

B.A.LL.B. II SEMESTER

BL - 2005

Liability of the State

To understand the concept of the liability of a state, it becomes necessary to understand the principle of vicarious liability provided under the tort law. Vicarious liability is a principle of tort law meaning the liability to be borne by one person for the acts committed by another person. The principle of vicarious liability arises only in certain cases and where a special relationship has been established between the two persons.

These relationship are mainly categorized in three parts

[Special Relationship between]

[Employer and Employee]

Master & Servant

Principle & Agent

Partners

The employee will have to be compensated by the state or the employer, if his legal rights have been violated during the course of his employment

Liability

Master & Servant	Principle & Agent	Partners
In the case of Master & Servant relationship the master is vicariously liable for the wrongful act done by his servant in the course of employment	The liability of the Principle arises when his agent commit a tort in the course of performance of his duty as an agent and they are considered to be joint tort Frasers since there liability is joint and several.	When the wrongful act done by the one partner in the ordinary course of the business of the firm all the other partners are vicariously liable for the same.

But when an act is committed or omitted by the employee of the state the question that arises is whether the government will be liable to compensate the injured person on the basis of above mentioned principle or not.

The Principle of tortious liability of the state in India has been adopted from the common law of England.

[Before Independence in India]

The Principle of immunity was enjoyed by the crown, which was adopted from common law of England on the basis that the state can not be held liable for the acts which have been committed by its servant. The Principle behind this is based on doctrine of [‘Rex non-Potest Peccare’] which state that [“The king can do no wrong”]

Meant that if a tort was committed by the king or king’s servants in the course of employment the injured has no right to sue the king under the vicarious liability. Court in various cases criticized this exemption given to the king because it was against the Principle of Equity, good conscience and Justice. Hence British parliament passed the Crown Proceeding Act, 1947 by abolishing the maxim ‘king can do no wrong’ now, the crown can also be sued for his servant tortious acts committed in their course of employment under the Principle of ‘Respondent superior’

After independence in India

When the constitution came into force article 300 and article 294(b) was the only explicit and implicit provision regarding Tortious Liability of state and suit against it.

Article 294(b) of the constitution of India Provides that the liability of union Government or state government may arise out of any contract or otherwise. The word “otherwise” would include various liabilities including tortious liability also.

Article 300 also stated that the Government of India may sue or may be sued subject to the act of the parliament or the state legislature.

Judicial Trend in India

[Before Independence]

In the landmark case of Peninsular & Oriental Steam Navigation Co. V. Secretary of state – The extension of immunity of the crown to the company was directly discussed. The facts of the case are as follows. One of the horses of the plaintiffs carriage was injured by the iron

funnel dropped on the road by the workers of the government state causing damages for the injury caused to the horse by the negligence of the government workmen.

For the first time in India the distinction was laid down stating if government is performing sovereign functions, it can be held liable for any Tortious Act. And in the absence of sovereign functions the government will be liable for such acts. Hence in this case on the basis of the above distinction the court held that the state was not liable as it was discharging its sovereign function.

Government servant Committing tort while exercising-

- 1- Sovereign function
- 2- Non Sovereign function

Sovereign Function – Defence, law & order Adjudication Taxation, Foreign Relation/Affairs

Non Sovereign Function – Any activities which ordinary person can undertake – like – Road Transport, construction and Trade.

Liability of Government Servant and Vicarious liability
of the state for injuries caused to the person's

Sovereign Function – (1) Done in good faith – servants & state not liable.

(2) Done in bad faith – State liable servant also (no Immunity)

Non Sovereign Function – (1) Done in good faith – Statutory immunity to servant, but state liable.

(2) Done in bad faith – No immunity state liable servant also

After independence in India when constitution came into existence the next landmark

- State of Rajasthan V. Vidyawati
- Kasturilal Railia Ram Jain V. State of U.P. **[Read with facts]**

In the above cases the court held that the Tortious act was done in the course of discharging the sovereign duty, hence the state is immune from the tortious liability.

Compensatory Trend – Violation of Article 21

Article 21 of the constitution guarantees that “no person shall be deprived of his life and personal liberty except according to a procedure established by law”. The court gave dynamic interpretation to article 21 and started giving compensation to those who suffered detention or bodily harm.

[Read with fact]

Rudal Shah’s case

Blom Singh V. State of Rajasthan

Milabati Behra V. Orisa

Chairman Railway Board V. Chandrima Das

N. Nagendra Raw v. State of A.P. A.I.R. 1994

*“Sovereign” – There Term sovereign means a political superior who is not subject to any other political superior. The term sovereign is used in England to designate the kind or Queen of the United Kingdom. ‘Sovereign’ is a person; body or state in which independent and supreme authority is verted.

*“Immunity” – is personal favour granted by law contrary to the general

Rule. Immunity is the freedom from liability, exemption conferred by a law, from a general rule. An immunity is an exemption from some general duty or burdon.

For further queries you may reach us via..

E-mail - kumkumsingh012@gmail.com

Mob - 9410617968

Dr Kusuma Vati

Assistant Professor of Law

ILS, CCSU campus, Meerut