TORTIOUS LIABILITY OF STATE: A COMPARATIVE STUDY ON INDIAN, THE UK, AND THE US LAW

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ABSTRACT

The tortious responsibility of the state in the US, the UK, and India are discussed in this paper. It compares the scope of the state's tortious liability by analyzing at the laws, legislation, and case laws of the three nations. It contends that although laws imposing tortious liability on the state are present in all three countries, the degree of culpability differs from one nation to the next. The study goes on to look at the many immunities that each nation's state has, as well as the limitations of such immunities. It also examines the remedies available to individuals when the state is held liable for tortious conduct. It comes to the conclusion that the state has to be held accountable for torts in order to guarantee access to justice. The study is an important resource for legal scholars and practitioners since it sheds light on the legal systems controlling the state's tortious responsibility in the three countries.

1. Introduction:

Torts committed by people against any other person were found in customary law, and the principle "Ubi Jus Ibi Remedium" drove the Law of Torts forward like never before. Because it was a Sovereign, the state was not liable in torts to its subjects under Roman law. It was considered a rule of Sovereignty, that a State cannot be prosecuted in its own courts lacking its agreement. Similarly, in England, the Crown relished the pleasure of being immune from tortious responsibility.

However the culpability of the state for its activities of omission and commission committed by its officers has been structured by codified or customary procedures. Tortious liability denotes to the accountability of the state for the wrongful activities of its servants. Interactions between the government/state and civilians are common in any contemporary society. Such relationships frequently cause legal concerns, and many of these issues fall under the purview of tort law since whenever redress through a civil court is sought, tort law comes into play far more generally than any other area of law.

Tort law, like many other laws, was brought to India by the British and in the present day it has so many variations from its original state as a result of being governed by native legal rules and constitutional necessities. Even the English saying that "the King can do no wrong" honoring the Crown's entire protection was not recognized in this country.[1] In this paper, the nature of the state's tortious responsibility of its servants is focused and the question that needs to be answered is about the liability of the state for the tort done by its servants.

The current legal position is that the master is answerable for his servant's wrongdoings if two criteria are met: initially, there needs to be a master-servant relationship between the lawbreaker and the person he is working for; and second, being wrongful act must have been done by the employee during the course of his employment. It is evident in modern society that there are so many developments in this area and the countries are adapting to the changing needs of society. The countries like the UK and USA have developed separate statutes for the same namely Crown Proceeding Act 1947 and the Federal Torts Claims act 1946.

Even in India though there is no separate statute for the State's tort liability. It is incorporated in the Constitution of India, 1950 by virtue of Article 300. There are so many developments

[1] "Justice U.C. Srivastava, 'Tortious liability of state under the constitution'< http://ijtr.nic.in/articles/art68.pdf> accessed on 6th November 2022."

and changes in the tortious liability of the state in these countries from its inception and this paper focuses on how the changes in one country are adopted by other countries and also the current position of the State's tort liability in these countries will be examined and compared.

2. Tortious liability of the state in the United Kingdom:

(a) 2.1 Historical background on principles of state liability:

In England before 1947 the common law provided the immunity of the state from any legal actions by any of the citizens based on the two important maxims namely;

(b) " The king by his writ cannot command himself"
(c) "the king can do no wrong"

Because of this, the crown was not subjected to any legal proceedings that were filed against it and it is based on the principle that was developed as a result of the feudal system where the lords cannot be subjected to undergo the trial where he himself tried the cases of other persons.

Due to the presence of the first principle, a procedure was established that no action will lie against the crown in the court of the king and they enjoyed plenty of immunity under the common law system. It is also important to note that they were not liable to any tort and even in case of liability existing in the case of contract they could only enforce that right by way of the petition of right. [2]

Unless by virtue of statute or expressly given by the attorney general, any action that was available against the crown or any of its departments to any person cannot be executed without the petition of right. In the case of **"Feather v. the queen, (1865) 6 B&S 257"** [3]it was held that the petition of right does not lie in these three circumstances;

(a) Where the statute itself provides the remedy for the problem
(b) If the petition is regarding the one which includes the acts of the state; or
(c) If the petition is for the torts committed by the state.

The second maxim provides immunity to the crown by stating that not any tribunal on the earth created by the men can question the integrity of the king and he is not bound to answer to any of these courts therefore he cannot be in any way be sued in the civil or criminal proceedings.

[2] "Durga Das Basu, Commentary on the Constitution of India (Lexis Nexis, 9th edition 2018, volume 13) pg. 13654."
[3] "Feather v. the queen (1865) 6 B&S 257."

There were no injunctions and interlocutory injunctions available for even the public servants against the crown.[4]

(d) 2.2 Consequences of following these Principles:

One of the important takeaways from this principle was that it was assumed that the crown was not capable of inflicting any injury, as, was created for the welfare of its subject so it cannot go against the will of the people. This principle again extended its arm to state that if the crown is not capable of causing harm then they are not even capable of authorizing the harm or wrong inflicted and it was by this stand of the crown the principle evolved that crown need not take the defense against the proceeding for any wrongful acts committed by the servants of the crown.[5]

Due to these Principles, the position was that the servant of the state though he has committed wrong in his public capacity the master i.e. the crown was not liable and they were provided sovereign immunity for any wrongful actions because of this, even the petition of right was not available against the state for any of the tortious acts done by the officers of the crown.[6]

(e) 2.3 Need for legislation for state accountability:

At the end of World War II, there were two important decisions in this regard that switched the whole momentum and created agitation for the need for reform. The first case was, "**Adams v. Naylor (1946) AC 543"** [7]where one of the boys died and the other was injured because of the minefield which was not fenced and marked as a danger due to the negligence of the officer of the state. There in that case the House of Lords couldn't come to the conclusion on whose fault the accident had occurred and who should be held accountable but only went to the extent of criticizing the government's practice. Secondly in the case of "**Minister of Supply v. British Thompson Houston (194) KB 478"**[8] the court observed the need for express words in the law to change the position and to create liability for the crown.

In 1921 the Crown Proceedings committee was appointed and it recommended that the crown ought to be held accountable in tort and should be sued just like any other employer in the

[4] "Merricks v. Heathercoat-Amory (1955) 1 Ch 567."
[5] "Raleigh v. Goschen (1898) 1 Ch 73."
[6] "A.G. v. De Keysers Royal Hotel (1920) AC 508 (530-1)."
[7] "Adams v. Naylor (1946) AC 543."
[8] "Minister of Supply v. British Thompson Houston (194) KB 478"

normal way. All these recommendations and the above two cases have brought reform in the UK and finally, the "Crown Proceedings Act, of 1947" was passed.

(f) 2.4 Changes that are bought by virtue of the "Crown Proceedings Act, of 1947":

"The Crown Proceedings Act" abolished two crucial principles of English constitutional law: first, Actions against the Sovereign for contract violation or property restoration must be brought after procuring a fiat, through the unfortunate process of the petition of right because the King couldn't be impleaded in his own court; and secondly, that the King might not be sued in tort in any way.[9]

By virtue of Section 2 (1) of the Crown Proceedings Act, which states that,

" Subject to the provisions of this act, the crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject: (a) in respect of torts committed by its servants or agents; (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employee; and (c) in respect of any breach of the duties attracting at common law to the ownership, occupation, possession or control of property."

The crown is made liable just like the private employer in all cases of torts. But though this section has some exceptions where the crown cannot be held liable they are

(a) The crown cannot be held liable even after this statute in cases where "acts of state" are involved.
(b) If judicial functions are involved and they are the reason for which the acts or omission were done.
(c) If the person is injured because of the nature of his work like a member of the armed forces while he is performing his duty which is covered under section 10 of the act.[10]

Other relevant laws regarding the Crown's tort obligation, in addition to section 2, are sections 3, 4, 5, 6, 7, 10, 11, 38, 39, and 40. These clauses mostly address various issues, such as "common law responsibility of the Crown," "liability for breach of statutory duties and powers," "exceptions within the Act exonerating the Crown from obligation," and so on. Thus,

[9] "Ravindra Kumar Singh, 'Liability of the State for Torts Committed by Its Servants: Public Law and Private Law Perspectives' (2016) 6 GNLU JL Dev & Pol 25."
[10] "Durga Das Basu, Commentary on the Constitution of India (Lexis Nexis, 9th edition 2018, volume 13) pg. 13659."

for the sake of litigation, and as nearly as practicable, the Crown has been matched with a private person with specific and restricted safety provisions. [11]

3. Tortious liability of the state in the United States of America:

3.1 Historical background:

In United States by virtue of the decision of the "**Chisholm v. Georgia (1793) 2 Dall 419 (US)"**[12] the eleventh amendment of the amendment of the constitution was passed due to the agitation of the states against the decision in this case which allowed the citizens of any state to sue another state. The 11th amendment to the constitution restricted the citizens of any state to sue another state or government in the federal court.

The United States also followed the principle of immunity of federal government from suits by individuals by virtue of which the federal government could not be subjected to any kinds of action for the wrongful acts committed against its citizens without getting prior consent from the government until recently. Some of the cases that have been decided had favored the same position and in "**U.S. v. Lee (1882) 106 US"**[13] it was held that,

"It has been adopted in our courts as part of the general doctrine of publicists, that the supreme power in every state, wherever it may reside, shall not be compelled, by process of courts of its own creation, to defend itself from assaults of those courts."

In "**Briggs v. Light Boats (1865) 11 Allen 157"** [14]also it was held that subjecting the supreme executive power to repeated suits at the will of its citizens will impair the sovereign's fulfilment of civic responsibilities .

3.2 Limited remedies available to Americans by virtue of 1st Amendment:

However, the Americans were not without recourse, as the 1st Amendment maintained their right to appeal the state for the resolution of grievances.[15] Citizens have requested Congress since the beginning of the Republic to establish special laws providing a monetary relief for

[11] "Ravindra Kumar Singh, 'Liability of the State for Torts Committed by Its Servants: Public Law and Private Law Perspectives' (2016) 6 GNLU JL Dev & Pol 25."
[12] "Chisholm v. Georgia (1793) 2 Dall 419 (US)."
[13] "U.S. v. Lee (1882) 106 US."
[14] "Briggs v. Light Boats (1865) 11 Allen 157".
[15] "Figley, Paul F, 'Understanding the Federal Tort Claims Act: A Different Metaphor', Tort Trial & Insurance Practice Law Journal 44 (Spring/Summer 2009)": 1105- 1138, p. 11o7.

certain harms that the states have done. With the passage of time, Congress enacted a number of statutes that provided remedies for a wide range of claims.[16] Though it addressed the problem only relating to the monetary claims and torts claims were being left unaddressed and several claimants of torts were being left remediless and congress was mounted with pressure to come up with a statute that could deal with the tort claims against the government.

3.3 Spark for the enactment of "The Federal Tort Claims Act, of 1946":

It was because of the Tragedy that occurred in July 1945 when the empire state building was destroyed due to an act by an army bomber when he crashed the flight and several people were killed and injured, however to their dismay they were left with no remedy and all the parties were immune from liability. This created unrest among the people and as a result of this in 1946, "The Federal Tort Claim Act" was enacted.[17]

"The Federal Tort Claims Act, of 1946" lays down that,

"The United States shall be liable, respecting the provisions of his title relating to the tort claims, in the same manner, and to the same extent as a private individual under like circumstances."

However, liability under this statute is limited to property injury or destruction, and in the case of death or personal injury caused by the actions of a public servant in the scope of employment, and the conditions should be such that if the United States were a private individual, it would be liable for such damage..[18]

3.4 Exceptions to "the Federal Tort Claims Act":

However, the Federal Tort Claims Act have situations where states of the US may not be held accountable despite the fact that private employers may be held responsible by state law. Three of these main exceptions are:

(a) The 'Feres Doctrine,' that forbids military members from suing for injuries received while serving.;

[16] "Ravindra Kumar Singh, 'Liability of the State for Torts Committed by Its Servants: Public Law and Private Law Perspectives' (2016) 6 GNLU JL Dev & Pol 25."
[17] ibid.
[18] "Durga Das Basu, Commentary on the Constitution of India (Lexis Nexis, 9th edition 2018, volume 13) pg. 13664."

(b) Claims founded on failure to exercise the discretionary function of an official;

(c) Claims to arise out of intentional torts.[19]

Certain other exceptions includes

a) The United States might not be said accountable in accord with state law imposing strict liability
b) It may not be held liable for interest preceding to decision or for punishing damages;
c) For the action or omissions of a servant performing with due care in the performance of an unenforceable statute or regulation;
d) For claims "arising out of the loss, miscarriage, or negligent transmission of letters or postal matters";
e) For claims arising in relation to the valuation or collection of any tax or customs duty;
f) For claims produced by the economic processes of the treasury or by the rules of the financial system;
g) For claims arising out of soldier activities; or
h) For claims arising in foreign country.

(g) 3.5 Rulings that facilitated the adoption of FTCA act 1946:

In "**Dalehite v. U.S. (1953) 346 US 15"** [20] the SC decided the government was not responsible for the negligent performance of a government duty or the exercise of discretionary authority by a public employee. Subsequently in "**Rayonier v. U.S. (1956) 352 US 315 (319),"**[21] the SC adjudged that there is no distinction between the governmental and Non- governmental functions that are incorporated in "the Federal Tort Claims Act".

The utmost important development in this area that has arisen in the United States was after the case of "**Muskopf v. Corning Hospital District 359 P 2d 457 Cal 1961"**[22] where the immunity of state government is abolished by the decision of the judiciary. It was held in that case that,

[19] Hatahley v. U.S. (1956) 351 US 173.
[20] Dalehite v. U.S. (1953) 346 US 15.
[21] Rayonier v. U.S. (1956) 352 US 315 (319).
[22] "Muskopf v. Corning Hospital District 359 P 2d 457 Cal 1961".

" the rule of Governmental immunity from tort liability must be discarded as mistaken and unjust. Sovereign immunity in tort is an anachronism, without rational basis and has existed by the force of inertia".

Following this 29 states renounced the state immunity doctrine for torts as a whole or in part in 1977.

3.6 Current Position of State immunity and abolition of Feres Doctrine in the US:

The Feres Doctrine which was founded by the US supreme court in "**Feres v. United States, 340 U.S. 135 (1950)"**[23] was abolished by the National Defense Authorization Act for the Fiscal Year 2020 (NDAA) and it was the historical movement as it ended the 70 long years of differential treatment to which many military members experiencing the damages of medical negligence in the course of their employment had previously been subjected as a result of an antiquated, widely criticized concept promulgated by the Supreme Court.[24]

Only the restricted exception to the Feres Doctrine is given by NDAA,

"for personal injury or death incident to the service of a member of the uniformed services that was caused by the medical malpractice of a Department of Defense health care provider,"

4. Tortious Liability of state in India:

4.1 Constitutional perspective:

The position of tortious liability of the state for the wrongs committed by its servants can be illuminated with the constitutional provisions and decisions of the courts in India. Article 300 of the Constitution of India states:

"(1) 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

[23] "Feres v. United States, 340 U.S. 135 (1950)".

[24] "Daniel Perrone, 'The Feres Doctrine: Still Alive and Well after the 2020 National Defense Authorization Act?'
< https://www.jurist.org/commentary/2020/03/daniel-perrone-feres-doctrine-ndaa/> last assessed on November 12, 2022."

corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution —

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings."[25]

Therefore four important points can be derived from Article 300 of the Constitution,

1) The Union of India shall sue or be sued under its own name, and a State may sue or be sued under its own name. Thus, for the purposes of proceedings, the Union of India and the States are legal persons under Article 300.
2) The Government of India or a State shall sue or be sued through relationships with their own affairs in the exact circumstances that the Dominion of India and the equivalent Provinces or Indian States could have sued or been sued in the absence of this Constitution. As a result, the responsibility of the Centre or a State is coextensive with that of the Dominion of India or the comparable Provinces or Indian States that existed before the current Constitution.
3) The rights and responsibilities of the government of India or a state shall be subject to any provisions that may be established in this subject passed by an Act of Parliament or the Legislature of such State by virtue of the powers granted by the Constitution.
4) If in some proceedings involving the Dominion of India as a party were awaiting decision at the time of the adoption of this Constitution, the Union of India should be considered to have replaced the Dominion in those proceedings; if any legal proceedings that a Province or a State in India was a party, the associated State should be considered to have replaced the Province or the State in India in those prosecution.[26]

[25] Article 300 of Indian Constitution

[26]" Ravindra Kumar Singh, Liability of the State for Torts Committed by Its Servants: Public Law and Private Law Perspectives (2016) 6 GNLU JL Dev & Pol 25. pg 36."

4.2 History of state liability in India in the Pre-Constitution era:

As observed above the pre-constitution status of liability of the state in tortious liability is maintained and the liability of the state is equated with the liability of the East India Company and at that time it had two characteristics namely sovereign function as well as a commercial and administrative function. [27] The Charter of 1833 gave the power to the company to hold the government of India in trust on behalf of the British Crown. Section 65 of the government of India act, 1858 established the secretary of state to be a "body corporate" and it reads as

"The secretary of state in council shall and may sue as well in India as in England by the name of the secretary of state in council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable against the secretary of state in council of India as they could have done against the company; and the property and effects hereby vested in Her Majesty for the purposes of the Government of India or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would while vested in the said company have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said company".[28]

And one of the important cases under section 65 of the 1858 act is **"P&O Steam Navigation Co. V. Secretary of State 5 Bomb HCR (App.1)**."[29] The court in this case distinguished sovereign and non-sovereign functions and ruled that if an act was done as a sovereign function and that function couldn't have done by any other than the sovereign itself or by any private person who was delegated with sovereign powers to act on behalf of sovereign then no proceedings or suit would lie against the state; however the secretary of the state would be liable for damages if the function is not sovereign and any ordinary employer would be liable for the same act of its employees.

In some cases, the dividing line between sovereign and non-sovereign functions was followed instinctively, while in others, it was regarded as mere obiter dicta, and the rule that the secretary of state shall not be responsible for something done in the implementation of sovereign power was not followed, and the courts took a distinct perspective.[30]

[27] "M P Jain, Indian Constitutional Law (Lexis Nexis, 8th edition 2018) pg. 1633."
[28] "Section 65 of the government of India act, 1858".
[29] "P&O Steam Navigation Co. V. Secretary of State 5 Bomb HCR (App.1)".
[30] "M P Jain, Indian Constitutional Law (Lexis Nexis, 8th edition 2018) pg. 1633."

In the case of "**Secretary of state v. Cockraft AIR 1915 Mad 993,"**[31] it was held that the military and maintenance of military roads was a sovereign function and the suit of the plaintiff who got hurt by the unaccounted heap of gravel which was put there by negligence, for damages against the state was rejected.

In the case of "**Etti C v. Secretary of State AIR 1939 Mad 663**,"[32] the maintenance of hospitals using public money for the advantage of the people was considered a sovereign function, and the state was held not accountable for the wrongs committed by workers working in a government hospital.

The state stood judged not answerable for losses consequential from damage done by steam roller involved in infrastructure improvements since this was deemed a sovereign function.[33]

However, the Courts in the country took a different approach followed here and took the view that the principle followed in P&O case is mere obiter dicta and it laid down the wider perspective of state liability. The courts decided in these decisions that the P & O. case was foundation for the theory that the government was culpable for damage experienced through commercial or individual activities, but that it did not erase liability in other ways, and that the act of the state is excluded under this purview.

"Secretary of State v. Hari Bhanji ILR 5 Mad 273"[34] was the prominent case in this classification and where the High Court of Madras held that the immunity of state in tort is limited only to the acts of the state and also the acts that are done with the intent of protecting the public safety is also excluded from the liability.

4.3 History of state liability in India in the Post-Constitution era:

The Post-Constitution approach followed by the courts in this issue was the reformist approach and that was followed to lighten the problems faced by the citizens. "**State of Rajasthan v. Vidhyawati AIR 1961 SC 933"**[35] was the initial case in which court took this approach. The facts of the case were that a driver of a Government jeep which was for the utility of the Collector of Udaipur struck and killed a guy strolling on a pathway alongside a public road.

[31] "Secretary of state v. Cockraft AIR 1915 Mad 993".
[32] "Etti C v. Secretary of State AIR 1939 Mad 663."
[33] "Krishnamurthy v. State of Andhra Pradesh AIR 1961 AP 283."
[34] "Secretary of State v. Hari Bhanji ILR 5 Mad 273."
[35] "State of Rajasthan v. Vidhyawati AIR 1961 SC 933."

Three days later, the injured guy died in the hospital. The victim's legal representatives filed a lawsuit against the State of Rajasthan and the driver seeking damages for the wrongful act perpetrated by the driver. It was proven that the driver was hasty and irresponsible while riding the jeep and that the tragedy was the consequence of that driving. The Trial Court and High Court decisions were dismissed and the Supreme Court held that

"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of tortious acts committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract, and the Common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in the public interest, that the State should not be held liable vicariously for tortious acts of its servant. This Court has deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. In State of Bihar v. Abdul Majid, this Court has recognized the right of a Government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favor of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause, in this case, arose after the coming into effect of the Constitution, in our opinion, it would be only recognizing the old established rule, going back to more than loo years at least, if we uphold the vicarious liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper on this behalf. But, so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been, ever since the days of the East India Company" .

However, the Supreme Court through its unfortunate judgment in "**Kasturi Lal Ralia Ram Jain v. State of U.P AIR 1965 SC 1039"** [36] differed from this progressive approach and came

[36] "Kasturi Lal Ralia Ram Jain v. State of U.P AIR 1965 SC 1039."

back to square one. In the current instance, the police took some gold from Ralia Ram on suspicion of theft. It was held in the government malkhana until it was stolen by a policeman who went to Pakistan. Ralia Ram was found not guilty of the offense. The question of law arose as to whether the State of UP was obligated to pay Ralia Ram for the loss caused by the State's police personnel for their negligence in misplacing the gold. The Supreme Court determined that the police officers were irresponsible in their handling of the property of the claimant and that the officers in question had failed to exercise the necessary care as required. However, with this finding, the Supreme Court dismissed the suit on the grounds that the police officers performed the act of carelessness when dealing with the property in the execution of their statutory powers.

The Court also held that the decision in the Vidhyawati case could not be compared by saying the employee of the government who was driving the car from the garage to the collector's house was not said to perform the sovereign function. The legislation governing the tortious responsibility of the government was very archaic, obsolete, and harsh to the people. In the present setting, the division between sovereign and non-sovereign powers maintained by the Supreme Court in the Kasturilal decision was unreasonable.

It is highly hard to differentiate between sovereign and non-sovereign functions in the present society. During that time independent countries like the UK and US had come up with their own legislation to make the state liable and the distinction between sovereign and non-sovereign was done away with. Even in India, the Law Commission mentioned the welfare state's widening scope of activities. While the Government's obligations have grown, so has its activity, resulting in a larger influence on people. The Committee's notable recommendation includes

"The old distinction between sovereign and non-sovereign functions or governmental and non-governmental functions should no longer be invoked to determine the liability of the state."

Later after this the courts have been easing the problem by limiting the definition of sovereign function and classifying many modern government duties as 'non-sovereign.

The extent of the state's "sovereign" function has diminished significantly over time as a result of numerous judgments of the court. The court in the case of "**Chairman, Railway Board v.**

Mrs Chandrima AIR 2000 SC 988"[37] expressed its dissent on the Kasturi Lal decision and observed that

"The theory of sovereign power which was propounded in Kasturi Lal's case has yielded to new theories and is no longer available in a welfare state. It may be pointed out that functions of the Government in a welfare state are manifold, all of which cannot be said to be the activities relating to exercise of sovereign powers. The functions of the state not only relate to the defence of the country or the administration of justice, but they extend to many other spheres as, for example, education, commercial, social, economic, political and even marital. These activities cannot be said to be related to sovereign power".

4.4 Present-day Liberal Judicial Approach:

The courts no longer examine the issue only from the perspective of typical tort litigation. In Court, given that the Constitution provides not only basic rights but also the right to seek redress for violations of those rights, redress for violations of those rights cannot be limited or prevented by the constraints that apply to regular litigation. As a result, when instances involving wrongful imprisonment and custodial death reached the Supreme Court under Article 32 in the 1970s, the idea of Constitutional Tort arose. Damages was also paid in circumstances where it was shown that the prison killing happened as a result of excessive recklessness on the part of law enforcement agents.

"N Nagendra Rao v. State of Andhra Pradesh AIR 1994 SC 2663"[38], was one the important judgments of the court in following the liberal approach on the state liability and it was observed that

"The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign" and "non-sovereign" or "governmental" and "non-governmental" is not sound. It is contrary to modern judicial thinking. In the welfare state, functions of the state are not only the defense of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between

[37] Chairman, Railway Board v. Mrs Chandrima AIR 2000 SC 988.
[38] "N Nagendra Rao v. State of Andhra Pradesh AIR 1994 SC 2663."

sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional government, the State cannot claim any immunity".

The Supreme Court in this case thus proposed 2 assertions: (1) In contemporary states, there is no division amid sovereign and non-sovereign functions; and (2) The state cannot claim immunity except for functions such as administering justice, maintaining peace, and order, and suppression of crime, that is amongst the "primary and inalienable" roles of a lawful state.

5. Comparative Analysis:

5.1 No specific Legislation:

Unlike the "Crown Proceedings Act of 1947" in England and "the Federal Tort Claims Act of 1946" in the United States, India does not have any specific laws addressing the culpability of the state. Prior to 1858, the law in India regarding the culpability of the state for the tortious conduct of its servants became entwined with the nature and character of the East India Company's involvement. Unfortunately, no legislation has been established in India to establish tort law.

5.2 Distinction between Sovereign and Non- Sovereign Function:

From before pre - independence period, when the state was a laissez faire state with little or no state intrusion, it was simple to discern between the sovereign and non-sovereign functions of the state. This is why, in "**P. & O. Steam Navigation"**, the court distinguished between sovereign and non-sovereign duties in order to impose culpability on the state. When the Modern Welfare State evolved, the state began to be burdened with a wide range of duties. It is logical to anticipate that the perpetrator must pay the victim for his losses.[39] To fulfill this goal of the Indian Constitution, the Courts have expanded their interpretation of Article 21. However, Article 300 failed to distinguish between sovereign functions and acts of the state as it plays an important role in the liability of the state where in the modern state through in

[39] Mayan H Jain ,"PAPER ON TORTIOUS LIABILITY OF THE GOVERNMENT" <https://deliverypdf.ssrn.com/delivery.php?ID=927103126008003093099031123095093011118033030042010043122092066030065119094089115010026005017013006005055071125103124009100095055066031061002127118121124083087085116004008057001080104096025126065122064111121123081093079010012105080120127121065027022092&EXT=pdf&INDEX=TRUE> assessed on November 11, 2022.

performing the sovereign functions the state could be held liable but not liable in the acts of the state. However, in the United Kingdom, There is no such distinction and the acts of state are outright exempted from the Crown proceedings act.

5.3 Liability under Traditional and Current Legislation:

In the United Kingdom under the traditional theory, the crown was not liable under the maim king can do no wrong however under the current legislation the crown was made liable as like any other private individual.

In the United States, the Federal and state government were likely not made liable under the traditional practice however after the advent of FTCA the United States shall be liable in the same manner and to the same extent as a private individual.

In India, under the traditional theory, the government liability is derived from the east India Company, where the company was liable for wrongs done by its servants. However, the current legislation is that under Article 294(b) and Article 300 of the constitution of India the Union of India and the state government are made liable.

5.4 Exceptions of state's liability for tortious acts:

In the United Kingdom, certain acts of the postal and armed forces are exempted. And also the acts which are in the judicial nature are also exempted from liability.

In the United State, the important exemptions included Feres doctrine, discretionary function and intentional tort and also certain other exception are allowed. However in the present day the exception of the feres doctrine has only the limited scope and its application is demarcated.

In India certain cases of sovereign function are exempted and acts of armed forces in certain areas are also exempted. Acts relating to foreign affair also comes under the category of exception.

6. Conclusion:

In the UK and the USA liability of government in tort decided is by the specific legislation, where they defined the liability and certain exemption from the liability.

However, in India, liability of the Government is still decided by the case to case there is no straight jacket Formula where, Government made liable for their acts. The abovementioned review of cases leads us to the conclusion that the courts have limited the scope of "sovereign activities" in order to make the state more and more accountable for the damage experienced by the people at the hands of government employees. The courts have accomplished this through a narrow interpretation. Though Kasturi Lai is not overruled, much of its power has been undermined by this point. This is a great step toward realizing the concept that in a Welfare State, a just relationship between personal liberty and State obligations is required. A republican Constitution limits sovereign immunity to the minimal essential functions, rendering the State responsible in all other circumstances. Present judiciary tendencies are undeniably in support of finding the government accountable for tortious acts done by its employees. The court has granted compensation in situations of police brutality, improper arrest and detention, detaining under-trial detainees in jail for an extended length of time, causing assault or physically attacking detainees, and so on.

Adopting the recommendations of the Law Commission in their report issued in 1956, the government submitted two Bills in the Lok Sabha, Government Liability in Tort, in 1965 and 1967, none of which became an Act. The government accepted the lapse on the grounds that it would introduce an element of rigidity in determining the government's obligation, which is practically accurate.

All governmental acts and their instruments must be aimed toward the goals outlined in the Constitution. Every government development should be made in the direction of fair conventions, social and financial improvement, and open welfare. As a result, sovereign invulnerability should not be accessible as a defense where the State is engaged in activities of the trade or of private enterprise, nor should it be accessible if its personnel are responsible for meddling with a free person's life and independence. The law governing the State's liability for torts committed by its agencies and servants is neither just in substance nor satisfactory in form, despite the fact that the Supreme Court and High Courts in the present day, under public law, have shaped new tools to do justice and awarded compensation to victims in cases of violation of fundamental rights. In a legal system, the State must acknowledge legal blame for its illegal activities by itself or through its officers rather than denying such liability. Exceptions may be allowed and must be limited to undeniably and genuinely unusual circumstances.

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