

# VICARIOUS LIABILITY OF THE STATE

## POSITION IN ENGLAND

- It was the rule of common law that *“King can do no wrong”* [**“Res Non-Potest Peccare”**]. Thus the Crown was immune from Civil and criminal liability, i.e. No action would lie against the crown for the wrongful acts committed by its servants in the course of their employment.
- The principle of Vicarious liability of Master for the tort of his servant did not applied to state.
- This approach was modified by **Crown proceeding act 1947**. It made the state liable for the tort committed by servants.

## Position in India

- **Article 300** of the Indian Constitution specifies that the Union of India or the Government of State can sue and be sued like any ordinary person. Article 300 gave the right to people to sue the Government. But this article came into effect in 1950 i.e., after the adaptation of the Constitution. Similar provisions are present under **Article 176** of the **Government of India Act, 1935** and also under **Articles 35 and 65** in the **Government of India Act 1915** and **1858** respectively.

## TYPES OF STATE FUNCTIONS

1. **Sovereign functions**- These are the functions of the state for which the state is **not liable** under any provision for the wrongful acts of its employees. For example, functions like defence activities, preserving armed forces, maintaining peace and war, diplomacy are some of the sovereign functions for which the state is not liable.
2. **Non-Sovereign functions** – These are the functions of the state which are other than the Sovereign Functions. If an act done is in the exercise of the sovereign power of the state then the state cannot be sued but if the Act was a non sovereign function then the state can be sued.

## CASE LAWS

- **In Peninsular and Oriental steam Navigation Company vs. secretary of state for India 1868-** A carriage pulled by a couple of horses was going to Calcutta. An accident took place when the wagon was travelling through the Government's dockyard. Some of the workers of the Government Dockyard were carrying heavy iron rods to repair rods to repair a steamer. However, these workers dropped the iron rods, the noise of which affected one of the horses of the Plaintiff.

The company filed a suit against the Secretary of State for India to get relief for the damages. The Supreme Court of Calcutta held that the Secretary of State is liable for the damages. This case is the first case which brought upon the difference between sovereign and Non-Sovereign functions of the state. As the maintenance of Dockyard is a non-sovereign function, Government was held liable.

- **Nobin Chandra Dey vs. the Secretary Of State for India-** The plaintiff, in this case, contended that the Government had made a contract with him for the issue of a license for the sale of ganja and had committed a breach of the contract. The High Court held that upon the evidence, no breach of contract had been proved. Secondly, even if there was a contract, the act had been done in exercise of sovereign power and was thus not actionable. It was held that the state was exempted from the liability when the function was a sovereign function.
- In **State Of Rajasthan Vs. Vidyawati 1962-**The driver of a jeep, owned and maintained by the State of Rajasthan for the official use of collector of a district, drove it rashly and negligently while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured him. The Supreme Court held that the state can be made liable for tortious Acts, like any other employer. It was observed that the Constitution has established a welfare state where in the state is required to carry out welfare activities. In such scenario the state should not be immune to the tortious act of its employer

- **Kasturi Lal vs. State Of Uttar Pradesh 1965**- In this case, the plaintiff had been arrested by the police officers on suspicion of possessing stolen property. Upon investigation, a large quantity of gold was found and was seized under the provisions of the Code of Criminal Procedure. Ultimately, he was released, but the gold was not returned, as the Head Constable in charge of the maalkhana, where the said gold had been stored, had absconded with the gold. The plaintiff thereupon brought a suit against the State of UP for the return of the gold or alternatively, for damages for the loss caused to him. However, the Supreme Court rejected the plaintiff's claim, on the ground that "the act of negligence was committed by the police officers while dealing with the property of Ralia Ram, which they had seized in exercise of their statutory powers and the Supreme Court held that state will not be liable in case of exercise of sovereign power
- **Kasturi Lal bypassed**- Although the decision of the Supreme Court in kasturiLal's case still holds good, for practical purposes its force has been considerably reduced by a number of decisions of the Supreme Court. Without expressly referring to Kasturi Lal or distinguishing or overruling this case, a deviation from this decision has been made. Under the circumstances in which the state would have been exempted from liability if KasturiLal had been followed, the State has been held liable.
- **State of M.P. v. Chironji Lal 1981**  
A new question came before the court relating to the payment of damages for the loss caused by the lathi-charge of the police in a situation where it was unauthorized and unwarranted by law. It was alleged that the police resorted to lathi-charge willfully and without any reasonable cause and thus damaged the plaintiff's property. The claim was rejected on the ground that the function of the state to regulate processions and to maintain law and order is a sovereign function.
- **N. Nagendra Rao v. State of A.P. 1994**  
In this case, the Supreme Court held that when due to the negligent act of the officers of the state a citizen suffers any damage the state will be liable to pay compensation and the principle of sovereign immunity of state will not absolve

him from this liability. The court held that in the modern concept of sovereignty the doctrine of sovereign immunity stands diluted and the distinction between sovereign and non-sovereign functions no longer exists. It was held that the ratio of **Kasturi Lal** is applicable in rare cases. In any civil society, the state cannot be allowed to play with the rights of the citizens and take the plea of sovereign function and thus, it cannot be treated above and against the rule of law.

- **Sovereign Immunity Is Subject To Fundamental Rights**

- ✓ **Bhim Singh v. State Of Jammu And Kashmir 1986**

In this case, the Court awarded the exemplary cost of Rs 50,000 on account of the authoritarian manner in which the police played with the liberty of the appellant.

- ✓ **Rudal Shah v. State of Bihar 1983**

In this case it was laid down a most important principle of compensation against government for the wrong action of its official the important judgment was handed down by the Supreme Court against the Bihar Government for the wrongful and illegal detention of Rudal Shah in Muzaffarpur jail for as many as 14 yrs after he was acquitted by the Sessions Court in June 1968. The Court ordered compensation of Rs 30,000 for the injustice and injury done to Rudal Shah and his helpless family.

- ✓ **Saheli vs. Commissioner of Police 1990** A child died by police assault and beating, the compensation of Rs 75000 was granted and the Delhi Administration was allowed to recover the same from the officials which were responsible for the incident.

- ✓ **Nilabati Behera v. State of Orissa 1993**, Nilabati Behera was a case which came before SC through PIL and was related to the custodial death of a 22-year-old boy whose body was discovered lying on the railway track on the day after he was sent for police custody. The court directed the State to pay Rs. 1.5 lakhs to the mother of the victim.