

Chapter III

Tortious Liability of State in Tort Law in India

The present state of law relating to liability of the State in tort in India is that the law is neither just in its substance, nor satisfactory in its form. It denies relief to citizens injured by a wrongful act of the State, on the basis of the exercise of sovereign functions of the State. A political organization which is set up to protect its citizens and to promote their welfare, should accept legal liability for its wrongful acts, rather than denounce such liability"⁶⁵. It appears that, the liability of the State to compensate for the negligence of its officers is not analyzed to its logical end. The dilemma remains unresolved and unanswered.

Therefore relief must be given even where injury occurs during discharge of sovereign function. It is morally, ethically and even legally wrong to say that, injury caused due to discharge of sovereign functions, should never be compensated⁶⁶. The Law Commission is strongly of the view, that this is one area of law where the need for a clear statement of the law in a statutory form is urgent, the legal maxim *Ubi jus incertum, ibi jus nullum* (where the law is uncertain, there is no law), can be applied, with great force.

⁶⁵ Dr. Rajeev Joshi, Sovereign powers and liability of state in tort, AIR 2011 Journal 206.

⁶⁶ V.S. Chauhan, Sovereign Immunity v. Fundamental Rights : A Gray area of tension in the constitutional law of India, AIR 1992 Journal 134.

The present method of determining the liability of the State in tort law in India is by distinguishing the function of the State as sovereign function and non-sovereign function. The first portion of this study deals, with the exemption from liability on the ground of sovereign function and the second portion deals with the liability of the State with respect to non-sovereign function.

3.1. Exemption from liability of the State on the ground of sovereign immunity

After the decision of *Peninsular and Orientation Steam Navigation Co. Case*, and *In Nobin Chander Dey and Hari Banji*, the court followed the distinction between sovereign and non-sovereign and in the latter the court limited the application of the immunity only to the 'Act of State'. This principle helped the court to interpret the functions of the State according to their will and pleasure. If they wanted, they could give privilege to the State making the act as sovereign. There was no rationale criterion to determine a particular act as sovereign. Now let us go through the subsequent cases where the court exempted the State from liability.

In *Mc Inery v Secretary of State*⁶⁷, the plaintiff sustained injury, while walking along the public road by coming into contact with a post set up on the road, due to the negligent act of the employee of the State. By putting up a post, the government was not carrying commercial or trading

⁶⁷ ILR 38 Cal. 797 (1911).

operation. Flecher. J by relying on Nabin Chander Dey said that the maintenance of public path is not a commercial function which is relating to sovereign function.

So the State was exempted from liability on the ground of privilege of doing public function. He questioned that 'what commercial undertaking or other trading operations was the government of India carrying on in maintaining the public path on the public highways?' He further restricted the State liability for such functions only, where there was some benefit or advantage to the government there could not be any liability unless it resulted in its benefit. Then court applied the theory of benefit and held the State not liable as it did not benefit by the act. The theory propounded is that State liability would extend only where there were some benefits to the government out of the alleged tortious act. The very purpose of the institution 'state' is for the benefit of the people. Instead of compensating the infringement of the rights of the people, the court tested whether the State benefited from the public function.

In *Shiva Bajan v Secretary of State for India*⁶⁸, In this case the goods were seized while exercising statutory authority but it was refused after the order for release. Without considering the breach of duty of the employee the court dismissed the suit on the ground of non-maintainability of the actions for the statutory function done by the employees. Here the statutory

⁶⁸ ILR 28 Bom 314.

privilege was extended to the consequence of the act even if the concerned officer had done the act negligently, without keeping it in safe custody.

In this case the police officer who seized the goods under a statutory authority, failed to return the same after the release, when he went to claim for. In an action against the State for compensation for the loss of goods, the court dismissed the suit on the ground of exercise of public function. There is no justification in extending the privilege to negligent act. Here the court failed to see that the statutes are made for the purpose of exercising a statutory duty by the employee of the State without any hindrance. This can be enjoyed, provided if he had done the act in good faith. There is no need of extending this privilege in case of negligence abuse or excess of power.

The same way in *Kesoram Podar & Co. v Secretary of State*⁶⁹, when the war goods were brought by the private company due to commandeering orders, the authorities failed to take delivery of and pay for it. In an action by the company, the court held that the suit was not maintainable on the grounds of sovereign immunity. Here the court had to see that the company had acted on the basis of valid order, and the government failed to comply with it and so it was necessary to compensate the company by the government for the value of the goods. Instead, the individual company had to bear the loss and this was great injustice shown towards the company by the court on the ground of sovereign immunity.

⁶⁹ (1927) 54 ILR 909.

In *Etti v The Secretary of State*⁷⁰, when the child was lost due to the negligence of the hospital authorities, the court exempted the State from liability on the ground of sovereign immunity and stated that the hospital was run for the benefit of public out of the revenue. But the court failed to understand that the revenue can be used to compensate the injured due to the act of State as explained in *P & O*.

In *Gurucharan Kaur v Province of Madras*⁷¹, the police officer acted in good faith according to the instruction of the public authority, but mistakenly prevented the Maharani instead of the Maharaja from leaving the station and boarding the train. Dismissing the appeal, the Federal court confirmed that the government could not be held liable for the improper conduct of the public servant unless those acts had been done under the orders of the government or had been ratified by the government. If the decision depends upon the ratification, the State can easily escape from liability. It is also necessary to note failure on the part of employer in complying with the statutory duty of selecting the good and efficient workmen while giving employment. If a suit for compensation is filed by the aggrieved for the wrong committed by the employee of the State, the court has to see whether the act committed by the employee was ratified by the State or not. If ratified, State would be liable for it. So the judiciary can exercise its discretion to favour the State by exempting it from the liability.

⁷⁰ AIR 1939 Mad. 663.

⁷¹ AIR 1944 F.C. 41.

These privileges can be used to protect the concerned officer who had done the act in good faith but this privilege cannot be used to determine the State liability. Actually this would help the State to enjoy more privilege if the liability depends upon the ratification by the State. The State can ratify the acts which would not impose liability.

In the case of *Secretary of State v Cockcraft*⁷², when the driver of the military vehicle suffered serious injuries, due to the negligence of the P.W.D employee, suit for compensation was dismissed on the ground of sovereign immunity. There is no logical in dismissing the suit on the ground of sovereign immunity. Here the injury was caused because of negligently storing the heap of gravel, on the sides of the road and after committing negligence, the State claimed privilege. What is the justification, in granting privilege, on the ground that there is no profit, to the government by conducting public function?

In *Ram Gulam v Government of U.P*⁷³, bench consist of Seth J., the ornaments were stolen from the house of the plaintiffs. On a search made by the police they were recovered from another house and seized as stolen property. They were kept in the Collector Malkhana, from where they were again stolen, and were untraceable. As per the decree of magistrate the government was not liable to compensate the plaintiffs.

⁷² AIR 1915 Mad.993.

⁷³ AIR 1950 All. 206.

On account of the negligence of the defendant's servants the ornaments were not available at Malkhanas. The plaintiff therefore, pressed the alternative relief for the recovery of their price on the ground that the ornaments were lost on account of the negligence of the government servants. Sovereignty is an essential attribute of a state, which means that it is the supreme and ultimate authority within its territory, so suit cannot be maintained against the government without the consent of the state. Court referred the number of the cases previously decided and reached the conclusion that it is settled law that an action lies against the state in respect of torts committed by government servants when engaged in undertakings carried on by the government but which could be carried on by a private person without possessing sovereign powers. Whether the immunity extends in respect of torts committed in the performance of all transactions carried on in the exercise of sovereign powers or in confined to particular kinds of transactions only. The rule embodied in the maxim 'respondeat superior' is subject to the well recognized exception that a master is not liable for the acts of his servants performed in discharge of a duty imposed by law. Therefore, it has been concluded that the government is not liable to answer the plaintiff's claim is correct and should be upheld.

Union of India v Harbans Singh⁷⁴ at Delhi bench consisting of D. Falshaw and Mehar Singh, JJ., an appeal filed by the Union of India, the defendant against the decree dated 24-7-1953 issued by the first class

⁷⁴ AIR 1959 Punj 39.

Subordinate Judge of Delhi. The plaintiffs are the sons, daughters and widow of Khushial Singh, the deceased and they brought an action to recover Rs. 50,000/- as damage, on account of the death of their father resulting from the defendant a driver of the military department of Union of India for knocking him down and running over him when he was riding his cycle. The plaintiff alleged that this was due to the rash and negligent driving of the defendant employee in driving the military vehicle in such a manner as to cause the accident that resulted in the death of their father. A number of defences were taken by the defendant, Union of India one of them was that it was not liable to damages for any acts of its servants done in pursuance to the exercise of sovereign powers. But the trial court decreed the suit against the defendant and granted a decree of Rs. 10,000/-

It was contended by the Union of India that it was not liable for the torts committed by its driver while driving the military truck for bringing meals from the cantonment and for distributing the same where military personnel were working. When it was being used the accident took place resulting in the death of the person. In the appeal before court, the only point raised was one regarding liability of the State for damages by the act of the defendant, the employee of the Union of India. In this case the court referred the *P&O Steam Navigation Co. v Secretary of State in India*, case to test whether particular act in question is sovereign function or not, and came to the conclusion from it that 'the Secretary of state in Council in India is liable for damages occasioned by the negligence of servants in the service

of the government if the negligence is such as would render an ordinary employer liable'. "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 undertaking which might be carried on by private individuals without having such powers delegated to them".

What was done in this case was carrying meals to the military personnel in a military vehicle and on the basis of illustration given for sovereign function in P&O case as any act of duty done for military or naval etc, this act of the defendant was done while he was engaged in military duty in supplying meals to the military personnel and the East India Company could not have been liable and not be sued if the company were doing these acts. In this particular case the learned judge Mehar Singh J, came to the conclusion that the act was the type of act that could be carried on by private persons without reference in any delegation of power by the sovereign for carrying it out.

In this case the court failed to note that Military function may be a sovereign function but the person got injured due to the negligent act of the military staff while carrying meals to them. After committing a negligent act and thereby killing the plaintiff's father, there is no justification to say that the State is exempted from liability because they were exercising sovereign function. They forgot to consider that vehicle used by the defendant was in military service and the accident happened because of the negligence of the driver and it was in the course of employment. Without applying ordinary

vicarious liability, the privilege granted to the State is not justifiable even if in the name of military work. So there was no cause of action against the Union of India because the position of Union of India was like that of East India Company; no action would lie against it. The court concluded by applying technical ground that at the time of accident it was engaging in a sovereign function.

In this case the court had taken the view that meals being taken by the truck belonging to the military department from cantonment for being distributed to the military personnel were a sovereign function and that the State was not liable for the death of a person resulting from an accident caused by the truck.

In *K. Krishnamurthy v State of A.P.*⁷⁵, a boy of five years was going by the side of the road and a road-roller belonging to the P.W.D was coming at a high speed after the work, for being placed at the place of its halt. When the road roller came nearer, the boy got up then the edge of the truck struck him. He fell down and his right palm was crushed under the front wheel so that his hand was amputated up to wrist. The accident could have been avoided if the driver had not been negligent. He failed to give warning to the persons standing there. The accident occurred because of the rash and negligent act of the driver.

⁷⁵ AIR 1961 A.P 283.

The trial court took evidence and came to the conclusion that the accident was the direct result of negligence. It was due to the rash and negligent driving of a road roller by the driver. As contended by the driver the accident was not inevitable. The court also came to the conclusion that the damages claimed were reasonable and in any way excessive. The disability incurred by the plaintiff was permanent and the plaintiff has to suffer for this disability in future. But the court expressed its difficulty of giving favourable decision by taking into consideration the condition of the boy. In appeal it was proved beyond that the accident occurred because of the negligence of the driver causing permanent injury to the boy. He was not crossing the road and he was well on the side of the road.

The court explained that the acts done for the exercise of governmental powers may fall under different categories. They are one 'acts of State' where the immunity is absolute and other class of acts are those which are done under the sanction of municipal law or statute and its exercise of powers thereby conferred. This classification again is divided into two. They are those connected with detention of crown land and the one connected with duties. Here the driver was an employee of the PWD and was entrusted with the work of highways. The road roller was sent from this department and halted there in the department after the work got over. It was concluded that the road roller was being used for the maintenance of highways. Making and maintenance of highways is a public purpose, the duty of the government and not a commercial undertaking. Now this

function is largely delegated by statute and municipality. Justice Kumarayya of the Andhra Pradesh High court observed that the road roller used for the maintenance of highways was for the public purpose, the government was not undertaking any commercial activity so no liability was imposed.

The court itself expressed its helplessness in compensating this small boy. According to the present law, the court could not give any remedy because of the sovereign immunity even if the boy suffered due to the negligent act of its employee. In the present case, the small boy had taken reasonable care and caution and the accident occurred because of the negligence of the driver. Article 300 of the Constitution is intended to meet the needs of the welfare State but this is equal to the Government of India Act 1858. This shows the reluctance of the court and legislature in taking actions against the State. Even after the employee committing negligence which resulted in the injury, what is the justification in telling that State has not benefited out of the act and so the victim has to go without remedy. Here the court expressed its shock over the suffering of the boy and sympathy of taking such a decision of not providing remedy to him due to uncertainty in law. In case of urgent need, the judiciary must be bold enough to create the law so as to give justice to the parties.

In *Kasturilal Ralia Ram Jain v State of Uttar Pradesh*⁷⁶, bench consisting of P.B. Gajendragadkar, C.J, K. N. Wanchoo, M. Hidayatullah, Raghubar Dayal and J. R. Mudholkar, JJ. Plaintiff was arrested by police officer in U.P on

⁷⁶ AIR 1956 SC 1039.

suspicion of possession of stolen property on search large quantity of gold and silver was seized. Gold and silver was taken in police custody until the disposal of cases. Ultimately he was released but the gold seized from was not returned the in charge of the police had absconded with the valuable property including the gold seized from the plaintiff. what is the justification in telling the owner that the seized goods were lost and the State is not liable for the damage suffered by the plaintiff, because the officers acted on the ground of statutory function. In this case the court would have followed the decision of *Vidhywathi v State of Rajasthan* in which it was stated that there is no justification distinguishing the function of the State as sovereign and non-sovereign in a Democratic Republican form of State while fixing the liability for its acts.

Instead of following the above decision, Gajendragadkar C.J said that the employee of the act had acted under a statutory authority which could not be done by private person. The water tight compartmentalization as sovereign and non-sovereign or governmental or non-governmental function was out of tune with a modern jurisprudential thinking and unworkable in practice. Actually this privilege is given to protect the public servant from liability and not to protect the State from liability. Whenever a public servant is engaged in statutory duty he has to comply with it so this privilege is extended to the consequence of the act also. But there is no need of extending this privilege in the case of State if the citizen suffers by the act. The privilege can be extended, provided he has committed the act

without any negligence. In all the above cases the wrong or damage was caused by the employee of the State, while exercising the statutory function and the privilege was granted on that basis. But there is no justification in granting immunity to the State in case of negligence of its employees even if it was done under a statute.

The above discussion indicates that the cure for the present law lies in the hands of the judiciary and not the legislature⁷⁷. The Crown Proceedings Act, 1947, in England and the Federal Tort Claims Act, 1946, in the United States have not solved this problem in the respective countries. Especially, this is an area which requires careful balancing of public interest and private claims and the legislation by enacting provisions on one way or the other will not be able to clear up the practical difficulties which may arise from time to time. The task is empirical and it must be left to the courts to bring the law in turn with new conditions of society⁷⁸.

In *Maharaja Bose v Governor General in Council*⁷⁹, the suit was against the Governor General in Council, for damages due to malicious prosecution. The fact of the case is that on the evening of Feb 3rd 1944, the plaintiff boarded an interclass compartment in Punjab Mail at Howrah. On 4th, the said train stopped at Asansol railway station, then three soldiers holding third class ticket forced their way into the said compartment. One of the

⁷⁷ The Law Commission of India has recommended legislation, First Report: Liability of the State in Tort (1956).

⁷⁸ Alice Jacob, 'vicarious liability of government in torts, Vol. 7 1965 JILI p 251.

⁷⁹ AIR 1952 Cal 242.

soldiers occupied the plaintiff's seat. He approached two employers of the defendant's company but no steps were taken against them. When the train started, the said soldiers threatened him thereupon out of fear he pulled the emergency chain and caused the train to stop. Defendants servants to whom the plaintiff had earlier complained reached there and made certain enquires and asked the soldiers to vacate it. While this was being done the Assistant station master on duty rushed into the compartment and accused the plaintiff for pulling the chain and abused him by using filthy languages.

The plaintiff who was a renowned dancer was on the way to take part in a dance programme at Patna in aid of Red Cross. But the plaintiff failed to give his name and identity so the railway servant arrested him and with the assistance of others he was dragged out of the compartment and was taken in custody of the railway police on false charges and detained there and later released on a personal bond. On Feb 23rd, 1944 he was prosecuted before the Magistrate ultimately acquitted on July 24th, 1944. When he claimed compensation on the ground of vicarious liability, the defendant contented that the suit was maintainable because he was arrested because of his failure to give his name and identity and he had honestly believed in the guilt of the plaintiff. According to section 132 of the Railways Act, the railway employee was empowered to arrest a person if he failed to reveal his name and identity. Mitter C.J. stated that 'Whatever the damage he suffered in consequence of the unfortunate episode must be borne by him; the tax payer cannot be answerable for the same'. This act was committed

by the employee incidental to the act of commercial undertaking by the State.

Then the doubt arose regarding the maintainability of the suit. Here the maintainability of the suit against the State was determined by referring decision of P&O, by Sir Barnes Pea Cock, in which, reference distinction had been made between the acts which are done by the crown in pursuance of ventures, which a private individual is undertaking and acts done in exercise of governmental powers, which would not be lawfully exercised by the sovereign authority or persons to whom the sovereign authority might delegate such powers.

So in this, suit would lie against the government in a business or commercial undertaking owned by the State based on the theory of benefit. While conducting the alleged wrong the employee was engaged in a commercial function which is incidental to the conduct of commercial undertaking. An undertaking which a private individual can equally undertake. So it is not in the exercise of sovereign powers. Thus the action was maintainable. Next question was whether the State had committed the alleged wrong of malicious prosecution. Here the plaintiff failed to give his name and identity so the railway servant was empowered to arrest the plaintiff. So the State was not held liable for the act of employee.

There is no rationale in applying theory of benefit to determine the maintainability of the suit. This theory would help the court to show a

leniency towards the State than protecting the injured citizen. According to this theory, liability of the State depend upon, whether the State had benefited out of the act committed by the employee. After injuring the rights of the people, it is not justifiable to say that the State had not benefited out of that wrong so the suit against the State would not be maintainable.

In State of M.P v Saheb Dattamal and others⁸⁰ , it is an appeal by State from the judgment and decree against it passed by the Addl. Dist judge Indore in favour of heirs and the dependents of Lala who was killed by a shot alleged to have been fired by the police while controlling riot on 21st July 1954. On that day there was a student's agitation at the main road at Indore. The District Magistrate ordered firing. When Lala and his grandson after closing the shop were returning their house, police from behind fired and one of the shots bored through the body of the car from behind and hit Lala on his back as a result of which he died. The shooting was illegal and damage was claimed. The trial court decreed Rs. 5,000/- and Rs. 4,000/- for Lala's car unusable to others and Rs. 1000/- to the grandson for the loss of guidance in his business by grandfather.

On appeal by State against this order the appellate court said that liability of the State would not arise while exercising sovereign function to maintain law and order. There is no remedy in Indian law as we have no similar law like the Crown Proceeding Act. Lala was shot while the police

⁸⁰ AIR 1967 M.P 246.

were trying to disperse the mob and the price of the car was allowed in the appeal and the grandson could not prove how much business loss was suffered or affected due to the death of his grandfather. In this case, the court failed to consider the grievance of the victim and the violation of guaranteed right to life.

In *Baxi Amrik Singh v Union of India*⁸¹, on 14th May, 1967, there was an accident between a military truck and a car on the Mall Road in Ambala Cantt. Due to the negligence and rash driving by the truck driver Sepoy Man Singh, who was also an army employee, Amrik Singh an occupant of the car, received serious injuries. Subsequently, he brought an action against the Union of India to recover compensation amounting to Rs. 50,000/-. The Union of India apart from pleading that there was no fault on the part of military driver, he was acting in exercise of the sovereign power of the Union Government at the time of accident in so far as he was detained for checking army personnel on duty throughout that day, and therefore there was no liability of the Union of India to pay compensation.

The full bench of Punjab and Haryana High Court, after discussing in detail the various authorities on the point, came to the conclusion that the checking of the army personnel on duty was a function intimately connected with the army discipline and it could only be performed by a member of the Army Force and that too by such a member of that force who is detained on such duty and is empowered to discharge that function. It was, therefore,

⁸¹ (1973) 75 P.L.R. 1.

held that since the military driver was acting in discharge of a sovereign function of the state, the Union of India was not liable for injuries sustained by Amrik Singh as a result of rash and negligence driving of the military driver.

In *State of Orissa v Padmalochan Panda*⁸², bench consisting of G. K. Misra, C. J, and P. K. Mohanty, J. the plaintiff, an advocate practicing at Bargarh in the district of Sambalpur, claimed compensation of Rs. 10,500/- as general damages and Rs. 500/- as special damage from the defendants. There was a students agitation on 28th Oct 1964, while he was standing in the court premises he saw students were assaulted by O.M.P personnel in front of the court premises indiscriminately and recklessly when the normal court work was going on and later he himself became the victim.

But the defence of State was that four students went into S.D.O's office and asked him to comply with the demands. The S.D.O told the students that their demands had been forwarded to the Collector, Sambalpur. On refusal they forwarded to the collector. The four students threatened the S.D.O Saying that they would break law and order if the decisions on their demands were not communicated to them by the evening of that day. The four students had some

⁸² AIR 1975 Ori 41.

discussion and break law and order and committing cognizable offences. Then S.D.O specially deputed OMP personnel for this purpose, came to maintain law and order but the students snatched away their lathis. So they were forced to use force to maintain peace and order. Injuries caused to the plaintiff by the police personnel with a view to disperse the unlawful crowd were in exercise of the sovereign function of the state. The state is therefore, not liable to pay damages for illegal acts committed either by defendants or by any other police personnel through the plaintiff suffered injuries in exercise of the sovereign function of the state.

In *State of Madhya Pradesh v Chironji Lal*⁸³ bench consist of H. G. Mishra, j., the plaintiff claimed Rs. 600 as damages caused by police to loud speaker amplifier, mike and other accessories which when a student's procession was being taken out and the loud speaker fitted in the Rickshaw was damaged due to the lathi charge. There was no dispute to the point that there was lathi charge and the loudspeaker was damaged because of it. The State resisted the claim of the plaintiff and contended that the State cannot be made liable for the damage even if caused by the acts complained of by the plaintiff. The trial court decreed the suit for Rs 377/- and dismissed the rest of the claim of the plaintiff. Aggrieved by this judgment and decree the defendant

⁸³ AIR 1981 M.P 65.

preferred an appeal which has been dismissed hence this second appeal. Before the appeal court, the learned counsel argued that under section 30 of the Police Act deals with the regulation of procession and section 144 of Code of Criminal Procedure Code with the maintenance of law and order. Quelling of riot is considered as sovereign function and the State government is immune from liability. It was contended that here the issue was regarding the exceeding of power by the police and the State is liable for the unlawful acts committed by the employees in the course of employment.

In this the court concluded that lathi charge was used only when the mob became unruly. This loud speaker kept in the auto which was used for leading the procession when hurriedly taken to the other side of the road became damaged on account of lathi charge.

The court made a reference to *Peninsular and Oriental Steam Navigation Co.* and concluded that 'where an act was done in the course of the exercise of powers which could not be lawfully exercised save by the sovereign power, no action in tort lay against the secretary of State for India in Council upon the principle of respondent superior". Then the court referred to the cases like *State v Dattamal*, in which the liability was sought to be imposed on the State on the ground of the firing was in excess of the need and it was held that the State was not

liable for the act and immunity was extended to the consequence of the act. In the State of Rajasthan v Vidyawathi it was held that the State can be made vicariously liable for the tortious acts, like any other employer in the case of Roolal v Union of India, the State was held liable due to the nature of the acts complained of in that case. In this case the court applied the Dictum laid down in Kasturilal as stated earlier, the test to know whether the State is liable in a given case or not has been decided in the light of it. "If the tortious act committed by a public servant gives rise to a claim for damages the question to ask is, was the tortious act committed by a public servant in discharge of statutory functions which are referable to and ultimately based on the delegation of the sovereign powers of the State to such public servants? If the answer is affirmative the action for damages for loss caused by such tortuous acts will not lie. On the other hand if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie.

This function of regulation of procession is delegated to the police by section 30 of the Police Act and Section 144 Cr.P.C is used to maintain law and order and these functions cannot be performed by private individuals. They are the powers exercised by the state or its delegates only and by their very nature, these functions are to be

regarded as sovereign function of the state, this case also falls within that dictum and so the State is immune from the liability sought to be enforced by the plaintiff.

In *Pagadala Narasimham v Commissioner and Special Officer, Nellore Municipality, Nellore and others*⁸⁴, bench consist of P. Venkatarama Reddy, J. the suit was filed by the plaintiff as an indigent person. Claiming damages of Rs. 50,000/- against the defendants, the Commissioner and Special Officer of Nellore Municipality and the Superintendent of police, Nellore. The suit was filed on the allegations that the plaintiff was the owner of the bus APA 8230, and while it was kept for repairs near the work shop, the Municipal and the police officials removed the same on the ground that it was causing obstruction on the public road. When he approached the municipal officials for the release of the vehicle they advised him to contact the traffic police officials and when he approached the concerned police station he was directed to contact the municipal authorities. The bus was under hire purchase agreement. The plaintiff estimated the damages caused on account of the illegal seizure and detention of the bus at Rs. 50,000/-. It was contended that the suit for damages against the police officials who discharging sovereign functions of the state was

⁸⁴ AIR 1994 AP 21.

not maintainable. The fundamental requirement has not been satisfied in the present case and court dismissed the suit.

The removal of bus causing obstruction to traffic by the police or even by the employees of the municipality cannot be regarded as a wrongful act or an act committed in excess of their powers and functions. When the bus was removed there was no engine to the bus and it was not in working condition. The plaintiff was not the owner of the bus but he was hirer having possession of the vehicle. The suit for damages is not maintainable as the alleged tortuous act was committed and discharge of statutory functions i.e the sovereign power of the state. If the plaintiff's bus was wrongly detained by the police, the plaintiff was to sue against the state of Andhra Pradesh.

In *State of Assam v Md. Nizamuddin Ahmed*⁸⁵, bench consist of J. N. Sarma, J. An appeal has been filed against the judgment and decree sated 16/03/1994 passed by District judge. A suit was filed for realization of compensation damage for alleged illegal seizure of seeds and loss of business the claim was for an amount of Rs. 80,000/- with interest @18% till realization with cost and other reliefs.

The plaintiff being a seed merchant used to store and sell seeds of different agricultural production and is a member of Indian Farmers Association. On 22/04/1987 Bilasipara police station seized certain seeds

⁸⁵ AIR 1999 Gauhati. 62.

from the shop of the plaintiff and seized some other seeds from the house of the plaintiff. The value of the goods so seized was claimed by the plaintiff to be Rs. 70,000/-. The police station has no storage facility to keep the seeds and ultimately the seeds were damaged because of the negligence, and carelessness. The illegal seizure has completely damaged the plaintiff's business for whole year and thereby plaintiff had sustained a loss not less than Rs. 10,000/- as profit.

Respondent contended that the seizure was in exercise of sovereign power of the state and the plaintiff is not entitled to any damage or compensation. The court referred the *Kasturulal v State of U.P* 'there is a great and clear distinction between act done in the exercise of what are usually termed sovereign powers, and act done in the conduct of undertaking which might be carried on by private individuals without having such power delegated to them'.

It was alleged by the plaintiff that the loss was caused by the negligence of the police officer who had not taken care of the said property. The court agreed that the police officer acted negligently but it held that since the police officer acted in exercise of sovereign function of the state was not liable for damage caused. So in particular case, it was held that the seizure of the seeds were in exercise of the sovereign power and the plaintiff is not entitled to any damage as claimed.

In *State of Haryana v Raj Rani*⁸⁶, bench consisting of R. C. Lahoti, C .J, J. P. Mathur and P. K. Balasubramanyan, JJ, the plaintiff, a woman, had undergone a sterilization operation of the state of Haryana. Subsequently to the performance of the surgery, the woman became pregnant and delivered a child. Suit was filed against the doctor who had performed the surgery, claiming compensation based on the cause of action of unwanted pregnancy and unwanted child attributable to the failure of the surgery. State of Haryana was impleaded, claiming decree against it on the principle of vicarious liability.

Several textbooks on medical negligence have recognized the percentage of failure of the sterilization operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the state being held vicariously liable also would not arise.

⁸⁶ AIR 2005 SC 3279.

3.2. Liability of the State on the ground of non-sovereign function

There was no doubt regarding the liability of the State in case of non-sovereign function. But an observation and illustration cited by Justice Peacock in *Peninsular Orientation and Steam Navigation* case regarding sovereign functions of the State made confusion and had been interpreted differently by different courts in *Nabin Chander Dey* and in *Hari Banji* cases. According to the interpretation given in *Nabin Chander Dey*, the liability of the State can be determined on the basis of the function of the State as sovereign and non-sovereign. In the case of sovereign function, State would not be liable but in the case of non-sovereign, State would be liable. According to the decision in *Hari Banji* the immunity of the State should be limited to the 'Act of State'. Thus in *Hari Banji*, the court compared the sovereign act with 'Act of State' and the suit filed against the State for the imposition of excess duty for the transit of salt was maintainable before the court.

Even before the decision of *Peninsular and Orientation Steam Navigation* case the liability of the State was determined in *Bank of Bengal v Union Co*, rejecting the plea of sovereign immunity raised by the company. In *Peninsular and Steam Navigation* case, while determining the liability of the State, under Section 65 of the Government of India Act 1858, with respect to non-sovereign function, the court clarified that State would be liable in case of non-sovereign function.

In *Mohammad Murad Ibrahim Khan v Govt. of U.P*⁸⁷, bench consisting of Raghubar Dayal and Brij Mohan Lall, JJ. In this case the plaintiffs are a son and a daughter of one Mohammad Farahim Khan. They were minors and their grandfather Hnji Mohammad Yusuf Khan, was appointed their guardian under the provisions of the Guardians and Wards Act. Certain jewellery belonging to a minor was entrusted with the Nazir for custody by an order of the District judge. The Nazir committed a default in the performance of statutory duty and was guilty of negligence with the result that the jewellery was stolen.

The minor after attaining majority brought a suit against the U.P Government for return of the jewellery or alternative for its value. Held that both the District Judge and the Nazir were functioning under certain provisions of law and in the performance of their duties they were negligence. The defendant contested the suit and denied the allegation of negligence. Further it was contended that the government was not liable for the tortious acts of its servants. Where the servants acts in performance of the duties imposed upon him by law, the master has no right to control him nor to give him any instruction. Servant is obeying the law and not the master and naturally the master should not be held liable for anything which the servant does while carrying out the duties. The government is not liable for orders passed by courts of justice.

⁸⁷ AIR 1956 Allahabad 75.

In an appeal by the plaintiffs against a decree of the court of justice, the question that arises for decision is whether the government is liable to pay damages on account of the price of the said jewellery. After verifying the facts and circumstances of the present case while referring the previous cases could stated that the position of the District judge was that of a bailee and therefore the Government is liable for value of the jewellery.

In *Rup Ram v The Punjab State*⁸⁸ *Rup Ram*, a motor cyclist was seriously injured, when a truck belonging to the public works department struck him. The driver was employed by the department. When the plaintiff brought an action for compensation against the State for the rash and negligent driving, it pleaded the defence of immunity but the court refused to allow this plea supporting the decision followed in *Hari Banji* limiting immunity of the State only for the 'Act of State'.

The State is not immune from liability merely the act complained of may have been done in the exercise of governmental power. The State is liable for tortious acts of its servants in the circumstances that make the relation between the State and that of particular servant, identical with the circumstances of private employment. The mere fact that the act may be or may not have been done in the course of government activity is not conclusive.

⁸⁸ AIR 1961 Punj. 336.

In *Union of India v Smt. Jaso W/o Rakha Ram and others*⁸⁹, bench consisting of D. Falshaw, Mehar Singh and A. N. Grover, JJ. The military truck driver driving a truck loaded with coal from store to the general Headquarters building at Simla for the purpose of heating the room in discharge of his duties. The fact of the case is that on the morning of the 7th December 1954 Rakha Ram deceased was fatally injured by a military truck which was carrying coal and being driven by an army driver to the army general headquarter building at Simla. His widow and two children instituted a suit for the recovery of Rs. 20,000/- as damages against the Union of India alleging that the death of the deceased was due to the rash and negligence driving the truck, and Union of India was liable to the damages caused by the rash and negligence driving of its employee. Union of India defence was two fold firstly, a denial of any negligence on the part of the driver of the truck and secondly that the Union of India was not liable for the tortious act of its servants. But the lower court held that the death of the deceased was due to the rash and negligent driving and that Union of India was liable.

After verifying the facts and circumstances of the present case court stated that it is difficult to see how it can possibly be held that driving of a truck loaded with coal from some store to the general headquarter building at Simla for the purpose of heating the rooms is something done in the exercise of a sovereign power, since such a thing could be done by a private

⁸⁹ AIR 1962 Punj. 315.

person. Union of India held vicariously liable for damage for the tortuous act of the driver.

In *Prem Lal v U.P Government*⁹⁰ the district collector, purporting to act under the U.P. Requisition of Motor Vehicles Act, illegally and maliciously requisitioned the motor truck and a car of the plaintiff, Prem Lal. This was done to teach a lesson to the plaintiff, a Jana Sangh Sympathizer. This political organization was considered by the government as undesirable to them.

The Plaintiff alleged that his car was kept uncovered during the period of requisition with the result that the paint was damaged and some parts become rusty and so he had to repair it.

When the plaintiff filed a suit against the State it raised the plea of immunity which was rejected as it was out of any governmental need. So it was held that the requisition order of the vehicle by the government as illegal and held the government liable to pay compensation because the act was malafide and abuse of power, although under the statutory power for which the government cannot claim immunity.

In this case the court took a bold step to protect the right of a citizen against the arbitrary acts of the State. The magistrate misguided by his zeal, abused the powers delegated to him by the government and took away the vehicle of the appellant not because the government needed them but he

⁹⁰ AIR 1962 All. 233.

wanted to take revenge on him. In the above case, the defence of sovereign immunity was rejected by taking into account, the illegal and the arbitrary acts of the employees of Union of India. If the officers of the State exceeded the power in the course of employment, immunity is not a defence. Thus the court began to limit the application of sovereign immunity in case of abuse of power.

In *State of Rajasthan v Vidhyawati*⁹¹, the bench consisting of B. P. Singh, C.J, J. L.Kapur, M. Hidayatullah, J., C. Shah and J. R. Mudholkar, JJ., where the driver of a jeep, owned and maintained by the state of Rajasthan for the official use of the Collector of a district, drove it rashly and negligently, while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured resulting in his death. His widow sued the state of Rajasthan for damages for the tort committed by their servant and claimed the compensation. The court took a bold step to promote justice to the widow for the death of her husband due to the negligent act of the employee of the State. According to Justice Sinha C.J, in a Democratic republican form of constitutional government, it is not justifiable to allow the defence of sovereign immunity for the negligent acts of its employees. Therefore the State was held liable for causing injury by the car which was maintained for the collector's use.

⁹¹ AIR 1962 SC 933.

In *State of Gujarat v Memon Mahomed Haji Hasam*⁹² bench consisting of R. S. Bachawat, J. M. Shelat and V. Bhargava, JJ, In this case, the State under the Sea Customs Act seized certain Motor Vehicles and other articles of the plaintiff but the articles while in the custody of the authorities remained totally uncared for. In an action for damages by the owner, the State pleaded that they were not bailee and so not liable. The State failed to raise the defence of sovereign immunity before the trial court. The order of the Customs officer was not final as it was subject to an appeal and if the appellate authority found that there was no good ground for the exercise of that power, the property could no longer be retained and under the Act to be returned to the owner. The property being liable to returned there was no statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property. So the state government was bound to return the said vehicle once it was found that the seizure and confiscation were not sustainable.

The court clarified that one reason sounds good that the taking care of the property seized and the duty to return the same is just like the duty of a statutory or duty arising out of bailment and cannot fall within the sovereign power. When this defence of sovereign immunity was raised before the High Court, it was refused on technical grounds. The Supreme Court observed that bailment is dealt within contract Act only but it was not correct to say that there could not be a bailment. Before deciding the case

⁹² AIR 1967 SC 1885.

as seizure of vehicle and other goods by the State was held illegal, the vehicle was sold as unclaimed and could not be returned to the respondent, which he was entitled to. The court held that the articles seized under the Customs Act belonged to the owner till the decision became final and the government was under a duty implicit in the statutory provision to take care of the goods and its position was that of a bailee to take care of goods to keep and preserve it and to return it in case where the order of confiscation could not become final. The government was not absolved from responsibility merely because an order had been passed by the magistrate for disposal of the articles as unclaimed property. So the government was vicariously held liable for the negligence of its servants in the course of bailment, for which there was no need of considering, whether the responsibility of taking care of goods confiscated was arisen out of contract. The very good decision taken by the judiciary in this case, would help to remind the State to become more responsible, while selecting the officers for the purpose of exercising statutory duty. There was an obligation on the state government either to return the said vehicle or in the alternative to pay their value.

The *Satyawati v Union of India*⁹³, bench consisting of S. K. Kapur and S. N. Andley, JJ, in this case the vehicle was engaged in carrying hockey and basket-ball teams to Indian Air Force Station, New Delhi to play a match against Indian Air Force, New Delhi. It appears that after the match was over

⁹³ AIR 1967 Del. 98.

the driver went to the guard room to report about his return and was at the time of accident going to park the vehicle at the sub-motor terminus. The mishap was caused by an air force vehicle used for carrying the hockey team to Indian Air Force station to play a match. The driver of the military vehicle was dazed by the glare of the head lights suddenly put by the motor cyclist coming from the opposite direction while he was on the way to park the vehicle after the match was over. Shiam Narain Singh the deceased, motor cycle driven by the right side hit against the vehicle and was killed in an accident with a three tonner Air Force Vehicle which was at the time of accident being driven by M. N. Kanji Lal.

Mr. Parkash Narain, the learned counsel for the respondents says that it is one of the functions of the Union of India to keep the army in a proper shape, giving physical exercise of its hockey team for the proper maintenance of the force is a sovereign function and so exempted from the liability.

The court observed that even if the driver was dazed, he should have stopped the vehicle rather than attempting to turn it. It is the nature of act that has to be taken into consideration to determine whether the particular function was sovereign or not. In this incident the act was not of sovereign character so the government was held liable for the mishap.

In *Rooplal v Union of India*⁹⁴, the jawans found some firewood lying by the riverside it being unmarked they honestly thought that they had every right to use it as camp fire and fuel. They carried away this in a military vehicle and used it as camp fire.

When the plaintiff filed a suit against the Union of India, they raised the defence of immunity and the act was done outside the course of employment. As far as the first point was concerned the jawans used this as camp fire and fuel so it was not a sovereign function and the second point was also rejected on the ground that for twenty four hours, the jawans were under the control and direction of the Union of India so they were supposed to be in the course of employment. So the Union of India was held liable for the act. Determination of a case relating to State liability on the basis of distinction of the sovereign and non-sovereign is restricted to the cases of harmful acts done by the employee of the State.

In this case, the ordinary principle of vicarious liability of the master for the torts of its servants in the course of employment was applied. The court would have imposed the liability according to the responsibility for the damage committed by each person by making the jawans also liable for the act.

In *Shyam Sunder v State of Rajasthan*⁹⁵, (Bench consisting of K.K.Mathew and A. Alagiri Swami JJ) In this case Navneet Lal was a residence

⁹⁴ AIR 1972 J & K 22.

⁹⁵ AIR 1974 SC 890.

of Udaipur. He was in the employment of the state of Rajasthan and was at the time working in the office of an executive engineer, in the office of the Public Works Department as a store keeper. In connection with the famine relief work undertaken by the department he boarded the truck owned by the department. After having traveled for four miles, when the engine of the truck caught fire the driver of the truck cautioned the occupant to jump out of the truck. While doing so Navneet Lal struck against a stone lying by the side of the road and died instantly. Parwati Devi widow of Navneet Lal brought a suit against the state of Rajasthan for damages. The plaintiff's widow alleged that it was on account of the negligence of the driver of the truck and the truck which was not roadworthy was put on the road and the State was liable for negligence of its employee under the Fatal Accident Act 1855. The trial court found the driver negligent and held the State liable for his act and court assessed the damages at Rs. 14,760/- a decree for the amount of plaintiff. But the state appealed to the High Court, reversed the decision.

The Supreme Court inferred that the cause of the accident was due to the negligence of the driver. It was made clear that the radiator was getting heated frequently and water was being poured in the radiator after every six or seven miles of the journey. The main point for consideration in this appeal was whether the truck caught fire due to the negligence of the driver in the course of employment usually *Res Ipsa loquitur* is used in imparting strict liability to the cases of negligence. Here also the driver was in the

management of the vehicle, the accident was such that it would not have happened in the ordinary course. Because the driver had the knowledge about the condition of the vehicle and if he had taken sufficient care, he would have avoided the accident circumstances of the case, proved that negligence of the driver was the only cause for the accident and there was no need to prove the case with evidence. So the court apply Res Ipsa loquitur even if it was not possible for the plaintiff to give any evidence. Here there was no justification in applying the principle of sovereign immunity. The relief work could be done by any private persons so in this case the Supreme Court by allowing the appeal set aside the decree of High Court and resorted to the decree and the judgment passed by the District judge. The court held that the famine relief work was not a sovereign function. In this case, the court considered the negligence of the employees and fixed liability on the State still lingered the archaic principle of sovereign and non-sovereign without saying any criteria of determining what is sovereign and non-sovereign. The court said that the liability of the state for a tort committed by its servant in the course of his employment would depend upon the question whether the employment was of the category which could claim the special characteristic of sovereign power. The question whether the immunity of the state for injuries on its citizens committed in the exercise of what are called sovereign functions has any moral justification today.

In Shyam Sunder case also the court even stated that the famine relief work was not a sovereign function as it had traditionally understood and the determination of the function as sovereign and non –sovereign was mainly depended on the traditional custom followed in a country. There was no authoritative principle behind it to categorize the function as sovereign and non-sovereign. This case is an illustration to show that the court is unhappy with the traditional distinction between sovereign and non-sovereign function as a basis for liability. While it would be difficult to say the famine relief is not a sovereign function, saddled liability for negligence in connection with famine relief operation, is tantamount to saying that the sovereign and non-sovereign distinction is of doubtful validity.

In Thangarajan v Union of India⁹⁶, bench consisting of Kailasam and Maharajan, JJ., the driver of the lorry, defence personnel while driving the lorry for taking carbon dioxide from the factory to the ship, the accident occurred. A small boy of 10 years old was knocked down, making him permanently incapacitated. This was due to the rash and negligent driving and there was no fault on the part of the child. The court held that the accident occurred while the lorry was being driven in the exercise of sovereign function so as to exclude the liability of Union of India. The court held that the accident occurred while the lorry was being driven in the exercise of sovereign function so as to exclude the liability of Union of India. But the court felt it as injustice to deny compensation for the injury caused

⁹⁶ AIR 1975 Mad 32.

to the boy on the ground of sovereign function so the court strongly recommended to the government to make an ex-gratia payment of Rs. 10,000/- to the boy as it would be cruel to tell the boy suffering from grievous injuries and permanently incapacitated that he was not entitled to any relief as the vehicle was being driven in the exercise of the sovereign function of the State. The court itself began to feel that it was not justifiable to decide a case on the ground of sovereign immunity, in cases of causing damage by the employee of the State.

In *Smt. Basava Kom Dyamogonda Patil v State of Mysora*⁹⁷ (the bench consisting of P.N. Bhagawathi, R.S.Sakkaria and S.Murtaza Fazal Ali JJ) theft took place in the house of the plaintiff. plaintiff's stolen articles including large number of ornaments and cash worth more than Rupees ten thousand were recovered and produced by the police before the magistrate, who directed the sub-inspector to keep them with him in safe custody to get them verified and valued by a gold smith. After the trial was concluded the plaintiff submitted a request to return the articles or for the value of the goods. But they were stolen from the Malkhana, the police guard room. This request for the claim of goods was disallowed by the court on the ground that the articles were not in the custody of the court. He appeal to the Sessions court and then to the High court failed, then she filed an appeal before the Supreme Court. In a proceeding taken under section 517 of the Code of Criminal Procedure 1898, the Supreme Court observed that "Seizure

⁹⁷ AIR 1977 SC 1749.

of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner, after the necessity to retain it ceases”.

It was also held that ‘property is stolen, lost or destroyed and there is no prima facie defence made out that the State or officers had taken due care and caution to protect the property, the magistrate may in appropriate cases, where the ends of justice so require, order payment of the value of the property’. Thus the appellant was held to be entitled to receive the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant and the idea of returning the restored property to the original owner after the necessity to retain it ceases, is a best example to show that the Supreme Court began to take a step forward to determine the governmental accountability for the negligent acts committed by the officials of the State. Here the court had adopted a liberal approach in interpreting the area of State liability without considering the decision taken in P & O and Kasthurilal. Even then the judiciary was unable to lay down a clear cut test to determine State liability. In a modern perspective it is not necessary to consider the so called distinction of sovereign and non-sovereign for the determination of State liability.

In *Iqbal Kaur v Chief of Army*⁹⁸ the damages claimed under Section 110 B of Motor Vehicles Act 1939 against the driver of the military truck and the Union of India for negligent and rash driving in which the deceased was

⁹⁸ AIR 1978 All 417.

killed. The claim was opposed on the ground that the accident was caused due to the negligence of the deceased and not due to the negligence of the driver of the vehicle. The contention on behalf of the Army Chief was that the vehicle did not belong to them. The vehicle was used for training recruits and the driver was engaged in the performance of statutory duty. The claims tribunal held that the claim was not sustainable since the driver of the vehicle was not driving rashly and negligently and the military officers were not liable since the vehicle did not belong to them and the Union of India will not be liable since the driver was engaged in his statutory duty at the time of accident.

But the Allahabad High Court held that the accident occurred due to the rash and negligent driving of vehicle and the driver as well as the Union of India were liable and rejected the plea that the act resulted in the exercise of statutory sovereign power because the truck was engaged in imparting training to the new recruits. Even if the military officers were engaged in the statutory sovereign duty at the time of accident, it was due to the rash and negligent driving so there is no need to distinguish the function as sovereign and non-sovereign. After causing death what is the justification in claiming privilege on the ground of statutory sovereign function. Here the trial court failed to consider these points and the High court also decided the case on the ground that at the time of accident they were imparting training so not engaged in sovereign function.

In *Nandram Heeralal v Union of India*⁹⁹, Indore bench consisting of G. L. Oza and G. G. Sohani JJ, In this case appeal has been filed by the two appellants parents of deceased Santoshkumar, who died as a result of an accident on the Bombay Agra Road by a military vehicle driver of army employee. It was alleged that at the time of the incident Santoshkumar who was about six years of age was standing on the left side of the footpath by the side of the road. At that time an army vehicle which was coming from Manpur was being driven at a high speed and in a negligence manner. This vehicle collided against the boy standing on the side of the road, as a result of this accident the boy was taken to the hospital where he ultimately died. Union of India contended that vehicle was being driven while discharging his duties carrying military personnel was discharging sovereign function of the state.

The Court stated that today, hardly any one agrees that the ground for exempting the sovereign from suit is either logical or practical. We do not also think it necessary to consider whether there is any rational dividing line between the so called sovereign and proprietary or commercial functions for determining the liability of the state. The concept of sovereign functions and the immunity of the state from tortuous liability is not accepted in the modern context. The government is vicariously liable for the tortuous acts of its servants committed in the exercise of its sovereign functions or in exercise of the sovereign powers delegated to such public servants. Though

⁹⁹ AIR 1978 MP 209.

maintenance of army is a sovereign function of Union of India, it does not follow that the Union is immune from all liability for any tortious act committed by army personnel. It has been passed that the respondent held liable for the compensation amount awarded in favour of the appellants.

In *Lucknow Development Authority v M.K. Gupta*¹⁰⁰ bench consisting of Kauldip Singh and R.M. Sahai, JJ., Lucknow Development Authority undertook certain plots of land for the construction of dwelling housing units. After the construction was complete the authority invited applications from the desired persons for purchasing the flats. Since the number of applicants were more, the authority decided to draw it on lots, and so a flat was allotted to the respondent. He deposited the entire amount in July 1988 and the flat was registered in his name. Thereafter he approached the authority to hand over the possession of the flat to the respondent that could not be done because the construction was not complete.

The respondent approached the authority but no steps were taken to hand over the flat to him. Consequently he filed a complaint before the District Forum that even after the payment of the entire amount by the respondent possession was not handed over according to their terms and conditions. The State Commission by its order on Feb 15, 1990 directed the appellant to pay 12% annual interest upon the deposit made by the respondent and to hand over the possession after the completion of work within June 1990. In case of failure of construction of flat within the time

¹⁰⁰ (1994) SCC 243.

allotted, to handover the flat to the respondent, by determining the deficiency in the work and estimate the amount required for the completion of work and directed to refund the same amount to the respondent. Instead of complying with the order of the court, the State authority approached the National Commission challenging the jurisdiction of the courts in issuing such an order. The Lucknow Development authority constituted under the State Act to carry on planned development of the cities in the State were amenable to Consumer Protection Act 1986 for the act or omission relating to housing authority such as delay in delivering the possession of house to the allottees non-completion of the flat within the stipulated time or defective or faulty construction.

Dismissing the appeal the court held that it is not necessary to consider whether there is any rationale or dividing line to determine whether the act was sovereign or non-sovereign for determining the liability of the State. By the sovereignty vested in the hands of the machinery, it was obliged to comply with its duties. In case of failure to do the duty by the public functionaries or any capricious or malicious act by the authorities, the complainant was entitled to compensation and the State could not claim the privilege. The cross appeal filed by the respondent was allowed and it was further directed the appellant to pay the Estimated amount of Rs 44,615 for the completion of work to the respondent. The Commission held that the action of the appellant amounted to harassment, mental torture and agony

to the respondent and it directed the appellant to pay Rs 10,000 as compensation.

The judiciary itself felt the difficulty in applying the principle of sovereign and non-sovereign without any rationality and guidelines. The court also expressed that the constitutional machinery is obliged to be people oriented. It is better to fix the liability of the State without giving privilege in case of negligence and abuse of power. There must be accountability or social responsibility for the wrong of its servants.

In *Jay Laxmi Salt Works (p) Ltd. v State of Gujarat*¹⁰¹, the State of Gujarat made a plan to erect reclamation bund to prevent the flow of sea water into certain areas and accordingly the construction was completed in 1955. Before constructing the bund, the appellant approached the concerned authority to abandon the idea of construction of bund or to change the location of it otherwise it would cause destruction to his factory. They did not accede to it. When there was heavy rain fall, the water level in this bund increased to a higher level, he approached the concerned authority to limit the water level in this river. Due to the negligence of the concerned authority the water level rose to such an extent it burst the bund and the water overflowed into the premises of the appellant's factory. Aggrieved by this, he claimed compensation of Rs. 4 lakhs from the respondents. Then the committee was appointed to assess the loss suffered

¹⁰¹ (1994) 4 SCC 1.

by the appellant and it was estimated as Rs. 1,58,735/- since this amount was not paid he filed this for compensation.

The defence of the State was that the suit was not maintainable because of time barred and there was no negligence on the part of the State in constructing the bund; besides the estimate made by the committee could not be accepted by the State. The trial court dismissed the suit accepting the contentions of the State and concluded that the damage occurred because of the Act of God. On appeal before the Division Bench of High Court the single judge found that the construction of bund was for non-natural use of land. There was negligence in the act of planning and the construction by the officers concerned. The Learned judge set aside the finding of the trial court that damage was caused due to the Act of God yet dismissed that the suit was time barred.

Due to the difference of opinion regarding the decision this was referred to a third bench. They considered that liability arising out of tort was due to breach of duty and that is towards the people generally. What is fundamental is the injury and not the manner in which it had been caused. Strict liability, absolute liability, fault liability are all for the benefit of the society. In order to get redress from court it was necessary to claim by the aggrieved in a particular category of wrong so the appellant challenged it under the head negligence.

Rule in Rylands v Fletcher¹⁰² is that strict liability arises, from the presence and absence of mental element. A breach of legal duty willfully or deliberately or even maliciously done is negligence, emanating from fault liability but injury or damage resulting without any intention yet due to lack of foresight is strict liability. What is fundamental is that there must be injury and not the manner in which it has been caused. No one has the right to cause harm upon others intentionally or innocently. In this, the court preferred the rule of fault liability and took decision in favour of the appellant. Negligent in the performance of duty was only a step to determine, if the action of the government resulting in loss or injury to common man should not go uncompensated. If the construction of bund was for common man or public duty then any loss or damage arising out of it gave to tortious liability. In the modern developing sense, the common man could not go unredressed because the wrongdoer was the State. The suit of appellant for Rs. 1,58,735/- as the amount of damage determined by the trial court was decreed with costs and also directed to pay the interest also as fixed by the court.

In this case, the court said that if any loss or damage is caused due to the act of the State, it is bound to compensate the aggrieved. The problem seen in all these cases is that even if judiciary faces difficulty with the principle of sovereign immunity which is one of judicial creation, and was introduced while deciding P & O, they could not abrogate it by their

¹⁰² (1868) L.R. 3 H.L. 330.

creativity. According to them remedy lies in the hands of the legislature and not in the hands of the judiciary. Any way these cases reveal that there is an urgent need to modify the existing law so as to meet the ends of justice.

In *Nagandra Rao & Co v State of A.P*¹⁰³ bench consisting of R.M. Sahaj and B.L.Hansaria, JJ, the appellant was carrying business in fertilizers and food grains legally. His premises were inspected and goods were seized under the Essential Commodities Act. On 29-6-76 proceeding was terminated in his favour and the confiscation order was quashed. Collector directed the release of the goods but sub ordinates delayed it so that the goods were spoiled and decayed in quality and quantity. The Appellant then asked for compensation which was denied and therefore he filed a suit and then the State claimed sovereign immunity. The trial court decreed the suit in his favour and the State filed an appeal before the High court which set aside the decree relying on the decision of *Kasturilal*.

In this civil appeal, the main issue was regarding the liability of the State in case of negligence of the officers of the State while discharging their statutory duty. This was answered in the negative by the High court of Andhra Pradesh on the rationale laid down in *Kasturilal*, while reviewing the decision for payment of Rs, 1,06,125,72/- towards the value of the damaged stock with an interest. There was an interest at the rate of 6% granted by the trial court for the loss suffered by the appellant due to non-disposal of the good seized under the various contract order issued under Essential

¹⁰³ AIR 1994 SC 2663.

Commodities Act 1955. The claim of the appellant was negative on the ground of sovereign power of the State. Whether the seizure of the goods was in exercise of statutory powers under the Act or immunized the State from any loss or damage suffered by the owner. In this case the court clarified that in modern sense, the old archaic concept of sovereign immunity does not survive and sovereignty now vests with the people. The distinction between sovereign and non-sovereign does not exist. It depended upon the nature of power and the manner of the exercise of legislative supremacy under the constitution arising out of constitutional provision. The Executive was free to implement and administer law. The defence available to the State were for raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory were the factors which were indicative of external sovereignty and were political in nature. So they were answerable to the jurisdiction of the civil court. The necessity to accept a new law in keeping with the dignity of the country and to remove the uncertainty etc was considered and then the appeal was allowed.

The court distinguished *Kasthurilal* from this case, in *Kasthurilal* the function of the police like search and seizure is an inalienable sovereign function of the State while in *Nagendra Rao* the State engaged in commercial activities and committed negligence where sovereign immunity is not a defence. Even if similar power is conferred under the Essential Commodities Act who exercised statutory power while searching inspecting

and seizing the property or goods, no constitutional system can condone the negligent functioning of the State its officers. When a citizen suffered any damage due to the negligence of the employee of the State the latter was liable to pay damages and the defence of sovereign immunity would not absolve it from this liability. Now the application of sovereign immunity is limited and sovereign and non-sovereign based on any of the rationality, is no longer allowed to exist.

The court stated that no civilized legal system could allow an executive to pay with the people of its own country. Uncertainty of law results in the abuse of judicial power. According to justice Holms certain justice is better than uncertain justice. The State and the laws are for the benefit of the people so there is no need of hesitation in making law in this line. In this case the court admitted the need of the State to have an extraordinary power but at the same time the State cannot claim sovereign immunity for the suffering caused to the common man by its officers acting illegally or negligently. In this case, the court determined the liability of the State with intent to compensate the plaintiff for the damage or loss suffered by the victim due to the act of government employee, the court have overruled Kasthurilal's decision at that time. Any way the court expressed its difficulty in deciding the case due to uncertainty of law. Though the decision of the Supreme Court in this case, restricted the decision of Kasthurilal to a considerable extent it failed to provide a satisfactory solution. So even after this decision, if a tort is committed by the State while repressing crime,

maintenance of public order, the plea of sovereign immunity absolve the State from liability. There are area where human rights violation are on the increase¹⁰⁴. But the ill effect of the sovereign immunity of the State still stands and this has to be rectified by the State as early as possible.

In *P. Gangadharan Pillai v state of Kerala and others*¹⁰⁵, bench consist of Mrs. K. K. Usha, J., On the murder of a priest of the mosque at Kattoor, there arose communal disturbance in certain parts of Kerala which led riot in some places. There was a 'harthal' in Fort Cochin area to protest against the murder of the priest. Respondents who were in charge of law and order in the district were aware of the fact and no any precautions were taken in time. On 19/10/1990, 11.30 in the morning about 100 persons armed with deadly weapons and instruments attacked petitioner's business premises caused severe damage to the doors and windows and entered the hotel. Petitioner is staying at about 18 km from the place where the hotel is situated. Workers who were inside the hotel were threatened by the mob, and destroyed valuable items of properties inside the hotel. Though the respondents were aware of the possibility of such riots in Fort Cochin area but respondents miserably failed to discharge their duty, and filed a suit against the state claiming damages.

It has been contended that so long as the petitioner has no legal right to claim compensation of violation of his fundamental right under Article 14

¹⁰⁴ Girish, "Compensating the Victims of Human Rights Violation-Need for Legislation", The Academy Law Review (Vol 22 : 1&2) 1998 p.178.

¹⁰⁵ AIR 1996 Kerala 71.

of the constitution on the ground he was denied compensation. Petitioner is not entitled to claim any compensation as per law. But it has been well settled by the court that this court can pass an order in exercise of its jurisdiction under Article 226 of the Constitution for payment of money if such an order is in the nature of compensation consequential upon the deprivation of fundamental right. The award of compensation in proceedings under Article 32 by Supreme Court or under Article 226 by the High Court is a remedy available under public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. So the respondent is liable to compensate the petitioner for violation of his fundamental right.

Taking into consideration all the facts and circumstances of this case the court stated that interest of justice will be served if the respondent is directed to pay an amount of Rs. 35,000/- as compensation within a period of one month with interest at the rate of 12% from 01/05/1991 till the date of payment.

In the State of Haryana and others v Smt.Santra¹⁰⁶, the respondent underwent a sterilization operation at the general hospital, Gurgaon as she had already seven children and there was the advantage of the scheme of sterilization launched by the State government of Haryana. She was then issued a certificate that her operation was successful. Even though she was

¹⁰⁶ (2000) 1.SCC 182.

assured that she would not conceive a child in future, she conceived and gave birth to a female child, so she sued for compensation for Rs 2 lakhs as damage for medical negligence. The explanation given by the medical officers was rejected by the trial court. The trial court as well as the lower court recorded the concurrent findings that the sterilization operation performed upon Santra was not complete as the operation was conducted on the right tube but left the other tube untouched. The courts expressed that there was exhibited negligence on the part of the medical officers. In spite of the unsuccessful operation, she was informed that she would not conceive any child in future. The High court also dismissed the second appeal. Before the Supreme Court one of the contentions was relating to the vicarious liability of the State for the negligence of its officers in performing the operation. But the State contended that the negligence of the medical officers in performing unsuccessful sterilization operation would not bind the State.

By rejecting the theory of sovereign immunity, in the light of *N. Nagendra Rao & Co. v State of A.P.*¹⁰⁷. *Common Cause, A Registered Society v Union of India*, the court decreed the suit for a sum of Rs. 54,000/- with an interest of 12% and this decree was affirmed by the appellate court and the High court. This implementation programme was in the hands of government officers involved in the family planning programme. So she was entitled to claim full damage from the State government to enable her to

¹⁰⁷AIR 1994 SC 2663.

bring up the child at least till she attained puberty. In the above cases the court was reluctant to apply the principle of sovereign immunity, while fixing the liability of the State.

In the electricity Board v Shail Kumari and others¹⁰⁸, the cyclist aged 37 was electrocuted from broken live wire that had fallen on the public road. The claim for damage filed by the dependent of the deceased was resisted by the board. Then the High court directed the board to pay compensation of Rs 4.35 lakhs to the claimants. Before the Supreme court, the appellant sought exception to the rule of strict liability. Even assessing that all safety measures had been adopted by the board, if the activity was hazardous or risky exposure to human life, it would be under the law of torts to pay compensation for the injury suffered by him. The basis of such liability was foreseeable, risk inherent in the very nature of such activity. The defence of "Act of stranger" would not apply in this case because there was no evidence to show that the board had anticipated the act of strangers and it had already taken precautionary measures to prevent it. In this case the court expressed its view that even if all safety measures had been provided if the activity affects the human life, it is the bounden duty to pay compensation. This principle is application only in case of hazardous cases so the victim has to prove that the case comes within the purview of this category. So this principle can be enforced in certain circumstances as specified in Rylands v Fletcher. This can be applied in cases relating to State liability by taking into consideration its duty. In a welfare State it engages in all activities which are beneficial to the society.

¹⁰⁸ (2000) 2 SCC 162.

In State of A.P v Challa RamKrishna Reddy and Others¹⁰⁹ , bench consisting of S. Saghir Ahmad and D.P.Wadhwa, JJ. In the instant case the deceased, father of claimant and claimant were involved in criminal case. The deceased as also his son who apprehended danger to their lives had informed the Inspector of Police that there was a conspiracy, to kill them and their lives were in danger, the inspector did not treat the matter seriously and said that no incident would happen within the jail. In spite of representation made by them, adequate protection was not provided to them. Extra guards were not appointed for duty. But a bomb was hurled into the cell and in the bomb explosion his father died and the respondent suffered serious injuries. When sued for compensation the State raised the defence of sovereign immunity.

The trial court allowed the contention and dismissed the suit on the ground of sovereign immunity relying on Kasturilal Ralia Ram Jain v State of U.P that the maintenance of jail is a part of the sovereign activity of the government and so suit for damages would not lie as the State was immune from being sued on that account. On appeal the High court also relied on the decision of Kasturilal but did not dismiss the appeal. But the court clarified that the right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the state has the authority to violate that right. It is a part of fundamental right of a person and a person cannot be deprived of his life and liberty except in accordance with the procedure established by law and the suit was liable to be decreed as the officers had acted negligently without taking adequate precaution even after sufficient information was given by the petitioner and his father about the danger to their lives.

¹⁰⁹ AIR 2000 SC 2083.

On appeal before the Supreme court, so far as fundamental rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the government attitude continues to be conservative and it tries to defend its action or the tortuous action of its officers by raising the plea of immunity for sovereign acts or acts of state, which must fail. The court referred to the observation made by the court in *Nagendra Rao & Co and Common Cause, A Registered Society v Union of India* and rejected the theory of sovereign immunity. The Supreme court stated that the concept of public interest has changed with a structural change in the society. No legal or political system can place the State above the law as it is unjust and unfair for a citizen to be deprived of his property by the negligent act of the officers of the State without any remedy. The basis of sovereign immunity has gone round and now the emphasis is more on liberty, equality and rule of law. The watertight compartmentalization of the functions of the State as sovereign and non-sovereign or governmental or non-governmental is not sound.

It is contrary to the modern jurisprudential thinking. The need of the State to have extraordinary power cannot be doubted. But statutory power being statutory duty for the sake of society and the people, the claim of a common man or ordinary citizen cannot be thrown out because it was done by an officer of the State even though it was against the law and negligent. The needs of the State, duty of its officials and the right of the citizen are required to be reconciled so that the rule of law in a welfare State is not shaken. In a welfare State, the functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere educational, commercial, social,

economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared.

Therefore, the functions like administration of justice, maintenance of law and order and repression of crime etc which are among the primary and inalienable functions of the constitutional government the State cannot claim any immunity. In this case the court referred the case of Common cause, A Registered Society v Union of India in which after going into the history of sovereign immunity which existed during the time of East India Company, this theory was rejected. Then a series of cases like Nilabati Behera v State of Orissa, death of Sawinder Singh Grower and D.k. Basu v State of West Bengal, decided protecting human rights and fundamental rights and promoting human dignity and so the law marched ahead like Pegasus. Still the government attitude clings to the old doctrine of sovereign immunity and it tries to defend it in the name of immunity or Act of State. After stating the above reasons the appeal filed by the State was dismissed. The judiciary took a progressive attitude in protecting and promoting the rights of the people. Now it is necessary to have a change in the attitude of the government. It is the need of the hour to modify the existing law in this line still the government goes back and cling on to old principle of sovereign immunity.

In State of Punjab v Des Raj and Others¹¹⁰, the plaintiff filed a suit for recovery of damages for malicious prosecution launched against him by one food inspector. The plaintiff was illegally detained for seven days based on false report

¹¹⁰ AIR 2004 P & H 113.

made by the said inspector, both the trial court and the first appellate court, found the plaintiff innocent and a lurching of prosecution against him and his consequent arrest was malicious. Damages were qualified as Rs. 2000/- holding the State vicariously liable for illegal and the wrong act done by its agent. The appellate court held that the State could not be immune from the consequence of the act of its agent.

In *Rakesh Sami and others v Union of India*¹¹¹, passengers were hit by a running train when they were boarding another train and the total failure of electricity at the relevant time. The deceased along with other passengers were compelled to cross the railway track meant for the incoming train to board the train standing at the outgoing track. There was Negligence, on the part of railway, in not providing proper platform as well as over Bridge. Compensation awarded to the dependents of the deceased, compensation would amount to Rs. 4,75,200/-

In *State of Jammu & kasmir v Zarina Begum and others*¹¹², Mohammad Bashir was electrocuted on 2nd August 1996. He came into contact with a broken live electric wire when he proceeded towards the main road. Negligence was attributed to the officials of the electricity department. The deceased, 30 years of age was earning Rs. 150/- per day. The total income of the deceased was said to be Rs. 4,500/- per month. Breach of duty and the consequence damage failure to keep required caution and safeguard would amount to negligence which were actionable under law. The court held that the State could be made liable to pay damages on account of negligence on the part of officials. The question as to

¹¹¹ AIR 2004 Del. 107.

¹¹² AIR 2004 J&K 23.

whether the appellant State was liable to pay damage and whether the negligence could be attributed to it was examined. The violation of duty was considered by the Division Bench and the compensation was calculated by considering the deceased person's earning per day Rs. 150/- and his compensation was fixed as Rs. 5,08,000/-

From the above cases, it was concluded that decision and the observation of Justice Pea Cock in P&O, made confusion in distinguishing sovereign and non-sovereign function. This became more evident in the case of Nobin Chander Dey and Hari Banji when they interpreted the law differently in determining the immunity in the light of P&O. The interpretation followed in Nabin Chander Dey influenced the court more, than the 'Act of State' principle of Hari Banji. There was no doubt about the liability of the State in cases of non-sovereign functions.

From these cases, it was clear that the court faced the difficulty to decide whether the particular act of the State in question is sovereign or non-sovereign. There were no guidelines issued by the court or legislature for demarcating these two functions. Really there is no rationale in distinguishing it, because of this perplexity, in certain cases, the court adopted the traditional custom of treating the function as sovereign and non-sovereign as the sovereign functions cannot be done by private persons but in the case of non-sovereign functions, which can be done by private persons, the State was held liable. While determining liability for the non-sovereign functions, the court in certain cases applied the theory of benefit and ratification to restrict the liability of the State for non-sovereign functions also.

In *State of Madhya Pradesh v Smt. Shantibai*¹¹³, the bench consisting of S.P.Khaere, J., On 26/12/1989 there was a strike of the students against the reservation policy of the government. There was traffic jam and violence. The police personnel resorted to using tear gas and lathi charge. Even then violence increased and therefore they fired in the air so that mob may disperse. The bullets from the firearms of the police hit the two ladies who are the plaintiffs and who were standing on the roof of their house which was at a height of about 10 feet from the ground. These ladies were injured. They were admitted in hospital. The plaintiffs claimed an amount of Rs. 1,75,000/- as compensation, according to them they spent about Rs. 25,000/- in medical treatment. They claimed remaining amount as general damages for the pain and suffering and permanent disability.

In the present case the only question to be decided is whether the doctrine of sovereign immunity is attracted and the state can seek protection under it. The doctrine of sovereign immunity in England was based on the common law maxim: 'king can do no wrong'. The crown was not liable in tort at common law for wrongs committed by its servants. But the Crown Proceeding Act, 1947 abolished the doctrine of sovereign immunity and thus it disappeared from the country of its origin. In *Kasturilal* case Supreme Court held that the state is not liable if the wrongful act was committed by its employees in exercise of delegated sovereign power. In certain decision of the court the doctrine of sovereign immunity found

¹¹³ AIR 2005 M.P 66.

reference. But in the subsequent decisions the Supreme Court narrowed down the scope of sovereign immunity and stated that the defence of sovereign immunity is not available when the state or its officers acting in the course of employment infringe a person's fundamental right of life and personal liberty as guaranteed by Article 21 of the Constitution. In Rudul Shah case Supreme Court laid more emphasis on the principle that if a tortious act has been committed causing injury to any person he would be entitled to claim reasonable compensation from the state for the wrongful act done by its employees. The maintenance of law and order and repression of crime are the traditional sovereign functions of the state and the doctrine of sovereign immunity must be confined to that sphere alone. In that field also state can be liable to pay compensation to its citizens if their fundamental rights have been violated and they suffered injuries on that account.

In view of the above legal position the plea of sovereign immunity is not available to the state. The plaintiff sustained injuries at the hands of police officers even though unwillingly, they deserve some compensation from the state to repair the damage done to them. As per the judgment of the court the amount of Rs. 50,000/- has been awarded as compensation to Shantibai and amount of Rs. 25,000/- to Jagrani with interest at the rate of Rs. 12% per annum.

In *Jeetindera Singh v State of Himachal Pradesh and others*¹¹⁴, the bench consist of Kuldip Singh, J. in this case the appellant was coming from Tarna Temple, Mandi, where he received bullet injury. He fell down and was taken to hospital. Due to bullet injury appellant suffered 25% permanent disability. The injury suffered by the appellant was on account of rash and negligence act of the police force deployed by the respondents. The agitators of Anti Mandal Commission got violent, started raising slogans and set on fire the government and private property. The respondents use all lawful means to prevent mob from further arson and violence. The appellant was injured due to police firing. The appellant filed suit for recovery of Rs. 1,00,000/- damages on account of bodily injury, loss of earning capacity, loss of job, mental shock, loss of health and money spend by the appellant on his treatment along with interest. The respondents contested that the officers were performing sovereign function of the state and limitation. The police had been performing sovereign function for saving the lives and property of government. It has been submitted that in order to prevent the bigger loss of life and property use the force and opened fire so as to protect the public, private property of innocent lives. The police action of opening firing was taken into large public interest and that too strictly in accordance with law. In case the appellant has sustained bullet injury, the appellant is not entitled to damages on account of the sovereign immunity of the state.

¹¹⁴ AIR 2012 HP 61.

The trial court held that there is no evidence to prove that before opening of fire warning was given to the crowd to disburse from the place, the opening of fire by government servants was not only rash and negligence but the same was also illegal, therefore, the state would not entitled to any immunity. After referring previous cases and in view of the above legal position it has been decided by the court that the plea of sovereign immunity is not available to the state in the present case. The plaintiffs sustained injuries at the hands of police officers even though unwittingly. They deserve some compensation from the state to repair the damage done to them. They were innocent victims.

After the commencement of the constitution, a considerable change was made by the judiciary, by narrowly interpreting the sovereign immunity to protect the right of the citizen of a democratic country, as decided in Vidyawathi's case. In an action against the negligent or arbitrary acts of the employee of the State, under the statutory function like injury due to rash and negligent driving, seizing the goods illegally and arbitrarily by the employee and refusing to return the goods even after the conclusion of trial was over. Thus the courts began to limit privilege to the consequence of the act. In cases like Nagendra Rao and Lucknow Development Authority, the court was reluctant to consider the sovereign immunity but is not inclined to overrule the decision of Kasturilal. Because of uncertainty in distinguishing these functions, decision depends on the discretion of judges.