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**“Vicarious Liability of the State: A Critical Analysis”**

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**[1] INTRODUCTION**

This research has been undertaken with reference to the case of *Saheli v. Commissioner of Police*, 1990 AIR 513-A in order to understand the concept of public law wrongs and the remedies to it. This case particularly deals with the vicarious liability of the state as it was held responsible for the death of a nine-year-old, owing to merciless beating by a police officer. Vicarious liability of the state refers to the liability of the central and state governments of our country for the torts committed by its employees against any individual. Legal remedy refers to the civil action for damages. In this paper, various case laws such as *Kasturi Lal v. State of Uttar Pradesh* and *State of Rajasthan v. Vidyawati* will be discussed so as to understand the nature of the liability of the state and the concept of immunity of the crown under torts law. A number of authorized published sources have been referred to in order to accomplish the research objectives.

**(1.1) BACKGROUND**

In the case of *Saheli v. commissioner of police*, a nine-year-old child was put to death on account of beating and assault by an Indian police officer. The court held the state liable for the tortious acts of its employees on the view that the tort which was committed was beyond the sovereign authority vested upon the police officers by the state. This case came to the limelight as it revealed the dark side of Indian police officials and how innocent people are subjected to harassment during police investigations. It also led to the questioning of the liability of the state and the prevalence of malicious prosecution in India.

Vicarious liability is a form of strict liability that falls under the doctrine of common law agency. “*Qui facit per alium facit per se*” that means “He who acts through another does the act himself” is legal maxim fundamental to the law of agency. It points to the liability of the employer for the acts of an employee in terms of vicarious liability. The most common form of vicarious liability arises out of the ‘master – servant’ relationship. Under this doctrine the master is responsible for the negligence or omissions on the servant’s part arising during his course of employment. State liability in India originated from Section 176 of the Government of India Act, 1935 and presently it is defined under Article 300(1) of the constitution.

**(1.2) RESEARCH QUESTIONS:**

1. Can the state be held liable for the public law wrongs?
2. What is meant by the doctrine of sovereign immunity?
3. Is the distinction between sovereign and non-sovereign functions still prevalent?

**(1.3) LITERATURE REVIEW**

The researcher has made use of various sources of information for the completion of the research paper. The present case of *Saheli v. Commissioner of Police* deals with the vicarious liability of the state. A number of articles and journals relating to the particular topic are available on legal databases like Jstor and SCC Online. The researcher has also gone through the facts, proceedings and judgments of different cases in order to acquire a clear picture of the given topic. The book, 'The Law of Torts' authored by Ratanlal and Dhirajlal was used by the researcher for reference and for gaining better understanding of the topic.<sup>1</sup>

One of the journal articles, 'Liability of the State for Torts Committed by Its Servants: Public law and Private law perspectives' written by Ravindra Kumar Singh was helpful in understanding the nature of State's liability for tortuous acts of its employees.<sup>2</sup> Another article, 'State Liability: A New Dimension from "Rudul Sah"' written by Surendra Yadav and published by Indian Law Institute focuses on the judicial response to conflicts occurring between the state and its citizens. It also examines the distinction between sovereign and non-sovereign functions and the concept of sovereign immunity.<sup>3</sup> The researcher has also attempted to analyze and understand cases which are relevant to the given topic. The case of *State of Rajasthan v. Vidyawati* was crucial as it was probably one of the first major cases that came up before the apex court of India for the determination of State liability for the tortuous acts of its employees after the Constitution came into force. The decision of the Supreme Court in the case of *Kasturilal Ram v. State of Uttar Pradesh* has been widely scrutinized and interpreted by legal constitutional authorities. Such interpretations and analysis would enhance the quality of the current case analysis

**[2] BRIEF FACTS OF THE CASE**

(2.1) In the case of *State of Maharashtra v. Kanchanmal Vijaysing Shirke*, a jeep belonging to the State government collided with the victim's scooter resulting in the death of the victim. It was argued on behalf of the respondent that the accident had not taken place during the course of employment as the respondent; a clerk under the state government had snatched the keys of the jeep from the driver and had driven away in an unauthorized manner. He also didn't possess the

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<sup>1</sup> RATANLAL & DHIRAJLAL, *The Law of Torts* (Lexis Nexis, 28<sup>th</sup> ed. 2019)

<sup>2</sup> RAVINDRA KUMAR SINGH, Prof.,GNLU, *Liability of the State for Torts Committed by Its Servants: Public law and Private law perspectives*, 6 (2016)

<sup>3</sup> 43 SURENDRA YADAV, *State Liability: A New Dimension from "Rudul Sah"*, 559-569, 4 (2001)

license required to drive the jeep and was under the influence of liquor. It was asserted that the state cannot be vicariously held liable for the compensation to be paid. However, in the same case, it was established that the driver, who had been authorized by the state to drive the jeep had been negligent in performing his duties as he shouldn't have allowed the other person to take over. Henceforth, it was held that the State cannot escape its liability towards the heirs of the victim in paying the damages.<sup>4</sup>

(2.2) In the case of *State of Haryana v. Sandra*, the Plaintiff underwent a sterilization operation at a government hospital after which she was handed over a certificate claiming that her operation was successful. However, subsequently she gave birth to a girl child and it was found that only her right Fallopian tube had been operated upon while the left one was left untouched. Therefore, she filed a suit against the State and the officers for medical negligence. It was contended by the defendants that she cannot claim any damages as she herself had signed the paper containing a recital which stated that she cannot claim for damages in case of any lapse on part of the doctor who performed the operation. The Supreme Court however rejected the defendant's plea and held the State responsible for the failure of operation on account of negligence of its officers.<sup>5</sup>

(2.3) In the case of *State of Punjab v. Shivram*, the Supreme court held that childbirth may occur despite of sterilization due to natural reasons such as recanalization or negligence on part of the doctor in performing the surgery. However, the doctor can only be held liable if the failure of operation can be attributed to his negligence and not otherwise. Also, the burden of proof lies on the claimant. Therefore, the state was exempted from paying any damages to the petitioner owing to the absence of reasonable evidences.<sup>6</sup>

(2.4) In the case of *Malikarjunappa Shivmurthappa v. State of Maharashtra*, the truck of the appellant was seized on account of non-payment of tax under Motor Vehicles Act. It was held by the Supreme Court that the state cannot be held vicariously liable for the damages for the seizure of the vehicle because the appellant neither attempted to free his truck nor make use of the same. Henceforth, he himself contributed to the damages suffered by him which accounts to contributory negligence on his part.<sup>7</sup>

(2.5) In the case of *P. Ravichandran v. State of Tamil Nadu*, the petitioner on his way to a nearby temple on his bicycle came across a pit. The mud excavated had been heaped on either side of the road causing a blockage. While examining the pit, the petitioner slipped and fell into it. The petitioner suffered a severe blow on the spinal cord which led to paralysis. The petitioner filed a

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<sup>4</sup> *State of Maharashtra v. Kanchanmal Vijaysing Shirke*, (1995) 5 SCC 659

<sup>5</sup> *State of Haryana and ors .v. Sandra*, (2000), 5 SCC 182

<sup>6</sup> *State of Punjab v. Shivram*, (2005), 7 SCC 1

<sup>7</sup> *Malikarjunappa Shivmurthappa v. State of Maharashtra*, (1996) 2 SCC 36

suit against the Respondent for misfeasance. It was also observed that no warning signals or board was kept indicating the existence of the pit or barring the road from being used. The stand of the respondent that the state cannot be held vicariously liable owing to the fact that the work was being undertaken by a private contractor was rejected in context of the statutory provisions of the Coimbatore City Municipal Corporation Act.<sup>8</sup>

(2.6) In the case of *V. Krishnakumar v. State of Tamil Nadu*, the infant born was highly prone to the risk of developing a disease known as Retinopathy of Premature (ROP) which can even lead to blindness. The Petitioner filed a suit holding the doctors concerned responsible for their child's plight. It was also observed by the National Commission that the appellant was neither warned nor informed about the possibility of occurrence of the disease or its screening by the Respondent. The Supreme Court agreed with the findings of NCDRC and held that the Respondent had also violated the terms of service of employment. Henceforth, the state was vicariously held liable for the damages to be paid on account of negligence of its doctors or others employees.<sup>9</sup>

(2.7) The case of *State of Rajasthan v. Vidyawati* was perhaps one of the first and most significant of its kind as it familiarized the concept of vicarious liability of the State in torts. In this case a pedestrian lost his life due to the rash and negligent driving of a government driver. The jeep had been given to the collector of Udaipur for his conveyance. The accident took place while the driver was carrying out a private task. The trial court held that the state cannot be vicariously held liable as the jeep was not being used for the purpose of the state when the accident took place. On the other hand, the High Court reversed the decision of the trial court on the ground that the state was as much liable as any other private employee as the driver and the jeep were under the supervision and authority of the state.<sup>10</sup>

(2.8) In the case of *Nilabati Behra v. State of Orissa*, the Petitioner filed a writ petition under Article 32 of the constitution seeking compensation consequent upon the custodial death of the Petitioner's son. The victim had been detained in police custody in connection with another case and was found dead the next day on the railway track. The Respondent in his defense held that the victim had managed to escape from custody and had been run over by a train. In contrary to this, the doctor's testimony and the post-mortem report indicated that the death was caused by merciless beating given to him. In the light of the admitted facts and evidences, the court held the state vicariously liable for the acts of its employees and directed them to pay compensation to the Petitioner.<sup>11</sup>

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<sup>8</sup> *P. Ravichandran v. State of Tamil Nadu*, (2011) (6) CTC 636

<sup>9</sup> *V. Krishnakumar v. State of Tamil Nadu*, (2015) 9 SCC 388

<sup>10</sup> *State of Rajasthan v. Vidyawati*, AIR (1962) SC 933

<sup>11</sup> *Nilabati Behra v. State of Orissa*, AIR (1993) SC 1960

(2.9) In the case of *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh*, the Petitioner was taken into custody by three police constables on the grounds of suspicion of having committed theft. His property consisting of gold and silver was seized till the disposal of the case. Having got out on bail the silver seized from him was returned but not the gold. The Petitioner filed a suit against the constables claiming a decree that the gold seized from him should either be returned or in the alternative, the value of the same should be paid to him along with interest. The Respondent in his defence accused the head constable who was in charge of the property of the Petitioner to have fled away to Pakistan with the gold. The Supreme Court held that the state cannot be vicariously held liable for the compensation to be paid to the victim as the acts of the police officers were within the sovereign exercise of powers. After this case, the use of the doctrine of sovereign powers was narrowed down and even damages were awarded in other similar cases.<sup>12</sup>

(2.10) In the case of *Smt Basavva Kom Dyamangouda Patil v. State of Mysore*, a theft took place in the house of the appellant in the course of which certain valuables belonging to the appellant were stolen. The police managed to recover the stolen property and retained the same in their custody for verification, showing compliance to the court's order. The ornaments were stolen for a second time from the guardroom. The appellant filed an application for restoration of lost goods or their value under Section 517 of Criminal Procedure Code, 1898 which was later rejected by the High Court. The Supreme Court reversed the decision in favor of the appellant and held that, "Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the state or its officers had taken due care or caution to protect the property, the Magistrate may, in appropriate case, where the ends of justice so require, order payment of the value of the property"<sup>13</sup>

### **[3.] CASE ANALYSIS AND CASE COMMENT OF SAHELI V. COMMISSIONER OF POLICE**

In the present case, a Writ petition was filed on behalf of two women, one of whom had lost her child to police brutality. The petitioner prayed for exemplary damages to be paid by the respondents for the pain inflicted upon her deceased son by the police. The women were being forced to leave their homes by their new landlords owing to which one of the ladies, Kamlesh Kumari had to obtain a stay order from the court. The landlords even tried to forcefully evict them by cutting off the water and electricity supplies to their homes. On Nov. 4 1987, the SHO of Anand Parbat police station called the women and asked them to vacate the rooms in return for some value. The petitioner requested them to grant her some time to vacate her room for the sake of her children's education. On Nov. 12 1987, the petitioner was again threatened by the police. As a result, she went to consult her lawyer and, on her return, she was astounded to see

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<sup>12</sup> *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh*, (1965), AIR 1039

<sup>13</sup> *Smt Basavva Kom Dyamangouda Patil v. State of Mysore*, (1977) 4 SCC 358

all her belongings thrown out of her house and her children missing. She found her children locked up in the police station and somehow managed to get them out. On another day, Kamlesh Kumari was molested and beaten up by the Respondents. Even her son who was clinging on to her with the hope of protecting her had suffered grievous injuries. She was then arrested and put behind the bars on the grounds of trespass but managed to get herself free with the help of her lawyer. When she returned, she got to know that Naresh, her son had been seriously injured and was being treated by a local doctor. He was later shifted to Ram Manohar Lohia hospital on the advice of the doctors. Despite of that, he passed away in the hospital and an inquiry was carried out. The Crime Branch report indicated a connivance of the accused with the local police. The post-mortem report stated that Naresh's death was due to Pneumonitis which might have occurred because of the injuries inflicted upon him. On the basis of this, the accused was denied bail in this case. The Supreme Court held that, "An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death". It also held the State vicariously liable for the tortuous acts of its employees and the doctrine of Common law immunity was turned down. Finally, the court directed the Delhi Administration to make the respondent pay a sum of Rs. 75,000 to the mother of the deceased, Kamlesh Kumari within a span of 4 weeks from the date of judgment.<sup>14</sup>

#### **[4] LIABILITY OF THE STATE FOR THE TORTUOUS ACTS OF EMPLOYEES**

This research paper mainly focuses on the liability of the state for the torts committed by its servants. It is a matter of due importance as it is placed on the constant interaction between the state and its citizens. Henceforth, it comes into play very frequently and also impacts the fortunes of citizens to a great extent. Vicarious liability of the state plays a crucial role in facilitating effectiveness and efficiency in the performance of duties and avoiding negligence on part of the employees.

Generally, there are two main conditions to be fulfilled if the master is to be held vicariously liable for the acts of its employees: -

- (i) there should be a master-servant relationship
- (ii) the wrongful act should be committed by the servant within the scope of employment for his master

The State has been defined under Article 12 of the Constitution of India which means the Union government or provincial government or any other local government. The principle of vicarious liability restrains the government from misusing powers or mishandling property or person of

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<sup>14</sup> Saheli v. Commissioner of Police, (1990) 1 SCC 422

citizens during their exercise of sovereign functions. However, while addressing to the claims against the state for an adequate compensation, much lies to the discretion of the system of jurisprudence. Such a situation calls for an appropriate mechanism for determining the liability of the state and for compensating the victim.

#### **[5] IMMUNITY OF THE CROWN**

The English Common Law maxim, “Rex Non Potest Pecare” i.e., the ‘King can do no wrong’ provided immunity to the crown from the jurisdiction of courts. It was later repealed by passing of a new legislation. However, this statute has never been followed in India. But this principle was statutorily recognized in India when the crown took over the administration from the East India Company. According to Section 65 of the Government of India Act, 1858, the secretary of the state in council has the right to sue or be sued. Therefore, according to the English common law no proceedings, civil or criminal could be directed against the Crown.

#### **[6] SOVEREIGN & NON-SOVEREIGN FUNCTIONS**

In the case of *N. Nagendra Rao & Co. v. State of Andhra Pradesh* the distinction between sovereign and non-sovereign functions were deliberated thoroughly and various previous judgments pertaining to this were also referred. The distinction between sovereign and non-sovereign functions as devised by various courts after the reading of the state liability rule laid down in the *P&O Steam Navigation* case has lost its significance and has become outmoded with the passage of time. It now depends upon the nature of power and manner in which it is exercised. The widely accepted method to determine whether the legislative or executive function is sovereign in nature is to answer the question, whether the state is answerable for such actions in the court of law or not. The Supreme Court has rightly observed in the process of judicial advancement that the case of *Kasturilal Ram v. State of Uttar Pradesh* no longer continues to be of binding value. However, its ratio continues to be available for cases where the statutory authority acts as a delegate of such function for which it cannot be sued. At present, the government is generally not held liable for the tortuous acts of its employees if the act was performed in exercise of sovereign powers or ‘act of State’. Sovereign functions constitute of those actions for which the state cannot be held liable in any court of law. For e.g., acts which are indicative of external sovereignty and are political in nature. This function grants immunity to the state from being sued as the jurisdiction in such cases is not maintainable.

#### **[7] CONCLUSION**

On the basis of the above discussion and case laws it can be rightly concluded that generally the state can be held liable for the tortuous acts of its employees if it were done during its exercise of non-sovereign powers. But, in the modern times the distinction between sovereign and non-sovereign functions has lost its significance. Henceforth, it relies on the nature of power and the

manner in which it was exercised. Despite of the fact that the principle of sovereign immunity and its initial justifications are outdated and are no longer valid in today's society, it remains uncertain whether the judgment in Kasturilal case was overruled or not. I conclude by suggesting that the current scenario calls for the abrogation of state immunity from tort liability and there is a dire need for an active mechanism for determining state liability and compensating the victims which needs to be fulfilled.

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