

AN ANALYSIS OF SOVEREIGN AND NON-SOVEREIGN FUNCTIONS OF THE STATE WITH LANDMARK JUDICIAL DECISIONS

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ABSTRACT

A tort is a duty violation that results in a civil wrong. It results from a person's legal commitment to other people. The Indian Constitution specifies that the State may bring a lawsuit or bring one. The concept of vicarious liability is taken from tort law. The idea of state liability offers consolation to the person who feels wronged by the state's performance of its duties. Before the pre-British period, there was no concept of State liability in India. With the expansion of state powers, the idea of state culpability has changed. The study paper offers information on the fundamentals of tort law and state liability. This blog also discusses the historical context of state accountability in India, the distinctions between the state's sovereign and non-sovereign activities, and state liability in other nations.

Keywords: Tort law, civil wrong, vicarious liability.

INTRODUCTION

The defence used for wrongdoings by the government or its agents is sovereign immunity. These reportedly have public policy justifications. As a result, even if all the components of a valid claim are present, using this defence can shield you from legal responsibility. The Common Law doctrine, which originated in British Jurisprudence, holds that the King is innocent and cannot be held accountable for any personal misbehavior or negligence. The concept of sovereign immunity is grounded in this theory. Therefore, he is immune to legal consequences resulting from the negligence or crime of his employees. Part of the idea of sovereignty is the idea that a state cannot be tried in its own courts.

This concept affected the way Indian courts were organised from the middle of the nineteenth century till the present. Indignation and pleas for explanation are inevitable when a valid damage claim is made in court and is denied by antiquated legislation that is manifestly invalid. To prevent valid cases from being defeated so that the victims may receive damages, Indian

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courts started narrowing the scope of sovereign powers. In its initial report, the Indian Law Commission also advocated doing away with this antiquated idea. It was up to the court to choose whether or not to include this doctrine in Indian constitutional law, as the draught bill to do away with it was never passed for a number of reasons.

SOVEREIGN AND NON-SOVEREIGN FUNCTIONS OF THE STATE

If a state commits a tort or breaches a contract, the citizens of that state may take the state to court in a normal civil court, since that court has jurisdiction over the non-sovereign acts of the state. But in modern times, the boundary dividing the sovereign from the non-sovereign actions of the state has grown increasingly blurry. The distinction between sovereign and non-sovereign functions was first examined by the court in *Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India*. The Secretary of State was argued to be exclusively liable for her professional duties and not for any imperial obligations she could have. This ruling supported the court's notion of the state's involvement in allocating blame. However, there was no standard method or criteria for determining which functions were sovereign.

A state's sovereign powers may be outlined as those for which it is not held accountable in law for the performance of those powers. These obligations mainly concern the maintenance of the country's armed forces, national defence, and territorial tranquillity. These duties, which are fundamentally unalienable and can only be performed by the state in order to preserve external sovereignty, are beyond the jurisdiction of ordinary civil courts. There are, nevertheless, a lot of state sovereign acts that are not inalienable by nature. These include collecting taxes, doing peace-and-order-preserving police tasks, performing legislative duties, enforcing laws and regulations, and issuing pardons.

IMPORTANT JUDICIAL DECISIONS THAT DIFFERENTIATE BETWEEN SOVEREIGN AND NON-SOVEREIGN FUNCTIONS OF THE STATE

The legal judgments listed below may be used to determine the state's sovereign and non-sovereign functions as well as to gain an understanding of those functions:

Performing statutory duty: The court may determine whether a function is within the purview of the sovereign function by using a particular standard. In the course of *Shivbhan Durga*

Prasad v. Secretary of State, a chief constable's inquiry and prosecution¹. Afterward, he was cleared. In spite of this, the petitioner sued the secretary of state, holding him accountable for the constable's behaviour. "The court did not hold the secretary responsible for the constable's conduct.

Maintaining the public path: In order to promote public welfare, the state ensures that all public thoroughfares remain free of any kind of commercialization. Given that building and maintaining public roads is the responsibility of the sovereign powers.² In *McInerny v. Secretary of State*, the Calcutta High Court decided that the State was not responsible for any injuries the plaintiff may have sustained from coming into contact with a public road post built by the Government since it did not engage in commercial activity while maintaining a public thoroughfare.

Maintaining the military road: Another crucial sovereign function of the government is this one. The government maintains the military road for defence-related reasons.³ Damages were awarded to the plaintiff in *Secretary of State v. Cockcraft* because of the employee's carelessness. The maid threw a handful of stones on an empty military road. The court ruled that as the government has a sovereign obligation to maintain the Military Road, it should not be held responsible for such offences.

Commandeering goods during the war: In the well-known case *Kessoram Poddar & Co. v. Secretary of Defense*, it was determined that product command is a sovereign duty in times of war.⁴ According to the facts presented in the action, the defendant, the secretary of state, failed to accept delivery of and make payment for goods requested by the plaintiff, causing the plaintiff to incur significant losses. The court decided that this order for goods and delivery was outside the purview of a sovereign power, which led to the dismissal of the lawsuit.

Defence Training: One of the government's constitutionally protected roles is to fund educational programmes to improve public safety.⁵ Since the government conducts these activities for the benefit of the public, not for personal gain, the court in *Secretary of State v. Nagerao Limbaji* ruled that the government's sovereign duties extend to the facilities supplied

¹ *Shivbhajan Durga Prasad v. Secretary of State* 1975 AIR 957

² *McInerny v. Secretary of State* [1911]ILR 38 CAL 797

³ *Secretary of State v. Cockcraft* (1916) ILR 39 Mad 351

⁴ *Kessoram Poddar & Co. v. Secretary* AIR 1928 Cal 74

⁵ *Secretary of State v. Nagerao Limbaji* AIR 1943 Nag 287

for bombing exercises and other defence training. The plaintiff died in an explosion close to the target practise area, therefore he filed a lawsuit against the secretary of state to recover damages.

Arrest and detention: Making arrests and putting people in custody is a part of maintaining law and order. The State, as the ultimate authority, must always do what it does in good faith.

⁶ In *M.A. Kador Zailany v. Secretary of State*, the plaintiff sued the Secretary of State after being wrongfully detained and imprisoned by many police officers. Unless the employees acted on behalf of the government or at its instruction and the government afterward confirmed or authorized the alleged behaviour, the government will not be held accountable for the activities of its employees.

The Sub-inspector of Police was also directed by the D.S.P. to go to the station and stop anybody else from leaving in the case of *Gurucharan Kaur v. Madras Province*. In an attempt to do the right thing but misinterpreting his instructions, the Sub-Inspector shut the iron fence gate and stationed two constables next to it when the train came, preventing the Maharani from getting on board. The unjustified incarceration of Maharani and her daughter was highlighted in their complaint. It was agreed that police measures performed in good faith in accordance with their statutory duty should not be held against the government. Therefore, the State would not be liable even if the government worker acted unjustly while acting morally.

Performing military duty: The father of the plaintiff in *Union of India v. Harbans Singh* was killed when a car ran him over when he was serving food to soldiers. The truck driver worked for the Indian Military Department. Since the motorist was operating within the scope of his or her sovereign power, the State has been absolved of responsibility.

When a state employee acts without legal authorization, the state is not held responsible for those actions. In these circumstances, the state is not at fault because it did nothing to warrant liability on its part. Government officials have a great deal of discretion that could limit people's freedom. Nonetheless, abuse or undue exercise of discretion would be the responsibility of the state. The Indian Law Commission has argued that the State should be held responsible if its personnel act carelessly or willfully when it comes to fulfilling the legal duties imposed on it or its employees. This is true whether or not discretion is used.

⁶ *M.A. Kador Zailany v. Secretary of State* AIR 1931 Rang 294

Maintaining law and order: A large group of people had assembled outside the District Court to voice their concerns. Orissa Military Police filed charges of lathery against the accused, as evidenced by the *State of Orissa v. Padmalochan*.⁷ The plaintiff claims that he was hurt when police officers opened fire on the crowd without first obtaining approval from a judge or other person in authority. He lodged a complaint regarding his injuries to the State.

The plaintiff's case was maintained by the High Court, but it did concede that police officers had committed wrongdoing while performing their duties without permission. The court said that it had determined that the plaintiff had suffered damages as a direct consequence of the use of sovereign powers and that the wrong was still subject to the authority of the delegated royal responsibility.

Similarly, in *M.P. State v. Lal Chironji*⁸, The respondent's property was damaged when the police broke up the march with a lath charge. The damage was not attributed to the State Government. The Police Act of 1861's Section 30 delegated to the police the authority to control processions, and Section 14 of the Criminal Procedure Code of 1973 Section 14 delegated to the appropriate authorities the authority to maintain peace and order, including the ability to put an end to riots. Such roles cannot be carried out by private individuals. The State, or its representatives, may carry out some "Sovereign functions" on its own behalf.

Collecting Revenue: The plaintiff in *Kuppanna Chetty & Co. v. The collector of Anantapur*⁹ suffered a large loss as a result of the Tahsildar attaching the mobile items in violation of the Madras Revenue Recovery Act. The Court decided that the State is not responsible for any harm that a government employee suffers while performing a sovereign or exclusive State activity in accordance with the State's statutory mandate. In the *State of Andhra Pradesh v. Ankanna*, a similar ruling was upheld.¹⁰ The plaintiff's bullock cart was purportedly improperly and intentionally held by income officials with the intention of realizing land tax under the Revenue Recovery Act.

According to the Court, since the collection of land income was seen as a sovereign activity at the time the legislation creating the act was adopted, the State could not be held accountable for the dishonest activities of its workers.

⁷ *State of Orissa v. Padmalochan* AIR 1975 Ori 41

⁸ *M.P. State v. Lal Chironji* AIR 1981 MP 65

⁹ *Kuppanna Chetty & Co. v. The Collector of Anantapur* AIR 1965 AP 457

¹⁰ *State of Andhra Pradesh v. Ankanna* AIR 1967 AP 41

According to the case laws mentioned above, the State cannot be held responsible for any misbehaviour perpetrated by a public official while they are allegedly performing authorized activities within the context of sovereign operations, such as collecting taxes, etc.

Administrating Justice: The State, in the discharge of its sovereign duties, must discover the identities of such individuals and ensure that their trials are conducted in a fair. The framework of judicial requirements cannot be adequately carried out if someone is found guilty while dispensing justice. This applies to anybody whose activities may be seen as having been performed in a judicial capacity. An official must be endowed with both judicial and executive power. Liability protection would only apply if he executed judicial actions while enforcing the law. He is not entitled to sovereign immunity even if he committed false imprisonment while acting in his official role.

The appellant was found guilty of dacoity in *Mata Prasad v. Secretary of State* and given a sentence of four and a half years in jail along with a fine of Rs. 500.¹¹ After serving two and a half years in prison, his good behaviour earned him his freedom. In response to the Secretary of State's officials being unfairly convicted, the plaintiff sought damages from him". The Court held that a guilty criminal cannot request compensation from India's Secretary of State in Council since the State was operating within the parameters of its sovereign powers.¹²

The magistrate in *Secretary of State v. Sukhdeo* made a similar ruling regarding the confiscation of the plaintiff's property as a consequence of the penalties imposed on the plaintiff's family. The State Secretary was not to blame for the seizure, the court ruled, dismissing the plaintiff's claim to reclaim the land. The presiding officer in *Maha Nirbani v. Secretary of State* mandated that the plaintiff give back the jewels she had given to a police officer.¹³

Protection of stolen goods in the police warehouse: Three constables detained the appellant in *Kasturi Lal v. the State of U.P.*¹⁴ on the grounds that he may have stolen part of the gold and silver they found in his possession. The gold was kept in the care of a chief constable at the police warehouse, and the silver was returned after he was granted bail. Nevertheless, the constable in charge of the residence misappropriated it, and he ran away to Pakistan. In order

¹¹ *Mata Prasad v. Secretary of State* AIR 1978 All 303

¹² *Secretary of State v. Sukhdeo* (1899)21 All 341

¹³ *Maha Nirbani v. Secretary of State* (1932) 34 BOMLR 791

¹⁴ *Kasturi Lal v. the State of U.P.* 1965 AIR 1039

to obtain the return of the gold or, in the alternative, the full value of the gold, the trader sued the Uttar Pradesh government. It was established that the government failed to maintain the gold in a secure location.

The Court noted that if a public employee commits a tortious act that inevitably results in a claim for damages, the question to be raised is whether or not that employee was acting tortiously while carrying out constitutionally assigned duties that primarily involved giving him control over the State's sovereign functions. When handling the property that they had taken from Kasturi Lal in the exercise of their legal authority, police officials committed an act of carelessness. The constitution reserves the right for state officers to capture, hold, and seize a perpetrator's suspected property. Furthermore, the State was exempt from responsibility.

While subsequently, a number of people disagreed with this ruling and said it was unreasonable since it incorrectly applied the pre-constitutional rule and characterised statutory power as a sovereign power. The immunity accorded to an official under the legislative authority only applied to the lawful exercise of such authority; it did not cover abuse or violation of that authority. Legal professionals have criticised the Kasturi Lal case heavily since it is a glaring instance of an inadmissible test being applied improperly.

Malicious Prosecution: In the matter of *Maharaja Bose v. Governor-General*¹⁵ in Council, the petitioner filed a claim for damages against the Governor-General in Council alleging false arrest and malicious prosecution. The complainant had been using the defendant's railway to travel from Howrah to Patna, according to the case's circumstances. He entered the train and sat in an intraclass space. Three Indian troops forcibly took over the plaintiff's seat when the aforementioned train pulled into Asansol Railway Station at around one in the morning. The complainant protested this and informed two railway employees of his concerns. But they did nothing.

The defendant's servants, about whom the plaintiff had previously complained, arrived, conducted a number of inquiries, and instructed the troops to leave. While the duty assistant station was having this conversation, the station master hurried over and accused the plaintiff of pulling the chain, insulted him by using foul language, and severely assaulted him. The complainant was taken out of the compartment, held at the railway police station under false pretenses, and never heard from again. It was asserted that the plaintiff was a well-known

¹⁵ *Maharaja Bose v. Governor-General* AIR 1952 Cal 242

performer who was en route to Patna to take part in the Red Cross dancing event. But the complainant wouldn't give up his identification, so the railway officer took him into custody.

The Court determined that the claimant had no plausible excuse for breaking off the line of communication. Because the claimant failed to give his identity and address to the police, the defendant's servant had a right to treat him. The defendant's employees were discovered by the court to have genuine and justified suspicions of the plaintiff's guilt and to have rejected the notion of malice. The lawsuit was dropped, and the government was absolved of responsibility for the employee's behaviour.

Vicarious liability and tortious liability of the State: According to the agency's common law principles, such as respondeat superior, which means the superior's responsibility for the actions of his subordinate or, in a broader sense, the responsibility of any third party who has the "right, capacity, or duty to control," the activities of a violator, comes under the category of strict, secondary liability known as vicarious liability. It is not the tortfeasor who is held accountable;

rather, it is the person who ought to be in charge of the tortfeasor. With evidence showing equality between the ruler and the subject in question, the idea of officers bearing moral responsibility for their wrongdoings has gained popularity.

The state treasury wasn't utilised to pay the charge until the monarch deemed it necessary to take on the role of a public officer. Dharma was regarded as the civic code governing both the king and the people. In accordance with both Hindu and Muslim law, the rulers themselves carried out the majority of the administration of justice, leaving the final tasks to the extraordinarily wise and upright judges. The court's pronouncement that it has the authority to award damages has been the most important recent development.

Article 300(1) of the Indian Constitution, which was initially derived from Section 176 of the Government of India Act, 1935, clearly defines state culpability in that country. This was first mentioned in Section 32 of the Indian Government Act of 1915, which had its beginnings in Section 65 of the Indian Government Act of 1858.

Consequently, it will be evident that each State's Government of India and Constitution are in accordance with the East India Company's succession via the chain of legislation beginning

with the Act of 1858. In other words, the government's role remains unchanged from that of the East India Company before 1858.

Case *Hari Bhanji v. Secretary of State*¹⁶. In this instance, a lawsuit was brought to recoup the excessive excise charge that the state had levied on a shipment of salt. The Madras High Courts rejected the claims of immunity and ruled that no immunity existed for activities taken in violation of municipal regulations because the East India Company's immunity only applied to acts of state.

In light of the Constitution: Case *Rajasthan State v. Vidyawati*¹⁷. The state of Rajasthan owned and maintained a vehicle for the official use of district collectors. When the jeep's driver was returning it from the shop after repairs, a pedestrian was struck and killed as a result of his hasty and careless action. He passed away. The state was sued for damages by his widow. As the jeep was maintained in the exercise of sovereign functions and not as a part of commercial activity, the state claimed immunity on the grounds that the East India Company would not have been liable in similar circumstances. The court agreed and held that the state was vicariously liable for the reckless and careless act of the driver. *State of Mysore v. Basavva Patil*¹⁸ case. A theft was perpetrated in this instance, and certain decorations were taken from the appellant's home. Five people were detained. In the course of their inquiry, the police authorities found the ornaments. Before the case was resolved, the magistrate requested that the police hold the suspects in custody. The magistrate denied the request for the return of the items made in accordance with Section 517 of the Criminal Procedure Code of 1898 on the grounds that they had not yet arrived in his custody. The High Court affirmed the aforementioned order.

In response to an appeal, the Supreme Court overturned the judgement and mandated that the state give the appellant the financial value of the property. *Union of India v. Satyawati Delhi*¹⁹, the Delhi High Court ruled that it is not a sovereign power to transport a hockey team to the Air Force installation to play a game in this instance. *Sugrabai v. Union of India*²⁰. The carrying of military equipment out of the artillery school's workshop was determined in this instance by

¹⁶ *Hari Bhanji v. Secretary of State*(1861) 5 Bom H.C.R

¹⁷ *Rajasthan State v. Vidyawati* AIR 1962 SC 933

¹⁸ *State of Mysore v. Basavva Patil* AIR 1977 SC 1749

¹⁹ *Union of India v. Satyawati Delhi* AIR 2010 SC 3413

²⁰ *Sugrabai v. Union of India* AIR 1969 Bom 13

the Bombay High Court to not be a sovereign function. *Smt. Jasso (Punjab) v. Union of India*²¹. The transporting of coal to the army headquarters was ruled to be outside of the sovereign's purview in this circumstance.

In response to an appeal, the Supreme Court overturned the judgement and mandated that the state give the appellant the financial value of the property. *Indian Union v. Savita Sharma*²², a military truck was heading to the train station in this instance to transport military men to the unit headquarters. It struck the car and hurt the people inside. The court concluded that any private individual might carry military personnel from one location to another because the truck's drivers were not executing any official duties. The state was made accountable. A case between *Dr. Vilas Dhondu Kavishwar and Mohd Shafi Suleman Qazi*. The Bombay High Court ruled that destroying a hospital is not a sovereign function in this case. For acts of carelessness perpetrated by hospital staff while performing their duties at state-run hospitals, the state has been held accountable.

Liability for unconstitutional acts is stated by a writ and reparations for governmental torts: According to the traditional classification, arrest and imprisonment are usually considered to be sovereign functions. However, a recent judicial tendency favours holding the state accountable for torts perpetrated by its agents. According to some Supreme Court rulings, when a government employee blatantly violates the right to life and personal liberty protected by Article 21 of the Constitution, the court will

issue a written order to quash the arrest or detention while also holding the state accountable for compensating the victims in *State of Bihar v. Khatri*²³. In one instance, it was claimed that the police had blinded several of the detainees, and as a result, the state was held responsible for compensating them.

*Saheli V. Commissioner of Police*²⁴: This case marked yet another significant turning point in the analysis of compensation law in writ courts. *Kasturi Lal* cited the stunning verdict in *Vidyawati*, which was frozen, appropriately in this case. The State was found responsible for the nine-year-old boy's death, which resulted from police beatings and abuse. The Delhi Administration was required to provide a 75,000 rupee compensation payment. The importance

²¹ *Smt. Jasso (Punjab) v. Union of India* AIR 1962 PH 315

²² *Indian Union v. Savita Sharma* AIR 1979 J&K 6

²³ *State of Bihar v. Khatri* 1981 SCR (2) 408

²⁴ *Saheli V. Commissioner of Police* AIR 1990 SC 513

of this case lies in two factors: first, the restoration of the Vidyawati ratio; and, second, the Delhi Administration's ability to obtain financial compensation from the personnel deemed accountable for the occurrence.

*Nilabati Behra v. State of Orissa*²⁵ : This historic decision compensated the petitioner for the loss of her son while he was in the care of the police in *Nilabati Behra v. State of Orissa*. According to the court, a claim under public law for damages for the infringement of fundamental freedoms and human rights is distinct from and additionally available to those seeking compensation under private law for torts. The court explicitly stated that the public law remedies under Articles 32 and 226 for the enforcement of basic rights are not subject to the principle of sovereign immunity. All

private law remedies are covered by the *Kasturi Lal* case ratio. In the instances of *Chairman, Railway Board v. Chandrima Das and Common Cause*²⁶ , *A Registered Society V. Union of India*, the distinction between public and private law and the remedies available under each have been emphasised. "When public employees are engaged and the problem relates to the enforcement of public obligations or the infringement of basic rights, the remedy would still be accessible under the public law notwithstanding that a claim could be launched for damages under private law," it was decided.

*Challa Ramkonda Reddy v. State of AP*²⁷: In its ruling in *Challa Ramkonda Reddy v. State of AP*, the High Court of Andhra Pradesh concluded that the defence of sovereign immunity was inapplicable when there had been a breach of the people's fundamental rights. In this instance, an individual who had been detained by the police was kept in a jail cell. He warned the person in charge of the jail about his fears that he would be attacked and killed there by his enemies. The authorities did not take this arrest into account at all. Instead of the normal six people, there were just two protecting the jail that particular night.

The arrested person was killed by gunfire after his opponents broke into the jail during the night. A lawsuit for damages was brought by the deceased's legal representatives. The trial court concluded that the authorities were careless in their supervision of the jail and that this carelessness was to blame for the deceased's death. The lawsuit, however, was rejected on the grounds that the deceased's arrest and incarceration were carried out as part of the State's

²⁵ *Nilabati Behra v. State of Orissa* AIR 1993 SC 1960

²⁶ *Railway Board v. Chandrima Das and Common Cause* AIR 2000 SC 988

²⁷ *Challa Ramkonda Reddy v. State of AP* AIR 1989 AP 235

sovereign powers. The Supreme Court's ruling in *Kasturi Lal* was cited by the State during the hearing of the plaintiff's appeal.

However, the Supreme Court ruled that the argument of sovereign immunity, which is presumed to remain under Article 300 of the Constitution, cannot be made when the fundamental rights of the citizens are violated. the Supreme Court agreed with this point of view. *v. Chella Ramakrishna Reddy, State of AP.*

CONCLUSION

Analyzing the above, it is evident that the judiciary is an important factor in determining whether a state's activity is exempt from criminal prosecution. The proper party's liability will be determined by the court after it has examined the case. The State's involvement in a business or private venture or the fact that one of its agents violated a citizen's life or liberty without a legal justification does not give rise to the sovereign immunity defence. The State is required by law, morality, and the constitution to protect the victim and provide compensation for losses in both instances of infringement. In the modern world, where the idea of sovereignty has undergone significant change, the principle of sovereign immunity is irrelevant.