
AN ANALYSIS LIABILITY OF GOVERNMENT IN TORT

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ABSTRACT

The state is now one of the main parties to legal disputes. On the one hand, the government maintains its conservative stance and attempts to justify its actions—or the torturous actions of its officers—by arguing that sovereign acts or state acts are immune. Conversely, yet, no thorough law outlining the state's obligation in the event that it commits a tort has been continued till this day. Through judicial interpretation, the state's tortious liability is determined. And just activism. India does not have a special legislation that deals with the tort liability of the state. Nonetheless, the Indian Constitution stipulates that the state and the Indian Government can be sued for their abusive actions. This does not, however, include a list of circumstances in which the state may be held liable for wrongdoing by its personnel.

Thus, the question is raised as to what circumstances allow the government to decide whether to grant someone financial damages or compensation. A clear-cut example of a recognized tort occurring is when a public official acts carelessly in the course of carrying out his obligations. And therefore the question of whether the vicarious responsibility theory makes the government liable for the injured party's damages arises. This paper has covered each of these topics.

RESEARCH OBJECTIVE

"To investigate and evaluate the scope and limitations of government liability in tort, exploring case studies, legislative enactments, and judicial interpretations to discern patterns of liability, factors influencing legal outcomes, and potential reforms needed for a more effective and equitable tort system involving governmental entities."

"To conduct a comprehensive analysis of government liability in tort by scrutinizing relevant legal doctrines, recent court decisions, and legislative developments, with the aim of identifying gaps, inconsistencies, and opportunities for enhancing the legal framework governing government tort liability, thereby contributing to a more robust and fair system of accountability."

INTRODUCTION

Article 12 of the Indian Constitution defines a state as the union government, a province government, or any other local authority "Government" and "State" or "administration" are used here respectively. The extent to which the administration is accountable for the wrongs perpetrated by its workers is a complex issue, especially in developing countries where the extent of government intervention is growing. The British common law served as the source for both the public law concepts and the provisions of the Indian Constitution that control government tort liability.

The state's accountability for the misconduct of its employees has become essential in the current circumstances. The Indian Constitution establishes the State's liability and gives it the authority to grant compensation. First, the State is obligated by law to make amends if it violates a victim's constitutional rights. Second, the higher courts can guarantee that the State upholds fundamental rights by using their writ powers, but they must exercise these powers responsibly. For the State's duty violation to be properly atoned for, the victim must get recompense from the State.

Dr. Justice Anand argues that the courts have the power to annul any State measures found to be unconstitutional and that the Constitution is the fundamental law of the land. The courts have the responsibility of protecting these rights and enforcing the Constitution. The judges' consciences are not the only things that hold the people whose sovereignty rests

responsible. This suggests that courts have a duty to protect and preserve the fundamental rights of people as well as to declare unlawful conduct unconstitutional and compensate victims of rights violations. State liability, which enables plaintiffs to hold the state liable for damages incurred as a result of the state's acts while performing its duties are a fundamental component of tort law. In India, the concept of state culpability evolved throughout time. Prior to analyzing the current Indian legislation on State Liability and its contemporary concerns, it becomes imperative to study the gradual evolution of State Liability into its current form.

The basis of the state's tortious liability is vicarious liability, which essentially holds the state accountable for any wrongdoings committed by its personnel while they are performing their jobs.

Respondent superior and *Quia facit per alium* are notions that the basis for the State's vicarious liability is *facit per se* and public responsibility. Idea in India.

Before, Under English law, the Crown was exempt from tort wrongs committed. Stated differently, the Crown was shielded from accountability for the misconduct of its workers. This was all based on the notion that the "King can do no wrong." But this notion was eliminated by the Crown Proceedings Act of 1947 since it increased the scope of government functions. The government and the subjects were in the same position as a result of this Act. From an Indian standpoint, the idea that a "King can do no wrong" was never accepted there. The Constitution's Article 309 defines the government's obligation. The Union of India and the State could file and accept lawsuits in the same way as the Dominion of India prior to the Constitution's implementation including the Provinces.

Understanding the distinction between sovereign and non-sovereign entities is crucial as it serves to completely comprehend the concept of the State's tortious liability.

Purpose of the research

This comparative research aims to clarify the nuances of tortious liability in administrative law, paying particular attention to the ways that various legal systems across the globe handle this important matter. Fundamentally, we want to accomplish the following with our study:

Emphasizing Accountability: Because governments have a lot of authority, the idea of tortious

liability is essential to holding them responsible for their deeds. By exploring the legal culpability of governments for harm inflicted, we highlight the essential idea that no organization—not even the state—is above the law.¹

Ensuring Fairness: Tortious liability is fundamentally about the pursuit of justice. Governments that are held accountable for their acts guarantee that people and organizations who have been harmed by administrative rulings will be treated fairly and compensated. This encourages equity and justice in interactions with governmental entities.

Encouraging Legal Practice: We give researchers, policymakers, and practicing attorneys important insights into various tortious liability strategies by presenting a worldwide viewpoint. Legal practice is informed by this information, which also influences global legislative reforms and legal concepts.

Recognizing Global Consequences: In a world growing more interconnected by the day, decisions made by governments may have global effects. It is easier to understand and navigate the complicated legal landscape of cross-border issues and international disputes when one is aware of how various legal systems address tortious liability.

Comprehending the subtleties of tortious liability is crucial, since it serves as a foundation for guaranteeing responsibility, equity, and justice in the conduct of governments across the globe. Our goal in this comparative research is to provide insight into how various legal systems—with an emphasis on India in particular—handle tortious liability issues. In doing so, we hope to establish links between the administrative law framework of India and international developments in this area.²

Concepts and Guidelines:

The Foundational Theory of Negligence: In administrative law, negligence is the fundamental principle of tortious liability. It makes the argument that while performing their administrative duties, government organizations have a responsibility to protect the public. A government body may be found negligent if it violates this obligation by neglecting to take reasonable precautions and this violation results in injury to a person or thing. Establishing the

¹ SIMANDIR NATH JAIN, 2011

² Administrative law

existence of a duty, a breach of that obligation, causation, and damages are usually necessary to prove carelessness.

Nearest Cause: A key idea in matters involving tortious responsibility is proximate cause. It entails establishing a clear causal connection between the claimant's injuries and the government entity's action or omission. Courts evaluate if the harm was an expected result of the action taken by the government. To prove liability, proximate cause must be established.

State Immunity and Its Deviations: a state of immunity Governments have generally been protected from litigation by the idea of sovereign immunity. Nonetheless, a lot of legal frameworks have acknowledged the necessity of this doctrine's exceptions. Under certain conditions, people may file lawsuits against the government. For example, the government.

Tort Claims Act (FTCA) in the United States waives sovereign immunity for specific torts committed by government workers while they are on the job.

Strict Liability in Particular Situations:- Strict Obligation: Although the main source of culpability is carelessness, strict liability may apply in specific circumstances. responsibility is enforced under strict responsibility regardless of negligence or fault. This is frequently the case with activities or items that are intrinsically harmful. For example, strict responsibility claims may result from environmental damage induced by government acts.

Public Duty Theory

Public Duty Theory According to this theory, government organizations have a responsibility to protect the general public rather than specific individuals.

Because the claimant must prove a specific duty due to them personally, claims based on the public duty doctrine may be harder to prove.

Compensation and Redress: Remedial Action: In administrative law, tortious liability frequently results in restitution for the injured party. Financial recompense, injunctive remedy, or specific performance requirements are examples of remedies. Restoring the victim's health or averting more damage is the aim.³

³ Nilabati Behera v. State of Orissa, and Vishaka v. State

The assessment and determination of government liability in torts is based on these theories and principles taken together. In the end, they guarantee that people and organizations can seek compensation for damages brought about by government acts or carelessness within a worldwide legal framework by striking a balance between the requirement for responsibility and the acceptance of official functions and immunities.

Administrative law's use of tortious liability as a universal legal notion

It is construed and implemented differently in many legal systems, including those in India and other countries. To acquire a more profound comprehension of the functioning of this notion, let us examine the principal components and tenets in Indian and worldwide settings:

Article 300 of the Indian Constitution: The Indian Constitution's Article 300 establishes the parameters for the government's tort culpability. It stipulates that in tort cases, the Union of India or a State shall be accountable in accordance with the English legal standards.

Case Law precedents- The legal precedents in India have a major role in tortious responsibility. Important cases such as *M.C. Mehta v. Union of India*, *Nilabati Behera v. State of Orissa*, and *Vishaka v. State of Rajasthan*

State Immunity: The idea of state immunity, which defends the government against certain lawsuits, is recognized by Indian law. But there are some exceptions to this immunity, which let anyone bring legal action against the government in particular circumstances.

Governmental Bodies:- Several governmental entities, including police departments, public hospitals, and municipal companies, may be held accountable for their actions if they are negligent, misbehave, or fail to perform their duties.

Quantum of Damages: In tortious liability proceedings in India, the amount of damages that can be awarded varies depending on a number of criteria, including the type of harm sustained, the degree of negligence, and the particular facts of the case.

Sovereign Functions

The state's conduct for which there is no legal recourse available. For instance: defending the nation, assembling and sustaining the armed forces, creating foreign policy, gaining and

maintaining, peace or war country The State is not permitted to assign them. As a result, they are outside the jurisdiction of common civil court. The State is not subject to lawsuits because, in cases like these, the courts' implied jurisdiction blocked.

Pre-Constitution Judicial Decisions:

Secretary v. Peninsular & Oriental Steam Navigation Company: 1861 The 5th Bom HCR App

The underlying idea of this case is that neither the State nor the East India Company would be held accountable for any actions taken while doing their sovereign duties. It made a very obvious division between the state's sovereign and non-sovereign functions. Secretary of State v. Hari Bhanji, 5 Madras 273; ILR (1882).

The Madras High Court ruled in this instance that State immunity was limited to government actions. Regarding P& O Case, the decision gave guidance but did not go beyond state actions. examples of circumstances in which the immunity was accessible.⁴

POST-CONSTITUTIONAL JUDICIAL PRECEDENTS

Prior to independence, the law remained unchanged regarding the State's tortious obligation for the deeds of its personnel, and the average person suffered much from the Government's lack of accountability. India is becoming a Welfare State instead of a Police State, and The judicial viewpoint about the State's tortious liability has undergone a shift. As for the Welfare

Although the laissez-faire doctrine supported the State's nonliability, the State acknowledged the concept of State responsibility. The question of the government's tortious

Culpability was re-examined by the Supreme Court following the State of Rajasthan v. Vidhyawati case marked the implementation of the constitution.

Here, the district collector's official vehicle was owned and maintained by the state of Rajasthan. The driver of the jeep was returning it from the repair shop once. He had a rash,

⁴ State v. Hari Bhanji, 5 Madras 273; ILR (1882).

so he struck a pedestrian and hurt him. The jeep was driven carelessly. His widow sued the driver and the other party for wrongful death.

The driver's negligent and irresponsible actions were deemed to be the State's responsibility by the Supreme Court's constitution bench. The *P & O Steam Navigation* was cited, and the court decided not to consider the more general question of whether the conduct constituted a divine deed. Nonetheless, it was determined that the English law-based immunity clause was ineffective in India.

According to the court, "Since our Constitution has established a Republican form of government and one of its objectives is to establish a Socialist State with its varied industrial and other activities, there is no justification, in principle or the public interest, for the state not to be held vicariously liable for the tortious act of its servants." Some claim that the Supreme Court should accurately formulate the legislation in the *Vidhyawati* case.⁵ Culpability was reexamined by the Supreme Court following the *State of Rajasthan v. Vidhyawati* case marked the implementation of the constitution.

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⁵ Assault on the law of torts, 38 Mod L Rev 139 (1975), Veith, E. and Miers, D. Andhra Pradesh 235 AIR 1989

EVOLUTION OF COMPENSATORY JURISPRUDENCE

Without taking particular judicial action, the Supreme Court upholds and corrects infringement of human rights using its original jurisdiction. The Supreme Court and other High Courts have stepped up to solve these problems by defending the victims' human rights, especially by providing compensation and establishing a number of guidelines that lower courts should adhere to while considering these cases. Regarding this matter, the legal community's perspective is evolving and becoming more favourable to victim recompensation. Interim compensation is paid, even under exceptional circumstances.

In using its compensatory jurisdiction to implement the Declaration of Human Rights, the Supreme Court considers the requirements of Articles 14, 21, 32, and 226. In light of the recent human rights violations, the State and its agencies are now answerable to the Supreme Court and are required to provide compensation to victims of rape, mass tragedies, and wrongful detention. The courts are committed to protecting the victims' human rights by granting compensation. Chief Justice Bhagwati described the circumstances under which the Court might give remedial remedies in *M.C. Mehta v. Union of India*⁴⁸, including the payment of compensation under Article 32 to prevent abuses of basic rights in "relevant scenarios." Bhagwati, C.J. stated in this ruling that "the violation of fundamental rights must be serious and obvious

That is unquestionable and evident on the surface" when construing the term "appropriate cases."

The court awarded compensation of Rs. 50,000 to Mr. Bhim Singh, a member of the Jammu and Kashmir State Legislative Assembly who was detained without a warrant in September 1985 due to his inflammatory speech. The cops were subject to severe directives from the court. It is proclaimed that the State has a legal duty to protect people's rights in addition to a civic duty to compensate for torture or wrongful imprisonment. The money is thought of as a "concrete statement" of the state's compassion and support for individuals who, due to circumstances beyond their control, encounter an unwarranted betrayal of their moral character.

Article 14 of the 1949 Constitution states, "Protection of Human Rights by invoking Compensatory Jurisdiction by Courts," 47 M.S. Deshpande. Cr.L.J. 50–48 AIR 1986 SC 1086 (2014)⁶

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Conclusion

The concept that government accountability and culpability for wrongdoing are not limited to any one country but rather are a part of a larger legal landscape with a variety of techniques and considerations is encapsulated in "Tortious Liability in Administrative Law: A Global Perspective." This viewpoint emphasizes how complicated and globally relevant tortious liability is in administrative law.

Through our exploration of the complex field of tortious liability in administrative law, we have looked at the underlying ideas, governing theories, guiding principles, and well-known case law that influence this important field of jurisprudence on a worldwide basis.

As we draw to a close, it is clear that tortious liability in administrative law is a constantly changing field. It is imperative for legal practitioners, scholars, and politicians to use caution when negotiating this intricate terrain.

Government responsibility will continue to evolve and be influenced by comparative study between countries.

⁶ State of Jammu and Kashmir v. Bhim Singh, AIR 1986 SC 494

Essentially, administrative law's tortious responsibility is a dynamic and essential component of contemporary legal frameworks. It is evidence of the unwavering dedication to responsibility, justice, and the rule of law. In this constantly changing global context, the quest of justice, equity, and the defence of individual and group rights will continue to be at the forefront of legal efforts.

Therefore, sovereign immunity as a defence was never applicable in situations where the State was involved in business or private endeavours or in situations where its agents were found to have interfered with a citizen's right to life or liberty not supported by the law. The State is vicariously liable for both of these violations. Legally, morally, and constitutionally obligated to reimburse and compensate the harmed party. The concept of sovereign immunity is no longer applicable, setting in which the idea of sovereignty has drastically changed.