Chapter 4

1. Criminal justice dispensation system and legal aid-
2. Constitutional rights
1. Criminal justice dispensation system and legal aid-

The criminal justice system descends from the British model. The judiciary and the bar are independent although efforts have been made by some politicians to undermine the autonomy of the judiciary. From about the time of Indira Gandhi's tenure as prime minister, the executive has treated judicial authorities in an arbitrary fashion. Judges who handed down decisions that challenged the regime in office have on occasion been passed over for promotion, for example. Furthermore, unpopular judges have been given less-than-desirable assignments. Because the pay and perquisites of the judiciary have not kept up with salaries and benefits in the private sector, fewer able members of the legal profession have entered the ranks of the senior judiciary.

Despite the decline in the caliber and probity of the judiciary, established procedures for the protection of defendants, except in the case of strife-torn areas, are routinely observed. The penal philosophy embraces the ideals of preventing crime and rehabilitating criminals.

Criminal Law and Procedure

Under the constitution, criminal jurisdiction belongs concurrently to the central government and the states. The prevailing law on crime prevention and punishment is embodied in two principal statutes: the Indian Penal Code and the Code of Criminal Procedure of 1973. These laws take precedence over any state
legislation, and the states cannot alter or amend them. Separate legislation enacted by both the states and the central government also has established criminal liability for acts such as smuggling, illegal use of arms and ammunition, and corruption. All legislation, however, remains subordinate to the constitution.

The Indian Penal Code came into force in 1862; as amended, it continued in force in 1993. Based on British criminal law, the code defines basic crimes and punishments, applies to resident foreigners and citizens alike, and recognizes offenses committed abroad by Indian nationals.

The penal code classifies crimes under various categories: crimes against the state, the armed forces, public order, the human body, and property; and crimes relating to elections, religion, marriage, and health, safety, decency, and morals. Crimes are cognizable or non-cognizable, comparable to the distinction between felonies and misdemeanors in legal use in the United States. Six categories of punishment include fines, forfeiture of property, simple imprisonment, rigorous imprisonment with hard labor, life imprisonment, and death. An individual can be imprisoned for failure to pay fines, and up to three months' solitary confinement can occur during rare rigorous imprisonment sentences. Commutation is possible for death and life sentences. Executions are by hanging and are rare--there were only three in 1993 and two in 1994--and are usually reserved for crimes such as political assassination and multiple murders.
Courts of law try cases under procedures that resemble the Anglo-American pattern. The machinery for prevention and punishment through the criminal court system rests on the Code of Criminal Procedure of 1973, which came into force on April 1, 1974, replacing a code dating from 1898. The code includes provisions to expedite the judicial process, increase efficiency, prevent abuses, and provide legal relief to the poor. The basic framework of the criminal justice system, however, was left unchanged.

Constitutional guarantees protect the accused, as do various provisions embodied in the 1973 code. Treatment of those arrested under special security legislation can depart from these norms, however. In addition, for all practical purposes, the implementation of these norms varies widely based on the class and social background of the accused. In most cases, police officers have to secure a warrant from a magistrate before instituting searches and seizing evidence. Individuals taken into custody have to be advised of the charges brought against them, have the right to seek counsel, and have to appear before a magistrate within twenty-four hours of arrest. The magistrate has the option to release the accused on bail. During trial a defendant is protected against self-incrimination, and only confessions given before a magistrate are legally valid. Criminal cases usually take place in open trial, although in limited circumstances closed trials occur. Procedures exist for appeal to higher courts.

India has an integrated and relatively independent court system. At the apex is the Supreme Court, which has original, appellate, and advisory jurisdiction below it are eighteen high courts that preside
over the states and union territories. The high courts have supervisory authority over all subordinate courts within their jurisdictions. In general, these include several district courts headed by district magistrates, who in turn have several subordinate magistrates under their supervision. The Code of Criminal Procedure established three sets of magistrates for the subordinate criminal courts. The first consists of executive magistrates, whose duties include issuing warrants, advising the police, and determining proper procedures to deal with public violence. The second consists of judicial magistrates, who are essentially trial judges. Petty criminal cases are sometimes settled in panchayat courts.

The local "criminal justice system" is not really a system. It is an array of agencies and organizations funded and controlled by various governmental and non-governmental entities. Each agency or organization has its own responsibility and specialized role to perform. The criminal justice system is one of the only areas in which an individual and/or case can potentially access all levels of government (Metro Louisville, state, and federal). To understand how the "system" operates, one must know which agencies are involved and the statutory authority or scope of responsibility.

A true "criminal justice system" has collaboration, coordination, and comprehensive systemic planning that include all levels of government. There must be a neutral forum that allows this process to take place.

In addition, many services required to help prevent crime and make communities safe are provided by non-criminal justice
agencies, including those with a primary mission for public health, education, welfare, public works, and housing. Citizens, public, and private sector organizations have joined with criminal justice agencies to prevent crime and make neighborhoods safe.

Please click on the gavel for a listing, brief description, and the agency web page at the end of the description, of the partnering agencies within Louisville Metro's local criminal justice system.

2. Constitutional rights (states liability towards victims) compensation as the part of justice-

The liability of the state to pay compensation for the deprivation of the fundamental right of life and personal liberty or any other fundamental right for that matter is a new liability in public law created by the constitution and not vicarious liability or a liability in tort.

The state in India has to establish a separate and distinct mechanism on the line of mutatis mutandis droit administrative and counsel d'etat of French legal system, to facilitate the common man to stand against the arbitrariness and oppressiveness of government and of its officials.

Victims Of Criminal Justice System: An Overview

Victim logy is the study of victims of crime as criminology is the study of crime and criminals. Victim logy is the Cinderella of criminology. D. Mendelsohn coined the term 'Victim logy' in 1947 by deriving from a Latin word 'Victims' and a Greek word logos' meaning 'the study of victims'. Since the publication of the pioneering works of Hans Von
Henting and D. Mendelsohn in 1940s, numerous scholars have focused their attention on the criminal-victim relationship.

Victimology focuses on the victim's condition and the victim's relationship to the criminal. Hence, there can be two major subareas of victimology. The one relating to the scientific study of criminal behaviour and the nature of the relationships which may be found to exist between the offender and the victim; and the other relating directly to the administration of justice and the role of system of compensation and restitution to the victim.2

In a narrow sense, victimology is the empirical, factual study of victims of crime and as such is closely related to criminology, and can be regarded as part of the general problem of crime. In a broad sense, victimology is the entire body of knowledge regarding victims, victimisation and the efforts of society to preserve the rights of the victim. Hence, it is composed of knowledge, psychology, psychiatry, social work, politics, education and public administration.

The subject matter of victimology can broadly be classified into: (i) Victim typology (ii) Victim participation in crime, and (iii) Compensation to victims of crime. The first aspect, victim typology, attempts to classify the characteristics of victim based on psychological, biological and sociological factors.3 It helps us to understand better the crime problem and the offender-victim relationship. The second aspect of victimology victim participation in crime focuses attention on the degree to which the victim could be considered responsible for his own victimisation. The third and most important aspect of the study of victimology, compensation to victim's of crimes is concerned with is restitution or compensation to
victims and their dependants for pecuniary loss, bodily injury or death resulting from crime.

An insight into the evolution of law regarding compensation to the victims of crime and abuse of power, thus reveals that in the course of history of civil and criminal administration of justice system, the payment of compensation to the victims of crime irrespective of the civil and criminal dichotomy has come to stay. Over the years several doctrinal principles have been developed concerning the need and justification for payment of compensation to the victims of crime be it a civil law case like torts or be it a criminal law case.4

In the changed scenario, the state playing a predominant role in the socio-economic justice programmes for the peoples’ development, incidentally has also made the state often an agency encroaching upon the constitutional protection extended to the citizens in the matter of life, liberty and property. In the ultimate analysis not only the wrongful acts of private individuals but also the wrongful acts of the state are becoming the cause of worry of the victims. It is in this back-drop that the activist judiciary through its reasoned decisions and the efforts of various criminologists, scholars, etc. over the years that new vistas have been opened up in the annals of jurisprudence, concerning compensation to the victims of crime and abuse of power, who has been hitherto a neglected lot in the criminal justice system.5

The Code of Criminal Procedure 1973, s. 357 and Probation of Offenders Act, 1958, s. 5; empower the courts to provide compensation to the victims of crime. However, it is noted with regret that the courts seldom resort to exercising their powers liberally. Perhaps taking note of the
indifferent attitude of the subordinate courts, the apex court in Hari Kishan\(^6\) directed the attention of all courts to exercise the provisions under s. 357 of the CrPC liberally and award adequate compensation to the victim, particularly when an accused is released on admonition, probation or when the parties enter into a compromise. To set an example, the apex court in Sarup Singh\(^7\) awarded Rs. 20,000 compensation to the widow of the deceased and reduced the sentence of seven years to one year of imprisonment.

Insofar as sub-section (3) of Section 357 of the Code is concerned, it empowers the Court to award compensation to victims while passing the judgment of conviction and for awarding such compensation there are no restrictions on the quantum thereof as we find on fine, provided for in the first proviso to Section 143 of the Act. In addition to conviction, the Court can order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. The Supreme Court in Hari Singh case has observed that the power under sub-section (3) is not ancillary to other sentences but it is in addition thereto. This power was intended to do something so as to re-assure the victim that he or she is not forgotten in the criminal justice system. The Supreme Court has observed that "it is measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way". A word of caution has also been noted saying that the payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. "The quantum of compensation may be determined by taking into account the
nature of crime, the justness of claim by the victim and the ability of accused to pay.” This will have to be borne in mind when courts pass order of payment as condition for suspending the sentence.\textsuperscript{8}

As a matter of rule, compensation is awarded only in case of conviction. In a fairly recent case of Bodhisattwa,\textsuperscript{8} the apex court held that interim compensation may be awarded to a rape victim by a court during the pendency of criminal trial in view of the seriousness of the offence. In the impugned case, the accused was asked to pay an interim compensation of Rs. 1000 per month to the victim—the prosecutrix (Subhra Chakrabarty) until the court finally disposes off the case.

In another landmark judgment—Uttarakhand Sangharsh Samiti\textsuperscript{9}—the Allahabad High Court awarded compensation of Rs. 10 lakh each to the deceased’s family and Rs. 10 lakh to rape victims and Rs. 5 lakh to Rs. 50,000 for less serious injuries. In the impugned case the State has been held vicariously liable for wrongs committed by its officers and asked to compensate for resorting to police firing and atrocities committed on a peaceful demonstration resulting in death of twenty-four persons and sexual molestation and assault on a number of women and other demonstrators.

It is gratifying to note that of late, the apex court and the high courts have taken a pragmatic and realistic approach in awarding compensation to the victims of constitutional and human right crimes by resorting to Art. 21 of the Constitution of India. For instance, in Rudal Shah,\textsuperscript{10} the apex court directed the State Government of Bihar to pay the petitioner a sum of Rs. 30,000 compensation for illegal detention in Ranchi jail for 14 years after his acquittal. The Court further said that the petitioner is also entitled to
seek relief under civil court for illegal detention in addition to the reparation for constitutional wrongs under Art. 21 of the Constitution. Similarly, the Court directed the authorities to pay compensation in Sebastian, Bhim Singh and in a number of cases.

No doubt, in recent years the Supreme Court and High Courts by invoking Art. 21 of the Constitution have tried to give some compensatory relief to the poor victims of illegal detention at the hands of the executive. Recently the Supreme Court has allowed compensation for the negligence of the jail authority and the jail doctors who laid the deceased to untimely death. Here the court held the government liable vicariously for the wrong action of its servant. such cases are, however, numbered and are not going to solve the malady.

**Strategies and Action – Points**

The concept of compensation to victims of crime, of late, has emerged as an independent branch of Criminology under the head Victimology. Criminal law of the recent years has witnessed changes of far reaching significance and there has been change towards improving the conditions of the victims of crime and ameliorate their hardships, who were hitherto remained a forgotten species in the administration of Criminal justice system. With the increasing number of crimes and abuse of power, particularly by the agencies of State the existing Criminal law system has proved to be inadequate to take care of and provide compensation to the victims of crime. Accordingly several constitutions of the modern governments and the international institutions have developed and been developing suitable Constitutional, Statutory and International Principles, providing for compensation to victims of crime. This social engineering,
through justice processes and missionary approach, must be evaluated in terms of civilised standards to accelerate the cause of victims of crime. In this context, following are some humble suggestions to make criminal justice more effective, dynamic and humanitarian:

(i) The present system of courts order of payment of compensation to the victim by the accused requires order of conviction and sentence as a pre-condition. The victim needs to be compensated at the earliest. Since it is the obligation of the State to protect the individual interests. State should be made to pay immediate compensation to the victim without the burden of any additional civil suit to be filed by the victim.

(ii) There is need in Welfare State, to evolve a scheme of payment of compensation by State in cases of crimes. Whether State should pay it directly out of its exchequer or through an insurable scheme as in Motor Vehicles Accident Claims, or by creation of separate fund are the alternatives available. In case a separate fund scheme is adopted, the power of operation could be given to the judiciary as it is required to decide at the first instance the existence of a prima facie case of loss or injury due to crime committed. As regards the basis of compensation, the mode of computation as accepted under the existing legislation such as Motor Vehicle Act, Workmen's Compensation Act, etc. as well as yardsticks adopted by Civil Courts could be effective guidelines.

(iii) A comprehensive Legal Code for victim compensation is a dire necessity. The time has come for the legislature to stop shirking its duty. Hence, a comprehensive Legal Code should be enacted
providing for fair treatment, assistance and adequate compensation to victims of crime. Only on embarking on this step can justice in its more altruistic forms be obtained.

(iv) It should be made mandatory for the state to pay compensation to the victims of crime of not only the private criminal wrongs but also for the criminal acts perpetrated by its agencies. This mandatory duty of the state gains importance from two points of view namely as a welfare state committed to the constitutional goal of social justice and secondly for its failure to protect the life, liberty and security of its citizens.

(v) In India there is an urgent need to establish a "Compensation Board" and of quick disposal (Fit cases of victims of crime and lock-up deaths in police custody. In case of delay in investigation on trial of the case, the victim should be granted some compensation on the merit of the case and on final disposal of the case an interim relief, the full settlement of compensation by way of increase or reduction or recovery of compensation to the needy victims. The compensation to the victim or his dependants should be granted without delay taking into account the victim's age, occupation etc., so as to substantially compensate the loss suffered by the victim and his dependants.

(vi) The criminal trial proceedings and victim compensation proceedings should be integrated in one continuous process according to which all victims should be compensated adequately and promptly for the injury and/or loss which they sustain. The primary responsibility should be that of the State for paying such compensation.
(vii) The State should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances. It should enact and enforce, if necessary legislation prescribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

(viii) The Malimath Committee appointed by Govt. of India in 2003 has really made a commendable effort in studying the role and availability of respite to the victims. The victims should be allowed to participate in the investigation and give their inputs freely to the investigating agencies. Their perspective of the offence and the offender will throw a better light on the whole issue. Likewise, if the victims are allowed to espouse their cause/relief for themselves one will be even taken aback by the simplicity of their approach and the lightening quickness in which the whole case would get disposed off.

The concept of compensation is inextricably linked to the socio-economic and legal norms prevailing in the society. Thus, the issue of payment of compensation arises several queries which needs to be tackled judiciously. These include the level of poverty, crime rate, the causes and consequences, the responsibility of the state and the society at large, the constitutional and legal framework concerning the rights of the victim to claim compensation etc. India which is a welfare State and which is guided by the constitutional goal of social justice set for it, is yet to take up the subject of compensation to the victims of crime on a large scale.
STATE LIABILITY- A CYNICAL REALITY-

An Acquaintance

Rights being immunities denote that there is a guarantee that certain things cannot or ought not to be done to a person against his will. According to this concept, human beings, by virtue of their humanity, ought to be protected against unjust and degrading treatment. Thus the principle of the protection of human rights is derived from the concept of a man as a person and his relationship with an organized society which cannot be separated from universal human nature. Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights.

State [1] is the system established and developed through social contract in between human beings with the aim to preserve and to protect these inherent rights. Therefore it is a legal duty of the state to protect and safeguard the interest and life of people. However one can come across the enumerable instances where the state itself or through its agency or ministers has violated these rights. Even after violating such rights of common man the state hides its responsibility in the guise of rule of sovereign immunity. However with the changing socio-economic phenomena and particularly with the development of human rights jurisprudence, the shelter of ‘sovereign immunity’ is now no more protecting the state from discharging its liability. Liability of state may occur for various wrongs done by way of wrongful act or omission committed by the state administrative authorities or by the agencies of the state. Such wrong may either be done intentionally or negligently the state has to owe its duty towards the victims of the sufferings.
Here in this article the author wants to highlight such instances where the state directly or indirectly, intentionally or negligently breaches such inherent rights of common man. Even after violating such rights the state remains aloof from accepting legal responsibility of causing such wrongful loss to the victims. On the other hand victims of the wrongs done by the state are also unaware about their rights and the fact that their rights have been violated by the state. Some victims may have idea that their rights have been violated but because of unavailability of proper mechanism they have to suffer such unnecessary evil.

The present article emphasizes on the need of 'mechanism' which will deal with the issues of violation of human rights due to the wrongful act or omission of the state or its agency or minister. Such mechanism should not be in the form of traditional judiciary, where crores of cases are pending that showing the living example of violation of people's right to speedy justice. A mechanism like that of Droit administrative, Council of the France. Droit administrative has been established to deal with the matters between the subject and the administration of the state apart from the traditional judicial system like that of Common law legal system accepted by India and other commonwealth countries.

**Instances**

No civilized system can permit an executive to play with the people of its county and claim that it is entitled to act in any manner, as it is sovereign. The concept of public interest has changed with structural change in the society. Following are the instances where such fundamental and natural rights of human being are violated:

1. Pendency of litigation over the years
2. Rights of under trial prisoners

3. Sufferings- financial, mental and health due to Red-tapism, corruption

4. Lack of co-operation and administrative arbitrariness

5. Accident of public transport, natural calamity

6. Attack by Naxalites, terrorists, inefficiency of agency of state like Intelligence Bureau, Police system

These and many more such instances in general as well as in particular has frequently violating the rights of subject i.e. right to freedom from fear. People in the country are living in the fear that their life is subject to the arbitrary and unwarranted ill-will of the state or its agencies.

Here the question for discussion is- whether the state has assumed the same liability for the operations carried on by it or by agencies? Whether the same rule i.e. rules of absolute liability is applicable to statutory authorities /agencies? What is the justification for such liability? Often after such unfortunate incidences where number of lives suffers death, injuries in person and in property as the case may be. The state and its opposition leaders claims resignation of government on the ground of assuming morale liability. Then the question here is why not the state should be made legally liable? Why the civil or criminal liability should not be imposed on the state or its ministers? Like that under the Crown Proceeding Act, 1 947 of England. *16

**STRICT LIABILITY – AN ANOMALY**

According to the general principles of state liability in tort, the state including public authorities and ministers enjoy no dispensation from the
ordinary law of tort and contract, except in so far as statute gives it to them. Here the article emphasizes on the need to expand the scope and ambit of the state liability for tort of the state or its authorities or ministers. Unless acting within their powers, they are liable like any other person for trespass, nuisance, and negligence and so forth. This is an important aspect of the rule of law. Similarly they are subject to the ordinary law of master and servant, by which the employer is liable for torts committed by the employee in the course of his employment, the employee also being personally liable.*17

Another rule which was emerged that oppressive or unconstitutional action by servant of the government could justify an award of exemplary or punitive damages i.e. damages which take into account the outrageous conduct of the defendant and not merely the actual loss to the plaintiff. Below discussed liability of statutory bodies for the negligence of their servants and agents. No statute can be expected to authorize works to be carried out negligently and hence ordinary law of liability therefore has full scope [18].

Lord Blackburn in Geddis v Proprietors of Bann Reservoir [19] has stated the Principle of Liability- “It is now thoroughly well established that no action will lie for doing that which the legislature has authorized, if I be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the legislature has authorized if it be done negligently.”

Even in the absence of negligence the law of tort imposes liability on those who create situations of special danger. This strict liability is imposed by the rule in Rylands v Fletcher (1868) on ‘the person who for his own purposes brings and collects and keeps there anything likely to do
mischief if it escapes’. Going one step ahead the Indian judiciary has developed principle of absolute liability [20]. Under this principle if the operation involves abnormal risk and his rule has been held to cover many situation where damage has been done by such things as chemical, fire, gas, nuclear power plant etc.

**JUSTIFICATION FOR STATE LIABILITY- Indian scenario**

The maxim that the King can do no wrong and the resulting rule of he Common law that the Crown has not answerable for the torts committed by its servants have never been applied in India.

Sec. 65 of the Government of India Act, 1858, which is the parent source of the law relating to the liability of the Govt. provided that; ‘All persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable against the secretary of state for India as they could have done against the said company’.

This provision was continued by the succeeding Govt. of India Act, 1915, Sec. 32, Govt. of India Act, 1935 Sec. 176 (1) and is also continued by Art 300 (1) of the Constitution of India which reads: “The Govt. of India may sue or be sued by the name of the Union of India and the Govt. of a state may sue and be sued by the name of the state and may, subject to any provisions which may be made by an Act of parliament or of the legislature of such state enacted by virtue of powers conferred by this constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian states might have sued or been sued if this constitution had not been enacted”.

The oft quoted authority on the construction of Sec. 65 of the 1858 Act is the decision of the Supreme Court of Calcutta rendered in 1861 in the
In India, ever since the time of the East India Co., the sovereign has been held to be sued in tort or in contract and the common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of govt. and one of the objectives is to establish a socialistic state with its varied industrial and other activities, employing a large army of servants, there is no justification in principle or in public interest, that the state should not be liable vicariously for the tortuous act of its servant.

The cases of Rudul Shah, lead to inference that the defense of sovereign immunity is not available when the state or its officers acting in the course of employment infringe a person’s fundamental right of life and personal liberty as guaranteed by the Art. 21 of the Constitution of India.

The cases of Rudul Shah and Bhim Singh were approved by a Constitution bench of the Supreme Court in M.C. Mehta’s case which laid down that compensation for violation of fundamental rights can be allowed in exceptional cases under the writ jurisdiction but normally the party aggrieved should seek his remedy by a suit in the civil court.

The supreme Court cases discussed above did not refer to the doctrine of sovereign immunity or the case of Kasturilal on which the following submission was made: “It is submitted that, that case (kasturilal) even if not overruled can be distinguished on the ground that it did not consider the nature of liability of the state when there id deprivation of fundamental right.”
The liability of the state to pay compensation for the deprivation of the fundamental right of life and personal liberty (or any other fundamental right for that matter) is a new liability in public law created by the constitution and not vicarious liability or a liability in tort. For this reason this new liability is not hedged in by the limitations, including the doctrine of sovereign immunity, which ordinarily apply to state's liability in tort. This view is strongly supported by the decision of the Privy Council in Maharaj v Attorney-General of Trinidad and Tobago[26].

The author is of the opinion that, in India too, the principle of liability seems to be emerging clearly. It can be said that administrative action which is ultra vires but not actionable merely as a breach of duty will found an action for damages in any of the following situations:

1. if it involves the commission of a recognized tort such as trespass, false imprisonment or negligence;

2. if it is actuated malice, e.g. personal spite or a desire to injure for improper reasons;

3. if the authority known that it does not possess the power to take the action in question or is recklessly indifferent to its existence;

4. if the case is governed by community law and that law would allow reparation.

CONCLUDING REMARKS

French law long ago achieved this socially just result (Droit administrative)[27] which accords with the requirement of the rule of law which accords with the requirement of the rule of law that public authorities should bear the same legal responsibilities as ordinary citizens unless dispensed by statute.
Now it is clear that the state has to discharge its liability for the wrong, of any kind, done by it or by its servants, authorities or ministers. Art. 300 (2) of the Indian Constitution clearly speaks for the enactment of an act by which legal, statutory liability can be imposed on the state for the torts committed by it or its agency. The state in India has to establish a separate and distinct mechanism on the line of mutatis mutandis droid administrative and counsel d’état of French legal system, to facilitate the common man to stand against the arbitrariness and oppressiveness of government and of its officials. Such mechanism should have a constitutional status and therefore to amend the constitution of India accordingly. Because the constitution is the creation of ‘We the people of India’. [30]

Here the author is of the opinion that the state should be put at par with that of a common man as far as their tortuous liability is concerned. Legal liability should be imposed on the state for causing any wrongful loss by way of act or omission done by the state, its agency or authorities, without giving any protection under the rule of sovereign immunity. The aim of this is to make the state responsible, accountable and ultimately legally liable to the ‘we the people of India.

Hereinafter the state should not bear only the moral liability but strictly legal liability for which the remedy is to compensate the victims that too through separate and distinct mechanism specially established for. This will help to keep control over the administrative, ministerial wing of the state so as to channelize the mechanism for the benefit of public at large and to achieve the goal set up in the preamble of the constitution of India i.e. to secure Justice-Social Economic Political.
In a political sense, there is one problem that currently underlies all of the others. That problem is making Government sufficiently responsive to the people. If we don’t make government responsive to the people, we don’t make it believable. And we must make government believable if we are to have a functioning democracy.
References Chapter -4


2. Vikaram Raghavan, Custodial deaths and Compensatory Jurisprudence 3 March of the L. 164, 1993


16 MAHENDRA SUBHASH KHAIRNAR,Asst. Prof. Bharati Vidyapeeth’s Yashwantrao Chavan Law College, Karad

17. For the present article the word’ state’ denotes the meaning as enshrined under Art. 12 of the Indian Constitution, so as to cover not only the formal state but all other authorities of the nature.
18. Mersey Docky & Harbour Board Trustee v Gibbs (1866) LR 1 HL 93.


20. M. C. Mehta v Union of India, AIR 1987 SC 965

22. (1868-1869) 5 Bom. HCR App. 1 p.1


25. Supra 4


27. (No.1) (1978) 2 All ER 670 (PC)

28. Under the French legal system, the administrative courts administer the law as between the subject and the state. Administrative courts administer the law as between the subject and the state. An administrative authority or official is not subject to the jurisdiction of the ordinary civil courts exercising powers under the civil law in disputes between the private individuals. All claims and disputes in which these authorities or officials are parties fall outside the scope of the jurisdiction of ordinary courts and they must be dealt with and decided by the special tribunals. Though the system of droit administrative is very old, the fact is
that this system was able to provide expeditious and inexpensive relief and better protection to the citizens against administrative acts or omissions than the Common law system. —C.K.TAKWANI-‘Lectures on Administrative Law’, 3rd Ed. 2007, Eastern Book Co.

29 Art. 300(2)

30: “The Govt. of India may sue or be sued by the name of the Union of India and the Govt. of a state may sue and be sued by the name of the state and may, subject to any provisions which may be made by an Act of parliament or of the legislature of such state enacted by virtue of powers conferred by this constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian states might have sued or been sued if this constitution had not been enacted”.

245