ISSN :2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

.

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

VICARIOUS LIABILITY OF STATE IN INDIA AND ABROAD

Authored by-Deepansha Vij
(Student at University School of Law and Legal Studies, GGSIPU)

ABSTRACT

The government or the state in general enjoys several immunities. Immunities also include the acts done by the government if otherwise would have done by a common individual he would have certainly made liable. One such immunity is that of vicarious liability of the state Whether or not the government can be made liable for the acts done by its employees? The general trend around the world is mix. However, what is common in all of them is that the countries over the passage of time have changed their approach to not make the state liable at all to considering the acts of state as tortuous acts. The Indian system of judiciary is still not clear on the benchmarks or the guidelines to be followed if the government or the state has to be made liable. There is no clarity about the "sovereign functions" and "Non sovereign functions" which the government performs and which has been the popular mode of determining the state liability. If we look at other countries' mode of determining the state liability, some like France have a very strict approach in making the state liable, in fact, the state can be made liable in cases pertaining to "no fault liability". Other country like the United States of America has some provisions to make the government liable but is flooded with various exceptions and procedural difficulties. England on other hand has evolved over time to make the state liable and to put the state in the same shoes as that of a "common man".

KEYWORDS: State, government, vicarious liability, employees, liable, tort

Introduction

"Ubi jus ibi remedium" is a maxim that is widely used in Law of torts. The phrase means where there is a wrong there is a remedy. Although this phrase is not mentioned anywhere in the constitution of India but it is widely used while deciding cases especially the cases which pertain to the law of torts. The maxim is derived from the common law and forms the basis of law of torts or law of wrongs. Whenever there is an infringement of obligation that is settled by law the phrase comes into play. The question then arises is that who will be liable for committing a wrong. Answering this question is convenient if we look into the disputes of private parties. For example if A commits wrong to B then A can be held liable. Similarly if the agent of A commits a wrong to B then again A will be vicariously liable. The complexity arises when a right has been infringed by the state. Can an employee of a state or in layman terms 'government' be held liable? Some of us might think that the state cannot be held liable as it is performing its sovereign duty while other might be of the opinion that a wrong is a wrong irrespective of who commits it. This forms the 'Tortious Liability of State' which means that the state can be held liable for the wrongful acts or omission by its servants. Article 300 of the constitution of India lays down that government of India can sue and can also be sued against proceedings of dominion of India, province or any State. Article 300 thus makes it clear that the Union of India and the States are juristic persons. There are no provisions which mention as to in what all circumstances can the state be made liable. Therefore for ascertaining the same we are heavily dependent on the judiciary. Therefore there is a need to lay down clear terms as to when can the state be made liable.

Vicarious Liability Of State – Pre Constitution Era

East India Company which came to India for doing trade but later subjugated it was not a sovereign body but was a delegate of the British crown. The functioning of the East India Company was regulated by the legislations as framed by the crown in England. Before the East India Company held the sovereign reigns of the country, the first judicial interpretation of state liability was made in 1775- John Stuart's case. For the first time ever it was held that the governor general of the state council comes under the jurisdiction of court in cases involving dismissal of government servants. In other case of *Moodlay v The East India Company*[1] the Privy Council was of the view that India can be exempted from the common law principle of sovereign immunity. After the sepoy mutinity of 1857, the East India Company came into the sovereign powers. The Government of India Act 1858, was enacted which was subsequently replaced by Government of India Act 1915 and 1935. In the section 58 of the act, for the first time the liability of the state was laid down. It stated that the secretary of state in council can sue and be sued in India as well as in England by the name of 'secretary of state'. Any person or body corporate can take the proceedings against the secretary of states as it would have bought against the company. It also stated that her majesty for the purposes of government of India acquired shall be liable to the same judgements and liabilities as the company. Section 68 of the act protected the members of the council from personal liability. A widely discussed case which was subsequently referred by the courts in India to decide the liability of state was *Peninsular and Oriental Steam Navigation Company v. Secretary of state for India*.[2] In this case the plaintiff's servant was travelling through a government property. Due to the fault of defendant's servants a heavy piece of iron which they were carrying fell and its clang frightened the horse. The horse rushed against the iron and was injured. The plaintiff filed a suit against secretary of state for India in council for damage caused due to negligence of servants

[1] 1775 (1 Bro-CC 469)
[2] (1861) 5 Bom H.C.R. App. I, p.1.

employed by the government of India. The court in order to arrive at a decision, draw distinction between the sovereign and non-sovereign function of the state. It was held that if the East India Company had done the act in exercise of the sovereign function, it would not have been liable. But since the act done was of such a nature that other private party could have also done the act (making it non-sovereign) the Company was held liable. According to Peacock,C.J the company had dual function- it had some sovereign functions and it also traded partly for the benefit of the government and partly for its own benefit. Therefore, sovereign and non sovereign acts could be distinguished. He was also of the view that if the functions carried out are of such a nature that only a sovereign could perform or any other person to whom the function has been delegated then the state cannot be held liable.[3]

The Madras High Court in Secretary of *State v. Hari Bhanjj*[4] held that immunity of East India Company extended only to "Acts of the State". "Act of State" includes acts done in exercise of sovereign functions. But where the act done is under municipal law, the mere fact that it is done by sovereign powers and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil court. The defence of an act of State is not available against a citizen. Acts of State are directed against another sovereign State or its sovereign personally or its subjects and being based on policy consideration and not on law administered by municipal Courts they are not justifiable.

Therefore, it can be concluded that in pre-constitution era although there was a provision for making the state liable for tortuous acts of its servants but there were no stringent norms as to in what circumstances the government could be liable. The courts were also of the mixed view as to when the state could be made liable.

Present Scenerio

After India became independent and drew its own constitution, the spirit of the provision of Article 56 of Government of India was carried down to article 300 of the constitution of India. Article 294 and article 300 throw light on the tortuous liability of state and the suits that can be filed there upon. Both the articles come under Chapter III of Part XII of Constitution of India which is headed as Property Contracts. Article 294 (b) of the Constitution of India provides that the liability of Union Government or State Government may arise out of any contract or otherwise. The word "otherwise" would include various liabilities including tortious liability also. This Article thus constitutes and transfers the liabilities of Government of India and Government of each governing province in the Union of India and corresponding States. Article 300 of the Constitution of India provides that State can sue or be sued as juristic personality

The notable case that came after the constitution was framed was that of *State of Rajasthan v. Vidyawati*.[5] The court was of the view that our country was a welfare state and the government should be not treated differently from other employers when it is undertaking acts that can be done by a private individual. On further appeal, the Supreme Court was of the same view and upheld the decision of high court. The hon'ble Supreme Court was of the view that it would be "too much" to claim immunity by the state when it is involving itself from functions other than that of sovereign powers. It can be noted that the view point of 'sovereign' functions that was being referred in the case was taken from the *Peninsular and Oriental Steam Navigation Company c*ase[6]

The precedent of Peninsular and Oriental Steam Navigation Company case was again referred to by Gajendragadkar, C.J..He referred the case to endorse the distinction between the sovereign and non sovereign functions while deciding the tortuous liability of state in the case of *Kasturi Lal v State of*

[3] ibid
[4] (1882) ILR Madras 273
[5] AIR 1957 Raj. 305, confirmed by the supreme court in State of Rajasthan v. Vidyawati, AIR 1962 SC 933
[6] Supra at point 4.

Uttar Pradesh[7]. Here the C.J referred to the case to distinguish between the sovereign and non-sovereign function of the state. the counsel for the appellant had contended that the principle laid down in the case of *Vidyawati*[8] should be extended to the present case. But, his lordship was of the view that the factual matrix of that case was different from the present one. In the former case, the act done was a non- sovereign function, as a result the state was held liable. But in the latter, the act was clearly a sovereign function and hence the state was eluded from being liable. His lordship was of the view that there was no clear cut distinction between sovereign and non-sovereign functions of the state. The case of Vidyawati, had not laid down any principles for distinguishing between the same. Hence he urged the legislatures to enact legislatures on the similar lines of Crown Proceedings Act,1947 in England.

The present decision of the court can be said to reveal a tendency on part of the court to perpetuate the distinction between sovereign and non-sovereign functions in order to determine the extent of state's immunity and liability. The Gajendragadkar CJ in this case wrongly assumed that the principles laid down in the case of P&O company was widely being referred to across courts in India. He seems to have ignored the principle laid down in Hari bhanji case which stated that "act of state" cannot be an excuse to claim immunity by the state if it is acting under the municipal law. It is to be noted here that the views of CJ were of wide implications. It is only after his suggestions in the case of *Kasturi lal*[9] the Government of India introduced the Government (Liability in Tort) Bill, 1965 in Lok Sabha. The bill seeked to implement subjected to some modifications the recommendations of the law commission it is intended to give regard to the suggestions made by Gajendragadkar C.J. it may be pointed out that the number of cases in which the principle laid down in p&o case is more[10] than the cases in which the principle laid down in *Hari Bhanji's*[11] case has been laid down[12]. The concept of sovereign and non- sovereign function is highly redundant in the present complex societies of ours where the government is involved in every walk of life. The modern welfare state is increasingly embarking on a journey which is indistinguishable from those performed by private persons. Where the government is doing such activities it should be equally treated at par with that of other employers. The law of equality as guaranteed under article 14 of the constitution of India shall be complied. It seems that the distinction of functions of government in water tight compartments of "sovereign functions" and "non-sovereign functions" is highly reminiscent of the Laissez Fair era. It is out of tune with modern jurisprudential thinking and unworkable in reality. It cannot be applied with logical consistency to the complex conditions of the industrialized society of the mid twenties.[13]. Therefore, the question arises, what should be the criterion to decide the government liability. The classification of sovereign and non sovereign function would not function. There is a need for an alternate criterion to establish the liability of the government one method could be by deciding the form and nature of activity so conducted by the state.[14] This rule perhaps may be applied in determining the liability of state in case it is undertaking traditional functions such as defence, foreign affairs, police ,etc. Another alternative to determine the liability can be to check if the state has derived any benefit from the wrongful act of its servant. If the answer is positive, the state can be sued for the extent of which such benefit is

---

[7] A.I.R. 1965 S.C 1039

[8] Supra at point 7.

[9] Supra at point 10

[10] All the decisions cited by the Chief Justice in present case have followed the P&O case. See also Ram Gulam v.UP Government AIR 1950 All206, Union of India v. Harbans Singh, AIR 1959 Punj.39; K.Krishnamurthy v. State of A.P A.I.R 1961 A.P. 283.

[11] Supra at point 6.

[12] P.V. Rao v. Khushaldas A.I.R1949 Bom 277

[13] Friedmann, Law in a Changing Society 383-391(1959)

[14] Friedmann, Law and Social Change 273 quoted in *Law Commission's First Report: Liability of State in Tort32 (1956)*

derived.[15] Going further other criterion could be drawing distinction between claims arising out of personal injury and injury to property – movable or immovable. With respect to the former the government should be invariably liable. In respect of the other, the spurious claims between the people and the government officials cannot be ruled out.

The responsibility of protecting people lies on the shoulder of the judiciary. The judiciary through its creative thinking and judicial activism can make out certain guidelines which can reasonably absolve the protection to the acts of state to make it accountable for its acts which hinder the rights of the people. No blanket immunity can be granted to the state for its actions in name of 'sovereign function' as it will defeat the very purpose for which our constitution was made. There is a requirement to carefully balance the public interest with private claims, blanket provisions will definitely not solve the problem. Hence to solve the problem of 'Tortious Liability of State' and in what cases and to what extent the state can be made liable can be solved by looking into the provisions of countries around the world and inferring the same from their laws and legal precedents.

ENGLAND

The position of liability of king was different from that if India. As discussed above, in India everyone was equal before the law, the sovereign could be made liable for his wrong or the wrong of his servants but in England it was the contrary. In England the two priniciples which were widely followed were Rex non potest peccare "King can do no wrong" and other related to procedural law which was "King cannot be sued in his own court". The legal position given to the king was given by the law and the law does not give him the authority to transgress the powers and prerogatives which distinguish him from an ordinary subject. "king can do no wrong " did not meant that the king is above the law but meant that the king has no legal power to do wrong. Other reason for not being able to hold the sovereign accountable for his wrong was because of lack of procedural remedy.[16] Under feudalism it was unthinkable to file a suit against the monarch. The kings were the ones who held courts which means that they were at the top of the feudal pyramid hence escaping the action of being sued. The king was not liable to be sued in criminal or civil matters for the wrong doings. This was invoked to negate the right of the subject to sue the king to seek redressal for the wrong committed by him.[17]

This changed in 1234, when the king's court proclaimed "Our lord the king cannot be summoned or receive a command from anyone"[18]. The king was now liable to its subjects and had to redress the claims against him in courts. Proper procedures were established to seek redressal . With the commencement of statute of Westminster 1275 the king and his officers could be sued. The wrong committed under a royal commission was made liable in 1331. Abolition of Star Chamber in 1641 and the enactment of Habeas Corpus Act 1679 was a blow to feudalistic powers of the Crown. The courts now began to enforce contracts against the king. However the king could not be sued for wrongs committed in torts.[19] In the nineteenth century the concept of vicarious liability became popular. The employers were held liable for the acts of their servants. Following the 'Rule of Law' it was thought that the it was time when the government ministers could be held liable. The officials were defended by the Treasury Solicitor because the compensation for the wrongs committed by the officials was to be paid from the government treasury. There was difficulty when the wrongdoer could not be identified amongst the department. So, the government starting nominating the defendants for the suit which was condemned by the house of lords as it was against the common law principles. This came in light in the case of *Adams v Naylor*[20] where a boy died

[15] In Secretary of State v Cockcraft,(1914) I.L.R.39.Mad. 351, 357, "benefit" was derived an exception to state immunity. Union of India v. Ayed Ram, A.I.R 1958 Pat 439.

[16] https://ir.nbu.ac.in/bitstream/123456789/2776/12/12_chapter%205.pdf

[17] V.Edwin M. Borchard, "Government Responsibility in Tort",Y.L.J,757(1926)

[18] Quoted by G.P Verma, State Liability in India, 25,(1993)..

[19] https://ir.nbu.ac.in/bitstream/123456789/2776/12/12_chapter%205.pdf

[20] 165 Adams Naylor(1946)2 All ER 241

when he came into contact with the wire fence of the mine field owned by the ministry. Here the house of lords was of the view that there was no substance in holding the 'nominated ' defendant liable as it was in no way his fault. The suit merely failed just because the crown could not be made liable. The court was of the view that it was time when the legislations on the wrong committed by servants of the crown could hold the crown liable.[21] This lead to the Crown Proceeding Act,1947.
This act made the crown liable for the actions of its employees in the same way as a private employer would be if his servants committed torts. The crown could be made liable by following ordinary procedures through ordinary courts. If the authority acted without power, there was no justification for it and it constitute torts or contract or any other wrongful acts and is actionable like a private person. The purpose of this act was to put the crown in the shoes of an ordinary defendant. The crown would be liable as if the minister or servants were acting on the instructions from the crown.[22] Although the defence of 'Act of State' was available to the government but it could be applied only in limited circumstances. Limited circumstances included course of relation with other states or subjects of other states or claims arising out of treaties.[23]
If the situation of state liability for tortuous acts of its servants of India is compared to that of England, Indian government enjoys various defences apart from 'Act of State' such as sovereign and non sovereign function which have no clear guidelines or norms classifying as to which activities constitutes sovereign functions and which activities come under non-sovereign functions of state.

United States Of America

In the legal system of America there was no concept of liability for the acts of state. This can be attributed to the financial instability of the state after the American revolutionary war .The government could not be held vicariously liable as there can be no legal right against the authority that makes law on which the right depends. The process of making the government liable started with the case of Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics. In this case the court held that violation of the fourth amendment can be the basis for making the officers liable for damages. But it is to be noted that the federal government was still not made liable in this case.
Various statements were made by the Supreme court which indicated that the government could not be held liable. For instance, Marshall C.J was of the view that no suit can be commenced or prosecuted against the United States and the judiciary does not authorise such suits. In 1868 the Supreme Court went to the extent of saying that no government has made itself liable for the misfeasance, latches or unauthorised acts of its agents. Justice Holmes brought the concept of Sovereign Immunity which exempted suit against the government.
However this gradually began to change. In 1910, the claim for infringement of rights was recognised. This was followed by enactment of The Federal Tort Claims Act,194 by the congress. According to this act, the government like any other private individual could be made liable for the tort committed by its employees acting within their authority. Hence the people can now claim financial compensation for the damage caused. This act however bars the people to claim damages in certain cases. The state cannot be made liable for every wrongful act of its agent or employee.[24] For example, the FTCA categorically bars plaintiffs from pursuing certain types of tort lawsuits against the United States. The FTCA also restricts the types and amount of monetary damages that

[21] 166 (1946)2 All ER 241,245.
[22] 1 Section 2 of the Crown Proceeding Act 1947
[23] 172 Garner, Administrative law, p 283.
[24] *See* Gregory C. Sisk, *Official Wrongdoing and the Civil Liability of the Federal Government and Officers*, 8 U. St. Thomas L.J. 295, 322 (2011), David W. Fuller, *Intentional Torts and Other Exceptions to the Federal Tort Claims Act*, 8 U. St. Thomas L.J. 375, 377 (2011)

a plaintiff may recover against the United States. Additionally, the FTCA requires plaintiffs to comply with an array of procedural requirements before filing suit.

It is also to be noted that the said act only grants a relief to the plaintiff if the suit is filed against the 'employee of the government'[25]. The act also has the provision which protects the federal employees for the tortuous acts committed by them but not for the violation of any other constitutional rights.[26] The common practice in the USA is to hire independent contractors to perform some functions as intended by the government.[27] The question then arises is whether these independent contractors come under the definition of 'employees of government'? The answer to this question is in negative.[28]

This means that the plaintiff will have to recover damages from such a contractor in personal capacity and the government cannot be made liable for the same. However a plaintiff in doing so can still encounter several problems in filing a suit. The Supreme Court ruled in its 1988 decision in *Boyle v. United Technologies Corp*., a plaintiff may not pursue state law tort claims against a government contractor if imposing such liability would either create "a 'significant conflict'" with "an identifiable 'federal policy or interest'" or "'frustrate specific objectives' of federal legislation." [29] As a result, the courts in various cases have opined that suit against tortuous liability cannot be instituted against independent contractors in cases related to defence and military[30]. Apart from this, the boyle rule is usually not exercised by the courts in non-military claims. [31]

FRANCE

As compared to the above discussed countries , the state liability for torts is quite clear in the French laws. The French doctrine of state liability is based on the theory that the state is an honest man and will not try to escape his responsibility to its citizens for the wrongful act by raising the defence of state immunity.[32] French courts have evolved what once was state immunity for tortuous acts to absolute liability of state and partial liability of the employees. The maxim "A king can do no wrong" is replaced by "The state is an honest man". The liability of an officer of the state can be divided into two categories. First one is faute de personnel which means the officer can be sued personally in a civil court. Second is the faute de service in which the state was alone liable for the faults in administrative courts. Personal fault included gross negligence or wilful neglect with malice.. However this system had its own troubles. On one hand when the suit was brought against the personal liability, the defendant in the case was not able to compensate the party due to limited resources. This lead the citizens to bring cases against the state in the administrative courts. There were some cases where the citizens used to bring frivolous charges just to exploit the state for compensation. This lead to the decision of shared compensation between the party and the government by Counsel d'Etat.

In the case *of Delvilla*[33], the defendant was in a drunken state while driving a vehicle and also the breaks of the vehicle were at fault. Therefore the defendant made a claim for fifty per cent of the contribution of damages by the state as the fault was with the vehicle too. The Counsel d'Etat upheld his claim and thus the state had to share damages with the defendant.

The French courts also believe in the concept of no fault liability of the state. Even if there is no

[25] 28 U.S.C. § 1346(b)(1)
[26] 28 U.S.C. § 2679(b)(2)
[27] *In re* KBR, Inc., Burn Pit Litig., 744 F.3d 326, 331 (4th Cir. 2014)
[28] 28 U.S.C. § 2671; *U.S. Tobacco*, 899 F.3d at 248
[29] 487 U.S. 500, 507 (1988) , United States v. Kimbell Foods, Inc., 440 U.S. 715, 728 (1979)
[30] *Boyle*, 487 U.S. at 512 , Saleh v. Titan Corp., 580 F.3d 1, 8 (D.C. Cir. 2009), Koohi v. United States, 976 F.2d 1328, 1336–37 (9th Cir. 1992)
[31] Cabalce v. Thomas E. Blanchard & Assocs., Inc., 797 F.3d 720, 731 (9th Cir. 2015)
[32] Durga Das Basu, *Administrative law*, Kamal Law House Kolkata, 2004. P 378
[33] CE28 July 1951.

negligence on the part of state it can still be made liable to pay compensation for the damage caused to the citizens by its administrative actions. Hence the state can only be immune from liability if the officials are acting outside their scope of power.

Conclusion

It can be observed that the liability of state is different in different countries. This means that in some countries such as that of French legal system has a clear demarcation as to when the state can be held liable and there is a provision that the state is an innocent person and can be made liable if done wrong. The system in England although did not have a legal provision as to make the state liable according to the saying that the "King can do no wrong" but after the Crown Proceedings Act of 1947 the state has the same liability as that of private individual. In United States the state can be made liable against the tortuous acts of the employees of the government but issues are faced if the act is done by independent contractor. Majority of Indian Courts still follow the concept of "sovereign" and 'non-sovereign' functions of state to decide the liability of the state for the acts done by its employees. It can be concluded that the liability of state for the tortuous acts of its servants/employees is gradually being realised. In the cases discussed above , there was no liability of state earlier but with the passage of time the government could be made liable on one stance or other though absolute accountability on part of government is still to be achieved. There is a need for clearing ambiguity around the laws determining the liability of state if the wrongful acts are done by its employees. The government cannot escape it liability by simply raising the defence of exercise of "sovereign function". More articulate and fair measures and guidelines need to be developed to lay down the circumstances or conditions under which government can be held vicariously liable.