

# Liability of State in India

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# Liability- Conceptual Note

- **Liability**-the state of being legally responsible for something. An obligation that legally binds an individual or company to settle a debt.
- **Liability** - present obligation of anyone arising from past events, the person's resources embodying economic benefits
- **Kinds**-Personal or vicarious
- **Vicarious Liability**-a form of strict, secondary liability that arises under the ***common law doctrine of agency – respondent superior*** – the responsibility of the superior for the acts of their subordinates
- **Master - servant relationship** : master is jointly and severally liable for any tort committed by his servant while acting in the course of his employment.
- **Tort & Tortious Liability**

# State Liability

- English Common Law the maxim w **"The King can do no wrong"** and Change of position by the Crown Proceedings Act, 1947. **Now the Crown is liable for a tort committed by its servants just like a private individual.**
- **In America**, the Federal Torts Claims Act, 1946 provides the principles, which substantially decides the question of liability of State.
- **Presentl State liability in India** is defined by the [Article](#) 300(1) of the [Constitution](#) ← Section 176 of the Government of India Act, 1935 ← Section 32 of the Government of India Act, 1915 ← Section 65 of the Government of India Act, 1858 ← same as that of the East India Company before, 1858.

# Article 300

- **Suits and proceedings** : (1) The Government of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted

# Sovereign Functions

**Those actions of the state for which it is not answerable in any court of law.** E.g.: Defence of the country, raising and maintaining armed forces, making peace or war, foreign affairs, acquiring and retaining territory

**They cannot be delegated by the State**

**Therefore, they are not amenable to jurisdiction of ordinary civil court.**

**The State is immune from being sued, as the jurisdiction of the courts in such matters is impliedly barred.**

# Distinction between Sovereign and Non-Sovereign Functions

## Present Position

- The distinction between sovereign or non-sovereign power thus does not exist.
- It all depends on the nature of the power and manner of its exercise.. It would be in conflict with even modern notions of sovereignty.
- The old and archaic concept of sovereignty thus does not survive. Sovereignty now vests in the people. The legislature, the executive and the judiciary have been created and constituted to serve the people. In fact the concept of sovereignty in the Austinian sense, that king was the source of law and the fountain of justice, was never imposed in the sense it was understood in England upon our country by the British rulers.
- No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society.

... N. Nagendra Rao v. State of AP. [AIR 1994 SC 2663]

# Pre-Constitution Judicial Decisions :

- **Peninsular & Oriental Steam Navigation Company v Secretary** : (1861) 5 Bom HCR App 1  
The principle of this case holds that if any act was done in the exercise of sovereign functions, the East India Company or the State would not be liable. It drew quite a clear distinction between the sovereign and non-sovereign functions of the state.
- **Secretary of State v. Hari Bhanji** : ILR (1882) 5 Madras 273  
In this case, the Madras High Court held that State immunity was confined to acts of State. In the P & O Case, the ruling did not go beyond acts of State, while giving illustrations of situations where the immunity was available.

# Post Constitution Judicial Decisions

- **State of Haryana v. Santra** 2000 (1) CPJ 53 (SC)  
The ratio of this case was on the principles of state liability for negligence. Here it was clearly established that the doctor while performing the operation was acting as a government servant and acting in the course of employment of the government. Hence when there was negligence, it amounted to acting in bad faith, and so the defence of sovereign immunity could not be used by the state. Moreover it was also held that such negligence which could have been perceived by a professional who had a duty to do so should take into consideration these matters and cannot escape liability by claiming defence of consent by the petitioner.
- **State of Rajasthan v. Vidyawati** : AIR 1962 SC 933  
The respondents filed a suit for the damages made by an employee of a State and the case questioned whether the State was liable for the tortious act of its servant – The Court held that the liability of the State in respect of the tortious act by its servant within the scope of his employment and functioning as such was similar to that of any other employer.

Held: State should be as much liable for tort in respect of tortuous acts committed by its servant within the scope of his employment and functioning as such, as any other employer.

- **Kasturilal v. State of UP:** AIR 1965 S.C 1039  
The ruling in this case was given holding that the act, which gave rise to the present claim for damages, has been committed by the employee of the respondent during the course of its employment. Also, that employment belonged to a category of sovereign power. This removed any liability on the part of the state.

In this case, the plaintiff had been arrested by the police officers on a 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. It was found by the courts below, that the concerned police officers had failed to take the requisite care of the gold seized from the plaintiff, as provided by the UP Police Regulations.

- **Challa Ramkonda Reddy Vs. State of AP:** A.I.R 1989 A.P. 235  
In the judgment of the [High Court](#) of Andhra Pradesh in Challa Ramkonda Reddy Vs. State of AP, it was held that the plea of sovereign immunity was not available, where there was a violation of the fundamental rights of the citizens. It was a case where a person arrested by the police was lodged in a cell in the jail. He expressed his apprehension to the authority in charge of the jail, that his enemies were likely to attack and kill him in the jail. This apprehension was not given any consideration by the authorities. During the particular night, there were only two persons guarding the jail, instead of the usual six. The enemies of the arrested person entered the jail during the night and shot him dead. The legal representatives of the deceased filed a suit for damages. The trial court found that the authorities were negligent in guarding the jail and that the death of the deceased was attributable to such negligence. However, the suit was dismissed on the ground that the arrest and detention of the deceased in jail was in exercise of sovereign functions of the State. During the hearing of the plaintiff's appeal, the State relied upon the decision of the Supreme Court in Kasturi Lal. The [High Court](#), however, held that where the fundamental rights of the citizens are violated, the plea of sovereign immunity, which is assumed to be continued by article 300 of the [Constitution](#), cannot be put forward.
- This view has been **approved by the Supreme Court in AIR 2000 SC 2083. [State of A.P. v. Chella Ramakrishna Reddy].**

- **Saheli V. Commissioner of Police:** A.I.R 1990 S.C. 513  
- another milestone in the evaluation of compensation jurisprudence in writ courts. ....The State was held liable for the death of nine year old child by Police assault and beating. Delhi Administration was ordered to pay compensation of Rs. 75000/-. The significance of this case is that firstly, the revival of Vidyawati ratio and secondly that the Delhi Administration was allowed to recover money from those officers who are held responsible for this incident.

**Nilabati Behra V. State of Orissa :** A.I.R 1990 S.C. 513  
....awarding compensation to the petitioner for the death of her son in police custody. The court held that a claim in public law for compensation for violation of human rights and fundamental freedoms, the protection remedy for enforcement and protection of such right, is distinct from and in addition to the remedy in private law damages for tort. The court expressly held that principle of sovereign immunity does not apply to the public law remedies under [Article 32](#) and [Article 226](#) for the enforcement of fundamental rights. The Kasturi Lal case ratio is confined to private law remedies only.

The distinction between public and private law and the **remedies under the two has been emphasised in [Common Cause, A Registered Society V. Union of India](#) AIR 1996 SC 3538 and [Chairman, Railway Board V. Chandrima Das](#) AIR 2000 SC 988** cases. It was held "**where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law.**"

# Conclusion

- Sovereign immunity as a defence was, thus, never available where the State was involved in commercial or private undertaking nor it is available where its officers are guilty of interfering with life and liberty of a citizen not warranted by law. In both such infringements the State is vicariously liable and bound, constitutionally, legally and morally, to compensate and indemnify the wronged person.
- The doctrine of sovereign immunity has no relevance in the present-day context when the concept of sovereignty itself has undergone drastic change.
- **'Sovereignty' and "acts of State" are thus two different concepts.** The former vests in a person or body which is independent and supreme both externally and internally whereas latter may be act done by a delegate of sovereign within the limits of power vested in him which cannot be questioned in a Municipal Court. The nature of power which the Company enjoyed was delegation of the "act of State". An exercise of political power by the State or its delegate does not furnish any cause of action for filing a suit for damages or compensation against the State for negligence of its officers.

- The old and archaic concept of sovereignty thus does not survive. Sovereignty now vests in the people. The legislature, the executive and the judiciary have been created and constituted to serve the people. In fact the concept of sovereignty in the Austinian sense, that king was the source of law and the fountain of justice, was never imposed in the sense it was understood in England upon our country by the British rulers.
- No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society.

- that for more than hundred years, the law of vicarious liability of the State for negligence of its officers has been swinging from one direction to other. Result of all this has been uncertainty of law, multiplication of litigation, waste of money of common man and energy and time of the courts. Federal of Torts Claims Act was enacted in America in 1946. Crown Proceedings Act was enacted in England in 1947. As far back as 1956 the First Law Commission in its Report on the liability of the State in tort, after exhaustive study of the law and legislations in England, America, Australia and France, concluded :

- "The old distinction between sovereign and non-sovereign functions or governmental and nongovernmental functions should no longer be invoked to determine the liability of the State.
- As Professor Friedman observes : 'It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental functions, but the nature and form of the activity in question'." .....**The First Law Commission**