



AN EMPIRICAL STUDY ON TORTIOUS LIABILITY OF STATE IN INDIA

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Abstract:

The concept of State Liability is one of the most useful aspects of law of tort where the victims can claim damages from the State due to the loss incurred by them from the act of the State while performing its functions. In British India the doctrine of 'King can do no wrong' was adopted. The position of tortious liability of the State in Independent India is quite similar to what was there under the Crown as Indian Constitution is mostly based on the Government of India Act 1935. So, as it prevailed in British India, the State was started to be given immunity from tortious liability in Sovereign functions. Now, as there was no clear definition of sovereign functions and non-sovereign functions, the question was left to be decided by the judiciary which had to first decide the nature and type of function that the alleged servant of the State was discharging when the wrong was committed. These in turn gave rise to conflicting decisions in the past. With the passage of time the welfare activities of the State started increasing and with this it became difficult to differentiate the functions of State as Sovereign or Non-Sovereign. Hence, in this research work the researcher made an empirical study on tortious liability of State in India and tried to find out the remedies to remove the ambiguities in the present tort system in India on State Liability.

Keywords: State Liability, Sovereign Function, Sovereign Immunity, Non-Sovereign Function, Indian Tort law

1.1 INTRODUCTION

The concept of State Liability is one of the most useful aspects of law of tort where the victims can claim damages from the State due to the loss incurred by them from the act of the State while performing its functions. During the reign of ancient Hindu and Muslim Rulers there was no room for Sovereign Immunity in India. Pre-British India was the era where predominance was given to the 'Rule of Law' and the King was not above law. Then under East India Company, Secretary of the State for India was liable only for sovereign functions and East India Company was liable like a body corporate. But under the British Government, the doctrine of 'King can do no wrong' with the enactment of the Government of India Act, 1935 was introduced which granted Sovereign immunity. The position of tortious liability of the State in Independent India is quite similar to what was there under the Crown as Indian Constitution is mostly based on the Government of India Act 1935. So, as it prevailed in British India, the State was started to be given immunity from tortious liability in Sovereign functions and were held liable as a corporate body if the wrong was committed while performing non-sovereign functions. Now, as there was no clear definition of sovereign functions and non-sovereign functions, the question was left to be decided by the judiciary which had to first decide the nature and type of function that the alleged servant of the State was discharging when the wrong was committed. These in turn gave rise to conflicting decisions in the past. With the passage of time the welfare activities of the State started increasing and with this it became difficult to differentiate the functions of State as Sovereign or Non-Sovereign.

The waters of judicial interpretation become even murkier as one moves to the liability of the State for tortious acts. Since the State acts through its agents, it is primarily held liable through the doctrine of vicarious liability, a doctrine that holds the commanding superior liable. The Indian position is moulded on the British position, as it is adopted by most countries in the commonwealth. The British position granted the Crown unquestioned immunity until the enactment of the Crown Proceedings Act in 1947 to bring it in line with the accepted idea of the 'Rule of law'. In India, this position of qualified immunity still prevails.

Currently, the only provision that an aggrieved party can rely upon to hold the Government liable is Article 294(b) of the Constitution, which provides for the liability of the Union Government or State Government as it may arise 'out of any contract or otherwise'. The word 'otherwise', in its broad sweep, is meant to include tortious acts. Article 300(1) fixes the extent of such liability as being co-extensive with that of the Dominion of India and the Provinces prior to the commencement of the Constitution. This iteration refers to the distinction being made between sovereign and non-sovereign functions with the State being held liable for any liability incurred in the exercise of the latter.

Hence, in this research work the researcher made an empirical study on tortious liability of State in India to find out the gaps.

1.2 METHODOLOGY

The methodology used in this research work was non-doctrinal. The researcher had used convenience sampling technique for data collection. The sample size comprised of **one hundred and ten (110)** samples, out of which eighty-five (85) were from Judges, Advocates and Lawyers and twenty-five (25) were Academicians from legal background. Questionnaire was used as a research tool.

1.3 ANALYSIS OF DATA

Percentage and frequency method were applied to analyse the data. Below the data collected from the questionnaire is analysed and represented in pie chart and cross tables:

Data Analysis of Question No.1: ‘Is there any specific legislation dealing with tortious liabilities in India?’



Fig No. 1: Analysis of the data for the question ‘**Is there any specific legislation dealing with tortious liabilities in India?**’

Inference: When combined 85.2% of the responses were ‘No’ and 14.8% were ‘Yes’. It can be inferred that there is no specific legislation dealing with tortious liabilities in India.

Data Analysis of Question No.2: ‘Is there any Specific legislation dealing with State Liability in India?’

The researcher represented the data obtained with the following cross-table:

‘Is there any Specific legislation dealing with State Liability in India?’		
Respondents	Responses in Yes	Responses in No
Academicians (25)	8.7%	91.3%
Judges/Advocates/Lawyers (85)	21.5%	78.5%
Total (110)	15.1%	84.9%

Table No.1: Data analysis of the question ‘Is there any Specific legislation dealing with State Liability in India?’

Inference: Out of total 110 Respondents, 84.9 % agreed that there is no specific legislation dealing with State Liability in India.

Data Analysis of Question No. 3: This was a close-ended one asking the respondents to choose the gaps faced while establishing State Liability in India for tortious acts committed by the State/its officials in purported exercise of their administrative powers/functions among the given options.

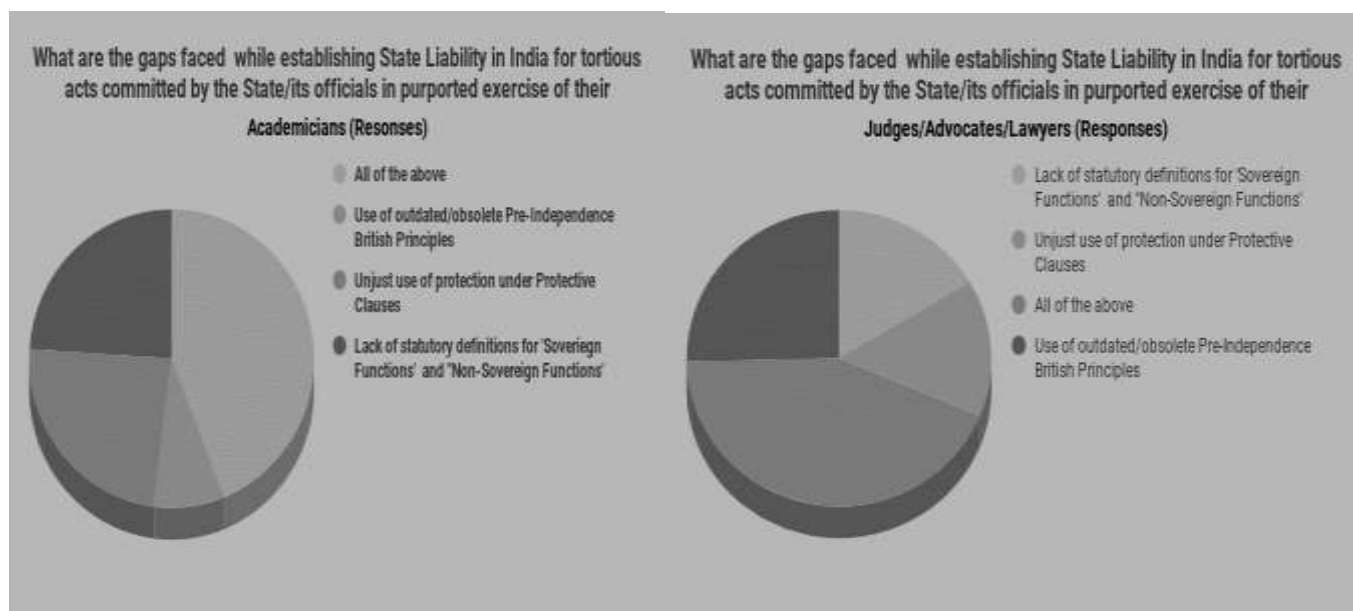


Fig:2 Data Analysis of Question No.3

Inference: Out of the total 110 respondents, the most opted choice was ‘all of the above’ which means that the gaps comprises of all the three given options:

- i) Lack of statutory definitions for ‘Sovereign Functions’ and ‘Non-Sovereign Functions’
- ii) Unjust use of protection under Protective Clauses
- iii) Use of outdated/obsolete Pre-Independence British Principles

Data Analysis of Question No. 4: ‘Will the codification of tort law be an alternative to the present Indian Tort Law which is based on scattered remedies and English Common Law Principles?’

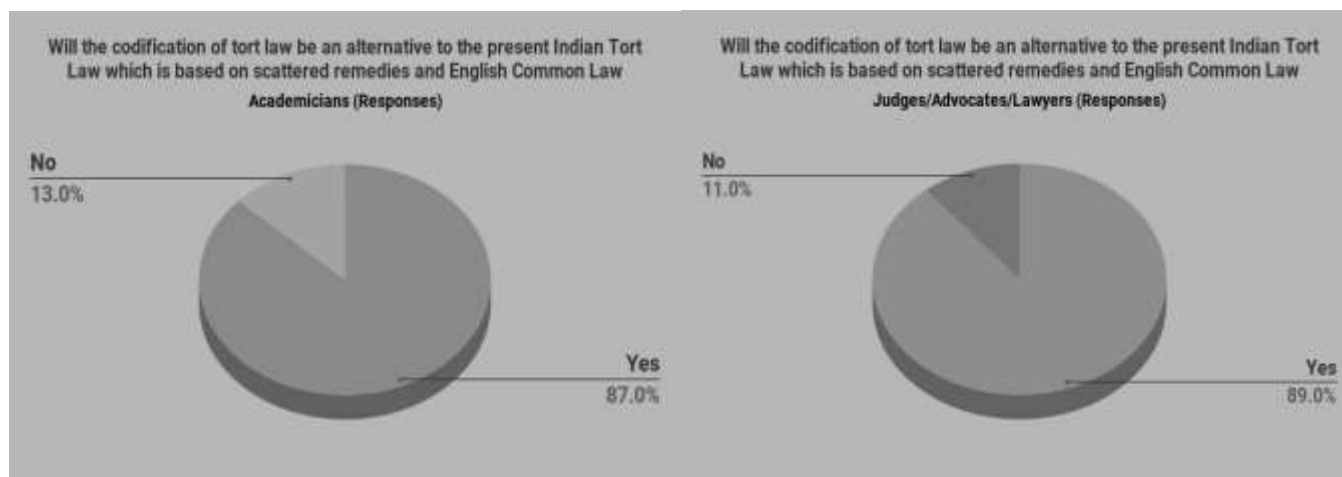


Fig: 3 Data Analysis of Question No. 3

Inference: When combined 88% of the responses were 'Yes' and 12% were 'No'. It can be inferred that the codification of tort law can be an alternative to the present Indian Tort Law which is based on scattered remedies and English Common Law Principles.

1.4 CONCLUSION

In this research work the researcher intended to study the tort law in India with limiting the study to State liability. This research was done with the following objectives-

- To find out the position of the laws dealing with civil wrongs and liability of the Sovereign and to examine if they provide a sound comprehensive legislation to encourage litigation under law of Torts in India.
- To find whether a codified Tort Law would make the State liable for tortious acts.

The researcher had used non doctrinal method for the above Objectives and to meet this end the researcher used questionnaire has a research tool which was filled in by judges, professionals and academicians from legal field. The data collected from one hundred and ten (110) respondents were analysed and interpreted above. Some of the important inferences drawn are listed below:

- 85.2% of the responses stated that there is no specific legislation dealing with tortious liabilities in India.
- 84.9 % of the responses stated that there is no specific legislation dealing with State Liability in India.
- 88% of the responses stated that the codification of tort law can be an alternative to the present Indian Tort Law which is based on scattered remedies and English Common Law Principles.

Hence, it can be concluded that the tort law in India dealing with State Liability has some inherent defects and gaps which can be possibly resolved by adopting a well comprehensive legislation, which is definitely the need of time.

1.5. REFERENCE

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