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## CAN THE LIABILITY OF STATE EVADE THE INFRINGEMENT OF ART.21 OF THE INDIAN CONSTITUTION ?

Before the 20th century, the state was precluded from lawsuits. The eminent scholar Blackstone says, “The King can do no wrong; that whatever is exceptionable in the conduct of his ministers is not to be attributed to him.” is a classic example of this.

Liability of State refers to the government being liable for every action of its servants (police officers, army, and so on) who, in due course of time, take any actions that lead to an infringement of Art.21 of the Indian Constitution. In simple words, the State cannot evade sovereign immunity from the infringing Art.21 of the Indian Constitution.

Alexander Bickel, “The problem of sovereign immunity is not merely a matter of protecting the public purse...it is the question of proper distribution of power between the government and the individual.”

Elements to Satisfy the liability of State for Infringement of Art.21:

1. Either it has to be done by the state or state’s servants
2. Wrong action should be committed in due course of employment
3. Wrong action should be infringement of Art.21 of the Indian Constitution

*Kasturilal V. State of Uttar Pradesh (1964)*<sup>1</sup>, the State was granted immune power from the tortious liability of the police officer who committed infringement of Art.21. The court acknowledged the material distinction about the acts employed by the public servants. The acts are

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<sup>1</sup> Kasturilal V. State of Uttar Pradesh, (1965) AIR 1039.

committed during the employment in exercising of the delegation of the statutory functions. Then, it will be affirmative to take a stance against the state's liability in case of significant loss of citizen's rights. P.B.Gajendragadkar, C.J opined that the regulation was necessary and chastised the administration for failing to implement it. The above mentioned decision was reversed in case ***Rudal Shah V. State of Bihar (1983)***<sup>2</sup>, Rudal Shah was arrested for murder offence against his wife. He was imprisoned for 14 years. He was released from prison after 1983. But, he had to officially release it before 1968. He filed for monetary compensation as the state failed to protect his personal liberty enshrined under Art.21 of the Indian Constitution. The SC ordered the compensation for the Petitioner. This case first led to the new concept of jurisprudence compensation under the fundamental rights in the Constitution.

In the case of ***Chairman Railway Board V. Mrs. Chandrima Das (2000)***<sup>3</sup>, the victim was named Hanuffa Khaton, who was a Bangladesh Citizen. She was gang raped by the railway workers at Howrah Station. This case was mainly observed from the perspective that non-citizens can get fundamental rights under Art.21 of the Indian Constitution. Thus, the railway board authorities were vicariously liable to pay compensation.

***In the Sebastian M. Hongray V. Union of India case***<sup>4</sup>, the two army officers were left at Phungrei Camp, Where 21st Sikh regiment were on duty. They both were stationed in the wrong area. In order to avoid the responsibility of the two army officers who were missing, they stated the facts as they left Phungrei Camp together. The two army officers's spouses were faced a mental oppression, torture and agony because of this. Instead of paying a fine or imprisonment for civil contempt of court, the court ordered the State to compensate the two army officers's families at a measure of exemplary costs.

The Indian courts diverged from habeas corpus not only for remedies but also for the punitive damages as compensation. In ***Bhim Singh V. State of J&K***<sup>5</sup> case, the court gave a verdict that a

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<sup>2</sup> Rudal Shah V. State of Bihar, (1983) AIR 1086.

<sup>3</sup> Chairman Railway Board V. Mrs. Chandrima Das, (2000) AIR SCW 649.

<sup>4</sup> Sebastian M. Hongray V. Union of India, (1984) AIR 1026.

<sup>5</sup> Bhim Singh V. State of J&K, AIR 1986 SC 494.

person came with the complaint, he/ she was arrested and detained with malafide intention and their constitutional rights had been breached, the courts have jurisdiction to issue an order to give compensation to the victims. Over the years, the courts perceived that by granting compensation, it can rectify the harm an individual expressed concern, namely, being arrested and breaching of their rights enshrined under Art.21 of the Indian Constitution.

***Abhishek Maddunay V. State of West Bengal (2024)***<sup>6</sup>: The two petitioners were selected for the post of Lower Division Clerk at District Primary School Council in 2015. Despite the RTI filed several times, the selection panel did not respond to it. The court opined that Sovereign immunity, which was granted in Kasturilal case, was not right decision, and sovereign immunity went drastic change after this case, and the court cannot accept the principle of sovereign immunity in the place of negligence of the state any longer. The court ordered the selection panel members who were negligent in their duty to perform the functions to be liable to pay the compensation to the petitioners. At the contemporary legal practice in the Indian Courts, the State cannot evade liability using the principle of sovereign immunity power upon infringement of Art.21 of the Indian Constitution.

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<sup>6</sup> Abhishek Maddunay V. State of West Bengal, (2024).