

Notes and References

1. Priyanath Sen, General Principles of Hindu
1. Priyanath Sen, General Principles of Hindu Jurisprudence 336 (1918);
Abdur Rahim, Muhammadan Jurisprudence 360 (1958)
Ramaswamy Iyer, Law of Torts (1975)
Appendix 591, 592.
2. Ibid
3. Setalvad The Common Law in India, 110 (1960) Sir Frederick Pullock prepared a draft code of torts in India but it was never enacted into law, see 5 IQR 362
4. Setalvad at 225,226.
5. See illustrations (h) to (j) of s.7 of the Easement Act, 1882.
6. Rights which are incidental to the ownership of property. See Chanti China Venkatareddi v. Kurasani Koti Reddy and another, AIR 1967 A.P. 81, Ramsewak Kazi v. Ramgir Choudhry, AIR 1954 Patna 320.
7. Taking into account the vastness of the research area the present study has been confined to making an appraisal of Indian cases only. Important English decisions have been referred to wherever necessary.
8. For example, a case coming within the applicability of the principles of res ipsa loquitur (that is, when an acts speaks for itself) or strict liability.
9. But here also, in certain exceptional cases a breach of the duty to take care has been side-tracked by the judiciary. For instance, where a defendant establishes that, he has a customary, prescriptive or an easementary right to dam up a particular water channel or to use water from a particular water source for the purpose of irrigation or to discharge effluent in a certain stream then even if such an act causes damages to the plaintiff the courts have insisted ~~that~~ without proof of negligence the defendant cannot be held liable in tort. The rights of riparian owners are also protected in the same manner.
10. 1932 AC 562
- 10a. Ramnath v. Kalanath and others, (1950) ILR Nag.510

11. P.Seetharamayya v. G.Mahalakshamma AIR 1958 AP 103; see also, Pattam Satyabadi Patna v. Kasinath Bissoyi, AIR 1964 Ori 47; Sami Ullah v. Mukundlal, AIR 1921 All 182.
12. P.Seetharamayya v. G.Mahalakshamma, see note 11.
13. Goapla Krishna Yashendriya Bahadur v. Secretary of State, AIR 1915 Mad 372.
14. AIR 1932 ALL 573.
15. AIR 1956 M.B. 209.
16. (1874) 10 Ex4 (A) in Ibid at 210.
17. (1926) IIR Mad 449.
18. Supra note 10a.
19. (1907) IIR 31 Mad 169.
20. (1907) 6 BIR 529 : 28 Bom 472.
21. AIR 1919 Nag 94.
22. AIR 1987 Kar. 87.
23. (1972) 1 ALL ER 749 : 1972 AC 877.
24. AIR 1917 Pat. 44.
25. Kasia Pillai v. Kumaraswami, AIR 1929 Mad 337.
- 25a. Ibid at 339.
26. (1874) 1 AC 364 14 Beng LR 200.
27. AIR 1936 Mad 202.
- 27a. Supra note 11.
28. Chandrabhan Singh v. Shital Prasad, AIR 1984 M.P. 4.
29. AIR 1969 Mad 351.
30. (1907) 28 IIR Mad 72; see also, Ram Odayan v. Subramania Aiyar, (1907) 31 IIR 171.
31. C.N.Maduranayakam Pillai v. Secretary of State, AIR 1936 Mad 923.

34. Secretary of State v. Kattaria Nagayya Kama Rajendra Ramaswami Kanya Naicker Zamindar of Satour, AIR 1938 Mad 180.
35. Secretary of Law v. Kattaria No Supra note 27.
36. B.M.Gandhi, Law of Torts, 814 (1987)
37. (1866) LR 1 Exch.265.
38. The rule in Rylands v. Fletcher was first formulated by Blackburn J. in 1866 which was approved by the House of Lords in 1868.
39. See Dhanusao v. Sitabai, IIR 1948 Nag 698; Becharam Choudhary v. Puhubnath Jha, (1869) 2 Beng LR (Appx.) 53; Baideo Das v. Secretary of State, (1863) P R No 80 of 1883.
40. Supra note 10a
- 40a. Supra note 15
41. Supra note 20.
42. AIR Oudh 121.
43. Supra note 14.
44. Ramanuja Chariar, Supra note 19; see also B.M.Gandhi, Supra note 36 at 830.
45. Ibid
46. Supra note 6
47. See also Municipal Corporation of City of Bombay v. Vasudeo Ramehandra, 6 BIR 899.
48. (1905) Bom LR 713.
49. Kenaram Akhuli v. Sristidhar Chatterjee, (1912) 16 CWN 875.
50. See supra note on the other hand, the Karnataka High Court in Mukesh Textile Mills, supra note 22, held that by storing large quantities of molasses on the land the appellant had put the land to a non-natural use and if a person collects on his land things which are intrinsically dangerous or might be dangerous, if they escape, he has a liability, if things so stored escape and cause damage.
51. Supra note 24.
52. Coulsen and Forbes : Waters and Land Drainage, (ed.6) 162 in B.M.Gandhi, Law of Torts supra note 36 at 829.
53. Becharam v. Pubnath Jha, supra note 39.
54. Mst.Anundmoyee v. Hameedoonisa 1862 Marsh 85.
55. Ramanuja Chariar, supra note 19; Dhanusao v. Sitabai, supra note 39.
56. The principle of non-natural user has also been extended to a governmental act, see section F on 'sovereign immunity,' of this paper.
57. Guru Charan v. Ram Dutt, (1865) 2 WR 43; Kadur Bukch v. Ram Nag, (1967) 7 WR 448.
58. Shankar v. Laxman, AIR 1938 Nag 289.
59. AIR 1987 SC 965. In this case there was a leakage of oleum gas from one of the units of Shriram Foods & Fertilizer as a result of which several persons were affected. The court while disregarding the principle of strict liability (with its exceptions) as established in Rylands v. Fletcher held the enterprise liable solely on the basis that such hazardous enterprises or inherently hazardous enterprises owe an absolute and non-delegable duty to the community to ensure that no harm is caused to the people.

60. In the Bhopal case on morning 3rd December 1984 there was a leakage of the deadly Methyl Isocyanate (MIC) gas from a storage tank of the Union Carbide at Bhopal as a consequence beings of which more then 2,5000 human beings were killed, and over two lakhs were affected owing to the pollutionspreading in the air and water.
61. See U.Baxi and Thomas Paul, Mass Disasters and Multinational Liability 6-7, (1986).
62. W.L.Prosser, Law of Torts 571 (1971)
63. See Dhanusao, supra note 39.
64. A.G. V. Pya Quarries, (1957) 2 QB 169, 191, per Denning C.J.
65. Ratanlal and Dhirajlal, The law of Torts 463 (1987)
66. Municipal Board, Lucknow v. Mussammat Ram Dei IIR 1940 Luck 173.
67. Supra note 65.
68. 198 IC 773.
69. AIR 1937 Pat 302.
70. Ibid
71. See Galstaun v. Dconia Lal Seil, IIR 1905 Cal 697. In this case the dependent who was the owner of a shellar factory discharged into the municipal drain liquid refuse of offensive character. He was prevented from doing so, as it interfered the plaintiff's ordinary comfort.
72. 158 I.C. 1103.
73. See Sariu Prasads case, supra note 14, where the court held that whenever any alteration is made from the normal in land, the owner of the land is liable for any damage which may accrue to his neighbour if there has been want of care by the landowner in making be alteration.
74. 74 I.C.41.
75. Similarly in Manumal Jaromal's case Supra notes 72, though the cases of Sariu Prasad supra note 14, and Mohanlal, supra note 20, were cited as examples of tort of nuisances the judges for some unexplained reason did not consider the tort to have been committed from the point of view of nuisance.
76. For example under ordinary law of tort.
77. Benjamin v. stoor, (1874) L.R.9C.P. 400,407 per Brett J., in R.W.?. Dias, B.S.Markesinis, Tort Law 233 (1984).
78. Nobilo v. Waitemata country (1961) N.Z.L.R. 1069,1067.
- 78a. Supra note 29.
79. Debi Pershad Singh v. J.Singh IIR 1897 Cal.865.
80. State of Bombay v. Laxman, (1952) 62 BLR 106.
81. Apporao v. seetharamaya, IIR 1939 Mad 45; Perumal v. Ramasami IIR 1887 Mad 16.
82. See S.N.Jain, 'Legal Control of Water Pollution in India', 11, in S.L.Agarwal (ed.) Legal Control of Environmental Protection (1980)
83. Lillywhite v. Trimmer (1967) 36 L.J.Ch.525.
84. Salmond, Law of Torts 234 (1961).
85. The Environment protection Act, 1986 bars civil jurisdiction in respect of anything done, action taken or order or direction issued by the Central Government or any authority or officer under the Act.
86. See Gayatri Singh and Madhusudhan Rao (ed.), The Environmental Activists' Handbook, An 'Asha Kendra' Publication.

- 86 a. Ibid at 30
87. AIR 1986 A P 328
88. 1986 (2) SCALE 284.
- 88a. 1987 (2) SCALE 124.
89. AIR 1925 Nag 50
90. Tripta Batra " The Bitter fruits of sugar", The Hindustan Time Sunday Magazine, Jan 31, 1988.
- 90a. R.W.M. Dias, B.S. Marquesinis , supra note 77 at 249
91. For, details see Kiran Bala Jain's paper on ' Right in Water-based Resources and Fishery , Ferry, Navigation and Hydro-electricity ' and Pradeep Kumar Chowdhry's paper on 'Regime of sanctions in water Resources Management Laws '.
92. supra note 74.
93. AIR 1976 Ori 47
94. Alice Jacob and S.N. Jain, Law Relating to irrigation 10 (1972)
95. Ibid
96. "Whereas it is necessary to make provision for the construction maintenance and regulation of canals, for the supply of water therefrom and for the levy of rates for water so supplied ----," supra note 94 at 7 .
97. For example, s. 5 of the Northern India Canal and Drainage Act 1873, states that whenever it appears expedient to the state Government that the water of any river or stream flowing in a natural channel, or of any lake, or other natural condition of still water, should be applied or used by the state government for the purpose of any existing or projected canal or drainage work, the state government may, by notification in the official gazette, declare that the said water be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof ".
98. see s. 6 of the Northern India Canal and Drainage Act, 1873, Infra .
99. supra note 94 at 8.
100. 41 I C 24
101. 2 I C 325
102. For instance, in Ramachandra v Narayanasami , IIR 1993 Mad 333, where the defendant irrigator, in pursuance of an order of the sub-collector made on a petition ~~pk~~ filed by him, had opened a new irrigation channel thereby materially reducing the supply of water necessary for the cultivation of the plaintiff's land and causing damage to him, it was held that the order of the sub-collector was in excess of the power he had for regulating the supply of water for irrigation purposes ; in Collector of Nasik V Shanil , IIR, . 1883 Bcm 209, the government was held not to have the power to curtail or interfere with the rights of irrigators in the enjoyment of water without any justifiable cause.

supra note 94 at 11

86 I.C. 928

6. A similar view has been expressed in state of Mysore V. Ranchandra Gounda and another, AIR 1972 Bom. 93 In this case the state government constructed a reservoir for facilitating the supply of drinking water to the residents of a town. Damage was caused to the adjoining land of the plaintiff by overflow of the reservoir for a channel to carry the overflow of water from the reservoir had not been completed by the state. The court held that the construction of the reservoir could not be considered as an act of exercise of sovereign functions and the state was held liable to pay damages to the plaintiff.
7. per Blackburn J., in Mersey Docks Trustees V. Gibbs, (1866) IR 1 HL 93, 112; Hammersmith, Rly V Brand, (1869) IR H HL.171. East Fremantle Corporation V Annois (1962) AC 213, Quebec Ry V Vandry, (1920) AC 662.
8. Allen V Gulf Oil Refinery Ltd., (1981) All ER 353 (HL) 65 (Lord Roskill)
9. Manchester Corpn V. Farnworth, (1930) AC 171 (HL).
10. (19 11) 35 BLR 412 12 I.C. 884.
11. Bom Act III of 1901
12. (1878) 3 App. Cas 430 at 455.
13. Gaekwar Sarkar V Gandhi Kachrabai/appeal, ILR 1903 Bom 344.
14. shatangan Das Coomar V. Hokha Shantal, ILR 1889 Cal. 159.
15. 21 I.C. 847 ILR 38 Bom 116.
16. (1902) 4 Bom LR 1914.
17. Gaekwar Sarkar V Kachrabai, (1900) 2 Bom LR 357 ; ILR 25 Bom 243
18. AIR 1939 All 375.
19. AIR 1962 All 211 .
20. See also Maya Ram V Municipal Committee, Lahore, 121 I.C.1930.
21. 18 I.C. 816 ; (1913) 88 P R 1913.
22. See Municipality of Hublis , supra note 110 ,
23. supra note 25
24. Historically speaking, the public duty of maintaining ancient tanks and constructing new ones was originally taken by the Government of India, which upon obtaining independence had devolved upon the Zamindars- the defendant being one of the Zamindars. The court therefore found that the " rights and liabilities of the defendant " were much more analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties conferred ", and that the duty of the defendant to maintain the tank, was similar to that of the plaintiff's to maintain their railway, Ibid.

128. Surprisingly, no reference was made to the case of state of Gujarat v Patel Mohanbai Mathurbai, (1974) 15 Guj LR 259, which encompassed a similar situation. In that case the court held that "No one has a right to use his own land in such a way as to be a misuse to his neighbour and that " it is the defendant's duty to prevent anything escaping from his artificial construction if care is not taken to prevent water from seeping and percolating through the construction into the neighbour's land and causes damage the government must be held liable in tort; see also Secretary of state for India v R. Ram and other, supra note 10 where the Government was held responsible for the overflow of water on principle of strict liability.
129. 1902 A.C. 381 (393) : 86 LT 457
130. supra note 30
131. supra note 26
132. AIR 1940 Sind 254 : 192 I.C. 494.
133. The section provides that where a fact is specially within the knowledge of a party the burden of proving that fact is on him.
134. supra note 127
135. H.R.W. Wade Administrative Law 686-687 (1982) ; L Neville Brown and J.F. Garner, French Administrative law 108-109(1983)
- 135 a. see S₃ 18 and 2 of the : Easement Act, 1882.
136. Mt. Amar Kaur v Secretary of state, AIR 1939 Lah 583 .
137. supra note 118
- 138 (1968) ILR 1 Punj. 234.
139. AIR 1980 S.C. 1622 .
140. supra note 26
- 141 supra note 59
142. see Rablan , Ramchandran supra, note 139 and note 106 respectively
143. Liability of state in Tort, 1956.
144. Ibid at 36
145. see commissioners for the port of Calcutta and Corporation of Calcutta , 94 1 A Vol. at 36.
146. supra note 33
147. supra note 26
148. similarly in Loknath samal V Guru Prasad Parida , AIR 1963 ORI 21 the digging of a tank on one's own land is considered as a normal use of land and if the bank of the tank is washed by extraordinary flood caused by heavy fall of rain it is the fault of the defendant but simply an act of vis major
149. supra note 21

118 I C 216

(1865) 3 H. & C. 596 : 13 L.T. 148.

Supra, note 48

AIR 1924 Lah. 192.

The period of limitation under this Act is one year from the time the act or omission takes place.

AIR 1965 SC. 17

S-6 Power of Canal Officer : At any time after the day so named, any Canal Officer, acting under the orders of the state government in this behalf, may enter on any land, remove any obstructions and may close any channels, do any other things necessary for such application or use of the said water "

S. 15 : Power to enter for repairs and to prevent accident; In case of any accident happening or being apprehended to a Canal , any Divisional Canal Officer or any person acting under his general or special orders in this behalf may enter upon any land adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accidents.

Compensation for damage to land.

In every such case, such canal officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted the canal officer shall refer the matter to the collector, who shall proceed to award compensation for the damage as though the state government had directed the occupation of the lands under section 43 of the Land Acquisition Act, 1870.

Limitation Act 1908

Description of suit	Period of Limitation	Time from which period begins to run
Art.2 For Compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India	Ninty days	When the act or omission takes place.
Art. 36 For Compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	Two years (now one year)	When the malfeasance, misfeasance or non-feasance takes place.

121 I.C. 500

Supra note 15

Supra note 58

AIR 1920 Bom 207

Supra note 26

