a valid defense in tort where an otherwise wrongful act is excused because it was done to prevent a greater harm, provided the act was reasonable, unavoidable, and proportionate.

b. Essentials of the Defense

To successfully claim necessity, the defendant must prove:

- **Imminent danger or emergency-** A sudden situation where immediate action was required.
- **No reasonable alternative-**The wrongful act was the only practical way to avoid harm.
- **Action taken in good faith-**The intention was to prevent greater harm, not to benefit oneself.
- **Proportionality-**The harm caused by the defendant must not be greater than the harm avoided.

c. Examples:

- **Medical necessity:** A doctor performs emergency treatment (like giving an injection or blood transfusion) without the patient's consent to save their life.
- **Trespass under necessity:** Entering another's land to save someone from a fire, flood, or to prevent serious injury.
- **Destruction of property:** Pulling down a house to stop the spread of fire to neighbouring houses.

d. Case Laws

- **Leigh v. Gladstone (1909)**

Prison authorities force-fed a hunger-striking prisoner to save her life.

Held: Justified as an act of necessity.

- **Cotesworth v. Spokes (1836)**

A captain jettisoned (threw overboard) goods to save the ship during a storm.

Held: Justified under necessity.

6. Mistake-

A mistake occurs when a person does an act under a wrong belief of fact or law. In tort law, a mistake of fact can sometimes excuse a person from liability, provided it negates intent or negligence.

Mistake of law, however, is generally not a defense- “ignorance of law is no excuse.” Mistake of fact can be a valid defense in tort if it is honest, reasonable, and negates intent or negligence, while mistake of law is not a defense.

Conditions-

- The mistake must be honest and reasonable.
- The act must be unintentional due to the mistaken belief.
- There must be no negligence on the part of the actor.

Illustrations

- Honest Mistake of identity-

A person delivers goods to X thinking he is Y (the intended recipient). If the mistake was honest and reasonable, liability may not arise for conversion.

- Mistaken Entry-

Entering someone's land believing it is his own.

If the mistake was reasonable, it may excuse trespass.

- Taking Property by Mistake-

A person mistakenly takes another's property thinking it is his own.

Liability may be reduced, as there was no intention to commit theft or conversion.

7. Statutory Authority-

If the injury caused by an act under statutory/legal duty, he cannot bring an action against such tort if an act is done carefully and within the scope, except any provision of compensation is there. Eg. construction of railway line, running of rail or air take off not possible without noise.

Conditions-

- Act done under statutory authority
The act must be expressly or impliedly authorized by law.
- Act within the scope of power
The defendant must not exceed the powers granted by the statute.
- Good faith
The act must be done honestly and in good faith to achieve the purpose of the statute.
- No malice or improper purpose
If the act was done for an improper purpose, the defense may fail.

Illustrations:

Government or public authorities:

A municipal authority demolishes a building to widen a road under a statutory provision.

Any damage to property or inconvenience caused is excused if done lawfully.

8. Judicial acts-

A person performing judicial acts cannot be held liable in tort for acts done in the discharge of judicial functions, even if the outcome is harmful to someone. Judicial acts are protected from liability in tort to ensure

independence and impartiality of the judiciary, provided the acts are done within jurisdiction and in good faith.

Conditions-

- Act must be judicial in nature;
- Act must be within jurisdiction;
- Done in good faith.

In Bradlaugh v. Gosset (1884)

Judges performing judicial functions cannot be sued for decisions made in good faith.

9. Quasi-judicial authority-

Quasi-judicial acts are acts performed by authorities or officers who are not judges but have been vested with powers to decide disputes, hear evidence, or make orders affecting rights. Such acts are treated like judicial acts for the purpose of tort liability. A person performing a quasi-judicial act cannot be held liable in tort if it is done in good faith and within jurisdiction.

Conditions-

- Act must be judicial in nature;
- Act must be within jurisdiction;
- Done in good faith.

Illustrations:

Decisions given by Tribunal, commissions, Revenue officers, Tax authorities etc.

Limitations/Exceptions

- Immunity is only for acts within jurisdiction.
- Does not protect acts done maliciously or with improper motive.
- Administrative acts or personal acts of the officer are not protected.

10.Executive authority:

If the acts are authorized by law, done in good faith, and within the scope of their powers, the official is not liable in tort.

Limitations/Exceptions-

- Immunity is only for acts within jurisdiction.
- Does not protect acts done maliciously or with improper motive.
- Administrative acts or personal acts of the officer are not protected.

Examples

- Police actions-
Arresting a person under proper authority, if done lawfully, the police officer cannot be sued for false imprisonment.
- Municipal actions-
Destroying unsafe buildings under municipal powers.
Any damage to property is excused if the act is within powers and done in good faith.

Case laws-

R. v. Commissioner of Police of the Metropolis (1925)

Police acts within legal powers cannot attract tort liability.

State of West Bengal v. Kamal Sengupta (1968, India)

Government authorities performing statutory duties were protected from tort liability when acting in good faith.

Conditions:

- Immunity applies only for acts within the official's authority.
- Does not cover acts done with malice, negligence, or beyond powers.
- Acts outside official duties are not protected.

11. –Parental and quasi parental act-

Parents and guardians have an authority to scold on their children and may detain. The lunatic child can be controlled by using reasonable force. The teachers also have same powers over authority and can give reasonable punishment to students. The teacher's authority over the student is not limited to school premises but out of school also in good faith and for welfare of that students.

Conditions-

- Reasonable force;
- Moderate punishment;
- Act in good faith;
- For welfare of child.

Case laws-

Laxhmikant vs Gera

The dispute involved the authority of the school/principal to expel a student.

Held: The principal (or school authority) has the authority to expel a student from the school under certain conditions.

Rex vs New port-

Two 15-year-old boys were punished by a schoolmaster with five strokes of the cane for misconduct.

Held- The Court held that the teacher has a delegated authority from the parent to correct the student by bodily punishment, provided the punishment is moderate and reasonable.

12.Exercise of common right-

Every person has right to exercise his common right in good faith and in lawful manner. During exercising his common right any harm caused to other legal action cannot be brought against such damage if it is reasonable one.

Conditions:

- Act must be reasonable;
- Act in lawful manner;
- Act in good faith;
- No negligence.

Maxim **damnum sine injuria** applies in this case. Any person conducting business in exercising his common right in good faith, the loss occurred to other businessman, cannot bring legal action. Digging well upon own land without negligence and loss caused to neighbor, no suit can be filed against him.

Gloucester Grammar School Case- Competition in business (opening another school) was held to be a lawful exercise of common right, even if it caused loss to another.

13. Act causing slight harm-

Maxim “De minimis non curat lex” means law does not concern itself with trifles. Falling dust or water during passing of vehicle etc. are common slight harms which are not actionable in law. However, the principle not

applied to rule of injuria sine damno, where a legal right is violated due to such slight harm is actionable.

Illustrations:

1. If your neighbor puts a
2. nail slightly on car, causing no real damage, it is still trespass. You can sue, because your legal right to exclusive possession is violated.
3. Slight dash to person while walking in market is not actionable.

Conditions-

- Slight harm only;
- No violation of legal right;
- No bad intention;
- No negligence.

Case laws-

Ashby vs White- deny to exercise voting right though there is slight harm still actionable in law.

UNIT III

NEGLIGENCE; NUISANCE; ABSOLUTE AND STRICT LIABILITY

NEGLIGENCE:

A. Introduction-

Negligence is one of the civil tort arises upon failure to do an act with reasonable care like ordinary common man would do. This wrong arises when a person is under obligation to do an act and failed to do with reasonable care and harm caused to other by such negligent act. Trespass, nuisance or defamation involves mental elements. However, negligence is an independent from the mental elements. The negligence is based upon conduct of the defendant and not on mental elements.

B. Definitions:

1. **Alderson B:** Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would doer doing something which prudent and reasonable man would not do.
2. **Winfield-** Negligence as a tort is the breach of a legal duty to take care which results in damages.
3. **Charelsworth and Percy-** Negligence is tort which involves a person's breach of duty that is imposed upon him, to take care, resulting in damage to the complainant.

C. Essential elements:

1. A legal duty to take care- In negligence there is no intention to cause the harm. It is unreasonable conduct. There is careless act in which carefulness is made obligatory by the law.

a. Carelessness- In case of wrongful intent the doer knows the result of his action, but in negligence the wrongdoer is careless, he does not desire the consequences or result nor act with desire to produce such consequences. The negligence and legal duty are strictly correlated. There is no negligence unless there is duty to take care.

In **Stansbei vs Troman**, the decorator working in house went out to fetch the wall paper leaving the front door open. The family of the house was outside came returned to home after couple of hours and they came to know about opened door and theft in the house. The decorator was held guilty of negligence as the duty to take care of the house was on him.

The unskilled person when act any skillful work, it amounts negligence if he has knowledge about required skill which he does not possesses.

In **Popat lal Gokaldas vs Ahmedabad Municipal Corporation**, the 21 years old boy dived in swimming pool and injured and while taking to hospital he died on the way and hospital declared him dead. The coach of the swimming pool had duty to take care of all affairs of that swimming pool who failed by not providing proper protection and immediate medical help. He was held liable for negligent act.

b. Proximity rule- The duty to take care exists or not is depend upon the facts and circumstance of the case. In **Donoghue v Stevenson**, X purchased ginger beer from retailer, for her girlfriend, he poured

it in dark opaque glass, she drank some part of beer, he again poured remaining beer and saw a snail floated in the glass and she became seriously ill. Defense by beer manufacturer was taken that we are liable to care of first customer. There is no legal duty to take care of plaintiff X beer purchaser as he is not our first customer. The court held liable beer manufacturer for negligent act since he could foresee that it may cause injury to plaintiff and hence there is presumption that he owed duty to take care of it. The legal duty is not necessary that there should be some contract.

c. Reasonable foreseeability- Duty to take care depend on reasonable foreseeability of the injury being caused. If while act or omission, if defendant could foresee injury, he owes to take care to prevent that injury and failure to prevent injury, he liable. In **Glasgo corporation v Muie**, during picnic party in tea room of corporation, the tea pot failed from the members of picnic party on the 6 children and plaintiff and got injured. Not held liable for negligence as there was no reasonable foreseeability.

d. Position in India- For negligence there is need of degree of care which required in particular circumstances. In India the principles laid down in *Donoghue v Stevenson* applies. In *Ramdas and sons v Bhuvaneshwar Prasad Singh* case the defendant was held liable for negligence. The contractor working for Government purpose the water pipe line, failed to take care or protect from the open trench and the plaintiff failed down in to the trench while he was going to hospital at 8 pm.

e. Medical services- The duty imposes on the doctor to take slandered care of the patient. Breach of such duty is actionable under negligence.

In *Dr. Laxman v Dr. Trimbak*, the 26 years old boy injured by leg fracture. The excessive force was used by doctor with other 3 attendances for pulling the injured leg and put up plaster over the fractured leg but the patient died due to the shock during treatment. The Supreme Court held the doctor liable for negligence.

f. New view on medical service- In *Jacob Mathew v State of Punjab*, the patient was died due to non-availability of oxygen, the doctor was not liable for negligence as there is no complaint that the doctors were not qualified, but short of oxygen cylinder.

g. Medical malpractice- If hospital failed to provide basic amenities to the patient it would amount to medical malpractice. In *Savita Garg* case the hospital was held liable for not having basic facilities like oxygen cylinder.

2. Breach of duty- The duty to take care breaches when the due care has not been taken by the defendant properly. In *State of J &K vs Altaf Ahmad Gani*, the transformer was there near school premises and a student got burn injury by came in to contact with the transformer while playing volley-ball. The state Government had shifted his burden on school authority for negligence, the court held liable to Government for non-taking reasonable care by fixing barricading to such easily accessible electric transformer.

The reasonable care required- The reasonable care is depend upon the facts and circumstances. The reasonable care is that, where the risk is clear the degree of care must be higher than that risk. While driving car in public need to take more care of blind and children.

3. Damage to the plaintiff- The plaintiff must prove the damage or harm caused due to the negligent act by breach of duty. Such injury must be direct and not remote, otherwise defendant is not liable. In *Alice George v Lakshmi*, after three children the plaintiff decided to undergo family planning operation but conceived and delivered fourth child as she could not do abortion due to health complications. The Doctor failed to prove that the operation was done carefully and held liable for negligence and awarded 50000 as a compensation.

D. Kinds of negligence- There is no complete list of types of negligence. It may depend upon each case. The degree of reasonable care is question of fact and need to be decided with reference to the facts and circumstances of each case.

E. Duty of servant to master- Servant is liable to master in tort. Servant must possess a skill and care in work. The negligent act done by the servant, he is liable for loss to his master.

F. Doctrine of res ispa loquiter- Means the thing speaks for itself. Generally, plaintiff has to prove the negligence and defendant need to not disprove it. In accident cases the plaintiff only has to prove accident. This doctrine applies when an accident is improbable without negligence of the defendant. In *Marakkar vs state of Kerala*, the man was died falling in pot hole on road during PWD work. The burden of proof was lies on PWD department that they had taken precaution and care.

The Doctrine Res ispa loquiter is rule of evidence. This principle lies burden on defendant that the accident was not happened due to negligence on the part of defendant.

Conditions for application of Maxim-

1. **Absence of explanation-** This maxim applies where no explanation as to the accident is available. Where the proof of fact is kept before the court, no need to draw any inferences.
2. **Improbability of the happenings-** The event must be such that in the ordinary course of events, it does not happen without negligence. It raises a presumption of negligence, shifting the burden of proof to the defendant to explain how the incident could have occurred without negligence. In **Scott v. London & St. Katherine Docks Co.** - A bag of sugar fell from a warehouse window. The court held that such an accident does not happen without negligence.
3. **Accident in the control of defendant-** When an accident is in the control of defendant, it shows the negligence on the part of defendant. Eg. the hospital authority is liable where several doctor are responsible for negligence and patient could not show who is from that several doctors was exactly responsible.

Effect of doctrine-The doctrine does not prove negligence but creates a presumption of negligence, and shift the onus of proof to the defendant that the accident was not in his control or happened even after due care. In *Byrne v. Boadle*, when a barrel of flour fell from a warehouse window, negligence was presumed, and the defendant had to prove that he was not negligent.

Defense/exception to negligence-

1. **Contributory negligence-** Contributory negligence is a defense in tort where the plaintiff's own negligence has contributed to the accident or the damage suffered. In such cases, even if the defendant was negligent, the plaintiff cannot claim full damages, because he

himself was partly responsible for the harm. If contributory negligence is proved, the plaintiff's compensation is reduced or may be completely barred, depending on the degree of his fault. In **Butterfield v. Forrester**, the defendant had left an obstruction on the road, but the plaintiff, riding fast without care, collided with it. The court held that since the plaintiff also failed to take reasonable care, he could not recover damages.

Doctrine of alternate danger- The Doctrine of Alternative Danger applies when a plaintiff, due to the defendant's negligence, is suddenly placed in a situation of imminent danger and, in trying to avoid greater harm, suffers injury. In such cases, the plaintiff's act is not treated as contributory negligence, because it was a reasonable reaction to a dangerous situation created by the defendant. The doctrine protects the plaintiff who, while acting instinctively to avoid harm caused by the defendant's negligence, gets injured.

2. Consent- The defense of consent in negligence arises from the legal maxim *Volenti non fit injuria*, which means "to a willing person, no injury is done." If a person voluntarily consents to the risk of harm, knowing its nature and extent, he cannot later claim damages for injuries resulting from it. If consent is not free, beyond the scope of consent and required reasonable care not taken, in this circumstances it cannot use as defense.

3. Voluntary act- The accident must not be due to any voluntary or negligent act of the plaintiff; otherwise, the presumption of negligence under *Res Ipsa Loquitur* does not arise. Eg. If a person carelessly places his hand inside a running machine and gets injured,

he cannot rely on Res Ipsa Loquitur, because the injury resulted from his own voluntary act rather than the defendant's negligence.

4. **Express Contract-** When a person, by an express contract, agrees to accept the risk of negligence or waives the defendant's liability, such consent acts as a complete defense to an action for negligence unless the contract is against public policy. In *L. Estrange v. F. Graucob Ltd* A woman bought a vending machine and signed a contract excluding liability for any defects. The machine malfunctioned, but she couldn't claim damages because she had signed the exclusion clause. The court upheld the express contractual defense.
5. **Burden of proof-** Generally, the plaintiff bears the burden of proof in negligence cases. But in special situations like Res Ipsa Loquitur, the burden shifts to the defendant to rebut the presumption of negligence.
6. **'No evidence' rule-** There is no strict rule of evidence requiring the plaintiff to produce direct proof of the defendant's negligence. The circumstances of the accident themselves can give rise to a presumption of negligence. The doctrine relies on common sense and probabilities rather than rigid legal evidence rules.

NUISANCE

1. Definitions:

- a. **Stephen-** Anything done to hurt or annoyance of the lands, tenements (residence) or hereditaments (Inheritable property (movable or immovable) of another not amounting to trespass.

b. Salmond- Causing or allowing without lawful justification, but not amounting trespass, if escape of any deleterious (harmful) from his land or from elsewhere into the land in the possession of plaintiff, eg. water, smoke, smell, fumes, gas, noise, heat, disease, animals etc.

c. Winfield- Nuisance is the wrongful interference with a person's use or enjoyment of land, or of some right over, or in connection with it.

2. Essentials of nuisance-

- a. Unlawful or Unreasonable Interference;
- b. Interference with Use or Enjoyment of Land;
- c. Continuous Interference;
- d. Interference must be substantial;
- e. Plaintiff must have a legal interest in property;
- f. Damage must be due to defendant's act (Nuisance within the control of defendant).

3. Kinds of nuisance-

A. Public nuisance- A public nuisance is an act or omission which causes injury, danger or annoyance to the public at large. Public nuisance affects the public or community.

a. Section 270 of BNS Act- A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or 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; but a common nuisance

is not excused on the ground that it causes some convenience or advantage.

- b. Public nuisance is crime under BNS Act-** Individual cannot take legal action against public nuisance unless such person suffered special direct and substantive injury. Advocate general or two or more persons with the consent in writing by Advocate general can take legal action against public nuisance otherwise there may be thousands suits would file in court on single occasion of public nuisance. Eg. If a road is blocked, everyone is inconvenienced; but if one person loses business, due to such road blocking, he can sue for special damage.

In Rose vs Miles

Fact- The defendants intentionally blocked a public canal that was used for transporting goods. The plaintiff could not transport his goods because of this blockage and suffered financial loss.

Decision- The court held that blocking a public canal is a public nuisance because it interfered with the rights of the public to use the canal. Although a public nuisance is generally a criminal offence prosecuted by the state, the plaintiff could sue for special damage (financial loss suffered individually).

➤ **Essentials of Public Nuisance-**

- Act or omission;
- Common injury to public at large;
- Interference with public right;
- Danger to public.

➤ **Examples-**

- Road blocking causing interference with public right;

- River pollution;
- Releasing poisonous gases from factory;
- Illegal construction obstructing public right to way.

➤ **Exceptions/defense-**

a. Act authorized by law is not nuisance- Any act done is permitted by law and any injury caused, an action not allowed. Eg. Running of train making noise, railway company is not liable for noise or vibration unless it is proved that the noise or vibration could be reduced by railway authority.

b. Sensitiveness of plaintiff- Where normal person does not cause any injury or suffer due to any particular act as a nuisance but any person who is sensitive or abnormal suffers or causes injury, in this cases defendant is not liable for public nuisance.

In Heath v. Mayor of Brighton (1908)

Fact: Over-sensitive plaintiff claimed injury due to normal street noise.

Held: Defendant not liable, as ordinary persons would not be disturbed.

➤ **Legal action for public nuisance-** Individual cannot file a case against nuisance unless he has suffered special damage. The advocate general or two or more persons with the consent of advocate general may file a suit for declaration and injunction.

➤ **Nuisance is continuing wrong-** It is continuing wrong and temporary or isolated acts do not amount nuisance. In **Stone v Bolton**, the plaintiff while passing through highway hit by a cricket

ball came from the ground beside to highway. The Court held that the defendant is not liable for nuisance as isolated act of hitting ball on to the road cannot amount nuisance.

- **Does malice relevant in nuisance?** Malice ie motive and intention is irrelevant in the cases of nuisance. Every person has right to enjoy his property in lawful manner. If one enjoying his property unreasonably and causes harm to other, in such cases defendant cannot take defense that he has done it without malice. In **Christe vs Davoy** the plaintiff was music teacher teaching music call in his house. The defendant being irritated by music noise, started to make noise in his home by hammering the wall and beating of tray, with bad motive to disturb the plaintiff's music class. Court held the defendant is liable for nuisance.

B. Private nuisance- It deals with individual. An injury to the private rights of a person. Winfield defines private nuisance means an unlawful interference with a person's use or enjoyment of land or some right over or in connection with the land.

a. Essentials of private nuisance-

- Unlawful interference;
- Interference with the use or enjoyment of land;
- Damage.

1. Unlawful interference- The interference must be unreasonable or unlawful. Every interference is not nuisance; it must cause substantial harm or inconvenience. Example: Normal household noise is not nuisance, but loud, constant machinery noise may be nuisance.

2. Interference with the use or enjoyment of land- It must affect the use, comfort, or enjoyment of the plaintiff's land. Example: Smoke, noise, vibrations, smells, or pollution entering one's property.

3. Damage- The plaintiff must prove actual damage to property or comfort.

b. Tests for unlawful interference or reasonableness-

- Location- What is reasonable in an industrial area may be unreasonable in a residential area.
- Duration and frequency – A continuous or recurring act is more likely to be unlawful.
- Extent of injury- Substantial or material interference is needed.
- Malice- If the act is done with a bad motive, it is more likely to be unlawful.
- Defendant's public purpose- Public benefit may sometimes justify the act, but if it is excessive it may amount nuisance. (water filter tank may make noise but it is for public purpose)

In **Hollywood Silver Fox Farm v. Emmett**, the defendant fired guns near the plaintiff's farm to frighten animals out of malice. The court held liable the defendant for nuisance.

c. Who can sue for nuisance-

- 1. The occupier-** The person in possession of land who is affected by nuisance can file a suit.
- 2. The owner-** The owner of land who is not in possession of land can file suit if he has suffered actual damage to his property due to continues act of nuisance.

3. A Reversioner (Person having interest but not in possession of property, eg. Landlord)- A reversioner can bring a legal action for nuisance if the act of the defendant injures the reversionary interest, i.e., causes permanent damage to the property that will affect its value or condition when the reversioner regains possession.

4. A licensee- The person who has merely use the land but no possession proprietary right cannot sue for nuisance. However, he can sue for special damage out of public nuisance only.

d. Who is liable for nuisance?

- An occupier of premises/land;
- The owner of the premises;
- The person who creates nuisance;
- Tenant.

e. Defense/exceptions-

1. Grant: If the defendant has right to do some act as per the contract between him and plaintiff, doing such act if any nuisance caused to the plaintiff, the defendant is not liable.

2. Prescription- If the defendant has been openly and continuously causing the nuisance for 20 years or more, he may obtain a legal right to continue it. The same view taken in the case **Sturges v. Bridgman**.

3. Statutory authority- If the nuisance was caused while performing duties under a law or government authority, the

defendant is not liable. For example, railway noise permitted by law.

4. Act of God (Vis Major)- Nuisance caused by natural forces beyond human control (eg: storms, floods, earthquakes) is not actionable.

5. Act of a Stranger-If the nuisance was caused by a third person without defendant's knowledge or control, he is not responsible.

f. Remedies-

- **Under criminal law-** Under criminal law nuisance is crime and punishable in accordance with law.
- **Under civil law-**
Public nuisance- Advocate general or two or more persons with the written consent of Advocate general can file a suit for injunction.

Private nuisance- Below are the remedies available.

1. Abatement- Abatement in tort means the removal or stopping of a nuisance by the injured person himself, without seeking the help of the court. It is a self-help remedy available to a person who is affected by a private nuisance. In following way, the nuisance can be abated-

- There must be a real nuisance.
- The abatement must be necessary.
- Notice should be given, unless urgent.
- Only reasonable force must be used.
- No unnecessary damage should be caused.

Examples-

- **Overhanging branches:**

Your neighbor's tree branches extend into your land and cause damage. You may cut the branches up to your boundary.

- **Water leaking from neighbor's tank:**

If the leak is damaging your wall, you can temporarily block the flow (if immediate action needed).

2. Damages- Suit for damages- Damages will determined as per the value.

3. Injunction- The plaintiff can file a suit restraining the defendant using his property in a such a way as not to cause nuisance.

Difference between nuisance and negligence-

Basis	Nuisance	Negligence
Meaning	Nuisance is an unlawful interference with a person's use or enjoyment of land.	Negligence is failure to take reasonable care, resulting in injury or damage to another.
Nature of wrong	continuing or repeated	It can be a one-time act or omission.
Effect	Affect property rights	Affect personal right
Proof	No need to prove duty of care; only need to show interference.	Must prove that the defendant owed a duty of care, breached it, and caused harm.

Defense	Prescription, statutory authority, act of God, etc.	Contributory negligence, act of God, volenti non fit injuria, etc.
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ABSOLUTE AND STRICT LIABILITY

Rule of strict liability-

1. **Nature of strict liability-** If a person keeps any dangerous thing on his land, and it escapes and causes damage, he will be strictly liable, even if he took all reasonable care.

2. **Essentials of Strict Liability**

- a. **Dangerous things-**

- b. **Escape of things from defendant's land-** Must escape from defendant's control to outside his premises.

Rylands v. Fletcher (1868) case:

Facts of the Case:

Fletcher (the plaintiff) owned a coal mine.

Rylands (the defendant) built a reservoir on his land to store water. Due to negligence of the contractor, water from the reservoir escaped and flooded Fletcher's coal mine.

Fletcher suffered heavy losses and sued Rylands.

Judgment:

The House of Lords held Rylands strictly liable, even though he did not act negligently himself.

Legal Principle (Rule in Rylands v. Fletcher):

"A person who brings and keeps on his land anything likely to do mischief if it escapes, must keep it at his peril. If he fails, he is liable for all the damage which is the natural consequence of its escape."

Even if there is no negligence or wrongful intention, if a dangerous thing escapes and causes damage, the person who kept it is liable.

Read v. J. Lyons & Co. Ltd

Facts:

The defendant, Lyons & Co., was manufacturing ammunition for the government during wartime. The plaintiff, Mrs. Read, was an inspector employed in the factory. During her inspection, an explosion occurred inside the factory premises, injuring her. She sued the company under the rule in Rylands v. Fletcher, claiming strict liability for the escape of a dangerous thing (explosives).

Issue- Was the defendant liable under the rule of strict liability when the explosion occurred inside the factory and caused injury to a person within the premises?

Decision- The House of Lords dismissed the plaintiff's claim. It held that the rule in Rylands v. Fletcher applies only when there is an escape of a dangerous thing from the defendant's premises to outside his control. In this case, no escape occurred the explosion happened inside the defendant's premises.

No liability without escape.

The rule of strict liability applies only if the dangerous substance escapes from the defendant's land and causes damage beyond it. Injury within the same premises does not attract strict liability.

- c. **Non-natural use of land-** Use must be non-natural (e.g., storing large quantities of water or chemicals). Non-natural use” does not mean “unnatural”, it means a special or extraordinary use of the land, which increases danger to others if something goes wrong.

Mukesh Textile Mills v A. R. Subramanyam Swami

Fcat-The defendant was owner of sugar factory collected 8000 tones molasses in a tank in his land. The plaintiff’s sugar cane farm beside to the defendant’s land, damaged due to the escaping of molasses through the stream and spread over the plaintiff’s land.

Held- Accumulation of large quantity of molasses was a un natural use of land and the defendant was liable for the damage caused from its escape.

- d. **Damage-** To apply the rule of strict liability there must be a damage caused due to escaping of dangerous substances.

3. Defenses/exceptions-

- a. **Natural use of thing-** The rule applies only to non-natural use of land. If the use is natural and ordinary, no liability.
- b. **Act of God (Vis Major)-** A natural event so unexpected and unavoidable, defendant is not liable.
- c. **Act of a Third Party-** If the escape was caused by the unforeseen act of a stranger over whom the defendant had no control, liability does not arise.

- d. Plaintiff's consent or Common benefit-** Where the dangerous thing is maintained for the common benefit of both plaintiff and defendant, no liability arises.
- e. Mistake of the Plaintiff-** If the escape was due partly to the negligence or act of the plaintiff, the defendant is not liable.
- f. Statutory Authority-** If the activity causing damage is authorized by statute, and carried out without negligence, the defendant is not liable.

RULE OF ABSOLUTE LIABILITY-

- 1. Meaning and concept of absolute liability-** If an enterprise is engaged in a hazardous or inherently dangerous activity and harm caused to anyone on account of an accident in the operation of such activity, the enterprise is absolutely liable to compensate all those who are affected, without any exceptions.
- 2. Essential elements-**
 - a. Hazardous activity- The defendant must be engaged in an activity that is inherently dangerous or poses potential threat to life or property.
 - b. Escape and harm- Damage must result from the operation of such activity.
 - c. Absolute responsibility- The enterprise is liable even if it took all reasonable care. No excuse such as accident, sabotage, or negligence of others can be pleaded.
- 3. No Exceptions Allowed-** There are exceptions available in the rule of strict liability however, such rules are not available in absolute liability.

4. Rule is stricter than strict liability- The rule of absolute liability is a modernized and stricter version of the English rule of strict liability from Ryland's v. Fletcher.

In **M.C. Mehta v. Union of India case**

- In 1985, there was a leakage of oleum gas from Shriram Food & Fertilizers Ltd. in Delhi.
- The gas leak caused death and injuries to several people.
- A PIL was filed by M.C. Mehta, a social activist lawyer.
- The Supreme Court formulated a new rule of liability suitable for Indian industrial conditions.

LEGAL REMEDIES-

1. Meaning- A legal remedy is the means given by law to a person for the enforcement of a right or the compensation for wrong.

2. Types of remedies-

A. Judicial remedies- The remedy granted by the court of law.

- **Damages-** Monetary compensation awarded by the court to the injured party for the loss suffered due to the wrongful act of another.
- **Kinds of damages-**
 - Nominal damages- Small amount to acknowledge a legal right was violated but no substantial loss.
 - Substantial/Compensatory/real damages-To compensate actual loss or injury suffered.
 - Exemplary (punitive) damages- To punish the wrongdoer and deter others.

- Contemptuous damages- When the plaintiff wins the case but is morally wrong or undeserving.
- General and special damages- General damages are those which the law presumes to result from the wrongful act itself, and therefore need not be specifically proved by evidence. At other hand special damages are those which are not presumed by law, but must be specifically claimed and proved by the plaintiff as having actually been suffered.
- Prospective and continuous damages- Prospective damages are future damages losses which are expected to occur after the date of trial as a future consequence of the wrongful act. At other hand, continuing damages arise from a continuing wrong a wrongful act that repeats or continues over a period of time, causing fresh injury every day or at recurring intervals.

Measure of damages-

a. General principle- The measure of damages refers to the standard or method used by courts to determine the amount of compensation payable to a person who has suffered injury, loss, or damage due to another's wrongful act.

b. Damages for personal injury-

- **Non pecuniary losses-**
 - Pain and suffering- Compensation for Physical pain, mental agony, emotional distress;
 - Loss of expectation of life- Compensation if life expectancy is reduced due to injury.
- **Pecuniary losses-**

- Loss of earning capacity- Income lost during incapacity and future earning capacity if permanently disabled.
- Medical expenses- Hospital, treatment, nursing, and medicine costs.
- Right to interest on damages- Interest over damages awarded in India at the rate of 12% pa.

c. Injunctions-

- **Meaning-** An injunction is a judicial order directing a person to do or to refrain from doing a particular act.
- **Object-**
 - To prevent the violation of a legal right.
 - To restrain repetition of a wrongful act.
 - To preserve property or rights pending litigation.
 - To compel performance of a duty or legal obligation.
- **Types of injunctions-**
 - **Temporary (interim) injunction-** Granted during the pendency of a suit. Purpose is to maintain the status quo until the case is finally decided.
 - **Permanent (perpetual) injunction-** Granted after final hearing of the case. It finally determines the rights of the parties.
 - **Prohibitory injunction-** A negative order preventing a person from doing something. It restrains a wrongful act rather than compelling an action.
 - **Mandatory injunction-** A positive order directing a person to perform a particular act to restore things to their original condition.

➤ **Specific restitution of property-** Means restoring possession of a specific movable or immovable property to the person who is entitled to it.

B. Extra judicial remedies-

1. Meaning- Extra-judicial remedies are the self-help measures that a person may lawfully take without going to court, to protect or enforce his legal rights.

2. Types of extra judicial remedies-

a. Self-help- A person can use reasonable force to protect:

- Their own body
- The body of another
- Their property

Conditions:

- Force used must be reasonable and proportionate.
- There must be an imminent threat.
- Cannot be used as a form of revenge; only preventive.

b. Re-entry on Land

A person who has been wrongfully dispossessed of land may retake possession peacefully and without force.

Example:

If a tenant wrongfully occupies land after expiry of lease, the landlord may re-enter without causing breach of peace.

c. Expulsion of trespasser-

When someone unlawfully enters another's land (trespass), the person in possession may forcibly remove the trespasser, provided the force used is-

- Reasonable
- Necessary
- Not excessive
- Used only to protect possession

Conditions:

- Possession must be lawful
- Unlawful entry
- Reasonable force and no deadly force

d. Reception of goods-

If someone's goods are wrongfully taken or detained, the owner may peacefully retake them.

Conditions:

- Only reasonable force allowed.
- No trespass or breach of peace.

Example:

Taking back your stolen bicycle if you find it lying in a public place.

e. Abatement of Nuisance

A person may remove or stop a nuisance without going to court.

Example:

Cutting branches of a neighbor's tree that overhang your land.

Removing a fence unlawfully erected on your land.

Conditions:

- Only reasonable steps permitted.
- Must ask the other party to remove nuisance when possible.

f. Distress Damage Feasant-

Meaning:

Distress means right to detain, Damage means injury, Feasant means wrongful act. Means if cattle or other things enters upon land and causes injury, the occupier of the land has right to retain them until compensation has been paid to him for the damage by owner of the animal or things.

This remedy applies when another's animals or chattels enter your land and cause damage. one may detain the animal until compensation for damage is paid.

Example:

If your neighbor's cow enters your field and destroys crops, you may seize the cow until damages are paid.

In India

Cattle Trespass Act, 1871

This Act gives a similar remedy:

- If cattle trespass on land and damage crops or property,
- The landholder may seize the cattle and
- Take them to the nearest pound,

Where they are kept until the owner pays compensation + pound fee (fee for impounding, feeding charges, maintenance charges, any administrative fee for keeping the animal).

g. Remedies under Constitution (Article 32 and 226)

Constitutional remedies that can be used to claim compensation for violation of fundamental rights, often arising from tortious acts of the State.

Indian courts have recognized the doctrine of constitutional tort, under which compensation may be granted in writ jurisdiction for violation of fundamental rights, particularly Article 21, 14 and 19. Therefore, while Articles 32 and 226 are not “remedies in tort,” they function as alternative remedies for tortious acts of the State in India.

Important Case Laws

1. Rudul Sah v. State of Bihar (1983)

First case where SC awarded compensation under Article 32 for illegal detention.

2. Bhim Singh v. State of J&K (1985)

Compensation for illegal arrest and detention by police.

3. Nilabati Behera v. State of Orissa (1993)

SC held:

Writ courts can award compensation for violation of fundamental rights.

This is not a private tort remedy, but a public law remedy.

4. D.K. Basu v. State of West Bengal (1997)

SC recognized constitutional tort liability for custodial violence.

5. M. C. Mehta vs Union of India

Escape of dangerous gas caused damages to the workers of industry. Under Art. 32 the court has power to grant remedial relief which includes the power to grant compensation where the fundamental rights violated.

REMOTENESS OF DAMAGE

Introduction:

In the law of torts, it is not enough that a defendant has committed a wrongful act; the plaintiff can claim compensation only for those injurious consequences that are sufficiently connected to the wrongful act. Since a single negligent act may lead to countless and unexpected results, the law imposes a limit on liability through the Doctrine of Remoteness of Damage. This doctrine determines how far a defendant's responsibility extends for the harm caused.

The central idea is that a wrongdoer is liable only for those damages that are not too remote, meaning those that a reasonable person could foresee as a likely result of the wrongful conduct. Damages that are extraordinary, unusual, or not reasonably predictable are treated as too remote, and the defendant is not liable for them. The doctrine therefore balances fairness: it protects plaintiffs from unjust harm while also preventing defendants from facing unlimited and unfair liability for consequences no one could have anticipated.

Object or purpose-

- To prevent unlimited or unfair liability;
- To ensure fairness and justice;
- To provide certainty and predictability;
- To connect liability with reasonable foreseeability;
- To balance plaintiff's rights and defendant's duties;

Test of remoteness-

1. **When the damage was not reasonably foreseeable-** If a reasonable person could not predict the type of harm likely to occur, such damage is considered too remote.

Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. (1961), commonly known as The Wagon Mound case. It established the modern rule of remoteness of damage in tort.

Facts (Briefly)

The defendants negligently dropped down explosive oil into Sydney Harbour. The oil spread to the plaintiff's wharf where welding was going on. A spark fell, caught fire on the water because of the oil, and damaged the wharf. The fire was not something a reasonable person would expect from the spilled oil.

Held:

Only foreseeable damage is recoverable. The fire damage was not foreseeable. Therefore, the defendants were not liable for the fire damage, though they were liable for any foreseeable pollution damage.

2. **Damage is unusual or improbable-** If the consequences are so unusual that they cannot naturally flow from the wrongful act, they are too remote.
3. **When there is an intervening act-** If a new independent event breaks the chain of causation, the final damage becomes too remote.

Example:

X negligently injures Y while being transported, a strike burns the ambulance, the burning may be too remote.

4. **Damage is not a direct or natural consequence of the act-** If the harm depends on a chain of rare accidents and not on normal results of the act, it is remote.

5. When the harm is unrelated to the defendant's duty of care- If the defendant's duty did not extend to the type of risk that occurred, the damage is treated as remote.

Position in India

In India, the rule of remoteness of damage is governed by the principle of reasonable foreseeability laid down in the Wagon Mound case. Indian courts consistently hold that a defendant is liable only for those consequences which are natural, probable and foreseeable, and not for remote or extraordinary results. The Supreme Court in several decisions, such as Subhagwanti and Manjulaben Nakum, has affirmed the foreseeability test. Thus, the Wagon Mound principle represents the current legal position in India.

Unit IV

Torts against person

Introduction:

Torts against the person are civil wrongs that directly affect the body, liberty or reputation of an individual. These torts involve intentional or negligent interference with a person's physical safety, freedom of movement, or mental peace.

Types of torts against the person:

1. **Assault-** An act that creates a reasonable apprehension of immediate harm or offensive contact. However, no physical contact is required.

Example: Raising a hand to hit someone.

Essentials of assault-

- a. **Intention to use force-** For an act to amount to assault, there must be a clear intention on the part of the defendant to cause the plaintiff to apprehend the use of immediate force or unlawful physical contact. It is enough that he intends to create a belief or fear of imminent harm in the mind of the plaintiff and not for future.
- b. **Capacity to use force-** For an act to amount to assault, the defendant must have the apparent capacity or ability to carry out the threatened force immediately. In other words, the plaintiff must reasonably believe that the defendant is physically capable of executing the threat at that moment.

Stephens v. Myers

Fact-

A meeting was being held in church. The plaintiff was the chairman of the church. The defendant, Stephens, became angry when a resolution

was passed against his wishes. He threatened to “throw the chairman out” and moved aggressively toward him with his fist clenched. He was stopped by other members before he could actually strike the plaintiff.

Held- The court held that Stephens committed an assault.

- c. Mere words are not enough-** Words alone did not constitute assault, but modern law accepts that words or gestures both can show intent.

Conditions:

- a. Intention;
- b. Immediate action;
- c. Immediate fear.

2. Battery:

A. Definition- Battery is the application of force to the another person without any lawful justification. Battery is the intentional and direct physical contact with another person.

B. Essentials of battery-

- a. Use of Force (Physical Contact)-** Any physical touching, amounts to battery if done in anger or without permission.

Examples:

- Slapping, hitting, punching
- Pushing someone
- Throwing water on someone
- Spitting on someone
- Pulling someone’s bag or dress

b. Force must be intentional-

The act must be voluntary and intended. Accidental touching is not battery. However, intention to harm is not necessary. Intending to make the contact itself is enough.

C. Without lawful justification- Battery is unlawful unless there is-
Consent (e.g., sports, medical treatment)

Self-defence

Parental authority (reasonable)

Fagan v. Metropolitan Police Commissioner (1969)

The defendant accidentally drove onto a policeman's foot, but refused to move when asked. The court held that the continuing act with intention amounted to battery.

Pursell v. Horn (1838)

Throwing water on the plaintiff constituted battery.

D. Difference Between Assault and Battery-

Assault	Battery
-No physical contact required	-Physical contact is essential
-Creates apprehension of harm	-Actual use of force
-Attempt to harm	-Completion of the harm

3. False imprisonment-

A. Definition- False imprisonment is the unlawful restraint of a person's liberty without legal justification. It protects an individual's right to freedom of movement.

B. Essential elements-

a. Total restraint-

- The detention must be complete.
- There should be no reasonable means of escape.

- Even preventing exit for a short time is enough.

b. Without Lawful Justification-

- The restraint must be illegal.
- If done under a valid law (e.g., lawful arrest), it is not false imprisonment.

c. Knowledge to the Plaintiff (Not essential)-

- The person need not know at the time that they are imprisoned (e.g., locked in a room while sleeping).
- Awareness is not required, but damages may differ.

C. Case laws-

1. Bird v. Jones

Partial obstruction is not false imprisonment.

There must be complete restraint.

2. Meering v. Grahame-White Aviation Co.

Plaintiff was detained without knowing at the time.

Held: Knowledge of imprisonment is not required.

3. Rudal Shah v. State of Bihar

Indian case: Person kept in jail even after acquittal.

Supreme Court awarded compensation.

False imprisonment violates Article 21 (Right to personal liberty).

4. Bhagwan Dass v. State of Rajasthan

Unlawful detention by police amounts to false imprisonment and compensation was awarded.

D. Defences-

1. Lawful Arrest- Arrest under valid warrant or reasonable suspicion.

However, in some situations, the law allows arrest either by-

- Public authorities (Police / authorized officers)
- Private individuals (citizens)

If arrest is made within legal limits, it is not false imprisonment. If the arrest is illegal, it becomes a tort of false imprisonment.

2. Consent- Voluntarily agreeing to be confined (e.g., in sports or checking at airport).

3. Self-defence- If a person restrains another to protect themselves or others from immediate harm, the restraint may be justified under self-defence.

4. Parental or quasi parental authority- Parents, guardians, and persons having lawful care of a minor have limited authority to control, supervise, and restrain the movements of the child for the child's safety, discipline, and welfare.

5. Public authority- When a person is detained or confined under valid legal authority given by the State or law, such detention is not false imprisonment.

6. Judicial authority- When a person is detained under orders of a court or judicial officer, that detention is lawful, and therefore not false imprisonment.

E. Motive- If there is unlawful total restraint on a person's liberty, liability arises even if the defendant had a good motive or no bad intention.

F. Damages for bodily harm- Plaintiff is entitled for damages against the civil wrong of false imprisonment. Such damages may be for the pain,

mental pain. He may claim compensation for pecuniary loss like medical expenses, loss of business, salary or earning capacity.

4. Mayhem

a. Definition- Mayhem is an aggravated form of battery where the defendant intentionally causes permanent bodily injury, disfigurement, or disables a part of the body of another person.

b. Essential elements of mayhem-

1. Unlawful and intentional act- The defendant must intentionally use force or violence.
2. Serious bodily injury- The injury must be more than minor; it must be grave or permanent.
3. Disabling or depriving of a body part- Mayhem occurs when injury:
 - Disables a limb;
 - Removes or cuts a body part;
 - Causes permanent disfigurement;
 - Reduces ability to fight or defend
4. Intention to cause the harm- Mens rea (guilty intention) is necessary.

c. Examples of mayhem-

- Cutting off someone's finger, ear, or nose;
- Gouging an eye or blinding a person;
- Breaking a limb causing permanent disability;
- Severely disfiguring the face with acid or sharp objects;
- Permanent paralysis caused intentionally

d. Mayhem in Indian law-

In India, BNS does not use the term “mayhem.”

It corresponds to Grievous Hurt under BNS Act, which includes:

- Permanent loss of limb or member
- Permanent disfigurement of the face
- Loss of sight/ hearing
- Fracture of bone

e. Difference between battery & mayhem

Battery	Mayhem
1.Any use of force causing harm	1.Serious, permanent injury
2.Minor/temporary injury	2.Permanent damage or disfigurement
3.Less Severe	3.More severe and punishable

TORT AFFECTING REPUTATION

1. Libel-

a. Meaning- Libel is a form of defamation where the defamatory statement is made in a permanent, written, or visible form.

b. Essential elements-

- A defamatory statement;
- In permanent form- like Written, Printed, published online, in pictures, cartoons, photographs Broadcast on TV, Posts on social media, Emails, newspapers, books;
- Publication to a third party- Someone other than the plaintiff must have seen or heard the statement.

- Statement refers to the plaintiff- The statement must identify the person, clearly or indirectly.

c. Libel is actionable per se- Plaintiff does not need to prove actual damage. Harm is presumed because the written form is lasting and widely spread.

d. Defenses to libel-

- Truth, Fair and bona fide comment;
- Privilege, Consent.
- Publication for good for public (eg. Wanted of accused)
- Matters of public interest;
- Apology.

e. Case laws-

Hulton & Co. v. Jones

A newspaper published a fictional story using a real person's name → Held liable for libel even without intention.

Monson v. Tussauds

Placing a wax statue suggesting guilt is Libel (visible representation).

D.P. Choudhary v. Kumari Manjulatha (India)

False publication in newspaper harming a girl's reputation → damages awarded.

2. Slander-

a. Meaning- Slander is a form of defamation that is spoken or oral in nature. It refers to false and defamatory statements made in a transient form, usually speech, which harm a person's reputation.

b. Characteristics of Slander

- Oral/Transient form- Spoken words, gestures, sounds, or other temporary expressions.
- False and defamatory statement- If true not slander.
- Must injure reputation.
- Publication required
- Must be communicated to a third party.
- Generally, requires proof of actual damage
- Unlike libel, slander is usually not actionable per se, meaning actual damage must be shown.

c. When slander is actionable per se-

- Imputation of a serious crime- Offence involving moral turpitude (e.g., theft, murder).
- Imputation of an infectious or hateful disease- Traditionally syphilis, leprosy; now includes HIV/AIDS.
- Imputation affecting professional Reputation- Statements harming a person's job, business, or office.
- Imputation of unchastity to a woman- Accusing a woman of adultery.

d. Defense-

- Truth, Fair and bona fide comment;
- Privilege, Consent.
- Publication for good for public (eg. Wanted of accused)
- Matters of public interest;
- Apology.

e. Remedies-

- Damages,
- Injunction.

f. Position in India-

Under the Bharatiya Nyaya Sanhita, 2023 (BNS), slander or spoken defamation is treated as a criminal offence under Section 356, which deals with defamation. The section defines defamation as making or publishing any imputation concerning a person by words spoken, intended to be read, by signs or visible representations, with the intention to harm, or with knowledge that such imputation is likely to harm the person's reputation. Section 356 prescribes punishment of simple imprisonment up to two years, or fine, or both. The law does not distinguish between libel (written) and slander (spoken); both are treated equally as criminal defamation. Therefore, under the BNS, slander is not only a civil wrong in tort law but also a criminal offence, reflecting India's continued emphasis on protecting individual reputation through criminal sanctions.

g. Difference between libel and slander-

Libel	Slander
Written / printed / permanent form	Spoken / temporary form
Considered more serious (no need to prove special damage) (no need to prove special damage)	Considered less serious Requires proof of special damages (except certain cases)
Publications, images, internet posts	Oral statements, gestures

TORT AFFECTING FREEDOM

Malicious prosecution-

a. Definition- Malicious prosecution is a civil wrong (tort) where a person initiates a criminal proceeding against another without reasonable cause and with malice, resulting in damage to the plaintiff.

b. Essential elements

To succeed in an action for malicious prosecution, the plaintiff must prove:

- Initiation or continuance of legal proceedings- Defendant must have started or continued a prosecution (criminal or civil) against the plaintiff.
- Falsity of the case- The proceeding was without reasonable or probable cause; the plaintiff was innocent.
- Malice / improper motive behind filing of case- Defendant acted with ulterior motives such as revenge, spite, or personal gain.
- Proceeding ended in plaintiff's favor- The previous case must have ended in acquittal or dismissal.
- Damage to plaintiff- Plaintiff suffered loss or injury due to the false proceedings (reputation, expenses, harassment, mental suffering).

c. Examples-

- Filing a false police complaint accusing someone of theft without evidence.
- Suing a person maliciously for defamation knowing the claim is false.
- Framing an innocent employee for fraud to get them dismissed.

d. Damages for malicious prosecution-

General damages: Harm to reputation or mental suffering.

Special damages: Financial loss caused by legal fees, expenses, or lost income.

e. Burden of proof- In an action for malicious prosecution, the burden of proof lies entirely on the plaintiff, because the law presumes that a person who initiates legal proceedings does so honestly and with reasonable cause. Therefore, it is the plaintiff's responsibility to prove every essential element of the tort. The plaintiff must first prove that the defendant initiated or continued legal proceedings against him, that such proceedings were terminated in his favor, and that the prosecution was instituted without reasonable or probable cause. The plaintiff must also prove that he suffered damage such as loss of reputation, financial loss, mental suffering, or deprivation of liberty due to the wrongful prosecution. Unless all these elements are proven strictly and satisfactorily, the plaintiff cannot succeed. The defendant does not have to prove good faith unless the plaintiff successfully establishes lack of reasonable cause; only then does the burden shift slightly to show honest belief or justification. Thus, the burden of proof in malicious prosecution is heavy and primarily rests on the plaintiff.

f. Defense-

- Reasonable or probable cause- Defendant believed the case had legal merit.
- Lack of malice- Action was genuinely intended to enforce the law or protect rights.
- Consent- Plaintiff agreed to the proceedings.

g. Case laws-

Andrew v. Hills

A malicious prosecution claim succeeded when the defendant filed a baseless criminal complaint.

Rudal Shah v. State of Bihar

Detention without lawful cause amounted to actionable wrong; damages awarded.

Moses v. Macferlan

Early English case recognizing malice and lack of probable cause as essential elements.

h. Difference Between Malicious Prosecution and False Imprisonment

- **Nature of Wrong:**

False imprisonment involves the unlawful restraint of a person's freedom of movement without legal justification, whereas malicious prosecution involves wrongfully initiating or continuing legal proceedings against a person with malice and without reasonable cause.

- **Requirement of Proceedings:**

In false imprisonment, no judicial or legal proceedings are required; the wrong occurs the moment a person is detained. In malicious prosecution, legal or judicial proceedings are essential, and the tort arises only after such proceedings are wrongfully instituted.

- **Burden of proof:**

In false imprisonment, the defendant must prove that the restraint was lawful. In malicious prosecution, the plaintiff carries a heavier burden and must prove malice, lack of reasonable cause, and that the case ended in his favor.

- **Favorable Termination:**

For malicious prosecution, the prior case must have terminated in the plaintiff's favor (acquittal or dismissal). False imprisonment has no such requirement, as the wrong occurs immediately upon unlawful detention.

- **Element of Malice:**

Malice is not necessary in false imprisonment. The motive is irrelevant as long as the detention is unlawful. In malicious prosecution, malice is an essential element and must be proved by the plaintiff.

- **Type of Injury:**

False imprisonment causes direct interference with personal liberty. Malicious prosecution causes indirect harm, such as mental suffering, loss of reputation, or financial loss due to wrongful litigation.

- **Defendant's Act:**

In false imprisonment, the defendant's act is usually physical restraint or confinement. In malicious prosecution, the defendant's act is setting the law in motion, such as filing a false FIR or complaint.

MALICIOUS CIVIL ACTION-

The tort of malicious prosecution is not limited to criminal cases; it can also arise from the malicious filing of civil suits. When a person institutes a civil action wrongfully, without reasonable cause, and with malice, the injured party may sue for malicious prosecution after the civil suit ends in his favor. However, courts are more cautious in treating civil cases as malicious prosecution because civil proceedings usually involve private disputes, and access to courts should not be discouraged. Therefore, not every unsuccessful civil suit amounts to malicious prosecution. The plaintiff must prove that the civil suit was groundless, vexatious, and filed for improper motives, such as harassment, coercion, or personal revenge.

The plaintiff must prove the below essential elements:

- Defendant instituted civil proceedings.
- Proceedings ended in plaintiff's favor.

- No reasonable or probable cause for filing the suit.
- Malice or improper motive.
- Damage, such as loss of reputation, expenses, or mental suffering.

Courts have recognized such actions, especially when the civil suit results in attachment of property, injunctions, or loss of liberty, making the harm more serious. Thus, malicious filing of a civil suit is actionable, but the threshold of proof is high, and the plaintiff must establish clear malice and absence of reasonable cause.

ABUSE OF LEGAL PROCESS-

Abuse of legal process is a tort that occurs when a person uses the legal system or court procedures for an ulterior or improper purpose, even though the legal process itself may have been properly initiated. It is different from malicious prosecution because the wrong lies not in starting legal action without cause, but in misusing the legal procedures after they have begun to achieve a goal other than the one for which the process was intended.

In this tort, the defendant sets the law in motion with a valid cause, but later perverts or misuses the court's processes such as summons, warrants, attachment orders, injunctions, or execution proceedings for purposes like harassment, extortion, coercion, or personal revenge.

The plaintiff must prove two elements:

- **An improper or ulterior motive-** Forcing a person to surrender property, money, or rights; and
- **An act using the legal process in a way not warranted by law-** such as using attachment to pressure settlement, or issuing repeated summons to intimidate.

TORT AFFECTING DOMESTIC AND OTHER RIGHTS

1. Introduction- Torts affecting domestic and other rights are civil wrongs that interfere with the personal, family, social, or relational interests of an individual. These torts protect rights that arise not from property or contract, but from domestic relations, social obligations, and personal status. They primarily safeguard marital rights, parental rights, and rights connected with family relations, as well as certain recognized social interests.

2. Torts to marital right-

a. Abduction of another's wife- Abduction of another's wife is recognized in tort law as a wrong that interferes with domestic rights, particularly the husband's consortium rights. Consortium includes companionship, cohabitation, affection, and marital comfort. When someone wrongfully takes away, entices, or detains another's wife, it amounts to a civil wrong.

- **Essential elements-**

- Enticement or taking away of the wife by the defendant.
- Lack of lawful justification for such conduct.
- Loss or deprivation of association suffered by the husband.
- Active involvement of the defendant in inducing or persuading the wife.

Tulsidas vs. Vasanji- It was held that a husband can sue a person who entices his wife away, leading to loss of society and marital comfort.

b. Adultery- Interference with marital relationship by engaging in sexual relations with a spouse.

Current position India-

In *Joseph Shine v. Union of India*, 5-judge Constitution Bench, the Supreme Court struck down Section 497 IPC as unconstitutional. Adultery is still a civil wrong under matrimonial laws. Adultery continues as a ground for divorce or judicial separation under:

- c. Injury to husband and wife-** The person causing injury to spouse is liable to pay compensation to other spouse.

Best vs Samuel Fox

Court held that the damages would be recovered for even an impairment of the society and comfort afforded by the wife to her husband.

Smee vs Tibbles

A husband whose wife was injured was awarded damages in respect of medical expenses and loss of services.

3. **Tort to parental rights-** Torts to parental rights” refer to civil wrongs committed by a third person that interfere with the legal rights of parents in relation to their children. These rights historically included the right to custody, control, companionship, and services of minor children.

a. Abduction or Enticement of a Child

This occurs when a third person:

- Entices,
- Induces, or
- Takes away a minor child from the lawful custody of the parent.

Essentials:

- Minor child under parental custody
- Defendant intentionally persuaded or forcibly took the child
- Loss of custody or companionship
- Resulting mental suffering or loss to parent

b. Harboring a Child- If a person knowingly keeps or shelters a minor child against the wishes of the lawful parent, it is a tort.

c. Seduction- The parent could sue someone who seduced his/her minor daughter or son. It is actionable when-

- It deprived him of her “services”, and
- Caused emotional and social injury.

Essential elements of seduction-

- Minor daughter;
- Lawful custody or right to service of the parents;
- The plaintiff must be entitled to the services;
- There must be a sexual intercourse;
- The defendant must be shown to be responsible for the impaired health of such female.

Measure of damages- In seduction cases, damages compensate the parent for both pecuniary and non-pecuniary losses. Pecuniary damages include loss of services and expenses for pregnancy, confinement, and medical care. Non-pecuniary damages cover injury to family honor, social embarrassment, and mental distress. Aggravated damages may be granted where the seduction is achieved through deceit or abuse of confidence. The focus is on the parent's loss, not merely the girl's injury.

RIGHT TO SERVICES

The right to services refers to the legal interest that certain persons (traditionally husband, parent, or master) had in the services, labor,

companionship, or assistance of another. If a third person interferes with this right, it may form the basis of a civil action in tort.

1. Husband's Right (Old Common Law)

Husband could sue if another person injured or enticed his wife, causing loss of her companionship or household services.

Modern law rejects this as outdated.

2. Parent's Right-

Parent can sue for loss of services of a minor child in case of -

- Child is injured,
- Child is abducted,
- Child is seduced (old tort),
- Child is enticed away or harbored.

3. Master's Right (Employer)

Employer may sue if an employee is wrongfully injured or enticed away, causing loss of labor.

CONTRATUAL RIGHTS, INTIMIDATION AND CONSPIRACY

CONTRATUAL RIGHTS

Interference with existing contract- Interference with an existing contract (also called tortious interference with contractual relations) occurs when a third party wrongfully induces or causes one of the parties to a valid contract to breach it, resulting in damage to the other contracting party.

a. Essential elements

1. **Contract-** There must be a legally binding contract between the plaintiff and another party. The contract must be capable of being enforced by law.
2. **Breach of contract-** The contract must have been actually breached or disrupted as a result of the defendant's interference.
3. **Knowledge of contract-** The third party (defendant) must have knowledge of the existence of the contract. Actual knowledge is required.
4. **Damage to Plaintiff-** The plaintiff must have suffered financial loss or other measurable harm because of the interference.

b. Mode of interference with contract-

1. **Direct persuasion-** Direct persuasion is the most common mode of committing the tort of interference with contractual relations. It occurs when a third person intentionally and directly persuades, induces, or encourages one party to a valid contract to break that contract. Mere advice to break a contract of service is not actionable.
2. **Direct interference-** Direct interference occurs when a third party does not merely persuade, but actively and directly prevents or obstructs the performance of a valid contract between two other persons.
3. **Indirectly helping in breach of contract-** Indirect interference occurs when the defendant does not directly induce a party to break the contract, nor physically prevent performance, but instead

provides assistance, support, or opportunities that facilitate or enable the breach.

c. **Remedy-** The aggrieved party may seek injunction.

CONSPIRACY

1. **Meaning-** Conspiracy in tort means a situation where two or more persons combine together with a common intention to cause harm, such as inducing breach of contract or interfering with another's trade, business, or contractual rights.

2. Essential Elements of Conspiracy-

- **Combination of two or more persons-** A single person cannot commit conspiracy. There must be a common design or agreement.
- **Common intention to cause harm-** The conspirators must have acted with the object of causing loss to the plaintiff. Malice or wrongful intention is important.
- **Overt act carried out in furtherance of the conspiracy-** The conspirators must take active steps to carry out the plan.
- **Resulting damage to the plaintiff-** The plaintiff must suffer actual loss (e.g., breach of contract, loss of business).

3. Illustration

A, B, and C form a plan to prevent X from supplying goods to Y so that the market benefits them. They collectively persuade X's employees and block deliveries.

This is actionable conspiracy to interfere with contractual relations.

4. How Conspiracy Interferes with Contracts

Conspiracy may involve:

- Persuading one party together to breach the contract.
- Coordinated actions (e.g., boycott) to force a person to break contractual obligations.
- Jointly supplying funds, incentives, or threats to cause breach.
- Collective refusal to deal unless the contract is broken.

5. Case Law

- **Quinn v. Leathem**

Members of a trade union conspired to induce customers of the plaintiff to break contracts.

Held: They were liable; a combination with malicious intent to injure is actionable.

- **Crofter Hand Woven Harris Tweed Co. v. Veitch**

A trade union boycott was not done with intention to injure but to protect workers; hence not actionable.

INTIMIDATION

1. Definition- Intimidation is a tort where one person uses threats to force another person (or sometimes a third party) to do any act in a particular way against his interest, and thereby causing damage or loss.

2. Essentials of the Tort of Intimidation

a. Threat- There must be a threat:

- to commit an unlawful act (e.g., violence, breach of contract, strike, property damage),
- To do something the defendant has no legal right to do.

- b. Intention-** The threat must be intended to force the claimant or another person to do (or not do) something.
- c. Act done under threat-** The person threatened must actually act under the pressure of the threat, i.e., they must comply because of fear or coercion.
- d. Resulting Damage-** The claimant must suffer economic loss or other actionable damage because of the intimidation.

3. Types of Intimidation-

a. Direct Intimidation- Where the defendant threatens the plaintiff directly.

Example:

X threatens Y that he will burn X's shop unless Y signs a contract. Y signs under fear, X is liable.

b. Third party intimidation- Where the defendant threatens a third party, and because of that threat, the plaintiff suffers loss.

Example:

Workers threaten the employer to stop working unless the employer stops dealing with X. Employer stops dealing with X.

4. Remedies

- Damages for economic loss
- Injunction to restrain further intimidation
- Sometimes punitive damages (as in *Rookes v. Barnard*)

5. Case law-

Rookes v. Barnard

Most important case on intimidation. Trade union threatened to strike unless employer dismissed an employee. Employer dismissed the employee due to the threat.

Held: This is third party intimidation. Union held liable.

MGLAW COLLEGE

UNIT V

CONSUMER PROTECTION ACT 1986

Introduction-

The Consumer Protection Act, 1986 (CPA, 1986) is a landmark social welfare legislation enacted by the Indian Parliament to provide simple, speedy and inexpensive remedy to consumers. It was introduced at a time when consumers faced exploitation through unfair trade practices, defective goods, and deficient services, without any effective legal mechanism to seek justice.

The Act aims to protect the interests of consumers through mechanism consisting of District Forum, State Commission, and National Commission. It lays down a comprehensive framework defining who a consumer is, what rights consumers possess, and what reliefs they can claim.

The CPA, 1986 promotes consumer welfare by recognizing consumer rights such as the right to safety, right to be informed, right to choose, right to be heard, and right to seek remedy. It imposes duties on traders and service providers to ensure fair dealings and prevent exploitation.

The Act is regarded as a milestone in consumer jurisprudence, as it shifted the legal landscape from the doctrine of caveat emptor (let the buyer beware) to caveat venditor (let the seller beware). It empowers consumers and ensures accountability in the marketplace. Although later replaced by the Consumer Protection Act, 2019, the 1986 Act laid the foundation for modern consumer rights in India.

SALIENT FEATURES OF CONSUMER PROTECTION ACT

1. Social welfare legislation- Enacted to protect consumers from exploitation and ensure fair trade practices.

2. Broad definition of consumer-

- Covers any person who buys goods or avails services for consideration.
- Includes beneficiaries of services.

3. Comprehensive consumer rights- Recognizes six major rights

- Right to safety
- Right to be informed
- Right to choose
- Right to be heard
- Right to seek redressal
- Right to consumer education

4. Simple, speedy & inexpensive redressal- Special consumer forums established for quick dispute resolution without complex procedures.

5. Three-Tier Quasi-Judicial Machinery

- District Forum – Up to specified monetary limit
- State Commission – Appeals + higher-value cases
- National Commission – Apex consumer court

Ensures accessibility at local, state, and national levels.

6. Covers Goods and Services-

- Includes defects in goods and deficiency in services.
- Covers wide range: banking, transport, insurance, telecom, etc.

7. Provisions Against Unfair Trade Practices- Prevents misleading advertisements, false claims, hoarding, black-marketing, etc.

- 8. Enables Consumer to File Complaints Easily-** Complaint can be filed by consumer, consumer association, government, or group of consumers.
- 9. Relief and Remedies Provided-** Replacement of goods, refund of price, compensation, removal of defects, discontinuation of unfair practices.
- 10.No Court Fee / Nominal Fee-** Ensures affordability of justice.
- 11.Procedural Simplicity-** Consumer forums are not bound by strict civil court procedures; follow principles of natural justice.
- 12.Appeal Mechanism-** Decisions of District Forum → State Commission → National Commission → Supreme Court.
- 13.Shifts from Caveat Emptor to Caveat Venditor-** Puts responsibility on seller/service provider to ensure quality and fairness.
- 14.Legal Set-Up for Product Liability-** Though expanded in 2019 Act, the 1986 Act recognized liability for defective goods and deficient services.

WHO IS CONSUMER

Section 2 (1) (d)- A person is consumer if he-

1. Consumer of goods-

(a) Buys goods for consideration

Consideration may be-

- paid,
- promised,
- partly paid and partly promised, or
- under a system of deferred payment (installments/credit).

(b) Includes user of goods- Any user of such goods other than the actual buyer is also a consumer if the use is with the buyer's approval.

Example:

Family members using a purchased product.

(c) Exclusion – Not a consumer if:

- Goods are obtained for resale, or
- Goods are obtained for any commercial purpose.

2. Consumer of Services-

A person is a consumer if he:

(a) Hires or avails services for consideration

Consideration may be:

- paid,
- promised,
- partly paid and partly promised, or
- paid through deferred payment system.

(b) Includes beneficiary of services- Any beneficiary of such service, other than the person who actually hires the service, is also a consumer if availed with approval.

Example: a passenger travelling on a ticket purchased by someone else.

(c) Who is NOT a Consumer?

The following persons are not considered consumers under the Act:

- 1. Goods or Services for Commercial Purpose-** If goods or services are obtained for commercial purposes, the buyer is not a consumer.

Exception: A person who buys goods for self-employment to earn livelihood (e.g., a tailor buying a sewing machine for personal work) is still a consumer.

2. Free Goods or Free Services- If no consideration is paid (i.e., free of cost), the person is not a consumer.

3. Personal Agreement/Contract of Personal Service- Services under a contract of personal service (e.g., employer–employee relationship) are excluded.

Case laws-

1. Laxmi Engineering Works v. P.S.G. Industrial Institute

Principle: Meaning of “commercial purpose” clarified.

The Supreme Court held:

If goods are purchased for commercial purpose, the buyer is not a consumer.

Exception: If the goods are used exclusively for earning livelihood by means of self-employment, the buyer is a consumer.

Indian Medical Association v. V.P. Shantha

Principle: Medical services = “services” under the Act, unless rendered free of cost.

Held; Patients who pay for treatment are consumers and can file complaints for deficiency in service.

Spring Meadows Hospital v. Harjot Ahluwalia

Principle: Beneficiary of service is also a consumer.

Held- Parents who paid for treatment + child as beneficiary = both are consumers under Section 2(1)(d)(ii).

DEFECTS IN GOODS

Definition: Section 2(1)(f)- Defects in goods –

A defect means any: fault, imperfection, shortcoming in the quality, quantity, potency, purity, or standard of goods.

-This must be a standard which is:

- Required by law (e.g., standards under the Food Safety Act, BIS standards, Drugs Act)

-Required under a contract-

- Express contract
- Implied contract (e.g., implied condition of merchantable quality under Sale of Goods Act)

-Claimed by the trader

- Statements made in advertisements
- Labels
- Promotional materials
- Verbal assurances

If the trader claims a feature or quality, and the goods fail to meet it, it is a defect.

C.N. Anantharam vs M/s Fiat India Ltd., which is often referred to when discussing “defect / deficiency / consumer rights” under the Consumer Protection Act, 1986.

Facts of the Case

- The petitioner (Anantharam) bought a car — a Fiat Siena Weekender (Diesel) — on 31 October 2002.

- Soon after delivery (on first drive), the car's engine started producing unusual noise and the petitioner claimed there was a defect in the vehicle's engine.
- On being notified, the dealer (agent of manufacturer) replaced various parts — including the engine itself — but the petitioner remained dissatisfied and insisted that the vehicle be replaced with a new one, or his money refunded.

Legal process and judgments-

- The petitioner filed a complaint before the District Consumer Forum; it held in his favour and ordered a refund (purchase price + interest + other costs).
- On appeal, the State Commission modified that — directing the manufacturer/dealer to replace the vehicle, or in default, to refund the ex-showroom price plus interest and other costs.
- The case reached the Supreme Court of India (S.C.) via Special Leave Petitions (SLP (C) Nos. 21178-21180 of 2009)

Supreme Court's Decision & Key Legal Principles

The Supreme Court, while disposing of the appeals on 24 November 2010, laid down the following key findings:

- The Court held that the petitioner had failed to conclusively prove a manufacturing defect or inherent defect in the car that would warrant replacement of the entire vehicle or full refund, because after replacement of the engine and other parts, there was no credible evidence of persistent defect.
- The Court noted that a manufacturer/dealer's obligation under warranty is generally limited to repair or replacement of defective

parts — it does *not automatically* extend to replacing the whole vehicle or refunding purchase price.

- However — given the unusual circumstances (vehicle remained with dealer for many years; the purchaser had not accepted the repaired car even after being told it was roadworthy) — the Court directed that the manufacturer and dealer should fix any defects (if found), recondition the car if necessary, and re-deliver it to the petitioner in presence of an independent, mutually agreed expert. That expert's certification would be final.
- The Court further ordered a fresh one-year warranty from the date of re-delivery.

DEFICIENCY IN SERVICES

Section 2 (1) (g): “deficiency”

Deficiency means any:

- Fault
- Imperfection
- Shortcoming
- Inadequacy

in the:

- Quality
- Nature
- Manner of performance

of a service, which is either:

- Required to be maintained by law, or
- Undertaken to be performed under a contract, or
- Performed otherwise (even without written contract).

Key Elements of Deficiency

1. Applies only to services- Any problem in service delivery amounts to deficiency.

Examples:

Electricity supply, banking, insurance, telecom, medical services, transport, housing construction, etc.

2. Must relate to quality, nature, or manner of performance- Service must be performed in a proper, professional, and legally compliant manner.

Examples:

- Poor quality medical treatment
- Delay in delivery of courier
- Faulty installation of telephone connection
- Failure to settle insurance claim properly

3. Deficiency may arise from:

(a) Violation of a legal standard- If a service must follow a law/regulation, and it is not followed → deficiency.

Example:

Hospital not maintaining sterilization standards required by law.

(b) Breach of contract- If the service provider does not perform as promised under agreement.

Example:

Builder not completing construction as per agreement.

(c) Any promise/undertaking- Even verbal, written, or implied assurances.

Example:

Bank assuring a loan within 7 days but delaying unreasonably.

Examples of Deficiency in Service

- Doctor leaving a needle inside a patient during surgery
- Telephone not repaired despite repeated complaints
- Bank wrongfully dishonoring cheque
- Insurance company delaying or denying rightful claim
- Electricity department issuing inflated bills
- Transport company losing goods

4. Exceptions-

a. Service rendered free of charge- If service is provided free of cost (not connected to commercial activity), it is not considered a service under the Act hence no “deficiency”.

b. Services rendered under a contract of personal service- If the contract excludes certain liabilities or responsibilities, and the consumer has agreed to it, then deficiency cannot be claimed

MEDICAL SERVICES

1. Position before 1995- Before 1995, there was uncertainty whether *medical treatment* constituted a “service” under the Consumer Protection Act, 1986.

2. Landmark Case: Indian Medical Association v. V.P. Shantha (1995)

This Supreme Court judgment brought medical services under the purview of the Consumer Protection Act.

Fact: There was confusion whether medical services fall under “service” under Section 2(1)(o) of the Consumer Protection Act, 1986.

Doctors’ associations argued that medical treatment is a “profession,” not a commercial service, and therefore cannot be brought under CPA.

The Supreme Court resolved this issue in this landmark judgment.

Issues Before the Court

- Are medical services covered under “service” in the Consumer Protection Act, 1986?
- Can patients claim compensation for medical negligence under CPA?
- Are free medical services included?

Held / Decision

The Supreme Court held that medical profession is covered under the Consumer Protection Act and a patient can be a consumer.

3. Medical services are included when:

(i) Fee is paid directly- Patient paying consultation fee, treatment fee, surgery charges, etc.

(ii) Someone else pays- Employer, insurance company, relative, etc.

(iii) Partly free + partly paid hospitals- Hospitals charging some patients but treating others free → all services covered.

(iv) Diagnostic centers and laboratories- Testing, scans, pathology reports all are part of “service”.

4. Categories NOT Covered (Exceptions)-

- Free medical services
- Contract of personal service

5. Medical Professionals Liable for “Deficiency in Service”-

Doctors/hospitals can be held liable for:

- Lack of due care
- Negligence in treatment
- Post-operative negligence
- Failure to use proper equipment
- Lack of informed consent

6. Child admitted in hospital for treatment and his parents both are consumer-

when a child is admitted to a hospital for treatment, BOTH the child and the parents are treated as “consumers” under the Consumer Protection Act.

Spring Meadows Hospital v. Harjol Ahluwalia

Facts:

- A minor child was admitted to Spring Meadows Hospital.
- A nurse administered a wrong injection.
- The child suffered cardiac arrest and permanent brain damage.
- The parents filed a consumer complaint.

Held:

Both the minor child AND the parents are “consumers.”

Because:

1. The child is a consumer- He is the direct beneficiary of the medical service.
2. The parents are also consumers- They paid for the treatment, so they are “consumers” under Section 2(1)(d).
3. Parents suffer independent loss
 - Mental agony
 - Financial loss
 - Cost of continuous treatment

Therefore, they can claim compensation.

REMEDIES TO CONSUMER

Section 14 of the Consumer Protection Act provides several remedies to a consumer who has suffered loss, injury, or inconvenience due to defect in goods, deficiency in service, unfair trade practice, or restrictive trade practice.

1. **Removal of Defect (Repair)**- The Forum may order the opposite party (seller/manufacturer) to remove the defect in the goods free of cost.

Example: Defective car engine repaired.

2. **Replacement of Goods**- Replacement of defective goods with new goods of similar description and quality.
3. **Refund of price or charges**- Full refund of the price or charges paid for goods or services.

4. Compensation for loss or injury due to negligence-

Compensation may be awarded for:

- Financial loss
- Physical injury
- Mental agony
- Pain and suffering
- Loss of profit
- Future medical expenses

5. Removal of Deficiency in Service- If the service provided is defective, the Forum may order improvement or correction of the service.

Example: Improper surgery-hospital must provide proper treatment.

6. Discontinue Unfair Trade Practice / Restrictive Trade Practice-

The Forum may direct the business to:

- Stop misleading advertisements
- Stop false claims
- Stop restrictive practices (tie-in sales, hoarding, black-marketing)

7. Adequate costs to the parties- Consumer may be awarded legal costs, litigation expenses, travel costs, etc.

CONSUMER DISPUTES REDRESSAL AGENCIES

A. Introduction-

The Consumer Protection Act, 1986 established a unique and effective mechanism for resolving consumer disputes in India through a three-tier quasi-judicial machinery known as Consumer Disputes Redressal Agencies or Consumer Forums known as District Consumer Disputes Redressal Forum

(District Forum), State Consumer Disputes Redressal Commission (State Commission) and National Consumer Disputes Redressal Commission (NCDRC).

B. Objectives of Consumer Disputes Redressal Agencies

- To protect consumer rights
- To provide inexpensive and speedy justice
- To reduce the burden on civil courts
- To promote fair trade practices
- To ensure accountability of manufacturers and service providers

C. Nature and Characteristics

- Quasi-judicial bodies- They act like courts but follow simple procedures.
- Consumer-friendly- Minimal court fees, simple complaint filing, no need for a lawyer.
- Time-bound disposal- The Act requires disposal within specific time periods (usually 90–150 days).
- Appeal system available- Each level allows appeal to the next higher authority.
- Powers similar to civil courts- Including summoning witnesses, examining evidence, and ordering compensation.

D. Redressal agencies-

1. **District forum-** The District Consumer Disputes Redressal Forum (commonly called District Forum) is the lowest tier of the three-level consumer dispute redressal machinery established under the Consumer Protection Act, 1986. It is created in every district to provide simple, speedy, and inexpensive justice to consumers at the local level.

a. Establishment-

- Set up by the State Government in each district.
- More than one District Forum may be established in a large district.

b. Composition of District Forum

(i) President-

A person who is or has been, or is qualified to be, a District Judge.

(ii) Members (Two)-

One of them shall be a woman;

Not less than 35 years' age;

Possess bachelor's degree;

They must be persons of ability, integrity, and standing with-

- knowledge or experience in law,
- commerce, economics, industry,
- public affairs, or administration.

c. Disqualification of president or member of the forum-

- He has been adjudged insolvent;
- He has been convicted of an offence involving moral turpitude;
- He became unsound mind;
- He has been removed or dismissed from government service;
- He has financial interest which affect the discharge of his duty;
- He has abused his position;
- Possessing any paid employment during tenure.

d. Term of office-

- Shall hold office for 5 years or up to the age of 60, whichever is earlier.
- May be reappointed for further 5 years' subject to the conditions.

- Member may resign by giving notice to the State Government.

e. Salary and Allowances-As prescribed by the State Government.

f. Jurisdiction of the district forum-

i. Pecuniary (Monetary) Jurisdiction-

Can entertain complaints where the value of goods or services and compensation claimed does not exceed ₹20 lakhs.

ii. Territorial Jurisdiction

A complaint may be filed where:

- The opposite party resides, or
- Carries on business, or
- Has a branch office, or
- The cause of action arose.

2. State commission/forum-

a. Composition-

President

- A person who is or has been a Judge of a High Court.
- Appointed by the State Government.
- Appointment only after consultation with the Chief Justice of the High Court.

Members-

- Not less than two, and not more than the number prescribed by the State
- One member must be a woman.

b. Qualifications-

- Be not less than 35 years of age
- Hold a Bachelor's degree from a recognized university
- Be a person of ability, integrity and standing, with at least 10 years' experience in- Economics, Law, Commerce, Accountancy, Industry, Public affairs, Administration.

c. Judicial Background Requirement

Not more than 50% of members may be persons with judicial background.

Explanation: A person has a judicial background if he has at least 10 years' experience as a presiding officer in:

- District-level court, or
- Tribunal of equivalent level.

d. Disqualifications (for Members)

A person is not eligible if he:

- (a) Has been convicted and sentenced for an offence involving moral turpitude
- (b) Is an undischarged insolvent
- (c) Is of unsound mind and so declared by a court
- (d) Has been removed or dismissed from Government service or a Government-controlled corporation
- (e) Has any financial or other interest likely to prejudicially affect his functions
- (f) Has any other disqualification prescribed by the State Government

e. Appointment Process-

Selection Committee- Appointments are made by the State Government on recommendation of a Selection Committee consisting of:

- President of the State Commission – Chairman
- Secretary, Law Department – Member
- Secretary in charge of Consumer Affairs Department – Member

If President is absent:

The State Government asks the Chief Justice of the High Court to nominate a High Court Judge to act as Chairman.

f. Benches of State Commission-

Jurisdiction and powers may be exercised by Benches.

A Bench may be constituted by the President with one or more members.

Difference of Opinion:

- If majority exists → majority view prevails
- If equally divided → matter referred to President
- President may hear it himself or refer to other member(s);
- Final decision is based on majority of those who heard the case.

g. Salary and allowances- As prescribed by the State Government.

h. Tenure of office-

- Term: 5 years
- Maximum age: 67 years
- Re-appointment: Allowed for another term of 5 years (subject to age limit and qualifications).

Resignation-

- A member may resign by writing to the State Government.
 - On acceptance post becomes vacant must be filled as per Sec. 16(1) and (1A).
- i. Continuation of Earlier Appointments- Persons appointed as President or Member before the 2002 Amendment continue to hold office until completion of their original term.
- j. **Jurisdiction of the State Commission-**
- Original;
 - Appellate;
 - Revisional

3. National Commission/Forum-

a. Composition

President

- A person who is or has been a Judge of the Supreme Court.
- Appointed by the Central Government.
- Appointment made only after consultation with the Chief Justice of India (CJI).

Members

- Not less than four, and not more than the number prescribed.
- One member must be a woman.

b. Qualifications for Members-

- Be not less than 35 years of age
- Hold a Bachelor's degree

- Be a person of ability, integrity and standing, having:
- Minimum 10 years' experience in economics, law, commerce, accountancy, industry, public affairs or administration.

c. Judicial Background Limit

- Not more than 50% of members shall be from a judicial background.
- Explanation – Judicial Background
- A member has a judicial background if:
- He has 10 years' experience as a presiding officer of:
 - A district-level court, or
 - Any tribunal at equivalent level.

d. Disqualifications for Appointment-

- Has been convicted for an offence involving moral turpitude
- Is an undischarged insolvent
- Is of unsound mind and so declared by a court
- Has been removed or dismissed from Government service or Government-owned corporation
- Has a financial or other interest affecting impartiality
- Suffers from any other prescribed disqualification

e. Benches of the National Commission

- **Exercise of powers-** The National Commission may exercise its jurisdiction through Benches.
- **Constitution of Benches-** President may constitute a Bench with one or more members.
- **Difference of Opinion**

If members differ:

- If majority exists → majority opinion prevails
- If equally divided → refer to President
- **President may:**
 - Hear the matter himself, or
 - Refer to one or more other members
 - Final decision is based on majority of those who heard the matter, including original members.

f. Salary and allowances- Service conditions are prescribed by the Central Government.

g. Tenure of Office-

- Term: 5 years
- Maximum age: 70 years
- **Reappointment-** Eligible for one more term of 5 years (subject to qualifications and age limit).
- President also eligible for reappointment.

h. Resignation

A member may resign by writing to the Central Government.

Upon acceptance, the post becomes vacant and must be filled according to Sec. 20(1) and (1A).

i. Continuation of Pre-2002 Appointees- Persons appointed before the 2002 Amendment continue in office until completion of their original term.

j. Jurisdiction of the national commission-

- Original;
- Appellate;
- Revisional

LIMITATION FOR FILING COMPLAINT

Section 24A- Limitation period

1. General Limitation Period (Sub-section 1)

- The complaint must be filed within 2 years from the date on which the cause of action arises.
- Cause of action means the date on which the defect, deficiency, unfair trade practice, or unfair service is first known to the complainant.
- If the complaint is filed after 2 years, the Consumer Forum cannot admit it.

2. Condonation of Delay

Even if the complaint is filed after 2 years, the Forum may still entertain it if the complainant shows “sufficient cause” for the delay.

Examples of sufficient cause:

- Serious illness
- Delay in obtaining documents
- Wrong legal advice
- Circumstances beyond the complainant’s control

However, the Forum must record written reasons for condoning the delay.

PENALTIES

1. Penalty for Non-Compliance of Orders-

If any trader, person against whom a complaint is made, or even the complainant fails to obey an order passed by:

- District Forum, or
- State Commission, or
- National Commission,

then such person is liable for criminal punishment of imprisonment:

- Minimum: 1 month
- Maximum: 3 years

Or fine:

- Minimum: ₹2,000
- Maximum: ₹10,000

Or both imprisonment and fine.

2. Forums have powers of a judicial magistrate first class-

- The District Forum, State Commission, and National Commission have the same powers as a Judicial Magistrate First Class for trial of offences under the Act.
- Once these powers are conferred, they are deemed to be Judicial Magistrates First Class for the purposes of the BNSS Act.

MOTOR VEHICLE ACT 1988

Introduction-

The Motor Vehicles Act, 1988 is the principal legislation in India that governs all matters related to motor vehicles, including their registration, licensing, traffic regulation, permits, insurance, and penalties for violations. It came into force on 1 July 1989, replacing the earlier Motor Vehicles Act, 1939, to meet the growing needs of modern road transport.

The Act was enacted because of the rapid increase in motor vehicles, rise in road accidents, and the need for a more organized system of road safety and traffic control. It provides a comprehensive legal framework to regulate road transport, promote safety, reduce accidents, and protect the rights of road users.

Salient features of motor vehicle Act 1988

1. Comprehensive regulation of motor vehicles-

The Act provides a complete legal framework for regulating all types of motor vehicles, including private, commercial, and transport vehicles.

2. Licensing of drivers and conductors-

- Mandatory driver's license for operating any motor vehicle.
- Provisions for issuing learner's license, driving license, and conductor license.
- Grounds for suspension or revocation of licenses.

3. Registration of motor vehicles

- Every motor vehicle must be registered before being driven in public places.

- Provides rules for temporary, permanent, and duplicate registration.
- Assigns unique registration numbers.

4. Control of transport vehicles through permits

- Transport vehicles (goods and passenger vehicles) require permits.
- State Transport Authorities regulate routes, timings, and conditions for permits.

5. Traffic regulation and road safety

- Lays down rules of the road.
- Provides for speed limits, traffic signals, overtaking rules, helmet and seat-belt requirements, etc.

6. Mandatory insurance

- Compulsory third-party insurance for all motor vehicles.
- Protects victims of road accidents and ensures compensation.

7. Liability in motor accidents

- Provides no-fault liability under Sections 140 and 161.
- Ensures quick compensation to accident victims without proving negligence.

8. Offences and penalties

Prescribes penalties for violations such as:

- Driving without license,
- Rash driving,
- Overloading,
- Drunken driving,

- Hit-and-run cases, etc.

Penalties enhanced by Motor Vehicles (Amendment) Act, 2019.

9. Special provisions for road safety

- Establishment of National Road Safety Board (2019 amendment).
- Emphasis on reducing accidents and improving vehicle standards.

10. Recall of defective vehicles

Manufacturers can be ordered to recall vehicles that have defects affecting safety or the environment (2019 amendment).

11. Electronic enforcement

Acceptance of electronic documents (DL, RC in DigiLocker), CCTV-based penalties, and digital monitoring.

LIABILITY WITHOUT FAULT IN CERTAIN CASES

Section 140: Liability to pay compensation in certain cases on the principle of no fault-

1. Liability of vehicle owner-

To pay the compensation to the claimant for death or permanent disablement arising out of the motor vehicle.

2. Fixed amount of compensation-

50,000/- for death,

25000/- for permanent disablement.

3. No Need to Plead or Prove Fault-

The claimant does not need to prove:

- Wrongful act

- Negligence
- Default

of the vehicle owner or driver.

- 4. Additional Compensation Under Other Laws -** Paying compensation under Section 140 does not prevent the claimant from getting compensation under any other law (e.g., Section 166 fault-based claim). But the amount received under Section 140 must be deducted from the final compensation.

Section 141: Provisions as to other right to claim compensation for death or permanent disablement-

1. No-fault claim is in addition to fault-based claim-

A victim (or legal representative) can claim both:

- No-fault compensation under Section 140 and
- Fault-based compensation (i.e., proving negligence) under other provisions of the Act or any other law.

Exception:

This right is not available if the claimant chooses compensation under Section 163A (special structured formula).

- Section 163A bars a Section 140 claim because both are “no-fault” schemes.

Thus, Section 141 ensures that Section 140 compensation is additional, except when Section 163A is chosen.

2. Section 140 claim must be decided first-

Then Section 140 compensation must be decided and paid first.

Object:

To provide immediate relief to victims before deciding the detailed fault-based claim.

3. Adjustment Between No-fault and Fault-based Compensation-

The owner pays full Section 140 compensation first.

Then pays only the difference between fault-based compensation and Section 140 amount.

Example:

- No-fault: ₹50,000
- Fault-based: ₹4,00,000
- Owner pays: ₹50,000 + (4,00,000 – 50,000) = ₹3,50,000 total.

Section 142: Permanent disablement-

For the purpose of no-fault liability under Section 140, a person shall be deemed to have suffered permanent disablement if the accident results in any of the injuries specified in this section.

Types of Injuries Constituting Permanent Disablement

(a) Loss of sensory organs or limbs

- Permanent disablement includes:
- Permanent loss of sight of either eye, or
- Permanent loss of hearing of either ear, or
- Loss (privation) of any limb (member), or
- Loss of any joint.

(b) Loss of functional capacity

- Destruction or
- Permanent impairment of the powers or functioning of any member or joint, even if the limb remains physically present.

Example: Paralysis of a hand or leg.

(c) Permanent disfiguration

- Permanent disfiguration of the head or face, affecting physical appearance.

Example: Severe facial burns or scars.

Section 143: Applicability of Chapter to certain claims under Act 8 of 1923-

The provisions relating to no-fault liability (Chapter X) of the Motor Vehicles Act, 1988 also apply to claims for compensation made under the Workmen's Compensation Act, 1923 (now called the Employees' Compensation Act).

An employee (workman) injured or killed in a motor vehicle accident during the course of employment, can get immediate, fixed compensation without proving negligence. The provision ensures speedy relief to workmen or their dependents.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

Section 145: Definitions

a. Authorised insurer-

Under Section 145(a), "authorised insurer" means:

- An insurer who is carrying on general insurance business in India
- Under the General Insurance Business (Nationalisation) Act, 1972, and
- Includes any Government insurance fund authorised to do general insurance business under that Act.

b. Certificate of insurance-

Certificate of insurance means:

- A certificate issued by an authorized insurer
- In pursuance of Section 147(3) of the Motor Vehicles Act, 1988
- And includes a cover note complying with prescribed requirements
- Where more than one certificate is issued in connection with a policy, or
- Where a copy of a certificate is issued,

all such certificates or copies shall be treated as a certificate of insurance.

c. Liability-

Term wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140.

d. “Policy of insurance” includes “certificate of insurance”

e. “Property” includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and mile- stones;

f. Reciprocating country- Any country which the Central Government, on the basis of reciprocity (mutual recognition between two countries), notifies in the Official Gazette as a reciprocating country for the purposes of this Chapter of the Motor Vehicles Act, 1988.

g. Third party- Includes the Government.

Section 146: Necessity for insurance against third party risk-

1. Mandatory Third-Party Insurance- No person shall use or allow any other person to use a motor vehicle in a public place unless there is in force a valid insurance policy.

2. Exemption for Government Vehicles- Sub-section (1) does not apply to vehicles:

- Owned by the Central or State Government
- Used for non-commercial Government purposes.

3. Power of Government to Grant Exemptions

- The appropriate Government may exempt vehicles owned by:
- Government (used for commercial purposes)
- Local Authorities
- State Transport Undertakings

Object of the Section

The primary object of Section 146 is to protect third parties who suffer death, injury or property damage due to motor vehicle accidents by ensuring that every motor vehicle is covered by compulsory insurance.

Section 147: Requirements of policies and limits of liability-

1. Requirements of Policies and Limits of Liability-

- a. The policy must be issued by an authorised insurer as defined under Section 145.
- b. The policy must insure the specified person(s) against.
 - Third-Party Risk- Death or bodily injury to any person, including-
 - Owner of goods or authorized representative carried in a goods vehicle
 - Damage to third-party property

-Liability must arise from use of the vehicle in a public place

- Passenger Risk- Death or bodily injury to passengers of a public service vehicle

Exclusions from Mandatory Coverage- A policy is not required to cover:

i. Employee Liability (Except Workmen's Compensation)- Death or injury of an employee during employment, except liability under the Workmen's Compensation Act, 1923, for:

- Driver
- Conductor or ticket examiner (public service vehicle)
- Employee carried in a goods vehicle

(ii) Contractual Liability

Any liability arising purely out of contract need not be covered.

2. Limits of Liability-

(a) Personal Injury or Death- Unlimited liability for death or bodily injury.

(b) Property Damage- Limited to ₹6,000 for damage to third-party property.

3. Certificate of Insurance

Policy has no legal effect unless:

- A certificate of insurance is issued
- In the prescribed form and particulars

4. Cover note obligation

Where a cover note is not followed by an insurance policy, the insurer must inform the registering authority within seven days of the expiry of the cover note as per Section 147(4) of the Motor Vehicles Act, 1988.

5. Duty of Insurer to Indemnify

Insurer must indemnify the insured:

- Notwithstanding anything contained in any other law,
- For all liabilities covered by the policy.

Section 148: Validity of policies of insurance issued in reciprocating countries-

An insurance policy issued in a reciprocating country shall be valid in India for the agreed route or area, notwithstanding Section 147, if it complies with the insurance law of that country.

Conditions:

A foreign insurance policy shall be valid in India if:

- Reciprocal Arrangement Exists- There is an arrangement between India and a reciprocating country.
- Vehicle Registration- The motor vehicle is registered in the reciprocating country.
- Operation Area- The vehicle operates on:
A route, or
Within an area common to both countries.
- Valid Foreign Insurance Policy- A policy of insurance is in force in the reciprocating country, and it complies with the insurance law of that country.

Section 149: Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

1. Statutory Duty to Pay Compensation

When a certificate of insurance has been issued under Section 147(3), and a judgment or award is passed against the insured person for-

- Third-party liability under Section 147, or
- No-fault compensation under Section 163A

Insurer must pay compensation to the claimant even if-

- The policy is cancelled, or
- The insurer is otherwise entitled to avoid the policy

Insurer pays:

- Compensation amount (up to sum assured)
- Costs
- Interest

Insurer is treated as if he were the judgment debtor.

2. Limited defences available to insurer-

The insurer is not liable unless:

- He had prior notice of the proceedings through:
 - Court, or
 - Motor Accident Claims Tribunal

Once notice is given, the insurer can defend only on the following grounds-

(a) Breach of Specified Policy Conditions

(i) Improper use of vehicle-

- Used for hire/reward without permit
- Racing or speed testing
- Use not permitted by permit
- Motorcycle used without side-car

(ii) Driving license violations

- Driver not duly licensed

- Driver disqualified from holding license
- Driving by unauthorized person

(iii) War-related risks- Injury due to war, civil war, riot or civil commotion

(b) Policy Obtained by Fraud-

- Non-disclosure of material facts, or
- False representation of material particulars

3. Foreign Judgments (Reciprocating Countries)-

Judgments from reciprocating countries are enforceable in India

- Insurer must satisfy such judgments:
- If insurer had notice and was allowed to defend under foreign law, treated as if passed by an Indian court.

4. Restrictive Policy Conditions Ineffective-

Any policy condition restricting liability (other than those allowed under Section 149(2)) shall be void as against third parties. However, insurer can recover the amount from the insured later.

5. Right of Recovery

If insurer pays more than policy liability, he can recover excess amount from the insured person.

6. Bar on Avoidance of Liability-

Once notice is given:

- Insurer cannot avoid liability except on grounds allowed under section 149(2), or
- Corresponding law of reciprocating country

Section 150: Rights of third parties against insurers on insolvency of the insured-

Section 150 provides that where an insured person becomes insolvent, is wound up, or dies under insolvency proceedings, all rights under the insurance policy relating to third-party liability are statutorily transferred to and vest in the third party. Any policy condition avoiding liability on such events is void. The insurer remains liable to the same extent as to the insured, subject to excess recovery rules.

Object of this provision is to protect third-party victims when the insured becomes insolvent, bankrupt, or is wound up, by allowing the third party to directly enforce insurance rights against the insurer.

Section 151: Duty to give information as to insurance-

Section 151 imposes a statutory duty on persons against whom third-party motor accident claims are made, as well as insolvency representatives and insurers, to disclose insurance particulars. This enables third parties to enforce rights under Sections 149 and 150. The duty includes inspection and copying of documents, and any policy condition restricting disclosure is void.

Object of Section 151 is to ensure that third-party claimants can obtain complete insurance details necessary to:

- Identify the insurer,
- Enforce statutory rights under Sections 149 and 150, and
- Prevent concealment of insurance information by the insured or insurer.

Section 152: Settlement between insurers and insured persons-

Section 152 prevents insurers and insured persons from settling third-party claims without involving the third party and protects third-party rights during insolvency or winding-up.

Purpose of Section 152 is to protect third-party victims of motor accidents by:

- Preventing secret or collusive settlements between insurer and insured, and
- Ensuring third-party rights are not defeated by private agreements.

Section 153: Saving in respect of sections 150, 151 and 152-

If a person is both:

- an insured under one policy, and
- an insurer under another policy

then Sections 150–152 apply only to his liability as an insured, not as an insurer.

Object

Prevents confusion or misuse of third-party protection provisions against insurers acting in their professional capacity.

Section 154: Insolvency of insured persons not to affect liability of insured or claims by third parties-

Once a certificate of insurance is issued, the insolvency, death, or winding up of the insured shall not affect his liability towards third parties under Section 147(1)(b). The provision safeguards third-party claims and ensures continuity of liability. It further preserves the rights of third parties against insurers under Sections 150, 151 and 152.

Section 155: Effect of death on certain causes of action-

Death of the insured after the accident does not bar the survival of the cause of action or the right to claim compensation.

Section 156: Effect of certificate of insurance-

If the policy is issued but its terms are less favorable than those mentioned in the certificate as against third parties, the policy shall be deemed to contain the terms stated in the certificate, not the restrictive policy terms.

Section 157: Transfer of certificate of insurance-

On transfer of a motor vehicle, the certificate of insurance and policy are deemed to be transferred to the transferee from the date of transfer, and the transferee must apply within 14 days to the insurer for endorsement of such transfer.

Object of the Provision

- Continuous insurance coverage
- Protection of third parties
- Avoidance of disputes due to change of ownership

Section 158: Production of certain certificates, license and permit in certain cases-

This provision mandates that a driver must produce essential documents such as the driving licence, registration certificate, insurance certificate, and, in the case of transport vehicles, fitness certificate and permit when demanded by an authorised police officer. In accidents causing death or injury, these documents may be produced later at the police station, with a limited grace period for insurance proof. It also obliges the vehicle owner to furnish necessary information and requires police to forward accident reports to the Claims Tribunal and insurer to ensure enforcement and compensation.

Section 160: Duty to furnish particulars of vehicle involved in accident- This section empowers the State Government to make rules requiring a motor vehicle owner, while applying for authority to use the vehicle in a public place (such as payment of tax), to produce prescribed proof that a valid insurance policy will be in force when such authority becomes effective, or that the vehicle is exempt from the insurance requirement under section 146.

Section 161: Special provisions as to compensation in case of hit and run motor accident-

This provision grants fixed compensation in cases of hit and run motor accidents, where the offending vehicle cannot be identified, by obligating insurance authorities to pay compensation under the statutory scheme. It provides ₹25,000 for death and ₹12,500 for grievous hurt, and claims are to be filed following the procedure prescribed under section 166 of the Motor Vehicles Act.

Section 162: Refund in certain cases of compensation paid under section 161-

This provision ensures that compensation paid for hit and run accidents under section 161 is not duplicated. If compensation for the same death or grievous hurt is later awarded under any other law or provision, an amount equal to that already paid under section 161 must be refunded to the insurer. It also requires courts or tribunals to verify prior payment or pending claims under section 161 and to issue appropriate directions for refund or information to the insurer.

Section 163: Scheme for payment of compensation in case of hit and run motor accidents- This section empowers the Central Government to frame a scheme for payment of compensation in hit and run motor accident cases, detailing the procedure, authorities, time limits, and administration by the General Insurance Corporation. The scheme may prescribe penalties for contravention, allow delegation of powers with approval, and operate retrospectively from the establishment of the fund, provided it does not adversely affect any person's interests.

Section 163A: Special provisions as to payment of compensation on structured formula basis - This section introduces no-fault liability compensation by making the vehicle owner or authorised insurer liable to pay compensation for death or permanent disablement on a structured formula basis as provided in the Second Schedule. The claimant need not prove negligence or fault, and the Central Government may revise the compensation amounts by amending the Second Schedule to reflect changes in the cost of living.

Section 163B: Option to file claim in certain cases-Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both.

Section 164: Power of Central Government to make rules-

This section empowers the Central Government to make rules to effectively implement the provisions of this Chapter, except matters covered under section 159. It authorises rule-making regarding insurance forms, issue and custody of certificates, maintenance of records by insurers, exemptions, information sharing, applicability to foreign or temporary vehicles, procedural requirements, and all other prescribed matters necessary for enforcement.

CLAIMS TRIBUNALS

Section 165: Claims Tribunals-

This section empowers the State Government to constitute one or more Motor Accidents Claims Tribunals (Claims Tribunal) to adjudicate compensation claims for death, bodily injury, or third-party property damage arising from motor vehicle accidents, including claims under sections 140 and 163A. Each tribunal may have multiple members, with one as Chairman, and members must be or have been High Court or District Judges (or qualified for such positions). The State Government may also regulate the distribution of cases when multiple tribunals exist in the same area.

Section 166: Application for compensation- Section 166 allows injured persons, property owners, legal representatives, or authorised agents to apply for compensation for motor accidents. Applications can be made to the Claims Tribunal in the area of the accident, claimant, or defendant. If not all legal representatives join, they are impleaded as respondents. Accident reports sent by the police under section 158(6) are treated as applications automatically.

Section 158: Award of the Claims Tribunal-

- On receiving an application under Section 166, the Claims Tribunal gives notice to the parties (including the insurer) and holds an inquiry.
- It determines a just compensation, specifying the amount and the person(s) liable to pay (insurer, owner, driver, or any combination).
- Copies of the award must be delivered to the parties within 15 days.
- The liable party must deposit the awarded amount within 30 days as directed by the Tribunal.

Section 169: Procedure and powers of Claims Tribunals-

- The Claims Tribunal may follow a summary procedure while holding inquiries under section 168, as per rules.
- It has all powers of a Civil Court to take evidence on oath, enforce attendance of witnesses, and compel discovery or production of documents.
- It is deemed a Civil Court for the purposes of section 195 and Chapter XXVI of the Criminal Procedure Code.
- The Tribunal may appoint experts with special knowledge to assist in inquiries for adjudicating claims.

OFFENCES, PENALTIES AND PROCEDURE

Section 177-General provision for punishment of offences-

anyone who contravenes the Act, rules, or notifications without a specified penalty is liable to a fine of up to ₹100 for the first offence and up to ₹300 for subsequent offences.

Section 178: Penalty for travelling without pass or ticket and for dereliction of duty on the part of conductor and refusal to ply contract carriage, etc.-

- Travelling in a stage carriage without a valid pass or ticket, or refusing to present it on demand, attracts a fine of up to ₹500.
- Conductors or drivers who wilfully or negligently fail to collect fare, issue or check tickets properly are liable to a fine of up to ₹500.
- Holders of a permit or drivers of contract carriages who refuse to ply or carry passengers are punishable with a fine of ₹50 for two/three-wheeled vehicles and ₹200 for other vehicles.

Section 179: Disobedience of orders, obstruction and refusal of information-

- Any person who willfully disobeys lawful directions or obstructs authorities under the Act is liable to a fine up to ₹500 if no other penalty is specified.
- Anyone who withholds required information or provides false/misleading information may be punished with imprisonment up to one month, or a fine up to ₹500, or both.

Section 180: Allowing unauthorised persons to drive Vehicles-

If the owner or person in charge of a vehicle allows someone who does not meet the requirements of sections 3 or 4 (valid driving license) to drive, they can be punished with imprisonment up to 3 months, or a fine up to ₹1,000, or both.

Section 181: Driving vehicles in contravention of section 3 or section 4-

Any person who drives a motor vehicle without complying with the requirements of section 3 or 4 (i.e., without a valid driving license) can be punished with imprisonment up to 3 months, or a fine up to ₹500, or both.

Section 182: Offences relating to licenses-

a. Driving License Offences-

- A person disqualified under the Act who drives, applies for, or obtains a driving license without disclosing previous endorsements is punishable with imprisonment up to 3 months, or fine up to ₹500, or both.

- Any license obtained in violation is invalid.
- b. Conductor's License Offences-
- A disqualified person who acts as a conductor, or applies for/obtains a conductor's license without proper disclosure, is punishable with imprisonment up to 1 month, or fine up to ₹100, or both.
 - Any conductor's license obtained unlawfully is invalid.

Section 182A: Punishment for offences relating to construction and maintenance of vehicles-

Any person who violates section 109(3) (requirements for proper construction, maintenance, or safety standards of a vehicle) is punishable with a fine of ₹5,000 for any subsequent offence.

Section 183: Driving at excessive speed, etc-

- Individual Offence: Driving above the speed limits under section 112 attracts a fine up to ₹400, or ₹1,000 for repeat offences.
- Employer/Controller Liability: Causing a person under one's control to exceed speed limits is punishable with a fine up to ₹300, or ₹500 for repeat offences.
- Evidence Requirement: Conviction cannot rely solely on a witness's opinion unless based on mechanical device measurement.
- Timetable Direction: If a person (like an employer or manager) publishes a timetable or gives directions requiring a journey to be completed in a time that makes it impracticable to comply with speed limits, it is considered prima facie evidence that they have committed an offence under the section. This makes the employer or controller legally responsible for encouraging or causing speeding.

Section 184: Driving dangerously-

Section 184 punishes dangerous driving with up to 6 months' imprisonment or ₹1,000 fine for a first offence, and up to 2 years' imprisonment or ₹2,000 fine for repeat offences within three years.

Section 185: Driving by a drunken person or by a person under the influence of drugs-

Any person who drives or attempts to drive a motor vehicle with blood alcohol exceeding 30 mg/100 ml or under the influence of drugs impairing control commits an offence. First offence: imprisonment up to 6 months or fine up to ₹2,000 or both. Second/subsequent offence within 3 years: imprisonment up to 2 years or fine up to ₹3,000 or both. Drugs notified by the Central Government are deemed to impair proper control.

Section 186: Driving when mentally or physically unfit to drive-

Whoever knowingly drives a motor vehicle in a public place while suffering from a disease or disability that makes driving dangerous to the public commits an offence. Punishment: for the first offence, fine up to ₹200; for second or subsequent offence, fine up to ₹500.

Section 187: Punishment for offences relating to accident-

Failure to comply with duties under sections 132(1)(c), 133 or 134 (relating to stopping, providing information and assistance after an accident) is punishable. First offence: imprisonment up to 3 months or fine up to ₹500 or both. Subsequent offence: imprisonment up to 6 months or fine up to ₹1,000 or both.

Section 188: Punishment for abetment of certain offences-

Whoever abets the commission of an offence under sections 184, 185 or 186 is liable to the same punishment as provided for the offence abetted.

Section 189: Racing and trails of speed-

Whoever permits or participates in a race or trial of speed between motor vehicles in a public place without written consent of the State Government commits an offence, punishable with imprisonment up to 6 months or fine up to ₹500, or both.

Section 190: Using vehicle in unsafe condition-

1. **Defective Vehicle-**Driving or allowing a vehicle/trailer with defect that endangers safety is punishable with fine up to ₹250; if such defect causes an accident resulting in injury or property damage, imprisonment up to 3 months or fine up to ₹1,000 or both.
2. **Violation of safety, noise or pollution standards-** First offence: fine ₹1,000; second or subsequent offence: fine ₹2,000.
3. **Carriage of dangerous or hazardous goods in violation of law:** First offence: fine up to ₹3,000 or imprisonment up to 1 year or both; Second or subsequent offence: fine up to ₹5,000 or imprisonment up to 3 years or both.

Section 191: Sale of vehicle in or alteration of vehicle to condition contravening this Act-

An importer or dealer who sells, delivers, offers to sell/deliver, or alters a motor vehicle or trailer in a condition that violates Chapter VII or related rules for use in a public place commits an offence. Punishment: fine up to ₹500.

Exception: No conviction if it is proved that there was reasonable belief the vehicle would not be used in a public place until made lawful.

Section 192: Using vehicle without registration-

1. **Contravention of Section 39 (unregistered vehicle):**

First offence: fine ₹2,000–₹5,000.

Second or subsequent offence: imprisonment up to 1 year or fine ₹5,000–₹10,000 or both.

2. Exception (emergency use):

Use in emergencies for transport of sick/injured persons, food, relief materials or medical supplies is exempt, provided it is reported to the RTA within 7 days.

3. Appellate power-

The appellate court may set aside or vary any order related to punishment, even if no separate appeal lies against the conviction.

Section 192A: Using vehicle without permit-

1. Without permit / breach of permit conditions (Sec. 66):

First offence: fine ₹2,000–₹5,000.

Subsequent offence: imprisonment 3 months–1 year or fine ₹5,000–₹10,000 or both.

2. Exception (emergency use):

Use for sick/injured persons, vehicle repair, relief materials, food, or medical supplies is exempt, if reported to the RTA within 7 days.

3. Appellate power:

The appellate court may set aside or vary punishment orders, even where no separate appeal lies against the conviction.

Section 193: Punishment of agents and canvassers without proper authority-

Whoever acts as an agent or canvasser in violation of section 93 or related rules commits an offence. First offence: fine up to ₹1,000. Second or subsequent offence: imprisonment up to 6 months or fine up to ₹2,000, or both.

Section 194: Driving vehicle exceeding permissible weight-

1. Overloading (Secs. 113, 114, 115)-

Driving or allowing a vehicle to be driven with excess load is punishable with minimum fine ₹2,000 + ₹1,000 per ton of excess load, and liability to pay off-loading charges.

2. Refusal to weigh / removal of load before weighing:

If the driver refuses to stop for weighing or removes load before weighing when directed by an authorized officer, punishment is fine up to ₹3,000.

Section 195: Imposition of minimum fine under certain circumstances-

If a person, after conviction, commits a similar offence within 3 years, the court shall not impose a fine less than one-fourth of the maximum fine prescribed, unless reasons are recorded in writing.

This does not limit the court's power to award imprisonment up to the maximum prescribed for that offence.

Section 196: Driving uninsured vehicle-

Driving or allowing a motor vehicle to be driven without valid insurance in violation of section 146 is punishable with imprisonment up to 3 months or fine up to ₹1,000, or both.

Section 197: Taking vehicle without authority-

- 1. Unauthorized taking and driving-** Taking and driving a motor vehicle without owner's consent or lawful authority is punishable with imprisonment up to 3 months or fine up to ₹500, or both.

(No conviction if acted under a reasonable belief of lawful authority or presumed consent.)

- 2. Forcible seizure or control-** Unlawfully seizing or controlling a vehicle by force, threat or intimidation is punishable with imprisonment up to 3 months or fine up to ₹500, or both.

- 3. Attempt or Abetment-**Attempting or abetting either act is treated as the offence itself and punished accordingly.

Section 198: Unauthorized interference with vehicle-

Entering or mounting a stationary motor vehicle, or tampering with brakes or any part of its mechanism, without lawful authority or reasonable excuse, is punishable with fine up to ₹100.

Section 199: Offences by companies-

1. Liability of company and officers:

If a company commits an offence, both the company and every person in charge and responsible for its business are deemed guilty.

(Exception: No liability if the person proves offence occurred without knowledge or all due diligence was exercised to prevent it.)

- 2. Consent, connivance, or neglect-** If the offence occurred with consent, connivance, or due to neglect of any director, manager, secretary, or officer, that person is also liable.

Explanation:

Company = body corporate, firm, or association of individuals.

Director (for a firm) = partner in the firm.

Section 200: Composition of certain offences-

1. Compounding offences

Certain offences under Sections 177, 178, 179, 180, 181, 182, 183(1)&(2), 184, 186, 189, 190(2), 191, 192, 194, 196, 198 may be compounded (settled by paying a specified amount) before or after prosecution by officers/authorities and amounts notified by the State Government.

2. Effect of compounding-

Once an offence is compounded, the offender is discharged if in custody, and no further proceedings are taken against them for that offence.

Section 201: Penalty for causing obstruction to free flow of traffic-

1. Disabled vehicle causing obstruction:

Keeping a disabled vehicle in a public place impeding traffic attracts a penalty up to ₹50 per hour while it remains there.

Exception: For vehicles involved in accidents, penalty starts after completion of inspection formalities.

2. Towing by government agency:

If the vehicle is removed by a government agency, towing charges are recoverable from the owner or person in charge.

3. Recovery of penalties/charges:

Penalties or towing charges are recovered by officers/authorities authorized by the State Government via notification.

Section 202: Power to arrest without warrant-

1. Arrest without warrant:

A police officer in uniform may arrest without warrant any person who commits an offence under Sections 184, 185, or 197 in his presence.

Special provision for Section 185 (driving under influence): The arrested person must undergo a medical examination within 2 hours; otherwise, they must be released.

2. Refusal to give name/address:

An officer may also arrest without warrant anyone who refuses to provide name and address.

3. Temporary disposal of vehicle:

The officer may take or arrange any necessary steps for temporary disposal of the vehicle if required.

Section 203: Breath tests-

1. Authority to require breath test:

A police officer in uniform or an authorized Motor Vehicles Department officer may require any person driving or attempting to drive to provide breath specimens if there is reasonable cause to suspect an offence under Section 185 (drunk/drugged driving).

Should be done as soon as reasonably practicable after the offence.

- 2. Accidents:** If a motor vehicle is involved in an accident and the driver is suspected of alcohol/drug influence, the officer may require a breath specimen:
Indoor hospital patient: at the hospital, with doctor notified or if no objection.
Others: at or near the place of requirement, or at a police station.

3. Arrest based on breath test:

If the breath test indicates alcohol, the officer may arrest without warrant, except for indoor hospital patients.

Refusal or failure to provide a specimen also allows arrest without warrant, except at a hospital.

4. Opportunity at police station:

Arrested persons shall be given a chance to provide a breath specimen at the police station.

- 5. Admissibility:** Results of a breath test are admissible in evidence.

Explanation: A breath test is done using a device approved by the Central Government to indicate the presence of alcohol in blood.

Section 204: Laboratory test-

1. Authority to require blood sample:

A person arrested under Section 203 may be required by a police officer to provide a blood specimen for a laboratory test if:

- (a) the breath test indicates alcohol, or
- (b) the person refuses, omits, or fails to provide a breath specimen.

Special provision for females:

If the person is female and the medical practitioner is male, the specimen must be taken in the presence of a female (medical practitioner or not)..

2. Indoor hospital patients:

A police officer may require a blood specimen at the hospital if:

Breath test shows alcohol, or Person refuses/fails to provide breath specimen and officer has reasonable cause to suspect alcohol.

Exception: Specimen shall not be taken if the treating medical practitioner objects on grounds it would prejudice proper care or treatment.

3. Admissibility:

Results of the laboratory test are admissible in evidence.

Explanation:

A laboratory test means analysis of a blood specimen at a laboratory established, maintained, or recognized by the Central or State Government.

Section 205: Presumption of unfitness to drive-

If a person suspected of an offence under Section 185 (drunk/drugged driving) refuses, omits, or fails to provide a breath or blood specimen when requested by a

police officer, it may be presumed, unless reasonable cause is shown, that this supports the prosecution's evidence or rebuts the defense regarding the person's condition at that time.

Section 206: Power of police officer to impound document-

1. Seizure of false documents:

A police officer or authorized person may seize any vehicle identification mark, license, permit, registration, insurance, or other document if believed to be false under Section 464 IPC, and require the driver or owner to account for it.

2. Seizure to prevent absconding:

If a driver charged under this Act may abscond or avoid summons, the officer may seize the license and forward it to the court. The court returns it upon the driver's first appearance in exchange for a temporary acknowledgment.

3. Temporary acknowledgment:

The acknowledgment authorizes the holder to drive until the license is returned or until a specified date, whichever is earlier.

If the license cannot be returned on time for reasons beyond the holder's control, a magistrate or authorized officer may extend the authorization to a new date.

Section 207: Power to detain vehicles used without certificate of registration permit, etc-

1. Seizure and detention:

A police officer or authorized person may seize and detain a vehicle if it is:

- Used in contravention of Sections 3, 4, 39, or
- Driven without a permit under Section 66 or violating permit conditions.
- Officer may take steps for temporary safe custody.

Alternative:

Instead of seizing the vehicle, the officer may seize the certificate of registration and issue an acknowledgment.

2. Release of vehicle:

The owner or person in charge may apply to the transport authority or authorized officer with relevant documents.

After verification, the vehicle may be released subject to conditions deemed appropriate.

Section 208: Summary disposal of cases-

1. Court procedure for offences (non-specified by Central Government):

Court may allow the accused to appear in person or by pleader, or Plead guilty before the hearing and remit a sum not exceeding the maximum fine, using a money order. For certain offences, the driving license must be forwarded with the plea.

2. Specified offences (Central Government rules):

If the accused pleads guilty and forwards the driving license, the court makes an endorsement of conviction on the license.

3. Effect of summary disposal:

No further proceedings shall be taken, and the accused shall not be disqualified from holding or obtaining a license by reason of having pleaded guilty.

Section 209: Restriction on conviction-

A person charged under Section 183 or 184 cannot be punished unless:

- They were warned at the time that they could be prosecuted, or

- They received a notice within 14 days telling them what the offence was, and when and where it happened.

Section 210: Courts to send intimation about conviction-

Whenever a person with a driving license is convicted of an offence under this Act (or using a vehicle to commit an offence), the court must inform:

- The authority that issued the license, and
- The authority that last renewed the license.

The intimation must include: name and address of the license holder, license number, issue and renewal dates, nature of the offence, punishment awarded, and any other prescribed details.