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# **Historical shaping of tort law In the context of sovereignty in India**

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## **Introduction**

This paper talks about how Tort Law has evolved in the country. The constitution's position on state liability is as follows: Clause (1) of Article 300 of the Indian Constitution states that the government of India can sue or be sued in the name of the union of India and the government of the state. Since the administration's liability today is in direct succession to that of the East India Company, it is essential to understand the liability criteria of the administration today. East India Company was established as a commercial entity, but it eventually gained sovereignty. The distinction between sovereign and non-sovereign roles is made by political forces.

This paper discusses how various cases such as Ram Gulam and Anr. Vs Government of U.P., how the power of the state has been, time and time described by the judicial system. This paper will also talk about how the tort law remains a much-unexplored territory in the Indian judicial system. This may be well defined by an example: Suppose person A slips into a pit or a pothole, though he may or may not be injured he'll conceal the fact to hide his embarrassment like any other common man. This is what the law of torts sheds light on. Any such individual (in this case the municipal corporation) who causes mischief or harm to an individual is liable to pay remuneration to the harmed party, the compensation is usually in form of cash.

First for the sake of clarification the paper would be defining what the terms sovereignty and tort mean

## **Sovereignty**

The word is derived from the Latin word '*superanus*' meaning the equivalent of supreme power however the actual practice of the word is quite different now a day.<sup>1</sup>

Sovereignty refers to the power of supreme authority, initially used in monarchy to explain the power of the 'king' as supreme, which cannot be questioned.<sup>2</sup> In modern democracies this power which earlier rested with the monarchs now is given to the people of the nation, they exercise that power through representative bodies like the parliament or the Rajya Sabha in India.

The word sovereignty was first used by the French namely Jean Bodin, to explain the power to the king more easily. Through time the term has changed and evolved to what it is today.

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<sup>1</sup> The Editors of Encyclopaedia Britannica, sovereignty, BRITANNICA, (Nov. 18, 2020), <https://www.britannica.com/topic/sovereignty>.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> Bryan A. Garner, Black's Law Dictionary, 1626, (Bryan A. Garner, 9<sup>th</sup> ed., 2009).

<sup>4</sup> *Id.* at 2.

## Tort Law

Tort law is rather a new law in the Indian judiciary made to basically answer the governing statutes, mainly statutes concerning damages. A 'tort' is "[a] private or civil wrong or injury, including an action for bad faith breach of contract, for which the court will provide a remedy in form of an action for damages."<sup>3</sup> Tort law is one of the most important area of law and accounts for more civil litigation than any other areas of law. Its primary aim is to provide relief to the affected, to deter from others committing the crime and to impose liability on the party causing harm. Generally tort are of three types namely<sup>4</sup>

- Intentional tort
- Negligent tort
- Strict liability

Intentional tort includes harm done intentionally example hitting a person physically, negligent tort refers to being negligent example driving rashly on a public road and lastly, strict liability includes liability for making and selling defective products, therefore, making the person liable.

## Historical Background Of the Case-I

The power and responsibility of the state were redefined in the landmark case in Allahabad High Court in 1949. The case which is being quoted is Ram Gulam And Anr. Vs Government of U.P. on August 22, 1949<sup>5</sup>. The case was as follow:

- The plaintiff's ornaments were stolen from his house, and a suit for recovery of rupees 599.4/- of their price was filed by the plaintiff.
- After investigation and search by local police, the ornaments were finally found in another house and the police seized the ornaments as stolen property.
- The ornaments along with the accused were produced in front of the magistrate and were accordingly kept in the Collectorate Malkhana.
- Again the ornaments were stolen from Collectorate Malkhana, instead this time they were untraceable.
- The plaintiff applied unsuccessfully to the magistrate for the restoration of the ornaments. The magistrate said the Government is not liable to compensate.

Therefore the judgment was given in favor of the Government of Uttar Pradesh.

The plaintiff could only pass alternative relief, to recover the ornament's price on basis that the ornaments were lost due to negligence of Government servants and the government is liable to pay for its tortuous conduct, but the plea was overruled and the suit was dismissed.

A very interesting political theory comes into play here that is how essential the sovereignty of the state is, it means that the state itself is the supreme and the only final authority within its own territory and cannot be questioned. The jurisdiction itself derive its powers from the state and therefore has no power it.

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<sup>5</sup> Ram Gulam v. Government Of Uttar Pradesh, AIR 1950 ALL 206.

<sup>6</sup> Rakesh Kumar, Doctrine of constitutional Tort: Evolution and Evaluation, LEGAL SERVICES IN INDIA, (2004), <http://www.legalservicesindia.com/articles/dct.htm>.

<sup>7</sup> *Id.* at 6.

Therefore the only power that the citizens and the jurisdiction has over the state is the powers it allows them to have through its own constitution or any other law enacted by the state itself. This concept is very similar to another English principal stating that 'The King can do no wrong,' and 'No action lies against the crown'. Earlier in England, the King could not be sued in tort either for wrong, authorised by it or done by it. Because of this in 1947, the Crown Proceeding Act.<sup>6</sup> This act made the King liable for his as well as the actions of his servants. Similar to this in America Federal Torts Claims Act, 1946<sup>7</sup> was passed providing answers to claim against state liability. In India unlike these act no such act is in place to make the master liable for the acts of its servants. Article 300 of the constitution lists the liability of the Union or the State in such scenarios.

The political government is the sovereign of the state and thus any suit against the government would be a suit of its own citizen. The sitting council decided that a suit cannot be maintained against the government without the consent of the state which is written in the constitution, under Section 300 and reads as the following:

“(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 corresponding Indian States might have sued or been sued if this Constitution had not been enacted.”<sup>8</sup>

Article 300 of the Constitution originated from the Section 176 of the Government of India Act, 1935 whose genesis could be traced back to the Government of India Act, 1858 enacted by the East India Company. What it means is that the liability of the state is the same as it was of the East India Company in the year 1858.

Their article basically tells that

- When the state is being sued it'll be sued by the name of The Union of India, and a state shall be sued by its name only.
- Secondly, Article 300 gives the right to the people to sue the Government.

The court finally came to the conclusion that the Government was not liable as it was discharging its sovereign obligations towards the state that is the search and the seizure.

The question of the sovereign functions and the non-sovereign function was cleared by the *Peninsular and Oriental Steam Navigation Company vs Secretary of State for India of 1861*.

## **Historical background of case-II**

In this case, a piece of iron funnel casting weighing around 300 kilograms was dropped by the employees and the plaintiff's ponies (two of them) fell on the piece, injuring at least one. As a result, the plaintiff asked for damage recuperation of Rs 350/- due to injury from the state (in this case The East India Company) as the accident happened due to irresponsible exhibition of the government workers.

The Supreme Court at Calcutta, at that time gave the verdict that the state will be held liable when doing any non-sovereign task. It further also defined what sovereign function is:

Functions for which the state is not liable for under any provisions, for wrongful acts of its employees.

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<sup>8</sup> *Id.* at 8.

<sup>9</sup> *The State Of Rajasthan v. Mst. Vidhyawati*, 1962 AIR 933.

<sup>10</sup> *Kasturilal Ralia Ram v. The State Of Uttar Pradesh*, 1965 AIR 1039.

The above-mentioned case is off before the independence. After independence, the sovereign power of the state was yet questioned time and time again.

### **Historical background of case-III**

For instance in the Rajasthan vs Mst. Vidyawati<sup>9</sup> case a person walking by was knocked down by the government jeep. The Supreme Court rejected the government's plea on the ground of Sovereign Immunity and ruled that the state is liable for the damages caused. In this case, the distinction between sovereign and non-sovereign functions was disregarded completely by the court. Thus a compensation of Rs. 15000/- was required to be paid by the government.

### **Historical background of case-IV**

But a contrasting thing happened in another matter i.e. Kasturi Lal vs State of U.P.<sup>10</sup> Some amount of suspected stolen gold was seized by the police, later the head constable fled to Pakistan with the gold. But in this scenario, the government was made not liable as the state had sovereign immunity.

## **Conclusion**

The tort law has come a long way from the start. It can be fairly said that the evolution of tort law has been inefficient in nature. One of the reasons could be how the law is not uniform in its doctrines or the law itself. Although there are plenty of cases of tort law in other countries India hasn't seen many cases comparatively and it, therefore, becomes very difficult to refer to the few of them. Other reasons which could be attributed to its inefficient growth could be poverty and lack of awareness i.e. education. Fighting a case in court is very expensive and not everybody can afford it.

The power of the state (sovereignty) was first installed into the law way back in the Government of India Act in 1858. Since that it has been amended time and time again. Various courts have tried to define the powers of the act, tried to limit it over time. Earlier the State had the power to do anything and get away with it based on it being a sovereign state, but as we move towards a more progressive time that power has been limited though it's still there. The cases in which the defense of State is sovereign was used hasn't been overhauled or taken up again.

The Law Commission made some suggestions back in 1956, even the Supreme Court made the suggestions but they haven't been applied in the working mechanism yet. The state can use these powers to curb social justice which has happened frequently as mentioned in the paper.

On the other part of the horizon, sovereign power is necessary for the state to complete mandatory functions hence it is an indispensable part of the State. These rights are inherent to the State and are not granted to it by anyone which makes it hard to take them away from the state. Most of the countries in the world remain sovereign states, and their power remain kind of limitless. Although the powers can be taken away, it is only a matter of time that the states get their powers back. The State has the responsibility to take care of its citizens. It is multiple times seen that the remedies provided by the law are very sophisticated in nature and the damages awarded are very immediate in nature rather than keeping a long time view. Often times cost of rehabilitation, cost of care are skipped through.

Based on the finding and definition of the sovereign powers to the state in this paper, it can be termed as a 'necessary evil'. This power is a must for a state to function but can also be used unduly, therefore it is in the power of the government to use the power of sovereignty with reason and care.

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