

## Consultation Paper on Manmade Disasters

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# MANMADE DISASTERS

## (Consultation Paper)

### I Introduction

1. Disasters are either natural or manmade. Natural disasters are caused by “acts of God”. Natural disasters, such as earthquakes, floods, tsunami, cyclones, being beyond the control of human beings, the aspects relating to mitigation of damage, rescue, relief and rehabilitation assume importance. A Disaster Management Act, 2005 has been enacted mainly to cope up with the situations arising from such calamities. A high-level body designated as National Disaster management Authority has been constituted under the said Act. The NDMA concentrates mainly on natural calamities and various aspects connected therewith, viz., capacity building, disaster preparedness and safety, risk reduction, etc.

2. Manmade disasters are attributable to conditions resulting from human conduct such as grossly negligent acts, gross inaction or serious errors. These are broadly: (i) Fire outbreaks especially in places to which the public has access including high-rise buildings, (ii) building collapses, (iii) stampedes in public places and (iv) industrial disasters viz., explosions, escape of noxious fumes and gases, mishaps in underground mines, etc., and (v) exposure to radio-active waste. **Road, rail, boat, air accidents and disasters caused by sabotage and mob violence are left out of consideration in this paper.**

3. Unlike natural disasters, preventive and regulatory measures assume greater importance in the case of man-made disasters. Of course, rescue and relief measures are common to both natural and man-made disasters. On account of the human element involved in triggering the man-made disasters, the victims can have recourse to civil and public law remedies and those responsible for culpable negligence may also be liable for criminal action under the provisions of Indian Penal Code or various special laws to which reference is made hereinafter. Specific remedies for claiming relief or compensation is available in certain statutes. Further, under the law of torts, compensation can be claimed in a Civil Court for the damage/injury caused on account of tortuous acts of negligence. Relief can also be sought against the public authorities by taking resort to Constitutional remedies under Article 32 and 226 of the Constitution.

4. In the wake of frequent man-made disasters resulting in high casualties and untold sufferings to the people and the lack of adequate legal apparatus to provide relief to the victims of tragedies, it is felt that the law should be geared up to provide speedy and adequate redressal to the victims. It is also felt that the preventive aspect is being neglected, regulatory mechanisms to ensure preventive measures are utterly lacking and the law is too lenient towards those violating the safety regulations or otherwise contributing to the root causes of disasters. Representations have been made to the Central Government that there should be an effective law to deal with the man-made disasters and to provide adequate and speedy remedies to the victims and their kith and kin.

### II. Causes of certain manmade disasters

5. Before proceeding further, **the causes** of the aforementioned man-made tragedies need to be identified.

(i) (a) **Fire** outbreaks are mostly caused by electrical short-circuits compounded by **lack of** (a) requisite obstruction-free exit points, (b) emergency lights and sign posts (c) sound system to relay the message and (d) space constraints for the entry and effective operation of fire-fighting vehicles and non-availability of water for contributing fire.

(b) Lack of smoke detectors, fire alarm, fire extinguishers and fire drills let the fire take its own course.

What is an Electrical Short-Circuit?

A short circuit is described as an electrical circuit that allows a current to travel along an unintended path, often where essentially no (or a very low) electrical ‘impedance’ is encountered. The electrical opposite of a short circuit is an “open circuit” which is an infinite resistance between two nodes. A short circuit, is “an abnormal low resistance connection between two nodes of an electrical circuit intended to be at different voltages” and this results in an excessive electric current which has the potential to cause circuit damage, overheating, fire or explosion. Overloaded wires can also overheat which might in turn cause damage to the wires’ insulation or a fire. A brief note on how and why short-circuits are caused is at **Annexure I**.

(ii) (a) Unauthorized erection of **temporary structures**, viz., pandals, tents and the like wherein electrical wires precariously hang on and are connected to the main in the adjacent building without regard to the load factor and safety devices. Fire extinguishers are seldom found at such places. Even if permission is taken to erect the pandal/shamiana, the observance of electrical and fire safety standards are not being insisted upon and no check is being conducted. Insistence on the presence of a qualified or at least experienced electrician is not done before permission is granted under the relevant State laws. Compliance conditions may have been laid down in the order granting permission, but, at the ground level, the observance of such conditions is a rarity. There is no adequate inspecting staff worth the name to keep a vigil against such unauthorized acts/omissions or violations.

(b) Lack of coordination among various regulatory agencies of Government and quick response from those agencies for granting permissions to erect temporary, detachable structures is one of the causes for erecting such structures without seeking permission.

(iii) **Permanent structures** (commercial complexes such as cinema halls, multiplexes, function halls, shopping malls, hotels, night clubs, educational institutions, auditoriums, multi-storeyed residential complexes) where people congregate in large numbers:

(a) At the time of granting the building permission or license for occupation and for renewal, the Engineering staff, the Fire personnel and the Electrical Inspectors do not bestow the necessary care and attention to ensure that the building is structurally sound and safe, that adequate exit points free from obstructions do exist for passage in case of emergency, that the sound and warning systems are functional, that proper equipment is in place to prevent and control the fire, that combustible materials and inflammable debris are not kept in the building close to the places of potential fire outbreak, that the electrical installations and connections including wiring are not exposed to the risk of occurrence of short-circuit.

(b) Even if fire-fighting kits and extinguishers exist, people are not aware how to use/operate them in case of emergency. Adequate training is not imparted to the staff and occupants.

(c) Periodical inspections even when they are provided for in the rule book are seldom done with the requisite thoroughness. The crucial defects and potential sources of danger noticed during inspection remain unrectified and not taken serious note of by the authorities concerned. In other words, there is no follow up action to ensure that adequate remedial measures are taken by the Proprietor/Manager and the source of likely danger has been removed.

(iv) The punishments prescribed by the laws governing various aspects of safety and maintenance are not adequate and in any case they are not deterrent enough to exact compliance. The Management can very well pay a meager amount of fine and continue to violate the laws such as under the Cinematograph law.

(a) The main problem about inspection is the lack of adequate number of specialized inspecting officials. The vacancies remain unfilled apart from the fact that the sanctioned strength is utterly inadequate. Capacity-building has become least priority of the local bodies/Governments.

(b) Lack of sufficient number of Fire Stations with adequate trained personnel and upgraded fire combating equipment.

(c) There is no training programme worth the name to the Fire and Building Inspectors and may be, for Factories and Electrical Inspectors and Mine Safety Officers.

(vi) Once the occupancy certificate is issued, the multi-storied residential buildings (say 5 floors or 15 metres and above) are not subjected to periodic inspection at all to ensure that safety standards are observed.

(vii) **Building collapses** occur on account of weak foundations unsuited to the conditions of soil and water-table, vulnerability to water-logging, faulty structural designing, weak beams and poor quality of construction. Non-observance of earthquake resistance standards in vulnerable areas is another cause. Sufficient care is not taken while granting permissions or to inspect during the construction stage. The architect, contractor and engineer engaged by the builder do not insist on observance of specified standards. They are too willing to sign the certificates. Further, the old age buildings with little or no maintenance pose a perennial threat to the safety of inmates. No forewarning is given by the civic authorities nor do they seldom exercise the power vested in them to demolish such buildings. Some of the residents of old buildings do not bother to spend money for renovation or safety measures.

(viii) **Stampedes** occur mostly in pilgrim places – in and near the place of worship or the approach road. Precautionary steps for crowd management are not planned properly by the police and the endowment officials. Sufficient police force and security guards are not deployed. The means of communication with superior officers are poor and this aggravates the situation.

(ix) **Industrial disasters** occur by reason of utter indifference on the part of the owner/manager in handling hazardous substances such as toxic gases or other flammable substances enumerated in the Environment Protection Act, 1986 coupled with lack of adequate fire control equipment in the premises and emergency evacuation plans. The storage of combustible material without even enclosing them with fire-proof walls/partition aggravates the problem. The escape of poisonous gases has terrible impact on the safety and health of those

living in the vicinity. There is no periodic inspection by the technical personnel of the Government/local bodies at the time of and after issuing/renewing the licenses and certificates.

(x) In the recent times, the hazards caused by toxic wastes generated by **ship breaking operations** have thrown up certain special problems which, it is pointed out, are not sufficiently taken care of by the existing laws in our country and the loopholes are being taken advantage of by ship owners and exporters. The research paper on “Hazardous Wastes and Ship Breaking”<sup>1</sup>, projects many important aspects which deserve notice.

### **III Instances of some tragedies**

6.1 The Uphaar Cinema fire disaster which claimed a toll of 59 lives is a grim revelation of the lack of observance of safety standards in the multiplexes and the apathy on the part of the officials concerned in ensuring that the building, electrical and fire safety regulations are observed by the licensee. It is reported that the cumulative negligence and indifference of the licensee/Management of the theatre, the Delhi Vidyut Board officials and the authorities who granted NOCs<sup>2</sup> for renewal of license contributed to the fire tragedy. The Association of Victims of Uphaar Tragedy which was formed in the aftermath of the devastating tragedy has furnished a lot of inputs in connection with this incident and demanded more stringent laws and effective legal mechanism to afford speedy relief to the victims and their kin.

6.2 On 13<sup>th</sup> February, 1997, the fire broke out at the 1000 KVADVB Transformer located in the ground-floor parking area and spread outwards. The parked cars close to the transformer were gutted and it intensified the flames. The smoke thus concentrated in the balcony of the theatre. One of the causes for the huge smoke was that the high parapet wall in between the transformer room and the car parking area prevented the noxious fumes/smoke escape into open atmosphere. The air funneled into the stairwell and reached the ducts providing air conditioning to the balcony. The audience seated in the balcony of the theater were trapped due to improper placing of gangway and the blocking of the only exit on the right side of the balcony. Most of those trapped thus within the balcony area died of asphyxia. The basic fire safety norms such as public address system, emergency lights, footlights and exit lights were non-functional. The available exit doors were bolted and those remaining in the balcony were deprived of easy access to the points of egress. It was found by the Inquiry Committee that the installation of DVA Transformer which catered to the needs of the cinema complex as well as the adjacent residential colony was done by violating the provisions of the Indian Electricity Rules regarding installation and maintenance of transformer. Apart from the fact that the DVB did not obtain approval from the competent authority for installation of transformer of higher capacity, the rules and safety norms were broken right from the installation to maintenance and the mandatory periodical tests were not carried out. There were no fire extinguishers in the transformer enclosure and there was no suitable isolation device which could have isolated the power supply to the building in the case of emergency. Electrical cables were found laid in a haphazard manner. The space around the transformer was less than what it ought to have been. The Dy. Commissioner of Police who thoroughly enquired into the incident concluded that the constant intense sparking between the detached phase cable and radiator has initiated the fire which spread along the oil spill. The absence of protection system for the DVB transformer, the poor

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<sup>1</sup> Compiled by Prof. Parimal Garud.

<sup>2</sup> No Objection Certificates

quality of oil in the transformer (not replaced for a long time) coupled with the fact that the short-circuited cable was in contact with the radiator for a long time made the temperature of transformer oil reach the flash point leading to the outbreak of fire. The efforts to extinguish the fire did not succeed.

6.3 The fire accident in high-rise commercial Carlton Towers in Bengaluru on 23<sup>rd</sup> February, 2010 is another incident of fire which originated in electrical system. The fire broke out at the electrical arcing presumably due to fracture in electrical conductor or deterioration of conductor. The fire however did not spread beyond the vertical cable shaft but it was the thick smoke that spread fast which caused panic reaction among some of the users/visitors who jumped from the top floors. The building in its original version has had all the required fire prevention and fire fighting measures and adequate exits as pointed out by the Technical Committee which investigated the cause of fire. However, at the time of the incident, the passages were either blocked or the fire exit doors were kept locked. At the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors, the common corridor had been blocked by a make shift construction by the occupants. The smoke detectors did not work and the fire sprinklers at ground and first floor level were found removed. It was noticed by the Committee that the fire accident was avoidable if the intervention in the original electrical wiring had been handled professionally instead of cut and paste work. There were no sketches or indicators showing the location of the fire exit doors. The most serious lapse was to have kept the exit doors locked and to have permitted blocking of the corridor in three floors. There was no warning system and there was no timely communication about the fire that broke out between the first and second floor in electrical shaft. The Committee stressed the need for mandatory re-inspection of high rise buildings by various authorities. It was found that no fire officer or any other official inspected the building after it was cleared for occupation in 1999. The undertaking to train at least 40% of the employees/occupants in fire prevention and fire fighting operations was breached. Further, it was noticed that there were no adequate number of fire fighting vehicles suited for high-rise structures.

6.4 The year 2011 witnessed two major fire disasters originating from electrical installations/apparatus. One was in the multi-storeyed AMRI Hospital in Kolkata. The fire started in the basement of the hospital where waste and combustible material was kept. The fire spread to the upper floors through AC ducts. Ninety people – mostly patients sleeping at that time died on account of suffocation and burns. Alarm bells were found switched off. The fire extinguishing pumps were non-functional as no water was filled up. There was no A/C mechanic on duty. People were not aware how to use the fire-fighting kits. There was delay in fire fighting operations and in rescuing the trapped persons. The other incident is the fire that occurred to a temporary structure (shamiana) in Delhi where the conference of Hizries (Eunuchs) was going on at a Community Centre in North-east Delhi. It was reported that this incident was also triggered by an electrical short-circuit in kitchen area. It was reported that the Police or fire personnel were not informed of this meet and the electrical connection to the temporary structure was provided unauthorizedly. The fire safety rules were reportedly breached. 14 persons were killed in this disaster.

6.5 The most recent incident of major fire was in Sachivalay of Maharashtra in Mumbai. There were five fatalities. The details are awaited. The Government establishments have to learn a lesson from this.

7. **Stampedes** have been occurring off and on at pilgrim places. In the recent times such incidents took place in Himachal Pradesh, Rajasthan, Nasik(Maharashtra) and Kerala, among others.

8. Coming to the **industrial disasters**, the Bhopal gas leak disaster was unprecedented in its nature and magnitude. It has taken a toll of 4000 human lives and has left tens of thousands of citizens of Bhopal physically affected in various degrees. The Union Carbide (India) Ltd. owned and operated a chemical plant manufacturing pesticides. Methyl Isocyanate – a lethal toxic chemical substance, is an ingredient of the pesticides. The Supreme Court noted<sup>3</sup> that the leak and escape of the poisonous fumes from the tanks in which they were stored occurred late in the night of December 2, 1984 “as a result of what has been stated to be a ‘runaway’ reaction owing to water entering into the storage tanks”. Owing to the then prevailing wind conditions, the fumes blew into the hutments abutting the premises of the plant and the residents of that area had to bear the brunt of the fury of the vitriolic fumes. Besides, large areas of the city were also exposed to the toxic chemical fumes.

#### **IV Legislation in India**

9.1 The legislation which is of utmost relevance to the subject in question is The **Disaster Management Act, 2005**. The Act is aimed at prevention and mitigation of effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. It is meant to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans and ensuring measures by various wings of government (vide Statement of Objects and Reasons). It provides for setting up of a National Disaster Management Authority under the Chairmanship of the Prime Minister, State Disaster Management Authorities headed by the Chief Ministers and District Disaster Management Authorities headed by District Magistrates. It also provides for constitution of a National Disaster Response Force and setting up of National Institute of Disaster Management. The Act also provides for the constitution of Disaster Response Mitigation Funds at the National, State and District levels. The Act also provides for specific role for local bodies in disaster management. The Act requires the establishment of National Institute of Disaster Management, the functions of which include preparation of training modules for human resources development and promotion of awareness among stakeholders. The National Disaster Management Authority and the State level and District level authorities have been put in place pursuant to the said Act. Further, in many States, Disaster Relief Funds have been created and the Central Government makes substantial contribution thereto. Even earlier to this legislation, some States have enacted the State Disaster Management Acts. Though the Act is primarily designed to take care of the disasters caused by natural calamities on a large scale, the expression ‘disaster’ in the Act has a very wide connotation including within its fold man-made disasters. The expression ‘disaster’ and ‘disaster management’ are defined as follows:

*“Disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature*

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<sup>3</sup> Union Carbide Corporation and Ors. vs. Union of India and Ors. (1991 4 SCC p, 584)

*or magnitude as to be beyond the coping capacity of the community of the affected area;*

*“Disaster management” means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for –*

- i. Prevention of danger or threat of any disaster;*
- ii. Mitigation or reduction of risk of any disaster or its severity or consequences;*
- iii. Capacity-building;*
- iv. Preparedness to deal with any disaster;*
- v. Prompt response to any threatening disaster situation or disaster;*
- vi. Assessing the severity or magnitude of effects of any disaster;*
- vii. Evacuation, rescue and relief;*
- viii. Rehabilitation and reconstruction”*

9.2 The Act contemplates drawing up of a plan for disaster management at National, State and District level. Responsibilities have been cast on the Ministries and Departments of Government of India and the States to take measures necessary for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority and the State Authorities as the case may be. Making provision for funds in the annual budget for the purpose of carrying out the activities and programmes set out in disaster management plans is contemplated by the Act.

9.3 Offences and penalties are dealt with in Chapter X of the said Act. Section 56 contains an important provision that “any officer on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine or both. The prosecution under this Section can be launched only with the previous sanction of the Central Government or the State Government as the case may be. Punishment for obstruction by any officer or employee of the Central Government or the State Government or a person authorized by the National, State or District Authority in the discharge of his functions **and** refusal to comply with any direction given by or on behalf of the Government or the Authority is prescribed by section 51.

9.4 The functions of the State Executive Committee (SEC) of which the Chief Secretary is the Chairperson, are set out in Section 22. Sub-section(1) says that SEC shall have the responsibility for implementing the National Plan and State Plan and act as the coordinating and monitoring body for management of disasters in the State. Sub-section (2) enumerates various specific functions of SEC, without prejudice to the generality of the provision in of Sub-section(1). Section 64 of the D.M. Act confers power on the National and State Executive Committees, State Executive Committee or the District Authority, as the case may be, to initiate action for making or amending the rules, regulations, bye-laws etc., if the same is required for

the purposes of prevention of disasters or the mitigation thereof. The appropriate department or authority is required to take necessary action thereon.

10. In the aftermath of Bhopal gas tragedy, the Parliament enacted the **Environment (Protection) Act, 1986** to ensure that the developmental and industrial activities do not damage the environment or cause pollution. Persons handling hazardous substances have to comply with the procedures and safeguards laid down in the Rules. The Act prohibits a person carrying on an industry, operation or process from discharging or emitting any environmental pollutants in excess of the standards prescribed. Hazardous Wastes (Management and Handling) Rules, 1989 and Hazardous Chemicals Rules, 1989 were framed under this Act.

11. In 1991, the **Public Liability Insurance Act 1991** was enacted which imposed obligation on the owners of industries handling hazardous substances to take mandatory insurance to provide compensation to victims of industrial disasters. Where death or injury to any person (other than a workman) or damage to property results from an 'accident' as defined in Section 2(a), the owner shall be liable to give relief as provided for in the Schedule. The 'workmen' as defined in the **Workmen's Compensation Act 1923** has been excluded from the purview of the Act.

12. As far as the industrial workers are concerned, the **Employees' State Insurance Act 1948** provides for compulsory State Insurance for stipulating certain benefits in the event of sickness and employment injury to workmen employed in factories. Quarterly contribution will be made by the employer. ESI Fund is created under Section 26 of the Act and it is administered by a Corporation. The insured person or their dependents are entitled to benefits specified under Section 46 of the Act. In case an insured person dies as a result of "employment injury", the dependents receive periodical payments as specified in the Act.

13. **The other relevant Central legislations are : The Cinematograph Act, 1952; the Factories Act, 1948; the Electricity Act, 2003 and Indian Electricity Rules, 1956; the Fatal Accidents Act, 1855; the National Green Tribunal Act, 2010; the Workmen's Compensation Act, 1923; The Explosive Substances Act, 1908, the Inflammable Substances Act, 1952, The Indian Boilers Act, 1923, The Mines Safety Act 1952 and Mines Rules, The Insecticides Act, 1968, The Civil Liability for Nuclear Damages Act, 2010;** provisions of **Indian Penal Code** viz. Section 304-A (causing death by rash or negligent act), Section 304 (culpable homicide not amounting to murder), the offences under Chapter-XIV concerning negligent conduct with respect to poisonous and explosive substances, fire or combustible material.

13.1 A gist of the main features of some of these Acts starting from Environment Protection Act are given in **Annexure V**.

13.2 Reference has also been made in **Annexure V-A** to some of the State Laws dealing with Fire Protection and Building bye-laws.

14. Thus, there is a plethora of laws in our country aimed at building safety, industrial safety, fire prevention and control and safety of electrical installations. Disaster prevention, mitigation and management at the National and State levels has been given a statutory basis. Alas, many regulatory provisions in the State and Central Laws cry for effective implementation. The crux of

the problem lies in enforcement of laws. It is common experience that many provisions are observed more in their breach. In the aftermath of a grave mishap, there will be knee-jerk reaction, there will be talk of improving the systems and there will be checks and raids. One is left to wonder whether the authorities concerned have suddenly become conscious of their duties and obligations under the laws of the land. As observed by the Supreme Court<sup>4</sup> “*As the days pass, slowly the disaster management equipment and personnel are allowed to slip away from their readiness. Only when the next disaster takes place, there is sudden awakening*”. The Supreme Court further observed: “*In regard to the preparedness to meet disaster, there could be no let up in the vigil. The expenditure required for maintaining a high state of alert and readiness to meet disaster may appear to be high and wasteful regarding ‘non-disaster periods’ but the expenditure and readiness is absolutely must*”. The officials at the field level or in the lower rung of the hierarchy are mostly blamed, little realizing that the existing staff is far from sufficient, the equipment provided to them is far from satisfactory and the repeated requests made to improving the infrastructure and quality of equipment as well as to fill up vacancies are not given due attention at the higher levels. In Uphaar tragedy case(*supra*) the Delhi High Court noted that several requests by the Fire Department for upgradation of the fire combating equipments were caught up in bureaucratic red tape. The Court observed: “When lives of citizens are involved, the requirement of those dealing in public safety should be urgently processed and no such administrative process of clearance in matters of public safety should take more than 90 days”. Apathy, collusion, perfunctory inspection, lack of follow up action – all these have marred the system to check violations of law. Paradoxically, the infringement of safety laws and norms is rampant in the **Government offices and buildings** as no one is made accountable and the officials in charge have a feeling of impunity and immunity. There are hardly any inspections of Government buildings, especially the old and high rise. In the name of economy, sufficient manpower required is not deployed and safety norms are quite often thrown to winds. We are saying all this because the addition of laws or changes in law are by themselves no answer to tackle the problems connected with manmade disasters. The aspect of **enforcement** is highly important. Further, adequate legal mechanisms and funds should be made available to ensure that the victims get immediate relief without hassles. The victims and their dependents should be enabled and empowered to get the due relief in the form of compensation and other assistance at the earliest in keeping with the ideals of welfare State.

15. In this background, the problems associated with manmade disasters should be approached from **three angles** and practicable solutions are to be found. The areas in which the law needs to be amended or refined are to be identified. The three aspects on which the attention should be bestowed are (i) preventive measures; (ii) punitive aspects; and (iii) remedial measures i.e., relief including compensation and rehabilitation.

16. Before we proceed to discuss the above points, it is appropriate to refer to the **suggestions** made by the Supreme Court (3 *supra*) and High Court in the case relating to victims of Uphaar tragedy. These suggestions which specifically relate to cinema theatres might hold good for other places such as multiplexes as well. The suggestions of the Supreme Court are in **Annexure II**. The recommendations of Naresh Kumar Enquiry Committee endorsed by the High Court of Delhi and approvingly referred to by the Supreme Court at paragraph 17 of the judgment are given in **Annexure III**. It needs to be considered whether all or some of these

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<sup>4</sup> Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy (AIR 2012 SC 100);

suggestions made by the apex Court could be usefully adopted and acted upon. For instance, the feasibility of single window clearance of licenses through a nodal agency needs deeper examination.

## **V Disaster Relief under DM Act**

17.1 The financing of disaster relief has been and ought to be the joint endeavour of Central and State Governments. The Disaster Management Act (for short, D.M. Act) provides for specified administrative structures from the Central to the District level known as Disaster Management Authorities and Executive Committees. Under the Disaster Management Act, funds have to be created both at the National level and State level. National Disaster Response Fund and National Disaster Mitigation fund are required to be constituted by the Central Government. So also, at the State level, the State Government is required to establish the State and District Disaster Response Funds **and** State Disaster and District Disaster Mitigation Funds. The amounts credited to Response Funds are to be made available to the State Executive Committee whereas the amount in the Mitigation Fund will be utilized by the State Disaster Management Authority. The Finance Commission has recommended that the State Disaster Response Fund should be funded by the Central and State Governments in the ratio of 75:25. However, for special category States, the funding should be in the ratio of 90:10 as per the recommendation of the Finance Commission. Accordingly, funds have been created in many States. Regarding disaster mitigation, the Finance Commission suggested that it should be a part of the Plan process and that the expenditure therein should be made out of the Plan resources of the respective Ministries of the Union and the States. The Finance Commission observed thus while referring to manmade disasters:

*“However, for very specific events that could even be man-made and require very high level of funding, but may have low chance of occurrence, financing of relief arrangements should best be left out of the SDRFs. The Government of India may consider financing disaster relief in respect of such man-made disasters out of the NDRF, after the list of eligible disasters has been drawn and the norms for funding carefully stipulated. If such man-made disasters are to be included, adequate additional budgetary allocations may have to be provided.”*

17.2 The Finance Commission stressed on the need to continuously undertake measures to building capacity amongst those handling response and creating awareness amongst people.

17.3 Adverting to the definition of ‘disaster’ in the Disaster Management Act, the Finance Commission pertinently observed:

*“While previous Finance Commissions have taken such a view, the DM Act provides a far wider definition of disaster as ‘a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence with results in substantial loss of life or human suffering or damage to, and destruction of property, or damage to, or degradation of environment, and **is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area**’.*

*Although the Disaster Management Act uses terms like ‘substantial loss of life, or human suffering’, ‘damage to and destruction of property’ and ‘nature or magnitude as to be beyond the coping capacity of the community of the affected area’, it does not quantify these terms.”*

#### Need to recast definition and bigger role to State Committees

17.4 There is a **need to recast the definition** as far as manmade disasters are concerned so that the State Fund could be made available for providing immediate relief to the victims of large-scale manmade disasters without any problems of interpretation. The expression “substantial loss of life or human suffering and damage to and destruction of property” is an indicator that manmade disasters which are not of serious proportions, the casualties being few, will not be covered by the Act. The said expression can be retained so that the manmade disasters of less serious nature and intensity can be excluded from consideration for granting relief out of the statutory funds. However, the last limb of the definition needs to be deleted as the expression “beyond the coping capacity of the community of the affected area” is not clear and lacks in clarity. It may unnecessarily constrict the scope of relief for manmade disasters. Even after deleting the same, the norm of substantial loss of life or human suffering or damage will still be applicable and that will exclude man-made disasters that occur on a small scale for which *ex-gratia* eligibility could be there. The Law Commission therefore is of the *prima facie* view that the last part of the definition of ‘disaster’ should be deleted so that the stringent standard which may, if at all, be appropriate in connection with natural calamities, is not applied to man-made disasters. The magnitude of disaster in terms of casualties and human suffering is no doubt relevant, but it should not be stretched too far. Relief from State Funds created under the D. M. Act should be made available to the victims of man-made disasters which are fairly intense and severe. If necessary, guidelines for judging “substantial loss of life and human suffering” etc. can be laid down by the National Authority in consultation with State Authorities.

17.5 At present, the State Governments have been announcing *ex gratia* relief to the victims or the heirs / dependants of the deceased. The guidelines for minimum standards of *ex-gratia* assistance etc. are required to be given by the National Authority (vide S,12 of D.M. Act). In Uphaar Cinema case, the Supreme Court directed the Delhi D.M. Authority to expeditiously evolve standards for managing disasters in cinema theatres and also in regard to *ex-gratia* assistance. The provision for *ex-gratia* relief should continue, especially for the reason that there might be genuine doubt on the extension of relief under the D. M. Act in the case of certain incidents of man-made disasters. At the same time, a **right based approach** to relief is a desideratum that should be given shape, wherever possible and statutory hurdles if any should be cleared for developing such approach.

17.6 Under **Section 19 of the D.M. Act**, the State Authority can also lay down guidelines for providing standards of relief to disaster-affected persons in the State. However, it is far from clear whether the State and District Funds can be utilized for granting interim relief/compensation to the victims affected by the man-made disasters or to the dependents of those who died in such mishaps. On the other hand, the Finance Commission’s thinking is that the Fund money ought not to be utilized for the purpose. In fact, the States like Tamil Nadu have made it clear that SDRF shall be used only for meeting the expenditure for providing immediate relief to the victims of cyclone, drought, earthquake and other natural calamities. There is every need to provide interim relief to those affected by man-made disasters as well from out of State

Funds constituted under the D.M. Act instead of the Government concerned acting in an ad hoc manner by releasing *ex-gratia* amounts. The scale of interim relief to be provided on a rational basis needs to be worked out. The State's obligation to provide relief to the victims of man-made disaster may flow from two considerations. Firstly, often-times negligence or failure of Government officials is a contributory cause for the mishap. Irrespective of that, it is the duty of a welfare State to provide immediate relief to the misery-stricken people who suffer for no fault of theirs. That would be in tune with the constitutional obligations of the State under Part III and IV of the Constitution. For all these reasons, it is necessary to specifically lay down that the interim relief to the victims and other persons affected by man-made disasters shall be provided by a designated authority out of the State funds created under D.M. Act and the scale of relief can be specified in the rules or guidelines. Such interim relief will be without prejudice to any other relief which the affected person can obtain either under a special statute or under the remedy available in public or private law domain for claiming compensation. Accordingly, appropriate amendment has to be made to the D.M. Act.

18. Apart from the amendments proposed above, there is a need to entrust a **bigger role and wider responsibility to the State Executive Committee** (SEC, for short) constituted under **DM Act** in matters relating to prevention of man-made disasters, effective enforcement and reformation of State laws to the extent necessary. Taking stock of the existing State laws relating to buildings viz, multi-storeyed buildings (five floors or above), commercial complexes including shopping malls and theatres, temporary structures, factory premises and examining whether any additions or modifications have to be made from the point of view of safety, convenience and modern technology, fire precautions and control, safety of electrical installations and industrial safety are additional responsibilities that can appropriately be undertaken by SEC under the DM Act. For this purpose, the SEC may nominate experts to undertake a study and report. The adequacy of punishments/penalties or sanctions prescribed for violations shall also be looked into by the nominated committee of experts and should be duly examined by the SEC after consultations with the concerned Departments. The recommendations shall then be made to the State Government to initiate action for the amendment of laws/rules. As the State Committee is headed by the Chief Minister and the Chief Secretary is also a member, the proposals can be translated into action without any hitch or delay. The law can be amended expeditiously. Even if the amendment of a Central law is necessary, SEC can apprise the National Authority which in turn may take it up with the Central Government. This is the most expedient and practical course that can be adopted. The Law Commission finds it difficult to examine each and every State law and subordinate legislation and undertake the task of suggesting amendments, more so, when the legislations /rules fall within the purview of States and the local inputs are necessary.

18.1 The State Executive Committee under the DM Act should be required to set up inspection teams consisting of experts specialized in various fields, viz., civil and structural engineering, electrical engineering, fire engineering, chemical technology, industrial and mechanical engineering, who shall undertake inspections of multi-storey buildings, theatres, commercial complexes, hospitals, factories, Government offices, old buildings located in or near cities and major towns. The team shall report about the violations of rules and regulation, the non-observance of safety standards, the precarious condition of the buildings / structures, the state of things relating to electrical and fire safety, storage and handling of explosive / flammable substances. The report shall be forwarded to the concerned departments / licencing authorities

who shall take the necessary follow-up action as per law after re-inspection or otherwise. These inspection teams will be complementary to the inspection machinery in force in the State functioning either under Central or State Acts. The State Committee has to devise a procedure for recruitment and service conditions of the personnel needed for the purpose. The authorized officer of the State Committee may recommend necessary action to be taken against the officials for negligence or dereliction of duties and the Departmental Heads concerned shall initiate necessary action against the officials concerned as well as take corrective action.

18.2. In the very nature of things, the State Committee under DM Act cannot act parallel to various statutory authorities. However, such inspections under the auspices of the high level State Committee though limited will keep the official machinery charged with inspections and checking violations in a state of alert and diligence and this will improve the quality of their functioning. The inspection by the experts here and there and the follow up action taken thereon would create a sense of fear of law and promote compliance and safety culture among the owners, occupiers and licensees.

18.3. The State Committee may also be required to undertake an assessment of the prevalent human resources and the adequacy of manpower required for discharging the duties under the various enactments enumerated above and based on such assessment, necessary action should be initiated at the highest level to solve the human resources problem. As already seen, the 13<sup>th</sup> Finance Commission has stressed the need on capacity building for which funds have to be provided both by the Central and the State Governments. An additional Central grant of Rs. 525 crores has been proposed by the Commission for the current year. Each State gets 5 to 30 crores. If the inspection teams are to be set up as indicated above – an important step towards prevention of manmade disasters, additional funds may have to be allocated. The role of the State Committee can thus be widened in order to actively coordinate with the Government and to ensure that adequate number of inspecting officers with necessary expertise and sufficient number of fire services personnel and equipment are put in place. There are reports that fire service is in shambles at many places and due priority is not given to strengthen it qualitatively and quantitatively. With the intervention of State Committees with statutory backing they have, it is hoped that the inaction or apathy on the part of the Government in building up necessary infrastructure for prevention and safety is taken care of. Depending upon the progress made by the States in this direction, the Central Government's assistance may be forthcoming without any hitch.

18.4 Even without the amendment of the DM Act so as to confer specific powers on the high level State Committee on the lines indicated above, perhaps, even through an executive order, such duties and responsibilities which are really implicit in or incidental to their powers and duties can be entrusted to them under the DM Act. However, to make it more explicit, specific enabling provisions for assuming the additional responsibilities can be added to Section 22 of the DM Act, 2005.

## **VI Public Liability Insurance Act**

19. The **Public Liability Insurance Act** which provides for mandatory public liability insurance for enterprises handling hazardous substance in order to provide relief to the victims was enacted in 1991. The Act was amended in 1992 for the reason that the insurance companies were not agreeable for offering insurance policies for unlimited liability of the insured/owners.

Therefore, while limiting the liability of the insurance companies, the Act provided for setting up of Environmental Relief Fund. A sum equivalent to premium is payable towards this fund under the Rules (Rule 10). The maximum aggregate liability of the insurer to 'pay relief' to the several claimants arising out of an accident shall not exceed five crores and in case of more than one accident during the currency of policy or one year, the liability shall not exceed Rupees Fifteen crores in total. According to the Schedule appended to Section 3(1) of the Act, the maximum relief that can be given to a person for a fatal accident is Rs.25,000/-, for permanent, total or partial disability, the maximum payable relief is Rs. 12,500/- and for damage to private property, the maximum relief is Rs. 6,000/-. Time has come to revise the upper limit for relief. As nearly two decades have passed by after the Act was enacted, there is a need to enhance the quantum of relief in the case of death at least to Rs.1,25,000/- and the amounts payable under other heads may be correspondingly increased to Rs.50,000/-. Of course the grant of relief is without prejudice to a claim for compensation or relief under the other Acts or the common law of the land.

19.1 The question whether the P.L.I. Act shall be extended to accidents other than those involving handling of hazardous substances is a matter which deserves consideration. Further, it needs to be examined whether the limit of Rs. 5 crore or Rs. 15 crores should be increased. The feasibility of introducing Group Insurance Schemes for occupiers, staff and visitors of multi-storeyed buildings (not handling hazardous substances) should also be considered. In this regard, the views of insurance companies and other stakeholders have to be ascertained.

19.2 Another important aspect to be considered is whether the *status-quo* ante should be maintained in relation to adjudication of claims under P.L.I. Act. Under the Act, the Collector is invested with that jurisdiction. However, after the advent of National Green Tribunal Act, 2010, the Tribunal may have exclusive jurisdiction by virtue of Sections 15 and 17 of the said Act. **If so**, it might cause undue hardship to the victims of 'accident'. The Tribunal having headquarters in Delhi will have Benches located only in 3 or 4 cities. The access to justice is thereby jeopardized in view of distance and cost. The process of settlement of claims is not so complicated as to warrant shifting the jurisdiction from a high level officer at the spot to a high level Tribunal at a distant place. It is a question of identification of the recipients of aid which the local officers would be able to settle satisfactorily. In a case where the relief is denied, an appeal can be provided to the Tribunal under Section 17. Accordingly, the NGT Act has to be amended.

## **VII Accountability and punitive measures**

20.1 The accountability is a key factor in the enforcement of laws for prevention and control of man-made disasters. The principle of accountability applies both to officials as well as those in charge of management or entrusted with the duties connected with prevention and safety. There is no reason why gross dereliction of duties on the part of the officials and casual and careless manner of performance of duties should not attract penal provisions. For instance, if an unauthorized construction goes on with the full knowledge of officials or such a construction would not have escaped the notice of the officials, would it not be proper to penalize them under criminal law? So also, if the building plans are approved or NOC is issued without going through mandatory inspection and without verifying material particulars should not the official be visited with punishment for a specified offence? Take the case of a police officer who having received information of the swelling crowd at a narrow pilgrim place, makes no effort to

mobilize the police force or even to visit the place. Is he not guilty of criminal neglect whether or not he was the immediate cause of actual casualties? Palpable negligence in the performance or non-performance of official duties should not be overlooked by criminal law. Quite often, it is difficult to distinguish between such acts of gross dereliction or utter indifference and corrupt motives. There may not be enough proof to proceed against the official concerned under the Prevention of Corruption Act. But, there must be appropriate penal provision to punish such persons.

20.2 In this context, it deserves notice that in the D.M. Act, 2005, there is a provision in **Section 55** under the caption “**offences by Departments of the Government**”. It says: “Where an offence under this Act has been committed by any Department of the Government, the Head of the Department shall be deemed to be guilty of the offence ..... and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such an offence”. Sub-section (2) of Section 55 is a wider provision which declares that if an offence under the Act is proved to have been committed with the consent or connivance of an officer of the Government (other than HOD) or the commission of the offence is attributable to his neglect, such officer shall be deemed to be guilty of the relevant offence and be punished accordingly. The offences under the Act *inter-alia* are (i) refusing to comply with the directions given by or on behalf of the Central or State Government or the National/State Executive Committee or the District Authority; (ii) making a false claim for obtaining any relief/assistance and other benefits consequent to disaster (iii) misappropriation of money or material entrusted to a person meant for providing relief in a threatening disaster situation or disaster. Apart from Section 55, there is another important provision i.e. **Section 56** which bears the heading “**failure of officer in duty or his connivance at the contravention of the provisions of this Act**”. Under Section 56, refusal of any officer to perform the duty imposed by the Act or his withdrawal from the duties of his office is an offence punishable with imprisonment extending to one year or with fine. In order to absolve himself from the criminal liability, the officer has to prove that he has obtained the express permission of his official superior or has other lawful excuse. These two sections, viz., Section 55 and Section 56, are borrowed from the Environment Protection Act, 1986. There is no provision in other Acts, viz., Factories Act, Electricity Act, Cinematograph Act, Fire Service/Fire Prevention Acts and Municipal laws making the officials liable for criminal action. It needs to be considered whether the officers shall be visited with criminal liability for gross negligence or inaction in performing the duties connected with the observance and enforcement of basic safety standards and regulations and secondly, for connivance of the officer in the commission of the offence by the owner or occupier. Of course, the defence of exercise of reasonable diligence and acting in good faith will be open to the officer. Secondly, to what extent and in which situations the supervisory officers who are at the higher levels should be penalized for the neglect of duties need to be addressed. The inputs received from various sources will be helpful in reaching conclusions in this regard. The general penal law provisions in IPC may not be in a position to cover such acts or omissions on the part of the officials who are supposed to enforce safety regulations because intricate questions may arise as to whether negligence or dereliction of the officer was the real contributory factor or the proximate cause of mishap. The officials’ callousness or apathy may allow the danger to remain unchecked and eventually, at some point of time, may trigger a major disaster. Still, it is not too easy to fix responsibility on the officials who have neglected their duties by taking recourse to general provisions in IPC. *Prima facie*, it appears desirable to introduce a separate provision in the Central law providing for punishment

of officials guilty of gross neglect of duty, etc. in the matter of enforcement of relevant provisions of law concerning safety and prevention relevant to manmade disasters. Such a penal provision can be introduced in the DM Act, on the analogy of the two existing provisions in Sections 55 and 56.

20.3 Another provision for punishments which may be contemplated is the one modeled on Section 34 A of Massachusetts Fire Safety Law. That provision was added to Chapter 148 of the Act Relevant to Fire Safety in the Commonwealth. Section 34 A introduced in 2004 reads thus,

*“Section 34A. (a) Any owner, occupant, lessee or other person having control or supervision of any assembly use group building, as defined by the state building code, and who causes or permits a dangerous condition to exist on the premises at any time shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than 2 1/2 years, or both.*

*For the purposes of this section, "dangerous condition" shall mean:-*

- (i) any blocked or impeded ingress or egress;*
- (ii) the failure to maintain or the shutting off of any fire protection or fire warning system required by law;*
- (iii) the storage of any flammable or explosive without a properly issued permit in quantities in excess of allowable limits of any permit to store;*
- (iv) the use of any firework or pyrotechnic device, as defined by the board of fire prevention regulations, without a properly issued permit; or*
- (v) exceeding the occupancy limit established by the local building inspector pursuant to chapter 143.*

*(b) Whoever is convicted of a second or subsequent violation of paragraph (a) shall be punished by a fine of not more than \$25,000 or by imprisonment in the state prison for not more than 5 years or in a house of correction for not more than 2 1/2 years, or both such fine and imprisonment.”*

20.4 “Assembly use groups” are classified into several groups for the purposes of State Building Code such as business use groups, institutional use groups, factory and industrial use groups, residential use groups, high hazard use groups, etc.

20.5 We may also refer to Section 34 B which prescribes punishment for violation of State Building or State Fire Code.

*“Section 34B. Any person who wantonly or recklessly violates the state building code or state fire code and thereby causes serious bodily injury or death to any person shall be punished by a fine of not more than \$25,000 or by imprisonment in the state prison for not more than 5 years or in a house of correction for not more than 2 1/2 years, or both.”*

20.6 A provision substantially similar to Section 34 of the Massachusetts Act together with clauses (i), (ii) and (iii) of the definition of ‘dangerous condition’ can be introduced providing for imprisonment extending upto 1 or 2 years and fine extending up to Rs.1 lakh together with a

provision for additional fine for continuing offence. The incorporation of such a provision in D.M. Act with a non-obstante clause will ensure an element of uniformity as well as deterrence. Further, one more clause that could be appropriately added in the Indian context is unauthorized use of electricity or use of electricity through unsafe means or maintaining the electrical installations, connections and wiring in highly unsafe condition. Compounding the offence can be allowed in the first instance before the prosecution, but the amount payable should be heavy.

21. Whether the **punishments** prescribed under the various laws concerning safety and precautionary measures are adequate enough to have an element of deterrence is another point which calls for introspection. A few observations in this regard with specific reference to the relevant enactments are apposite.

(i) Cinematograph Act: The owner or occupier who permits the place to be used in contravention of the provisions of Part III (Regulation of Cinematograph Exhibitions) or the rules made thereunder or the conditions or restrictions subject to which the licence has been granted under Part III shall be punishable with fine extending to Rs.1000 and in the case of a continuing offence, with a further fine extending to Rs.100 for each day. There is no provision for imprisonment however grave the violation of conditions of the licence may be. Further, the fine prescribed is too meager to achieve the intended objective of punishment.

(ii) Electricity Act: Though adequate punishment is prescribed for offences like theft of electricity, interference with meters or works of licensee etc., the punishment for contravention of the provisions of the Act or the rules and regulations made thereunder (including those dealing with safety) is imprisonment for a term which may extend up to three months or with fine which may extend up to Rs.1 lakh. The period of imprisonment needs to be extended, say upto six months or one year.

(iii) Delhi Fire Services Act: Failure to comply with requirements as to fire prevention and fire safety measures specified in a notification issued under Section 25 attracts punishment of 3 months' imprisonment or fine extending to Rs.1,000 or with both and if the offence continues, a further fine of Rs.500 per day can be levied. Under Section 52, which is a general provision for the offence of contravening any provision of the Act or a rule or a notification, the punishment is 3 months' imprisonment or Rs.10,000 of fine or both and if the offence continues, fine can extend up to Rs.500 per day. The provisions as to imprisonment and fine may call for enhancement.

(iv) Delhi Municipal Corporation Act, 1957: There are many provisions in which a nominal fine has been prescribed. The fines prescribed half a century back still remain on the statute book. However, in the year 1984, the fine amounts have been increased in respect of some offences for e.g., Sections, 343, 347. Long time has elapsed since then. Section 342: use of inflammable materials without permission – fine of Rs.100. Section 343: failure to demolish buildings erected without sanction or erection of buildings in contravention of order issued – imprisonment upto 6 months or fine extending to Rs.5,000 or both. Section 344: erection of buildings in contravention of conditions of sanction etc. – imprisonment extending up to 6 months or fine extending to Rs.5,000 or both. Section 346: non-compliance with provisions as to completion certificates, occupation of houses, etc., without permission – Rs.200. Section 347: non-compliance with restrictions of user of buildings – imprisonment upto 6 months or fine of Rs. 5,000/-. Section 348: failure to comply with requisition to remove structures which are in ruins

or likely to fall – fine of Rs.500. Section 349: failure to comply with requisition to vacate buildings in dangerous conditions – Rs.200. Many other offences carry fine as little as Rs.50 and Rs.100. The duration of imprisonment as well as the quantum of fines needs upward revision. So also under the DDA Act, the fine amount of Rs.5,000 specified in Section 29 needs enhancement. The penalty for breaches of bye-laws is prescribed by Section 482. The contravention shall be punishable with fine which may extend to Rs.500 and in the case of continuing contravention, with an additional fine extending to Rs.20 for every day of contravention. This provision again brings to fore the meagre punishments prescribed.

22. **Indian Penal Code:** The punishment prescribed by Section 304-A for causing death by a rash or negligent act is only two years or fine or both. Even if the rash and negligent act is of such a magnitude that it results in mass deaths, the maximum punishment is only two years. For instance, recently this Section was applied by the Sessions Judge in convicting the officials of Union Carbide Corporation for the mass fatalities caused by the escape of lethal gas. So also in *Uphaar Cinema case*, it appears that the accused who were found guilty of grossly negligent acts resulting in massive casualties were sentenced to two years imprisonment and fine under Section 304-A. Quite often, in mass death cases, prosecution seeks to invoke second part of Section 304 to pave the way for higher sentencing, viz., imprisonment upto 10 years. But whether Section 304 can at all be invoked in law in such cases is in the realm of doubt. To obviate this problem, it is high time that the punishment under Section 304 A is appropriately enhanced to 5 years or more. It may be stated that in 234<sup>th</sup> Report, the Law Commission recommended the sentence under Section 304 A to be enhanced to 10 years while deviating from the previous recommendation in 156<sup>th</sup> Report to enhance the punishment to 5 years imprisonment. This recommendation in 156<sup>th</sup> Report was mainly based on previous legislative proposals.

#### **a. Inspections**

23.1 It is of utmost importance that inspection of high rise buildings – both commercial and residential, including hospitals and hotels should be done periodically. It is needless to emphasize that the inspection personnel should have necessary expertise and experience. It would be ideal if, instead of piecemeal inspections by Civil / Structural Engineers, Electrical Inspectors and Fire Service officers, the inspection teams consisting of officials from all these disciplines are put in place in sufficient number to inspect the buildings, take stock of safety measures, deficiencies and violations and to take necessary steps firstly to have the defects rectified or hazards removed and secondly to initiate action for prosecution and / or other measures to enforce compliance with safety standards and regulations. These officials shall not be diverted to other duties. In the case of new constructions, the inspection by the Civil / Structural Engineers of the municipal bodies before granting permission and after foundation is raised and finally at the stage of scrutiny of completion certificate is desirable. Even under the existing rules / bye-laws, the inspection has to be necessarily done at the stage of completion and before the building is occupied. However, It is also necessary to have inspection even at the initial stages so that the defects in foundations etc. will be revealed. Further, there shall be mandatory re-inspections at specified intervals which shall be laid down either in the Rules or by way of administrative instructions. So also, in the case of factories there should be regular inspection by Factories Inspectors and technical staff periodically. The inspection – whether it be of a building or factory or mine should be professional, but not mechanical. One proposal that deserves consideration is to set up **Area Inspection Committees** of officials and service minded

non-officials which can act in an advisory capacity and undertake informal inspections in the area. Further, the Fire Service personnel have to undertake a survey of localities especially the 'Basti' areas so as to find ways and means of organizing effective fire fighting operations despite the constraints of access. Such survey can be carried out during the lean season when the fire incidents are normally less and a **contingency plan** drawn up.

23.2 The Commission does not have definite information on the number of inspecting officials deployed in a city corporation or a major town municipality or regarding the number of Factories and Electrical Inspectors entrusted with duties of inspection. But it is a well known fact that the specialized inspection personnel are utterly inadequate. The training imparted to fire service and other staff is far from satisfactory. There is every need to build up a cadre of trained inspecting officers drawn from different fields of specialty who can be placed in charge of particular areas/zones. Though it is the primary obligation of the States / local authorities to set up such inspection teams in sufficient number, resources crunch is often pleaded. Sufficient allocation of funds should be there for this specific purpose and the Central Government should also help the States in this regard. These funds can be supplemented by the inspection fee collected annually from the owners / occupiers or the representative body of residents. The rate of fee, the criteria for determination of the fee and other modalities can be worked out by way of rules framed in this regard. Provision for collection of such fee, if not authorized by any State Act, should be made in the law. The quantum of inspection fee should not, of course, be too high or unrelated to the quantum of expenditure that may be incurred for inspection.

23.3 Side by side, certain other practical measures can be thought of in order to keep effective vigil on the aspects of safety and rule compliance. This may include preparation of safety tips and widely circulating them.

#### **b. Self –assessment report**

24.1 An obligation should be imposed on the person In-charge of management and supervision of multi-storied buildings (residential or non-residential) more than seven years old to furnish a self assessment report on various aspects of safety. A composite proforma covering essential information relating to structural, electrical (including lifts) and fire safety aspects, storage of waste and combustible material, water source, information regarding vigilance at night time and the name of licensed/qualified electrician who undertakes regular checking should be furnished in that report. Information as regards the occupants and staff who are familiar with operation of fire-fighting equipment installed in the premises should also be included in the report. The format of the report should be prepared by the designated department of the Government or the Municipal Corporation. The persons responsible for management/supervision of the building and the names and particulars of the Lessor, if any should be furnished in the self assessment report which should be filed annually. Any false declaration filed should be a punishable offence. However for the class of buildings such as Cine-theatres or factories for which license has to be renewed annually or periodically, this report may be waived in as much as all the relevant particulars should necessarily be given in the application form. Such a self-assessment report should have statutory backing; may be, it can be incorporated into the Municipal laws. An obligation may also be placed on the representatives of Flat-owners associations to set up a **Safety Fund** out of the service or maintenance charges collected from the occupant of the flats

every month at a specified percentage, say 5%. Particulars relating to the person who operates this fund, the Bank and the amount in credit should be furnished in the self assessment report. The proceeds of that fund can be utilized for taking safety measures – electrical, fire safety etc. Such steps will go a long way in promoting safety culture and greater awareness of the safety measures in high rise buildings.

24.2 Further, the **complaints** regarding violations of building laws and safety regulations should be promptly addressed if they are specific in nature, by inspecting the premises. A nodal agency for receiving such complaints has to be designated and the complaints received online should also be taken note of.

24.3 The SDMAs and State Executive Committees under the Disaster Management Act can play a vital role in ensuring that the measures suggested above as well as those suggested by the Supreme Court (Annexure) are put in place and the relevant rules/bye-laws are appropriately amended to the extent necessary. Promotion of safety culture, strengthening and activating the official machinery coupled with effective penal provisions or other sanctions to check violations are the need of the day. A continuous and integrated effort is necessary to demonstrate that the Governmental agencies are not prepared to compromise with safety norms and requirements.

25. Fire regulations are laid down both in Fire safety/prevention related legislation as well as the building bye-laws. These are by and large based on the National Building Code of India. Some of those regulations in the Code are borrowed from the Fire Safety Code in other countries like U.S. The expression “fire prevention and fire safety measures” is defined in Delhi Fire Service Act, 2007 as “such measures as are necessary in accordance with the building bye-laws/National Building Code of India for the containment, control and extinguishing of fire and for ensuring the safety of life and property in case of fire and as may be prescribed in the rules made in this behalf.” Among others, the requirements of installing automatic sprinklers and appointment of Fire Safety Officers by the owners/occupiers of mega buildings (vide Section 29 of Delhi Act) need special mention. In the recent times, in many countries, the installation of automatic fire sprinklers is mandatory in places of public entertainment where more than 100 gather such as night clubs, bars etc. Minimum standards for fire prevention and fire safety for multi-storeyed buildings (above 15 metres) are laid down in Rule 33 of Delhi Fire Service Rules. They relate to access to building, the number, width and type of exits, protection of exits with fire check doors, smoke management system, fire extinguishers, automatic fire detection and alarm systems. Public address system, fire lifts, automatic sprinkler system, captive water storage, pumping arrangements etc. For ‘pandals’ also, certain minimum standards and requirements are laid down. So also, the Maharashtra Fire Prevention and Life Safety Measures Act, 2007 read with the Rules is quite comprehensive. According to the news reports, Andhra Pradesh State is also taking steps to overhaul the Fire Services Act.

26. There is no dearth of rules, but, as pointed out earlier, the difficulty is in the area of enforcement. Unless the fire service machinery and equipment is geared up to meet the growing needs and the safety consciousness is instilled, situation will not improve. Too many rules and very little compliance seems to be the present day scenario. The Law Commission would like to have inputs on these aspects related to preparedness and implementation as well as the amendments to rules if any to be made to achieve the desired objective. The need to enhance punishment in the respective State Acts, of course, is one of the aspects to be looked into. Whether the maximum fine imposable and the maximum period of imprisonment specified needs

to be suitably enhanced is an exercise to be undertaken by the State Governments / UT Administration from time to time.

### **VIII Right to Relief and Remedies**

27.1 At present, the victims of man-made disasters and the legal representatives of the deceased victims are entitled to relief under more than one Statute. Where substantial loss of life or human suffering results from accidents arising from natural or man-made causes, the claimants should be eligible to get cash relief and medical assistance as an immediate palliative from out of the funds constituted under the Disaster Management Act. As suggested earlier, the doubts if any in this regard should be dispelled by suitable amendment or clarification issued by the Central Government. Irrespective of that, ex-gratia assistance is admissible under the Act on account of loss of life and for restoration of means of livelihood. Section 12 requires the National authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by the disaster. Similar power is vested with the State authority under Section 19. The District authority is required to provide shelter, food, healthcare and services (vide Section 34). The relief admissible to the persons affected – whether it be ex-gratia or a grant from the Disaster Relief Fund, has to be given without any loss of time and without any hassles. The quantum of relief and modalities of medical assistance should be laid down through guidelines. The persons affected may have another remedy under the Public Liability Insurance Act to get the relief to the extent of the amount specified in the Schedule, provided it is an accident that had arisen in the course of handling hazardous substance or operations. We have indicated that the said Act needs to be amended to provide greater relief. There is every need to ensure that the victims of disaster or their families get the relief under these two enactments within shortest possible time. The Collector/District Magistrate can be designated as an agency to process the claims and take all necessary steps to disburse the relief with utmost expedition. If the jurisdiction under the P.L.I. Act is continued with the Collector, (instead of sending the claims to the National Green Tribunal), that will quicken the process. The claimant should not under any circumstances be driven from pillar to post to get the entitled relief. As far as the workman is concerned, no relief can be extended to him or his ‘dependents’ in view of the exclusion clause in Section 3. However he can seek relief under the Workmen’s compensation Act which lays down the principle of ‘no fault liability’ as in the case of PLI Act. Under the said Act, the workman cannot however seek compensation both under that Act and by way of civil suit. In a disaster situation, the Commissioner under the W.C. Act, shall accord priority to the disposal of claims and pass orders within a maximum time-frame. The appropriate Governments will have to issue instructions in this regard to the Commissioners. The need to revise the multiplier relating to percentage of loss of earning capacity under the Act deserves examination.

27.2 The District Legal Services Authorities can also play a useful role by coordinating with the victims and the authorities concerned so as to provide the needed legal assistance to the hapless victims. The Secretaries of LSAs should take initiative to contact the persons concerned and offer the necessary help even if the victims have not approached the LSAs. Even now, this is being done, but the endeavour shall be to enter the scene at the earliest.

#### **a. Civil Law and Public Law Remedies**

28.1 The drawal of relief / compensation under the provisions of DM Act and/or other special Statutes (except Workman’ Compensation Act) does not bar the affected persons to avail of

common law remedy of suing for damages for the tort of negligence. The affected person can seek private law remedy for compensation based on the tortious liability of one or more wrong doers. If the wrong is committed by a public/statutory authority which has the effect of infringing the fundamental rights under Article 21 etc., the Public Law remedy of proceeding against the State and its instrumentalities for damages / compensation is also available to the persons aggrieved. Remedies under the National Green Tribunal Act can also be invoked. It is open to the persons affected to sue both the private persons / entities as well as the public authorities treating them as joint tort-feasors. In order to obtain quick redressal, the Constitutional Courts are approached for relief.

## **b. Action in torts for negligence**

28.2 Tort means a civil wrong (as distinguished from criminal wrong) which is not exclusively the breach of contract or the breach of a trust (vide Section 2(m) of the Limitation Act, 1963). Salmond, in his celebrated book on the Law of Torts defines 'tort' as a civil wrong for which the remedy is a common-law action for unliquidated damages and which is not exclusively the breach of a contract or a breach of a trust or merely equitable obligation. In Encyclopedia of the Laws of England, the following definition of Torts is given<sup>5</sup>:-

*“What we now understand by a tort is a breach of some duty between citizens, defined by the general law, which creates a civil cause of action. The duty must be founded in common right, not in a strictly personal relation such as those of husband and wife or parent and child. It must be a duty assigned by law, not dependent on the will of the parties: A breach of contract or of trust is not, as such, a tort, though it may also be a tort in particular circumstances. There must be a private right of action; the facts producing it may or may not also constitute an offence punishable by public authority.”*

28.3 Negligence is a distinct head of tort. The action in tort for negligence is based on the breach of duty to take care. The general principle behind the tort of negligence is that “you must take reasonable care to avoid acts or omissions which you could reasonably foresee would be likely to endanger your neighbour” (vide Lord Atkin’s dictum in *Donoghue Vs. Stevenson*, 1932 AC 562). In *Caparo Industries vs Dickman*, (1990) 1 All ER 568, the three criteria for imposition of a duty to take care were stated to be foresee-ability of damage, proximity of relationship between the parties and the reasonableness or otherwise of imposing a duty. The duty of care expected of public authorities in ensuring compliance of safety regulations has been broadly indicated by the Supreme Court in the recent case of *Uphaar* (AIR 2012 SC 100) to which reference will be made later. In the matter of performance of statutory or public duty how and in what circumstances the State and its instrumentalities can be held liable in tort in a public or private law proceeding is a complex issue on which there is considerable case law.

28.4 The law of torts as administered in India in the recent times is the English law as adapted to Indian conditions. The Judiciary in India has been setting new precedents in tort law, keeping in view the magnum of wrong, the gravity of situation and constitutional rights. Apart from the Judge-made law, there are statutes like Motor Vehicles Act, 1988 which give effect to the principles of tort law on negligence.

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<sup>5</sup> Quoted in P. Ramanatha Iyer’s Major Law Lexicon Second Edition (Reprint 2001).

28.5 In the First Report of the Law Commission of India, the Commission pointed out at para 26, “breach of statutory duties which gives rise to liability **analogous to torts** is treated as a group of torts which are *sui generis* i.e., a class in itself. After citing the dictum of Lord Wright in 1949 AC 155, the Commission aptly said:

*“It would be seen that whether the breach is of a statutory duty or of a common law duty, there is a common law action for damages. The source of the obligation or the duty is, no doubt, different. If there is a breach of a statutory duty, it may be presumed that there is a negligence. In the case of a common law duty, the duty itself has to be established before its violation is proved giving rise to a claim for damages. It follows, therefore, whether there is a breach of statutory duty or not, there may be common law action for negligence.”*

### **c. Sovereign Immunity**

29.1 One important feature in the development of tort law in our country is that the concept of sovereign immunity which precludes vicarious liability of the State for the wrongful actions of its officials has been considerably diluted notwithstanding what was laid down in the case of *Kasturilal Vs. State of UP* (AIR 1965 SC 1039). In *Kasturilal's* case, the Supreme Court upheld the plea of sovereign immunity for the tortuous acts of its servants in illegally seizing the goods. The Supreme Court observed that in the absence of legislation, the court had no option but to deny relief to the citizen. This is a Constitution Bench decision. In the later cases, while recognizing the concept of sovereign immunity, the Supreme Court has made many qualifying remarks on the jurisprudential basis of the doctrine, restricted the scope of sovereign functions and further ruled out its application to the violation of fundamental rights under Article 21 of the Constitution. Sovereign immunity is now applicable in a limited sphere. At the same time, the applicability of the doctrine of sovereign immunity looms large in several situations and there is need to impart certainty in this important sphere of law. The Law Commission, in its First Report and 92<sup>nd</sup> Report as well as the National Commission for Reviewing the Working of the Constitution have also expressed concerns over the lack of legislation defining the scope of sovereign immunity.

29.2 It has been held in several decisions that the defence of sovereign immunity is inapplicable to an action seeking public law remedy for violation of fundamental rights by public officials and when the infringement and injury is established, monetary compensation can be awarded against the State by the Constitutional Courts. In the case of *N. Nagendra Rao Vs. State of Andhra Pradesh* (AIR 1994 SC 2663) which was referred to *in extenso* in the recent *Uphaar case*, it was observed that any water tight compartmentalization of the functions of State as “sovereign or non-sovereign” or “governmental or non-governmental” is not sound and “contrary to modern jurisprudential thinking”. The needs of State, duty of its officials and rights of the citizens are required to be reconciled so that the rule of law in a welfare state is not shaken. The court further held that there is no rationale for the proposition that the State cannot be sued even if its officer is negligent and that vicarious liability cannot be fastened on the State. However, the Court pointed out the need to maintain State immunity in respect of certain functions. The test to be applied, according to the court, to determine if the legislative or executive function is sovereign in nature is whether the State is answerable for such actions in a court of law. For instance, acts connected with defence of the country, foreign affairs, etc are

functions which are political in nature and they are not amenable to jurisdiction of civil courts. “The State is immune from being sued as the jurisdiction of the courts in such matters is impliedly”. In *Uphaar case* (2012), one of the learned Judges pointed out that the defence of sovereign immunity is alien to the concept of guarantee of fundamental rights and such a defence is not available in the sphere of constitutional remedies.

29.3 The Law Commission of India in its very First Report (1956) dealt with the subject of “Liability of the State in Tort”. The Commission commented that the law relating to the liability of the Union and the State for tortuous acts is in a state of uncertainty and therefore the Commission undertook the task of defining the extent of liability of the Union and the States. The Commission observed that the old distinction between the “sovereign and non-sovereign functions” or “governmental or non-governmental functions” should no longer be invoked to determine the liability of the State. (This is what was repeated in *Nagendra Rao case*, supra). The Commission suggested enactment of legislation and set out the principles on which such legislation should proceed. The first proposition stated was that the State as employer should be liable for the torts committed by its employees and agents while acting within the scope of their office or employment. Another principle laid down was that the State should be subject to general law liability for injury caused by dangerous things. The Law Commission then dealt with the “duties of care” imposed by the Statute. One of the principles stated was that the State should be liable if in the discharge of statutory duties imposed upon it or its employees, the employees act negligently or maliciously, whether or not discretion is involved in the exercise of such duty. A provision enabling the State to claim indemnity or contribution was also suggested. In the last part, Exceptions were set out. They are, Acts of State, judicial acts and execution of judicial process, acts done in the exercise of political functions of the State such as foreign affairs, defence forces, anything done by the President or Governor in issuing proclamations, summoning and dissolving the legislature, vetoing of laws etc.

29.4 Chapter VIII of Law Commission’s Report dealing with “Conclusions and Proposals” is annexed herewith as **Annexure - IV**. Whether the recommendations of the Commission and the proposed legislative provisions need to be further refined in the light of developments that are taking place is a matter to be examined, after looking into the responses received. In the initial stages, there was an attempt to give legislative shape to the recommendations long ago. But, the Bills lapsed. Having regard to the Constitutional provision contained in Article 300, the liability of Union and the States to sue or be sued is the same as that of the dominion and the provinces of India before the Constitution came into force, until legislation is made in this behalf by Parliament or State Legislatures, the Law Commission analysed the legal provision obtaining before the Constitution going back to the provisions of Government of India Act, 1958 and forcefully made out a case for enunciating the principles on which the State could be made liable for the torts committed by its employees and agents.

#### **d. Public law wrong and remedy**

30.1 Since 1980s, there was another remarkable development. The public law remedy for awarding compensation against the State for serious infraction to life and personal liberty by the State machinery has taken firm roots in Indian Constitutional law, and the concept of public law wrong or ‘Constitutional Tort’ has been evolved by the Supreme Court. *Rudul Sah vs. State of Bihar*, (1983) 4 SCC 141, has charted the course for granting compensation while enforcing public law remedies. That was a case in which the petitioner was detained illegally in the prison

for many years even after his acquittal in a criminal case. He filed a habeas corpus petition in the Supreme Court under Article 32 for his release from illegal detention and also sought appropriate orders for payment of compensation. Chandrachud, C.J., speaking for the Supreme Court observed:-

*“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield.”*

30.2 The court directed the Government of Bihar to pay a sum of Rs.30,000/- as interim compensation while leaving it open to the petitioner to recover damages from the State in a civil suit.

30.3 In the words of A.S. Anand J. in *D.K. Basu vs. State of West Bengal [(1997) 1 SCC 416]* *“Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.”*

*DK Basu* was a case of custodial death.

30.4 The learned author and jurist Justice G P Singh who edited the latest edition of Ratan Lal's Law of Torts has made the following pertinent observations:

*“The distinction between tort of officers for which the State may be vicariously liable and the primary and the strict liability of the State for the public law wrong of violation of fundamental right has sometimes not been maintained and cases of public law wrong redresses under the public law remedies by application under Article 32 or 226 have all times been, it is submitted, inaccurately referred to as cases of tort.”*

30.5 In the case of *Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy* (AIR 2012 SC p. 100), the Supreme Court, having referred to Indian, English and Canadian decisions of the highest courts which laid down the principle that mere breach of statutory duty does not constitute negligence, observed: *“It is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because action taken by them is ultimately found to be without authority*

of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse.” It has been clarified in **Uphaar case** that the compensation that is awardable under the public law remedy ought not to be a nominal palliative amount. “It can be by way of making monetary amends for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability.” In *Uphaar Association case*, the Supreme Court exonerated the Municipal Corporation of Delhi and the licencing authority from the liability to pay compensation in the public law proceeding and to that extent set aside the judgment of the High Court. However, the Supreme Court held the licensee (theatre owner) and Delhi Vidyut Board jointly and severally liable to pay the damages and fixed the same at Rs.25 lakhs to be apportioned uniformly among all the claimants. At the same time, the Supreme Court, instead of driving the victims to another round of litigation by way of civil suits, laid down the broad principle for working out compensation and directed the Registrar General of Delhi High Court to receive applications in regard to death cases from the claimants (legal heirs) who want compensation in excess of what has been awarded, i.e., Rs.10 lakhs or Rs.7.5 lakhs, as the case may be. In coming to the conclusion as it did the Supreme Court applied the close and direct proximity between the acts of the respondents concerned and the fire accident. The Supreme Court observed:

*“The cases where damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the Licensing Authority. The position of DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that in so far as the licensee and DVB are concerned, there was contributory negligence. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them or anything done by them. Their actions/omissions were not the proximate cause for the deaths and injuries. The Licensing Authority and MCD were merely discharging their statutory functions (that is granting licence in the case of licensing authority and submitting an inspection report or issuing a NOC by the MCD). In such circumstances, merely on the ground that the Licensing Authority and MCD could have performed their duties better or more efficiently, they cannot be made liable to pay compensation to the victims of the tragedy. **There is no close or direct proximity to the acts of the Licensing Authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the Licensee and DVB on the one hand and the fire accident and resultant deaths/injuries of victims. In view of the well settled principles in regard to public law liability, in regard to discharge of statutory duties by public authorities, which do not involve mala fides or abuse, the High Court committed a serious error in making the licensing authority and the MCD liable to pay compensation to the victims jointly and severally with the Licensee and DVB.**”*

30.6 At the same time, the Supreme Court made it clear that the exoneration was only in regard to monetary liability and endorsed the observations of the High Court that the performance of the duties by the licencing authority and by MCD was mechanical and casual.

30.7 The doctrine of sovereign immunity, though referred to incidentally, did not come up for consideration of Court in *Uphaar* case for the reason that the basis of Writ Petition was the violation of fundamental rights and in view of the finding on facts, the court had no occasion to consider the impact of that doctrine in relation to the fact situation.

30.8 The legal position on the subject of tortious liability of public authorities has been discussed in detail by the Supreme Court in the case of *Union of India vs. United India Insurance Co. Ltd* [(1997), 8 SCC, 683]. That was a case of ghastly accident at an unmanned railway crossing where a passenger bus was hit by the running train. Whether omission to perform statutory duties can or cannot give rise to action at private law for damages was discussed. The liability of public bodies in tort while performing inherently dangerous operations was also considered by the Court. The parameters of duty of care at common law has been restated with clarity. It was held that the claimant can sue the railway concurrently for breach of the common law or statutory duties or for breach of either of the duties. It was also pointed out that the omission to perform public law statutory duty (in the matter of setting up level crossing gates) can give rise to cause action for claiming damages based on negligence. It was ruled that a discretionary statutory duty can also give rise to a common law duty of care in certain circumstances.

**e. Whether codification of principles for award of damages in public law regime is necessary.**

31.1 One of the learned judges who decided *Uphaar* case observed that the duty of care expected from State or its officials functioning under the public safety legislation is ‘very high’ compared to the statutory functions and supervision expected from the officers functioning under the statutes like Companies Act. The duty of care to be observed by the officials acting under the provision of Cinematograph Act, the Delhi Building Regulations and Electricity Act is ‘high’ according to the learned Judge. At the same time, it was clarified that normally there should be direct connection between the wrong-doer’s conduct and the victim’s injury. The learned judge referred to the English decisions and commented that there is lot of uncertainty in the principles to be adopted when claims are made against public bodies for negligence or violation of statutory duties. It was also noted that the Law Commission of U.K. proposed the introduction of a new touchstone of liability: ‘serious fault’ on the part of public bodies. The learned judge then referred to various approaches adopted by the Constitutional Courts in determining the monetary compensation or damages and observed that no uniform criteria or formulae were adopted. It was also observed that it was not desirable to import the rules applicable to private law remedy for determination of quantum of compensation while dealing with ‘constitutional torts’. Due to lack of legislation, it was pointed out, the courts were not following uniform pattern while deciding the claims under public law proceedings and in fixing the compensation amount. It was observed “we hope and trust that utmost attention would be given by the legislature for bringing in appropriate legislation to deal with claims in public law for violation of fundamental rights, guaranteed to the citizens at the hands of the State and its officials.”

31.2 The question is whether it is really practicable and desirable to codify the tests and principles to be applied in determining the compensation or the assessment of punitive damages in cases involving infraction of fundamental rights in respect of which public law remedy has

been invoked or in specifying through legislation the standards to be applied in judging the liability of State for non-compliance with statutory provisions?

31.3 The basic principles are not in doubt. There are bound to be divergent approaches while applying the principles to concrete cases. Would it be possible to lay down guidelines for Constitutional Courts as to how to proceed in a hypothetical situation and which principle could be more appropriately applied? Is it possible to devise strait-jacket formulae which could solve the issues that arise in these matters? Above all, can the Constitutional jurisdiction of superior Courts be circumscribed by hard and fast rules? Any prescription of rules and principles for guidance in the matter of enforcing of Public law remedy – will it not be counter-productive? These questions do arise. Probably, it would be wise and prudent to allow the law to evolve itself rather than creating a situation of Constitutional Courts being hide-bound by rigid and imperfect principles/guidelines. As it is, the trend of the decisions and approaches adopted have been beneficial to the persons aggrieved. The superior courts in our country have been adjusting their doctrinal responses suitably to render maximum justice to the victims of disasters.

#### **f. Absolute liability Principle**

32.1 The enunciation of principle of absolute liability is another innovative development in the tort law of our country. In a situation where the accident occurs in the course of handling hazardous or explosive substances, the principle of strict liability laid down in the vintage decision of Rylands v. Fletcher (1868), *minus* the exceptions laid down therein is applied in our country. The owner of the enterprise dealing with such substances will be liable on the principle of ‘absolute liability’ and this is what has been laid down by the Supreme Court in Sriram Fertilizer Case (M.C. Mehta v. Union of India, AIR 1987 SC 1089). The rule now evolved by the Supreme Court while deviating from the English law principle stemming from Rylands v. Fletcher, is this :-

*“We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous nature of the activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.....If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the*

*enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards.”*

32.2 As seen earlier, the principle of strict liability of State has been applied by the Supreme Court in Public law jurisdiction while dealing with cases of gross violation of the petitioner’s right to life and personal liberty.

33. Our tort law has been liberalized in favour of citizens to an extent unparalleled in the legal history of the world. The liabilities regime in respect of disasters resulting from hazardous substances or operations has been so tightened by judgment law that the escape routes for avoiding the liability are practically blocked. However, the delays in judicial processes attributable to various reasons, some of which are beyond the control of judiciary still come in the way of obtaining quick relief. At the same time, the claims arising out of mass torts are dealt with, by and large, on priority basis by the courts.

**g. Class actions/suits**

34.1 Class action is a form of collective law suit which has originated in the United States and is still a predominant feature of U.S. litigation system. Class action or representative action is a form of law suit in which a large group of people collectively bring a claim to the court and/or in which a class of defendants is being sued. The procedure for filing a class action is to file a suit with one or several named plaintiffs on behalf of a proposed class. The proposed class must consist group of individuals or business entities that have suffered a common injury or injuries. Class action is a means of combining a large number of individualized claims into one representational law suit. Such aggregation can increase the efficiency of legal process by avoiding duplication of witnesses and exhibits and lower the cost of litigation. In a class action, the plaintiff seeks court approval to litigate on behalf of a group of similarly situated persons. An alternative to the representative class action is that number of persons can join together in one suit which is sometimes described ‘mass action’. Apart from U.S., another country which allows class actions is Canada. However, in several European countries with civil law, the consumer organizations are allowed to bring claims on behalf of large groups of consumers by way of class action<sup>6</sup>.

34.2 Rule 23 of Federal Rules of Civil Procedure deals with ‘Class Actions’. One or more members of a class may sue or be sued as representative parties on behalf of all members only if the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of claims or defenses of class and fourthly, the representative parties will fairly and adequately protect the interest of the class. Subject to the above conditions, a class action may be maintained especially in the situation where prosecuting separate actions would create a risk of inconsistent or varying adjudication with respect to individual class members. The Court must find that the questions of law or fact common to class members predominate over any questions affecting only individual members and that class action is superior to other available methods for fairly and efficiently adjudicating the controversy. In certain situations, the class members are given a chance to opt out of class settlement, if any. The United States Congress passed Class Action Fairness Act of 2005 in the wake of criticism that some abusive class actions harmed

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<sup>6</sup> See generally [http://en.wikipedia.org/wiki/class\\_action](http://en.wikipedia.org/wiki/class_action)

class members with legitimate claims and defendants that have acted responsibly and also adversely affected inter-State commerce. Nevertheless, it is recognized that the class action law suits are an important and valuable part of the legal system.

34.3 In India, the development of Public Interest Litigation through the relaxation of *locus standi* rule by the Constitutional Courts and also grant of damages/compensation in appropriate cases for the violation of fundamental right to life etc. has, to a great extent, taken care of the interests of large body of persons aggrieved by common injury, as demonstrated by the recent *Uphaar case*. Apart from the provisions in Civil Procedure Code, there are two enactments wherein provision has been made for representative action. Under the National Green Tribunal Act, 2010, an application for grant of relief or compensation under Section 17(1) read with Section 15 of the said Act and for settlement of disputes (relating to environment) under Section 14 can be made by any representative body or organization. Section 17 is applied in a situation where death or injury to any person or damage to any property or environment has resulted from an accident OR an adverse impact of an activity or operation or process under the 7 enactments specified in Schedule I. The Consumer Protection Act also provides for a complaint being filed by a recognized consumer association or by one or more consumers on behalf of others having similar interest. The main provision in CPC which provides for representative or collective suit is O 1 r 8. Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued or may defend such suit on behalf of or for the benefit of all persons interested. O 1 r 8 can be said to be the Indian version of class action suits for redressal of common grievance though it is narrower in scope when compared to US class actions. It needs to be mentioned that private law remedy by way of instituting suit of such nature is rarely resorted to in our country. It may be, as pointed out by some writers, by reason of the fact that the legal regime in India prohibits contingent or conditional fee arrangements. More important, there is a lack of awareness and initiatives in this direction. The Memorandum<sup>7</sup> attached to this paper (see **Annexure VI**) gives an informative overview of Class Action Litigation in the United States and discusses the *pros* and *cons* of resorting to such litigation.

34.5 In the case of *Tamil Nadu Housing Board vs. T.N. Ganpathy (AIR 1990 SC 642)*, the scope and object of the rule has been explained thus by the Supreme Court: “*the provisions of O 1 r 8 have been included in the Code of Civil Procedure in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provision is that the persons on whose behalf the suit is being brought must have the same interest. In other words, either the interest must be common or they must have a common grievance which they seek to get redressed. The object for which O 1 r 8 is enacted is really to facilitate the decision of questions in which large number of persons are interested, without recourse to the ordinary procedure. The provisions must, therefore, receive an interpretation which will subserve the object of the enactment. There are no words in the rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction*”. Whether numerous persons who have suffered damage or injury can authorize one or more persons who are similarly aggrieved to maintain a single suit is not free from doubt. Though the incident may be a single

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<sup>7</sup> Class Action Litigation in the US by Leigh Blomgren, Fellow, Avon Global Center for Women and Justice, Cornell Law School (July 2012).

one and the questions that arise are broadly common, it could be argued that the claimants do not have the same or identical interest as the nature of legal injury and quantum of compensation would vary. Though the cause of action may be the same, the grievance may not be common. The expression 'same interest' must be distinguished from 'same transaction', as pointed out in Mulla's Code of Civil Procedure. An English case has been cited therein in which the representative suit was held to be not maintainable in a case where the goods of several persons were shipped under separate Bills of Lading and goods were lost on account of the same cause. In the Civil Procedure Code, there are two more provisions which allow the suits to be filed by two or more persons on behalf of the public, subject to leave of the Court. They are, Section 91 (for abatement of public nuisance) and Section 92 (for proper administration of a public charitable / religious trust).

34.6 The question needs to be considered whether we should have in our country the class action litigation on the lines of USA and whether in the case of mass torts arising out of a single incident / transaction, such class suits shall be permitted. In the case of Bhopal Gas Tragedy case, the Government has armed itself with the power to file representative actions on behalf of the victims by passing an Act known as Bhopal Gas Leak Disaster (processing of claims) Act, 1985. While doing so, the Government has assumed the character of '*parens patriae*' (father of the country) to protect the interests of innumerable victims and their dependents.

34.7 *Prima facie*, it appears that an Explanation has to be added to Order 1, Rule 8 to make it clear that class actions in cases of damage or injury resulting from man-made disasters are permitted notwithstanding the variations in respect of the injuries caused and the amounts claimed, subject to such conditions and restrictions that may be specified in the Code.

34.8 In any case, the civil claims arising out of man-made disaster should be settled with utmost expedition and for this purpose, the High Court may direct that all such suits wherever filed should be made over to the Court of Dt. Judge or Addl. Dt. Judge and the appeals if any filed against the verdict given in such cases should be disposed of on priority basis. The National Green Tribunal should accord priority to the disposal of claims filed by the victims of disaster by consolidating all of them.

## **IX Sum up**

35.1 This paper is by no means exhaustive of various kinds of manmade disasters, through they are broadly indicated. However, the problems, by and large are the same. Enforcement of safety measures especially those laid down in specific provisions of law (including subordinate legislation) is the most neglected area. The **three** aspects from which the problem of manmade disasters has to be approached have been stated to be preventive, punitive and remedial measures and the discussion has been proceeded on these lines.

35.2 Certain amendments to Central Acts viz. Disaster Management Act, Public Liability Insurance Act, National Green Tribunal Act, Cinematograph Act, Indian Penal Code and Delhi Municipal Corporation Act have been mooted for (i) providing higher and quicker relief to the victims; (ii) to provide for a better regulatory regime so as to improve the level of compliance; (iii) to enhance the punishment especially the quantum of fines and (iv) to create two new offences in Disaster Management Act. The matters in which guidelines could be issued have

also been indicated. Promotion of safety culture by various measures has been stressed. The need for capacity building and strengthening the manpower in terms of number as well as quality to cope up with man-made disasters has been highlighted. The Private law action for damages for the tort of negligence and recourse to public law remedy against the State and its agencies is discussed. The doctrine of sovereign immunity, the principle of absolute liability and other principles applied for determining the liability of the State or other parties have been referred to. The question whether there is need to legislatively declare the principles governing tortious liability of the State and its agencies for the breach of statutory duties or misuse of statutory discretion and for determining the compensation to be awarded in a public law proceeding has been discussed. The subject of class action litigation has also been discussed.

35.3 These are tentative views that are expressed. The Law Commission would like to have fuller consideration after receiving inputs and responses from various sources. Such responses may reach the Law Commission preferably within a month.

## **Short circuit and electrical fire**

1. A short circuit is described in Wikipedia (the Free Encyclopedia), as an electrical circuit that allows a current to travel along an unintended path, often where essentially no (or a very low) electrical ‘impedance’) is encountered. The electrical opposite of a short circuit is an “open circuit” which is an infinite resistance between two nodes. It is common to misuse the term “short circuit” to describe any electrical malfunction, regardless of the actual problem.

2. A short circuit, is “an abnormal low resistance connection between two nodes of an electrical circuit intended to be at different voltages” and this results in an excessive electric current which has the potential to cause circuit damage, overheating, fire or explosion. Overloaded wires can also overheat which might in turn cause damage to the wires’ insulation or a fire. A common type of short circuit occurs when the positive and negative terminals of a battery are connected with a low-resistance conductor, like a wire. With low resistance in the connection, a high current exists, causing the cell to deliver a large amount of energy in a short time. In electrical devices, unintentional short circuits are usually caused when a wire’s insulation breaks down or when another conducting material is introduced, allowing charge to flow along a different path than the one intended. In mains circuits, short circuits may occur between two phases. It is possible for short circuits to occur between two conductors of the same phase. Such short circuits can be dangerous as they may not immediately result in a large current and are therefore less likely to be detected. To help reduce the negative effects of short-circuits, power distribution transformers are designed to have certain amount of leakage reactance. A short circuit may lead to formation of an arc, a channel of ionized plasma which is highly conductive and can persist even after significant amount of original material of the conductors was evaporated. Surface erosion is a typical sign of electric arc damage.

3. In an improper installation, the overcurrent from a short circuit may cause ohmic heating of the circuit parts with poor conductivity (faulty joints in wiring, faulty contacts in power sockets, or even the site of the short circuit itself). Such overheating is a common cause of fires. An electric arc, if it forms during the short circuit, produces high amount of heat and can cause ignition of combustible substances as well.

4. Damage from short circuits can be reduced or prevented by employing fuses, circuit breakers, or other overload protection, which disconnect the power in reaction to excessive current. Overload protection must be chosen according to the prospective short circuit current in a circuit. Wire gauges as specified in building and electrical codes, are to be chosen for their specific application to ensure safe operation in conjunction with the overload protection. There are modern gadgets like circuit breakers of different types which protect electric circuits against overload and short circuit currents. Circuit breakers must be able to carry high load without excessive heating.

5. The major reasons for an electrical fire are identified as:-

(1)Short circuit in wiring/cables; (2)Loose connections giving rise to sparking; (3) Overloading of conductors/cables; (4) Electrical source close to flammable material; (5) Use of inferior

grade materials and equipments; (6) Use of under-sized fuses leading to sparking and break down and (7) Generation of static electricity.

6. It is seen from a presentation given at the International Fire Materials Conference held in 2001 at San Francisco that even in USA, a sizeable fraction of ignitions of structures occur due to electrical faults associated with wiring and wiring devices.

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**Para 45 of the Judgment of the Supreme Court in Municipal Corporation, Delhi v. Association of Victims of Uphaar Tragedy, Air 2012 SC 100.**

“While affirming the several suggestions by the High Court, we add the following suggestions to the Government for consideration and implementation:-

- (i) Every licensee (cinema theatre) shall be required to draw up an emergency evacuation plan and get it approved by the licensing authority.
- (ii) Every cinema theatre shall be required to screen a short documentary during every show showing the exits, emergency escape routes and instructions as to what to do and what not to do in the case of fire or other hazards.
- (iii) The staff/users in every cinema theatre should be trained in fire drills and evacuation procedures to provide support to the patrons in case of fire or other calamity.
- (iv) While the theatres are entitled to regulate the exit through doors other than the entry door, under no circumstances, the entry door (which can act as an emergency exit) in the event of fire or other emergency) should be bolted from outside. At the end of the show, the users may request the patrons to use the exit doors by placing a temporary barrier across the entry gate which should be easily movable.
- (v) There should be mandatory half yearly inspections of cinema theatres by a senior officer from the Delhi Fire Services, Electrical Inspectorate and the Licensing Authority to verify whether the electrical installations and safety measures are properly functioning and take action wherever necessary.
- (vi) As the cinema theatres have undergone a change in the last decade with more and more multiplexes coming up, separate rules should be made for Multiplex Cinemas whose requirements and concerns are different from stand-alone cinema theatres.
- (vii) An endeavour should be made to have a single point nodal agency/licensing authority consisting of experts in structural engineering / building, fire prevention, electrical systems etc. The existing system of police granting licenses should be abolished.
- (viii) Each cinema theatre, whether it is multiplex or stand-alone theatre should be given a fire safety rating by the Fire Services which can be in green (fully compliant) yellow (satisfactorily compliant), red (poor compliance). The rating should be prominently

displayed in each theatre so that there is awareness among the patrons and the building owners.

- (ix) The Delhi Disaster Management Authority, established by the Government of NCT of Delhi may expeditiously evolve standards to manage the disasters relating to cinema theatres and the guidelines in regard to ex-gratia assistance. It should be directed to conduct mock drills in each cinema theatre at least once in a year.”

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**Para 17 of the Judgment of the Supreme Court in Municipal Corporation, Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100.**

“The High Court approved the recommendations of Naresh Kumar Committee which were extracted in detail in the judgment of the High Court. The High Court also made the following recommendations:-

- A) Several requests by the fire authorities for adequate maintenance and timely upgradation of the equipment have floundered in the bureaucratic quagmire. When lives of citizens are involved, the requirement of those dealing in public safety should be urgently processed and no such administration process of clearance in matters of public safety should take more than 90 days. The entertainment tax generates sufficient revenue for the administration to easily meet the financial requirements of bodies which are required to safeguard public health.
- B) Considering the number of theatres and auditoria functioning in the city, sufficient staff to inspect and enforce statutory norms should be provided by the Delhi Administration.
- C) The Delhi Police should only be concerned with law and order and entrusting of responsibility of licensing of cinema theatres on the police force is an additional burden upon the already over burdened city police force.
- D) The inspection and enforcement of the statutory norms should be in the hands of one specialized multi-disciplinary body which should deal with all aspects of the licensing of public places. It should contain experts in the field of (a) fire prevention (b) electric supply (c) law and order (d) municipal sanctions (e) urban planning (f) public health and (g) licensing. Such a single multidisciplinary body would ensure that the responsibility of public safety is in the hands of a body which could be then held squarely responsible for any lapse and these would lead to a situation which would avoid the passing of the buck. The existing position of different bodies looking after various components of public safety cannot be continued. A single body would also ensure speedier processing of applications for license reducing red tape and avoidable complications and inevitable delay.
- E) All necessary equipment should be provided to ambulances and the fire brigade including gas masks, search lights, map of water tanks located in the area including the existence of the location of the underground water tanks. Such water tanks locations should be available to the firemen working in the area. The workshop for the fire tenders service and maintenance should also be fully equipped with all spares and other equipment and requisition made by the fire brigade should receive prompt and immediate attention.

There should also be adequate training imparted to the policemen to control the crowd in the event of a disaster as it is found that onlookers are a hindrance to control the crowd in the event of a disaster as it is found that onlookers are a hindrance to rescue operations. Similarly all ambulances dealing with disaster management should be fully equipped.”

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Extract from the First Report of Law Commission of India

CHAPTER VIII—CONCLUSIONS AND PROPOSALS

60. In the context of a welfare State it is necessary to establish a just relation between the rights of the individual and the responsibilities of the State. While the responsibilities of the State have increased, the increase in its activities has led to a greater impact on the citizen. For the establishment of a just economic order industries are nationalised. Public utilities are taken over by the State. The State has launched huge irrigation and flood control schemes. The production of electricity has

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<sup>50</sup>. A.I.R. (1955) Calcutta, 282.

practically become a Government concern. The State has established and intends to establish big factories and manage them. The State carries on works departmentally. The doctrine of *laissez faire*—which leaves every one to look after himself to his best advantage has yielded place to the ideal of a *welfare State*—which implies that the State takes care of those who are unable to help themselves.

61. Some of the activities are entrusted to public corporations to run the business on sound economic and business lines efficiently. Public Corporations like the Air Corporations, Damodar Valley Corporation, etc. (*vide* Appendix IV for a list) are such examples. For all these it employs labour on a large scale. There is no convincing reason why the Government should not place itself in the same position as a private employer subject to the same rights and duties as are imposed by statute.

62. When the Constitution was framed, the question to what extent, if any, the Union and the States should be made liable for the tortious acts of their servants or agents was left for future legislation. The point for consideration, therefore, is on what lines the legislation should proceed. This, indeed, is a difficult question to decide, as it involves the question of demarcating the line up to which the State should be made liable for the tortious acts. It involves, undoubtedly, a nice balancing of considerations so as not to unduly restrict the sphere of the activities of the State and at the same time to afford sufficient protection to the citizen. Even conservative countries like England realise that the law should progress in favour of the subject in the context of a welfare State and should not remain stagnant. Even under the law obtaining before the Crown Proceedings Act in England, when the immunity of the Crown extended to the departments of State and the injured party had no remedy at all in respect of claims founded on tort, the State mitigated the hardship by paying compensation though this was as a matter of grace and not as of right.

63. The tendency in England, therefore, is towards relaxation of the immunities of the Crown in favour of the subject. But it has not gone far enough.

64. The liberalisation of the law in England and other countries should not be ignored in framing the law in this behalf. Our country also must formulate the law suitably having regard to the changed conditions and the provisions of our Constitution. In America, as has been seen, the liability is very restricted. In Australia, which was the first to give the lead in reducing the immunity of the Crown, a simpler formula that the "rights of the parties shall as nearly as possible be the same . . . . . as in a suit between subject and subject" was adopted. This was judicially interpreted to exclude liability for discretionary duties. The Crown Proceedings Act is more liberal than

the legislation in the United States but in respect of statutory duties and powers, the scope is very restricted. Though the State is the biggest employer, industrialist and factory owner, the legislation which imposes certain duties on the employer has not been adopted in its entirety. In other words, the whole of the industrial legislation except the Factories Act was excluded on the principle that the Crown is not bound by any statute unless it is expressly mentioned or is bound by necessary implication. The Act is silent regarding discretionary powers and duties but that may be on the principle that the officer who committed the tort was not liable at common law in the absence of additional damage caused by negligence in the exercise of discretion.

65. It would, therefore, not be advisable to adopt the legislation in this respect in England, America or Australia. It is necessary that the law should, as far as possible, be made certain and definite instead of leaving it to courts to develop the law according to the view of the judges. The citizen must be in a position to know the law definitely.

The old distinction between sovereign and non-sovereign functions or governmental and non-governmental functions should no longer be invoked to determine the liability of the State. As Professor Friedman<sup>51</sup> observes:

"It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental functions, but the nature and form of the activity in question."

This was also what was decided in *Haribhanji's case*<sup>52</sup>. We would recommend that legislative sanction be given to the rule laid down in that case.

66. The following shall be the principles on which legislation should proceed:—

#### I. Under the general law:

Under the general law of torts i.e., the English Common Law as imported into India on the principle of justice, equity and good conscience, with statutory modifications

<sup>51</sup>. Law and Social Change, page 273.

<sup>52</sup>. I.L.R. 5, Mad. 273. See also in this connection the observations of Mukerjee, J., (as he then was), *Saghir Ahmed V. The State of U* (1955) 1 S.C.R. 707, at page 731.

of that law now in force in India (*vide* the Principles of General Law, Appendix VI)—

(i) The State as employer should be liable for the torts committed by its employees and agents while acting within the scope of their office or employment.

(ii) The State as employer should be liable in respect of breach of those duties which a person owes to his employees or agents under the general law by reason of being their employer.

(iii) The State should be liable for torts committed by an independent contractor only in cases referred to in Appendix VI.

(iv) The State also should be liable for torts where a corporation owned or controlled by the State would be liable.

(v) The State should be liable in respect of breach of duties attached under the general law to the ownership, occupation, possession or control of immoveable property from the moment the State occupies or takes possession or assumes control of the property.

(vi) The State should be subject to the general law liability for injury caused by dangerous things (chattels).

In respect of (i) to (vi) the State should be entitled to raise the same defences, which a citizen would be entitled to raise under general law.

**II.** *In respect of duties of care imposed by statute:*

(i) If a statute authorises the doing of an act which is in itself injurious, the State should not be liable.

(ii) The State should be liable, without proof of negligence, for breach of a statutory duty imposed on it or its employees which causes damage.

(iii) The State should be liable if in the discharge of statutory duties imposed upon it or its employees, the employees act negligently or maliciously, whether or not discretion is involved in the exercise of such duty.

(iv) The State should be liable if in the exercise of the powers conferred upon it or its employees the power is so exercised as to cause nuisance or trespass or the power is exercised negligently or maliciously causing damage.

*N.B.*—Appendix V shows some of the Acts which contain protection clauses. But under the General Clauses Act a thing is deemed to be done in good faith even if it is done negligently. Therefore, by suitable legislation the protection should be made not to extend

to negligent acts however honestly done and for this purpose the relevant clauses in such enactments should be examined.

(v) The State should be subject to the same duties and should have the same rights as a private employer under a statute, whether it is specifically binding on the State or not.

(vi) If an Act negatives or limits the compensation payable to a citizen who suffered damage, coming within the scope of the Act, the liability of the State should be the same as under that Act and the injured person should be entitled only to the remedy, if any, provided under the Act.

### III. Miscellaneous:

*Patents, Designs and Copyrights:* The provisions of Sec. 3 of the Crown Proceedings Act may be adopted.

### IV. General Provisions:

(i) *Indemnity and contribution:* To enable the State to claim indemnity or contribution, a provision on the lines of Sec. 4 of the Crown Proceedings Act may be adopted.

(ii) *Contributory negligence:* In England, the Law Reform (Contributory Negligence) Act, 1945 was enacted amending the law relating to contributory negligence and in view of the provisions of the Crown Proceedings Act the said Act also binds the Crown. In India, the trend of judicial opinion is in favour of holding that the rule in *Merryweather v. Nixon*<sup>53</sup> does not apply and that there is no legal impediment to one tortfeasor recovering compensation from another. But the law should not be left in an uncertain state and there should be legislation on the lines of the English Act.

(iii) Appropriate provision should be made while revising the Civil Procedure Code to make it obligatory to implead as party to a suit in which a claim for damages against the State is made, the employee, agent or independent contractor for whose act the State is sought to be made liable. Any claim based on indemnity or contribution by the State may also be settled in such proceeding as all the parties will be before the court.

### V. Exceptions:

(i) *Acts of State:* The defence of "Act of State" should be made available to the State for any act, neglect or default of its servants or agents. "Act of

<sup>53</sup>. (1799) 8. T.R. 186.

"State" means an act of the sovereign power directed against another sovereign power or the subjects of another sovereign power not owing temporary allegiance, in pursuance of sovereign rights.

(ii) *Judicial acts and execution of judicial process:*  
The State shall not be liable for acts done by judicial officers and persons executing warrants and orders of judicial officers in all cases where protection is given to such officers and persons by Sec. 1 of the Judicial Officers Protection Act, 1850.

(iii) *Acts done in the exercise of political functions of the State such as acts relating to:*

(a) Foreign Affairs (entry 10, List I, Seventh Schedule of the Constitution);

(b) Diplomatic, Consular and trade representation (entry 11);

(c) United Nations Organisation (entry 12);

(d) Participation in international conferences, associations and other bodies and implementing of decisions made thereat (entry 13);

(e) entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries (entry 14);

(f) war and peace (entry 15);

(g) foreign jurisdiction (entry 16);

(h) anything done by the President, Governor or Rajpramukh in the exercise of the following functions:

Power of summoning, proroguing and dissolving the Legislature, vetoing of laws and anything done by the President in the exercise of the powers to issue Proclamations under the Constitution;

(i) Acts done under the Trading with the Enemy Act, 1947;

(j) Acts done or omitted to be done under a Proclamation of Emergency when the security of the State is threatened.

(iv) *Acts done in relation to the Defence Forces:*

(a) Combatant activities of the Armed Forces during the time of war;

(b) Acts done in the exercise of the powers vested in the Union for the purpose of training or maintaining the efficiency of the Defence Forces;

The statutes relating to these already provide for payment of compensation and the machinery for determining the compensation: See *Manoeuvres, Field Firing and Artillery Practice Act, 1948*; *Seaward Artillery Practice Act, 1949*;

(c) The liability of the State for personal injury or death caused by a member of the Armed Forces to another member while on duty shall be restricted in the same manner as in England (Sec. 10 of the *Crown Proceedings Act*).

(v) *Miscellaneous:*

(a) any claim arising out of defamation, malicious prosecution and malicious arrest,

(b) any claim arising out of the operation of quarantine law,

(c) existing immunity under the *Indian Telegraph Act, 1885* and *Indian Post Offices Act, 1898*,

(d) foreign torts. (The English provision may be adopted.)

#### VI. Definitions:

1. "Agent" shall have the same meaning as under the *Contract Act, 1872*.

2. "Employee" of the Government includes every person who is a member of the defence service or of a civil service of the Union or of an all-India Service or holds any post connected with the defence or any civil post under the Union and every person who is a member of the civil service of a State or holds a civil post in a State, and any other person acting on behalf of or under the control and direction of the Union or State with or without remuneration.

3. "Independent contractor" is a person who enters into a contract to do a work for the State without being controlled by the State as to the manner of execution of the work.

4. "State" includes the Union of India.

#### VII. Rule of construction regarding statutes binding on the Union and States:

We have discussed this question in paragraph 53, *ante*, and we recommend that a provision be inserted in the *General Clauses Act* as follows:

"In the absence of express words to the contrary, every statute shall be binding on the Union or the State, as the case may be."

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(Signed) M. C. SETALVAD (*Chairman*),

M. C. CHAGLA,

K. N. WANCHOO,

G. N. DAS,

P. SATYANARAYANA RAO,

N. C. SEN GUPTA,

V. K. T. CHARI,

D. NARASA RAJU,

S. M. SIKRI,

G. S. PATHAK,

G. N. JOSHI, *Members.*

K. SRINIVASAN,  
DURGA DAS BASU,  
*Joint Secretaries.*

NEW DELHI;  
*The 11th May, 1956.*

### Legislation

1. In the aftermath of Bhopal gas tragedy, the Parliament enacted the **Environment (Protection) Act**, 1986 to ensure that the developmental and industrial activities do not damage the environment or cause severe pollution.

2. An inclusive definition of ‘environment’ has been given. Environment includes “water, air and land and the inter-relationship which exists among and between these three things, and human beings, other living creatures, plants micro-organisms and property”. ‘Environmental pollutant’ is defined to mean any solid, liquid or gaseous substance present in such concentration as may be injurious to environment. The presence in the environment of any such pollutant is described as ‘environmental pollution’. “Hazardous substance” has been defined to mean any substance or preparation which, by reason of its chemical or physico-chemical properties or handling is likely to cause harm to human-beings, other living creatures, property etc. or the environment. “Occupier” in relation to any factory or premises means a person who has control over the affairs of the factory or premises and includes the person in possession of the hazardous substance. The power of the Central Government to take measures to protect and improve environment and to frame rules to regulate the environmental pollution is the main theme of the Act. The rules can *inter-alia* provide for the standards of quality of air, water or soil for various areas and purposes, the maximum allowable limits of concentration of various pollutants (including noise) for different areas, the procedures and safeguards for the handling of hazardous substances. Section 7 mandates that no person carrying on any industry, operation and process shall discharge or emit any environmental pollutants in excess of the standards prescribed. Section 8 requires compliance of prescribed procedure and safeguards for handling any hazardous substance. The appointment of Government Analysts and setting up of Environmental Laboratories is contemplated by the Act. The Central Govt. is empowered to issue orders to any person, officer or any authority directing the closure, prohibition or regulation of any industry operation or process (vide Section 5). The Central Govt. can also direct stoppage or regulation of the supply of electricity or water or any other service. The penalty for contravention of the provisions of the Act, the rules and orders issued under the Act is imprisonment for a term extending to five years and fine which may extend to Rs.1 lakh or both. In case of continued violation or contravention, an additional fine extending to Rs.5000/- per day is payable. Who are liable in the case of offences by Companies and the circumstances in which the Director, Manager, Secretary or other officer of the company or a partner of a firm or association of individuals are liable are prescribed by Section 16. In the case of offences by Govt. departments, Section 17 provides that the Head of Department shall be deemed to be guilty and punished accordingly subject to the proviso that the HOD is not liable for punishment if he proves that the offence was committed without his knowledge or he exercised all due diligence. If the offence is proved to have been committed with the consent or connivance or by reason of neglect on the part of any officer other than the HOD, such officer shall also be deemed to be guilty of that offence. There is a provision in Section 24(2) which lays down that if any act or omission punishable under this Act is also punishable under any other Act, then the offender found guilty of such offence shall be liable to be punished under the other Act, but not this Act. This

provision is likely to give rise to difficulties in interpretation and whether it would become counterproductive, remain to be seen. The offence under the Act can be taken cognizance by a Court only on a complaint made by the Central Govt. or the officer authorized in this behalf.

3. The Central Government framed various rules under the Act. They are Environment (Protection) Rules, 1986 which inter-alia set out the standards for emission or discharge of environmental pollutants from the industries for the discharge of effluents, for emission of smoke, vapour and the standards of ambient air quality. The other important Rules are: Hazardous Wastes (Management and Handling Rules, 1989), Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 and Rules for the Manufacture, Use, Storage and Import of Hazardous micro-organisms, Genetically engineered organisms or cells, 1989 and the Municipal Solid Wastes (Management and Handling) Rules, 2000.

4. Before the Environment Protection Act was enacted, there were two legislations concerning environment. They are – (i) **Water** (Prevention and Control of Pollution) Act, 1974; and (ii) **Air** (Prevention and Control of Pollution) Act, 1981. Section 24(1) of the Environment Protection Act declares that the provisions of the said Act shall prevail over the inconsistent provisions in any other Act. The UN Conference on the Human Environment held in Stockholm in June, 1972 in which India participated was the forerunner to these legislations.

#### 5. **Public Liability Insurance Act, 1991:**

5.1 In 1991, the Public Liability Insurance Act was enacted imposing an obligation on the owners of industries handling hazardous materials to take mandatory insurance with a view to provide compensation to victims of industrial disasters.

5.2 Section 4 of the Act lays down that every owner shall take before he starts handling any hazardous substance, one or more insurance policies whereby he is insured against liability to give relief under section 3(1) of the Act. The insurance policy shall be renewed from time to time. The insurance policy shall be for an amount not less than the amount of the paid-up capital of the undertaking handling any hazardous substance and it shall not be more than Rs. fifty crores. “Paid-up capital” means, in the case of an undertaking other than a company, the market value of all assets and stocks of the undertaking on the date of insurance. The liability of the insurer under one insurance policy shall not exceed the amount specified in the insurance policy. Under the rules, the maximum aggregate liability of the insurer in respect of one accident shall not exceed five crores. However, the owners’ liability remains unlimited under the Act. The owner is enjoined to pay the amount of premium to the insurer together with a prescribed sum not exceeding the amount of premium to be credited to the relief fund established by Central Government under section 7A. The maximum relief that can be given to the injured person, the LR of the diseased or the owner of the property damaged in the accident is at the scale specified in the schedule. Under the Schedule, for a fatal accident, the relief that could be given is Rs. 25,000/- per person in addition to reimbursement of medical expenses upto a maximum of Rs. 12,500/-. For permanent total or partial disability, the relief will be Rs. 25,000/-, and for other injury or sickness, reimbursement to the extent Rs. 12,500/- towards medical expenses is allowed. For damage to private property, the maximum prescribed is Rs. 6000/-. The application for claim to relief will be dealt with by the Collector having jurisdiction over the accident area. The relief to this limited extent as stated above is available to the claimant on the principle of no-fault liability. The right to claim relief under this Act is without prejudice to any

other right to claim compensation under any other law. However, the compensation payable under any other law shall be reduced by the amount of relief paid under this Act [vide section 8(2)]. The Collector's jurisdiction under this Act has since been transferred to the National Green Tribunal (constituted in 2010).

6.1 **The Factories Act, 1948** lays down the minimum requirements regarding health (cleanliness, ventilation, disposal of wastes and effluents, etc.), safety (eye protection, control of explosive or inflammable dusts, gas, fume or vapour, safety of buildings and machinery, precautions against dangerous fumes or gases, precautions in case of fire, etc.), and general welfare of workers (washing facilities, first-aid, shelter rooms, etc.) provisions relating to hazardous processes, health, safety, welfare and working conditions of employees are made. General duties of the occupier are laid down in section 7A according to which every occupier shall ensure so far as is reasonably practicable the health, safety and welfare of the workers in the factory. So also section 7B prescribes general duties of manufacturers as regards the articles and substances kept for use in factories. Chapter IV-A added to this Act in 1987 have various provisions relating to hazardous processes, viz., compulsory disclosure of information on damages, health hazards, handling of hazardous material, etc., to the workmen and keeping health records of workers exposed to risk. The State Government is required to appoint Inspectors of various designations, the Chief Inspector being at the helm. The powers and duties of Inspectors are specified in section 9 and other provisions. The State Government's powers to make rules in relation to operations of dangerous nature being carried on in a factory, are specified in the Act (vide Section 87).

6.2 Factories Rules have been promulgated by the State Governments in exercise of the powers under Section 112 read with section 87 and section 41 of the Act. Under section 92 of the Act, the occupier and the manager of a factory shall each be guilty of an offence and be punishable with imprisonment for a term which may extend to **two** years or with fine which may extend to **Rs. one lakh** or with both if there is any contravention of any provisions of the Act or the rules made thereunder or of any order given in writing. If the contravention is continued after conviction, further fine extending to Rs. 1,000/- for each day of contravention is liable to be imposed. The proviso to section 92 lays down that where the contravention of any of the provisions in Chapter IV (relating to safety) or any rule made thereunder or section 87 has resulted in an accident causing death or serious bodily injury, the fine imposable shall not be less than Rs. 25,000/- in the case of serious bodily injury. Section 92 was amended in 1987 in order to provide for enhanced punishment and fine as stated above.

7.1 **The Cinematograph Act, 1952** deals with the certification of films for public exhibition and secondly the regulation of exhibitions by means of cinematograph. The Act of 1952 underwent certain changes in 1981. Under this Act, cinematograph exhibitions are to be licensed, the licensing authority being District Magistrate. In a city, the Commissioner of Police is the licensing authority. The State Government has been empowered to constitute for a Union territory any other authority to be the licensing authority. In Delhi, it appears that the Deputy Commissioner of Police is the licensing authority. Section 12 enjoins that the licensing authority shall not grant a license unless it is satisfied that the rules made by the Central Government under section 16 have been complied with and that "adequate precautions have been taken in the place in respect of which the license is to be given to provide for the safety of persons attending exhibitions therein". The Central Government has framed "The Cinematograph (Certification)

Rules, 1983” and “The Cinematograph (Film) Rules. Rules relating to the conditions of the building, fire safety precautions, seating capacity, etc are framed by the respective State Governments. The Cinematograph (Film) Rules framed by the Central Government only deals with the precautions to be taken and the conditions to be observed in regard to the transport and storage of films. The Delhi Government framed the Delhi Cinematograph Rules in 1981. The procedure in granting licenses, the inspections, alterations and repairs to the licensed premises, the specifications to be complied with in respect of any building before an annual license is granted, the precautions against fire, emergency lighting, the gangway and exits, the electrical installations and circuits – these are all covered by the Rules. It may be noted that in the States, there is a separate enactment under the title “Cinemas (Regulation) Act”. The rules framed thereunder set out the requirements as to the buildings, electrical installations, precautions against fire, etc.

7.2 Section 14 of the Cinematograph Act, which bears the heading “Penalties for contravention of this Part” i.e., Part III, lays down that if the owner or occupier permits the place to be used in contravention of the provisions of this Part or the Rules made thereunder or of the conditions and restrictions upon or subject to which any license has been granted under Part III, he shall be punishable with fine extending to Rs. 1000/- and in the case of a continuing offence, with a further fine extending to Rs. 100/- for each day during which the offence continues. The form of license and the conditions, etc., subject to which it is granted are laid down in the rules framed under the respective Cinema (Regulation) Acts enacted by the State Governments. For instance, the AP Cinema (Regulation) Act, 1955, as amended by Act 18 of 1995, provides for the regulation of cinematograph exhibitions in the State of AP. The licensing authority is the District Collector. In tune with section 12 of the Central Act, section 5 of the AP Act casts a duty on the licensing authority to grant a license only on being satisfied that the rules made under the Act have been substantially complied with and adequate precautions have been taken in the place to be licensed to provide for the safety of the persons attending exhibitions therein. The exhibition of the film can be suspended in case of apprehended breach of peace. The license may be revoked or suspended if the license has been obtained by misrepresentation or fraud or the licensee has without reasonable cause failed to comply with any of the provisions of the Act or the rules made thereunder or any of the conditions subject to which the license has been granted. However, the licensing authority can for good and sufficient reasons collect a sum not exceeding Rs. 10,000/- on account of penalty in lieu of such revocation or suspension. Section 9 which is similar to section 14 of the Central Act prescribes punishment by way of fine which may extend to Rs. 10,000/- and in the case of a continuing offence with a further fine extending to Rs. 200/- for each day of contravention. The AP Cinemas (Regulation) Rules lays down the requirements for the cinema buildings including the site, requirement as to cinematograph apparatus and enclosure, electrical fittings, fire extinguisher equipments, model wiring diagram, storage of film, inspection programme, etc. So also the Gujarat Cinema (Regulation) Rules deals with all aspects relating to building, seating, exits, ventilation, sanitation, electric installations, precaution against fire, etc. The power to suspend or cancel the license is conferred on the licensing authority. The punishment prescribed under section 7 of the Gujarat Act for contravention of the provisions of the Act or of the Rules or the conditions of the license is a fine which may extend to Rs. 1000/- and in the case of a continuing offence with a further fine extending to Rs. 100/- per day. Power to revoke or suspend license is also conferred on the licensing authority under the Haryana Cinema (Regulation) Act, which also contains the power to suspend or revoke a license, the punishment for contravention of the provisions of the Act or

the rules or the conditions of license is a fine extending to Rs. 1000/- and in the case of continuing offence with a further fine extending to Rs. 100/-.

8. Thus, the penalty prescribed in most of the Acts is in tune with the Central Act. The sentence of imprisonment has not been provided either under the Central Act or the State Acts except in few States like Bihar and Maharashtra. Inspection by various authorities is compulsory before granting or renewing a license under the various Acts.

#### 9. **Electricity Act, 2003, the Indian Electricity Act, 1910 and the Indian Electricity Rules, 1956.**

9.1 The Act of 2003 which repealed the earlier Act of 1910 purports to be a consolidating law covering various aspects ranging from generation to use of electricity, the interests of consumers, rationalization of electricity tariff etc. The Central Electricity Authority is empowered under Section 53 of the Act to specify suitable measures, in consultation with the State Government for protecting the public from dangers arising from the generation, transmission or distribution or use of electricity supply etc. and for eliminating or reducing the risks of personal injury to any person or damage to property. The said authority can also specify action to be taken in relation to any electric line, plant or electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use. It is not known whether such measures have been specified by the Central authority. The Act provides for appointment of Chief Electrical Inspector and Electrical Inspectors who shall exercise the powers and perform the functions specified under the Act or as may be prescribed under the rules. The appropriate Government has to appoint these Inspectors. Though the Indian Electricity Act, 1910 was repealed by Section 185 of the new Act, by virtue of the saving provisions contained therein, the rules, notifications, licenses, permissions, etc. granted or issued under the repealed law shall be deemed to have been issued under the new Act in so far as they are not inconsistent with the provisions of the new Act. In particular, Clause-(c) of Section 185(2) has saved the operation of Indian Electricity Rules, 1956. Those rules will continue to be enforced till the regulations under Section 53 of the new Act are made. Accordingly, a reference to Indian Electricity Rules, 1956 is relevant. Chapter-IV of the rules deals with "General Safety Requirements". Rule 30 refers to "Service lines and apparatus on consumer's premises" and it says that the supplier shall ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control which are on a consumer premises are in a safe condition in all respects and the supplier shall take due precaution to avoid danger arising on such premises from the supply lines, wires, fittings and apparatus. The consumer is required to ensure that the installation under his control is maintained in a safe condition. Precautions to be adopted by owners, occupiers, electrical contractors, electrical workman and suppliers are laid down in Rule 45. No electrical installation work or repairs except replacements of lamps, fuses and the like and low voltage domestic appliances shall be carried out upon the premises except by a licensed electrical contractor. No electrical installation work carried out in contravention of this sub-rule in Section 45 shall either be energized or connected to the works of any supplier. Periodical inspection and testing of installation at intervals not exceeding **five years** by the Inspector or other authorized officer is enjoined by Rule 46. Notice of installation and testing of generating plant is required to be given under Rule 47A. Rule 50A inserted in 1995 lays down "Additional provisions for supply and use of energy in multi-storeyed building (more than 15 metres in height)". Among other things,

the supplier/owner of the installation shall provide at the point of commencement of supply a suitable isolation device with a cut-out or breaker to operate on all phases except neutral. The owner/occupier of a multi-storeyed building is required to ensure that the electrical installation/works are carried out in such manner as to prevent danger due to shock and fire hazards. Before connecting the supply or reconnecting the same after a gap of six months, the supplier shall inspect and test the applicant's installation (vide Rule 47). Rule 49 refers to steps to be taken by the Inspector if he has reason to believe that there is a leakage in the system which is likely to affect injuriously the use of energy by others or likely to cause danger. Additional precautions to be adopted in mines and oil fields are specified in Chapter X.

9.2 Offences and penalties are dealt with in Chapter XIV of the Electricity Act, 2003. Theft of electricity is punishable with imprisonment extending to three years or fine or both. Interference with meters or works of licensee is similarly punishable. Section 146 provides for punishment for non-compliance of orders or directions issued under the Act and for contravention of any of the provisions of the Act or rules or regulations made under the Act. The punishment prescribed is imprisonment for a term extending to three months or with fine which may extend to Rs. 1 lakh or with both and in the case of continuing failure, additional fine extending to Rs. 5000/- per day is leviable. Such penalties will not affect other liabilities (vide Section 147).

#### 10. **The National Green Tribunal Act, 2010:**

10.1 The Tribunal which has become functional in the year 2011 is empowered to grant relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule-I (seven in number) including accident occurring while handling any hazardous substance *vide* Section 15. The Public Liability Insurance Act is one of the Acts specified in the Schedule. The Tribunal can also order restitution of property damaged. It is laid down in sub-section (2) of Section 15 that the relief and compensation and restitution of property etc. shall be in addition to the relief paid or payable under the Public Liability Insurance Act. Section 17 lays down that the person responsible has to pay compensation for death, injury or damage under various heads specified in Schedule-II and the Tribunal is empowered to determine the same. The heads mentioned in Schedule-II under which the compensation can be claimed for death, total or partial disability, loss of business or employment, medical expenses, damage to private property etc. The Tribunal is required to apply the principle of no fault in the case of an accident. 'Accident' has been defined as a sudden or unintended occurrence while handling hazardous substance or equipment or plant or intermittent exposure to death or injury to any person or damage to any property or environment. "Hazardous substance" bears the same meaning as in the Environment Protection Act. The Tribunal is not bound by the procedure laid down in CPC but shall be guided by principles of natural justice. The Act has got an overriding effect. Under Section 26, heavy penalties are provided for failure to comply with any order or award of the tribunal and if the failure or contravention continues, an additional fine of Rs.25,000/- per day is payable. The application for grant of compensation or relief should be made within five years. An award or decision of Tribunal under the Act, shall be executable as a decree of Civil Court. Any person aggrieved including any representative body or organization can file the application for grant of relief or compensation.

#### 11. **Provisions of the Indian Penal Code**

11.1 **Section 304-A:** Causing death by any **rash** or **negligent** act is an offence punishable with imprisonment of two years or with fine or with both.

11.2 The decision of the Supreme Court in *Cherupin Gregory Vs. State of Bihar* (AIR 1965 SC 205) is illustrative of the offence under this Section. In that case, the appellant-accused fixed up at the back of his house an electrical charged copper wire with a view to prevent the entry of intruders into his latrine. It was held that the voltage of the current passing through the naked wire being high enough to be lethal, the charging of the wire with current of that voltage was a rash act done in reckless disregard of the serious consequences to people coming into contact with it. The conviction was, therefore, upheld.

11.3 Acts of rash and negligent driving resulting in death are also punishable under this section. This section was applied by the Sessions Judge recently in convicting the officials of Union Carbide Corporation for the fatalities caused by poisonous gas leak.

#### **Section 304:**

11.4 This section provides for the punishment for culpable homicide not amounting to murder. It is sometimes a moot point whether a rash or negligent act could really and more appropriately fall within the second limb of section 304 which says that if the act is done with the knowledge that it is likely to cause death but without any intention to cause death, the accused person shall be punishable with imprisonment for a term which may extend to ten years or with fine or with both. When mass deaths occur by reason of the acts or omissions of serious magnitude committed by the accused, this section is invoked at times by the prosecution.

11.5 In the offences under Chapter XIV, i.e., the offences affecting the public health, safety, etc., the provisions relevant to the subject under consideration are the following:

**Section 284** – negligent conduct with respect to poisonous substances.

**Section 285** – negligent conduct with respect to fire or combustible material

**Section 286** – negligent conduct with respect to explosive substance

**Section 287** – negligent conduct with respect to machineries

11.6 In all these sections, the relevant act if it is so rash or negligent as to endanger human life or likely to cause hurt to any person, becomes an offence punishable with six months imprisonment or fine of Rs. 1000/- or both.

11.7 **Section 277** makes fouling water of public spring or reservoir a punishable offence. Imprisonment of three months or fine of Rs. 500/- or both is the punishment prescribed. **Section 278** says “making atmosphere noxious to health” for which only a fine of Rs.500/- is the punishment.

## **Some State Laws**

**1. The Delhi Fire Service Act** was enacted in 2007 while repealing the Delhi Fire Prevention and Fire Safety Act of 1986 and other old Acts. This is applicable to the National Capital Territory of Delhi. Rules were framed under the said Act in the year 2010. In the State of Maharashtra, the **Maharashtra Fire Prevention and Life Safety Measures Act, 2006** was enacted in 2007 and the rules were framed under that Act in the year 2009. The Delhi and Maharashtra Acts and Rules coupled with Building bye-laws related to Fire are quite comprehensive and cover in detail several aspects of fire safety and prevention to be applied to various categories of buildings/structures. The fire protection requirements for buildings are also incorporated in **Delhi Building Bye-laws** related to fire. The opening bye-law of Chapter 17 ordains that buildings shall be planned, designed and constructed to ensure fire safety and this shall be in accordance with Part IV of **National Building Code of India**. The additional provisions relating to fire protection of buildings more than 15 metres in height are enacted in Appendix K. General measures for fire prevention and self-regulation are contained in Chapter-V of Delhi Fire Service Act. Classes of occupancies likely to cause risk of fire are to be notified as per Section 25. There are specific provisions relating to fire prevention and safety measures in the 'pandals' (temporary structures raised for occupation of large number of people on special occasions). Under Section 26, the erectors of pandals shall be deemed to be self-regulators for taking the prescribed fire prevention and safety measures. Removal of encroachments or objects likely to cause a risk of fire or any obstruction to fire fighting is provided for by Section 27 of the Act. Another important provision in Chapter V is Section 29 which provides for appointment of Fire Safety Officer. Every owner and occupier or an association of such owners and occupiers of the classes of buildings specified in the Section are required to appoint a Fire Safety Officer who shall ensure the compliance of all fire prevention and fire safety measures. Cinema houses with a sitting capacity of more than 1000 persons and having commercial complex with built-up area of more than 10,000 sq.m. or above, hotels with 100 rooms and above, hospitals and nursing homes with more than 500 beds, multi-storeyed non-residential buildings above 50 mtrs. in height, underground shopping complexes, district centres, etc. with built-up area of more than 25,000 sq. m., public buildings like railway stations, Interstate Bus Terminus, airports, amusement parks and certain other buildings are also required to appoint Fire Safety Officers who shall undergo training at the Fire Safety Management Academy. In case of default of appointment of **such officer** within 30 days of the receipt of notice given by the authorized officer of Fire Service, penalty @ Rs.10/- per sq.m. and not exceeding Rs.50/- per sq.m. may be recovered for each month of default. The Act contemplates 'fire tax' to be levied in the form of surcharge on the property tax. Special provisions for multi-storeyed buildings are laid down in Chapter VI. The inspection of buildings and premises, directing measures to be taken to remove the deviations or contraventions of building bye-laws with regard to fire prevention and fire safety are laid down. The penalty for violation of provisions of Chapter VI is prescribed by Section 37. The punishment is imprisonment for a term which may extend to six months or fine which may extend to Rs.50,000 or with both and where the offence is a continuing one, with a

further fine extending to Rs.3000/- for every day. The power to seal the building or premises is conferred on the Director of Fire Safety based on the report made under Sections 34, 35 and 43 after inspection. Punishments are prescribed for failure to take precautions as specified in a notification under Section 25(1) or a direction issued under Section 25(2), for willfully obstructing fire fighting / rescue operations and giving false report are punishable offences. Imprisonment up to three months or fine extending to Rs.1000 or both is prescribed by Section 49. Section 52 provides for punishment for contravention or any provision of the Act or rule or notification made thereunder. Without prejudice to any other action taken against the person concerned under the Act and the rules, he is punishable with the maximum of three months imprisonment or fine extending to Rs.10,000/- or with both. If the offence continues, a further fine extending to Rs.500/- for every day could be levied.

2. Section 54 provides for compounding of offences under several Sections including sections 49 and 52 and the amount has to be specified in a notification issued by the Government. The provision for appeals against the action taken under Chapter VI has been made in Section 36.

### 3. **Building Laws in Delhi**

3.1 The Delhi Municipal Corporation Act, 1957 deals with building regulations in Chapter XVI. The Commissioner of the Corporation has been empowered to exercise the powers and discharge the functions under the chapter under the general superintendence and control of the Central Government. The Chapter, *inter alia* contains provisions broadly relating to sanctions for construction of buildings including additions and repairs, power to seal unauthorized constructions, order directing stoppage of buildings or works in certain cases, completion certificates, restrictions on uses of buildings, prohibition against use of inflammable materials for buildings. The Corporation is empowered to make bye-laws in relation to erection of buildings or execution of works *vide* Section 332 and 481. The bye-laws are subject to approval of Government of National Capital Territory of Delhi.

3.2 The Delhi Development Act 1957 extends to whole of NCT of Delhi. The Delhi Building bye-laws, 1983 were framed under Section 57(1) of the said Act, 1957. The bye-laws are called Building Bye-laws for Union Territory of Delhi under the jurisdiction of Delhi Development Authority. The same bye-laws have been made applicable to MCD and NDMC by virtue of a notification issued by the Government of India on 23 June 1983. The Delhi Building Bye-laws are quite comprehensive and these are supplemented by the instructions and guidelines on various matters. In the building bye-laws, Chapter 11 is devoted to fire safety.

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**Memorandum**

**TO:** Justice P.V. Reddy  
**FROM:** Leigh Blomgren, Women and Justice Fellow, Avon Global Center for Women and Justice  
**CC:** Elizabeth Brundige, Executive Director, Avon Global Center for Women and Justice  
**DATE:** July 20, 2012  
**RE:** Class Action Litigation in the United States

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**Introduction**

This memorandum responds to your request for information regarding class action lawsuits in the United States. The memorandum introduces class actions as a procedural device, highlights the importance of Rule 23 of the Federal Rules of Civil Procedure, outlines the most common types of class action lawsuits in the United States, discusses the pros and cons of using class action litigation, and briefly considers the practicality of utilizing the U.S. model of class action litigation in India.

**Overview of Class Actions in the United States**

A class action is a procedural device that permits one or more plaintiffs to file and prosecute a lawsuit on behalf of a larger group, or “class” of individuals with similar legal claims.<sup>8</sup> A plaintiff, or small group of named plaintiffs, submits a lawsuit representing a larger group of plaintiffs (which may include several thousands of individuals).<sup>9</sup> The class action is a useful procedural litigation device that permits a small number of class representatives to litigate on behalf of many absent class members and legally bind the entire class through a single lawsuit.<sup>10</sup> The class action serves as an exception to the due process principle that “one is not bound by a judgment *in personam* in a litigation in which he has not been made a party by service of process,” so long as the procedural rules regulating class actions afford absent class member sufficient protection.<sup>11</sup> Class actions in the United States are not a new concept; group litigation has been possible since the mid-19<sup>th</sup> century.<sup>12</sup> The modern form of class actions in the United States arose in 1938 with the adoption of Rule 23 of the Federal Rules of Civil Procedure

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<sup>8</sup> *Class Action: An Overview*, Legal Information Institute (LII), available at [http://www.law.cornell.edu/wex/class\\_action](http://www.law.cornell.edu/wex/class_action).

<sup>9</sup> *Class Actions*, Justia, Trials & Litigation, available at <http://www.justia.com/trials-litigation/class-actions/>.

<sup>10</sup> *Class Action: An Overview*, *supra* note 1.

<sup>11</sup> *Hansberry v. Lee*, 311 U.S. 32, 61 S. Ct. 115, 85 L. Ed. 22 (1940).

<sup>12</sup> Nicholas M. Pace, *Class Actions in the United States: An Overview of the Process and the Empirical Literature*, RAND Institute for Civil Justice, available at [http://www.law.stanford.edu/display/images/dynamic/events\\_media/USA\\_\\_National\\_Report.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/USA__National_Report.pdf).

(FRCP)<sup>13</sup> and was further developed by the 1966 amendments.<sup>14</sup> Class actions are only allowed in civil cases and in the United States may be brought in federal or state court.<sup>15</sup>

In the United States, plaintiffs' lawyers in class action suits are paid a contingency fee based on a percentage of the plaintiff's settlement or trial reward, rather than an hourly wage.<sup>16</sup> If the plaintiff's case does not succeed, the attorney receives no compensation. While there is risk involved, this fee arrangement gives attorneys a strong incentive to take on class action cases and to work on behalf of their client to achieve the best possible outcome. This arrangement shifts the economic risk of success (or lack of success) in class action suits from the plaintiff to the plaintiff's attorney.<sup>17</sup> A contingency fee, thus, can be viewed as a loan from the lawyer, who is better able to assess the value of the lawsuit than an external lender such as a bank, to the plaintiff.<sup>18</sup>

### **Rule 23**<sup>19</sup>

Rule 23 of the FRCP and its state law counterparts<sup>20</sup> set forth the procedural requirements for class action lawsuits.<sup>21</sup> Rule 23 serves two primary purposes: it identifies the conditions under which class action litigation is appropriate, and it aims to ensure that class actions are litigated in a manner consistent with the Constitutional guarantee of due process by protecting the rights of absent class members.<sup>22</sup> Subdivision (a) of Rule 23 identifies four prerequisites for maintaining a class action, and subdivision (b) of Rule 23 sets forth four situations in which a class action is an appropriate litigation device. A proposed class must meet all the requirements of Rule 23(a) and fit into one of the categories of Rule 23(b) in order to be certified by the court as a class.<sup>23</sup>

Rule 23(a) requires the court make the following findings: (1) the number of class members renders it impracticable to join them in the action; (2) the class members' claims share common questions of law or fact; (3) the claims or defenses of the proposed class representatives are typical of those for the rest of the class; and (4) the proposed class representatives will adequately protect the interests of the entire class.<sup>24</sup> The implication of Rule 23(b) is that there are cases that satisfy the criteria of Rule 23(a) but do not satisfy the requirements for class

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<sup>13</sup> The Federal Rules of Civil Procedure (FRCP) govern civil procedure for civil lawsuits in United States federal courts.

<sup>14</sup> *Id.*

<sup>15</sup> Pace, *supra* note 5, at 2.

<sup>16</sup> Eric Helland and Alexander Tabarrok, *Contingency Fees, Settlement Delay and Low-Quality Litigation: Empirical Evidence from Two Datasets*, 19 J. Law, Econ., & Organ. 517 (2003).

<sup>17</sup> *Id.*

<sup>18</sup> David Shrager, *The Hammer for the Public Interest*, American Bar Association Journal. 71:38-40 (1985).

<sup>19</sup> See **Appendix A** for the full text of Rule 23.

<sup>20</sup> Each state in the U.S. has its own rules of civil procedure, which are generally the same as the FRCP.

<sup>21</sup> See Fed. R. Civ. P. 23.

<sup>22</sup> William B. Rubenstein, *Newberg on Class Actions*, § 1:1 (database updated November 2011).

<sup>23</sup> *Id.* at § 1:2.

<sup>24</sup> *Class Action: An Overview*, *supra* note 1.

certification.<sup>25</sup> An additional criterion must be met.<sup>26</sup> Although Rule 23(b) has three denominated sections, it actually identifies four situations in which class action litigation is appropriate – two of these are included in Rule 23(b)(1) (subparts (A) and (B)), and the other two are set forth in Rule 23(b)(2) and 23(b)(3). The four types of class action cases under Rule 23(b) share the common feature that each aims to address a particular shortcoming that arises when only individual litigation is allowed.<sup>27</sup>

The first situation, Rule 23(b)(1)(A), exists where separate litigation might adversely affect members of the class or the defendant due to inconsistent standards of conduct imposed in piecemeal litigation.<sup>28</sup>This category is somewhat obscure and rarely utilized.<sup>29</sup>The second situation, Rule 23(b)(1)(B), sets forth mandatory class action in situations where multiple suits might “impair or impede” the class members (usually plaintiffs) from protecting their various interests.<sup>30</sup>The third category, Rule 23(b)(2), authorizes a class action when a party has taken or refused to take action with respect to a class, and final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.<sup>31</sup>This category is typically used in civil rights cases and other actions not primarily seeking money damages.<sup>32</sup> In the fourth scenario, Rule 23(b)(3), a class action is available where questions common to the class predominate over questions peculiar to each plaintiff, and a class action is superior to other proceedings as a means of resolving the controversy among the parties.<sup>33</sup> This is the most common category for money damage cases, especially small-claims class actions.<sup>34</sup>For this fourth variety of class action only, Rule 23 permits individual members of the class to opt out of litigation if they do not wish to be bound by the results of the class action.<sup>35</sup>

In the cases that fall within Rule 23(b)(3) seeking monetary relief, unnamed plaintiffs are not required to be part of the class. They may choose to litigate their legal claims separately, or not at all. After certification of a class, notification is sent to the unnamed plaintiffs to inform them of the lawsuit, at which point they are given the opportunity to opt-out of the class.<sup>36</sup>For those who choose to opt-out, the class action litigation will not impact their legal rights, and thus,

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<sup>25</sup> Rubenstein, *supra* note 15, at § 1:3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Stephen C. Yeazell, *From Medieval Group Litigation to the Modern Class Action* (New Haven: Yale University Press, 1987).

<sup>29</sup> Rubenstein, *supra* note 15, at § 1:3. A good example of a Rule 23(b)(1)(A) class action is an action challenging voter registration procedures; if it is not conducted as a class action, one court may order that plaintiff be allowed to vote, while another court may hold that a similarly situated plaintiff is not eligible, leaving the registrar of voters in a quandary as to a third similarly situated person.

<sup>30</sup> Yeazell, *supra* note 21.

<sup>31</sup> Rubenstein, *supra* note 15, at § 1:3.

<sup>32</sup> *Id.*

<sup>33</sup> *Class Action: An Overview*, *supra* note 1.

<sup>34</sup> Rubenstein, *supra* note 15, at § 1:3.

<sup>35</sup> Pace, *supra* note 5, at 11.

<sup>36</sup> *Class Action Cases*, FindLaw, U.S. Legal Systems, available at <http://litigation.findlaw.com/legal-system/class-action-cases.html>.

the final resolution of the class action, whether by settlement or judgment, is not binding upon them.<sup>37</sup> By the same token, non-members of the class are not entitled to any recovery awarded to the class.<sup>38</sup> Those who opt-out may, however, bring their own separate lawsuit(s) asserting their own legal claims.<sup>39</sup>

### **Common Types of Class Action Litigation**

Class action litigation is widely employed in mass tort cases where numerous plaintiffs are seriously injured or killed as the result of a single defendant's (usually the manufacturer of a dangerous product) negligence or failure to recognize hazards that could cause injury.<sup>40</sup> Comprehensive definitions for the most common types of class action lawsuit are available in **Appendix B**, attached hereto. In the mid-1970s, thousands of women brought suit against the manufacturer of the Dalkon Shield, an intrauterine contraceptive device linked to numerous health problems, including sterility.<sup>41</sup> A class action suit was also employed against the manufacturer of the herbicide Agent Orange, a highly toxic defoliant that was used during the Vietnam War and has been linked to cancer and birth defects in Vietnam era veterans and their families.<sup>42</sup> In mid-1995, two major class action suits on behalf of millions of smokers were instituted against several tobacco companies.<sup>43</sup> The plaintiffs alleged that the tobacco companies concealed their knowledge of the addictive nature of nicotine and the harmful effects of smoking.<sup>44</sup> Asbestos insulation class action suits are another prominent example of mass tort cases.<sup>45</sup>

Class action suits have also often been a vehicle for social and economic reform. They have figured prominently in civil-rights litigation, and they have helped to remedy discrimination based on race and gender, and also to address inequalities in education, housing, and voting rights laws. *Brown v. Board of Education*, the Supreme Court decision striking down segregated schools, was brought as a class action lawsuit.<sup>46</sup> Class action litigation is also used to promote consumer protection. It is regularly used in corporate securities and antitrust cases and to contest consumer fraud, price fixing, and other commercial abuses.<sup>47</sup> Class action lawsuits are also used

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<sup>37</sup> *Class Actions*, *supra* note 2.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Alan Haburchak, *Types of Class Actions are Varied and Diverse*, Articlebase (posted: Apr 15, 2008), available at <http://www.articlesbase.com/law-articles/types-of-class-actions-are-varied-and-diverse-387520.html>.

<sup>41</sup> Yeazell, *supra* note 21.

<sup>42</sup> Pace, *supra* note 5, at 14.

<sup>43</sup> Howard M. Erichson, *The End of the Defendant Advantage in Tobacco Litigation*, 26 Wm. & Mary Envtl. L. & Pol'y Rev. 123-124 (2001), available at <http://scholarship.law.wm.edu/wmelpr/vol26/iss1/6>.

<sup>44</sup> *Id.*

<sup>45</sup> Yeazell, *supra* note 21.

<sup>46</sup> *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct 686, 98 L. Ed 873 (1954).

<sup>47</sup> Pace, *supra* note 5, at 21-22.

for claims related to services, such as phone, banking, cable television, and other consumer services.<sup>48</sup>

### **Benefits of Class Action Litigations**

Class action litigation allows courts to manage lawsuits that would otherwise be unmanageable if each class member were required to be joined in the lawsuit as a named plaintiff.<sup>49</sup> Class actions, however, do more than address the situation of “too many plaintiffs” to litigate a case manageably: “The justifications that led to the development of the class action include the protection of the defendant from inconsistent obligations, the protection of the interests of absentees, the provision of a convenient and economical means for disposing of similar lawsuits, and the facilitation of the spreading of litigation costs among numerous litigants with similar claims.”<sup>50</sup> Moreover, “the class action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion.”<sup>51</sup> Litigation is costly, and class actions allow people who would not be able to bring an individual action to pool their resources in order to litigate and seek justice. Furthermore, class actions can equalize the difference in power between large entities with sufficient economic means and individuals lacking substantial resources. As a group, individuals gain a more powerful adversarial posture and amplify their ability to litigate, negotiate, and settle disputes.<sup>52</sup>

Additionally, class actions can be used for the promotion of public policy. The purpose behind bringing a class action lawsuit may be to deliberately change the behavior of a group of which the defendant is a member. For example, *Landeros v. Flood* was a groundbreaking case where class action litigation was used to purposely change the behavior of doctors and encourage them to report suspected child abuse. Doctors who did not comply would face the threat of civil action for damages in tort proximately flowing from the failure to report the suspected injuries. Before this class action, many physicians were reluctant to report cases of apparent child abuse, even despite existing law that required it.<sup>53</sup> Another example of a class action suit promoting public policy is seen in *Brown v. Board of Education*, where a public interest lawyer, Thurgood Marshall, used the legal system as a tool for social change in the height of the civil rights movement.<sup>54</sup>

Class actions take on a significant public interest role in aggregating plaintiff claims and forcing non-compliant defendants to shift behavior to conform to the law’s requirements. Hence,

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<sup>48</sup> *Id.*

<sup>49</sup> See *Hansberry v. Lee*, *supra* note 4.

<sup>50</sup> *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 402-03, 100 S.Ct. 1202, 1211-12 (1980).

<sup>51</sup> *General Telephone Co. v. Falcon*, 457 U.S. 147, 155, 102 S.Ct. 2364, 2369, 72 L.Ed.2d 740 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. at 701, 99 S.Ct. at 2557).

<sup>52</sup> *Class Actions*, *supra* note 2.

<sup>53</sup> See *Landeros v. Flood*, 17 Cal. 3d 399, 131 Cal. Rptr. 69, 551 P.2d 389 (1976).

<sup>54</sup> Howard M. Erichson, *Doing Good, Doing Well*, 57 Vand. L. Rev. 2087, 2088 (2004).

the public is protected, and honest competitors of non-compliant businesses also benefit.<sup>55</sup> For example, class actions seeking injunctive relief have successfully addressed systemic deficiencies in government programs and institutions that individual actions were unable to remedy due to limited resources.<sup>56</sup> Class action cases spark discussion – in court and in public debate – about the goal of particular laws and if such laws achieve those aims. Class actions help uncover competing goals of the law, such as compensation and deterrence, and the outcome of a given class action can be viewed as part of an ongoing conversation between society, the judiciary, and the legislature about the success and future development of a given law.<sup>57</sup>

### **Critiques of Class Action Litigation**

The class action litigation device does not go without criticism. While the size of a class provides strength to its members, it also limits their choices and options. Unnamed plaintiffs (those who chose not to opt-out), have very little control over the case.<sup>58</sup> For example, the named plaintiffs can accept a settlement that is binding on all class members, irrespective of whether unnamed class members prefer the case to be determined by a verdict after a full trial.<sup>59</sup> The complexity of class action cases makes them difficult and expensive to litigate, thus necessitating greater time and resources of the attorneys and the court.<sup>60</sup> Opponents of class action lawsuits also criticize the procedure for increasing the burden on the courts by creating more incentive to bring superfluous lawsuits.<sup>61</sup> Moreover, class action litigation increases the incentive for a defendant to settle out of court, even in meritless cases, because of the frequently exorbitant legal costs of proceeding to trial.<sup>62</sup>

Other criticized features of class action litigation are the self-appointment of class representatives, the procedure by which one is a class member unless he or she affirmatively “opts out,” the vague standards for determining whether there is adequate cohesiveness between class members, the role of lawyers, given the strong incentives for attorney’s fees and entrepreneurial litigation that may result in a class action lawyer taking on cases out of self-interest rather than to pursue legal justice or advocating on behalf of plaintiffs’ rights, and

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<sup>55</sup>Deborah Rothman, *An Inside View of Class Action Settlements*, The Daily Journal Corporation (Mar. 11, 2010).

<sup>56</sup>Sidney S. Rosdeitcher, *Supreme Court’s Term and Class Actions: Impact on Public Interest Litigation and Access to Justice*, Brennan Center for Justice (2001), available at [http://www.brennancenter.org/content/resource/supreme\\_courts\\_term\\_and\\_class\\_actions\\_impact\\_on\\_public\\_interest\\_litigation\\_](http://www.brennancenter.org/content/resource/supreme_courts_term_and_class_actions_impact_on_public_interest_litigation_).

<sup>57</sup>Alexandra D. Lahav, *Two Views of the Class Action*, 79 Fordham L. Rev. 1939, 1962 (2011).

<sup>58</sup>*Class Actions*, *supra* note 2.

<sup>59</sup>*Id.*

<sup>60</sup>*Id.*

<sup>61</sup>David Rosenberg, *Class Actions for Mass Torts: Doing Individual Justice by Collective Means*, Indiana Law Journal: Vol. 62: Iss. 3, Article 3 (1987), available at <http://www.repository.law.indiana.edu/ilj/vol62/iss3/3>.

<sup>62</sup>*Id.*

confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.<sup>63</sup>

### **Class Action Litigation in India**

Today, despite criticisms of the class actions model in the United States, twenty-two countries have adopted some form of class actions, and six more countries have adopted some type of consolidated group proceeding instead of, or in addition to, class actions.<sup>64</sup> Very few countries, however, have adopted the full “American-style” class action mechanism, and in most other countries that have some form of a class action regime, there has been relatively little use of the procedure.<sup>65</sup> There are various reasons for the limited use of class actions, but one principal factor is that, in most jurisdictions, the legal regime prohibits or limits conditional or contingent fee arrangements, provides no mechanism for cost sharing among members of an opt-out class, and requires fee shifting.<sup>66</sup>

The civil procedure law in India permits the combination of suits that relate to the same cause of action.<sup>67</sup> The difference between the use of class actions in India and the United States lies in the economics – the incentives that prompt class actions in the U.S. do not exist in India.<sup>68</sup> As with many countries, Indian rules of legal practice do not permit lawyers to charge contingency fees. In many cases, it is not sensible for plaintiffs to initiate a class action lawsuit since there is no guarantee of recovery nor is there certainly of obtaining a net benefit from the suit. Furthermore, India tends to follow the British model whereby courts can award costs in favor of the successful party, to be paid by the losing party.<sup>69</sup> Accordingly, if the plaintiffs lose in a class action suit they may have to bear the costs of the defendant. Because of the legal financing regime in India, it is not possible to have an “American-style” market-based class action mechanism.<sup>70</sup>

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<sup>63</sup> *International Practice: Overview/Comparison of U.S. & E.U. Judicial Class Action Structures*, Center for Public Resources, available at <http://www.cpradr.org/Resources/ALLCPRArticles/tabid/265/ID/593/International-Practice-Overview-Comparison-of-US-EU-Judicial-Class-Action-Structures-Web.aspx>.

<sup>64</sup> Debra Lyn Bassett, *The Future of International Class Actions*, annotated transcript of symposium (“2021: International Law Ten Years From Now”), *Southwestern Law* (January 2012), available at [http://www.swlaw.edu/pdfs/lawjournal/18\\_1bassett.pdf](http://www.swlaw.edu/pdfs/lawjournal/18_1bassett.pdf).

<sup>65</sup> Deborah R. Hensler, *The Future of Mass Litigation: Global Class Actions and Third-Party Litigation Funding*, 79 *Geo. Wash. L. Rev.* 306, 308 (2011).

<sup>66</sup> *Id.* at 309.

<sup>67</sup> V. Umakanth, *Shareholder Activism and Class Action Lawsuits*, *IndiaCorpLaw* (posted: June 1, 2009), available at <http://indiacorplaw.blogspot.com/2009/06/shareholder-activism-and-class-action.html>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Source: Legal Information Institute [LII], Cornell Law School, *available at* [http://www.law.cornell.edu/rules/frcp/rule\\_23](http://www.law.cornell.edu/rules/frcp/rule_23).

**Rule 23. Class Actions**

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) In General. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Source: Alan Haburchak, *Types of Class Actions are Varied and Diverse*, Articlebase (posted: Apr 15, 2008), available at <http://www.articlesbase.com/law-articles/types-of-class-actions-are-varied-and-diverse-387520.html>.

**Types of Class Actions are Varied and Divers**

**Antitrust Claims**

Antitrust actions are typically brought when consumers suffer financial losses because products and services are illegally overpriced. This overpricing can occur due to companies fixing prices at artificial levels to secure higher profits and/or to force out competition, forming agreements that allocate markets or customers among competitors to eliminate or reduce competition and through bid rigging.

**Consumer Actions**

Consumer class actions are generally brought when consumers are injured by a company's systematic and illegal practices. Examples include illegal charges on bills, illegal penalties for late-payments, and failure to comply with consumer protection laws.

**Consumer Product Claims**

Legal actions are often brought about because of defective products that cause harm or injury to large numbers of individuals due to faulty labeling, design defects or defective manufacturing. It is the responsibility of the manufacturer, designer, distributor, or retailer to ensure that the product does not cause harm and they can be held liable.

**Breach of Warranty**

Warranties on personal items, appliances, automotives and many other consumer products exist to protect consumers regardless of whether the product specifically states the coverage. When this assurance is false or the quality is misstated class

action lawsuits are often brought against the liable party.

### **Employment Claims**

Employment class action lawsuits are typically brought on behalf of employees of a large company for claims ranging from systematic workplace discrimination, illegal hiring and promotion practices, wrongful termination policies and practices, unpaid unemployment benefits and unpaid overtime.

### **Employee Benefits**

These class actions by employees of a single employer generally address violations of Employee Retirement Income Security Act (ERISA) and involve discriminatory practices or violations in employers plan design. In some cases company health plan benefit payments violate discrimination laws.

### **Insurance Claims**

Insurance companies that misrepresent policies, do not pay valid claims, deny coverage to classes of individuals, fail to make prompt investigations or payments are all vulnerable to class action lawsuits.

### **Medical Devices**

Medical devices that malfunction cause serious injury or death and the manufacturers of these devices are liable to the group of people and their families who suffer because of the defect of the device.

### **Product Liability/Personal Injury**

Product liability and personal injury class action lawsuits are generally brought when a defective product, unreasonably dangerous product, unsafe environments or negligent practices kill or seriously harm and injure people.

### **Pharmaceutical Litigation**

Pharmaceutical liability claims of prescription and over-the-counter medications are brought when drugs that are intended to help people causes side effects, injuries, serious harm or sometimes death in a large group of people. This can occur because clinical trials were not large enough to determine increased risks, when drugs are prescribed to the wrong patients or when drugs are regularly co-prescribed with other drugs and cause adverse reactions.

### **Securities Class Actions**

Securities class actions are typically brought on behalf of a group of investors who have been injured as a result of a company's improper conduct, such as misstating earnings, concealing or misrepresenting risks, or otherwise engaging in activity detrimental to the company. Other securities actions are brought as direct result of a financial advisor or broker's, or group of advisors, repeated misrepresentation, negligence, dishonesty or fraud.