

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-21023-2022  
JUDGEMENT RESERVED ON :29.05.2023  
JUDGEMENT PRONOUNCED ON: 22.08.2023

MRINALINI SHARMA .....Petitioner

VERSUS

STATE OF U.T. CHANDIGARH AND ANOTHER .....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present:- Mr. Jasdev Singh Mehndiratta, Advocate  
for the petitioner.

Mr. Arav Gupta, Advocate  
for the respondent No.1-U.T. Chandigarh.

Mr. Shubham Chaudhary, Advocate with  
Mr. Parminder S. Kaul, Advocate for  
Mr. Sanjiv Ghai, Advocate  
for respondent No.2-U.T. Chandigarh.

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**VINOD S. BHARDWAJ, J.**

1. The prayer in the present petition is for seeking issuance of directions to the respondent to take immediate steps to curb the menace of stray dogs within the territorial jurisdiction of Union Territory, Chandigarh and to ensure that the laws are implemented with promptitude. A further prayer of compensation for the injury caused as well as mental and physical trauma suffered by the petitioner due canine attack while jogging in a Park in Sector-16, Chandigarh is also claimed.

2. The petitioner, who is a National Level Tennis Player and has

been playing for more than 15 years with an All India Ranking of 216 has approached this Court for suffering a canine attack while jogging in Shanti Kunj, (park maintained by the Municipal Corporation), Sector-16, Chandigarh. The petitioner has been concentrating on training for making a mark in sports. Her parents put away their flourishing career in the corporate sector to concentrate on the Tennis training of the petitioner and her younger sister by appointing international Coaches for the best possible training of the petitioner. As per the hierarchy of tournaments of Tennis in India, there are certain categories which are “TS” i.e. Talent Series followed by “CS” i.e. Championship Series and thereafter the level “SS” i.e. Super Seniors, higher to it is National Series i.e. “NS” and at the top of the pyramid is the “Nationals” (Open Nationals). The petitioner has participated in the highest level of tournaments in the country. Various certificates won by her in the above said tournaments have been attached.

3. The incident in question took place on 28.08.2022, when the petitioner had gone for jogging to Shanti Kunj. The dogs attacked her from behind and caused bite injuries on both her calves resulting in Grade-IV dog bites. She was immediately taken to the Government Multi-speciality Hospital, Sector-16, Chandigarh for treatment. She was tested and was found allergic to anti-rabies serum derived from animals. The anti-rabies serum (Human) had to be thereafter arranged personally as the same was not readily available in the Hospital. The father of the petitioner made strenuous efforts and it was then that the said serum could be procured after about 04 hours. The scale of injuries is from 1 to 6 where, six is fatal, the injuries suffered by the petitioner was categorized as Grade-IV. The photographs of

the injury suffered by the petitioner have been attached as under:-









True photo given  
Invt L  
Dr

4. The injury, however, did not heal as the rabid dogs had pull away flesh from the calves leaving a gaping hole which further led to pus formation in the wound. As the pain did not reduce and condition deteriorated, the petitioner was taken to PGIMER, Chandigarh where the doctors informed that the stitching of the injury by the Government Medical Hospital was improper and the wound ought to have been kept open. Samples were drawn from the pus and were sent for check up and the petitioner is continuously consuming anti-biotics since 28.08.2022 even till the date of filing of the petition before this Court on 12.09.2022. The petitioner thus approached this Court for seeking compensation not only for the trauma caused to her but also on account of failure by the respondents in discharging their obligations as per the statue.

5. Reply by way of affidavit of Isha Kamboj, Joint Commissioner, Municipal Corporation, Chandigarh had been filed where in the measures taken by the Municipal Corporation, Chandigarh have been detailed. It was also mentioned that a Division Bench of this Court in CWP-18253 of 2009 had issued various directions vide order dated 02.03.2020 for managing stray dogs, some which are extracted as under:-

*"N. All the dog owners are required to register their dogs with the Municipal Authorities. The Municipal Authorities are required to issue tokens. The owners of the dogs must ensure that the dogs' poop must be picked up/removed and put in a bag/container to be disposed of at home in a hygienic manner.*

*O. The Municipal Authorities in the State of Punjab, Haryana and UT Chandigarh Authorities are directed to construct 4/5 dog pounds in their jurisdiction to house the stray dogs. The States of Punjab, Haryana and UT Chandigarh are directed to strictly enforce the provisions of the Prevention of*

*Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017. All the dog breeders in the States of Punjab, Haryana and UT Chandigarh should be registered. The breeding of dogs without registration is banned.*

*P. All the dogs being taken to streets/roads must be collared besides being leashed. The Municipal Authorities shall maintain the record of all the licensed dogs within a period of three months from today.*

*Q. The caretakers of dog pounds would ensure to protect the dogs from extreme weather conditions and to maintain proper ventilation and also to provide appropriate space. All the dogs should be vaccinated and should be kept in clean environment. The surface of the dog pound should be cleaned regularly. There should be proper drainage and waste disposal. It should be the duty of the Administration to provide uncontaminated and palatable food in sufficient quantity. The diet should be sufficient according to the age and health of dogs. All the dogs kept in the pounds should be vaccinated against rabies preferably also against canine distemper, parvovirus, leptospirosis and viral hepatitis.”*

6. It was also mentioned that the stray dogs cannot be impounded for more than a reasonable time period and that after their treatment and recovery they have to be released back to their locality from where they were captured as per the Animal Birth Control (Dogs) Rules, 2001 and the provisions of the Prevention of Cruelty to Animals Act, 1960. It was further claimed that in furtherance to order dated 31.10.2012 passed by this Court in CWP-9902 of 2012, a scheme for management of stray dogs in the Union Territory, Chandigarh was framed in 2012 and effective steps for controlling the menace are being undertaken by the Union Territory, Chandigarh and for managing population of stray dogs. The NGO Compassion for Animal

Welfare Association (CAWA) has been engaged in the work of catching, sterilization, Operations, Anti-Rabies Vaccinations, Post-Operative Care and Release of Dogs. It has also been averred that as per the Census 2018, the tentative stray dog population was 12,922. A reference was also made to the SLP No. 691 of 2009 wherein the Hon'ble Supreme Court of India has vide its order dated 18.11.2015, requested all the High Courts not to pass any orders relating to the Prevention of Cruelty to Animal Act, 1960 and the Birth Control (Dogs) Rules 2001.

7. A short reply of Dr. Suman, Director, Health and Family Welfare Department, Chandigarh Administration has also been filed wherein it is averred that after the unfortunate incident of dog bite suffered by the petitioner, she was attended expeditiously by the medical staff without undue delay and the treatment was extended. The medical protocol which was required to be followed was also adhered to. As per the medical protocol only the equine serum was available and as the petitioner was allergic to the said equine serum, attendants of the petitioner were asked to bring anti-rabies plasma serum and upon the same being arranged, it was administered to the petitioner. The Administration had, however, submitted the case which was identified as a category III dog bite. A rejoinder was filed by the petitioner in which reference was made to the medical report to substantiate that it was diagnosed as a case of Grade-IV dog bite. Reference to the medical report and the treatment extended by the PGIMER, Chandigarh was also attached which too had proceeded to treat the petitioner as a Grade-IV injury case.

8. A rejoinder to the written statement filed on behalf of the

Municipal Corporation, Chandigarh was also filed wherein it was pointed out that sufficient, effective and necessary steps have not been taken by the Municipal Corporation, Chandigarh for controlling the menace of dogs and having been attacked by a pack of dogs in a park maintained by the Municipal Corporation, Chandigarh itself shows laxity in their approach and volumes about the negligence.

9 Counsel for the petitioner has argued that under the provisions of Prevention of Cruelty to Animal Act, 1960, the rules framed thereunder and also the Municipal laws, the obligation is cast upon the Municipal Corporation as well as the Government to ensure that effective mechanism is put in place so that the menace can be checked and the citizens are not subjected to attacks/injuries by stray/rabid dogs. The nature of injuries as well as the number of injuries speak for themselves that the respondents-authorities miserably failed to discharge their obligations and that they are thus liable to provide compensation to the petitioner.

10. On the other hand, counsel for the respondents have reiterated the provisions of the Act and Rules and have submitted that sufficient, adequate and appropriate mechanism and medical procedures have been put in place by the respondents to check the menace of stray animal and that there was no laxity.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the pleadings & documents placed on record.

12. Before proceeding further, some of the relevant provisions of the Prevention of Cruelty to Animal Act, 1960 and the rules as well as the

bye-laws framed by the Municipal Corporation, Chandigarh are extracted as under:-

**Prevention of Cruelty to Animal Act, 1960**

***"9. Functions of the Board.-The functions of the Board shall be-***

- (a) to keep the law in force in India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time;*
- (b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement;*
- e) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals;*
- (d) to take all such steps as the Board may think fit for amelioration of animals by encouraging, or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals;*
- (e) to advise the Government or any local authority or other person in the design of slaughter-houses or in the maintenance of slaughter-houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed, wherever*

*necessary, in as humane a manner as possible;*

- (f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering;*
- (g) to encourage, by the grant of financial assistance or otherwise the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like where animals and birds may find a shelter when they have become old and useless or when they need protection;*
- (h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;*
- (i) to give financial and other assistance to animal welfare organisations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board;*
- (j) to advise the Government on matters relating to the medical care and attention which may be provided in animal hospitals, and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so;*
- (k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;*

l) *to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.*

*"11. Treating animals cruelly.-*

(1) *Xxx xx xxx xxx*

(2) *Xxx xxxx*

(3) *Nothing in this section shall apply to-*

(a) *the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or*

(b) *the destruction of stray dogs in lethal chambers or [by such other methods as may be prescribed]; or*

(c) *the extermination or destruction of any animal under the authority of any law for the time being in force; or*

(d) *any matter dealt with in Chapter IV; or*

(e) *the commission or omission of any act in the course of a destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.*

*Section 38 of the 1960 Act confers powers upon the Union Government to frame rules for all or any of the matters enumerated in the Act. Sub Clause (ea) was added in Section 38 (2) vide Amendment Act No.26 of 1982, which reads as under:*

*"38. Power to make rules-*

(1) *x x x*

(2) (a) to (e) *x x*

*(ea) the other methods of destruction of stray dogs referred to in clause (b) of sub-section (3) of*

*section 11."*

13. In exercise of powers under Section 38 of the 1960 Act, Animal Birth Control (Dogs) Rules, 2001 were framed by the Union Government. As per the above Rules of 2001, dogs have been classified into two categories i.e., pet dogs and street dogs. Rule 4 provides for the formation of Monitoring Committee consisting of Commissioner/ Chief of the Local Authorities who shall act as the Chairperson of the Committee. Seven more representatives have to be there in the Committee. Rule 5 stipulates the functions of the Committee. Further, Rule 6 casts obligation upon the local authorities for the establishment of dog pounds and make arrangements for sterilisation and immunisation of street dogs. Rule 7 provides for capturing, sterilisation, immunisation and release of the dogs. Rule 9 provides for euthanasia of street dogs in certain conditions. Rule 10 deals with furious or dumb rabid dogs.

**Animal Birth Control (Dogs) Rules, 2001**

**2. Definition**

Xx xxx xxx xxx xxx xxx xxx xxx

(e) “local authority” means a municipal committee, district board or other authority for the time being invested by law with the control and administration of any matters within a specified local area;

Xx xxx xxx xxx xxx xxx xxx xxx x

**5. Functions of the Committee:** The committee constituted under rule 4 shall be responsible for planning and management of dog control programme in accordance with these rules. The committee may

(a) issue instructions for catching, transportation, sheltering, sterilisation, vaccination, treatment and release of sterilized vaccinated or treated dogs.

- (b) *authorize veterinary doctor to decide on case to case basis the need to put to sleep critically ill or fatally injured or rabid dogs in a painless method by using sodium pentathol. Any other method is strictly prohibited.*
- (c) *create public awareness, solicit co-operation and funding.*
- (d) *provide guidelines to pet dog owners and commercial breeders from time to time.*
- (e) *get a survey done of the number of street dogs by an independent agency.*
- (f) *take such steps for monitoring the dog bite cases to ascertain the reasons of dog bite, the area where it took place and whether it was from a stray or a pet dog*
- (g) *Keep a watch on the national and international development in the field of research pertaining to street dogs' control and management, development of vaccines and cost effective methods of sterilization, vaccination, etc.*

**6. *Obligations of the local authority:***

- (1) *The local authority shall provide for*
  - (a) *establishment of a sufficient number of dogs pounds including animal kennels/shelters which may be managed by animal welfare organizations;*
  - (b) *requisite number of dog vans with ramps for the capture and transportation of street dogs.*
  - (c) *one driver and two trained dog catchers to be provided for each dog van*
  - (d) *an ambulance cum clinical van to be provided as mobile center for sterilisation and immunization;*
  - (e) *incinerators to be installed by the local authority for disposal of carcasses;*
  - (f) *periodic repair of shelter or pound.*

- (2) *If the Municipal Corporation or the local authority thinks it expedient to control street dog population, it shall be incumbent upon them to sterilize and immunize street dogs with the participation of animal welfare organizations, private individuals and the local authority.*
- (3) *The animal welfare organizations shall be reimbursed the expenses of sterilization/immunization at a rate to be fixed by the Committee on fortnightly basis based on the number of sterilization/immunization done.*

**7. Capturing/sterilization/immunization/release:**

- (1) *Capturing of dogs shall be based on:*
  - (a) *Specific complaints (for which the local authority in consultation with the Monitoring Committee shall set up a dog control cell to receive complaints about dog nuisance, dog bites and information about rabid dogs) and*
  - (b) *General :-*
    - (i) *On receipt of specific complaint about nuisance or dog bite the same shall be attended on priority basis, irrespective of the area from which the complaint comes. On receipt of such complaint the details such as name of the complainant, his complete address, date and time of complaint, nature of complaint etc. shall be recorded in a register to be maintained for permanent record.*
    - (ii) *Capturing for general purpose will be on such dates and time to be specified by the Committee.*
- 2. *The dog capturing squad shall consist of-*
  - (i) *The driver of the dog van*
  - (ii) *Two or more trained employees of the local authority who are trained in capturing of dogs.*

- (iii) *One representative of any of the animal welfare organization*

*Each member of the dog squad shall carry, a valid identity card issued by the local authority. The dog capturing squad will be accompanied by a representative of an Animal Welfare Organisation nominated for the purpose.*

- (3) *On receipt of specific complaint or for capturing dogs in normal course the dog squad will visit the concerned area, capture the dogs identified by the complaint in case of complaint oriented capturing and other dogs in case of general capturing. All the dogs caught will be tagged for identification purposes and to ensure that the dogs are released in the same area after sterilization and vaccination. Only stipulated number of dogs, according to the Animal Birth Control Program target, shall be caught by the van. A record of dogs captured shall be maintained in a register, mentioning therein the name of the area/locality, date and time of capture, names of persons in the dogs squad on that particular day and details about dogs captured such as number of male dogs, number of female dogs, number of puppies etc.*
- (4) *The dogs shall be captured by using humane methods such as lassoing or soft-loop animal catchers such as those prescribed under the provisions of Prevention of Cruelty (Capture of Animals) Rules, 1979.*
- (5) *While the dogs are being captured in any locality the representative of the local authority or of the animal welfare organization accompanying the dog squad will make announcements on a public*

*address system that dogs are being captured from the area for the purpose of sterilization and immunization and will be released in the same area after sterilization and immunization. The announcement may also briefly educate the residents of the area about the dog control programme and solicit the support of all the residents reassuring them that the local authority is taking adequate steps for their safety.*

- (6) *The captured dogs shall be brought to the dog kennels/dog pounds managed by the Animal Welfare Organisations (AWOs). On reaching the dog pounds all the dogs shall be examined by the veterinarians and healthy and sick dogs should be segregated. Sick dogs should be given proper treatment in the hospitals run by Society for Prevention of Cruelty to Animals (SPCA//other recognized institutions and only after they are treated they should be sterilized and vaccinated. The dogs will be sterilized/vaccinated under the supervision of the veterinarians of the hospital run by the Society for Prevention of Cruelty to Animals (SPCA). Animal Welfare Organization or other dog shelters. After necessary period of follow up, the dogs shall be released at the same place or locality from where they were captured and the date, time and place of their release shall be recorded. The representative of Animal Welfare Organisations (AWOs) shall accompany the dog squad at the time of release also.*
- (7) *At a time only one lot of dogs shall be brought for sterilization, immunization at one dog kennel or dog pound and these dogs shall be from one locality. Two lots from different areas or localities*

*shall not be mixed at the same dog pound or dog kennel.*

- (8) *The dog kennel must have sufficient space for proper housing and free movement of dogs. The place should have proper ventilation and natural lighting and must be kept clean. Adults and puppies must be housed separately and amongst the adults the males and females also should be housed separately. Adequate arrangement for drinking water and food shall be made for dogs while in captivity.*
- (9) *Female dogs found to be pregnant shall not undergo abortion (irrespective of stage of pregnancy) and sterilization and should be released till they have litter.”*

14. As per the information available on the website of Chandigarh Administration, last dog census was conducted in the year 2019. Stray dogs' population witnessed an increase of 65% over a period of 7 years. The data further shows that only 1 male dog and 3 female dogs were sterilised in the areas of Sector 16 & 17, Chandigarh in 2017. These figures leave with an only inference that authorities have not been performing their duties diligently. Data of sterilization was last updated on 30.06.2017 by the Municipal Corporation, Chandigarh and has not been uploaded or placed on record.

15. That apart from specific Acts, Section 133 (1)(f) of the Code of Criminal Procedure, 1973 gives power to the District Magistrate for destruction, confinement or otherwise disposal of any dangerous animal.

***"133. Conditional order for removal of nuisance.***

*(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-*

- (a) x x*
- (b) x x x*
- (c) x x x x*
- (d) x x x x x*
- (e) x x x x x*

*(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-*

- (i) to remove such obstruction or nuisance; or*
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or*
- (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or*
- (iv) to remove, repair or support such building, tent or structure, or to remove or support such*

*trees; or*

*(v) to fence such tank, well or excavation; or*

*(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute."*

16. Comprehensive Scheme for management of stray Dogs in the Union Territory of Chandigarh, 2012 has been passed by the Municipal Corporation, Chandigarh to control stray dog menace and safeguard the citizens. The following obligations have been imposed on the local authority:-

**VI) INFRASTRUCTURE AND OBLIGATIONS OF THE LOCAL AUTHORITY:**

*To be provided by the Municipal Corporation Chandigarh.*

- 1. Dog Control Cell with one Computer, Internet & common facilities to be manned by one person.*
- 2. Creation of a dog pound in the city as required for the housing dogs suspected of rabies temporarily or such arrangement be made in the existing shelters of NGO's.*
- 3. Three dog vans with announcement system for capturing, transportation and release after operation from various zones. 3. One MultiPurpose Worker, One driver and four trained dog-catchers to be provided to each dog van.*
- 4. Incinerator shall be installed by the Municipal*

*Corporation at each dog shelter or a common incineration plant for disposal of dead dogs.*

- 5. The NGOs will be reimbursed the expenses of sterilization/immunization by Municipal Corporation, Chandigarh at a rate fixed by the Monitoring Committee/Municipal Corporation, Chandigarh.*
- 6. To hold free anti-rabies camps throughout the year for stray dogs in a scheduled programme and this programme shall be repeated every year in similar fashion.*
- 7. Municipal Corporation shall provide the financial support for address system/education tentage/transport/public literature/honorarium/other misc. operational expenses to the public awareness team.”*

17. A perusal of the aforesaid shows that the duty has been cast upon the Administration to keep the menace of stray dogs under control and that the citizens are not endangered by the presence of large number of dogs. Despite the comprehensive scheme for management of dogs by the respondent-Municipal Corporation and claims made about the implementation of the management schemes, an increase by more than 67% in the stray dog population fails to lend support to the claim made on behalf of the respondents. It rather shows that the measures adopted are inadequate and fail to respond in furtherance of the scheme. A mere bringing of a scheme without any effective implementation and objective review can hardly be said to be a proper implementation. The respondent(s)-agencies have been patting their back on the number of sterilizations done and have not opted to conduct a review of the scheme and as to why despite the claimed successful execution of the said scheme, the population of stray

dogs is on a steep rise. The respondents have failed to offer any satisfactory explanation for the same.

18. Besides, there is no dispute qua the incident that has taken place on the date and the manner as claimed. There is also no denial of the obligation by the respondents to keep stray dogs menace under control. Further, there is no allegation or suggestions to the effect that the attack was as a result of any act or omission attributable to the petitioner herself. In the absence thereof, the principles of strict liability would come into play against the respondents and no lapse or fault can be found attributable to the petitioner. It is also not in dispute that Shanti Kunj, the park where the petitioner was jogging is managed and maintained by the Municipal Corporation itself. It is also well known to the respondent-Corporation that a large number of citizens from diverse age group including toddlers, young ones, grown up and old visit these parks every day for exercise, general walk and even for family outing. Despite being conscious of the same, there seems to be hardly any effective measure undertaken to ensure that such places which are visited by large number of citizens are kept free of dog menace.

#### **PUBLIC SAFETY AND ARTICLE 21: ANALYSIS**

19. The question which arises next is as to whether Article 21 of the Constitution of India has to be read into all public safety statutes/provisions since the prime object of Public Safety Legislation is to protect the individual and provide compensation for the loss suffered. The duty of care expected from State or its officials functioning under the Public Safety Legislation is, therefore, very high as compared to the statutory powers and

supervision desired under any other Statute. The Hon'ble Supreme Court of India was faced with the issue as to whether or not to award compensation for violation of right to life and personal liberty guaranteed under Article 21 of the Constitution of India in the matter of **Rudul Sah Versus State of Bihar** reported as **1983 (4) SCC 141**. The stand of the State was that the claimant/victim should be left to avail remedies under the ordinary Civil Law, however such contention was rejected by the then Chief Justice of India Mr. Y.V. Chandrachud as it would have amounted to rob Article 21 of its significant content. The Hon'ble Chief Justice of India observed that relegating the petitioner to ordinary remedy of Civil Suit would have only prolonged the misery of the person who had been kept in prolonged detention despite his acquittal. The Hon'ble Supreme Court of India had awarded compensation for violation of fundamental rights in various other cases also including the matter of **Sebastian M. Hongray Versus Union of India** reported as **(1984) 3 SCC 82**; **Bhim Singh Vs. State of Jammu & Kashmir** reported as **AIR 1986 SC 494**; **Saheli Vs. Commissioner of Police** reported as **AIR 1990 SC 513** and **State of Maharashtra Vs. Ravi Kant S.Patil** reported as **(1991) 2 SCC 373**. The legal proposition propounded by the abovesaid cases are that the Union or the State Government would be liable for tortious acts committed by their officials in violation of Article 21 of the Constitution of India.

20. The nature of liability was however, not clearly spelt out by the Hon'ble Supreme Court in the above said decisions, which was later expounded in the case of **"Nilabati Behera Vs. State of Orissa"**, **AIR 1993 SC 1960**, wherein it was held appropriate to spell out clearly the principles

on which the liability of the State arises in such cases for payment of compensation and the distinction between the liability in person and the liability in law for payment of compensation of any action of torts. The judgment in the matter of Nilabati's case (Supra) was inspired by the Privy Council Decision in the matter of **Ramesh Lawrence Maharaj Vs. The Attorney General of Trinidad and Tobago (1978) 2 All England Reports 670.** Amongst the earliest cases reported in India, the Government was recognized as liable for the tort committed by its officials while acting in discharge of their statutory duties in the matter of **Peninsular Oriental Steam Navigation Company Versus Secretary of State of India 1861 5 Bombay High Court-1.** A distinction was, however, drawn between sovereign and non-sovereign functions of the East India Company and it was held that maintenance of dockyard is a non-sovereign function, hence, the Government was not liable for negligence of its servants. The abovesaid point of view was, however, not followed by the Courts of Madras and Bombay in subsequent judgments of **Secretary of State for India Versus Hari Bhanji, ILR (1882) 5 Madras 273** and **P.V. Rao Versus Khushaldas S. Advani, AIR 1949 Bombay 277.**

21. A Full Bench of Punjab and Haryana High Court in the matter of **Rup Ram Kalu Ram Aggarwal Versus State of Punjab reported as AIR 1961 P&H 336** held the State liable for torts of its servants. The point of law was reverberated in the Judgment of Hon'ble Supreme Court in the matter of **Kasturi Lal Ralia Ram Jain Versus The State of Uttar Pradesh** reported as **AIR 1965 SC 1039.** The previously followed distinction of sovereign and non-sovereign functions was even though initially given much weightage

and precedence and the traditional sovereign function such as making of laws, administration of justice, maintenance of law and order, repression of crime, carrying of war, the making of treaties and peace and other consequential functions etc. which were exclusively sovereign functions were held to be covered under the defence of sovereign functions under the law of Torts. However, the plea of sovereign immunity was not made available in the case of public law for claiming monetary compensation for violation of fundamental rights, especially the right to life and personal liberty guaranteed under the Constitution of India by the Hon'ble Supreme Court in the matter of *Nilabati Behara (Supra)*.

22. The principles which thus emerge about the nature and scope of new public law remedy evolved by the Hon'ble Supreme Court are as under:

- (i) Mandatory compensation for violation of fundamental rights is an acknowledged remedy in public law for the enforcement and protection of fundamental rights;
- (ii) Such claim is based on strict liability;
- (iii) Such claim is distinct from and in addition to the remedy in private law for damages for tort;
- (iv) This remedy would be available when it is the only practicable mode of redressal available; and
- (v) Against the claim for compensation for violation of fundamental rights in a writ petition under Article 226 of the Constitution of India, the defence of sovereign immunity may be inapplicable.

23. The remedy thus provided goes a long way in providing relief to the victims/claimants for violation of right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The remedy is, however, to be tempered by judicial restraint, to avoid circumvention of

private law remedy. The abovesaid judicial pronouncements established that public law remedy may be availed by a person under a given set of circumstances where the liability of the respondents is *per se* well established and made out on the principles of strict liability. The remedy for seeking compensation on account of failure of public duty is in addition to the private law remedy available before the Civil Court which is competent to look into the issue and award adequate compensation after examining the evidence.

#### **NEGLIGENCE AND COMPENSATION UNDER PUBLIC LAW**

24. The issue which arises next relates to what 'negligence' is 'actionable' and what is the meaning of 'negligence' for entertaining a claim under the Public Law for compensation. The said question was examined by the House of Lords in the matter of **Donoghue Versus Stevenson**, reported as **1932 AC 562**. Lord Atkin spoke on behalf of the Bench laying down an important rule that the manufacturer owes a duty of care in their manufacturing, to all persons who are forcibly likely to be affected by the lack of care in the preparation of those products. It was further stated that the negligence depends upon proof that one person has committed a breach of duty of care binding upon himself and owed to another and has thereby caused injury to that other. The judgment laid the foundation for creation of a separate tort of negligence and the same has evolved as amongst the most important tort. Actions under negligence far exceed those brought for any other tort. A two tier test was evolved in the judgment of **Anns Versus London Borough of Merton (1978) AC 728**, which was increased to a triple test in the judgment of House of Lords in **Caparo Industries PLC versus**

**Dickman** reported as **(1990) 2 AC 605**. The three requirements which were laid down were:-

- (i) There must be reasonable foreseeability of the relevant laws;
- (ii) It must be a just and reasonable duty that should exist; and
- (iii) There must exist a relationship of proximity between the parties.

25. The concept of foresee-ability and proximity has been accepted as a flexible concept as the bounds of foresee-ability can be stretched or narrowed to almost certainty or virtually impossibility. It is the reasonableness i.e. the prudence of a reasonable person that has been applied to the foresee-ability and proximity relationship. Hence, a claimant is required to establish that the respondent/defendant owed a duty to him and to next establish that there was breach of this duty on the parameters of a reasonable and prudent man to be guided by those considerations. The issue as regards the compensation to be granted for the negligence shown by the statutory authorities has been under consideration for the Court in various matters. In a case relating to debris sliding down the road and claiming lives of two persons, a claim was awarded against National Highway Authority of India. The defence taken by the National Highway Authority of India was to the effect that it had entered into an agreement with a concessionaire for the maintenance and operation of said Section of the National Highway and that it had no further obligation and that the liability was cast on the concessionaire.

26. While dealing with the aspect of legality of the compensation awarded under Question –II in the matter of “***The Director General (Road Development) National Highways Authority of India Versus Aam Aadmi***

***Lokmanch and others***” bearing ***Civil Appeal No.6932 of 2015*** decided on 14.07.2020 the Hon'ble Supreme Court has noticed and recorded the following:

*“56. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 (“the Highways Act”) and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:*

*“4. National highways to vest in the Union. — All national highways shall vest in the Union, and for the purposes of this Act “highways” include—*

*(i) all lands appurtenant thereto, whether demarcated or not;*  
*(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and*  
*(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.*

*5. Responsibility for development and maintenance of national highways.—It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.*

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*8A. Power of Central Government to enter into agreements for development and maintenance of national highways — (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in*

*relation to the development and maintenance of the whole or any part of a national highway.*

*(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.*

*(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof.”*

*57. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:*

*“16. Functions of the Authority.— (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government.”*

*58. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed,*

*and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).*

*59. This issue had arisen in Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions and stated that (Rajkot Municipal Corporation case):*

*“18 The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the*

*plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time correlative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.*

*19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action,*

*the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the correlative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 192 of CPC or with leave of court under Order I, Rule 8 CPC by public- spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.*

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*24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in Sheppard v. Borough of Glossop [(1921) 3 KB 132 : 1921 All*

*ER Rep 61, CA]* . The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action....

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39. *It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail.”*

60. *In the UK, the duty of a highway authority was described by Diplock L.J. in Griffiths v. Liverpool Corporation as follows:*

*“The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute.”*

*Again, Diplock, LJ stated in Burnside v. Emerson<sup>19</sup> described the duty as follows:*

*“in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition.”*

61. *Later, in Haydon v. Kent County Council Lord Denning*

*M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:*

*“If Section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided ‘as a question of fact and degree,’ it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under Section 58 has been made out. Parliament did not define those facts for the purpose of Section*

*41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount and [1967] 1 Q.B. 374 [1968] 1 W.L.R. 1490 [1978] Q.B. 343 nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty.”*

*62. In Stovin v Wise, the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council,*

*which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that “Drivers of vehicles must take the highway network as they find it”. It was held that statutory power could not be converted into a common law duty. The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,*

*“In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised.”*

*63. Stovin (supra) and its enunciation that the existence of a public duty did not per se extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in Gorringe v. Calderdale Metropolitan Borough Council. The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in Robinson v. Chief Constable of West Yorkshire Police<sup>23</sup>, which observed as follows:*

“32. At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example, *Entick v Carrington* (1765) 2 Wils KB 275 and *Mersey Docks and Harbour Board v Gibbs* (1866) LR 1 HL 93. Dicey famously stated that “every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen”: *The Law of the Constitution*, 3rd ed (1889), p 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, section 2.

33. Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example, *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004, as explained in *Gorringe’s case* 2004 (1) WLR 1057, para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question: *Geddis v Proprietors of Bann Reservoir* (1878) 3 App Cas 430. It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.

34. On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in *Michael’s case* [2015] AC 1732, para 97, “the common law does not generally impose liability for pure omissions”. This “omissions principle” has 2004 (1) WLR 1057 2019 (2) All ER 1041 been helpfully summarised by Tofaris and Steel, “Negligence Liability for Omissions and the Police” [2016] CLJ 128:

*“In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A’s status creates an obligation to protect B from that danger.”*

35. As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example, *Barrett v Enfield London Borough Council* [2001] 2 AC 550 and *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619, as explained in *Gorringe’s case* 2004 (1) WLR 1057, paras 39–40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example, *Smith v Littlewoods Organisation Ltd* [1987] AC 241, concerning a private body, applied in *Mitchell v Glasgow City Council* [2009] AC 874, concerning a public authority.

36. That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question. A well known illustration of that principle is the decision of the House of Lords in *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74. The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then “it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power]

*could generate a common law duty of care”: Gorringer’s case 2004 (1) WLR 1057, para 23.*

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*40. However, until the reasoning in the Anns case was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including Hill’s case [1989] AC 53. The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in Gorringer’s case. Since that case, a public authority’s non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.*

*41. Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see Gorringer’s case 2004 (1) WLR 1057, para 38, per Lord Hoffmann.*

*42. That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles*

*do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable.”*

64. *In Yetkin v. Mahmood*, where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

*“33. The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority’s powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established.”*

65. A similar approach was indicated by this court in *Municipal Corpn. of Delhi v. Sushila Devi* (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

*“13. By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of*

*the tree (see Brown v. Harrison [1947 WN 191 : 63 TLR 484], Quinn v. Scott [(1965) 1 WLR 1004 : (1965) 2 All ER 588] and Mackie v. Dumbartonshire County Council [1927 WN 247] ). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corpn. of Delhi v. Subhagwanti [AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a (1999) 4 SCC 317 at page 323 tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."*

*This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in*

*Vadodara Municipal Corporation v Purshottam V. Muranji.*

66. *The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it inter alia, states that:*

*“During pre-monsoon rains all the excavated muck has been carried to NH4 alongwith rain water and block Satara bound traffic lane for quite some time. The problem will be severe during heavy rains of July and August.*

*As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end.”*

67. *Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the 2014 (16) SCC 14 highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI’s correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by*

*the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, prima facie, disclose their liability.”*

27. The issue of public safety and disbursement of compensation under the Constitutional remedies were also considered by the Hon'ble Supreme Court in the matter of **Sanjay Gupta and others Versus State of U.P.** reported as **(2022) 7 SCC 203**. The relevant extract of the same is reproduced hereinafter below:

*“13. It was thereafter, the Division Bench of the Delhi High Court in a judgment reported as “**Uphaar Tragedy Victims Association. v. Union of India**” reported as **2000 SCC OnLine Del 216** noticed the deviations in the building plans of the theater. The High Court considered a similar argument as was raised on behalf of the Organizers herein and held as under:*

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*48. In D.K. Basu Vs.State of West Bengal (Supra) it was held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to*

*assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil*

*suit. Dr.Dhawan also relied upon the judgment reported as M.C. Mehta Vs.Union of India, 1987 (1) Supreme Court Cases 395, to contend that to justify the award of compensation, the requirement is that infringement must be gross, patent, incontrovertible and ex facie glaring. It is also his submission that the remedy of damages was an extra ordinary remedy where there was gross violation arising out of deliberate action or malicious action resulting in deprivation of personal liberty. It is submitted that the exemplary damages in public law were not to be confused with damages in private law for which private law remedies were available. The damages available for constitutional wrongs were by very nature exemplary and have a limited meaning and were not intended to be compensatory in nature. In support of his contentions, he refers to the judgments of the Supreme Court in Nilabati Behara Vs.State of Orissa, 1993 (2) Supreme Court Cases 746 and Indian Council for Enviro Legal Action and Others Vs.Union of India and Others, 1996 (3) Supreme Court Cases 212. In Nilabati Behara Vs.State of Orissa(Supra), it was held by the Supreme Court that it would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defense in private law in an action based on tort. This is a*

*distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this court as well as some other decisions before further discussion of this principle. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach to its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.*

*49. In Indian Council for Enviro Legal Action and Others Vs. Union of India and others (Supra), the Supreme Court had held that even if it is assumed that the Court cannot award damages against the respondents in proceedings under Article 32 of the Constitution of India that would not mean that the Court could not direct the Central Government to determine and recover the cost of remedial measures from the respondents. It was held that Section 3 of the Environment (Protection) Act, 1986 expressly empowered the Central Government to make all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. The right to claim damages was left by institution of suits in appropriate Civil Courts and it was held that if such suits were filed in forma pauperis, the State of Rajasthan shall not oppose those applications for leave to sue in forma pauperis.*

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*52. We have given our thoughtful consideration to the arguments advanced by Dr. Rajeev Dhawan that public*

*law remedies by way of writ petition are normally limited to giving directions, providing interim and final injunctive reliefs and quashing decisions which are violative of the fundamental rights or violation of law and that the remedy of damages in public law is not available for each and every transgression of fundamental rights nor ultra vires acts by themselves give rise to damages and that where the disputes questions of fact involved, the party should be left to the normal course of getting the matter decided by a Civil Court but we have not been able to make ourselves agreeable with Dr.Rajeev Dhawan. We have already held in our judgment dated 29th February, 2000 that the petition for claiming damages in public law by filing a petition under Article 226 of the Constitution of India was maintainable. We have also already held that it was not a matter in which highly disputed questions of fact arose and it appears to be a matter in which facts could be ascertained very easily. The earlier observations of the Court, in our view, are relevant to quote at this stage as under:*

*Xxx xxxx xxxx xxxx xxxx xxxx xxx xxxx*

*14. An appeal against the said order was partly allowed in “**Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors**” reported as “(2011) 14 SCC 481. wherein this Court held as under:*

*“60. The contention of the licensee is what could be awarded as a public law remedy is only a nominal interim or palliative compensation and if any claimants (legal heirs of the deceased or 14 (2011) 14 SCC 481any injured) wanted a higher compensation, they should file a suit for recovery thereof. It was contended that as what was awarded was an interim or palliative compensation,*

*the High Court could not have assumed the monthly income of each adult who died as being not less than Rs 15,000 and then determining the compensation by applying the multiplier of 15 was improper. This gives rise to the following question : whether the income and multiplier method adopted to finally determine compensation can be arrived at while awarding tentative or palliative compensation by way of a public law remedy under Article 226 or 32 of the Constitution?*

*xx xx xx*

*64. Therefore, what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability..*

*.....*

*xx xx xx*

*67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] .) If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependents (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-thirds of which becomes the annual loss of dependency; and second, the age of the deceased which*

*will furnish the multiplier in terms of Sarla Verma [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] . The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of the Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded, that is, Rs 10 lakhs/Rs 7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the claimants concerned and the licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10-1-2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the learned Chief Justice/Acting Chief Justice of the Delhi High Court.*

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*76.4. The licensee (appellant in CA No. 6748 of 2004) and the Delhi Vidyut Board are held jointly and severally liable to compensate the victims of the Uphaar fire tragedy. Though their liability is joint and several, as between them, the liability shall be 85% on the part of the licensee and 15% on the part of the DVB.”*

*15. In a separate order, Hon’ble Mr. Justice K.S.P. Radhakrishnan held as under:*

*“78. Private law causes of action, generally enforced by the claimants against public bodies and individuals, are negligence, breach of statutory duty, misfeasance in public office, etc. Negligence as a tort is a breach of legal duty to take care which results in damage or injury to another. Breach of statutory duty is conceptually separate and independent from other related torts such as negligence though an action for negligence can also arise as a result of cursory and mala fide exercise of statutory powers. Right of an aggrieved person to sue in ordinary civil courts against the State and its officials and private persons through an action in tort and the principles to be followed in considering such claims are well settled and require no further elucidation.*

*xx xx xx*

*80. We are primarily concerned with the powers of the constitutional courts in entertaining such monetary claims raised by the victims against the violation of statutory provisions by the licensing authorities, licensees, and others affecting the fundamental rights guaranteed to them under the Constitution. The constitutional courts in such situations are expected to vindicate the parties constitutionally, compensate them for the resulting harm and also to deter future misconduct. The constitutional courts seldom exercise their constitutional powers to examine a claim for compensation merely due to violation of some statutory provisions resulting in monetary loss to the claimants. Most of the cases in which courts have exercised their constitutional powers are when there is intense serious violation of personal liberty, right to life or violation of human rights.*

*xx xx xx*

93. *Liability to compensate for infringement of fundamental rights guaranteed under Article 21 was successfully raised in Khatri (2) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] (Bhagalpur Blinded Prisoners case).*

xx xx xx

96. *Courts have held that due to the action or inaction of the State or its officers, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentalities, is strict. The claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. The claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.*

xx xx xx

98. *But, in a case, where life and personal liberty have been violated, the absence of any statutory provision for compensation in the statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the*

*statutory powers and supervision expected from the officers functioning under the statutes like the Companies Act, the Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematograph Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity laws the duty of care on officials was high and liabilities strict.” (Emphasis Supplied)*

16. *We find the precedents for payment of compensation in a writ petition under Article 32 of the Constitution fall under three categories of cases. First category is where the acts of commission or omission are attributed to the State or its officers such as “Nilabati Behera, Sube Singh, Rudul Sah v. State of Bihar & Anr.” reported as (1993) 2 SCC 746, Bhim Singh, MLA v. State of J & K & Ors. reported as (2006) 3 SCC 178 and “D.K. Basu v. State of W.B” reported as (1997) 1 SCC 416.*

*XXX XXX XXX*

58. *The State has paid Rs.2 lakhs each as ex-gratia compensation to the families of the deceased, Rs.1 lakh each for the persons who suffered serious injuries and Rs.50,000/- each for the persons suffering from minor injuries whereas the Union of India has paid ex-gratia compensation of Rs.1 lakh each for the deceased and Rs.50,000/- each for those with serious injuries. In terms of the order of this Court, the State has paid Rs.5 lakhs each to the deceased, Rs.2 lakhs each to the victims suffering serious injuries and Rs. 75,000/- each to the victims suffering minor injuries, apart from the amount paid by the Union of India.*

59. *The list of deceased and injured persons has been produced by the learned counsel for the petitioners. The amount of compensation payable to each of the victim including*

*the families of the deceased have not been computed and such amount is required to be computed in accordance with the principles of just compensation as in the case of accident under the Motor Vehicle Act, 1988 by the Motor Accidents Claims Tribunal.”*

28. Even though, the State of Punjab and Haryana have framed certain guidelines for compensating the citizens for the injuries (fatal/non-fatal) sustained by them as a result of stray animals including dogs, however, no such policy has been notified by the respondent-U.T. Chandigarh as well as Municipal Corporation. Public safety being a sovereign function and the prime responsibility of the State, hence the State would remain liable for any danger that has occasioned to public safety. Divesting the responsibility to the Municipal Corporation, is only a mechanism put in place by the State Government for checking the menace. The failure is thus joint and several.

29. Hence, the respondents are held liable on the principles of strict liability for the omission/lapses on their part. They are thus liable to compensate the petitioner for the mental and physical trauma suffered by her due to the dog bite.

30. The same next leads to the determination of the point of compensation.

31. The petitioner has although claimed compensation of Rs. 1 crore and has based the same on the prospective impairment which it has on the career of the petitioner as a professional Tennis player. The monthly expenses incurred by her parents for her training, the sports events that she is likely to skip between her recovery and considering that

the petitioner is 19 years old and at the peak of her energy in her career as well as the pain suffered by her alongwith a mental trauma. The respondents, in their reply have not whispered anything with respect to the quantum of compensation and have not disputed or denied the incident. However, even though the reply may not be very responsive, yet, such computation is a matter of evidence and has to be best left to be established on the strength of evidence that may be adduced before a competent Civil Court.

32. The only defence taken by the respondents is that the matter with respect to the Act of 1960 and Rules of 2001 is pending before the Hon'ble Supreme Court of India which has requested the High Courts to not pass any order on the aforesaid Act and Rules. The said judgment, however, does not come to the rescue of the respondents in the present case inasmuch as this Court is examining the issue of compensation to be awarded to a citizen for the injuries suffered by them and is not commenting upon the manner of applicability/enforcement of the provisions of the Act of 1960 and the Rules of 2001 notified thereunder.

33. In view of the circumstances noticed above and the undisputed facts, the **interim financial assistance of Rs. 5,00,000/- is awarded to the petitioner to be paid by the respondent-Chandigarh Administration and Municipal Corporation, Chandigarh jointly and severally.** The Commissioner, Municipal Corporation is directed to release the aforesaid financial assistance **within a period of 06 weeks from the receipt of a certified copy of this order.** The aforesaid financial assistance is without prejudice to the rights of the petitioner to

file an appropriate suit for claiming damages before a competent Court.  
The period during which the present petition has remained pending shall  
be taken into consideration while computing the limitation for institution  
of such suit.

The writ petition is accordingly disposed of.

(VINOD S. BHARDWAJ)  
JUDGE

AUGUST 22, 2023  
*Vishal Sharma*

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |