

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- Vicarious Liability: An Introduction

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Date:- 24/07/2020

Union of India v. Sugrabai ^[viii]

The Bombay High Court held that the transporting of military equipment from the workshop of the Artillery School is not a sovereign function.

The Bombay High Court overruled the plea of sovereign immunity when a military driver driving a motor truck carrying a Records Sound Ranging machine from military workshop to military school of artillery killed a cyclist on the road. It was held that the driver was not acting in the exercise of sovereign powers. The Bombay High Court observed in the following words:

“Sovereign powers are vested in the State in order that it may discharge its sovereign functions. For the discharge of that function one of the sovereign powers vested in the State is to maintain an army. Training of army personnel can be regarded as a part of the exercise of that sovereign power. The State would clearly not be liable for a tort committed by an army officer in the exercise of that sovereign power.

“But it cannot be said that every act which is necessary for the discharge of a sovereign function and which is undertaken by the State involves an exercise of sovereign power. Many of these acts do not require to be carried out by the State through its servants. In deciding whether a particular act was done by a Government servant in discharge of a sovereign power delegated to him, the proper test is whether it was necessary for the State for the proper discharge of its sovereign function to have the act done through its own employee rather than through a private agency.”

Khatri(II) v. State of Bihar ^[ix]

An important question was raised regarding the liability of the government for wrongful arrest and detention. Moving ahead in the direction of a new dimension of the right to life and personal liberty, Justice Bhagwati said: “Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental rights to life and personal liberty.”

It may be noted that the Government of India has not signed a treaty which provides for compensation for wrongful arrest and detention. This amply proves the lack of government’s concern for the precious of the precious rights of the people for the sake of discounting its own inefficiency and lawlessness.

Rudal Shah v. State of Bihar ^[x]

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.

Bhim Singh v. State Of Jammu And Kashmir ^[xi]

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.

Saheli, A Women’s Resources v. Commissioner Of Police ^[xii]

Saheli v. Commissioner of Police was another milestone in the evaluation of compensation jurisprudence in writ courts. The masterpiece judgment in Vidyawati, which was frozen by Kasturi Lal was rightly quoted in this case. 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.

Common Cause, A Registered Society v. Union of India ^[xiii]

The Supreme Court emphatically stressed that Kasturi Lal case, apart from being criticized, not been followed by the Court in subsequent cases, and therefore, much of its efficacy as a binding precedent has been eroded. In this case, the entire history relating to the institution of suits by or against the State or, to be precise, against Government of India, beginning from the time of East India Company right up to the stage of Constitution, was considered and the theory of immunity was rejected. In this process of judicial advancement, Kasturi Lal's case has paled into insignificance and is no longer of any binding value.

N. Nagendra Rao v. State of A.P. ^[xiv]

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.

The court noted the dissatisfactory condition of the law in this regard and suggested for enacting appropriate legislation to remove the uncertainty in this area. Rejecting the contention of the state the Supreme Court held that the state was liable vicariously for the negligence committed by its officers in the discharge of public duty conferred on them under a statute. As regards the immunity of the state on the ground of sovereign function, the court held that the traditional concept of sovereignty has undergone a considerable change in the modern times and the line of distinction between sovereign and non-sovereign powers no longer survives.

No civilized system can permit an executive as it is sovereign. The concept of public interest has changed with structural change in society. No legal system can place the state above the law as it is unjust and unfair for a citizen to be deprived of his property illegally by the negligent act of the officers of the state without remedy. The need of the state to have extraordinary powers cannot be doubted. But it cannot be claimed that the claim of the common man be thrown out merely because the act was done by its officer even though it was against law.

The need of the state, the duty of its officials and the right of the citizens are required to be reconciled so that the rule of law in a welfare state is not shaken. In the welfare state, functions of the state are not the only defense of the country or administration of justice or maintaining

law and order but it extends to regulating and controlling the activities of the people in almost every sphere.

The demarcation between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. The court further said that sovereign immunity was never available if the state was not involved in commercial or private function nor it is available where its officers are guilty of interfering with life and the liberty of a citizen not warranted by law.

In both cases, the state is vicariously liable to compensate. The doctrine of sovereign immunity has no relevance now when the concept of sovereignty has itself undergone a major change. *Sovereignty is now with the people. The people of India made the Constitution and gave it to themselves. The structure and functions of the state have been created and constituted to serve the people.*

Accordingly, the state is liable for the negligence of its officers. Further, in a large number of cases, the courts have ordered the Government to pay compensation to the victims of torture for violation of their fundamental right guaranteed by Article-21 of the Constitution.

Chairman, Railway Board v. Chandrima Das ^[xv]

In this case, the Supreme Court held that the functions of the State not only relate to the defense of the country or the administration of justice, but they extend to many other spheres e.g. education, commercial, social, economic, political etc. These activities cannot be said to be related to sovereign power.

State of Gujarat v. Haji Memon ^[xvi]

It was held in this landmark judgment, that is bound to be of great use to the public, that if any property (moveable) is seized by the police/custom officials or any other department of the government, they are under the same responsibility as a Bailee to take care of the goods as an ordinary man would take care of his own goods under similar circumstances. The state cannot seek to evade responsibility for loss of goods under its custody under the cloak of sovereign functions and under the fallacious argument that Bailment can only arise by a contract (s.148) as the said section is not exhaustive upon matters of bailment.

Wherein Articles seized by the police were produced before a Magistrate, who directed the Sub-Inspector to keep them in his safe custody and to get them verified and valued by a goldsmith. The articles were lost, while they were kept in the police guard room. In a proceeding for the restoration of the goods, it was held that when there was no prima facie defense made out, that due care had been taken by officers of the State to protect the property, the court can order the State to pay the value of the property to the owner.

Conclusion

In all the cases discussed before, the entity sought to be made liable is not the government but the State. So far as the government is concerned, it may well say that the statutory authority is neither accountable nor subordinate to it. Hence the government cannot be visited with the consequences flowing from a wrong order made by a statutory authority.

As far as the State is concerned, it cannot put forward any such plea inasmuch as the statute is enacted by it by Legislature. The appointment of the authority is also done either by the Statute itself or by such authority as may be authorized by the Statute. The act of the statutory authority in such a case is an act done for and on behalf of the State. Hence the state is held liable.

State's liability for the acts or omissions of statutory authorities arises only in cases where the statutory authority acts outside his legal authority while purporting to act pursuant to the legal authority conferred upon him and the act or omission, which causes or results in damage to a person, is not within the ambit of the statutory protection, if any, contained in such enactments. This rule is evolved for the obvious reason that an act done under a statute and in accordance with the statute can never amount to tort as was said by the Supreme Court by following cases.

The Court said, "A result flowing from a Statutory provision is never an evil". "The Government of India may sue or be sued by the name of the Union of India 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."

