

## ABSTRACT

It is observed that in recent years the state has become a major litigant in the court of law on the one hand government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State on the other hand till today a comprehensive enactment delineating the liability of state in case of its tortious act has not been promulgated. Tortious liability of the state is assessed through judicial Interpretation and activism alone. The important of my study in this area is given to see whether human rights of the citizen are protected properly with the present legal system by providing remedy to the victim and by imposing punishment to the wrongdoer and on the other hand my study is to know whether our present law is adequate to fixing the liability of the state in case of human rights violation by the agencies.

In India we do not have any separate act to deal with liability of state in tort. In England Crown Proceeding Act, 1947 deals with the liability of Crown regarding tort committed by its servant. Liability of Crown is just like the private person. Similarly in Australia Federal Tort Claims Act, 1946 deals with the liability of the State for the wrong committed by its servant. However, Article 300 of the Indian Constitution state that Government of India and of state can be sued for their Tortious act. As this Article does not enlist the circumstances under which we can sue the state for the Tortious act of its servants. We should analyze the pre-constitutional decision in this regard. Article 300 of the Constitution does not provide for the liability in

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clear terms and this Article refers back to the pre-Constitutional laws like Government of India Act 1935. The Act of 1935 refers to the Act of 1915 which in turn refers back to the Government of India Act 1858. Thus one must reach the time of East India Company in order to determine the extent of liability of Government in India today. This is certainly a strange way of determining the liability of a state governed by the constitution. It is because of this strange way with resultant confusion and complexity that the law commission recommended legislation on the subject. Accepting the recommendation the Government introduced two Bills on the "The Government Liability in Tort" was first introduced in parliament in 1965, but it could not be enacted into law.

There were several criticisms regarding the law relating to state liability in Torts. The law commission asked why the Government should not be placed in the same position as a private employer subject to the same rights and duties imposed by the state. The commission recommended several times to modify the existing law and introduce the Bill to amend the law in this regard to make the state liable like that of an ordinary person. Late Dr. Rajendra Prasad, President of India took initiative for considering the law Ministry of India to amend the law similar to English Crown Proceedings Act 1947. This matter was referred by the law commission and went through similar laws existing in different countries and submitted the first Law Commission Report in the parliament on August 31<sup>st</sup>, 1965 but this lapsed due to the dissolution of third Lok Sabha. This was reintroduced in the year 1967 (The Government Liability In Tort Bill 1967) but the government allowed the bill to lapse on the ground that if it was enacted it would bring rigidity in determining state liability in Torts. It was stated that the Bill will do away with Judicial discretion to determine the sovereign and non sovereign. The court failed to produce any Jurisprudence as to the liability of the state. The better course the court would have adopted by overruling the unfortunate law which is the creation of the Judiciary so that that the remedy can be obtained from the lowest court as envisaged in the common law system, so that the error in

the judgment can be cured . A Bill was again presented in the Lok Sabha on March 25<sup>th</sup> 1969 to make uniformity of law in India in this aspect making the government liable like that of an ordinary person of full age and capacity. This bill exempted the state from liability if any acts were done in good faith. By providing exemption actually it was protecting the rights of the state then protecting the rights of the citizen. Even after sixty six year of Independence no sincere efforts has been made to modify the law relating liability of state in Torts. Modern views butter the concepts that state is the guardian of the citizen. So the dominant theme of twentieth century private law has been the replacement of tort liability by the principle of compensation. The controversy whether the state should be made liable for the wrong of its servants is in fact is the liability of the state itself and the ground on which the state claimed immunity was the doctrine that as the makers of the law must be beyond the reach of tentacles. Now there is no satisfactory provision to fix the liability of the state in India. The distinction between sovereign and non sovereign brings an unending confusion. The law being the civilizing machinery of the people, it is necessary to make the law as a predictable working system.

The law of torts had originated from common law and this branch of law continues to be uncodified. As a law of torts is basically a Judge made law and are required to study it in the light of judicial pronouncements. The law of torts forms an important division the English Jurisprudence. From the English soil it has travelled outside the countries like USA, Australia, Canada, Newzerland etc and entranced itself as the significant branch of their Jurisprudence. Generally our Courts follow the principle of English law as there is no specific enactment on the law of Torts. However it is not obligatory on the part of Indian court to follow the English law. Except it court in India are guided by the principle of justice, equity and good conscience. Tort means the violation of legal duty which the wrongdoer owned towards the victim. Thus the presence of legal right and failure to obey the legal duty to protect that right constitute Tort.

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. While deciding cases by the Court, 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 as sovereign or non sovereign. Really there is no rationale in distinguishing it, in certain cases the Court adopted the traditional method of treating the function as sovereign and non sovereign, as the sovereign function cannot be done by private person but in the case of non sovereign function 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 function also.

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