Chapter II

SCOPE OF JUDICIAL CONTROL

In assessing the scope of judicial control of public corporations in modern India, the relevant issues to be examined are:

1. The legal status of public corporations in India.
2. The liability of the State.
3. The general liability of public corporations in India.
4. The special procedures and special penalties provided by the initiating statutes.

The most important question which must be considered in connection with the judicial control of public corporations, is, the legal status of these corporations. That this problem has frustrated the efforts of the Bar and of the Bench everywhere can be well demonstrated by the multitude of contradictory judgements handed down in this field. Actually speaking, it has been difficult to determine the legal status of public corporations because the liability of the State itself has been a problem which continues to plague most legal systems.\(^1\) Thus, to determine whether a public corporation in this country shares immunities of the State, it is necessary to take a fresh look at the issue of State liability in India.

\[\text{Liability of the State in Modern India}\]

State enterprise, which means State ownership and

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operation of industrial, agricultural, financial and commercial undertakings, is now a near-universal phenomenon. The presence of the State is felt in almost all the spheres of human life. The old laissez-faire theory has become completely impracticable. The question then is how far should the State be, liable to actions brought by citizens?

There is no controversy when a particular law specifically makes the State liable or specifically exempts the State from the operation of the statute. In our country there has been no firm legislative practice on this subject. Different statutes have taken recourse to different devices to achieve the desired results. In some instances when the legislature wants to exempt the State, an express exemption is incorporated in the statute, while in some other cases liability of the State is expressly mentioned. Ambiguities in regard to the liability of the State arise, however, when no such express provision is found in a statute.

In England the view is held that a statute enacted with the Crown's assent is made for the subjects only and that the Crown is outside its purview. This law was accepted in India as well before independence as is evidenced by the Privy Council decision in Province of Bombay v. Municipal Corporation of the City of Bombay. The same law was accepted as operative in independent and republican India as well by the majority of

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the Supreme Court in 1960 in Director of Rationing v. Corporation of Calcutta\(^3\), where it held that the rule of interpretation of statutes was that the State was not bound by a statute unless it was so provided in express terms or by necessary implication.

In 1967, however, the Supreme Court overruled the Director of Rationing case in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta\(^4\). The Court, by a majority, has stated that the above rule of construction was never accepted throughout the whole of India, and even in the Presidency towns it was not regarded as an inflexible rule of construction. It did not become the law of the land. The Court has examined the question whether the earlier rule of construction should be accepted and held that this rule is inconsistent with the present set-up. The archaic rule based on the prerogative of perfection of the Crown has no relevance in a democratic republic and is incompatible with the rule of law based on the doctrine of equality. The Court has lent support to the view that there is no justification for accepting English canon of construction. The normal construction that the general act applies to citizens as well as to the State, unless the State is exempted expressly or by necessary implication, steers clear of all anomalies. This rule is consistent with the philosophy of equality enshrined in our Constitution.

Thus the reasons for not following the common law rule in India have been stated to be: (1) there is no Crown in India; (2) the archaic rule based on the prerogative and perfection of the Crown has no relevance in a democratic republic; and (3) the common law rule is inconsistent with the rule based on the doctrine of equality. The Court has affirmed the decision in *Union of India v. Jubbi*.

It should be noted, however, that the Law Commission in its First Report (Liability of the State in Tort) in 1956 also suggested that the common law rule should not be followed in India. Even in England, the rule has been regarded as an "archaic survival of an ancient law".

The State, however, may be exempted from the operation of a statute by necessary implication, if the application of the statute leads to some absurdity. For example, if the only penalty for an offence is imprisonment, the State cannot be convicted for the offence, because the State cannot be imprisoned. When the penalty for the offence is fine and the fine goes to the Consolidated Fund, it may be presumed that the penal provision is not binding on the State. Moreover, cases may conceivably arise where express provision in a statute imposing liability on the State in certain affairs may lead to the necessary implication that the State is not bound in respect of other affairs.

6. at pp. 31 - 35.
An analysis of the Supreme Court's decision in *Superintendent and Remembrancer of Legal Affairs v. Corporation of Calcutta* shows that the State does not enjoy absolute immunity even in criminal matters.  

**Liability of the State in Tort**

The question of the liability of the State in tort has assumed great importance in the modern welfare State. The increased activities of the State have an impact on the citizen in a far greater degree than before. In England and in the United States the matter is now regulated by legislation (Crown Proceedings Act, 1947; the Federal Tort Claims Act, 1946). The tendency in England would appear to be towards a greater relaxation of the immunities of the Crown in favour of the subject. There would appear to be a feeling that the legislation already enacted has not gone far enough.

Before considering the liability of the Union and the States in tort in India, it is necessary to state briefly the position as it obtained in England till the passing of the Crown Proceedings Act, 1947:

"At common law, on the principle that the king could not be impleaded in his own courts, there was no right of action against the Crown. The procedure by way of petition of right was available to the subject, to enable claims in respect of

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breaches of contract and detention of property to be tried. But as it was said that 'the king can do no wrong', petitions of right would not lie for torts; and there was therefore no means of making the Crown liable in tort. The actual wrongdoer, acting on behalf of the Crown, did not enjoy this exemption; but while he personally could be sued, his superior officers (who might be worth suing) could not; for he was not their servant, but, like them, the servant of the Crown".  

The Crown Proceedings Act has now provided a remedy by suit both in contract and tort, with exceptions which are not material to the present discussion.

The law on this subject in India is, however, in many respects, different. Article 294(b) of the Constitution of India provides that all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State. Thus the liability of the government may arise "out of any contract or otherwise". The word "otherwise", as Kagzi points out, extends the reach of the provision to tortious liability.

In India, the extent of immunity of the government for the torts of its employees is determined by Article 300(1) of

the Constitution which declares that "The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the legislature of such State enacted by virtue of powers conferred by the 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". It will be noticed that this Article consists of three parts, namely, (1) the first part provides for the form and the cause-title in a suit and says that a State (omitting any reference to the Government of India) may sue or be sued by the name of the State, and (2) that a State may sue or be sued in relation to its affairs in like cases as the corresponding Provinces or the corresponding Indian State might have sued or been sued if this Constitution had not been enacted and (3) that the second part is subject to any provisions which may be made by an Act of the legislature of the State concerned, in due exercise of its legislative functions, in pursuance of powers conferred by the Constitution.

Extent of Liability

The liability of the Dominion and the Provinces of India before the commencement of the present Constitution was described

in section 176 of the Government of India Act, 1935 as follows:

The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

Section 176, it will be noticed, instead of directly stating the liability, refers back to the legal position as it obtained before the enactment of that Act, that is to say, as it existed on the enactment of section 32 of the Government of India Act 1915. Sub-sections (1) and (2) of section 32 are in these words:

"(1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.

(2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against East India Company if the Government of India Act, 1858 and this Act had not been passed".

13. 5 & 6 George V., c. 61.
The Government of India Act 1858 enacted:

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 of India as they could have done against the said Company.  

It is relevant to ask: what, then, is the liability of the Union and States of India to-day? It has been seen that to answer this question we have had to go back as far as the days of East India Company rule. "It is, therefore, incumbent on us", held the Law Commission of India in 1956, "to consider the question to what extent the East India Company was liable before 1858". In substance, the question to ask as regards Article 300 is: would a suit or action have lain against the East India Company?

The leading case arising under section 65 of the Government of India Act 1858 is P & O Steam Navigation Co. v. Secretary of State, a case decided in 1861 by the Calcutta Supreme Court in which the P & O Co. made a claim for damages for injury caused to its horse by the negligence of some workmen in the Government Kidderpore Dockyard. It was held that the Secretary of State for India was responsible for the action of his servants in respect of what were described as the trading activities of the East India Company and of the

14. 21 & 22 Vict., c. 106.
17. 5 Bom. H.C.R. App. 1.
Government of India. Although the question whether the East India Company would have been liable for torts in the exercise of its sovereign function was not in issue, nevertheless, the court expressed its opinion on this aspect as follows:

There is a great and clear distinction between acts done in the exercise of what are usually termed as sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them. The latter and not the former acts are justiciable and cognizable by the courts. 18

In the United States some States apply the governmental and proprietary distinction in regard to the tort liability of the municipalities. 19

In the State of Rajasthan v. Mat. Vidhyawati and Another 20, the Supreme Court considered the liability of the State for the negligent action of its servants. The facts of the case are as follows: The driver of a jeep, owned and maintained by the State for the official use of the collector, drove it rashly and negligently while taking it back from the workshop to the residence of the collector after repairs, and fatally injured a pedestrian. The State was sued for damages. The Supreme Court held that the State was vicariously liable for the negligence of the driver. The judgement of the Court expressed the view that there should be no difficulty in

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18. Ibid., p. 15.
19. 3 Davis, Administrative Law Treatise, S. 25.07.
holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer. "The immunity of the Crown in the United Kingdom, was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable 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 Government, 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 held vicariously for the tortious act of its servant ................. When the rule of immunity in favour of the Crown based on common law in the United Kingdom has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution".21

The tendency to broaden the liability of the State and to narrow its immunity was reflected in many decisions that follow

the Vidhyawati case. 22

There was possibility that the Vidhyawati case might have been the precursor of a new trend in the area of State liability, but then the efficacy of the views propounded by the court therein was whittled down by it in its second decision, Kasturi Lal v. State of Uttar Pradesh 23. Here the police seized some gold from the appellant on the suspicion that it was stolen property. The gold was kept in the government malkhana but was misappropriated by the chief constable in charge of the malkhana who fled to Pakistan. The authorities thus committed gross negligence in keeping the gold in safe custody. The question was raised whether the State would be liable to compensate the appellant for the loss caused to them by the public officers employed by it. Gajendragadkar C.J. held that the State was not liable for the tortious acts of its servants where such acts were referable to the exercise of sovereign power. He observed that the P & O case had distinguished between the trading activities and the sovereign activities of the company, a distinction which had been "uniformly followed by judicial decisions in India". 

Vidhyawati's case was distinguished as being confined to tortious liability not arising from the exercise of sovereign power. 22

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power. Gajendragadkar C.J. said that in England the immunity of the Crown from tortious liability was based on the maxim that "the king can do no wrong" and he expressed the distress of the court that under our Constitution, the citizen should have no remedy against the State in respect of a civil wrong. He held that the appellant had no remedy against the State when contrary to the provisions of the law a police officer seized gold from him and subsequently did away with it.

According to H.M. Seervai\textsuperscript{24}, the judgement is clearly wrong. It failed to distinguish between an act of State and an act done or purporting to be done under the authority of municipal law, thus overlooking the distinction made by a long line of Privy Council decisions. Again, the observations in the judgement that the distinction made in the P & O case between the sovereign and the trading functions of the company had been consistently followed, is clearly wrong and is made \textit{per incuriam}. Thirdly, Seervai points out that the judgement is self-contradictory. Gajendragadkar J. rightly observed that in England the immunity of the Crown from liability for a tort was based on the maxim that "the king can do no wrong". But the P & O case had in terms said that in determining the liability of the East India Company that maxim had no force.\textsuperscript{25} Consequently, the P & O judgement required Gajendragadkar J. to hold that the Union of India could claim no immunity from

\textsuperscript{25.} See above in the discussion of the P & O case.
liability for tort, since the East India Company could claim none.

It is respectfully submitted that the views of Seervai are correct and that the Kasturi Lal decision was based on a dichotomy of sovereign and non-sovereign functions which is outmoded and which must be rejected. The watertight compartmentalisation of the State's functions into sovereign and non-sovereign is highly reminiscent of the laissez-faire era. The functions of the modern State are so complex that it is difficult to demarcate them into one or the other category. This leads to unnecessary uncertainty regarding the legal position. As a result, we find that the law is far from certain. So long as the law is not stated clearly, 'the litigant, the Bench and Bar would be swinging in the balance between the exploded pillar of absolute immunity and the not-yet certain post of absolute liability for all acts done under colour of the municipal law'. The uncertainty has been deepened as we have seen by the recent decision of the Supreme Court in Kasturi Lal v. State of U.P. where it was held that the State was immune from liability for tortious acts committed by public servants in the course of employment and in the

exercise of statutory functions delegated to them by the government.

In view of the existing defective and archaic state of the law, and on the initiative of the President of India, the Law Ministry of India referred the matter to the Law Commission in 1955 - 1956 "to consider the question whether legislation on the lines of the Crown Proceedings Act, 1947 of the United Kingdom in respect of claims against the Union and the States based on tort is needed and, if so, to what extent". The Law Commission considered the existing law in India and the law in England and other countries on the subject. The view that it formed was that though the Crown Proceedings Act in England was more liberal in its provisions than the legislation in the United States, its scope in respect of statutory duties and powers was very restricted. It is submitted that the Commission has rightly recommended the relaxation of the rule of governmental immunity and doing away with the old distinction between sovereign and non-sovereign functions. In this connection Professor Friedmann observes: "It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through

incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental functions, but the nature and form of the activity in question”. 31

The Law Commission is further of the opinion that there is no convincing reason why the government should not place itself in the same position as a private employer subject to the same rights and duties as are imposed by statute. 32 Accordingly, the Commission has recommended legislation in India making the State liable in tort in a number of specified matters and imposing liability on a much wider scale than under the Crown Proceedings Act in England. A bill entitled the Government (Liability in Tort) Bill, drafted on the lines recommended by the Law Commission, was first introduced in Parliament in 1965, then re-introduced in 1967, and certain modifications in the Bill were suggested in 1969 by the Joint Committee of Parliament, but the bill has not yet been enacted into law.

Liability in Contract

In early cases, we find observations that contractual liability of the government, as in the case of in tortious

32. Law Commission of India, op. cit., p. 36.
liability, would depend upon the question whether the liability was incurred in the course of sovereign or non-sovereign functions. Sir Barnes Peacock, C.J., in the P & O case had stated that "where a contract is entered into in the exercise of powers usually called sovereign powers, no action will lie". The latter decisions, however, do not allude to the distinction between sovereign and non-sovereign functions. Moreover, a dichotomy of sovereign and non-sovereign functions, as we have seen, is outmoded and must be rejected.

In determining the liability of the Union and the States in respect of contracts, regard must be had to Article 299(1) which prescribes the formal requirements for the making of contracts by the Union and the States, for their power to enter into contracts and to carry on trade or business is expressly affirmed by Article 298, which provides that the executive power of the Union and the States extends to the carrying on of any trade or business, acquiring, holding and disposing of property and the making of contracts. Therefore, if the requirements of Article 299 are complied with, there can be no doubt that under Article 300 a valid contract can be enforced against the Union and the States, since it could have been enforced against the East India Company.

Thus we can conclude that so far as the contractual liability of the State is concerned, the generally accepted view has been that subject to formalities prescribed by Article 299 and to statutory conditions or limits, its liability under the Constitution is the same as that of an individual under the ordinary law of contracts. 36

Legal Status of Public Corporations in India

Having considered the liability of the State in India, it would now be convenient to consider the legal status of public corporations.

The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority has been laid down by the Supreme Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar & Others 37 as follows:

"The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of

the members have no right to the assets of the corporation*. The Court pointed out that this position had been well established ever since the decision in the case of Salomon v. Salomon & Co. was pronounced in 1897; and indeed, it had always been the well recognised principle of common law.

However, in the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.

Against the above background we may now examine the legal status of public corporations in India. But before we do so, it is necessary to lay down the relevant English law on the subject.

38. (1897) A.C. 22, H.L.
The legal status of a public corporation in England was considered by the Court of Appeal in Tamlin v. Hannaford. As so often happens in the law, a major problem arose from a minor dispute. The question coming on appeal from the County Court, was simply whether a certain house in Plymouth was or was not subject to the Rent Restriction Acts. It had been the property of the Great Western Railway and had vested in the British Transport Commission. If the Commission was a Crown agency, the Rent Restriction Acts did not apply, because those statutes did not specifically extend their provisions to the Crown. The Court of Appeal, delivering judgement per Denning L.J., had no difficulty in holding that the Transport Commission was not a servant or agent of the Crown.

In short, the Court of Appeal gave the only interpretation consistent with the true purpose and function of public corporations in the modern legal and economic system of Great Britain.

However, the decision in Tamlin v. Hannaford has been subjected to vehement criticism. It has been submitted that the decision of the Court of Appeal is regrettable and full of contradictions. The case is also criticised because there is an inadequate examination of the important, and perhaps

41. (1950) 1 K.B. 18.
crucial, question - the degree of control exercised over the Commission by the minister. 42

In view of the above mentioned inconsistencies and criticisms it would not be appropriate to think that with this court decision our important legal problem dealing with the legal status of the public corporation is settled.

India

In determining the legal status of public corporations in India it is essential to discuss briefly the State privileges in respect of production of documents in court.

The Indian Constitution does not make specific provision for State privileges in respect of production of documents in courts. However, the Constitution of India does preclude the jurisdiction of the courts to inquire into the character of advice tendered by the minister. 43

The Indian Evidence Act 1872 has a number of provisions on the subject of discovery. For example section 123 of the Act states as follows:

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withold such


43. See Article 74.
permission as he thinks fit.

Two crucial, but vague phrases can be noted in this section, namely "unpublished records" and "affairs of State". Whether the phrase "unpublished records" means "not published in Official Gazette" or "not for general information", is still not clear. Similarly, what are and what are not "affairs of State" is again an ambiguous question. It may, however, be pointed out that in the case of India, where the Constitution is a written document which delegates specific powers to the government, it should be possible to define the functions of the State.44

From the point of view of determining the legal status of public corporation in India, it is necessary to look at section 124 of the Indian Evidence Act 1872 which provides that:

No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

In this section we cannot afford to overlook the term "public officer". The expression "public officer" has been defined in sub-section (17) of section 2 of the Code of Civil Procedure. The only sub-clause which might have some relevancy is sub-clause (h), which is as follows:-

"Every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty".

However, where the officers of the corporation are in service and pay of the corporation and are paid out of the funds of the corporation, they are not "public officers" within the meaning of section 80 of the Code of Civil Procedure. 45

We may also make a reference to one patent clause 46 which is available in most of the Acts creating public corporations in India, which says: All members, officers and servants of the corporation, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

According to section 21 of the Indian Penal Code (XLV of 1860), the words "public servant" are used to describe an officer of government whose duty it is, as such officer, to prevent offences, to give information on offences, to bring offenders to justice, or to protect the public health, safety or convenience. 47 This section also covers every officer whose duty it is, as such an officer, to take, receive, keep or extend any property on behalf of government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the interests of government, and every officer in the service or pay of government or remunerated by the fee or commission for the performance of

46. See e.g. section 56 of the Damodar Valley Corporation Act, 1948; section 93 of the Employees State Insurance Act 1948; section 27 of the Oil and Natural Gas Commission Act, 1959.
47. Vide the Indian Penal Code (XLV of 1860), section 21 Clause 8.
any public duty. It is also explained in Explanation I that persons falling under any of the above descriptions are "public servants", whether appointed by the government or not.

It is significant to note that the relevant clause quoted above, which is part of many Acts initiating public corporations in India, is similar to section 124 of the Indian Evidence Act (1872), which extends to all public officers the privilege of non-disclosure of communications made to them in official confidence when they consider that the public interest would suffer by such disclosure. Since the public corporations and the Government of India are placed on the same footing, it may be deduced that they enjoy the same amount of privilege in respect of discovery. In case this conclusion is accepted it would further contribute to the confusion which surrounds the "suability" of the public corporation in India.

Thus in determining the legal status of the public corporation, the first question that arises is whether it is a department of the State or an agent or servant of the State.

Despite the severe criticisms levelled against the decision in Tamlin v. Hannaford, it is submitted, that for the purpose of this study, the decision may be accepted as an

48. Ibid., Clause 9.
49. See section 21, Explanation I of the Indian Penal Code (XLV of 1860).
51. (1950) 1 K.B. 18.
authority for determining the legal status of at least the commercial corporations. Since the Indian public corporations are of the same nature, it is clear that in the eye of law they are their own master and are answerable as fully as any other corporation.

The constitutional position of a public corporation with special reference to the Life Insurance Corporation was examined by Rajagopala Ayyangar, J. in Narayanaswamy v. Krishnamoorthy. He held that service under the Life Insurance Corporation of India is not service under the Government of the Union within the meaning of Article 191(1)(a) of the Constitution of India. His Lordship regarded the following tests for determining the constitutional position of a public corporation as either a department of government or as a servant of the State. If the statute in terms answered the question there is no need for any further enquiry. If there is no such statutory declaration or provision, the intention of Parliament must necessarily be gathered from the provisions of the statute constituting the corporation. The learned judge suggested the following tests:

(i) First, the incorporation of the body though not determinative is of some significance as an indication of Parliament of its intention to create a legal entity with a personality of its own, distinct from the State.

(ii) Secondly, the degree of control exercised by the minister over the functioning of the corporation is a very relevant factor, a complete dependence on him making it as really a governmental body, while comparative freedom to pursue its administration being treated as an element negating an intention to constitute a government agent, this semi-autonomy deriving from the desire to avoid plenary parliamentary control over the details of its normal administration.

(iii) Third is the degree of dependence of the corporation on the government for its financial needs. Much emphasis should not be laid on the historical aspects. The test of function appears to be equally unsafe for identifying a public corporation as a mechanism of the State.

The learned judge further stated that it was open to the government to have created a wing of the Ministry of Finance or the Ministry of Economics to carry on the insurance business. But this was not done. For the government did not desire to assume the responsibility for the day-to-day administration. It is for that purpose Parliament created an autonomous corporation, though sufficient power to control and guide its general policy was vested in the government. It was clearly the purpose of the statute to create a body autonomous in regard to its day-to-day administration and free from ministerial control except as to broad lines of policy and therefore outside plenary parliamentary surveillance save perhaps in regard to directions given by the responsible minister under section 21.
It was this freedom that was sought to be achieved by the creation of a separate legal entity in the form of a statutory corporation. Therefore the difference between a department of the government and this statutory corporation—the Life Insurance Corporation—was not merely one of form but of substance. The necessary concomitant of the form, with this difference in substance was to remove it, so to speak, from its character as a government department. It would run counter to the very intentions of Parliament to hold that the newly created body was either a government department or a servant or agent of the government.

In State Trading Corporation of India Ltd. and Others v. The Commercial Tax Officer, Visakhapatnam and Others 53 Shah J. in his dissenting judgement examined the question whether the corporation in India is an agent or servant of the State as follows: "The question whether the corporation either sola or aggregate is an agent or servant of the State must depend upon the facts of each case. In the absence of any statutory provision a commercial corporation acting on its own behalf, even if it is controlled wholly or partially by a government department, will be presumed not to be a servant or an agent of the State. The fact that a minister appoints the members of the corporation and is entitled to call for information and supervise the conduct of the business, does

not make the corporation an agent of the government. Where, however, the corporation is performing in substance governmental, and not commercial functions an inference that it is an agent of the government may readily be made.\(^{54}\) He further pointed out in relation to the State Trading Corporation of India Ltd., a government company incorporated under the Companies Act that "though it functions under the supervision of the Government of India and its directors, it is not concerned with performance of any governmental functions. Its functions being commercial, it cannot be regarded as either a department or an organ of the Government of India.\(^{55}\) In S.R.Tewari v. District Board, Agra\(^{56}\) the Supreme Court referred to the decision of the High Court of Allahabad in Ram Babu Rathaur v. Divisional Manager, Life Insurance Corporation of India and Others\(^{57}\) and stated that "the corporation is an autonomous body and is not a department of the State".

In connection with the above a question that arises is whether a public corporation is an office of the Central Government. This question was answered with reference to the Life Insurance Corporation in Life Insurance Corporation of India v. The State of U.P. and Others\(^{58}\). The court did not

\(^{54}\) (1964) 4 S.C.R. 99, at p. 188.


\(^{56}\) Civil Appeal No.304 of 1962, decided by the Supreme Court on April 15, 1963.


\(^{58}\) A.I.R. (1973) All. 516.
accept the submission that the Life Insurance Corporation is an office of the Central Government and therefore there was no justification for treating it in a manner different from other government offices. The court pointed out that the Life Insurance Corporation is an autonomous corporate body created under the Life Insurance Act. It is not an office of the Central Government. In this connection the petitioner relied upon the case of Shyam Lal Sharma v. Life Insurance Corporation of India, Bombay 59, where it has been held that for purposes of Article 12 of the Constitution, Life Insurance Corporation is State. Article 12 of the Constitution defines the expression 'State' as including within its ambit all local or other authority under the control of the Government of India only for the purposes of explaining as to in what sense the expression has been used in part III of the Constitution. It does not mean that the local or other authority under the control of the Government of India, which may be 'State' for purposes of Part III of the Constitution is a Central Government Office.

An important question to be considered in ascertaining the legal status of a public corporation is whether it is a citizen. The question of the citizenship of public corporations is of particular importance because of its bearing on the enjoyment of fundamental rights. In Part III of our Constitution certain fundamental rights are conferred on "any person", e.g.,

by Article 14, while others are conferred on "citizens" alone, e.g. by Articles 15 and 16. It is clear that the fundamental rights conferred by Article 19 are conferred only on citizens.\(^{60}\)

In *State Trading Corporation of India Ltd. v. C.T.O.*\(^{61}\) the whole question relating to the public corporation's claim to citizenship was considered by a bench of nine judges of the Supreme Court and it was held, by a majority of 7 to 2, that the State Trading Corporation, a company registered under the Indian Companies Act, 1956, was not a 'citizen' within the meaning of Article 19 and therefore could not invoke that Article. The majority held that nationality and citizenship were distinct and separate concepts, that the word 'citizen' in Part II, and in Article 19 of the Constitution meant the same thing, and that the provisions of Part II read with the provisions of the Citizenship Act were conclusive on the question that a corporation or a company could not be a citizen.

The corporation's claim to citizenship was again discussed in *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar*\(^{62}\). Here it was contended on behalf of the corporations that "the veil of the petitioning corporations should be lifted and it should be held that their shareholders who are Indian citizens should be permitted to invoke the protection of Article 19, and on that basis move this Court under Article 32".


\(^{61}\) (1964) 4 S.C.R. 99.

\(^{62}\) (1964) 6 S.C.R. 885.
The Supreme Court, referring to its decision in the State Trading Corporation case, dismissed the petitions and remarked that Parliament obviously did not intend to treat corporations as citizens: "If the legislature intends that the benefit of Article 19 should be made available to the corporations, it would not be difficult for it to adopt a proper measure in that behalf by enlarging the definition of 'citizen' prescribed by the Citizenship Act passed by the Parliament by virtue of the powers conferred on it by Articles 10 and 11".

Similarly, in British India Steam Navigation Co. Ltd. v. Additional Collector of Customs, Calcutta, the Supreme Court held that a corporation is not a citizen and, therefore, cannot claim any fundamental right guaranteed under Article 19, of the Constitution of India.

Thus the conflict of judicial opinion both before and after the enactment of the Citizenship Act, 1955, on the question whether a corporation or a company is a citizen has now been resolved and it is submitted that the public corporation in India is not a citizen for the enjoyment of fundamental rights.

In assessing the legal status of a public corporation, another question of great interest is whether it is to be regarded as a 'State' within the meaning of Article 12 of the Constitution of India. If a public corporation can be so included within the purview of Article 12, it will be empowered, subject to

63. (1965) 1 S.C.A. 424.
limitations imposed by the Constitution, to place restrictions on fundamental rights, and to protect them. In Article 12 of the Constitution of India, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India, or under the control of the Government of India.

However, if the public corporation cannot be included within the meaning of the State as a part of the government, it is contended that it may be included as one of the "other authorities" mentioned in Article 12. It is not clarified in the Constitution as to what exactly is meant by the term "other authorities".

We, may, however, make an attempt to throw some light on the meaning to be given to the words "other authorities".

In University of Madras v. Shantha Bai, the Court said that the words "local or other authority" in Article 12 "must be construed 'ejusdem generis' with Government or Legislature and so construed can only mean authorities exercising governmental functions. They would not include persons natural or juristic, who cannot be regarded as instrumentalities of the Government".

It is submitted by Seervai that if the word "local authority" itself contains two categories which have no common

65. Ibid., p. 68.
the words local or other authorities" cannot be construed ejusdem generis with the government or the legislature, for, there is no genus common to the government, the legislature, the two categories of local authorities and other authorities. In *Ujjain Bai v. State of U.P.*, Rajagopala Ayyangar J. said: "Again, Article 12 winds up the list of authorities falling within the definition by referring to 'other authorities' within the territory of India which cannot, obviously, be read as ejusdem generis with either the Government and the Legislatures or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India. There is no characterisation of the nature of the "authority" in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws".

The view here taken of Article 12 was taken in *Nambooripad v. C.D.Board*. The Court stated that in its literal sense, the word "authority" meant "a body exercising power" and in the context of Article 12 that power must be

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68. (1963) 1 S.C.R. *Supra* at p. 969.
considered as a power to issue rules or bye-laws or regulations having the force of law.

In *Kartick Chandra v. W.B.S.I. Corporation* the High Court of Calcutta declared that "the word 'authority' in Article 12 refers to persons or bodies having power to make rules, bye-laws etc. having the force of law". It was held by the Court that in order to constitute an "other authority" within the meaning of Article 12, the body must be a body created by statute and having the force of law or exercising statutory powers as a "public authority" and that a non-statutory body such as a company which does not exercise statutory powers cannot come within the definition of 'State' in this context. A government company could not be brought within the meaning of the term 'State'.

In *K.S.Ramamurthy Reddiar v. Chief Commissioner, Pondicherry & Another*, the Supreme Court dealing with Article 12, held: ".............all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the governments of various States and even autonomous authorities which may not be under the control of the government at all". This observation would include public corporations within the definition of "State" in Article 12, for they are clearly autonomous authorities, partially under the control

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71. (1964) 1 S.C.R. 655.
of the government.

In Electricity Board, Rajasthan v. Mohan Lal, the Supreme Court overruled the decisions in University of Madras v. Shantha Bai, Devadas v. Karnatak Engineering College, and Kishan Gopal Ram Chand Sharma v. Punjab University, all of which had held that the words "other authorities" in Article 12 should be construed ejusdem generis. The Supreme Court stated that there was no common genus between the authorities mentioned in Article 12, and cited the passage from the judgement of Rajagopala Ayyangar J. set out above. Bhargava J., speaking for the majority judgement observed:

"These decisions of the Court (Supreme Court) support our view that the expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities."

Recently in Sukhdev Singh v. Bhagatram, the Supreme Court held that the statutory bodies like the Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation are authorities within the meaning of Article 12 of the Constitution of India.

74. (1964) A.I.R. Mys. 6.
75. (1965) 2 Punj. 480.
It can thus be deduced that since a public corporation can be brought within the purview of Article 12, fundamental rights can be enforced against it by an aggrieved person.

Finally, a question of considerable significance that needs to be examined in determining the legal status of public corporations is whether the employee of a statutory corporation like a public corporation holds a civil post under the Union or the State.

The following principles, deduced from decided cases, may, be laid down:

"(i) a statutory corporation has a separate and independent existence and is a different entity from the Union or the State Government with its own property and its own fund and the employees of the corporation do not hold civil post under the Union or the State, (ii) it makes little difference in this respect even though the Union or the State holds the majority share of the corporation and controls its administration by policy directives or otherwise, (iii) it also makes little difference if such a statutory corporation imitates or adopts the Fundamental Rules to govern the service conditions of its employees, (iv) although the ownership, control and management of the statutory corporation may be, in fact, vested in the Union or State, yet then in the eye of law the corporation is its own master and is a separate entity and its employees do not hold any 'civil post under the Union or the State', (v) if, however, the State or the Union controls a post under a statutory corporation in such manner that
it can create or abolish the post or can regulate the conditions subject to which the post is or will be held and if the Union or the State pays the holder of the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union. 78

We can conclude then that whereas in the U.K., the legal status of public corporations is mainly determined in connection with the question whether it is a servant or agent of the Crown or not, in India, the legal status is to be determined with regard to (1) whether the public corporation is a department of the State or an agent or servant of the State; (2) whether it is a citizen for the enjoyment of fundamental rights; (3) whether it is to be regarded as a State within the meaning of Article 12 of the Constitution and (4) whether the employees of the public corporation hold a civil post under the Union or the State. With regard to (1) we have seen that the public corporation is not a department nor an agent or servant of the State. In connection with (2) it has been held that the public corporation is not a citizen for the enjoyment of fundamental rights. As regards (3) it has been decided that public corporations may be included within the definition of "State" in Article 12.

With regard to (4) whether an employee of the statutory corporation like the public corporation holds a civil post under the Union or State or not, the principles have been laid down

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and it is submitted that on this point the law is quite clear.

But despite some clarity in regard to the foregoing questions, it is submitted that the legal status of public corporations is still obscure. This is because the tortious liability of the State, as we have already seen, is very much vague in the absence of a codified law of torts in India. R.S. Arora in his book Administration of Government Industries after analysing the legal status of public corporations in the U.K., the U.S.A. and India concludes that the legal status of the public corporation remains ambiguous. He says that no consistent policy seems to have emerged in the United States, England or India. In both Britain and the United States, the only countries where a substantial case study is available on this subject, the corporations have been sometimes reduced to the status of ordinary suitors before the courts, and the principles of law as they relate to private litigants have been applied where it was considered that there would be no disadvantage to the State by so doing.  

Pinney is also of the view that the status of government corporations before the courts is not certain beyond these inconclusive generalisations. He feels that the status of the public corporation is not yet judicially determinate. No analysis of the forms, controls, functions and essential

79. 1969, Indian Institute of Public Administration, New Delhi, p. 92.
elements of power furnishes satisfactory guidance to the legal status of a public corporation. The statutory provisions made in various Acts creating public corporations also serve as inadequate guides. This inadequacy has been partly due to the fact that even legislatures were uncertain of the exact position that these corporations were to occupy in the administrative structure of the government. Consequently, "to-day a person in the legal profession does not know, when he takes up a case involving a public corporation, what branch of law is going to be applied by the court. So far, the courts have been applying partly private law, partly public law and partly their own philosophies". 82

Conclusion

From the above analysis it is clear that owing to the absence of clear-cut decisions on the point, uncertainty prevails as to the legal status of the public corporations. The present writer believes that the problem of determining the legal status of these corporations and of working out a code on the rights and obligations of this institution in India should be given adequate attention because public corporations, which are bound to be established in increasing numbers as a result of the socialistic policies pursued by the government, are destined to play an important role in the years to come.

82. R.S. Arora, op. cit., p. 93.
General Liability of Public Corporations in India

In India, the general liability of public corporations in law are not explained fully by the Acts creating them. These merely provide that the corporation can 'sue and be sued'.

Under section 80 of the Code of Civil Procedure, no special notice is necessary before filing a suit against them.

Here it would be relevant to consider the case of Kamta Prasad Singh and another v. The Regional Manager, Food Corporation of India and others. In this case the appellants contended that the view of law taken by the courts below that a notice under section 80 of the Code of Civil Procedure was necessary so far as the Food Corporation of India or its officers are concerned is not a good view in law. They referred to the provisions of section 80 of the Code, as also some of the provisions of the Food Corporation Act, 1964 (Act XXXVII of 1964). The respondents contended that in view of certain provisions, on which he relied section 80 of the Code was applicable.

83. Vide e.g., Damodar Valley Corporation Act, 1948, section 3(2); Industrial Finance Corporation Act, 1948, section 3(2); Life insurance Corporation Act, 1956, section 3(2); Reserve Bank of India Act, 1934, section 3(2); Air Corporations Act, 1953, section 3(2); State Bank of India Act, 1955, section 3(2); Khadi and Village Industries Commission Act, 1956, section 4(1); Agricultural Refinance Corporation Act, 1963, section 3(2); Employees' State Insurance Act, 1948, section 3(2); National Co-operative Development Corporation Act, 1962, section 3(1); Oil and Natural Gas Commission Act, 1959, section 3(2); Central Warehousing Corporation Act, section 3(1); Food Corporations Act, 1964, section 3(2); Industrial Development Bank of India Act, 1964, section 3(2); Deposit Insurance Corporation Act, 1961, section 3(1).


Section 80 of the Code of Civil Procedure requires service of notice on the government before instituting a suit against the government or against a public officer in respect of any act purported to be done by such public officer in his official capacity. We have, therefore, to see, whether the Food Corporation of India is covered by the expression "Government". We have also to see, whether the expression "public officer" as used in the section would cover officers of the corporation.

Section 3 of the Food Corporation Act is as follows :-

(1) "With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Central Government shall establish for the purpose of this Act a Corporation known as the Food Corporation of India.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire hold and dispose of property and to contract, and may, by that name, sue and be sued."

It would thus appear that the corporation is a body corporate and can sue and be sued in its own name. The fact that the capital of the corporation may be provided by the Central Government or that the working of the corporation can be supervised or directions may be issued by the government does not constitute it a "government" within the meaning of section 80 of the Code. Although the expression "government" has not been defined in the Code, it cannot include a "corporation"
constituted under an Act of the Parliament.\(^86\)

It was further held in *Kamta Prasad Singh and another v. The Regional Manager, Food Corporation of India and others*\(^87\) that where the officers of the corporation are in service and pay of the corporation and are paid out of the funds of the corporation, they are not "public officers" within the meaning of section 80 of the Code of Civil Procedure.

Notwithstanding the general liability to be sued, the statutes in most cases provide some special protection. The Damodar Valley Corporation Act provides the most extensive protection by making both the corporation and the persons in the employment of the corporation immune from suits and other legal proceedings for anything in good faith done or purported to be done under the Act.\(^88\) The Reserve Bank of India Act protects the bank and its officers for anything in good faith done or intended to be done in pursuance of section 42 and section 43 of the Act.\(^89\)

\(^88\) Damodar Valley Corporation Act, section 57:
(1) No suit, prosecution, or legal proceeding shall lie against any person in the employment of the Corporation for anything which is in good faith done or purported to be done under this Act.
(2) Save as otherwise provided in the Act no suit or other legal proceeding shall lie against the Corporation for any damage caused or likely to be caused by anything in good faith done or purported to be done under this Act.

\(^89\) Reserve Bank of India Act, section 43 A:
(1) No suit or other legal proceeding shall lie against the Bank or any of its officers for anything which is in good faith done or intended to be done in pursuance of section 42 or section 43.
(2) No suit or other legal proceeding shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of section 42 or section 43.
The Industrial Development Bank of India Act extends protection to the Development Bank or any director or any officer or other employee of the Development Bank or any other person authorised by the Development Bank to discharge any functions under the Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the Act or any other law or provision having the force of law. 90 The Deposit Insurance Corporation Act affords protection to the Corporation or the Reserve Bank or any director of the Board or any officer of the Corporation or the Reserve Bank or any other person or agency authorised by the Corporation or the Reserve Bank to discharge any functions under the Act for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the Act. 91 The Food Corporations Act offers protection to the Food Corporation or any member of the board of directors thereof or any officer or other employee thereof or any member of a Board of Management or its staff or any other person authorised by a Food Corporation or a Board of Management to discharge any functions under this Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the Act. 92 The Oil and Natural Gas Commission Act provides protection to the Commission or any member or employee of

90. Industrial Development Bank of India Act, section 32.
91. Deposit Insurance Corporation Act, section 42.
92. Food Corporations Act, section 40.
the Commission for anything which is in good faith done or intended to be done in pursuance of the Act or of any rule or regulation made thereunder. 93

The Agricultural Refinance Corporation Act protects the Corporation or any director or any officer of the Corporation or any other person authorised by the Corporation to discharge any functions under the Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the Act. 94 In the case of the Industrial Finance Corporation this protection is given to any director of any industrial concern appointed by the Corporation under section 25 or section 30A for anything which is in good faith done or intended to be done by him as such director. 95 The Life Insurance Corporation extends this protection not to the Corporation but only to members or employees of the Corporation for anything in good faith done or intended to be done under the Act. 96 All the Acts creating public corporations in India, however, do not extend such protection 97 and, in the absence of express provisions, it may be assumed that these corporations are fully liable to be sued just like ordinary individuals or corporations.

93. Oil and Natural Gas Commission Act, section 28.
94. Agricultural Refinance Corporation Act, section 40.
95. Industrial Finance Corporation Act, section 38A.
96. Life Insurance Corporation Act, section 47.
97. e.g. Central Warehousing Corporation Act, the Khadi and Village Industries Commission Act, the National Co-operative Development Corporation Act, the Air Corporations Act.
There is another difference in the protection provided by the Acts. While the Damodar Valley Corporation Act protects any act done or "purported" to be done in good faith, the Life Insurance Corporation Act, the Reserve Bank of India Act and others\(^98\) protect all acts done or intended to be done in good faith. It is likely that the courts will draw a difference between "purported" and "intended". Anything "intended to be done" under the Act appears to cover a wider sphere than anything "purported to be done" under the Act.\(^99\)

Acts purporting to be done under the statute will cover only those cases which were done under a vestige or semblance of authority or of a shadow of right. If an act was outrageous and extraordinary, or could not be supported at all, it would not be covered by the phrase and in such a case a suit will lie without any restrictions under the Act.\(^100\)

It is evident from the foregoing discussion that the protection clause protects acts done in good faith. Under the General Clauses Act, 1897 an act is deemed to be done in good faith even if it is done negligently. Hence, protection extends to negligent performance of their duties or exercise of their powers under the statutes by government employees. In any event, protection would not extend to an act done maliciously. It is not easy to prove "mala fides" since it involves probing into

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98. See supra.


the motives of an individual. However, an act performed in a recklessly negligent manner may indicate "mala fides" on the part of the performer. It has rightly been pointed out by the Law Commission that such protection clauses should not be made "to extend to negligent acts however honestly done".\(^{101}\) If the Law Commission's recommendation is accepted, it may then not be necessary to have such protection clauses in the statute book. It is because no express provision is needed to protect acts done with reasonable care in the discharge of statutory duties or powers as under the common law such acts do not amount to torts even though these may injure an individual.\(^{102}\)

The number of statutes containing immunity clause of the types mentioned above is very large.\(^{103}\) In fact, it is an established practice to insert such a clause in the legislation. The tort bill now pending before Parliament saves such immunity clauses which, in effect, would immensely dilute the efficacy of an individual's remedy against the government otherwise provided in the bill.

**Special Procedures and Special Penalties provided by the initiating statutes.**

The Acts setting up public corporations in India sometimes provide for special procedures and special penalties. e.g., section 53 of the Damodar Valley Corporation Act lays down that

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contravention of Sections 17 and 18 of the Act (i.e., provisions regarding construction of dams except with the approval of the Corporation, and supply and generation of electrical energy) shall be punished with imprisonment for a term which may extend to six months or with fine or with both. The Industrial Finance Corporation Act states in section 41(1) that whoever in any bill of lading, warehousing receipt or other instrument given to the Corporation wilfully makes any false statement, or knowingly permits any false statement to be made shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both. Section 41(2) of the same Act says that whoever without the consent in writing of the Corporation uses the name of the Corporation in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. A similar provision is found in section 41(1) of the Food Corporation Act and section 38(1) of the Warehousing Corporations Act. Similarly, section 47(1) of the Deposit Insurance Corporation Act states that whoever in any return, balance sheet, or other document or in any information required for the purposes of any provision of the Act wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. Section 47(2) of the same Act
lays down that if any person fails to produce any book, account or other document, which under the provisions of the Act, it is his duty to produce or furnish, he shall be punishable with a fine which may extend to two thousand rupees in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to one hundred rupees for every day during which the failure continues after conviction for the first such failure. A similar penalty is specified in section 44(1) and section 44(2) of the Agricultural Refinance Corporation Act. The Employees' State Insurance Act provides that whoever makes a false statement shall be punishable with imprisonment for a term which may extend to three months, or with fine not exceeding five hundred rupees, or with both (section 84). Section 85 states that if any person fails to pay contributions etc. (as specified in the section), he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both. The Reserve Bank of India Act (section 32) states that any person contravening the provisions of section 31 "shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed". The Life Insurance Corporation Act (section 40) and Air Corporations Act (section 43) similarly specify the penalty for withholding property. Under section 49 of the Damodar Valley Corporation Act, save as otherwise expressly provided in the Act,
any dispute between the Corporation and any participating government regarding any matter covered by the Act or touching or arising out of it shall be referred to an arbitrator who shall be appointed by the Chief Justice of India. The arbitrator's decision shall be final and binding on the parties. In conformity with this provision the dispute between the Damodar Valley Corporation and the West Bengal and the Bihar Governments over the sharing of expenditure on subsidiary objects other than power, flood control and irrigation, was referred to an arbitration and a former Chief Justice of Madras High Court acted as an arbitrator.

Reference may also be made to the special provisions in some of these statutes relating to the institution of criminal proceedings in respect of offences committed under the statutes. Thus section 54 of the Damodar Valley Corporation Act states that: "No Court shall take cognisance of an offence under this Act except on the complaint of an officer of the corporation authorised by it in this behalf". A similar provision is incorporated in section 49 of the Deposit Insurance Corporation Act, section 86(1) of the Employees' State Insurance Act, section 38(2) of the Warehousing Corporations Act, section 41(2) of the Food Corporations Act, and section 41(3) of the Industrial Finance Corporation Act.104 These provisions have been inserted to prevent indiscriminate prosecution by private persons. But

104. See also section 32(2) of the Reserve Bank Act.
then, can the public and an individual member of the public obtain redress against infringement of his rights by a public corporation? The first task is to obtain a judgement of the court declaring the Act setting up the corporation ultra vires and then to get a similar declaration about rules and regulations made under the Act. The power of the court to grant such relief is based on the fact that the Constitution is the supreme law of the land and that the principle of judicial review is an accepted rule of Indian constitutional jurisprudence.\(^\text{105}\) In our country when the courts are confronted with the difficult task of judicial review, "it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution".\(^\text{106}\)

**Conclusion**

An examination of the above survey reveals that the judiciary has a limited scope in exercising control over the public corporations in India. This is mainly due to, firstly, the uncertainty which prevails in regard to the legal status of public corporations, and secondly, the absence of clear-cut decisions on the vital question, viz., the tortious liability of the State. Finally, the absence of a codified law of torts in our country has further aggravated the problem.

The above shortcomings accounting for restricting the judiciary's scope leads us to make a study of the general principles underlying the judicial control of public corporations in India.

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