

STATE LIABILITY UNDER THE INDIAN CONSTITUTION**K.Anusha**

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Received: July 13, 2018

Accepted: August 24, 2018

ABSTRACT

To what extent the administration would be liable for the torts committed by its servants is a complex problem especially in a developing country like India with ever widening State activities. The liability of the government in tort is governed by the principles of public law inherited from British common law and the provisions of the Constitution.

The whole idea of vicarious liability of the state for the torts committed by its servants is based on three principles:

1. *Respondeat superior (let the principle be liable).*
2. *Qui facit per alium facit per se (he who acts through another does it himself)*
3. *Socialization of compensation.*

Article 300 of the Constitution which deals with the extent of liability of the Union of India and government of the State, instead of laying down the liability in specific terms, refer back to section. 175 of the Government of India act, 1935, which refers in turn to section 32 of the government of India act, 1915 which, in its turn, refers to section 65 of the Act of 1858. Therefore in order to determine the extent liability of the government in tort, one has to find out the extent of liability of the East India Company.

*With ever increasing state activities and its transformation from the laissez-faire to welfare state it became difficult to divide sovereign and non-sovereign functions of the state to determine state liability. With the resultant confusion and complexity the Law commission in its First Report, 1956 recommended legislation on the subject. Accepting the Recommendations, the government introduced two Bills, "The Government Liability in tort" in the Lok Shabha in 1965 and 1967 neither of which emerged as an Act. The Law relating to tortious liability of the State in India has witnessed several phases of development right from the earliest decision in *Peninsular v. Oriental steam Navigation Co.* case in 1861 to the recent *Nambi Narayanan v. State of Kerala*, 2018 popularly known as (ISRO spy Case). In this paper an attempt was made to evaluate the conflict between individual and the State.*

Keywords: *Laissez-faire, Sovereignty, Respondent superior, Government Liability, Common Law.*

The Position of State Liability :

With the recent Judgment by the Supreme Court in **Nambi Narayanan v. State of Kerala** delivered on 14th September, 2018, the concept of vicarious Liability of State from the tortious actions of its servants was established. In this case the Court awarded former Indian Space Research Organization (ISRO) scientist S. Nambi Narayanan, a compensation of Rs 50 lakh for wrongful arrest in 1994 on espionage charges and illegal detention for 54 days. After a 24-year long legal battle, a bench of Supreme Court , awarded compensation to the rocket scientist for loss of reputation and mental agony. Narayanan subsequently moved the National Human Rights Commission, seeking a compensation of Rs 1 crore for his trials and tribulations. The NHRC had ordered for an interim compensation of Rs 10 lakh, which was upheld by the Kerala High Court in 2012. Further, the court appointed a committee by Supreme Court judge DK Jain, to investigate into the role of the Kerala police officers, who were involved in falsely implicating the scientist under the Official Secrets Act. The court observed that Narayanan was "needlessly arrested and tortured". With this judgment once again the vicarious liability of the State for tortious actions of its servants was established.

The early ideas regarding sovereign immunity had their philosophical views, To Bodin; Sovereignty is the absolute and perpetual power within the state. To Hobbes, sovereignty is justification of absolute power as an imaginary compact between ruler and ruled. Austin view is , Law as command of sovereign. Austin command theory provided that the sovereign who is not subject to any law whatsoever, could, if that was the wish, command all whom he may find within his 'independent political society' to be subject to his command¹.

In this Article it is proposed to trace out the historical development of States Liability and how it is moulded from time to time by the courts to suit the needs of the people.

¹ (1991)54. Mod.L.R.664.

Law in England:

The law of torts in England as in India is uncodified. As the classic writer Professor Dicey said:

"Nine tenths of the law of contract and nearly the whole of the law of torts (which are civil wrongs) are not to be discovered in any volume of statutes". According to the basic common law principles, no action lies against the Crown for tortious acts done by its servants. This probably is due to the application of the well-known maxims either 'the king can do no wrong' or 'the king cannot be sued in his own courts'. The subjects had only a limited right against the crown and this related to the recovery of real or personal property or cases of breach of contract. Even this right could be enforced only by way of Petition of right. Eventually the Crown Proceedings Act of 1947 which negative to a remarkable degree the theory of immunity of Crown for torts of its servants and dispensed with the special procedure of petition of Right.²

In England, before 1947, the Crown Enjoyed immunity from tortious liability as per the maxim, 'KING CAN DO NO WRONG'. The maxim meant not only that the king could not be made liable by action, but also that wrong could not be imputed to the king and therefore he could not be said to have authorized another to commit a wrong. As there is no concept of the State in English Law, and the Governmental departments are merely groups of crown servants. The Crown Proceedings Act 1947 makes the crown in principle liable for the torts to the same extent as a private person of full age and capacity, subject to such exceptions, interalia, as defence of realm, maintenance of armed forces and postal services. Thus the crown becomes vicariously liable to a very large extent for the torts committed by its servants. Thus in *Home Office v. Dorset Yacht Co.*,³ the crown was held liable for the damage caused by the runaway borstal trainees who escaped because of the negligence of the borstal officers in the exercise of their statutory function to control the trainees.

Law in U.S.A.:

In the United States of America, The Federal Tort Claims Act, 1946 defines the tortious liability of the Government. In the cases of common Law duties, the U.S.A., Government is liable to the same extent as a private individual under like circumstances. However intentional torts (such as assault, battery, false imprisonment etc) are exempted. On the Whole the tortious liability of the U.S. Government is more restricted than that of the government in England.

Law in India:

Law in India however has been surprisingly static. When the sovereignty under the Government of India act passed to the crown in England It is still almost the same as it was in or about the year 1858 In India there is no legislation which governs the liability of the state for the torts committed by its servants. However the extent of liability of the State for the torts of its servants is defined by Article 300 of the constitution as follows,

"(1) The government of India may sue and be sued by the name of Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provision which may be made by Act of parliament or of the Legislature of such State enacted by virtue of power conferred by this constitution sue or be sued in relation to their respect e affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had been enacted.

(2) If at the commencement of this constitution-

- a) any legal proceedings are pending to which Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
- b) any legal proceedings are pending to which a province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian state in those proceedings."

Article 300, thus provides that the Union of India and the states are juristic persons for the purpose of suit or proceedings. Although the Union of India and State governments can sue and be sued but the circumstances under which that can be done have not been mentioned. According to Article 300, the Union of India and the State Government can sue or be sued in the like cases as the Dominion of India and the corresponding Indian States might have sued or been sued if the Constitution had not been enacted. The

² Kirshna Murthy v. State of A.P., A.I.R. 1960, pg. 285.

³ (1970) AC 1004, See M.P.Jain & S.N.Jain, *Principles of Administrative Law*, fifth edition 2009, pg. 750.

position prevailing before the commencement of the constitution, therefore, remains unchanged though the Parliament and the state Legislature have been empowered to pass laws to change the position.

To know the present position as regards the liability of the State we have to go back to the pre-Constitution days. For that, we refer to Sec.176 of the government of India Act, 1935. That acts like the present constitution, does not give the circumstances of the government's liability but recognizes the position prevailing before the passing of that Act, 1858. Therefore, to know whether the State is liable for a particular act or not, we have to find the position of the East India Company prior to 1858."

Origin and Development of Sovereignty and Common Law principles in India:

In order to better appreciate the origin of the concept of state Liability for tort, it is imperative glance through the history behind the same. The first charter of the East India Company was granted by Queen Elizabeth in 1600. The East India Company came into existence for a trade monopoly and special privileges which by the constitutional practice of the time could be conferred only by the Crown. Initially it started within certain geographical limits but subsequently under various charters it acquired certain judicial and legislative functions.

The charter granted by Charles II empowers the company to exercise civil and criminal jurisdiction. In 1765 lord Clive persuaded King Shah Alam to grant to the company at Calcutta Firman for the collection of revenues of Bengal, Bihar and Orissa. This facilitated the establishment of courts to administer civil and criminal justice. Between 1765 and 1774 East India Company assume sovereign powers and established supreme Courts at Madras, Bengal and Bombay between 1774 and 1823 empowering them to decide suits against all inhabitants of their areas. Then in 1858 came the government of India Act on the transfer of the government of India from the company to the Crown in England. Then came the Charter Act of 1833 as a result of which it ceased to be a mercantile corporation and held the government of India in trust for the Crown. On the transfer government from East India Company to the Crown in 1858 came the Government of India Act, That statute declares for the first time in its section 65 the rights and liabilities of the secretary of State for India to sue or be sued. Section 65 reads thus:

"The Secretary of State in council shall and may sue and be sued as well in India, as in England by the name of the Secretary of State in Council as a Body corporate; and all Persons and Bodies Politic shall and may have and take the same suits, Remedies, and Proceedings, legal and equitable, against the Secretary of state in council of India as they could have done against the said company; and the Property and effects hereby vested in Her Majesty for the purposes, of the Government of India acquired for the said purposes shall be subject and liable to the same Judgments and executions as they would while vested in the said Company have been liable to in respect of Debts and Liabilities lawfully contracted and incurred by the said Company".

S.66 Secretary of state in council to come in place of the company with regard to pending suits etc.- " The Secretary of State in council shall, with respect to all actions, suit, and all Proceedings by or against the said Company pending at the time of the Commencement of this act, come in the Place of the said Company, and that without the necessity of substituting the Name of the Secretary of lawfully contracted and incurred by the said Company."

S.67. Treaties to be binding on Her Majesty and contracts etc of Company may be enforced etc:- " All the treaties made by the said Company shall be binding on Her Majesty, and all contracts, Covenants, Liabilities, and Engagements of the said company made, incurred or entered into before the commencement of this Act may be enforced by and against the secretary of State in Council in like manner and in the same courts as they might have been by and against the said Company if this act had not been passed."⁴

This would show that the subjects had a right to sue the East India Company when it was exercising the sovereign powers, though as a delegate and the same rights are still available on the transfer of power to the crown. Further there were certain Acts passed subsequently, they too have maintained this right of the subjects. Not only the Government of India Act 1915 in its section 32 has made such a provision but also the government of India Act 1935 in its Sec.176

"The federation may sue or be sued by the name of the federation of India and a Provincial government may sue or be sued by the name of the Province, and without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by act of the federal or a provincial Legislature enacted by virtue of powers conferred on that Legislature by this act, sue or be sued

⁴ Prof C.L. Anand, 'Constitutional Law and History of government of India' Eighth Edition, The government of India Act 1935 and Constitution of India, page 242.

in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed".⁵

The first leading case on the point of sovereign immunity of the state for tortious acts of its servants in pre-independence India was the **Peninsular and Oriental Steam Navigation Company v. Secretary of State for India**⁶:

In that case, the plaintiff's servant was travelling in a horse driven carriage and was passing by the Kidderpore Dockyard in Calcutta, which is the government property. Due to the negligence of defendant's servants, a heavy piece of iron, which they were carrying for the repair of a steamer, fell and its clang was injured. The plaintiff filed a suit against the Secretary of State for India in Council for the damage which was caused due to the negligence of the servants employed by the government of India.

The court tried to look to the liability of the East India Company. A distinction was drawn between the sovereign and non-sovereign functions of the East India Company. It was held that, if the act was done in the exercise of sovereign functions, the East India Company would not have been liable, but if the function was a non-sovereign one, that which could not be performed by a private individual without any delegation of power by the Government, the Company would have been liable. Maintenance of the dockyard was considered to be a non-sovereign function and, as such, the Government was held liable.

According to the court, "The East India Company were a company to whom sovereign powers were delegated, and who traded on their own account and for their own benefit and were engaged in transactions partly for the purpose of Government and on their own account, which without any delegation of sovereign rights might be carried on by private individuals. There is a great and clear distinction between acts done in exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them". Further the court observed "Where the act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by a sovereign or private individual delegated by a sovereign to exercise them, no action will lie".

It may be observed that there was distinction in liability, depending upon the sovereign and non-sovereign functions of the East India Company. It was due to the dual character which the East India Company was having. It performed commercial functions and exercised sovereign powers as well. The East India company got the administrative power as the representative of the British Crown and as such, the position as prevailing in England was tried to be applied in India. In England, the King could not be held liable for the wrongs of his servant. That was due to the conviction that the King can do no wrong, or can he authorize the same.

In Hari Bhanji v. Secretary of State⁷

The facts of the case were that during the course of transit of salt from Bombay to Madras ports, the rate of duty on salt was enhanced and the merchant was called upon to pay the difference at the port of destination. He paid under protest and instituted the suit for its recovery. The court ruled that immunity of the East India company extended only to "acts of State" strictly so-called and that the distinction based on sovereign and non-sovereign function of the East India company was not well founded. On the other hand, there is another set of authorities according to which the State is liable for the torts of its servants except when an act done is an 'Act of State'. 'Act of State' is a defence which the State cannot have against its own subjects. According to this view, therefore, the State is liable towards its own subjects, just like an ordinary employer. One case which explains this point of view is as follows:

"The act of State of which the municipal courts of British India are debarred from taking cognizance, are acts done in the exercise of sovereign powers which do not profess to be justified by municipal law.. Where s an act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign powers is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the civil court".

⁵ Prof C.L. Anand,' Constitutional Law and History of Government of India, The Government of India Act 1935 and the Constitution of India, Eighth Edition, Pg.677.

⁶ (1861) 5 Bom. H.C.R.

⁷ (1882) 5 ILR Mad.273.

In Nobin Chander Dey vs. Secretary of State for India.⁸

In this case the State was exempted from liability when the function was considered to be a sovereign one. There the plaintiff filed a suit contending that the Government has made a contract with him for the issue of license for the sale of ganja and had made breach of the same. On evidence it was held that there was no contract. Relying on P. & O. Steam Navigation Company's case, it was further held that assuming

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But in some line of cases, distinction between sovereign and non-sovereign function was perpetuated. If the courts had adopted the view adopted in Hari Bhanjis , the situation of the tortious liability of the Government would have been different today.⁹

In Gurucharn Kaur v. Madras Province¹⁰

The plaintiff brought action for damages against the government for wrongful confinement of the plaintiff by the police officers,, and no action maintained against the government for a tort committed by its servants, and held it is sovereign function.

In Etti v. Secretary of state¹¹

The Madras High court ruled that in maintaining a hospital for the benefit of the public at the expense of the public revenues, the Government was discharging a proper governmental function, and therefore, the secretary of State was not liable for the torts of his servants employed in the hospital under P & O. Principle.

The Law Commission of India also accepted the Hari Bhanji view as correct and recommended legislation giving effect to this view ¹². The commission looked into the question of a specific law with respect to citizen claims based on tort against the Union and states, and if so, what should be the extent of State liability. It recommended the enactment of a suitable law to define the position on government's tortious liability, stating that it 'is necessary that the law should, as far as possible, be made certain and definite' On the extent to which such law should make the state liable for tortious acts, the Commission recommended that the issue requires 'undoubtedly, a nice balancing consideration so as not to unduly restrict the sphere of activities of the State and at the same time to afford sufficient protection to the citizen'. However, the court did not follow this view in later cases.

The commission also considered the scope of the immunity of the State for the tortious acts of its officials and recommended the relaxation of the rule of state immunity, and that 'the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine the liability of the state'.

Recently the Law Commission Report No.277 on 'Wrongful Prosecution (Miscarriage of Justice) Legal Remedies , in August 2018 recommended to provide effective response from the State to the victim of miscarriage of justice for violating rights of the citizens under Art. 21.

Post-constitutional Law

The present-day position with regard to tortious liability of State has undergone a sea change. A great transformation of the state from the laissez faire to welfare state and change in judicial trends lead to a very restrictive view of the 'sovereign-' functions. The courts have shown a tendency to dilute the distinction between sovereign and non-sovereign functions. The courts characterize most of the governmental activities as 'non-sovereign'. Thus by restricting the concept of 'Sovereign functions', courts have been able to expand the area of governmental TORTIOUS LIABILITY. After of case-law Madhya Pradesh High court has elucidated as¹³

⁸ I.L.R. 1 Cal. 11.

⁹ According to the Law commission of India, " The Law was correctly laid down in Hari Bhanji's case, First Report, 1956.

¹⁰ A.I.R. 1942 Mad. 539.

¹¹ A.I.R. 1939 Mad. 663.

¹² First report of the Law commission- LIABILITY OF THE STATE IN TORT.

¹³ Association Pool v. Radhabai, A.I.R. 1976 MP 164

"These cases show that the traditional sovereign functions are the making of laws, the administration of justice, the maintenance of order, the repression crime, carrying on of war, the making of treaties of peace and other consequential functions. Whether this list be exhaustive or not it is at least clear that the socio-economic and welfare activities undertaken by a modern state are not included in the traditional sovereign functions."¹⁴

Non-Sovereign functions of the State:

In State of Rajasthan vs. Vidyawati¹⁵:

In this case Supreme Court of India held the State vicariously liable for the tort committed by its servants. In this case a pedestrian, the husband of the respondent was fatally knocked down by a government jeep while the driver was returning to the residence of the district collector from workshop after undergoing the necessary repairs. It was found that the accident was due to rash and negligent driving of the driver. Suit was filed by the widow of the deceased for compensation was decreed by the court against the driver but not against the State. On appeal the court held that the immunity rule of the Crown in England was based on the old feudalistic notions of justice. In India, ever since the time of the East India company, the sovereign had been held liable to be sued in tort or in contract and the common law immunity never operated in India. Further the court went on to say that India has now been constituted as a socialistic State with varied welfare activities employing a large army of servants, add therefore. There is no justification in principle or in the public interest that the state should not be held liable vicariously for the tortious acts of its servants. Thus the decision of the court has abolished the distinction between sovereign and non-sovereign functions for the purpose of determining the State liability and that henceforth, the government would be liable for the torts committed by its servants in all cases except 'acts of State'.¹⁶

In Kasturilal v. State of Utter Pradesh¹⁷:

In this case the supreme court of India took a different view. The court reintroduced again the vague distinction of sovereign and non-sovereign functions; it regarded abuse of police power under the statute as a sovereign act.

In this case the plaintiff was going to Meerut to sell gold, silver and other goods. The police arrested on suspicion that it was stolen property. On release silver returned and gold was not returned. The Head constable in-charge of the Government malkhana, where the gold was kept, misappropriated it and fled to Pakistan. Plaintiff filed a suit against the government of Uttar Pradesh for the return of the gold or value for gross negligence on the part of the police authorities in the matter of safe custody of the gold. The court relied on rule laid in Peninsular & Oriental Steam Navigation Co. v. Secretary of State for India¹⁸, following the distinction between sovereign and non-sovereign powers. It regarded abuse of police power under the statute as a sovereign act. The court further held that if the act is sovereign, no act of negligence on part of the employees of the State would render the State liable.

The courts in late years have made an attempt to follow Kasturilal case and have tried to adjunct the archaic law to the realities of the modern life. By liberal interpretation they limited State Immunity by holding more and more functions of the State as non-sovereign.

In Satyawati Devi v. Union of India¹⁹

An Air force vehicle used for carrying hockey and basketball teams caused accident and due to the negligence of the driver, death was caused of the plaintiff's husband. The Court held the State liable since the act of carrying teams to play matches could be performed by a private individual, it was not a sovereign function and, as such, the Government was liable.

In Union of India v. Savita Sharma²⁰

The Jammu and Kashmir high court has held that the driving of a military truck to Railway Station to bring the jawans to Unit Headquarters is performing a non-sovereign function and, therefore, if the respondent gets injured while the truck is being so driven, she is entitled to get compensation.

¹⁴ M.P.Jain & S..N.Jain, Principles of administrative law, fifth edition 2009.pg. 789.

¹⁵ A.I.R. 1962, SC 933.

¹⁶ Dr. I.P.Massey , Administrative Law, sixth edition, pg.392.

¹⁷ A.I.R. 1965 Sc. 1039.

¹⁸ Supra

¹⁹ A.I.R. 1967 Delhi 98.

²⁰ A.I.R. 1979 J & K 6, see also Union of India v. Sugarpal, A.I.R. 1969 Bom 13.

Similarly in Nandram Heeralal v. Union of India²¹

It has been held that the act of driving the vehicle in bringing back the military officers from the place of exercise to the College of Combat, Mhow was a non-sovereign function and the State was liable for the accident caused by the negligence of the driver.

In Union of India v. Jasso²²

Carrying of coal for heating rooms has been held to be a non-sovereign function as the same could be performed even by a private individual and the Govt. has, therefore, been held liable for the negligence of the driver of a military truck which carried such coal from the depot to the Army General Headquarters' building in Simla.

In Roop Lal v. union of India²³

Some military jawans found some firewood lying by river side and carried the same away for purposes of campfire and fuel. It turned out that the wood belonged to the plaintiff. The plaintiff brought an action against the Union of India for the tort of conversion which was alleged to have been committed by its servants. The State was held liable.

In Union of India v. Abdul Rehman²⁴

It has been held that the driving of a water tanker belonging to Border Security Force (B.S.F.) by a B.S.F. driver is a non-sovereign function, and the State is liable for the damage caused by the negligent driving of the tanker.

Sovereign Immunity subject to Fundamental rights:-Violation of right to Life A. 21:

The decisions of the Supreme Court in the area of personal liberty, arrest and detention have attenuated the sphere of sovereign immunity. Therefore according to the court, the duty of care of the State is strict and admits of no exception. The wrong doer is accountable and the State responsible if the person in the custody of the police is deprived of his life and liberty except by the procedure established by law. To meet this end, the courts have granted exemplary damages under Arts. 32 and 226 of the constitution.

In Peoples Union for Democratic Rights v. State of Bihar²⁵

About 700 poor peasants and landless persons had collected for a peaceful meeting, without any previous warning by the police they opened fire as a result of which at least 21 persons, including children died and many more were injured. The Peoples Union of Democratic Rights (PUDR) filed an application before the supreme Court under article 32 of the constitution claiming compensation Rs. The Court held 20,000 for every case of death and Rs. 5000 for every injured person.

In Sebastian M. Hongary v. Union of India²⁶

The Supreme Court recognized the liability of the state to pay compensation when the right to life and personal liberty as guaranteed under article 21 of the constitution had been violated by the officials of the State. In these case two persons were taken in custody by the army authorities. Later they failed to produce those two persons in obedience to the writ of habeas corpus. They were supposed to have met unnatural death while in army custody. The wives of the two missing persons were awarded exemplary costs of Rs. 1 lack each and this amount was ordered to be paid within 4 weeks.

In Bhimsingh v State of J. & K.²⁷

The scope of this remedy was further extended to cover cases of unlawful and malicious detention, where a member of state Legislative assemble was unlawfully arrested and detained in order to prevent him from attending the assembly session and vote. In a Petition under article. 32 of the constitution, the supreme court granted Rs. 50,000/- by ay of compensation to the petitioner.

²¹ A.I.R. 1978 M.P. 209.

²² A.I.R. 1962 Puj. 315.

²³ A.I.R. 1972 J & K 22.

²⁴ A.I.R. 1981 J & K 22.

²⁵ A.I.R. 1987 S.C. 355

²⁶ A.I.R. 1984 S.C. 1026.

²⁷ A.I.R. 1986 S.C. 494.

Rudal Shah v. State of Bihar²⁸

In this case a person was kept in illegal detention for nearly 14 years. In habeas corpus petition, the petitioner sought not only ancillary reliefs like rehabilitation reimbursement of expenses likely on medical treatment and compensation for unlawful detention. The Supreme Court ordered the payment of compensation of Rs. 30,000/- interim measure in addition to the payment of Rs. 5,000, which has already been made by the state of Bihar. It was also stated that the said order of compensation did not preclude the petitioner from bringing a suit to claim appropriate damages from the State and its erring officials.

Similarly in Saheli v. Commissioner of Police, Delhi²⁹

In this case the death of a 9 year old boy was caused by beating an assault by a police officer. In the writ petition filed by the Women's Civil Right Organization, known as SAHELI the Supreme Court awarded Rs. 75,000/- as damages to the petitioner.

Neelabati Behra v. State of Orissa³⁰

In this case the petitioner son aged 22 years was arrested by an Assistant Sub-Inspector of Police in connection with investigation of the offence of theft in the village. He was handcuffed and kept in the police station. On the next day his body was found with multiple injuries by the side of a railway track. The mother of the deceased sent a letter alleging custodial death of her son. She claimed compensation on ground of violation of Art. 21. The Court awarded Rs. 1,50,000/- as exemplary damages.

In a landmark decision in common Cause, A registered Society v. Union of India³¹

In this case the Supreme court of India went another step further and observed that the Court's power to grant damages cannot be limited only when the fundamental right to life and personal liberty under Art.21 is violated. Even in cases where the public functionaries are involved and the matter relates to violation of other fundamental rights or the enforcement of public duties, the remedy would lie at the option of the petitioner under the public law. notwithstanding the fact that damages are also claimed in such proceedings.

In State of Andhra Pradesh v. Challa Ramkrishna Reddy³²

In this case the negligence on the part of government officers resulted in the death of a prisoner in jail. . The deceased son filed a suit under Art. 32 of the Constitution for compensation. The court held the Doctrine of Sovereign Immunity is no longer valid and state is liable to pay compensation.

Conclusion:

Thus from the above cases the rule of absolute immunity of the Crown based on the maxim , "The King Can Do No Wrong" has never been applied in India in toto. Right from the time of East India Company, the State has been made liable for the torts of its servants but the Courts have fixed liability for torts without any difficulty only to those acts committed by the servants of the State in exercise of non-sovereign powers. However in case of acts committed in the course of exercise of sovereign powers there is conflict and confusion. The recommendation of the Law Commission made long back in 1956, and the suggestions made by the Supreme Court have not yet been given effect to. In the modern welfare State a legislation on Act of State Liability should be passed without further delay .

²⁸ A.I.R. 1983 SC 1086.

²⁹ A.I.R. 1990 S.C. 513.

³⁰ A.I.R. 1993 Sc 1960.

³¹ A.I.R. 1999 SC 2979.

³² A.I.R. 2000 SC 2083.