

Liability of Gov. Servants for the wrongs done/ASR

“The only man who never makes mistakes is the man who never does anything.” – *Theodore Roosevelt*

VL Problem

- The Supdt. Engineer of R & B Department directed the driver of a departmental Zeep to carry some bitumen drums, mechanical tools and to make over the same to the Asst. Engineer who is looking after road laying work situated 5 K.M. away from the office. The driver promptly complied with the orders of S.E. but while returning he drove the zeep to his residence just to enquire about the health condition of his wife. En route, his Zeep hit against a pedestrian who subsequently collapsed in the government hospital. The dependants of the victim filed civil and criminal cases against driver and claimed compensation from the R & B Department.

DISCUSS:-

1. Whether State is liable for the death of the pedestrian, and if so how?
 2. What is the extent of liability of the driver of the Zeep in causing the death of the victim?
 3. **What will be the legal position if the pedestrian crosses the road ignoring the red signal shown to pedestrians to stop?**
- This problem involves discussion on State's vicarious liability, civil & criminal liability of the perpetrator of the wrong, Negligence and Compensation

VICARIOUS LIABILITY

- Generally, a person is liable for his own wrongful acts and *one does not incur any liability for the acts done by others.* In certain cases, however, the vicarious liability, that is *the liability of one person for the act done by another person may arise.* In order that the liability of A for the act done by B can arise, *it is necessary that there should be a certain kind of relationship* between A and B, and *the wrongful act should be, in a certain way, connected with that relationship*

LIABILITY BY RELATIONSHIP

Vicarious liability for wrongful act arises from the relation existing between-

1. Master and Servant.
 2. Principal and agent
 3. Company and director
 4. Firm and partner
- Vicarious liability is based upon the principles of 'respondent superior' (i.e., **responsibility must be that of the superior**) and 'quifacit per alium facit per se' (i.e., **he who acts through others is deemed in law as doing it himself**)

Master & Servant=Joint Tortfeasors

- Since for the wrong done by the servant, the master can also be made liable vicariously, *the plaintiff has a choice to bring an action against either or both of them.* Their liability is joint and several as they are considered to be joint tortfeasors. For the wrong done by the servant=*master is liable and also the servant. However, with respect to Government servants – it is an unwritten law that for the wrongs done by the servant-the master is liable and not the servant towards the third party.* Nevertheless, for the wrong done the servant is subject to disciplinary proceedings.

Vicarious Liability of the Master

- **Criminal Law**=Master liable for authorised acts along with the servant (if such an act is done in the course of employment). However, Master is not liable for unauthorised acts and only the servant is liable. **(So in all cases -servant is liable)**
- **Civil Law**=Master **liable for authorised acts as well as unauthorised acts** done in the course of employment, along with the servant. **(Servant is liable exclusively if the act is outside the scope of employment—This rule applies for Govt. Servants also)**

VL of the Master&servant-Criminal Law

- For authorised Acts=S is liable/M is also Liable
- For unauthorised Acts=S is liable/**M is not Liable**
- For acts outside the scope of employment=only S is liable/**GS—Sanction to prosecute is required**

VL of the Master&Servant-Civil Law

- For authorised Acts=S is liable/M is also Liable
- For unauthorised Acts=S is liable/**M is Liable**
- For acts outside the scope of employment=only S is liable
- **Gov Servant=M is liable provided the function is not sovereign(rule is diluted now to a large extent)**

Servant – always liable(Criminal or Civil

- **Exception –Govt. servants – ONLY CIVIL LAW**-in the course(whether authorized or unauthorised)
- Govt servants (OUTSIDE THE SCOPE-Civil or Criminal) Liable
- Criminal=**Gov St—Sanction to prosecute is required if the act done in the course of employment**
- **No sanction required =for acts (civil/criminal)outside the scope of employment**

Master

Outside the scope of employment (Civil or Criminal)= Not liable

In the course of employment:-

Criminal Law

For authorized acts=liable

For unauthorised acts= not liable

Civil Law

For authorized acts=liable

For unauthorised acts= liable

Essentials for Master's Liability

For the master's liability to arise, the following essentials must be there:-

- (a) The person committing the tort must be *servant*.
 - (b) The tort committed by the servant must be in the *course of his employment*.
 - (c) The act must be a wrongful act authorised by the master or a *wrongful and unauthorised mode of doing some act authorised by master*.
- So, a master can be made liable as much for unauthorized acts *(Fraud/Negligence etc.,)* as for the acts he has authorized.

Unauthorized Acts

- However, for an unauthorized act, the liability arises if that is within the course of employment, i.e., it is a wrongful mode of doing that what has been authorized. Thus, *if I authorize a servant to drive and he drives negligently, or I authorize a servant to deal with the clients and he deals with them fraudulently. or if I authorize a servant to help the railway passengers, but he mistakenly causes harm to them,* in each the servant is doing the act which he has been authorized to do but his mode of doing is wrongful. Each one of these acts is, therefore within the course of employment and the master can be made liable for the same.

Century Insurance Co. v. Northern Ireland Road Transport Board(1942)

- In this case, the driver of a petrol lorry while transferring petrol from the lorry to an underground tank, *struck a match to light a cigarette and threw it on the floor*, and thereby caused a fire and explosion which did great damage. *The master were held liable because the negligence was in the discharge of the duty by the servant.* Although the act of *lighting the cigarette was something the driver did for himself*, it could not be regarded in the abstract and was a negligent method of conducting the master's work.

Ricketts v Thos Tiling Ltd(1915)

- In Rickett's case, *the driver of the omnibus asked the conductor to drive the omnibus* and turn it round to make it face in the right direction for the next journey. The master was held liable vicariously because the *driver was negligent in the performance of the master's work*. The driver in fact was seated by the side of the conductor at the time when the omnibus was turned round. In other words, *the turning round of the vehicle was an act within the employer's business and not something outside it.*

Beard v. London General Omnibus Co.,(1900)

- In Beard v. London General Omnibus Co., the conductor *attempted to turn the omnibus on his own initiative and caused the accident.* The *company was held not liable because it was not a part of the conductor's duty to drive the omnibus.* It was not negligence in the course of employment.
- Servant is exclusively liable

Lloyd V Grace Smith & Co(1942)

- In **Lloyd's case**, Mrs. Lloyd, a widow, who owned two cottages called at the office of Grace, Smith & Co., a firm of solicitors, to consult them as she was not satisfied with the income she was having from her property. She was attended by the managing clerk of the company. The managing clerk advised her to sell the cottages and sign two sale deeds for that purpose. She was made to sign two documents which were supposed to be sale deeds.

Lloyd V Grace Smith & Co(1942)

- In fact, *they were gift deeds in favour of the managing clerk himself.* He then disposed of the property for his own benefit. The House of Lords unanimously held that Grace, Smith & Co. were responsible for the fraud of their agent, even though the agent was acting for his personal benefit and they had no knowledge of the fraud, as *the fraud was committed by the agent while acting in the course of his apparent or ostensible authority.*

State Bank of India v. Shyama Devi(1978)

- In State Bank of India v. Shyama Devi, it was held that if a customer of the bank gives some amount or cheque to the bank employee (in his capacity as a friend) for being deposited in the account, without obtaining any receipt for the same, the bank employee is not deemed to be acting within the scope of his employment. If such an employee misappropriates the amount or proceeds of the cheque for his personal gain, the bank, cannot be made liable for the same, because the act of the servant in this case has been done outside the course of employment[Servant is exclusively liable]

Theft of goods/ Tort- Conversion

- In **Roop Lal v. Union of India(1972)**. the question which had arisen before the J. & K. High Court was regarding the **liability of the master for the theft committed by his servants of the plaintiff's property. In that case, some military jawans, who were in the employment of the Central Government, lifted some firewood belonging to the plaintiff and carried the same away in military vehicles for the purpose of camp fire and fuel. The question arose whether the act of the jawans could be considered to be in the course of employment** so as to make the Union of India liable for the same.

Roop Lal v. Union of India(1972).

- It was held that the *act of the jawans fell within the course of employment* and the Union of India was liable for the same. Bhatt, J. observed: "Even the learned judge has held that "the jawans were supposed to be on duty all the 24 hours." Obviously if they were and are supposed to be on duty all the 24 hours, and if they lifted the firewood belonging to the plaintiff and that too in the Army vehicles, that action of theirs would be in the course of employment of their master. *Camp fires are a normal activity of the Army people.*
- **Note: The wrong done was the tort of conversion**

Union and the States as juristic persons

- Article 300 provides that the Union of India and the States are juristic persons for the purpose of suit or proceedings. Although the Union of India and State Government can sue and be sued, the circumstances under which that can be done have not been mentioned in the Constitution. The extent of liability is also not fixed by the Constitution. So, one has to rely for this on leading cases decided by the courts

State's Liability - general principle

The general principle is that if a government servant commits any wrong while exercising sovereign functions, State is not liable and if a government servant commits any wrong while exercising non-sovereign functions the Government is liable.

(King can do no wrong)

No well defined tests to know what are sovereign powers

- There are no well defined tests to know what are sovereign powers. Traditional sovereign functions are the making of laws, the administration of justice, the maintenance of order, the repression of crime, carrying on of war, the making of treaties of peace and other consequential functions.
- Functions relating to trade, business and commerce and the welfare activities are amongst the non-sovereign functions.
- Broadly speaking, such functions, in which private individual can be engaged in, are not sovereign functions.

Baxi Amrik Singh v. Union of India **[1972]**

- In Baxi Amrik Singh v. Union of India, an army driver while driving an army truck caused accident to the plaintiff. At the time of accident **the driver was deputed on duty for checking military personnel on duty for the whole day.**

Baxi Amrik Singh v. Union of India[1972]

- The Court held that the accident was caused in discharge of the sovereign function of the State because **only military personnel could be deputed to check the military personnel on duty.** It was for this purpose that the **army vehicle was placed at the disposal of the person deputed for duty and he himself drove the vehicle to go from place to place.** Therefore, the Court held that the Union of India was **not liable.**

Thangarajan Vs. Union of India (1975)

- *In Thangarajan v. Union of India, an army driver was deputed for collecting CO2 gas from the factory and to deliver it to ship, I. N. S. Jamuna. As a result of rash driving he knocked down the appellant, a minor boy aged about 10 years.*

Thangarajan Vs. Union of India (1975)

- *It was held that the accident was caused to the plaintiff while the driver was driving the lorry for the purpose of supply of CO2 Gas to the ship, I. N. S. Jamuna, which was in exercise of sovereign function of the State for military purposes.*
- You may get a doubt here-what about criminal liability

Union of India v. Sugrabai[1969]

- In this case, *one Mr. Abdul Majid was knocked down by a military truck which was engaged in carrying a machine to the School of Artillery.* The machine was sent for repairs to military workshop and after repairs it was being transported to the School of Artillery. *It was a machine meant for giving training to military officers.* The Government Pleader argued that training of army personnel was a sovereign function which in turn required maintenance of machines, and maintenance of machines required that they should be kept in proper condition, and that work of repairing required its transportation from workshop to military school and therefore transporting was a sovereign function. *The Court rejected the argument that training of army personnel was a sovereign function*

Satyawati v. Union of India(1967)

- In **Satyawati v. Union of India**, an Air Force *vehicle was carrying Hockey and Basket Ball teams to Air Force Station to play matches.* While *carrying the teams to play the matches* the driver *caused the fatal accident by negligence.* The Court held the Union of India liable for damages on *the* ground that *carrying of the teams to play the matches was not in the exercise of sovereign function.*

Nagendra Rao's case(1994)

The facts of the case were that the appellant was carrying on business in fertiliser and food grains under licenses issued by appropriate authorities. The appellant's premises was visited by the Police Inspector, Vigilance Cell and huge stocks of fertiliser, food grains and even non-essential goods were seized 11-8-75. On the report submitted by the Inspector, the District Revenue Officer (DRO) in exercise of powers under Section 6-A of the Essential Commodities Act, **directed the Assistant Agricultural Officer (AAO) to dispose of the stock immediately and deposit the sale proceeds in the Treasury.**

The AAO did not take any steps to dispose of the stock, as directed. On 29-6-1976, the proceeding under Section 6-A of the Act were decided in favour of the appellant and **confiscation order was quashed** as there was no proof that the appellant was guilty of black-marketing or adulteration.

Nagendra Rao case

Despite Collector's Order the AAO did not release the stock. However, in March, 1977, the AAO informed the appellant to take delivery of the stock. **But when the appellant went to take the delivery of the stock, he found that the stock had been spoilt both in quality and quantity.** He then demanded the value of the stock by way of compensation. His demand was rejected. He then filed the suit for recovery of the amount which was contested by the State that it was immune from liability on the ground of doctrine of sovereign immunity. **The trial court did not accept the defence and held that AAO acted negligently in not disposing of the stock in time and decreed the suit.**

Nagendra Rao & Co. Vs. State of A.P. [(1994)]

- The State appealed to the High Court. The High Court set aside the decree. The appellant filed an appeal in the Supreme Court against the judgment of the High Court.
- ***Rejecting the contention of the State, the Supreme Court held that the State was liable vicariously for the negligence committed by its officers in discharge of public duty conferred*** on them under a statute.

Violation of Legal Right (Position before Nagendra Rao)

- Remedy available under private law –provided the function is a non-sovereign function.

• *Violation of Legal Right (Position after Nagendra Rao)*

- Remedy available under private law –Whether the function is a sovereign or a non- sovereign function.

- ***Note:-For violation of legal right there will be no remedy under public law***

DEFENCE OF STATE IMMUNITY
NOT AVAILABLE WHERE
FUNDAMENTAL RIGHTS ARE
VIOLATED

- Before 1983, no difference between fundamental rights and ordinary rights

Violation of fundamental Rights

1) If the wrong is done in the **exercise of a sovereign function** (and if there is violation of a fundamental right) –**only public law remedy**

2) If the wrong is done in the ***exercise of a non-sovereign function*** (and if there is violation of a fundamental right) –**both public law remedy as well as private law remedy**

Public law remedy = remedy under ***Constitution (given by higher Courts)*** [***It is purely discretionary***]

Private Law remedy: Remedy under civil law (given by subordinate courts)

Constitutional Tort

- Custody death
- Encounter killing
- Illegal Detention
- Disappearances
- Police Atrocity

Rudal Shah Vs. State of Bihar(1983)

- A man called Rudal Shah, in the State of Bihar, was arrested on charge but acquitted by the Sessions Court at Muzaffarpur on 3 June 1968. He was , however, released from jail only after more than fourteen years, i.e., on 16 October 1982. The Supreme Court of India said that under Art. 32 of the Constitution, it was competent to order payment of the compensation to the petitioner for the deprivation of the fundamental right to life and liberty. The Supreme Court directed the Bihar Government to pay compensation of Rs. 30,000/- to Rudal Shah.
- **Before 1983, no difference between fundamental rights and ordinary rights(violation)**

BHIM SINGH V. STATE OF JAMMU **&.KASHMIR (1986)**

- In **BHIM SINGH V. STATE OF JAMMU &.KASHMIR.**
–an MLA, was arrested and detained by the police without sufficient reason and thereby he was prevented from attending the Session of the Legislative Assembly. **The State was directed by the Supreme Court to pay Rs. 50,000 as compensation to the petitioner as compensation for the violation of his right of life and liberty as guaranteed by Article 21**

Sebastian M. Hongray Vs. Union of India (1984)

- The Supreme Court by a writ of Habeas Corpus required the Government of India to produce two persons before it. **These two persons were taken to the military camp by the jawans of the army at Manipur.** The Government failed to produce them and expressed its inability to do so as these persons had met an unnatural death. The Supreme Court directed the Central Government to **pay exemplary damages of Rs. 1 lakh each to the wives of those persons.**

People's Union for Democratic Rights Vs. Police Commissioner, Delhi Police Headquarters, [(1989)]

- One labourer was taken to the police station for doing some work. When he demanded wages, he was severely beaten and ultimately succumbed to the injuries. It was held that the State was liable to pay Rs. 75,000/- as a compensation to the family of the deceased labourer

SAHELI V. COMMISSIONER OF POLICE

- ***In SAHELI V. COMMISSIONER OF POLICE [AIR1990 SC513], a nine year old child was in police custody. He was beaten and tortured by the police. The beating and torture resulted in the death of the child. The Supreme Court directed the government to pay Rs.75,000 as compensation to his mother. The significance of this case is that the Delhi Administration was allowed to recover money from those officers who are responsible for this incident.***

In ***NILBATI BEHRA V STATE OF ORISSA*** -

[AIR 1993 SC 1960]:

The petitioner's son aged 22 years was arrested by police in connection with investigation of an offence of theft in a village and kept in police custody with his hands tied. On the next day his body was found by the side of the Railway track. The mother of the deceased sent a letter to the Court alleging custodial death of her son. **The Court treated this letter as a writ petition under Article 32 and awarded Rs.1,50,000 as compensation** on the ground of violation of Article 21 of the Constitution. The Court said that **proceeding under Art.32 and Article 226 is a remedy available in Public law for contravention of fundamental rights to which THE PRINCIPLE OF SOVEREIGN IMMUNITY does NOT apply-- EVEN THOUGH IT MAY BE AVAILABLE IN PRIVATE LAW.**

Non-sovereign functions

- Running a railway, functions of postal department and banking activities are all commercial activities.
- Public welfare activities—Social welfare activities like opening, and maintaining irrigation canals, conveying mails from one office to another carrying on famine-relief work, constructing projects, maintaining hospitals and running schools are also the activities which make the government liable in tort.

Non-sovereign functions(DRIVING)

- A military truck carrying milk, coal, food tiffins, vegetables, a machine and crushed barley is not performing a sovereign function so as to attract the rule of immunity from liability. Similarly, driving military officers in a military truck after training back to their barracks, bringing the jawans from station to unit headquarters, driving a motor truck and going to impart training to new recruits, transporting a patient in a fire service ambulance are all non-sovereign functions and the government is liable vicariously for the negligence of its servants.

Third Party insurance

- No 3rd party insurance for government vehicles
- Public law remedy is discretionary
- Generally sanction is given in cases of custodial deaths/custodial rapes/false encounter.
 - **Bilki Bano**
- Gujarat riots victim
- 50Lakhs, a job and accomodation

*P. and O. Steam Navigation Co. v .
Secretary of State for India(1861)*

- *In this case, the plaintiff's servant was travelling in a horse driven carriage and was passing by the Kidderpore Dockyard in Calcutta, which is the government property. Due to negligence on the part of the defendant's servants, a heavy piece of iron, which they were carrying for the repair of a steamer, fell and its clang frightened the horse. The horse rushed forward against the iron and was injured.*

*P. and O. Steam Navigation Co. v .
Secretary of State for India*

- The *Company filed a suit against the Secretary of State for the damages for injury to its horse caused by the negligence of the servants employed by the Government of India.* The Court held that the Secretary of State for India was liable for the damages caused by the negligence of Government servants, because *the negligent act was not done in the exercise of a sovereign function.*
- *Thus, the Court drew a distinction between acts done in exercise of "sovereign power"* and acts done in the exercise of *"non- sovereign power"*.

State of Rajasthan Vs. Vidyawati(1962)

- In this case, the driver of a jeep owned and maintained by the State of Rajasthan for the official use of a collector of a district, drove it rashly and negligently while bringing it back from workshop after repair and knocked down a pedestrian and fatally injured him. As a result of the injuries, the pedestrian died. The deceased person's wife claimed compensation from the Rajasthan Government. The Court held that the driving of a jeep from workshop after repair was an activity which was **not connected with the sovereign powers and the State of Rajasthan was liable.**

Kasturi Lal v. State U. P[1962]

- In this case, the appellant was taken into custody on suspicion of being in possession of stolen property. **His property including certain quantity of gold and silver was taken out from him and kept in the Malkhana** till the disposal of the case. The **gold and silver was misappropriated by a police constable who fled to Pakistan**. After the **appellant was acquitted, the appellant sued the State of Uttar Pradesh for return of the gold and silver**, and in the alternative claimed damages for loss caused by negligence of the Meerut police. **The State contended that no liability would accrue for acts committed by a public servant where such acts were related to the exercise of sovereign power of the State.**

Kasturi Lal v. State U. P[1962]

- The Supreme Court held that the State was not liable.
- The State of U.P. was held to be not liable on the grounds that : (i) **the police officials were acting in discharge of statutory powers**, and (ii) **the power of the police official in keeping the property in the Police Malkhana was a sovereign power.**

Shyam Sunder v. State of Rajasthan(1964)

- In **Shyam Sunder v. State of Rajasthan**, a truck belonging to the P.W.D. was engaged in the famine relief work and a person was killed due to the negligence of the driver of the truck. The Supreme Court -*held the famine relief work as non-sovereign function* and the *State liable for damages.*

State of Orissa v.
Padmalochan[1975]

- The facts of the case are that, there was an apprehension of an attack on the office of the S.D.O and its properties by a mob which had resorted to violence there. The Orissa Military Police under the control of supervising officers and a Magistrate, cordoned the areas. **Some police personnel assaulted members of the mob without order from the Magistrate or any higher police officer, as a result of which the plaintiff was injured.**

State of Orissa v. **Padmalochan[1975]**

- It was held that the **posting of police personnel for cordoning in front of the S.D.O.'s office was in exercise of delegated sovereign function.** The fact that the **police personnel committed excess in discharge of their function without authority would not take away the illegal act from the purview of the delegated sovereign function.** Thus, **the injuries caused to the plaintiff while police personnel were dispersing unlawful crowd were, in exercise of sovereign function of the State.** The State was held not liable.

M.P. v. Chironji Lal(1981)

- In this case, the police made a *lathi charge on a student's procession, when the same became unruly.* The *loudspeaker set* belonging to the plaintiff, which was being used by the students in their procession, got damaged.
- In an action by the owner of the loudspeaker against the State to recover compensation for damage to the loudspeaker it was held that *maintaining law and order is a sovereign function, and the State is not liable for any damage in the exercise of that function*

B.K.D. Patel Vs. State of Mysore (1977)

- In this case the stolen ornaments of the appellant were recovered by the police. Again they were stolen from the police custody. After the disposal of the case, the appellant claimed the jewels or its equivalent value. The Magistrate Court, the Sessions Court and the High Court dismissed the claims. However, the Supreme Court held that that the State is liable to pay cash equivalent of the property stolen to the appellant.

Kumari v. State of T.N(1992)

- In Kumari v. State of T.N., a six year old son of the appellant died as a result of falling in a **ten feet deep sewerage tank** in the city of Madras. The Supreme Court **directed the State of Tamil Nadu to pay a compensation of Rs. 50,000/-** to the appellant . The Supreme Court further held that State of Tamil Nadu **can recover the said amount from the local authority or any other person who might be responsible of keeping the sewerage tank open.**