26

TORT LAW

*B C Nirmal**

I INTRODUCTION

MUCH INK has been spilt in attempts to define tort with only limited success; at least for the students new to the subject.[1] It is generally recognized that it is not possible to frame any precise or scientific definition of a tort.[2] Winfield has made a critical examination of many possible or current definitions and the one suggested by him is as follows:[3]

> Tortious liability arises from the breach of the duty primarily fixed by the law, such duty is towards person generally and its breach is redressible by an action for unliquidated damages.

This is an informative definition and perhaps supplied a good working rule in many cases but it cannot claim to be precise.[4]At the risk of repetition, we must again stress that in framing this definition Winfield was not seeking to indicate what conduct is and what is not sufficient to involve a person in tortious liability, but merely to distinguish tort from certain other branches of law.It cannot be accepted as entirely accurate but it has the merit of comparative brevity and contains elements which deserve continuing emphasis. It must also be emphasised that the number of cases in which it will be essential to classify the plaintiff's claim as a tort,contract,trust, *etc*., will be comparatively small.[5] It was Winfield's view that tortious duties exist by virtue of law itself and are not dependent upon the agreement of consent of the persons subjected to them.

---

* B.Sc. L.L.M. Ph.D. (Law), Professor of Law, Head & Dean, Faculty of Law, Banaras Hindu University, Varanasi-5, Editor-in-Chief, Banaras Law Journal, Vice President, Indian Society of International Law, New Delhi; Member, Editorial Board, Indian Journal of International Law; Member, Governing Body, Indian Law Institute, New Delhi. *dean.lawschool.bhu@gmail.com; arti_nirmal@rediffmail.com*. The author would like to acknowledge with thanks the research assistance provided by Rajnish Kumar Singh and Adesh Kumar, Assisstant Professors, Law School, BHU.

1 Jhon Murphs *Street on Torts*, 12th (edn.) Oxford university press.

2 *Romford Ice Factory* v. *Lister* [1955] 3 All ER 460 (CA).

3 Winfield, *Province of the Law of Tort* 92 (1931).

4 A Lakhsminath & M Sridhar, *RamaswamyIyer's The Law of Torts*, (10th edn. 2010).

5 W.V.H. Rogers, "Winfield & Jolowicz on Tort" Sweet & Maxwell, 15th edn., 1998.

A more recent definition offered by Peter Birks, suggests that a tort is [T]he breach of a legal duty which affects the interests of an individual to a degree which the law regards as sufficient to allow that individual to complain on his or her own account rather than as a representative of society as a whole.[6]

These definitions do little more than point towards one kind of remedy that is available in tort and towards certain distinction between tort and the other branches of law. Compensation is not tort's only concern, as monetary damages are not the only available remedy. Torts are also designed to protect fundamental human interests. Here interests may be defined as the kinds of claims, wants, or desires that people seek to satisfy in life and which a civilized society ought to recognize as theirs as of rights.[7] Certainly no claim in tort can succeed, however morally reprehensible the defendant's conduct, unless the court first recognizes some form of harm suffered by the claimant that involves a violation of an interest sufficient to confer on the claimant a legal right to protection of that interest.[8] Perhaps the best working explanation that can be offered at this stage is this: [9]

Tort is that branch of civil law relating to obligations imposed by operation of law on all natural and artificial persons. These obligations, owed by one person to another embody norms of the conduct that arise outside contract and unjust enrichment.

During the survey period, the apex court and the various high courts of India dealt with numerous important judicial pronouncements which not only contributes on different aspects of law of tort but develops the jurisprudence of law of tort. India, with an independent judiciary with judicial activism has contributed much to development of tort law. The development in the absolute liability rule in *M. C. Mehta case* and the Supreme Court's directions on multinational corporation liability is a vibrant example of change in the approach of Indian judiciary towards the law of tort. Recognition of governmental tort by employees of government, principles of legality of state, evolution of the tort of sexual harassment, grant of interim compensation to a rape victim and award of damages for violation of human rights under writ jurisdiction, including Rs. 20 crores exemplary damages in the *Uphaar Theatre Fire Tragedy case* by the Delhi High Court are very significant changes in the tort law of India.[10]

II NEGLIGENCE

It is not every careless act that a person may be held responsible for in law, nor even for every careless act that causes damage. He will only be liable in negligence if he is under a legal duty to take care. It may be objected that duty is not confined to the law of negligence and that it is an element in every tort, because there is a

6 Birks, (edn.) 'The Concept of a Civil Wrong in Owen, Philosophical Foundations of Tort Law 51(1995).

7 *Supra* note 1 at 4 and 5.

8 *Rogers* v. *RajendroDutt* (1860) 8 M.I.A 103and *Bradford Corporation* v. *Pickles* [1895] AC 587.

9 See Smith (2011) 31 *OJLS* 1.

10 *Supra* note 4.

legal duty not to commit assault or battery, not to commit defamation, not to commit nuisance and so forth. But all that duty signifies in these other torts is that you must not commit them: they have their own, detailed, internal rules which define the circumstances in which they are committed and duty adds nothing to those[11]. In the tort of negligence, breach of duty is the chief ingredient of the tort; in fact there is no other except damage to the plaintiff. Duty is the primary control device which allows the courts to keep liability for negligence within acceptable limit. It is essential to grasp from the start of any consideration of negligence law that it is not the case that anyone who suffers harm as a result of another's carelessness can sue. The tort of negligence requires more than 'heedless or careless conduct'.[12] The injured party must establish that the defendant owed him a duty to take reasonable care to protect him from the kind of the harm suffered, that he was in breach of that duty and that it was the defendant's breach of duty that caused the claimant's injury. In *Capro Industries Plc* v. *Dickman*[13] Lord Bridge opined that it is never sufficient to ask simply whether A owes B a duty of care. It is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless. The concept of duty of care in negligence emerged towards the end of the eighteenth century and is now firmly rooted that there can be no doubt that action in negligence must fail where a duty is not established.[14] The first attempt to rationalise the situations in which a duty may be imposed was made in Heaven v. Pender[15]by Brett MR that[W]henever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other, a duty arise to use ordinary care and skill to avoid such danger.

In 1932 the famous dictum of Lord Atkin came in *Donough* v. *Stevenson*[16] in which he enunciated the seminal 'neighbor principle'

The rule that you are to love your neighbor becomes in law; you must not injure your neighbour; and the lawyer's question, who is my neighbor? receives a restricted reply. You must take care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then in law is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to act the acts or omissions which are called in question

The neighbor principle is not the *ratio decidendi* of the case and it is probable that Lord Atkin never intended it to be an exact or comprehensive statement of law.[17] But the case of *Donough* v. *Stevenson* provides a new category of the duty

11 *Stubbings* v. *Webb* [1993] A.C. 498.
12 *Lochgelly Iron and coal Co* v.*M'Mullan* [1934] AC 1.
13 [1934] AC 1.
14 *Grant* v. *Australian Knitting Mills Ltd.* [1936] AC 85.
15 (1883)11 QBD 503.
16 [1932] AC 562.
17 *CfHaseldine* v. *CA Daw & sons Ltd.* [1941] 2 KB 343.

namely that of a manufacturer of goods to the eventual users of those goods (a category that has since developed far beyond the limits of the facts of that case). Speaking on scope of duty to take care, Lord Pearce said that "how wide the sphere of the duty of care in negligence is to be laid depends ultimately upon the court's assessment of the demands of society for protection from carelessness of others.[18] In holding so Lord Reid observed that the time has come when we can and should say that it (*i.e.,* Lord Atkins's neighbor principle) ought to apply unless there is some justification or valid explanation for its exclusion.[19] This suggestion was taken up by the House of Lords in *Anns* v. *Merton London Borough*[20] in particular in the speech of Lord Wilberforce, who said that through the trilogy of the cases in this house, *Donough* v. *Stevenson*[21]*, Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.*[22] and *Home office* v. *Dorset Yacht Co. Ltd.*[23] the position has now been reached that in order to establish whether a duty of care arises in a particular situation, it is not necessary to bring the fact of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one must ask whether there was a sufficient relationship of proximity or neighborhood between plaintiff and defendant such that in the defendant's reasonable contemplation carelessness on his part might cause damage to plaintiff. If so a *prima facie* duty of care arose. Then at second stage, it was necessary to consider whether there were any consideration which ought to negative or reduce or limit that 'duty'. The House of Lords led a retreat from *Anns* case, bringing the tort of negligence back to a much more category based approach in *Governors of the Peabody Donation Fund* v. *Sir Lindsay Parkinson & Co Ltd.*[24] Where the Lord Keith demanded that the claimant identify policy grounds why a duty should arise and why the defendant should be made responsible for his welfare.. The judicial disapproval of *Anns* test continued thereafter and it became clear beyond doubt that foreseeability of harm is not enough to create a duty of care. But in the case of *Caparo Industries* v. *Dickmam*[25] the house of Lord held that a duty of care may now be imposed if three requirements are satisfied *i.e*. reasonable foresight, proximity and imposition of a duty 'fair, just and reasonable in all the circumstances'.

During the survey period, the question of duty to take care was came before the High Court of Madhya Pradesh in the case of *Santoshdevi* v. *State of M.P.*[26] where a suit for compensation has been filed by the plaintiffs against the State of Madhya Pradesh, mandi samiti and municipal council, as defendants. There was a 50 feet deep'well' in the premises of the defendant mandi samiti. In order to prevent the water from pollution, the 'Well' was covered by stone slabs which fell down resulting

18 *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1964] AC 465 HL.
19 *Home Office* v. *Dorset Yacht Co. Ltd.* [1970] AC 1004.
20 [1978] AC 728.
21 *Supra* note 16.
22 [1964] AC 465 HL.
23 [1970] AC 1004.
24 [1985] AC 210.
25 [1990]1All ER 568.
26 ILR 2012] MP 3046:2012[2] JLJ 392.

into the death of several persons on account of drowning. The deceased was the husband of the first plaintiff and the age of the deceased was 38 years and he was the sole bread earner of the plaintiffs. Hence a suit for compensation to the tune of Rs. 5 lakhs has been filed by the plaintiffs. The issue before the high court was to decide as to which of the respondent was negligent, which led to the accident. Each of the defendants filed their separate written statement. According to the defendant mandisamiti, the 'well' in question was under the control and was being looked after by the Municipality. The 'well' in question was also covered by the Municipality and it was not at all related to the mandisamiti and therefore the defendant mandisamiti is not liable to pay any compensation. It has also been pleaded by the mandisamiti in the written statement that construction of covering the well was carried out by the defendant municipality and therefore for this additional reason also no liability can be fastened upon the mandisamiti. In the written statement filed by defendant *ie*., No. 3 municipality it has been specifically pleaded that the 'well' in question was never acquisitioned by the municipality nor it was in the control of the said municipality. The defendant mandisamiti is the owner of the impugned 'well' and they are also having possession over the same. The factum of construction to cover the 'well' by the defendant municipality has been denied. Hence it has been prayed that no liability can be fastened upon the municipality and the suit be dismissed against it. The court admittedly held that the Well in question is situated in an area which is part of mandisamiti and thus for all practical purposes the defendant mandisamiti was having domain over that area and was also in possession over the entire land including the area upon which the impugned Well was constructed and was covered up. According to the court, merely because the necessary construction to cover up the impugned 'Well' was carried out by the Municipality would not mean that any liability to pay the compensation can be fastened on them. Court observed that: "Merely because the Well was covered up by the Municipality would not mean that the mandisamiti was permitted to use that place for access or to allow the persons to sit on that place. Indeed, the mandisamiti should not have convened a meeting on the covered area of the Well because they were fully aware that beneath the covered area 50 ft. depth 'Well' is there and, therefore, according to us the act of the MandiSamiti convening a meeting over the place of covered 'Well' was hazardous and amounts to negligence."

The office bearers of mandisamiti were fully aware that if a meeting is convened at the hazardous place covering the well there are possibilities to harm the others and if that would be the position the law has to treat them as liable on the term of injuring the public against injury irrespective of who was at fault. The principle of strict liability applies in the present case against the defendant municipality. The court placed its reliance on the decision of Constitution bench of apex court in the case of *M.C. Mehta* v. *Union of India*,[27]which has also been relied upon in the case of *Union of India* v. *PrabhakaranVijaya Kumar*.[28] This is a welcome decision in the context of the uncertainties in law in respect of the liability of the statutory bodies of the state.

27 AIR 1987 SC 1086.

28 (2008) 9 SCC 527.

Electrocution

In the case of *Rani* v. *N.D.P.L.*[29] deceased were brothers, along with their respective families, were living in a narrow street of Delhi. An electricity pole had been installed by the respondent in that street. The wires were quite weak and never replaced, despite repeated requests. During electricity failure in the locality the hand of nephew of deceased came in contact with that live electric wire. In order to save him the deceased were electrocuted and declared dead when taken to the hospital. On postmortem being conducted, it was opined that they had died on account of having come into contact with electric wire. The defendant/respondent contested the suit and alleged that the deceased tried to restore electricity supply to their premises, by illegal means, from the Delhi Vidyut Board (DVB-mains) at the time this incident took place and there was no negligence on its part. The defendant DVB denied that the cables provided by it were weak and feeble and used to break quite often. It was, however, admitted that the nephew and the deceased had come into contact with electric wires. No evidence was led by the defendant/respondent to prove that nephew of the deceased was trying to obtain electricity form DVB Mains at the time this incident took place. The court held that the admitted facts and circumstances of the case also do not support the defense taken by the defendant/respondent. It is an admitted fact that regular electricity connections were installed in the house in which the deceased were residing. The electricity bills issued by DVB have been filed by the plaintiffs. The court laid down that it was the duty of the (DVB) to maintain its wires and keep them in appropriate condition. The defendant/respondent was also required to replace the old/weak wires from time to time, so as to eliminate the risk of the wire getting broken, someone coming in its contact and getting electrocuted. The court very aptly applied the well-known maxim *res ipsa loquitur* The court held that it can be safely applied in an accident of this nature where the cause of accident is primarily within the knowledge of the defendant. This maxim is stated as under in its classic form Where the thing is to shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper case, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

The Supreme Court relied on *Shyam Sunder* v. *The State of Rajasthan*[30] where it was opined by the Court that the maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts bearing on the matter is at the outset unknown to him and often within the knowledge of the defendant. The court observed that the maxim is based on common sense and its purpose is to do justice when the facts bearing on the causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or

29 2012 Indlaw DEL 3228.

30 AIR 1974 SC 890.

ought to be within the knowledge of the defendant.[31] Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance.[32] Since the electric wire which got broken belonged to the defendant/respondent and admittedly was under its care and control, the explanation given by the defendant for snapping of the wire does not stand substantiated and no other reason is forthcoming from the defendant/respondent for snapping of wire which touched Sunil Sharma, the doctrine of *res ipse loquitur* would squarely apply to the case before this Court. On the question of compensation the issue before the court was whether the plaintiffs were entitled to compensation and if so to what extent. No documentary evidence such as income-tax return has been produced by the wives of the deceased to prove the income of deceased. The court came to conclusion that in a suit for damages based on tort, the court, in order to decide the quantum of damages/compensation, needs to estimate as to what was deceased person's expectation of life, had he not been killed when he actually was and what sums, during his remaining life, he would have applied to support his dependents. It cannot be disputed that an accurate ascertainment of pecuniary loss to the aggrieved party is just not possible. The ascertainment of quantum of damages necessarily depends upon the particular facts and circumstances of each case. It was duty of DVB to maintain its wires and keep them in appropriate condition. Hence even if it is presumed that electric wire had got broken for some reason other than its being old and weak, the defendant/respondent would still be liable to pay suitable compensation to the plaintiffs. The court held that there was no age of retirement of person engaged in business such as running a *kirana* shop, selling fruits and vegetables or selling milk. Therefore the deceased could have continued earning from business in which they were engaged till time their age and health permitted them to do so. This was not case of the defendant/respondent that late deceased was not engaged in business of selling fruits and vegetables from shop or in selling milk. Moreover if deceased income at Rs. 4500 per month and apply multiplier of 11, amount of compensation come to Rs. 3,96,000 after deducting 1/3rd of his income for his personal expenditure. Hence decree for recovery of Rs. 4 lakhs with proportionate cost and *pendent lite* and future interest @ 6% per annum was passed in favour of the plaintiffs/appellants.

Contributory negligence

Contributory Negligence is an expression which implies that the person who suffered damage is also guilty of some negligence and has contributed towards damage. If the plaintiff's injuries have been caused partly by the negligence of the defendant and partly by his own negligence,[33] then, at common law, the plaintiff

31 *Barkway* v. S. *Wales Transport* (1950)1 AIIER 392.

32 John G. Fleming, *The Law of Torts* 260 (4th edn.1993).

33 *Heranger (Owners)* v. *S.S. Diamond* [1939] AC 94.

can recover nothing. This rule of "contributory negligence" first appeared at the beginning of the nineteenth century, though the general idea is traceable much earlier.[34] Contributory negligence is a failure by the claimant to take reasonable care for his own safety that contribute to the damage about which a compliance. The common law rule produced hardship where one of the two negligent parties suffered the greater loss although his negligence was not the major cause of the accident. Accordingly, the courts modified the defense of contributory negligence by the so-called rule of last opportunity. This enabled the plaintiff to recover notwithstanding his own negligence, if upon the occasion of the accident the defendant could have avoided the accident while the plaintiff could not.[35] The authorities were confused, and confusion was made worse confounded by the extension of the rule, in British Columbia *Electric Ry.* v. *Loach*[36], to cases of "constructive last opportunity". This meant that if the defendant would have had the last opportunity but for his own negligence, he was in the same position as if he had actually had it, and the plaintiff again recovered in full. In *Butterfield* v. *Forrester*[37] Lord Ellenborough C.J. added "one person being at fault will not dispense with another's using ordinary care himself."This rule which was often harsh to claimant was abolished by Law Reform (Contributory Negligence) Act 1945 in Britain and replace by a system of apportionment of damages for contributory negligence. The onus of pleading[38] contributory negligence and proving[39]the apportionment provision applies rest on the defendant. Contributory negligence, like negligence, is a type of conduct, not a state of mind. It involves a failure to take as much care as the reasonable person would have taken for his own safety. Accordingly, findings of contributory negligence are not restricted to cases in which the claimant was inattentive to risks. A claimant who deliberately harms himself may be guilty of contributory negligence since the reasonable person does not engage in acts of self-harm. The mere fact that the claimant failed to take reasonable care for his own safety is not enough to engage the apportionment provision. His fault must be causally related to the damage about which he complains. As Lord Atkin put it 'if the [claimant] were negligent but his negligence was not a cause operating to produce the damage there would be no defense. I find it impossible to divorce any theory of contributory negligence from the concept of causation.[40]

One of the leading cases on contributory negligence which is decided by the apex court during the period of survey is *RamlilaMaidan In Re.*[41]It is a landmark judgment on contributory negligence not because of Scope, liability and complex question of law of contributory negligence but because of important principles of law laid down by B.S. Chauhan J. and Swatantra Kumar J., Broad principles of law

34 *Sanders* v. *Spencer* (1567) 3 Dyer 266b.
35 Thus authority usually regarded as supporting the rule of last opportunity is *Davies* v. *Mann* (1842)10 M.&W.546.
36 [1916] 1 AC 719.
37 (1809) 11 East 60.
38 *Fookes* v. *Slaytor* [1978] WLR 1293(CA).
39 *Flower* v. *Ebbw Vale Steel, Iron and Coal co. Ltd* [1936] AC 206(HL).
40 *Caswell* v. *Powell Duffryn Associated Collieries Ltd* [1940] AC 152(HL).
41 (2012)5 SCC 1.

enunciated by them on this subject could be seen as invaluable contribution to the tort jurisprudence in India. As aptly and correctly noted by Justice Swatantra Kumar in this case that *'negligence' could be composite or contributory*. "Negligence" does not always means carelessness but want of such a degree of care as is required in particular circumstances[42]. "Negligence" is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Normally the crucial question on which such a liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequences of other's negligence. The Court relied on *Municipal Corporation of Greater Bombay* v. *Laxman Iyer*[43] where court stated that the principle stated above would be applicable to a large extent to the cases involving the principles of contributory negligence as well."Negligence" materially contributes to injury or is regarded as expressing something which is a direct cause of the accident[44].

In the present case[45]Bharat Swabhiman Trust, Delhi (Baba Ramdev's Trust) sought permission from Municipal Corporation of Delhi for organizing a Yoga camp at a public ground which is popularly known as RamlilaMaidan situated at Delhi. The police authorities granted a conditional no objection certificate. Later on it was found that he Yoga Guru Baba Ramdev used the camp for mobilizing public opinion against Indian Black Money in foreign countries and to pressurize the Indian Government to bring back the money in India. Later on the government withdrawn the permission and prohibitory order was imposed under section 144 of the Criminal Procedure Code, 1973. The government tried to convince the Yoga Guru but the talks failed and there was a police crackdown on the night. Yoga Guru and his supporters were asked to leave RamlilaMaidan at midnight itself and police evicted the sleeping persons from RamlilaMaidan forcibly by caning and use of tear gas *etc*. this results in injuries to number of people.

The Supreme Court, speaking through *Swatanter Kumar* J.*,* held that the police could have avoided the tragic incident by exercising greater restraint, patience and resilience. The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed. The decision to forcibly evict the innocent public sleeping at Ramlila ground in the midnight is amiss and suffers from the element of arbitrariness and abuse of power to some extent. The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts. It was an invasion of the people's liberty and exercise of fundamental freedoms. It was not a case of emergency.

The court held that obedience of lawful orders is the duty of every citizen. Every action is to follow its prescribed course in law i.e. *action quaelibet it suavia.*The course prescribed in law has to culminate to its final stage in accordance with law.[46] In that process there might be either a clear disobedience or a contributory

42 Charlesworth and Percy on Negligence at 195and 206 11th edn.

43 (2003)8 SCC 731.

44 Clerk and Lindsell on Torts at 246, 20th edn.

45 *Supra* note 41.

46 *BabulalParate* v. *State of Maharashtra* AIR 1961 SC 884.

disobedience. In either way, it may tantamount to being negligent. Thus the principle of the contributory negligence can be applied against parties to an action or even a non party. The rule of identification would be applied in cases where a situation of the present kind arises. The court will have to see the fault of the party and the effective cause of the ensuing injury. Under the English law, it has been accepted that once a statute has enjoined a pattern of behavior as a duty, no individual can absolve another from having to obey it. Thus as a matter of public policy, *volenti*cannot erase the duty or breach of it.

There is no statutory definition of contributory negligence. The concerns of contributory negligence are now too firmly established to be disregarded, but it has to be understood and applied properly.[47] Negligence materially contributes to injury or is regarded as expressing something which is a different cause of accident. The Court relied on *Nance* v. *British Columbia Electric railway Co. Ltd*.[48] in which Lord Simon, pointing out the difference in the meaning of negligence, when applied to a claimant, on the one hand, and to a defendant on the other hand, opined that

When contributory negligence is set up as a defence, its existence does not depend on any duty owned by the injured party to the party sued, and all that is necessary to establish such a defence is to prove…. That the injured party did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the claimant's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full.

Even if the court takes the view that there was undue haste, adamance and negligence on the part of the police authorities, then also it cannot escape to mention that to this negligence, thereis a contribution by the Bharat Swabhiman Trust, Delhi as well. The role of Baba Ramdev at that crucial juncture could have turned the tide and probably brought a peaceful end rather than the heart rending end of injuries and unfortunate death. Even if it is assumed that the action of police was wrong in law, it gave no right to others to commit any offence *injuria non excusatinjuriam.*

Court held that every law abiding citizen should respect the law and must stand in conformity with the rule, be as high an individual may be. Violation of orders has been made under the provisions of section 188 IPC, but still in other allied proceedings, it would result in fastening the liability on all contributory partners, may be vicariously, but the liability certainly would extend to all the defaulting parties. For these reasons, a view has to be taken that in the circumstances of the case, Baba Ramdev and the office- bearers of Bharat Swabhiman Trust, Delhi have contributed to the negligence leading to the occurrence in question and are vicariously liable for such action.

The Yoga Guru was found guilty as to be partly responsible for incident. It was his legal as well as moral duty to obey prohibitory order His cooperation might have avoided police public confrontation and resultant damage to life and property. The court awarded compensation of Rs. 5 Lakhs to the legal heirs of the lady who

47 *Supra* note 44.
48 1951 AC 601.

died as a result of this incident with the compensation of Rs 50,000 to each of the persons who were hospitalized due to serious injuries along with the compensation of Rs. 25,000 to each person who was discharged after simple medical treatment. The liability for the monetary compensation was apportioned between state and Yoga Guru in ratio of 3:1.

In the instant case the Supreme Court defined the scope of the fundamental rights (especially right to sleep and right to privacy) and held that the citizens/ persons have a right to leisure, to sleep, not to hear and to remain silent. The knock at door, whether by day or by the night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen.[49] Right to privacy has been held to be a fundamental right of the citizen being an integral part of article 21 of the Constitution of India by this court. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. Such a right has been extended even to woman of easy virtues as she has been held to be entitled to her right of privacy. However, right of privacy may not be absolute and certain exceptional circumstances particularly surveillance in consonance with the statutory provision may not violate such provision[50]. The courts have always imposed penalty on disturbing peace of the others by using the amplifiers or beating the drums even in religious ceremonies.[51]Thus the present decision also assumes importance in the context of cases relating to nuisance.

Vicarious liability

In another case of electrocution the question of vicarious liability arose before the High Court of Madhya Pradesh in the case of *Ramkali* v. *M.P. Electricity Board*[52] in which the deceased while going to attend his labour work came in contact with live wire which was hanging on the road and got electrocuted. It was the contention of the plaintiffs that the original defendant, M.P. State Electricity Board ("the Board") was negligent in not taking requisite care as required so as to secure safety of lives of the citizens from being electrocuted. Since a live wire was allowed hanging on road took the life of deceased who was earning Rs. 180per day, at the relevant time, as he was healthy and young labourer. The plaintiffs, therefore, claimed an amount of Rs.6,50,000 for the death of earning member of their family on account of electrocution which was attributable to the negligence of the Board. The defendants resisted the suit, inter alia, contending that they were not at fault though they admitted the death of deceased by electrocution. They pleaded that due to fault on account of rainy season they disconnected 11 KV line, but subsequently the said line was

49 *Wolf* v. *Colorado* 93 L Ed 1782: 338 US 25 (1949).

50 *Malak Singh* v. *State of P&H* (1981) 1 SCC 420, *State of Maharastra* v. *Madhukar Narayan Mardikar* (1991) 1 SCC 57, *R. Rajagopal* v. *State of T. N.* (1994) 6 SCC 632 and*People's Union for civil Liberties* v. *Union of India* (2003) 4 SCC 399.

51 *Rabin Mukherjee* v. *State of West Bengal*AIR 1985 Cal 222, *Burrabazar Fire Works Dealers Assn.* v. *Commr. of Police* AIR 1998Cal 121, *Church of God (Full Gospel) in India* v. *K.K.R. majestic Colony Welfare Assn.* (2000) 7 SCC 282 and *Noise Pollution(7) In re* (2005) 8 SCC 796.

52 ILR [2012] MP 1648, 2013[1] MPJR 31.

rejoined by some unknown persons by putting wire illegally and thereby electricity was restored, which ended in the present incident. It was submitted that there was no negligence on the part of the employees of the Board and as such no vicarious liability can be fastened on the board under such circumstances. Accordingly, it was prayed that the suit claiming for compensation be dismissed. The trial court decreed the suit to the extent of Rs. 3,96,000 in favour of the plaintiffs against the defendants, respondents. The Board herein was found liable for the tortious liability which resulted into death of the deceased. Both the parties filed appeal in the High Court of Madhya Pradesh (Gwalior Bench) against the order of the Trial court. The submissions of the appellants/plaintiffs are that the trial court while awarding compensation for death of deceased Kamlesh wrongly assessed his income at Rs. 100/- per day. It is submitted that the income of the deceased should have been assessed at Rs. 180/- per day. While the contention of the appellants-Board is that while passing the impugned judgment and decree, the trial court has erred in awarding compensation even without finding proof about the negligence on the part of the employees of the Board and therefore vicarious liability fastened for payment of compensation on the appellants-Board is not sustainable in law. Thus, it is prayed that the impugned judgment and decree being based on no reason, same is liable to be set aside. The court opined that the unfortunate, premature and untimely demise of the deceased was attributable to the negligence of the original defendants, respondents-Board before us in not taking required care and not following the required standards in maintaining the electricity supply. The bench held that "we have no hesitation in finding that there was wanton and gross negligence on the part of the Board, which culminated into cutting short of life of a young labourer. The ultimate conclusion of the trial court in holding the Board and its employees negligent for the resultant death of the deceased on account of electrocution on the unfateful day is justified."The court confirmed the finding of the trial court on the issue of negligence. Considering the annual income of the deceased and after deducting 1/5th towards personal expenses, the loss of dependency comes to Rs. 28,800/- in which after applying multiplier of 16, the total loss of dependency comes to Rs. 4,60,800/-. Apart from this, the claimants/appellants are also held entitled to receive total sum of Rs. 22,000/- under different heads. In this manner, now the appellants are entitled to receive total amount of compensation to the tune of Rs. 4,82,800-(Rs. Four lakhs eighty two thousand and eight hundred only) instead of Rs. 3,96,000, as awarded by the learned trial court along with interest @ 7% p.a. from the date of filing of the suit till realisation of the amount. It is also directed that the appellants Madhya Pradesh Electricity Board Morena shall bear the costs of both the appeals which would be payable to the plaintiffs.

Medical negligence

The cases of failure of sterilization operations have increased the burden of the judiciary due to unnecessary litigation. It is a well settled law that the claim for compensation under tortious liability can sustain where it is proved that the medical practitioner was negligent on his part at the time of performing his medical duties. The methods of sterilization, so far known to the medical science, which are most popular and prevalent, have not been claimed to be 100% safe and secure. Therefore,

in spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes.[53] Though the Bolam's test is challenged in its own country of origin and is considered merely a rule of evidence or rule of practice and not a rule of law[54] but in a catena of cases, the Supreme Court has opined that the proof of negligence in such cases is determined by application of Bolam's test. In *Govt. of NCT of Delhi* v. *Shobha*[55] the question before the Delhi High Court was that whether the operating surgeon or his employer for a failed tubectomy operation cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The respondent filed a writ petition before the Delhi High Court which was allowed and compensation of a sum of Rs. 3,25,000 was awarded to the respondent. Against the order, the appellant filed this appeal. The Court placed its reliance on *State of Punjab* v. *Shiv Ram*[56] where a three judges bench of the Supreme Court held that merely because a woman having undergone sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. It was further held that the claim in tort can be sustained only if there is negligence on the part of the surgeon in performing the surgery and the proof of negligence has to satisfy Bolam's test. It was yet further held that no liability on this account can be fastened unless it is pleaded and proved that assured 100% exclusion of pregnancy after surgery, was the basis for undergoing surgery. The Supreme Court also noticed that the methods of sterilization so far known to medical science which are most popular and prevalent, are not 100% safe and secure and once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. The appellants defended that through the record including the consent form signed by the respondent and her husband before undergoing the surgery in which they had admitted having been informed of the probability of failure of the operation and had further undertaken not to blame the hospital/operating surgeon in any circumstance. It is also contended on the basis of records that the respondent inspite of missing the menstrual cycle did not approach the hospital in time as had been advised and approached much later, by when termination of pregnancy was not feasible. Since the Supreme Court had nevertheless allowed the respondents in those cases to retain the compensation of Rs. 50,000/- awarded to them in those cases, The High Court of Delhi allowed the appeal and in equity, modify the judgment of the learned Single Judge by reducing the compensation awarded to the respondent from Rs. 3,25,000/- to Rs. 50,000/-. It is important to note that the number of cases of medical negligence is on rise. It may be argues that the desire of the patients to vindicate their rights is one of the strong reasons for the trend. In this background the present decision seems a good contribution.

---

53 *State of Punjab* v. *Shiv Ram* (2005) 7 SCC 1, *State of Chhattisgarh* v. *ManjuBai* AIR 2007 Chh. 87 and *Smt. Sita Devi* v. *State of H.P.*AIR 2008 (NOC) 1894 H.P.

54 *Sideway* v. *Governor of Bethlam Royal Hospital* [1985] AC 871, *Hucks*v. *Cole* (1986) 118New L.J. 469 and *Bolitho* v. *City and Hackney Health authority* [1997] 4 All ER 771.

55 MANU/DE/5110/2012.

56 *Supra note* 53.

Professional negligence

One of the prominent judgment on professional negligence was handed over by the Supreme Court during the survey period is *CBI* v. *K. NarayanaRao*[57] in which Supreme Court clearly manifests the requisite of professional negligence under the tort of negligence. In the instant case CBI, Hyderabad registered an FIR against the Branch Manager and the Assistant Manager respectively of Vijaya Bank, Hyderabad, abusing their official position as public servants and for having conspired with private individuals for defrauding the Bank by sanctioning and disbursement of housing loans. After completion of the investigation, CBI field charge-sheet against all the accused persons. In the said charge-sheet, Shri K. NarayanaRao (the respondent) a panel advocates for Vijaya Bank was also arrayed to give false legal opinion in respect of 10 housing loans. Being aggrieved, the respondent filed a petition before the High Court of Andhra Pradesh at Hyderabad for quashing of the criminal proceedings. By the impugned judgment, the high court quashed the proceedings and being aggrieved, CBI, Hyderabad filed this appeal by way of special leave. Following contentions were raised: (i) The high court while entertaining the petition under section 482 of the code has exceeded its Jurisdiction. (ii) The high court has committed an error in holding that no material had been gathered by the investigating agency against the respondent herein that he had conspired with the remaining accused for committing the offence and (iii) There is no material on record to show that the respondent did not verify the originals pertaining to housing loans before giving legal opinion and intentionally changed the proforma and violated the Bank's circulars. Speaking through P. Sathasivam J., the Supreme Court held that the only allegation against the respondent panel advocate is that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties. The respondent was not named in the FIR. It is not in dispute that the respondent is a practicing advocate and he has experience in giving legal opinion and has conducted several cases for other banks also including the Bank concerned herein. Only in the charge-sheet, there was name of respondent stating that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question. However, there is no specific reference to the role of the present respondent along with the main conspirators. The Court rejected the arguments of the learned ASG who based his reliance on a decision of Supreme Court in *Shivnarayan Laxminarayan Joshi* v. *State of Maharastra*[58] wherein it was held that once the conspiracy to commit an illegal act is proved, the act of the one conspirator becomes the act of the other. By pointing out the same, it was submitted that the respondent along with the other conspirators defraud the bank's money by sanctioning loans to various fictitious persons. The Supreme Court held that the high court while quashing the criminal proceedings in respect of the respondent has gone into the allegations in the charge-sheet and the materials placed on record for his scrutiny and arrived at a conclusion that the same do not disclose any criminal offence committed by the

57 (2012) 9 SCC 512.

58 (1980) 2SCC 465.

respondent. It also concluded that there is no material to show that the respondent herein joined hands with A-1 to A-3 for giving false opinion. In the absence of direct material, the respondent cannot be implicated as one of the conspirators for the offences punishable under section 420 read with section 109 IPC. The high court has also opined that even after critically examining the entire material, it does not disclose any criminal offence committed by the respondent. A roving enquiry is not needed; however, it is the duty of the court to find out whether there is any *prima facie* material available against the person who has been charged with an offence under section 420 read with section 109 IPC. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The court relied on *Jacob Mathew* v. *State of Punjab*[59]whereas the court held that to determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices. The court also reminded the principle laid down in *PandurangDattatrayaKhandekar* v. *Bar Council of Maharashtra*[60] that there is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the bank. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence, and cannot be charged for the offence under sections 420 and 109 IPC along with other

59 (2005) 6 SCC 1.
60 (1984) 2 SCC 556.

conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case the respondent herein. Thus, there is no *prima facie* case for proceeding in respect of the charges alleged insofar as the respondent herein is concerned. The court dismissing the appeal upheld the conclusion of the high court in quashing the criminal proceedings and rejected the stand taken by CBI.

Res ipsa loquitur

As a general rule it is for the plaintiff to prove negligence and not the defendant to disprove it, in some cases, it is one of the considerable hardships to the plaintiff because, it may be that the true cause of the accident lies solely within the knowledge of the defendant who caused it. The plaintiff can prove the accident, but he cannot prove how it happened so as to show its genesis or origin in the negligence of the defendant. This hardship is avoided to a considerable extent by the principle of *'res ipsa loquitur'*. The effect of the doctrine of *'res ipsa loquitur'* depends on the cogency of the inference to be drawn, and will vary from case to case. In certain circumstances courts are prepared to draw an inference on negligence on the part of the defendant and the burden of proof shifts from the plaintiff to the defendant to disprove negligence on its part. The leading case on the subject is *Scott* v. *London and St. Katherine Docks Co.*[61] in which Erle C.J. stated that:

> where the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

Evershad M. R. in *Moore* v. *R. Fox & Sons*[62] affirmed and followed the principle laid down in Scott's case. Winfield in his famous treatise on tort, after referring to the decisions which founded the above doctrine, has mentioned the two requirements to attract the above principle. These are, (i) that the "thing" causing the damage be under the control of the defendant or his servants and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence. This principle which was often found to be a helping guide in the evaluation of evidence in english decisions has been recognised in India also. This doctrine is necessary to invoke such a doctrine in examining, determining and adjudicating upon the claim of compensation founded upon the tort negligence. The event or the accident must be a kind which would not happen in ordinary course of event or nature or thing if those who have the management and control of the thing have exercised due, appropriate and reasonable standard of care and caution. Further, the events are caused; the accident must be within the control of the defendant or the adversary. The reason for second requirement is that where the defendant or the adversary has the control of the thing which caused the injury, he was in a better position than the plaintiff to explain as to how the incident or the accident has

61 (1865) 3 H & C 596.
62 (1956) 1 OB 596.

occurred. In our country, the rules of evidence are governed by the Evidence Act, 1872, under which the general rule is that the burden of proving negligence as to the cause of the accident is on the party who propounds it. In order to lighten this burden, there are certain provisions and the doctrines, namely: (1) permissive presumption, (2) presumption of fact, (3) rebuttable presumption of law and (4) irrebuttable presumption of law.

Presumptions of fact are inferences on fact patterns drawn from the experience and experiments. It is, therefore, the discretion of the court to draw an inference about the existence of certain factual situation, if primary facts brought out on record warrants such presumption. In fact, doctrine of '*res ipsa loquitur*' could only create an aid in evaluation and analysis and assessment of evidence on record. When such a doctrine is applied properly to the facts, the burden of proof, initially, rests with the victims of the tort or their heirs or legal representatives is lightened or reduced as the court would be able to presume certain things and therefore, it will be for the defendant or the adversary to explain or rebut such a presumption. No doubt, this doctrine could be invoked where direct evidence is not obtainable. Truly and plainly speaking, the effect of doctrine of *'res ipsa loquitur'* is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of '*res ipsa loquitur'*, therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortuous liability.

In *Union of India* v. *Dhyan Singh*[63] four labourers hired by the contractor of CPWD were cleaning the septic tank at the CRPF Camp, Bawana. When they entered in the septic tank, they fell unconscious upon inhaling the poisonous gases in the tank. Constable, Ranbir Singh and head constable, Dayal Singh reached the spot and went inside the septic tank to save the lives of the labourers. However, both of them were affected by the poisonous gases inside the tank and they fell unconscious. Later on head constable, Dayal Singh survived whereas the remaining four persons including constable Ranbir Singh were declared dead. Constable Ranbir Singh was survived by his widow, parents and four minor children (respondents No. 1 to 7) who filed a suit for recovery against the appellant. In the trial court, the appellant contested the suit on various grounds *inter alia* that the work of cleaning the septic tank was to be done by the contractor between 10.07.01 to 09.08.01 and the contractor started the work after the expiry of the said period without seeking the extension from the department and, therefore, the appellant was not responsible for the accident. It was further pleaded that there was no negligence on the part of the appellant. The trail court passed a decree for 5,00,000/- in favour of respondents no. 1 to 7 and against the appellant. The appeal was filed in the High Court of Delhi against the order of the trial court. The plaintiffs/respondents no. 1 to 7 are poor persons and their counsel was unable to effectively assist this court and, therefore

63 MANU/DE/5042/2012.

this court appointed Mr. A.J. Bhambhani as amicus curiae to assist this court. The amicus curiae has submitted that this case is squarely covered by the judgment of the Supreme Court in *Delhi Jal Board* v. *National Campaign for Dignity and Rights of Sewerage and Allied Workers*[64] in which the Supreme Court held the government liable to pay the compensation in the event of death of any person in cleaning of septic tanks. It is further submitted that four precious lives were lost due to the failure of CPWD to maintain the septic tanks. It is submitted that the doctrine of *res ipsa loquitur* is applicable to the present case. The plea of the government that they are not liable for the negligence of the contractor was rejected by the courts. The Supreme Court held that the state and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintain and cleaning the sewage system. The Supreme Court further held that human being employed for doing work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The state and its agencies or contractors are under constitutional obligation for the safety of such persons who undertake such hazardous jobs and cannot use the judicial process for frustrating the efforts of the dependants of the workers, who died due to the negligence of the contractor to whom the work of maintaining the sewage system was outsourced. In *National Campaign for Dignity and Rights of Sewerage and Allied Workers* case[65] the National Campaign for Dignity and Rights of Sewerage and Allied Workers, which is engaged in the welfare of sewage workers, filed a writ petition to highlight the plight of sewage workers as the legal representatives of the persons who work in the sewers laid or maintained by the state and/or its agencies/instrumentalities on their own or through the contractors and who get killed due to negligence of the employer, do not have the means and resources for seeking intervention of the judicial apparatus of the state. The division bench of this court requested S. Muralidhar, J. to find out a workable solution to the problem relating to the deaths of the sewer workers, their health and safety, the steps to prevent recurrence of deaths/injuries of the sewer workers, to improve their working conditions, the compensation to be paid for the deaths of the workers and the steps to be taken to phase out manual work and replace it with mechanized sewer cleaning. S. Muralidhar J deliberated upon the matter and gave valuable suggestions which were considered by the division bench. The division bench after hearing all the parties held that the government shall remain responsible to pay the compensation for death of a worker due to the negligence of the contractor. However, the government can recover the said compensation from the contractor. The division bench directed the civic agencies to pay the compensation to the families of the victims.

In view of the principles laid down in the aforesaid judgments, court rejected the argument that by issuing the directions, the high court has assumed the legislative power of the State. What the high court has done is nothing except to ensure that those employed/engaged for doing work which is inherently hazardous and dangerous to life are provided with life-saving equipments and the employer takes

64 (2011) 8 SCC 568.
65 *Ibid.*

care of their safety and health. The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system.

The case is also covered by the principles of *res ipsa loquitur*. In *Shyam Sunder* v. *State of Rajasthan,*[66] the Supreme Court discussed the doctrine of *res ipsa loquitur* and observed as follows, *res ipsa loquitur* is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where *res ipsa loquitur* is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part.

Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite over shadowed by its practical significance.[67] The court also opined that over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age, less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance.[68] In *Syad Akbar* v. *State of Karnataka*[69], the Supreme Court held that the rule of *res ipsa loquitur* in reality belongs to the law of torts. Where negligence is in issue, the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. The Supreme Court held as under:

> The peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of event or accident. It is to such cases that the maxim res ipsa loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred…

The deceased was aged 32 years at the time of the accident and was working as a constable with CRPF. His salary at the time of the death was 4,857 per month.

66 [1974] 1 SCC 690.
67 Millner: "Negligence in Modern Law" 92.
68 John G. Fleming. *The Law of Torts*, at 260 4th ed.
69 (1980) 1 SCC 30.

50% has to be added towards future prospects and 1/5th has to be deducted towards his personal expenses and the appropriate multiplier at the age of 32 is 16. The loss of dependency is computed to be Rs. 11,19,052. Rs. 10,000 is awarded towards loss of consortium, Rs. 10,000 towards loss of love and affection, Rs.10,000 towards loss of estate and Rs. 10,000 towards funeral expenses. The respondents are entitled to total compensation of Rs.11,59,052. In the present case, the plaintiffs/respondents no. 1 to 7 are entitled to just compensation of Rs. 11,59,052 according to multiplier method. The plaintiffs have in fact taken a specific plea before the trial court and also proved in evidence that they have suffered loss to the tune of Rs.13,50,000. However, due to poverty and legal advice received by them, they restricted the claim to Rs.5,00,000. This court agrees with the submission of the learned *amicus curiae* that it is the duty of the court to compute just compensation in accordance with law.

III STRICT/NO FAULT LIABILITY

From the very development of the law, the fault liability principle is accepted in England to provide remedy to the injured party. The fault liability principle says that a person who claimed compensation from another for injury suffered by him could do so only if he proved that the injury was due to misconduct of the latter. If he did not do so, he had no remedy in law and had to bear his injury or loss as part of his misfortune. But there are some situations recognized by the law known as no fault liability principle in which a person may be held liable for injury caused even though he is not negligent in causing the same, or there is no intention to cause the injury. The policy which is in favour of making a person pay compensation is not because of his fault by way of unreasonable conduct, but on the grounds of social justice. The principle of insurance against harm is in accordance with the ideas of social justice such as workmen's compensation Act in India.[70] This principle was first laid down by the House of Lords in nineteenth century in the case of *Rylands* v. *Fletcher*[71] which is probably the best known example of a strict liability tort in English law. Winfield prefers the word 'strict' to 'absolute' for describing the liability under the rule in *Rylands* v. *Fletcher.* This liability is in form, absolute though subject to certain qualifications which take away the great deal of its absolute character. Inspite of these qualifications it may, in particular cases, have that operation and make a person liable for no fault of his. The basis of the liability in the case of *Rylands* v. *Fletcher* was the rule propounded by the Blackburn J delivering the judgment of the court of Exchequer Chamber, held thus:

> We think that the rule of law is that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequences of its escape.

70 *Supra* note 4.

71 (1868) LR 3 HL 330.

In appeal House of Lords broadly accepted the judgment of Blackburn, but Lord Cairns restricted the scope of the rule to instances where the defendant had engaged in a non-natural use of the land. In *Read* v. *J Lyons & Co Ltd*[72] the House of Lords made it clear that the rule of *Rylands*v. *Fletcher* does not apply unless there has been an escape from a place where the defendant has occupationor control over land to a place outside his control. The rule of *Rylands* v. *Fletcher* has been accepted in India though enforced rarely by the courts.

In *Surendra Kumar Arora* v. *ManojBisla*[73] the parents of the deceased, filed a petition before the Motor Accidents Claims Tribunal[74]and the tribunal, based on the evidence of the driver of the vehicle, has come to the conclusion that the driver (respondent no. 1) of the vehicle was not driving the vehicle in rash and negligent manner and the insurance company cannot be held responsible of paying the insurance amount to parents of the deceased. The appellants filed an appeal before the high court which has come to the conclusion that it was for the parents of the deceased to have established that the vehicle which was driven by the respondent no. 1 in a rash and negligent manner, which they have failed establish.

The Supreme Court held that the issue raised for our consideration is squarely covered by the decision of this court in *Oriental Insurance Co. Ltd.*[75]

> .....therefore, the victim of an accident or his dependants have an option either to proceed under section 166 of the Act or under section 163-A of the act. Once they have approached the tribunal under section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under section 163-A of the act, the compensation will be awarded in terms of the schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

The court upheld the decision of the high court and rejected the appeal, coming to conclusion that petition was filed under section 166 and not under section 163-A thus it was responsibility of the parents of the deceased to have established that the driver of the vehicle drove in rash and negligent manner which resulted into fatal accident but directed that the amount paid by the respondent insurance company by way of the interim compensation[76] shall not be recovered from the appellants.

Wrongful act of a third party cannot be a defence

One of the prominent judgments on defence of strict liability was handed over by the Kerala High Court in*VeeramaniChettiar* v. *Davis*[77]where the court rejected the act of third party as a defence in strict liability. In the instant case the plaintiff

72 [1945] KB 216.
73 (2012)4 SCC 552.
74 S.166 of the Motor Vehicle Act, 1988.
75 (2007)5 SCC 428 pp 445-46, para 27.
76 S. 140 of the Motor Vehicle Act 1988.
77 2012(4)KLJ375.

was walking through the footpath; an elephant suddenly moved towards the footpath and attacked the plaintiff and another person. The plaintiff stated that the elephant lifted him on its tusk to a height of 15 feet and threw away. Consequently, the plaintiff sustained grievous injuries on his right elbow and other parts of the body. He had undergone three surgeries and prolonged treatment. Though he was discharged later on, the treatment continued for a long time, he has lost his working capacity. Natural form of movement of his hand had been lost and now he is unable to pull or lift loads.

The first defendant, owner of the elephant, contended that there was no negligence on the part of either the first defendant or the third defendant. The elephant was brought for 'Ezhunnellath' with all precautions required and was under full control. There was no rashness or negligence in controlling it. The no. 1 defendant reiterated his defence in the reply notice that someone caught hold of the tail of the elephant when it turned suddenly, people started running and the plaintiff was injured in that stampede. The court decreed the suit, as prayed for against the 1st defendant, on a finding that the first defendant alone is liable to pay the amount. In appeal the learned single judge of high court partly allowed the appeal by fixing the compensation at Rs. 53,000 with interest at 6% from 25.01.1990 till realisation and full costs in the trial court. The impugned judgment and decree passed by the learned single judge is challenged in this appeal on various grounds. The defendant no. 1 submitted that the finding of the court that the employees of the appellant were negligent is incompatible with the evidence on record, and unless negligence on the part of either the first defendant or the third defendant is proved; the plaintiff is not entitled to get damages from these defendants.

The issues before the high court were (i) What is the nature and extent of liability of the owner for damage done by his elephant? (ii)Whether the elephant is a dangerous animal to mankind or not? (iii) Whether owner of the animal is strictly liable independently of negligence?

Animals are classified according to experience of mankind. By experience, there are two classes of animals. (A) those that are of a dangerous character (animals feraenaturae) and (B) those not normally of a dangerous nature (animals mansuetaenaturae). The court relying on *Filburn* v. *People Palace and Aquarium Company Limited*[78] stated that the law of England recognises two distinct classes of animals; and as to one of those classes, it cannot be doubted that a person who keeps an animal belonging to that class must prevent it from doing injury, and it is immaterial whether he knows it to be dangerous or not. As to another class, the law assumes that animals belonging to it are not of a dangerous nature, and anyone who keeps an animal of this kind is not liable for the damage it may do, unless he knew that it was dangerous. There is another set of animals that the law has recognised in England as not being of a dangerous nature, such as sheep, horses, oxen, dogs, and others. This recognition has come about from the fact that years ago, and continuously to the present time, the progeny of these classes has been found by experience to be harmless, and so the law assumes the result of this experience to be correct without further proof. Unless an animal is brought within one of these

78 (1890) 25 Q.B.D. 258.

two descriptions that is, unless it is shown to be either harmless by its very nature, or to belong to a class "that has become so by what may be called cultivation it falls within the class of animals as to which the rule is, that a man who keeps one must take the responsibility of keeping it safe. It cannot possibly be said that an elephant comes within the class of animals known to be harmless by nature, or within that shown by experience to be harmless in this country, and consequently it falls within the class of animals that a man keeps at his peril, and which he must prevent from doing injury under any circumstances, unless the person to whom the injury is done brings it on himself. In *Stephen May* v. *Burdett*[79] Lord Denman C.J. declared thus:

> whoever keeps an animal accustomed to attack and bite mankind, with knowledge that it is so accustomed, is prima facie liable in an action on the case at the suit of any person attacked and injured by the animal, without any averment of negligence or default in the securing or taking care of it. The gist of the action is the keeping the animal after knowledge of its mischievous propensities. The negligence is in keeping such an animal after notice.

Relying on judicial precedents, the court held that all elephants were dangerous and that it made no difference that a particular elephant in question was a highly trained, Burmese elephant and in fact tame, for the harmfulness of an offending animal was to be judged not by the particular training and habit, but by reference to the general habit of the species to which it belonged. The keeper of a dangerous animal is under an absolute duty to confine and control it so that it should do no harm, and hence injury was caused by such an animal whilst out of control, the rule of absolute liability will be applied whether or not the injury resulted from the animal's vicious or savage propensity.

Considering the defences raised by the defendants, the questions before the court were, whether wrongful act of a third party can be a defence to liability for the damage caused by a dangerous animal? And whether defence that a particular animal was always quiet, well trained and tamed makes any difference in the application of strict liability? The court answered both the questions in negative. The court held that contentions that the dangerous animal was provoked by the wrongful act of a third party and thereby damage was caused, and this particular dangerous animal was well trained, tamed and never behaved violently or caused damage, are unsustainable defence in law. This line of defence does not make any difference in the application of strict liability. The court relied on *Rylands* v. *Fletcher*[80] that the wrongful act of a third party afforded no defence to liability for injury done by a savage animal.

The keeper of a dangerous animal is under an absolute duty to confine and control it so that it should do no harm, and hence injury was caused by such an animal whilst out of control, the rule of absolute liability will be applied whether or not the injury resulted from the animal's vicious or savage propensity. The plaintiff

79 (1846) 9 Q.B. 101.
80 (1908) 2 K.B. 825.

was allowed to realise an amount of Rs. 85,000 with interest at the rate of 12%. But in appeal, the learned single judge though concurred with the merits of the case except the quantum of compensation, reduced compensation to Rs. 53,000 with interest at the rate of 6%.

IV COMPENSATION/DAMAGES

Dealing with law of tort, the Supreme Court has not only developed the principles of liabilities but also the law to award compensation to the aggrieved party. The Supreme Court, through its various judgments, issued a number of guidelines to award compensation in which *Kerala SRTC* v. *Susamma Thomas*[81] is remarkable one where the court issued certain guidelines in order to safeguard the feed from being frittered away by the beneficiaries due to ignorance, illiteracy and susceptibilities to exploitation. The court ordered that it is mandatory to deposit some portion of amount of compensation in long term fixed deposits for the minor dependants of the deceased, illiterate claimants and widows. This guideline came into question in the case of *A.V. Padma* v. *R. Venugopal*[82] where deceased met with an accident and died due to the major injuries sustained by him. The wife of the deceased (appellant no. 1) with two daughters (appellants no. 2 &3) filed a petition for claim in Motor Accident Claims Tribunal, Mysore and the said tribunal passed an order to award of Rs. 60,000 as compensation against which the appeal was filed in Karnataka High Court which enhanced the amount of compensation to Rs. 4,25,000. The appellants filed an application for release of the amount, Rs. 6,33,038 deposited by the United Insurance Co. Ltd in Tribunal, in favour of appellant no. 1 because the appellants no. 2 & 3 had no objection, through affidavit filed by them, to the full payment of amount of compensation to their mother. Inspite of giving the entire amount to appellant no. 1, the tribunal ordered to invest Rs. 1,00,000 each in long term deposits in favour of appellants no. 2 & 3. The appellant no. 1 again filed an application to the tribunal for payment of full amount in her favour requesting not to deposit any portion of amount in long term deposit. The tribunal rejected the application against which the appellant filed a writ petition In High Court of Karnataka. The high court dismissed the petition keeping in mind the decision of the Supreme Court in *Kerala SRTC* v. *Susamma Thomas*.[83] The appellants filed this appeal in Supreme Court which clarified its own decision given in the case of *Susamma Thomas*. The court observing the facts that the appellants no. 1 is 71 years old lady and in need of money in look after of her health and to provide shelter to her daughters, second appellants is an M.Sc. Degree holder and third appellant was holding Master's Degree both in Commerce and Philosophy, they were well versed in managing their lives and finances, granted the leave to the petition and held that the neither the tribunal nor high court considered the necessity of keeping said amount in nationalized bank for long term. The court directed the release of entire amount to the appellants without further delay clarifying the

81 (1994)2 SCC 176.
82 (2012)3 SCC 378.
83 *Supra* note 81.

Susamma Thomas case that the said guidelines are not to mean that tribunals are to take a rigid stand by insisting on long term fixed deposit of compensation amount. The said guidelines were issued to safeguard interests of minors, illiterate *etc*. Empowering the tribunal with sufficient discretion to award compensation the court said that the tribunals are empowered with sufficient discretion to order the release of the entire amount in appropriate case. In this case the investment in long term deposit will benefit the bank not the appellants.

The decision of the apex court in *New India Assurance Company* v. *Yogesh Devi*[84] is an important judicial pronouncement on the determination of compensation. One of the issue before the court was whether income of the owner could form the basis of computation compensation. In the present case the deceased was hit by a truck when he was travelling on motorcycle resulting in death. The wife of the deceased (respondent no. 1) with their children filed an application before the tribunal and claimed compensation of amount Rs. 1.86 crores on the ground that the deceased was earning more than Rs. 35,000 per month as he was owner of three minibuses, driver and agriculturist. The tribunal calculating his income Rs. 3900 per month awarded the compensation of Rs. 10,000,00. Aggrieved by the said determination of compensation, the claimants as well as appellants brought the matter in High Court of Rajasthan in appeal. The court dismissed the appeal of the appellant and partially allowed the appeal of the claimants modifying the award of the compensation. The high court opined that the income of the deceased should be taken at Rs. 24,000 per month of which 1/3rd is treated to be an amount, which the deceased would have spent on himself and the balance on the claimants. Therefore the high court concluded that the claimants are entitled to a compensation of Rs. 30,72,000 along with an interest of 6% per annum from the date of the filing of the claim petition till the realization. Hence the present appeal lies in the Supreme Court where court followed its own the decision in *JasbirKaur Case*[85] where the court held thus:

> It has to be kept in view that the tribunal constituted under the Motor Vehicle Act 1988 as provided in section 168 is required to make an award determining the amount of compensation which is to be in real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne in the mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in the mind that the compensation in not expected to be a windfall for the victim. Statutory provision clearly indicates that the compensation must be just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

Keeping the above principle in view, the court examined the correctness the conclusion arrived at by judgment by the high court. Dealing with the question that the deceased was earning an amount by agriculture land, the court again relied on

84 *Supra* note 82.

85 *State of Haryana* v. *JasbirKaur* (2003) 7 SCC 484.

JasbirKaur case where it was opined that "the land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may require to engage persons to look after the agriculture. Therefore the normal rule about deprivation of income is not strictly applicable to cases where agriculture income is the source. Attendant circumstances have to be considered."

The court held that the high court rejected the claim as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family but at the same time the high court failed to see that the same logic would be applicable even to the income from the abovementioned three minibuses. The assets would still continue with the family and fetch income. The only difference is that during his lifetime the deceased was managing the buses but now the claimants may have to engage some competent person to manage the asset which in turn, would require some payment to be made to such manager. Computation of the compensation by the high court that the respondent claimants lost Rs. 16,000 per month was neither based on any evidence nor on right logic. The Supreme Court computed compensation by taking salary of manager of three minibuses as Rs. 10,000 and driver of buses as Rs. 3900 so the total loss sustained by respondent claimants was calculated to be Rs. 13,900 and multiplier of 16 applied which modified the compensation to Rs. 26,68,800.

In *Santosh Devi* v. *National Insurance Company Limited*[86] the question before the court was whether there should be incremental enhancement of annual income in his total income where the deceased was the self employed or was on fix salary without provision for annual increment etc. The deceased Swaran Singh died in a road accident when the maruti car lost its control. The wife of deceased (appellant here) filed a petition for award of compensation under section 166 of the Motor vehicle Act 1988. The Supreme Court, allowing the appeal of the claimants for the enhancement of the compensation, answered positively clarifying the *Sarla Verma* Case[87]. The court noticed apparent divergence in the views expressed by the Supreme Court in different cases and the other precedent[88]. The court held that it is very difficult to fathom any rationale for the observation made in *Sarla Verma case* that where the deceased was self employed or was in fixed salary without provision for annual increment, the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases. The court opined that it is difficult to presume that the wages or total emolument/ income of a person who is self employed or employed on a fixed salary without provisions of the annual increment would remain same throughout his life. The court accepted that though the wages/income of the self employed persons or who is employed on fixed salary without annual increment in unorganized sector is not increased in comparison to the salaries of the government employees or those who are employed in organized sector. The court held that a self employed person or who is engaged on fixed wages will be entitled of 30% increase in his total

86 (2012) 6 SCC 421.

87 *Sarla Verma* v. *DTC* (2009) 6 SCC 121.

88 *UPSRTC* v. *Trilok Chandra* (1996) 4SCC 362, *Nance* v. *British Columbia Electric Railway Co. Ltd.* 1951 AC 601 and *Davies* v. *Powell Duffryn Associated Collieries Ltd.* No. 2 942 AC 601.

income over a period of time and if he/she become victim of accident then the same formula will be applied at the time of calculation of compensation.

The court also held that 1/3rd deduction rule out of the monthly income for personal expenses would not be applicable because it is impossible to think that a person whose monthly income is Rs. 1500 will spend 1/3rd on himself and rest of the amount will be spent on rest of the five family members. Such person would spend 1/10th of his income on himself for personal expenses and rest of the amount would be for family. Hence after the deduction of 1/10th the court granted Rs. 2,94,840 compensation with Rs. 1,42,340 enhanced compensation alongwith the Rs. 10,000 as funeral expenses and Rs. 10,000 in *lieu* of loss of consortium. The enhanced amount of compensation shall be with 7% interest from the date of application till realization.

In *National Insurance Company Limited* v. *Sinitha*[89] it was the issue before the court whether the claim for compensation can be defeated under section 163-A of Motor Vehicle Act 1988 on the proof of the contributory negligence. The court answered the question in affirmative. In this case the deceased was riding a motorcycle which hit a big latrine stone lying on the tar road while giving way to a bus coming from the opposite side. The motorcycle overturned and caused injuries which resulted into his death later on. The motorcycle was insured with the petitioner *i.e.*, National Insurance Company Limited. The wife of the deceased with the children and parents of the deceased filed a petition for claim in tribunal and prayed for compensation of Rs. 8,20,500. The tribunal awarded the compensation a sum of Rs. 4,26,650. The insurance company filed an appeal against the order of the tribunal in the Kerala High Court which upheld the decision of the tribunal though accepting one of the contentions of the appellant that Rs, 5000 awarded for pain and sufferings was impermissible under sec 163-A of the Act. Still dissatisfied by the by the decision the appellant filed the appeal in the Supreme Court. The court clarified its decision pronounced in the case of *Oriental Insurance Company Ltd* v. *Hansrajbhai*v. *Kodala*[90] that the court did not decide that determination of the compensation under section 163-A of the Act is base on 'no fault' liability. The claim for compensation raised under section 163-A need not be based on pleadings or proof by claimants showing absence of contributory negligence. The court held that the onus of proof of contributory negligence lies on shoulder of defence. The insurer did not produce any evidence to establish the contributory negligence of the deceased hence the appeal was dismissed by the court. The court also clarified the difference between section 140(4) and 163-A and held that if claim for compensation is not sustainable for reason of fault on account of contributory negligence *i.e.*, wrongful act, neglect or default of victim said provision would be governed by fault liability principle and where claim cannot be defeated on account of contributory negligence then said provision would fall under no fault liability principle. It is apparent that both sides are precluded in a claim raised under section 140 of the Act from entering into arena of fault. There can be no doubt that the compensation claimed under section 140 is governed by the 'no fault' liability principle.

89 (2012) 2 SCC 356.
90 (2001) 5SCC 175.

V DEFAMATION

From very early times the law has sought to protect the individual in his reputation as in his person and property.[91] An injury to reputation is as likely, if not more, to disturb public peace and individual comfort and happiness as an injury to person and property.[92] Most legal system confers some protection on the related interests of reputation, dignity and privacy though this may be via criminal law. The tort of defamation is unique in many ways. And it is best understood in the context of historical development. Until the sixteenth century, the ecclesiastical courts exercised general jurisdiction over defamation. Thereafter the common law courts developed an action on the case for slander where temporal damage could be established. Much later the common law courts acquired the jurisdiction over libels too, and then they forged a distinction between libel and slander on the basis of that damage would be presumed in libel but that the claimant would have to prove special damage for slander.

In *Hardeep Singh* v. *State of Madhya Pradesh*[93] the appellant Hardeep Singh who was engaged in running a coaching called "Deepika Classes" for professional courses was trapped by the authorities for taking money for the question papers of the pre medical test in three subjects. He was brought to police station in handcuffs and his photographs in handcuffs were published in local news papers. In appeal, the division bench of Madhya Pradesh High Court acquitted the appellant and awarded Rs.70,000 as compensation finding that an expeditious trail ending in acquittal would have resorted appellant's dignity and there was no warrant for putting appellant in handcuffs. The Supreme Court held that in the light of the findings arrived at by the division bench; the compensation of Rs. 70,000 was too small and did not do justice to the sufferings and humiliation undergone by the appellant. In the facts and circumstances of the case, a sum of Rs. 2,00,000 was awarded as compensation to the appellant to meet the end of justice.

In another case of *Mehmood NayyarAzam* v. *State of Chhattisgarh*[94] the appellants, who was a doctor, was indulge in spreading awareness against the exploitation of the weaker sections who were the victims of local coal mafia, authorities and police jointly. The rights and interests of weaker sections were being affected by them. The doctor was falsely implicated in multiple criminal cases for helping the weaker sections of society against the local mafias *etc*. He was arrested and in police custody admittedly humiliated. The appellant was being photographed with a placard in which self humiliating words were written and he was asked to hold it. The photographs were circulated in the general public and were also filed by one of the respondents in revenue proceedings. The appellant filed a petition in High Court of Chhattisgarh which affirmed that the appellants was harassed and entitled to compensation. The court directed to state government to determine the compensation and award the same. The state government did not award the

91 Veeder, Anglo American Essays on legal History vol. III, at 447.
92 *De Crespigny* v. *Wellseley* (1829) 5 Bing 406.
93 (2012)1SCC 748.
94 (2012)8 SCC 1.

compensation. The appellant moved to Supreme Court. It was the question before the apex court that whether it was a case of defamation or not. The court answered in negative and held that in the present case the writ court is not concerned with the defamation postulated under section 499 IPC. The writ court is really concerned with how in a country governed by the rule of law and where article 21 of the Constitution is treated to be sacred, the dignity and social reputation of a citizen has been affected. The court also held that the right to reputation is a facet of right to life of a citizen under article 21 of the Constitution. Any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by the law.

VI INTIMIDATION

Intimidation is now a well settled tort. According to Winfield, it means a threat delivered by A to B whereby A intentionally causes B to act (or refrain from acting) either to his own detriment or to the detriment of C.[95] To constitute the wrong of intimidation, there must be a threat to do an unlawful act to compel a person to do something to his own detriment or to the detriment of somebody else. If the threat is to do something which is n ot unlawful or the threat does not cause any detriment, there is no intimidation.

The Supreme Court got a rare opportunity in *P. Mahalingam* v. *Monica Kumar*[96] to explain the law relating to the subject. The appellants in the instant case who studied MBBS filed a writ petition against Santosh Medical College and police for harassment. The court passed orders and issue of notice in the writ petition. The registrar of the court directed that the notice be served by way of *dasti* on the unserved respondents. When the appellants went to serve respondents who were then SHO of police station, he started brutally assaulting them and caused injuries on their body.

Hearing the contempt petition the court held that the contemnors are repeatedly intimidating the applicant and his family members and for that reason the applicant made the prayer for restraining order preventing contemnors from going within 100 meter of certain private premises. The same was not granted per se as that would restrain contemnors barred from going to public places As well.

VII MASS TORT

In reference to Bhopal Gas Leak Disaster the Supreme Court, after hearing various contentions and suggestions, directed[97] the empowered committee to consider the suggestions of the Bhopal Group for Information and action and the Bhopal Gas Peedith Mahila Udhyog Sangathan and to express its point of view on it. The empowered committee took necessary actions immediately, in compliance

95 Wienfield, Tort, at 546 8th ed.

96 (2012) 1 SCC 694 with *Monica Kumar* v. *State of Uttar Pradesh* decided on 16.12.11.

97 *Union Carbide Corp. Ltd.* v. *Union of India* order dated 06.02.96.

of order[98], met on 11.03.96 and heard the views and summed up that the original proposal for the construction of the hospital was the best way of providing what had been asked by the Supreme Court. The committee was also of opinion that the court may be requested to release funds to the extent of Rs. 187 crores only at this stage. The balance fund under attachment can be release later on. In this regard the Supreme Court reiterated in *Union Carbide Corporation Limited* v. *Union of India*[99] that the amount has been attached to enforce the presence of the then UCC chairman, Mr. Anderson. The council of the UCC has also agreed that the amount may be made available for the construction of the hospital and the attachment has thus lost its sting because in any case UCC is not claiming that amount, therefore, there is no difficulty in directing the release of that amount from attachment. The Court directed that out of the attached amount, a sum of Rs. 187 Crores be released, in favour of the Empowered Committee, for the construction of the Hospital with interest accruing thereupon to the date of actual release and payment may be made available to empowered Committee to carry out the construction work.

VIII WRONGFUL / FALSE IMPRISONMENT

False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification. To constitute this wrong, imprisonment in the ordinary sense is not required. When the person is deprived of his personal liberty, the wrong of false imprisonment is said to have been done. In this context the case of *Prithipal Singh* v. *State of Punjab*[100] appears to be a good contribution of judiciary. In the instant case the deceased, Jaswant Singh Khalra, being a human right activist, had taken the task to expose the misdeeds of the police in district Amritsar and Taran killing innocent people under the pretext of being terrorist and cremating them without any identification and performing any rituals. The police authorities did not like such activities of deceased so the SSP, Ajit Singh Sandhu, hatched the conspiracy with the appellants and some other police personnel to abduct the deceased. Witness Rajiv Singh was present in the house of deceased at the time of abduction and witness Kirpal Singh Randhawa had seen the appellants namely Jaspal Singh, DSP with others. Inspite of the best efforts made by Paramjit Kaur, wife of the deceased and others, the whereabouts of the deceased were not made known to them. The case was transferred to CBI which made public appeal by putting photographs of the deceased in electronic media and posters on walls of the cities. A reward of, Rs. 1lakh was also declared for the person giving information about him but the whereabouts of the deceased could not be known. Kulwant Singh, one of the witnesses, in his statement recorded by CBI revealed that he had been detained in a case[101] and brought to police station on the same day where he met the deceased who had disclosed his identity to him. Another witness, Kuldeep Singh, special police officer revealed the

98 Dated 06.02.96.
99 (2012) 8 SCC 348.
100 (2012)1SCC 10.
101 Narcotic Drugs and Psychotropic Substances Act, 1985.

facts to the CBI in respect of abduction and murder of the deceased. He made a voluntary statement to CBI that the deceased was murdered and his dead body was thrown in canal by the police authorities.

The court observed that police atrocities are always violative of the constitutional mandate, particularly, article 21 (protection of life and personal liberty) and article 22 (person arrested must be informed the grounds of detention and produced before the magistrate within 24 hours). Such provisions ensure that arbitrary arrest and detention are not made. Tolerance of police atrocities, as in the instant case, would amount to acceptance of systematic subversion and erosion of the rule of law. Therefore, illegal regime has to be glossed over with impunity, considering such cases of grave magnitude.

The court also propounded that the in the view of provision of article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. The latin maxim *salus populie stsupremalex* (safety of the people is the supreme law)*;* and *salus reipulicae supremalex* (the safety of the state is the supreme law), coexist.

IX BREACH OF STATUTORY DUTY

Defining the coexistence of the safety of the state and safety of the people, in *Ramlila Maidan In Re*[102] the Supreme Court opined that the state has a duty to ensure fulfillment of the freedom enshrined in our constitution and so it has a duty to protect itself against certain unlawful actions. It may, therefore, enact laws which would ensure such protection. The rights and the liberties are not absolute in nature and uncontrolled in operation. The rule of justice and fair play requires that state action should neither be unjust nor unfair; less it attracts the vice of unreasonableness or arbitrariness, resultantly vitiating the law, the procedure and the action taken thereunder. In the event of any untoward incident resulting into injury to a person or property of an individual or violation of his rights, it is the police alone that shall be held answerable and responsible for the consequences as may follow in law. The police is to maintain and give precedence to the safety of the people as *salus populi supremalex*[103] and *salus republicae supremalex*[104] coexists and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. Even if the court takes the view that there was undue haste, adamancy and negligence on the part of the police authorities, it gave no right to others to commit any offence *injuria non excusatinjuriam.*

X CONCLUSION

The foregoing takes us to the conclusion that the law of torts has moved from the stage when it is only considered to be concerned with the allocation and prevention of losses occurring in our society *i.e.* it belongs to the category of distributive justice, to the present stage when it has recognized its preventive function

102 *Supra* note 41.

103 See safety of the people is the supreme law.

104 See safety of the state is the supreme law.

in the society. It is well known, like other laws, the law of torts is not a static but a dynamic law which continuously tries to adapt itself to meet the social needs of a changing society in order to remain relevant. The survey of the cases decided during the year 2012 reveals the dynamic aspect of the law of torts. Many of these cases add immense value to the existing corpus of knowledge in the subject.

The case of *Ramlila Maidan In Re* is a classic case on the subject of contributory negligence. The broad principles of law enunciated by the court could be seen as invaluable contribution to the tort jurisprudence in India. The decision also assumes importance in the context of law relating to nuisance. *Govt. of NCT of Delhi* v. *Shobha,* is another important judgment in the context of the increasing number of cases of medical negligence. The cases of *SantoshDevi* v. *State of M.P.,* and *Rani* v. *N.D.P.L.* elaborate the principles relating to the tort of negligence of statutory authority, strict liability and computation of damage.

Surendra Kumar Arora v. *ManojBisla, VeeramaniChettiar* v. *Davis and Kerala SRTC* v. *Susamma Thomas* are some of the other important judgments on various other aspects of torts. The other cases considered in the survey are no less important; these bring clarity in the existing law and are of importance in the context of the peculiar fact situations.