Chapter VI

Tortious Liability of State and its Remedies in USA

Constitution of every nation guarantees some exclusive rights to its citizens and it is the duty of the democratic nations to protect these rights, the violation of which can be remedied under the respective Constitutions. Although the provisions of the Constitution of the United States of America are relatively different, regard might be had the position in that country in view of the fact that they have a similar Bill of Rights which did to an extent serve as a model of our own. Section 3 of Article III of the U.S Constitution states that "the judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Law of the United States……", but traditionally the Constitution has been put to 'defensive use' and has not been made nullification of the effect of constitutional violations, as in *Mapp v. Ohio*[183] where it was held that evidence gained by the State in contravention of the Fourth Amendment could not be used in the courts.

6.1. Law relating to state liability in U.S.A.

In American legal system, the Rule of Law was absent in the field of government liability, as the government could not be vicariously liable, since it could not be subjected as defendant on the theory. There can be no legal right as against the authority that makes the law on which right depends. The reason for adapting the sovereign immunity principle in American legal

[183] 367 U.S. 643 (1961), 6L. Ed. 2d 1081.

system may be financial instability of the American states after the revolutionary war.

Garner in an article seeking to explain Anglo-American approach towards administrative law commented that it is difficult to understand how in a democratic republic the people could have accepted the doctrine of immunity of the state its non-liability for damages inflicted by its agents on private individuals[184].

However, the U.S. Supreme Court for the first time in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*[185] held that they violation of the Fourth Amendment could be made the basis for a civil suit in the Federal District Courts against the erring officers. In Bivens, six agents of the Federal Bureau of Narcotics entered the appellant's residence in the night and arrested, manacled and searched him. He was then taken to the New York Headquarters of the Federal Bureau of Narcotics where he was interrogated, fingerprinted, photographed, booked, stripped and searched again. The court was of the opinion that in the absence of any effective alternative remedies, the Fourth Amendment could directly be made the basis of an affirmative cause of action for damages without waiting for a legislative mandate to do so. The fact that the remedy made available was against the officers concerned and not against the Federal Government, and that it could be availed of only in the Federal District Courts is immaterial to

[184] G.P.Verma, State Liability in India: Retrospect and Prospects, Deep and Deep publications, New Delhi, (1993) p.69.
[185] 403 U.S. 388 (1971), 29 L. Ed. 2d 619.

the point sought to be made: the fact remains that an affirmative remedy based directly on the Constitution was given sanction by the Supreme Court of the United States in this case.

Besides a host of other cases dealing with various other provisions of the Bill of Rights which were terminated at the stage of the various U.S. Circuit Courts of appeals[186], the U.S. Supreme Court itself has extended its decision in Bivens in two other cases dealing with the implication of a cause of action for damages directly from other provisions of the Constitution. In *Davis v. Passman*[187], a lady who had been dismissed from employment by a U.S. Congressman on the ground that she was a woman, was permitted to sue him in the "Federal District Court directly on the basis of the violation of her right to equal protection which has been read into the Fifth Amendment. Again in *Carlson v. Green*[188] the Court extended the facility of a "Bivens' type action" to persons whose rights under the Eighth Amendment had been violated. Here the mother of a man, who it was claimed had been denied proper medical treatment by officials and had, therefore, died in prison, was permitted to sue on the basis of the Eighth Amendment prohibition against cruel and unjust punishment. It is evident from these decisions that the rights guaranteed in "the Bill of Rights" in the American Constitution are limitations on the State powerful enough to be directly

[186] For a list of cases decided by the various U.S. Circuit Courts of Appeal see the Annotation by G.K. Chamberlin, Implication of Private Right of Action from Provision of United States Constitution- Federal Cases, 64 L.Ed. 2nd p. 872.
[187] 442 U.S. 228 (1979), 60 L. Ed. 2nd 846.
[188] 446 U.S. 14 (1980), 64 L.Ed. 2nd 15.

made the basis of a cause of action for damages, without waiting for legislative authorization[189].

In 1791, the fifth Amendment to the Constitution of U.S.A declares- "No person shall be deprived of his life, liberty or property without due process of law". In 1798, the Eleventh Constitutional amendment was passed to restrain state immunity. Judicial activism played a vital role in abolishing the doctrine of sovereign in some stated but in some states this was left in the hands of legislation. In 1821, the first authoritative pronouncement regarding state immunity was made by Marshall C.J. According to him, no suit can be commenced or prosecuted against the United States, that the judiciary does not authorize such suit.

In 1868, the Supreme Court went to the extent of holding that no government has held itself liable to individuals for the misfeasance, laches or unauthorized exercise of power, by its offices or agents. It was thought that if the sovereign immunity principle is restricted, it would endanger the performance of public duties by the sovereign if the sovereign is repeatedly tendered with suits. In the year 1907, Justice Holmes, brought a powerful argument, supporting sovereign immunity. The Sovereign is exempted from suit because there can be no legal right against the authority that makes the law on which right depends and also the sovereign cannot exist in the

[189] Krishnan Venugopal, "A new dimension to the liability of the State under Article 32", Indian Bar Review 1984,Vol. xl. p.376,377.

absence of the government and this would be assumed only if some immunity is granted to it.

By the middle of the nineteenth century, the citizen was not satisfied with the doctrine of sovereign immunity and they preceded action against the government for getting relief. Due to the dissatisfaction by the citizen, the Court of Claims Act was enacted in 1855 and set up a tribunal to investigate on claims against government and to submit a report. It was possible only in compensating a victim of administrative action arising out of contract but not the liability in tort. The result was that talented men were discarded from entering the government service due to the fear of accountability. The officers were not financially sound enough to pay adequate compensation to the aggrieved party.

This struggle was continued by the citizen for the protection of their rights against the state. By the Twentieth century, there was a change in the attitude of people supporting sovereign immunity so that a gradual change was made from state irresponsibility to state responsibility. In 1910, certain claims for infringement of rights were recognized statutorily like compensation for admiralty and marine torts, federal employee's compensation, war, damages, postal claims against the Federal Bureau of investigations. Thus the Bill for securing damages was introduced in 1924 and 1925 and the Bill of 1928 adopted under the chairmanship of the senator which was vetoed by President Coolidge. In 1942 President Franklin Roosevelt in his message suggested a change in the law relating to

governmental liability in Tort. This change could not be brought about due to Second World War resulting in economic depression. Federal Tort Claims Act 1946 came into force. President Lincoln requested that citizen must get prompt justice from the government.

The United States adopted the principle of restricted immunity in 1952, in the so – called Tate Letter[190], although a decision of 1955 limited the practical effect of the principle by refusing the establishment of New York jurisdiction through the seizure of the assets held by the Republic of Korea, the defendant, in a New York bank. But in 1961 the state Department, in another case declared that 'where under international law a foreign government is not immune from suit, attachment of its property for the purpose of obtaining jurisdiction is not prohibited. However, the United States, like a majority of foreign states, still refuses to execute a judgment against the property of a foreign sovereign.

The restriction of government immunity has been rationalized in two different ways. The first approach, now adopted by most continental countries, substitutes for the doctrine of absolute of absolute state immunity that of qualified immunity. Foreign states, under this doctrine may or may not be immune from jurisdiction, according to the kind of activity in which they are engaged. Following the leadership of the Belgian and Italian courts which have since been followed by the courts of France and many other continental countries, a distinction, familiar in continental

[190] 26 Dept. of State Bull, 984 (1952).

administrative law between acts *jure imperii* and acts *jure gestionis* has been applied to this branch of international law. The difficulty is how to find a reasonably precise distinction between acts of the one and the other kind, in view of the many diverse ways in which governments may engage in economic and commercial activities. For this reason neither the functional test (does the state act in its sovereign capacity) nor the test of the form of the transaction is satisfactory. Any government activity may fulfill 'sovereign purposes'. But many government departments obtain their purchases and supplies in the form of commercial contracts.

The second approach, which makes the nature of the transaction the criterion, was adopted in the Brussels Convention of 1926. Under the convention, seagoing ships operated or owned by governments for commercial purposes are in time of peace subject to the same rules as those applicable to private vessels, cargoes and equipment, and do not enjoy the immunities of government property.

While this pragmatic distinction between commercial and non-commercial activities avoids the fallacious criterion of sovereignty, it leaves other doubts and difficulties unsolved. It is implicit in the doctrine that the states will continue to enjoy the traditional immunities in regard to such activities as have traditionally been held to be their proper sphere. This is not because commercial activities should be regarded as 'non-sovereign', but because any distinction between privileged and non-privileged government activities must separate out the hard core of an irreducible

minimum of government activities. While, economic activities may ,in contemporary society, be undertaken by private enterprise, governments or mixed undertakings, certain activities are universally recognized to be necessarily governmental in the practice of nations. These minimum spheres include, undoubtedly, military and foreign affairs, the administration of justice, and the activities inevitably related to them. Here the difficulties of the other tests recur, at least to a limited extent. Military operations may include purchases, service contracts and licence agreements. The conduct of foreign affairs may include broadcasting contracts or the purchase of land. These problems are parallel to the difficulties of distinguishing between *gestion poblique* and *gestion privee*, in the administrative law of France and other countries, as a criterion for the allocation of jurisdiction to either the administrative or the civil courts. But no theoretical test or principle can avoid the complexities of the concrete decision. The distinction between commercial and non-commercial activities of a state is, in contemporary conditions, a sound and necessary one, even if it is difficult to apply in certain individual cases.

The remedy by way of personal liability was futile, where the officials doing the wrong may not be financially sound enough to pay adequate compensation to the aggrieved party. The United States found a solution to this problem by enacting the Federal Tort Claims Act 1946, which set aside sovereign immunity.

6.1.1. The Federal Tort Claims Act, 1946

According to the Federal Tort Claims Act, 1946 the United States is liable only for torts of any employee of the government, while acting within the scope of his office or employment. The basic provision of the Act towards sovereign responsibility is as follows.

The United States shall be liable respecting the provisions of this title relating to tort claims in the same manner and to the same extent as a private individual under like circumstances but shall not be liable for interest prior to judgment or for punitive damage.

The state should not be liable for damages caused to private persons by its actions and it should be immune from liability in genuine cases. The legislatures and the judges were of the opinion that the state should not be responsible for all activities and not to fully curtail the sovereign immunity of the state. Borchard, who was in favour of governmental responsibility, stressed the need of limiting the state responsibility. The exceptions in the Act are mainly divided into three categories[191].

[191] The exceptions in the Act are mainly divided into three categories they are

1) Act or omission of officers while exercising their functions or abusing the power while exercising discretionary power.
2) There is no liability for intentional torts, any claim arising out of assault, battery, false imprisonment, deceit or interference with contract rights.
3) The U.S government is not liable for any claims arising out of foreign countries.

But no claim is allowed under this Act for the loss miscarriage or postal matters, assessment or collection of tax or customs duty or detention of goods by custom officials, claims in the Admiralty Act 1920, act or omission in administering trade in Enemy Act, upon the imposition or establishment or quarantine by the United States, upon the injury to a vessel or to the cargo, crew or passengers of a vessel while passing through Panama Canal or in Canal Zone Waters, upon the fiscal operation of the treasury or regulation of monetary system, activities relating to military, naval or coast guard during war, act done in the foreign country, claim arising out of the activities of the

It was stated that the first part of this section leads to a confusion that should the state always be immune from liability for what is prudently done in carrying out a statute or regulation. The second part of exception says the liability will be in the same manner and to the same extent as a private individual under like circumstances. But in the exercise of discretionary functions, governmental units should be immune from liability for damages on account of negligence, fault, mistake or abuse of discretion. If the discretion is the basis for a decision, revocation of license, denial of zonal permit then the party aggrieved has no cause of action against the government. This part also invites confusion to decide whether particular act of the government is discretionary function. The purpose of including the third category of exception is not clearly mentioned in the Act. By which the state is exempted from liability arising out of specific torts.

Law made the state of U.S liable for tort claim in the same manner and to the same extent as private individual but it provided number of exceptions in which liability can be evaded. Most of the exceptions exempt the state from liability. Today, the Federal Tort Claims Act 1946 recognizes governmental liability in principle but subject to three main exceptions with wide ramifications: i) There are exceptions for specific administrative functions or agencies as well as for all claims arising in foreign countries; ii) the Act excepts specific torts, providing that there is to be no liability of the United States for most international torts; the courts are denied jurisdiction

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Tennessee Valley Authority and activities of the Panama Rail Road Company, claims arising out of the Federal land bank a Federal Credit Ban or a bank of cooperatives.

over "any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecutions, abuse of process, libel, slander, misrepresentation, deceit or interference with contact rights",[192] iii) there is a broad exception for acts or omissions of federal officers exercising due care in carrying out statutes or regulations, whether or not they are valid and performance of discretionary functions by government employees, whether or not the discretion is abused.

The third exception has the effect of leaving the United States irresponsible in most cases in which the act causing damage is not committed by a negligent public officer, for it is only the rare situation in which the officer has not acted in the execution of a statute or regulation or in exercise of discretionary powers. "If discretions are involved, recovery against the United States cannot be had even though the act causing the damage was done negligently"[193]. According to the Supreme Court this "lay aside a great portion of the sovereign's ancient and unquestioned immunity from suit"[194]. Thus limiting the tort liability of the United States to "fault" seems unreasonable, in view of the extension of general liability in tort far beyond the "fault" principle.

[192] By the 1974 amendment, the United States is now liable for assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution committed by law enforcement officers.
[193] Bernard Schwariz, Administrative Law 565 (1976)
[194] United States v. Lillian Spelar, 388 U.S. 217 (1949)

More over there is no liability for intentional torts also. So the aim for state liability became weakened by exemption clause in *Delehite v U.S*[195]. The United States was not held liable because the case involved is concerned with the exercise of discretionary powers. The fault was in the discretion of the officers in deciding not to experiment further with combustibility of the material and in arriving at a decision to proceed with a manufacture and fertilizer. It was also found that fault was not only with the planning level but also with operational level. So neither the United States nor the negligent official may be held liable and the only way to reduce grievance was by private legislation for compensating the loss by the government. So the Supreme Court held that the wrong was done in the exercise of discretionary power neither the government nor the officials were liable for the tort committed in the exercise of discretionary power.

In *Hargrove v Town of Cocoa Beach*[196] where a suit was brought against the municipality for wrongful death of an inmate of a jail who was suffocated by smoke, majority held that municipality was liable though the function was governmental. In this case the court said that the court should be alive with the demands of justice.

[195] 346 U.S. 15.(1953) In this case large cargo of ammonium nitrate fertilizer exploded on board a ship docked at Texas City in 1947 as a result of it more than 560 persons were killed and 3000 injured and property worth hundreds of millions dollars damaged. When the suit brought against the government lower court found the negligence in production and transportation. But the act fell within the exceptional clause like discretionary power of the government.

[196] G.P Verma, State liability in India : Retrospect and prospect, Deep and Deep publication, New Delhi (1993) p.92.

In *Muskopf v Corning Hospital District*[197] the Californian court expressed:

'The rule of governmental immunity in tort is an anachronism, without rational basis and the exception operate illogically so as to cause inequality'.

The doctrine of immunity was mistaken and unjust and as an anachronism without any rational basis.

In *Monroe v Pape*[198], the police officers who broke the petitioners house, without warrant, roused them from sleep and ransacked everything in the house subjected them to torture under police custody and so the Supreme Court held that the police officers were to be held liable under section 1983. Now along with the expansion of the concept of state, the scope of this section is also enlarged. The important factors like the essence of the rule of law, corrective justice and elemental principles of justice, equal rights etc are incorporated in section 1983. Thus section 1983 compensates the wronged and at the same it condemns the wrongdoer.

Without it the action in *Elizabeth H. Dalehite*[199] would probably have succeeded. The position in State jurisdictions is better. The State of New York has completely abolished immunity in tort, thus going far beyond the federal legislation. Twelve other States established governmental liability in

[197] 55 Cal 2d 211.
[198] *Monroe v Pape* 365 US 167 (1961).
[199] Supra note 6. This combined over 300 suits brought against the United States under the Federal Tort Claims Act based on negligent handling of the ammonium nitrate fertilizer by the government which exploded gutting the entire dock area, killing more than 560 persons and injuring about 3,000. The Supreme Court held that the government was not liable because discretionary authority was involved in which "fault" was irrelevant.

most cases. In the remaining states the tort claims are granted only occasionally, seldom, or not at all[200].

It is gratifying to note that by separating planning from operation, an inevitable limitation on *Dalehite* rule has been placed, and thus the court has developed a principle of public law of tort which will go a long way in protecting against the negligent acts of the government. In *Indian Towing Co. v. United States*[201], the court ruled: "The Coast Guard need not undertake lighthouse service. But once it exercised its discretion to operate a light and engendered reliance on the guidance afforded by the light, it was obligated to use care to make certain that the light was kept in good working order[202]. The judicial behavior, however, still remains residual and variegated because "negligence" or "fault" still plays a dominant role in determining State liability.

The severity of "fault" doctrine has further been mitigated by introducing a distinction between governmental and proprietary functions. The liability has been limited to the proprietary functions alone. This distinction has been a source of unending confusion not only in the United States but in other countries also where such a distinction is followed. Needless to say that the distinction between governmental and proprietary functions is based on logical fallacy and practical absurdity and derives its justification, if any exists, from extra-legal considerations of protecting the

[200] Robert A. Leflar and Benjamin K. Kantrowitz, "Tort Liability of the States", 29 NYU.L.Rev. 1363 (1954).
[201] 350 U.S. 61 (1955). Government was held responsible for the damage caused to a ship because of the negligent maintenance of lighthouse by the coast guard.
[202] Kenneth Culp Davis, Administrative Law Text 475 (3rd ed. 1972).

impecunious small authority from liability. However, it is only desirable and equitable that an attempt to protect an impecunious state from liability should be through budgetary reorganization and not through shifting the burden to helpless victims[203]. The harshness of the "immunity" principle is further mitigated by a number of legislative and administrative measures: i) In many cases private laws are passed for granting compensation, often irrespective of fault; ii) claims are also settled by administrative machinery such as the departments for the army, interior and the postmaster-general; iii) employees who are held personally liable are often indemnified by the authority in whose service they are; iv) it is sometimes possible to bring claim for wrongful injury not under the heading of "tort", but under "taking property" which is subject to just compensation; v) many public authorities take out liability insurance, the terms of which often exclude the defence of sovereign immunity[204].

Hence all these concessions, though not in anyway less important but only mild palliatives, do not provide a cure to the deep rooted malady because they still remain concessions at the discretion of legislative and administrative authorities making the question of compensation not a matter of law but a matter of concession. Moreover, the feudalistic, authoritarian doctrine of sovereign immunity is still perpetuated, obscuring

[203] In view of the multitudinous business operations which are conducted for general welfare, the test artificially divides and truncates the ubiquitous function of a state.
[204] Walter Gellhorn and Louis Lauer,"Congressional Settlement of Tort Claims against the United States", 55 Col. L.R.1 (1955).

the proper understanding of the role and function of government in a democratic society.

It is amazing that the courts in the United States, which have developed a rich wealth of new principles in almost every field, are still groping in the dark in this area of high social visibility. Dalehite is dead but still rules from the grave. In *Melvin Laird, Secretary of Defense v. Jim Nick Nelms,*[205] the Supreme Court reaffirmed Delehite by holding that the State is not responsible for the damage caused from sonic booms by military planes under the provisions of the Federal Tort Claims Act unless negligence is proved. Therefore, the liability in tort does not arise by virtue either of State ownership of an inherently dangerous commodity or property or of engaging in an extra-hazardous activity[206]. Hence the doctrine of sovereign immunity, which is an anachronism without any rational basis, is still persisting in the United States especially in federal jurisdiction perhaps by the force of inertia[207].

6.2. Remedies available in U.S.A legal system

In U.S.A there is a written Constitution which cannot be overridden by the ordinary process of litigation, the judiciary is in a special sense, the guardian of the Constitution and so they declare a statute to be unconstitutional and invalid if it violates the rights of the citizen. But there is

[205] 405 U.S. 797 (1972).
[206] The movement generated by Rylands v. Fletcher, (1868) L.R. 3 H.L. 330, now extended to all activities that pose an undue risk to the community, has not affected the development of law in the United States.
[207] I.P. Massey, "Dialectics of Sovereign Immunity and Dynamics of Welfare Society: Need for an Independent public law of Tort" JILI 1984 at 151.

a special provision for judicial review and there the judiciary is famous for judicial activism. Section 10 of the Administrative Procedure Act 1946 is for the purpose of judicial review. In 1976, the Administrative Conference drafted a legislation by which the congress amended Sections 702 and 703 of Administrative Procedure Act to allow review of administrative action in suits against the government for relief other than money.

The study conducted by the California Law Review Commission reported that absence of malice in the torts of state's employees, the public entity has to bear the loss so that the recent trend is that of increasing liability of governmental units and decreasing liability of public officers and employees. The Supreme Court in the U.S.A. is the highest in guarding the interest of the people. Remedies are also provided by the Federal Tort Claims Act. Thus today in the words of renowned judges of the Supreme Court J. Frank further that U.S.A is famous for, review of administrative action and their Constitution is the largest and the category of court's work. Comprising one third of the total cases decided on the merits. Even then the Federal Tort Claims Act needs to be amended; otherwise it would affect the human rights and dignity of the citizen.

6.3. State Liability in French Legal System

France is a welfare state governed by the rule of law[208] and the state is subject to law and as far as liability is concerned, it ensures the

[208] S.S. Sreevastava, *Rule of Law and Vicarious Liability of government*, Eastern Law House Private Ltd. Calcutta,(1995) p.38.

governmental liability. The maxim 'king can do no wrong has been superseded by the maxim that the state can do no wrong and as a honest man it will seek to repair damages caused by its wrongful acts. The French administrative court which is adopted as a model by a number of countries, have the jurisdiction to annual illegal administrative acts, when the citizens are injured by the acts of government employee.

6.3.1. French doctrine of liability of the State

The French doctrine of the liability of the state is based on the theory that the state is an honest man and will not try to avoid responsibility to its citizens for damage done by wrongful or improper acts by raising the shield of immunity of the state[209].

The *Conseil d' Etat* which is not bound by any code or civil law and the two principles of state liability evolved from *legalite* and *responsibilities.* According to the former the administration must act in accordance with the law and in the latter the administration will be responsible for the injury to the citizen due to its unlawful act. There are two principles to deal with the administrative torts; they are *faute de service* and *faute personelie*.

In faute personelie, where there is some personal fault the official can be sued personally in the ordinary courts. In faute de service one which is linked with the service of the official, the injured party can sue the administration before the administrative courts.

[209] Durga Das Basu, Administrative law, Kamal Law House Kolkata, 2004. P 378.

In some case *faute de service* and *feute personelie* may be difficult to distinguish and a combination of the service fault and the personal fault is called a *cumul.* Then the victim can sue both in civil court and in administrative courts but that does not mean that the aggrieved party can claim from both sides. The *Conseil d 'Etat* has applied the principle of joint tort-feasor and it has the final words in apportioning the liability by contribution. The Conseil indicated that once the commune had paid the damages to the complainant, it could require to be subrogated to the latter right against the mayor for his personal fault. But this was recognized to be an imperfect and clumsy device. As a result the most injured party decided to sue only the administration in cases of cumul having regard to its bigger pocket so that the negligent officer escaped from liability. In practice these irresponsible officers were encouraged to repeat the same acts in future. Prompted from this policy consideration, the *Counsel d' Etat* decided to have a direct action for contribution or indemnity against the official. The action would lie in the administrative courts to apportion the ultimate share of responsibility between the official and the administration in cases of cumul. When an official has been ordered to pay the damages by the civil courts or when the administration has been ordered to pay damages by the state courts, the state courts can order contribution either in full or in part on the basis of fault. In such cases damages are contributed by joint tort feasors.

In *Delvilla*[210], when the liability of the defendant was fixed, he claimed 50% contribution from the administration on the ground that the accident was due to the defective breaks of the vehicle. The *Conseil d' Etat* upheld his claim so where there is a personal fault combined with service fault the victim can sue either the official or the administration in the appropriate courts. The official can be made to contribute appropriately according to his damage.

In France, even if the administrators are not at fault they can be made liable by applying the risk theory, the liability without fault. According to this theory when the administrators engaged in the public work involving risk, duty cast upon them to bear the damage by compensating the injured. In France liability of the state for Administrative torts[211] is seen, like the injury caused by the fault of the public officials due to some defect in the machinery provided by the administration or if the operation involved special risk of the citizens. It ensures full justice to the victim on the basis of the risk arising out of the act and not on the basis of fault. In such cases French administrative law makes the state liable as an insurer against social risk. This is applied in riot cases, police while chasing the offenders and a lunatic escaping from asylum, military munitions etc. In risk theory, liability is assessed in four categories.

[210] CE28 July 1951. In this case, a government lorry was involved in an accident partly because of the drunken state of the driver, Delville and partly because of the defective breaks. Delville was sued in the ordinary courts by the other party to the accident and held liable for the damage caused.
[211] L.Neville Brown, J.F.Garner French Administrative Law (1983) p.115.

1) Person assisting in public service sustaining injury example injury occurs while engaged in fire extinguishing operation.
2) Injury or abnormal risk while engaged in dangerous operations loss of life and property due to blasting up of large quantity of ammunitions and grenades.
3) Refusal to execute judicial decisions.

   In *Couiteas*[212], the *Conseil d'Etat* held the Couiteas were entitled to damages not on the basis of fault of the government but on the basis of equality in bearing public opinion. A citizen bearing special sacrifice for refusal of help by administration in executing the judgment must be compensated on the ground of equality.

   1) Legislation

      If the effect of the legislation is injury to an individual he is entitled to damages from the state.

In the *Ministre Des Affaires Etrangers C.Consorts Burgat*[213] a case of government liability where the damages were awarded against the state because of the statutory immunity of diplomats prevented the enhancement of the rent against the lady occupant of the premises. Now the right to indemnify or assurance arises only if it is proved that it was not

[212] CE 30 November 1923. In this case, the nomadic tribesman had occupied the extension tracts of land covered by Couiteas. Couteas had obtained a declaration from the civil courts of his right over the land. His own efforts in evicting the land having failed he sought the help of public authorities and the government but the help was not given to him due to government's fear of civil war.

[213] CE29 October 1976. Here the lady who occupied the premises of the Land lord subsequently married a UNESCO official who was living in the same flat when the landlord asked the tenant the payment of increased rent, the landlord had to meet with the plea of diplomatic immunity. The complainant successfully argued that the state had enacted the immunity statute which had deprived them of normal life.

the intention of the legislature to make the victim to bear the loss. Moreover the victim should not have engaged in the act which is injurious to public health, public order and good morals. It is the only company which was affected by the statute etc.

The state will be liable for ultra vires acts, error of law, abuse of power, if it violates the procedural law and natural justice.

The state is immune from liability only if the act was done by the officials wholly unconnected with the official function. But the state would not be liable where the impugned act is not administrative but political. Acts relating to international or diplomatic relation, parliamentary proceedings relating with executive and the legislature, reason of state or Act of State.

Conclusion

In England the law relating to state liability defines the area where the state can enjoy privileges. So there is certainty of law in this area whereas in USA exceptional clause is a great flaw and the state is exempted from liability. In England there is no other courts except the ordinary courts where aggrieved has to file suit against the public officer. When comparing these three system the French system is the most suitable one and it defines the area where the sovereign can enjoy privilege and state would be liable like that an ordinary person in most of the negligent acts. In England, no court is competent to enquire into the allegation against the officials of the state. In USA the Federal Torts Claims Acts 1946 consists of exception clause

which exempts the state from liability. The defects of English system is that the application of 'Act of state' is limited whereas in USA more exemption clause is a real flaw. This exemption clause exempted the state from liability even for negligence acts. In India while determining the liability of the state, application of sovereign and non-sovereign would affect the right of the citizen guaranteed by the Constitution. So the French system is more adaptable to the modern conditions making the country more responsible towards the citizens rights and justice. The French administrative law succeeded in developing a new machinery and evolved a new technique in determining the liability of the state. The French legal system is a notable one and it is a well developed and balanced system of state liability and it can be used as a model for equipping and shaping the law of state liability.