



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## INTRODUCTION :

Do you Know an amazing fact which is so horrible that “GODS ARE KILLED IN THE TEMPLE” where ‘CHILDREN’ are compared to ‘GOD’ and school is compared to the temple, which means a place to learn and educate themselves for the shine career. Safe learning environment is something which every child is entitled to. But today, the bigger question in front of us is “Are we doing enough to give our children a safe learning environment or are we still waiting for a wake up call?”

Times and again our nation has gone through the agony of losing young school children in natural and man-made disasters within school premises, many of which would have been averted by simple prevention, mitigation and preparedness measures. The Gujarat earthquake that occurred on 26 January 2001 claimed 13,805 lives of which around 1/3<sup>rd</sup> were children. At least, 1884 school buildings collapsed & 5950 classrooms were destroyed in that earthquake. A devastating fire claimed 94 lives of young children at the Sri Krishna Primary school in Kumbakonam [Tamil Nadu] on 16<sup>th</sup> July 2004. Around 17,000 children died & 2948 school collapsed in the 2005 Kashmir earthquake. We need to learn from the devastating incidents that occurred in India over last few years, due to the negligent acts of the concerned authorities and Government officials.

Just a few months ago, five school girls died in a stampede in a government school in Delhi. The reason may be a matter of discussion and investigation but it is very important that the basic minimum standards for safety need to be ensured in all schools across the country. It is a fact that government authorities don't care for such orders. If those guidelines had been ensured and complied for those children then, those 94 young minds will be alive today.

## FACTS OF THE FIRE ACCIDENT :

This important Public Interest Litigation relates to a fire swept through the Lord Krishna Middle School in Kumbakonam in the state of Tamil Nadu. The fire started in the school's kitchen while cooks were preparing mid-day meal. The fire had sparked by dry coconut leaves used as firewood in a nearby makeshift kitchen with thatched roof. The kitchen fire rose so high that the thatched roof of the classrooms caught fire and the blazing roof supported by bamboo poles collapsed on the school children and most of them died on the spot.

## OPINION OF THE FIRE OFFICIALS ;

The Fire officials described the school as the death trap .They said that the victims had no chance of escape when the fire erupted as they were doing their lessons on the floor constructed with the thatched roof.It is alleged that the incidence of Kumbakonam district is not the first of its kind.

#### A TRAGEDY HAPPENED IN HARYANA :

In the year 1995,a school prize giving ceremony in a Northern Indian town turned to tragedy when a fire-broke out,killing nearly 400 people,many of them were children and teenagers.The fire was caused by an electrical short circuit in the town of Haryana,about 150 miles from the national capital,Delhi.

On analyzing the facts of the Kumbakonam school fire tragedy on 16<sup>th</sup> july 2994,one of the worst fires in Indian History broke out in a school building housing three schools at Kumbakonam in Tanjore district,India.94 school children perished in the fire while 18 suffered injury was happened due to the negligence of the corresponding school authorities.Recently a fire accident happened in Srirangam,Tiruchy.

According to the law of torts,they are liable under the tort of negligence without any hesitation,where the victims affected can claim punitive damages.

#### THE ETYMOLOGY OF NEGLIGENCE :

Negligence comes form the latin word :negligentia,from neglegere,to neglect,literally ‘not to pick up something’ is a failure to exercise care that a reasonably prudent person would exercise in like circumstances.<sup>[1]</sup> The area of tort law known as negligence involves harms caused by carelessness,not intentional harm.

According to Jay M.Feinman of the Rutgers University school of law, “the core idea of negligence is that people should exercise reasonable care when they act by taking account of the potential harm the they might foreseeably cause harm to other people”.<sup>[2]</sup>

“ Those who go personally or bring property where they know that they or it may come into collision with the persons or property of others have by law a duty cast upon them to use reasonable care and skill to avoid such a collision”.<sup>[3]</sup> In law of torts,negligence may be defined as the failure to act reasonably ,i.e;as a reasonable man would act.

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1.Negligence ,encyclopedia Britannica,Meriam Webster.

2.Deakin,tort law,218.

3.Fletcher vs Rylands [1866] LR IEX 265.

#### TORTS OF NEGLIGENCE :

Lord Wright in the case of Lochgelly Iron coal co. Vs M. mullan said: “In strict legal analysis ,negligence means more than heedless or careless conduct,whether in omission or

commission ,it properly connotes the complex concept of duty,breach and damage thereby suffered by the person to whom the duty was owing”.In a well known definition of negligence in Blyth vs Brimingham waterworks co,we can discern the meaning of negligence in its objective sense.<sup>[4]</sup>

“Negligence is the omission to do something which a reasonable man,guided upon those considerations which ordinarily,regulate the conduct of human affairs would do or doing something which a reasonable and prudent man would not do”.<sup>[5]</sup>

This objective theory of negligence was accepted in the leading decision of the house of lords in Donoghue vs stevenson<sup>[6]</sup> which treats negligence ,where there is a duty to take care,as a specific tort in itself,and not simply as an element in some more complex relationship or in some specialized breach of duty in Lord Wright in grant vs Australian knitting mills ltd<sup>[7]</sup> .

#### WHO IS A REASONABLE MAN ?

There are some different views,who can be a reasonable man.

- 1.The reasonable man exercises care not to injure others.
- 2.To the reasonable man some truths are self-evident.
- 3.The reasonable man knows the difference between direct facts and imagined conjectures.
- 4.The reasonable man cares for his neighbour’s welfare.

In conclusion ,to pinpoint, “To act in a way that will not adversely affect the welfare of others or the welfare of society as a whole.”The reasonable man exercises due diligence to ensure that his acts [including his words both spoken& written] do not injure others.The reasonable man sets the stage for civilized governments to establish a system of justice & fair play.In short, “Whatever is good for the reasonable man is for us all”.

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4.[1856]11EX 781.

5.AIR 1998 born 373.

6.AIR 1932 AC 562.

7.1936 AC 103.

#### ANALYSIS OF NEGLIGENCE SUITS :

In order for a defendant to be found negligent,the plaintiff must prove three factors.FIRST,the plaintiff must prove that the defendant owed the plaintiff a duty of care.A duty of care is the obligation to avoid careless actions that could cause harm to persons.SECOND,the plaintiff must prove that the defendant failed to provide the proper standard of care ,that a reasonable person would have provided in a simple standard of care is a way of measuring how much care one persons owes another.Eg: For some people,the standard of care is higher than others. Doctors,eg: Standard of care toward others than the

reasonable person. THIRD, the plaintiff must prove that the actions of the defendant were the cause of the plaintiff's injuries known as cause in fact, is often done by applying the "but for" test. An injury would not have happened "but for" the defendant's actions. If a teacher takes students on a canoe trip and fails to provide life jackets and one student falls in and drowns, a court would likely say that the student would not have drowned "but for" failure to provide a life jacket. Therefore this negligence was the cause in fact of the injury.

#### ELEMENTS OF THE NEGLIGENCE:

- DUTY.
- BREACH.
- CAUSATION AND DAMAGES.

#### ESSENTIALS OF NEGLIGENCE :

Indian Jurisprudence, have approved, the approach stated in Ratanlal & Dhirajlal: The Law of torts, laying down three elements.

- The defendant owes a duty of care to the plaintiff.
- The defendant made a breach of that duty; and
- The plaintiff suffered damage as a consequence thereof.

#### DUTY OF CARE :

The idea of a duty of care in the tort of negligence has developed through judges making decisions in cases. It means a legal duty rather than a mere moral, religious or social duty. There is no general rule of law defining such duty. It depends in each case whether a duty exists. Lord Macmillan in Donoghue vs Stevenson <sup>[6]</sup> referred to the "breadth and elasticity of the conception of actionable negligence" in English law. A purchased a bottle of ginger beer from the retailer for the appellant. She consumed that and seriously suffered in her health. She found some snail at the bottom of the bottle. She sued for compensation, the defendant pleaded that he did not owe any duty of care towards the plaintiff. The House of Lords held that the manufacturer owed her a duty to take care that the bottle did not contain any noxious matter and that he would be liable on the breach of duty. This led to Lord Atkin's famous statement,

"The rule that you are to love your neighbour becomes in law, you must not injure your neighbour, and the lawyer's question, who is the neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbours.

Who, then, in law is my neighbour? The answer seems to be: persons who are so clearly and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

The first successful attempt to set out a general principle with respect to the concept of the duty of care. How as lawyers realized this principle could be manipulated to be used with

different types of situations, the test was reformed to form the three –part test <sup>[8]</sup>. The general test set in CAPARO requires three elements to be demonstrated:

- It was reasonably foreseeable that a person in the claimant’s position would be injured.
- There was sufficient proximity [closeness] between the parties.
- It is fair, just and reasonable to impose liability on the defendant.

All parts of the test must be satisfied if there is to be a duty of care owed by the defendant to the claimant. Each part must be explained and proved separately.

CAPARO TEST :

#### THE FIRST PART – FORESEEABILITY :

In a case that it was reasonably foreseeable that the claimant would suffer harm from the failure of the ambulance to arrive and so the defendant was held liable <sup>[9]</sup>. In other case were the house of lords held that attempting to repair the boat was not so very different from normal play, so the injury to the claimant was reasonably foreseeable. <sup>[10]</sup>

#### THE SECOND PART – PROXIMITY :

Even if the harm is reasonably foreseeable, a duty of care will only exist if the relationship of the claimant and the defendant is sufficiently close. This can be seen in the case

Where the police officer knew that there was real risk of an attack on victim. The victim was murdered by the attacker. The court held that there was a sufficiently close relationship between the police and the victim <sup>[11]</sup>.

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8. caparo vs dickman [1990].

9. kent vs Griffiths [2000].

10. jolly vs sulton london borough council [2000].

11. osman vs ferguson [1993].

However, the case did not succeed because it was ruled that it was not fair just and reasonable to impose a duty of care on the police [which is the third part of the test]

#### THE THIRD PART- FAIR JUST & REASONABLE:

The third part of the test, whether it is fair, just and reasonable to impose a duty of care, is really a matter of public policy. The courts are usually reluctant to impose a duty of care, is really a matter of public policy. The courts are usually reluctant to impose a duty on public authorities, as seen in the case where it was pointed out that imposing a duty on police could lead to policing being

carried out in a defensive way which would divert attention away from the suppression of crime, leading to lower standard policing, not higher over<sup>[12]</sup>.

The duty depends on reasonable foreseeability of injury:

Duty to take care is the duty to avoid doing or omitting to do anything, the doing or omitting to do which may have as its reasonable and probable consequence injury to others, and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed<sup>[13]</sup>.

To decide culpability, we have to determine what a reasonable man would have foreseen and they form an idea of how he would have behaved under the circumstances<sup>[14]</sup>. The standard of reasonable foresight was given by Lord Macmillan in a case<sup>[15]</sup>. In another case where the defendant was made liable for the negligence on his part to take duty of care towards other persons.<sup>[16]</sup> In a case where the respondent who maintained the electric pole was considered negligent and was held liable for the death of the deceased.<sup>[17]</sup> due to the negligence of the electricity board, snapping of electric wire resulted in the death of the cyclist and so they were held liable to pay the compensation.<sup>[18]</sup> Likewise, the school institution failed to take reasonable care, towards the children who are under the control of the institution.

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12. Hill vs Chief Constable of South Yorkshire [1990].

13. Bowhill vs Young [1943] A192 at 1041 per Lord Macmillan.

14. Veeran vs Krishnamoorthy {AIR, 1966 KER 172, 176}.

15. Glargon Corporation vs Muir {1943 AC 448 at 457}.

16. Booker vs Wenborn [1962] 1 All ER 431 1 WLR 162.

17. S. Dhanaveni vs State of Tamil Nadu [AIR, 1997 Mad 2571].

18. Thayumanavar Vs Secy. P.W.D. Govt of Tamil Nadu [AIR, 1997, Mad, 263].

#### BREACH OF DUTY :

Breach of duty means non-observance of due care which is required in a particular situation. The law requires taking of two points into consideration to determine the standard of care required.

- ✓ The importance of the object to be attained.
- ✓ The magnitude of the risk.
- ✓ The amount of consideration for which services, etc are offered.

The degree of risk involved: The greater the risk, the more the defendant has to take care<sup>[19]</sup>.

The cost of precautions : The courts will see how high the risk is involved, and then take into account the expense of taking precautions to prevent that risk <sup>[19][20]</sup>.

Potential seriousness of injuries : So,if there is a very high risk of serious injury,the more the defendant needs to be very careful<sup>[21]</sup> .

The importance of the activity in an emergency ,sometimes,it is not possible to reflect ,think of a possible risk<sup>[22]</sup> .

Venkataramiah .J,says in a case “Negligence is failure in the duty to take due care.The degree of care depends upon the magnitude of risk which could have been foreseen by a reasonable and prudent man.Thus ,the driver of a vehicle should take greater care when it is drizzling.”<sup>[23]</sup>

#### DAMAGE CAUSED :

Having established a duty of care ,and a breach of that duty,the claimant will then need to show that damage has been caused to them,and that loss is not too remote.A person will only be liable for damage,which they have actually caused the victim.The same rules apply to damage to property.

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19.Bolton vs Stone [1951].

20. Latimer vs AEC .

21.Paris vs stepney BC 1951.

22.Marshall Vs Osmand 1982 .

23.Mysore state road transport corporation Vs Albert [AIR,1973 Mysore 240 at 242].

#### FORESEEABILITY :

The claimant has to show that the type of damage was reasonably foreseeable.This is seen in the case where fuel had negligently spilled onto water in a harbour,two days later the oil caught fire because of welding work being done on another ship,the fire spread to the claimants wharf and burnt it & the damage suffered was not reasonably foreseeable<sup>[24]</sup> ,but by applying the test of reasonable foresight,the defendant were made liable for the negligent act committed by the reasonable man,due to the presence of already precedent<sup>[25]</sup> .

#### THIN SKULL RULE :

This rule means that the defendant must take his victim as he finds him.So,if the type damage is reasonably foreseeable,but it is much more serious because of something unusual about the claimant,such as a thin skull,then the defendant is liable.In this situation,the damage is not too remote.This is shown in the case where because of the defendant's negligence,a man was burnt on the lip by molten metal.The burn cause him the develop cancer and his widow claimed against the defendant & because the burn was a foreseeable injury,he was also liable for the man's death<sup>[26]</sup> .

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All the basic elements of negligence are present in the kumbakoanm fire accident.

CRIMINAL NEGLIGENCE, which is another kind of tort committed by the concerned school authorities. Criminal negligence cases such as where the leakage of oleum gas on the 4<sup>th</sup> & 6<sup>th</sup> December, 1985, from one of the units of Shriram foods & fertilizers industries, in the city of delhi, writ petition under the article 32 of the constitution where a person and many a got injuries due to the leakage.<sup>[27]</sup> In the second case, where a large scale leakage of MIC gas from the union carbide plant in Bhopal, more than 3000 persons were died due to the negligent act of the authorities.<sup>[28]</sup>

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24. wagon mound I [1961].

25. Wagon mound II [1962]

26. Smith vs Leech brain & co [1962].

27. M.C. Mehta vs Union of india. [AIR, 1987 SC 1086; 1987 ACJ 386].

28. Bhopal gas tragedy {AIR 1987 SC. 1086}.

#### ISSUES RELATED TO THE FIRE ACCIDENT :

1. Whether Lord Krishna Middle school is the private school which collects sufficient money from the parents ?

YES, It is absolute from the fact that Lord Krishna middle school is the private school which collects sufficient money from the parents and so, it is mandatory for responsible school authorities to provide adequate care and hygienic facilities to the young minds.

2. Whether the fire broke out while preparing the mid-day meal ?

YES, the fire broke out during the preparation of the mid-day meal, through dry coconut leaves and the thatched roof in the kitchen and in the school premise.

3. Whether, the school building was so narrow and situated in the crowded street?

YES, the premise of the school was so narrow and situated in the crowded street.

4. Whether, there was a proper exit and safety measures provided by the institution during any accidents?

NO, there was only one main gate and other small windows are cemented and so, there was no ventilation, and as a result, deficiency of the air led to the suffocated death.

5. Whether the children were young and they were not mature to foresee the consequences?

YES, the young minds were unable to foresee the consequences and so there is a great responsibility & duty of the school authorities to provide the extreme care towards them.



6. Whether the PWD officer failed to check regularly the buildings and the maintenance of the school ?

YES, from the fact it is obvious that ,PWD officer visited the school 3 years before, but the government made it mandatory that, they should visit the school regularly within the interval of two years.

7. whether, the institution failed to maintain the hygienic and proper safety environment to the young minds?

YES, the institution failed in providing adequate care to the young minds.

8. Whether the concerned school authorities were able to foresee the consequences?

YES, buildings of the school were constructed with the thatched roof, and so, this is the first negligence made by the authority, and the failure of the defendant's servants to not take proper care while preparing mid-day meal is another major negligent and so, many other precedents already happened in before cases.

9. whether the elements of negligent present in this case?

THE DUTY OF CARE : The defendants, here failed to take the adequate duty of care towards the school children by constructing the thatched roof ,cement windows, small exit doors etc.

BREACH OF DUTY : The government PWD officer failed to do his duty regarding the inspection of the proper maintenance of the school and failed to visit the school at regular time period.

DAMAGE : As the negligent act of the defendant and the other government authorities resulted in the death of 94 young kids who ought to be enlightened for the future world, lost their lives and so they can be made liable and penalized for the tort of criminal negligence. And they also caused death by negligence and so they can be convicted under section 304 -A of THE INDIAN PENAL CODE ,1860.

CRITICISM OF THE ISSUES :

Under the criminal negligence, The failure to use reasonable care to avoid consequences that threaten or harm the safety of the public & that are the foreseeable outcome of acting in a particular manner. Thus, they are liable for the criminal negligence ,based on the number of deaths caused by the negligent act. As the proverb goes, Today students are tomorrow's citizens, but these citizens are nipped in the bud due to the negligent act of the school authorities and the government officials. And so, they are strictly liable for the negligent act committed and they are not only strictly liable, they can also be penalized under the PIC section 304 A, causing death by negligence ,under criminal negligence.

SAFETY MEASURES BY THE SUPREME COURT :

Detailed directions for compliance has been given on the following:

- [a]. Fire safety measures in schools. {point 3.1 pg 23 of the order }
- [b]. Training of school teachers and other staffs {point 3.2 pg 25 of the order }
- [c]. school building specifications {point 3.3 pg 27 of the order }
- [d]. Clearances and certificates {point 3.4 pg 29 of the order }

Further in view of what happened in Lord Krishna middle school in district Kumbakonam where 93 school children were burnt alive in fire accident in school premises and many similar incidents in the past, Hon'ble court has given the following specific directions for the schools.<sup>[29]</sup>

{i} Before granting recognition or affiliation, the concerned state governments and union Territories are directed to ensure that the buildings are safe & secured from every angle as they are constructed according to the safety norms incorporated in the national building code of India.

{ii} All existing government & private schools shall install fire extinguishing equipments within a period of six months.

{iii} The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

{iv} Evaluation of structural aspect of the school may be carried out periodically. We direct the concerned engineers & officials must strictly follow the national building code. The safety certificate be issued only after proper inspection.

{v} Necessary training be imparted to the staff & other officials of the school to use the fire extinguishing equipments.

In light of the above orders of the court in which almost four months have gone by the Govt of NCT of Delhi did not care to implement the orders of the court and therefore a case of criminal negligence is made out against the education secretary and the chief secretary. Until and unless such senior officials are not brought to book such tragedies will continue to happen. The Govt of NCT of Delhi should not be left off by paying simple ex gratia payment but they should be held accountable for criminal negligence and the govt should pay a heavy compensation to the parents as it is the administration which is responsible for such an accident.<sup>[30]</sup>

#### SITUATION TODAY :

Court case is still pending. The Supreme court has directed all the state governments to file affidavits on school safety. Disaster management in schools at least in CBSE has been introduced. Institutional Disaster management plant still are not a reality. People who lost their children are yet to fully recover.<sup>[31]</sup>

30.Ravi kant ,Advocate supreme court of India.

31.Articles related to The Times of India newspaper,2009.

#### CONCLUSION :

It is still a moot point that it is safe while studying ? Roughly one billion children aged below 14 lives in countries with high seismic zones.Several hundred are at risk when they are attending schools.300 children marching in the republic day Procession in the narrow lanes were killed when building collapsed into the narrow street from both sides.There were reports of children running towards the school building from open ground to safe guard them.

23 December 1995,nearly 425 people many of them, school children perished as they tried to escape the flames during a school prize giving ceremony in the town of Dabuali,Haryana.Kumbakonam fire tragedy ,A deadly fire ragged through Lord Krishna school killed 94 children,all below the age of 11 years.The main strategy is to place school safety for the education agenda.The challenge for schools is to build these safety aspects to the lives of childrenso that these become inherent parts of their culture towards safety.

Thus,to avoid all these accidents & disasters,the person who are responsible for these negligent acts must be severely penalized under punitive damage and so it will be a precedent for one those who try to be recklessness or careless while performing the duty.

#### SUGGESTIONS :

“ A STICH IN TIMES SAVES NINE” “Onus is on us”-Let’s assume responsibility.

Let us make disaster planning a “state of mind”.In corporate socio-economic impact of calamities into the planning process and livelihood patterns from the community levels in a bottom up approach.

Develop risk management model to reduce exposure to disasters at family,community and state levels.Let us support emergency planning as it spells difference between “FLOURISHING & PERISHING”.

“AND LET ALL OF US JOIN TOGETHER AND STRIKE BEFORE DISASTER DOES”.

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