

# **RMM LAW COLLEGE SAHARSA**

## **ADMINISTRATIVE LAW**

### **IIIrd Part**

### **Paper -VII**

**TOPIC- Suits Against government**

**Lecture Notes by- INDRA BHUSHAN SINGH**

**Date:- 08/06/2020**

#### **Case Law on the tortious liability of the State**

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The first important case involving the tortious liability of the Secretary of State for India-in – Council was raised in P and O. Steam Navigation v. Secretary of State for India.

The question referred to the Supreme Court was whether the Secretary of State for India is liable for the damages caused by the negligence of the servants in the service of the Government. The Supreme Court delivered a very learned judgment through Chief Justice Peacock, and answered the question in the affirmative. The Court pointed out the principle of law that the Secretary of State for India in Council is liable for the damages occasioned by the negligence of Government servants, if the negligence is such as would render an ordinary employer liable. According to the principle laid down in this case the Secretary of State can be liable only for acts of non sovereign nature, liability will not accrue for sovereign acts Chief Justice Peacock admitted the distinction between the sovereign and non sovereign functions of the government and said: “There is a great and clear distinction between acts done in exercise of what are termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them.”

But the judgment of P. and O. Steam Navigation case, was differently interpreted in Secretary of State v. Hari Bhanji, In this case it was held that if claims do not arise out of acts of State, the civil Courts could entertain them.

The conflicting position before the commencement of the Constitution has been set at rest in the well known judgment of the Supreme Court in **State of Rajasthan v. Vidyawati**, where the driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of the district, drove it rashly and negligently while taking it back from the workshop to the residence of the Collector after repairs, and knocked down a pedestrian and fatally injured him. The State was sued for damages. The Supreme Court held that the State was vicariously liable for damages caused by the negligence of the driver. In fact, the decision of the Supreme Court in **State of Rajasthan v. Vidyawati, Kesoram Poddar v. Secretary of State for India**, introduces an important qualification on the State immunity in tort based on the doctrines of sovereign and non-sovereign functions. It decided that the immunity for State action can only be claimed if the act in question was done in the course of the exercise of sovereign functions.

Then came the important case of **Kasturi Lal v. State of U. P.** where the Government was not held liable for the tort committed by its servant because the tort was said to have been committed by him in the course of the discharge of statutory duties. The statutory functions imposed on the employee were referable to and ultimately based on the delegation of the sovereign powers of the State.

The Court held that the Government was not liable as the activity involved was a sovereign activity. The Court affirmed the distinction between sovereign and non-sovereign function drawn in the *P. and O. Steam Navigation's* case in the following terms.

The Supreme Court's judgment unambiguously indicates that the Court itself on the question of justice felt strongly that Kashturi lal should be compensated yet, as a matter of law they held that he could not be. There are, on the other hand, a good number of cases where the courts, although have maintained the distinction between sovereign and non- sovereign functions yet in practice have transformed their attitude holding most of the functions of the government as non-sovereign. Consequently there has been an expansion in the area of governmental liability in torts.

### **Sovereign And Non-Sovereign Dichotomy Changed Judicial Attitude**

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It is redeeming to note that the sovereign and non-sovereign dichotomy in the State functions which the Supreme Court has followed so far, is no being narrowed down by a new gloss over the sovereign functions of the State. The courts started holding most of the governmental functions as non-sovereign with a result that the area of tortious liability of the government expanded considerably.

The Madhya Pradesh High Court Has put up the entire legal position, which emerged from the analysis of the cases, in the following words: "These cases show that the traditional sovereign functions are the making of law, the administration of justice, the maintenance of order, the repression of crime, carrying on for war, the making of treaties of peace and other consequential functions, Whether this list be exhaustive or not, it is at least clear that the socio-economic and welfare activities undertaken by a modern state are not included in the traditional sovereign functions.

### **Damages**

It may happen that a public servant may be negligent in the exercise of his duty. It may, however, be difficult to recover compensation from him. From the point of view of the aggrieved person, compensation is more important than punishment. Therefore, like all other employers the State must be made vicariously liable for the wrongful acts of its servants.

The Courts in India are now becoming conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of the personal liberty. Hence they are coming forward with the pronouncements holding the Government liable for damages even in those cases where the plea of sovereign function could have negated the governmental liability. One such pronouncement came in the case of **Rudal Shah v. State of Bihar**. Here the petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full dressed trial. The court awarded Rs. 30,000 as damages to the petitioner.

In **Bhim Singh v. State of J&K**, where the petitioner, a member of legislative Assembly was arrested while he was on his way to Srinagar to attend Legislative Assembly in gross violation of his constitutional rights under Articles 21 and 22 (2) of the Constitution, the court awarded monetary compensation of Rs.50,000 by way of exemplary costs to the petitioner.

Another landmark case namely, **C.Ramkonda Reddy v. State**, has been decided by the Andhra

Pradesh, in which State plea of sovereign function was turned down and damages were awarded despite its being a cases of exercise of sovereign function.

In **Saheli a Women's Resource Center v. Commissioner of Police, Delhi**, where the death of nine years old boy took place on account of unwarranted atrocious beating and assault by a Police officer in New Delhi, the State Government was directed by the court to.

In **Lucknow Development Authority v. M.K. Gupta**, the Supreme Court has observed that where public servant by mal fide, oppressive and capricious acts in discharging official duty causes in justice, harassment and agony to common man and renders the State or its instrumentality liable to pay damages to the person aggrieved from public fund, the State or its instrumentality is duly bound to recover the amount of compensation so paid from the public servant concerned.

**The Court very correctly analyses the entire position of sovereign liability in India and observed:**

“The immunity peculiar to English system found its way in our system of governance through run of judgments rendered during British period, more particularly after 1858, even though the maxim *lex non protest peccary* that is the king can do no wrong had no place in ancient India or in medieval India as the king in both the periods subjected themselves to the rule of law and system of justice prevalent like the ordinary subjects of the States. According to Monu, it was the duty of the king to uphold the law and he was as much subject to the law as any other person. it was said by Brihaspati, where a servant commissioned by his master does an improper, for the benefit of his master, the latter shall be held responsible for it. Even during the Muslim rule the fundamental concept under Muslim law like Hindu law was that the authority of king was subordinate to that of the laws. It was no different during British rule. The courts leaned in favor of holding the State responsible for the negligence of its officers.”

### **Liability of The Public Servant**

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Liability of the State must be distinguished from the liability of the individual officers of the State. So far as the liability of the individual officers is concerned, if they have acted outside the scope of their powers or have acted illegally, they are liable to the same extent as any other

private citizen would be. The ordinary law of contract or torts or criminal law governs that liability. An officer acting in discharge of his duty without bias or mal fides could not be held personally liable for the loss caused to the other person. However such acts have to be done in pursuance of his official duty and they must not be ultra vires his powers. If an official acts outside the scope of his powers, he should be liable in civil law to the same extent as a private individual would be. Where a public servant is required to be protected for acts done in the course of his duty, special statutory provisions are made for protecting them from liability.

## **Public Accountability**

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Major developments in the area of public accountability have taken place. In the absence of public accountability today, corruption is a low-risk and high-profit business. The Classical observation of the Supreme Court in *D.D.A v. Skipper Constructions* deserves special attention.

### **The court observed.**

“Some persons in the upper strata (which means the rich and the influential class of the society) have made the ‘property career’ the sole aim of their life. The means have become irrelevant in a land where its greatest son born in this country said, “Means are more important than the ends.”

A sense of bravado prevails; everything can be managed; every authority and every institution can be managed... They have developed utter disregard for law may, contempt for it.

In order to strengthen the concept of public accountability the court in *Common Cause. A Registered Society (Petrol Pumps Matter) v. Union of India* held that it is high time that public servants should be held personally liable for their functions as public servants.

Thus, for abusing the process of court public servant was held responsible and liable to pay the cost out of his own pocket.

The principle thus developed is that a public servant dealing with public property in oppressive, arbitrary or unconstitutional manner would be liable to pay exemplary damages as compensation to the government, which is ‘by the people.’

In **Lucknow Development Authority v M. K. Gupta**, the Court asked as to who should pay the compensation for the harassment and agony to the victim? For acts and omissions causing loss or injury to the subject, the public authority must compensate. Where, however, the suffering was due to mal fide or capricious act of public servant, such a public servant would be made to pay for it. Although the Court spoke in connection with the Consumer Protection Act, if this principle is to be extended to liability for wrongful acts in general, it would doubtless provide an effective deterrent against mal fide and capricious acts of public servants. RM Sahai J observed.

“The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this Court and English courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees.”

Having stated this, the learned Judge stopped to consider who would pay such compensation. Such compensation would of course be paid from the public treasury, which would burden the taxpayer. He, therefore further ordered that when a complaint was entitled to compensation, because of the suffering caused by a mal fide or oppressive or capricious act of a public servant, the Commission under the Consumer Protection Act should direct the department concerned to pay such compensation from the public fund immediately but to recover the same from those who are responsible for such unpardonable behavior by dividing it proportionately among them when they were more than one.

Where a married woman was detained on the pretext of her being a victim of abduction and rape, and the police officers threatened her and commanded her to implicate her husband and his family in a case of abduction and forcible marriage, the Court directed the State government to launch prosecution against the police officers concerned and to pay compensation to the woman and her family members who were tortured.

Where high ranking officials of a public authority, the Delhi Development Authority were held guilty of irregularities such as giving possession of lands sold in auction to the respondent bidder before receiving the auction amount in full, thus causing loss to the public and the guilt was established in an inquiry conducted by Justice (retired) O Chinappa Reddy, the Supreme Court directed the government to hold a departmental enquiry against such official. Where indiscriminate admissions were given in an educational institution in branch

of eligible conditions, the Court ordered the government to take penal action against the person responsible for such admission. The head of the department is accountable to the court for carrying out the orders of the court. Personal costs may be awarded against the officer who fails to act in compliance with the court's order.

In recent years, the Supreme Court has also imposed personal fines and liabilities on ministers who used their discretionary powers on ulterior considerations. Where a minister allotted petrol pumps to his favorites or where a minister gave out of turn allotment of houses to persons related to her or known to her in preference to those who deserved such accommodation. The Court not only quashed the allotments but also imposed exemplary damages for having denied that largesse to the deserving people. Personal liability for abuse of power is a recent phenomenon.

**The Court further observed:**

“In modern sense the distinction between sovereign and non-sovereign power does not exist. It all depends on the nature of power and manner of its exercise. Legislative supremacy under the Constitution arises out of Constitutional provisions. Similarly the executive is free to implement and administer the law. One of the tests to determine if the legislative or executive functions sovereign in nature is whether the State is answerable for such actions in courts of law, for instance, acts such as defense of the country, raising armed forces and maintain it, making peace or war, foreign-affairs, power external sovereignty and are political in nature. Therefore, they are not amenable to the jurisdiction of ordinary civil court. The State is immune from being sued as the jurisdiction of the courts in such matters is impliedly barred.”

But there the immunity ends. No civilized 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. No legal or political system today can place the State above law, as it is unjust and unfair for a citizen to be deprived of his property illegally by the negligent act of officers of State. The modern social thinking and judicial approach is to do away with archaic State protection and place the State or the Government at par with other juristic legal entity. Any watertight compartmentalization of the functions of the State as sovereign or non-sovereign is not sound. It is contrary to modern jurisprudence. But with the conceptual change of statutory power being statutory duty for sake of society and the people, the claim of a common man cannot be thrown out merely because it was done by an officer of the State official and the

rights of the citizen are required to be reconciled so that the rule of law in a welfare State is not shaken.

It is unfortunate that no legislation has been enacted to lay down the law to torts in India. For that law, our courts have to draw from the English common law. Since the law of contract and the law of Sale of Goods and now the law of consumer protection have been enacted, it is high time that our Parliament enacts a law and thereby comes out of the legislative inertia.. The law in India on State liability has developed in the last two decades through judicial process. It has made the State liable for the torts of its servants. The courts have, however, developed such a law without expressly overruling some of the earlier decision, which defined the State liability in very narrow terms.

While the State has enacted various anti-pollution laws and the laws for the protection of the consumers, which provide quick remedies to the citizens, there is yet no sincere and strict implementation of such laws. The industry has often shown inadequate regard for provisions requiring installation of hazard preventing devices as required by the anti pollution laws. This became clear in *MC Mehta v. Union of India*. The State can be compelled to perform its statutory duties through a writ of mandamus, but will the State be liable to pay compensation to those who suffer because of its negligence or failure to obtain compliance of the industries to the provisions of the anti-pollution laws?

In recent years, the courts have awarded compensation in a number of situations.

Compensation was awarded for police brutalities committed on policemen *People Union for Democratic Rights v. Police Commissioner* to victims of negligence by medical personnel in an eye camp resulting in irreversible damage to the eyes of patients, **A.S Mittal v. State of U. P.**, and to victims of road accidents *President Union of India v. Sadashiv* and to victims of environmental pollution. The plea of sovereign immunity has been rejected by courts time and again. **Pushpinder Kaur v. Corporal Sharma**. Besides these, the courts have awarded excreta payment and costs of public interest litigating to those who spearheaded it. The Supreme Court has held that where essential governmental functions were concerned, loss or injury occurring to any person due to failure of the government to discharge them would make it liable for compensation. Such compensation would be paid even if the plaintiff does not prove negligence on the part of an authority.

In **Nilbati Behera v. State of Orissa**, the Supreme Court held that the awards of compensation in the public law proceedings were different from the awards in the tort cases. In a civil suit for tortious liability, whether the State was liable was an issue to be decided by taking evidence. The petitioner had to prove that the respondent was guilty of negligence and he suffered as a result of that. In a writ petition, the fact that a fundamental right had been violated was enough to entitle a person to compensation. Further, compensation in writ proceedings is symbolic and is not based on the quantification of the actual loss suffered by the petitioner.

Under the Consumer Protection Act, 1986, informal grievance redressal machinery has been provided. . Although consumer courts do not award damages for the civil wrongs, they have provided compensation to the consumer against unfair trade practice, deficient or negligent service or faulty goods. The consumer courts have not spared even government agencies. The Life Insurance Corporation, the nationalized banks, government hospitals have been made to pay compensation. Such actions of the consumer courts, however, do not deprive the consumer of his right to file a suit for tort in a civil court.