

Vicarious Liability of State

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Abstract

This article deals with the Vicarious Liability of the State in Law of Torts. Here the word 'administration' is used as a synonym for 'State' or 'Government'. How far the torts are committed by its servant, the administration would be liable for the act of its servant is an intricate problem with ever widening State activities especially in developing countries. The liability of the Government in tort is administered by the principles of public law are inherited from the provisions of the British Common Law and the Constitution of India, 1950. It notably focuses on the recognition of the liability in case of legal injury and providing damages to the individuals especially by the Judiciary. The scope of the article is very limited to assess the extent of tortious liability before the Constitution and the gradual changes in approach in post-Constitutional era. The hypothesis that is outlined is considered or not considered to be tortious liability that undergone major changes and the Court have explored new dimensions of liability to provide remedies and compensate victim of state action. The Article is all about the tortious liability of the State and it explains the Pre-Constitutional and Post-Constitutional judicial decisions along with the case laws and it also talks about the sovereign functions and non-sovereign functions before and after the enforcement Constitution. Finally, this article deals with the Doctrine of Public Accountability in the field of judicial and personal liability in comparison to both English and Indian Laws. It also deals with the statutes that are bound by the state, whereby it includes comparisons with the English and Indian Law.

Keywords: Vicarious Liability of State, Respondeat Superior, Qui facit per alium facit per se, Socialisation of Damages, Tortious liability, Sovereign and Non-Sovereign function, Statutes.

INTRODUCTION

Tortious Liability arises from the breach of an obligation mandated by the law, that is the obligation is towards individual and as a whole and its breach is redressible by an activity for unliquidated damages. The torts presented by people against the other were considered in custom based law and the maxim "UBI JUS IBI REMEDIUM" means "Where There Is Right There Is Remedy" greatly promoted the development of the Law of Torts more than ever.

Under Roman Law, the State was not responsible in torts towards its subjects because it was a sovereign. It was viewed as one of the elements of the sovereignty that a state could not be sued in its own Court of Law without its consent. Similarly, in England, the Crown delighted in insusceptibility from the tortious liability and the maxim "The King can't take the blame no matter what".

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Neither the wrong can be ascribed to the king nor might it be able to sanction any off-base. Article 12 of Constitution of India, 1950 defines the term 'State'. According to Article 12 of Constitution of India, State implies the Union Government, State Government and the Local Authorities.

Vicarious Liability are the liability of one person that may arise for the act done by another person. In order to the liability of X for the act done by Y can arise, it is essential that there should be a certain type of relationship amidst X and Y, and the wrongful act must be in a certain way which is linked to that relationship of X and Y.

Vicarious Liability of State is a liability which arises against the State Government or Central Government when an administrator or a public servant working under the State commits a tortious act. The basic idea behind the Vicarious Liability of the State for the tortious act committed by its servants is based on three principles which are follows:

- *Respondeat superior* means let the principal be liable for the act of a servant.
- *Qui facit per alium facit per se* means he who acts through another, acts it by himself.
- *Socialisation of Damages*.

RESEARCH METHODOLOGY

1. In this Article an attempt has been made to do **Theoretical or Doctrinal research**
2. **Secondary Source** have been used in this Article.
3. **Reference Book and E-Sources such as websites, e-books etc** have been considered for the research purpose of this Article.

SIGNIFICANCE OF RESEARCH

1. To identify the provisions available for the doctrine of Vicarious Liability of state.
2. To analyse whether the State is bound by the Statute.

REVIEW OF LITERATURE

1. The article includes the vicarious liability of state for acts and omissions committed by its servants, not a static concept in written and unwritten laws. Under the liability of the state to commit tortious acts of its servants is called tortious liability, if such act is made voluntary or involuntary, when it comes before the Hon'ble Court it will be in the form of non-liquidated damages. It also comes under the branch of the Law of Torts. The Crown shall not be sued for acts or omissions committed by its servants under the Tort Law in the course of employment. (Jain, Mayan 2018, '*Tortious liability of Government*'. SSRN Electronic Journal)
2. It begins with the vocalized terms relating to the inequality of the state which breaks their contract and which denies their bond. The cases relating to the State liability for Tort is comparatively attracts less interest. It mentioned the reasons as situations changes. It also includes that many decisions ultimately made regarding the citizens may acquire legal rights a sovereign by reason of the latter torts. (Maguire, John M. 1916 '*State liability for Tort*.' *Harvard Law Review* 30 (1): 20.)
3. The article talks about the legal position and unsatisfactory rule of law and it also considers the practices made international in the United Kingdom, attempts to incorporate the law involved in France into the governmental liability in tort, and it also discuss about the reforms that have been taken place in India and it ends with the requirement of the legislature which violates the fundamental rights of an individual. (Harry Street, *Governmental Liability: A comparative Study Issue 4, 1953*)
4. The paper mainly talks about the difference between sovereign and non-sovereign functions. It shows the thin line difference between the two main functions of the state. The doctrine of sovereign immunity is not obsolete, but only applicable to a defence cases such as a public law remedy that is based on the principle of strict liability which is a violation of fundamental rights, but in other tortious cases, acts done by public servants by exercising his sovereign powers. Where in case of violation of the fundamental rights of the citizen by act of the public servant by the discharge of his powers, then the State is vicariously liable. (Chapter 5, *Vicarious Liability of State, Law of Torts by Dr. R.K. Bangia, 24th edition*)
5. State's liability to be legally responsible for something. An obligation that legally obliges individual or company to settle a debt. A person's resources, with economic benefits, over a

person's current obligation arising from past events. There has been a kind of liability. On being the vicarious liability from a strict, secondary liability that arises from common law. Then comes to the sovereign functions of master and servant relations, litigation and proceedings, pre-constitutional and post-constitutional judicial decisions. (*B.M. Gandhi, Law of Torts, Eastern Book Company, Lucknow*)

6. This article primarily traces the liability of the State in India and it evaluates the current trends in recognizing liability and providing damages to the individuals by the judiciary in the event of legal injury. The main focus of this article is to expand the perspective of liability on the pre-constitutional and post-constitutional eras. It also discusses with the need for a modern welfare state and to analyse the nature of the constitution before the existence of state liability.
7. It was held by the Supreme Court that the claim against the State cannot be maintained notwithstanding the fact that negligent act was committed by the employees in the course of their employment as the employment was of a category which could claim the exclusive feature of a sovereign power. The Court also observed that the tortious act of the police officers in the discharge of their sovereign powers was committed by them and therefore the State was not responsible for any damages caused to the appellant. (*Kasturi Lal Vs State of U. P.*)
8. The Court observed that the liability of the State in relation to the tortious act committed by its servant in the scope of his employment and work was tantamount to the State's liability for the tort in the Act. (*State of Rajasthan Vs Vidyawati*)
9. The court made an important resolution that sovereign immunity from tortious acts of State officials is different from State liability for violation of fundamental rights of an individual, then the sovereign would be immune. (*Nilabati beher Vs State of Orissa*)
10. Including the accident of the plaintiff due to the negligence of the Government servants. The matter is significant; besides the responsibility of the State, it also demonstrated the distinction between sovereign and non-sovereign functions of the state. (*Peninsular and Oriental Steam Navigation Co. Vs Secretary of State for India*)

Meaning

Vicarious liability means a situation where an individual will be held accountable for the act or actions or omissions of another person.

The vicarious liability of the state is a liability that arises against the State Government or the Union Government when an administrator or public servant who is working under the State commits a tortious activity.

The principles that apply to master-servant relationships [1] are:

1. **Respondeat Superior:** The Doctrine of Respondeat Superior in Tort Law applies between the relationship of the master and the servant where if the servant commits any tort during the service period, the master will be directly held liable for the acts of his servant.
2. **Qui facit per alium facit per se:** It means "He who acts through another, does the act by himself." This maxim says that whatever service is being provided by the employee or servant, it is presumed that the employer or master is himself providing the service to the customer, so the liability also arises against the employer or master.
3. **Socialization of Damages:** It is a fundamental maxim of Law of Agency. This is a maxim often stated in discussing the liability of an employer for the act of an employee.

ORIGIN OF VICARIOUS LIABILITY OF STATE [2]

In England, the position of English common law changed with the enforcement of the Crown Proceeding Acts, 1947 that earlier stated: "the king can do no wrong" which means that the king cannot be apprehended responsible for the tort that is being committed by his subordinate during the time of the services/employment. But with the enactment of the Act, usually the king is held responsible for the tort that is being committed by his employee or servant at the time of the use.

With the increasing function of the state, the Act is being passed, and now the crown is also a like a personal figure for the tort committed by his servant. Similarly, in U.S.A., an act is being passed for handling the liability of the State, the Federal Tort Claims Act, 1946.

Thus, the origin of this Vicarious Liability of State was started around medieval period when the Maxim '*Res Non-Potest Peccare*' means '**the king can do no wrong**' was started to lose its importance in the sight of the public. After the 18th century, new industries and democracies have emerged which considered the acts of authorities under judicial quest. So that justice can be provided to the persons aggrieved by the illegal acts of the concerned authorities. Even the State's responsibilities have been enhanced, so the Crown Proceedings Act was framed in 1947.

By the Crown Proceeding Act 1947, the Crown i.e. King was also made liable as much as the private individual.

How Vicarious Liability has evolved in India [3]

Vicarious Liability of State developed by the East India Company in 1858. But Article 300 of the Constitution of India came into force from the year 1950.

In India, there is no clear statute relating to the vicarious liability of the State, Article 300 of the Constitution of India lays down that the Union of India or the State Government may prosecute and be prosecuted like any common individual. The Vicarious Liability of the State is also called as the Tortious Liability of the Government. State's liability for the tortious actions or omission of its workers is called as tortious liability of the State. The State is responsible for the acts of negligence, wrongful performance and omission or commission either voluntarily or involuntarily.

Position in England [4]

At Common Law, the Crown could not be sued in tort either for wrong actually authorised by it or committed by its employees or servants, in the course of their employment or services. Further, no action could be taken against the head of the department or other senior officials for the acts of their subordinates as the relationship among them was not that of principal and servant but of fellow servants.

Entick Vs Carrington [5]

The Hon'ble Court apprehended that the individual offender was personally liable and he couldn't take the difference of orders of the Crown, or State necessity.

Royster versus Cavey [6]

The Court stated that if it was necessary for a case to prosper the person named by the Treasury Solicitor should be the same who was seemingly the offender.

The position has been wholly changed after the Crown Proceedings Act, 1947 was passed. Now the Crown, just like a private individual is liable for the tort committed by its employees or servants.

Section 2 (1) provides that

"Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort for which, if he were person of full age and capacity, it would be subject:

- i. in respect of torts committed by its agents or servants;
- ii. 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 employer; and
- iii. in respect of any breach of duties attaching at Common Law to the ownership, occupation, possession or control of property:

Provided that no proceeding shall lie against the Crown by virtue of paragraph (a) of sub-section in reverence of any act or omission of a servant or agent of the Crown unless the act or omission would

apart from the provision of this Act, have given rise to a cause of action in tort against the servant of agent for his estate [7]."

Position in India [8]

Unlike, The Crown Proceedings Act, 1947 India doesn't have any legal provision stating the liability of the State.

The position of State is defined in the Article 300 are as follows:

1. "The Government of India may sue and be sued by the name of Union of India and therefore the Government of a State may sue or be sued by the name of the State and may, subject to any provision which may be made by Act of Parliament or of the Legislature of such State enacted by the virtue of power conferred by this Constitution, sue or be sued in relation to their respective affairs in this like cases as the Dominion of India and the corresponding Provinces of the corresponding Indian States might have sued or been sued if this constitution had been passed.
2. if, at the commencement of this Constitution -
 - a. Any legal proceedings are pending to which 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 [9]."

Thus, Article 300 Constitution of India provides that the Union of India and the States are the legal person for the purpose of suit or proceedings. Although the central government in the name of Union of India and State Governments can sue and be sued but the circumstances under which that can be done have not been mentioned.

The position prevailing before the commencement of the Indian Constitution, therefore, remains untouched, though the Parliament and the State Legislature have been empowered to pass Laws to change the position.

Section 65 says that "the Secretary of State in Council shall and may sue and be sued 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 taken the same suits, remedies and proceeded against the Secretary of State in Council of India in a legal and just manner as they could have done against the East India Company [10]."

Nobin Chander Dey Vs Secretary of State for India [11]

The State was exempted from obligation when the function was considered to be a sovereign one. There the Plaintiff filed a suit opposing that the Government had entered contract with him for the issue of licenses for the sale of ganja, and had made breach of the contract. Based on evidence, it was held that there was no contract.

In ***P. and O.S.N. Co.'s [12]*** case, it was held that assuming that there was a contract, the action could not lie as the act was done in exercise of sovereign power.

The Secretary of State for India in Council vs Hari Bhanji [13]

In this case the position was explained in the following way:

"Acts of the State in which the Municipal Courts of British India refused to take cognizance, are acts done in the exercise of sovereign powers that do not claim to be justified by Municipal Law.

Where any action complained of is apparently done beneath the approval of municipal law, and in the exercise of powers provided by the law, the fact remains that it is done by the sovereign powers is

not an act which could conceivably be done by a private individual, does not extrude the jurisdiction of the Civil Court."

Kasturi Lal vs State of U.P. [14]

The Hon'ble Supreme Court observed that if the act of the Government servant was such which could be considered in the delegation of sovereign powers, the State would be relieved from the liability, otherwise not.

The Supreme Court further observed that the Government of Uttar Pradesh was not liable on the grounds that are stated below:

- a. The police officials were acting in discharge of Statutory powers.
- b. The authority of the police officials in keeping the property in the police malkhana was sovereign power.

Indian Insurance Co. Association Pool Vs Radhabai [15]

It was observed by the Hon'ble Court that taking sick children to Primary Health Centre in a vehicle belonging to the State Government is not a sovereign act of the State, and the State is liable for an accident caused by the negligence of the driver of such vehicle.

Act of Police Officials

Pagadala Narasimham Vs the Commissioner and Special Officer, Nellore Municipality [16]

Plaintiff in the owner of the bus, which had been erroneously parked and caused hindrance to the traffic, was removed by the traffic police with the help of the municipal employees.

The Court held that the act of the police officers was justified and in discharge of sovereign functions, and therefore, the traffic police could not be held liable for the same.

State of Orissa Vs Padmalochan [17]

The question that arose was whether the excesses committed by police personnel in the discharging of their duty could fall within the purview of delegated sovereign function so as to relieve the State from liability. In this case the fact that, there was a possibility of an attack on the S.D.O., office and its properties by a mob which has resorted to violence.

The Orissa Military Police under the control of supervisory officer and a Magistrate, cordoned off the areas. Some police personnel assaulted the members of mob without any order or directions from the Magistrate or any higher police officials, as a result of which the plaintiff was injured.

The Court observed that the posting of police personal for siege in front of the S.D.O.'s Court was under delegated sovereign function. The fact that police personal has committed excess in discharge of their function without authorities would not take away the illegal act from the horizon of the delegated sovereign function.

Thus, the injuries suffered by the plaintiff while police personnel were dispersing unlawful mob were in the exercise of Sovereign Function of the State. It was held by the Court that the State is not liable.

State of Punjab vs Lal Chand Sabharwal [18]

Some inmates arrested in connection with 'Save Hindi' agitation, who were kept at a Chandi Mandir Police Station were taken out in a bus at midnight to an undisclosed location. Due to carelessness of the constable driver, the bus met with an accident and the plaintiff suffered with some serious injuries.

It was held by the Hon'ble court that the object of dispersing the inmates instated of producing them before a Magistrate, could not be considered a sovereign act and, as such, the driver and the State were liable for the same act.

In references with the cases discussed above it can be concluded that **“Every act of the police official may not be in exercise of sovereign function.”**

Negligence of Military Servants [19]

Though the maintenance of the army is a sovereign act but this certainly does not mean that the State will be free from liability for any tortious act committed by the army personnel.

Baxi Amrik Singh Vs the Union of India [20]

The Court held that a distinction has to be drawn between act that can be done by the Government in the exercise of Sovereign powers and an act that can equally be done by a private person.

Liability for Illegal Acts

The principle of vicarious liability for illegal acts committed by armed persons has been evoked under the public law domain.

State of Punjab vs Lal Chand Sabharwal [21]

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Acts done in Exercise Non-sovereign Powers

Union of India Vs Smt. Jasso [22]

In this case carrying of coal for heating rooms has been held to be sovereign function as the same could be performed even by a private individual and the Government.

Therefore, they are held to be liable for the negligence of the driver of military truck which carried such coal from the depot to the Army General Headquarters building in Shimla.

Union of India vs Abdul Rehman [23]

It has been observed by the Court that the driving of a water tanker belonging to Border Security Force by the B.S F. driver is a non- sovereign act, and the state is liable for the damages caused by the negligent driver of the tanker.

Torts Committed by the Servants of the State in Discharge of Obligations Imposed by Law and in Exercise of Sovereign Functions [24]

Position in England: In England, after the enforcing the Crown Proceedings Act, 1947, it is no defence for the State that the tort committed by its servants was in the discharge of obligations imposed by Law.

Section 2 (3) of the Crown Proceedings Act 1947 says that: "Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the Common Law or by Statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown."

Position in India: In India, Tort committed in performance of duty in the discharge of obligations imposed by law has been treated as a defence.

The exemption of the State from liability to pay damages for the tortious act of the servants, where a government servant in carrying out or purporting to carry out duties imposed by the law, has been

justified on the ground that in such cases, the Government servants are intended to perform the duties imposed by the letter of the law and is governed by the law and not by the Government.

In order to exempt the State from liability, it is likewise necessary that the statutory functions exercised by the Government servant carried out through the delegation of the sovereign power of the State.

State of U.P. Vs Hindustan Lever Ltd [25]

In this case it was held by the Hon'ble Court that the tortious act committed by the servant was in discharge of non-sovereign acts, the State would be liable for the same.

Failure of the Police to Perform its Duties

State of M.P. Vs Shantibai [26]

It was held by the Court that there would be applicability of the Doctrine of Sovereign immunity. The contention that firing was done by police officers for the maintenance of law and order without aiming at anyone was not tenable. Police officers were aware of presence of inmates of houses in vicinity. They had duty to take care that no injury should be caused to persons living in the vicinity houses. Therefore, act of police officers was negligent so far as the plaintiffs were concerned. The State government was liable to pay compensation.

Loss to Property

When the property is in the possession of the State authorities then the property is considered to be bailment of the property, and the State would be held liable to either return the property or pay compensation for the same as the bailee.

State of Gujarat Vs Memon Mahomed [27]

The Supreme Court held that after seizure, the position of the government was that of a bailee. The Magistrate's order was received on misrepresentation did not affect the right of the owner to demand for the return of the property. The State, therefore had a duty to return the property, and on failure to do the same, State has a duty to pay compensation.

Liability of Electricity Board in case of Electrocutation

H.S.E.B. Vs Ram Nath [28]

The Electricity Board was held liable because if it was found by Board that unauthorized constructions were put up close to its wires, it was held that its duty to ensure that constructions were got demolished by moving them to an appropriate authority, if there were complaints wires were drooping and almost touching the houses, the board had to ensure that the essential distance must be kept between the houses and the wires, even though the houses were unauthorized.

Liability of Department for Negligence in Maintaining Roads, Light etc.

Dharanidhar Panda Vs State of Orissa [29]

In this case children were playing when a portion of school boundary wall had collapsed, as a result they sustained injuries resulting in their death. Deaths had taken place and account of negligence of a school authority in ensuring that school premises were safe in all respects. Maintenance of school building had been entrusted to village Education Committee by State Government as its agent. It was held that the State Government was vicariously liable. Parents were awarded Rs 75000 for each child.

Sovereign Liability in Riots

State of A.P. Vs M/s J.K. Traders [30]

It has been held that in order to succeed in his claim for damages caused to the property, a person has to establish or prove that by such damage his right to livelihood has been violated.

SOVEREIGN IMMUNITY IS SUBJECT TO FUNDAMENTAL RIGHTS

Death or Injury to Persons

People's Union for Democratic Rights Vs State of Bihar [31]

In this case about 600 to 700 needy farmers and landless persons had gathered for a peaceable meeting. Without any prior warning by the police or provocation on the part of those collected, the S. P. of that district surrounded the gathering with the help of police force and open the fire as a consequence of which about 21 persons including children died and many more got injured.

The People's Union of Democratic Rights filed an application before the Hon'ble Supreme Court under Article 32 of the Constitution of India claiming compensation for the victims of the firing.

It was held by the Hon'ble Supreme Court that the State should pay damages of Rs 20,000 to the families of every case of death and Rs 5,000 to all the injured person. The stated amount was ordered to be paid within the period of two months without prejudice to any just claim for compensation that may be advanced by the victims afterwards.

State of Gujarat Vs Govindbhai [32]

The Gujarat High Court has held that the doctrine of Sovereign immunity is subject to fundamental right to Life and Personal Liberty contained in Article 21 of the Constitution of India.

Liability of State-Constitutional Tort

Ramjan Vs State of Rajasthan [33]

Rajasthan High Court has held that the State is liable to provide free and full medical aid and also provide damages to the victims for injury caused by private person, according to new horizons of constitutional tort.

D.K. Basu Vs State of West Bengal [34]

It has been held that the claim in public law for compensation for unlawful deprivation of a fundamental right is a claim which based on the principal of strict liability and is in addition to private law remedy.

It is the duty of the State to protect the fundamental right, maintain the law-and-order situation, inhibit the crime, the prosecution of the accused in case the offence is committed. Since it amounted to violation of the Right to Life and Personal Liberty secured by Article 21 of the Constitution of India.

Common Cause-A Registered Society v. Union of India [35]

The Supreme Court insisted that apart from criticizing the Kasturi Lal case, it was not followed by the court in the consequent cases and therefore has lost much of its efficacy as a binding precedent. In this case, the entire history relating to the institution of promises by or against the State or against the Government of India, from the period of the East India Company to the stage of the Constitution, was considered and the principle of immunity was considered and rejected. In this process of judicial advancement, the case of Kasturi Lal has become insignificant and there is no longer any binding.

Present Position in India is Uncertain

In its First Report on the 'Liability of State in Tort', the Law Commission of India recommended legislation prescribing State Liability as in England. On the basis of Report given by the First Law Commission, a Bill entitled 'The Government (Liability in Tort) Bill, 1967' was introduced in the Lok Sabha. The Bill has reported by the Joint Committee of both the Houses of the Parliament, was placed before the Lok Sabha in 1969. It has not yet become the law. The Bill seeks to define the liability of the Government to third parties for the wrongs of its servants, agents and independent contractors it employs.

N. Nagendra Rao and Co. Vs State of A.P. [36]

The Supreme Court considered the question of vicarious liability of the Government for the negligence of its servants.

It is noted in the earlier Supreme Court decisions in *Vidyawati's [37] and Kasturi Lal's [38] case*, recommendation of the First Report of Law Commission in it, they statutorily recognising the liability of the State that had been done in England through the Crown Proceedings Act, 1947 and in U.S.A. to the Federal Tort Claims Act, 1946.

It is unfortunate that the recommendations of the Law Commission made long back in 1956, and the suggestions made by the Supreme Court, have yet not been implemented so far. The unsatisfactory situation in regards it is against the concept of social justice in a Welfare State. It is expected that the Act regarding the liability of State will be passed without much delay. In the absence of such law, it would be in consonance with the social justice demanded by the concept of welfare State that the Courts would follow the recent decisions of the Supreme Court instead of Kasturi Lal.

COMPARATIVE STUDY BETWEEN ENGLAND AND INDIA

Sl. No.	Position of England	Position of India
1	Prior to the Crown Proceedings Act, 1947 the King could not be held liable for the wrongful act which is committed by its servants during the period of their employment, the person who is committing wrongful act used to be held personally liable and he could not take defence of orders of Crown or state necessity. After passing of this act i.e. Crowns Proceeding Act, 1947 the position has changed and now the Crown can be held liable for wrongful acts which is committed by its servants like any other common person.	In India, though there is no specific Act relating to the Vicarious liability of the State, but the provision has been made under Article 300 under the Constitution of India, 1950 where the Union of India or the State Government can sue and be sued just like any other ordinary person. However, the complete and exhaustive provisions explaining how it will be implemented do not exist and this void has been filled by various judicial pronouncements.
2	UK Supreme Court in <i>Various Claimants VS Catholic Child Welfare Society et al.</i> [2012] UKSC 56 and <i>Mohamed VS WS Morrison supermarkets Plc</i> [2016] UKSC 11 It has been well established by the court in these two cases that the vicarious liability requires the satisfaction of a two test which is as follows: 1. The relationship between the parties capable of giving rise to a vicarious liability such as employment during the relevant time period 2. The substantial relationship between the act or omission of one party and the relationship between the other parties.	The Hon'ble Supreme Court of India in <i>Rajasthan Vs Vidyavati</i> while upholding the decision of the Rajasthan High Court, the Supreme Court held that if the driver's negligence while driving the car from the workshop to the Collector's bungalow for the use of the Collector, resulted someone's death because of rash and negligent driving of the driver, the State should be held liable for the act of the driver because it is done during the course of the employment of the driver. The reason quoted by the Hon'ble Supreme Court of India behind this decision was that the Constitution of India, 1950 declares India to be a welfare state and hence the state performs its duties in the capacity of the employer besides maintaining law and order. So, the State is not kept immune from the application of the principle of vicarious liability.

CONCLUSION

Before 1858, there was no law regarding the liability of the State or Government for the wrongful actions of its subjects. The decision of enacting the law for this purpose is indeed a better decision. Since our state is a sovereign, secular and democratic state, this law should be there to protect all the above said words.

In all the cases discussed earlier, the entity sought to be made to be liable is not the Government but the State. As far as the Government or State is concerned, it may be well said that the statutory authority is neither answerable nor subordinate to it. That is why the State or Government cannot be

visited with the significances flowing from a wrong order made by statutory authority. In so far as the State is concerned, it cannot make any such plea unless it is enacted by the Legislature. The authority is appointed either by the law itself or by any such authority who may be authorized by the Law. In such a case the function of the statutory authority is the act done for and on the part of the State. Therefore, the state is held liable and accountable.

The drawback of the vicarious liability of State has been defined with the judicial decisions i.e., precedents that are being passed by the Supreme Court is binding to all the subordinate court and is a law as stated in Article 141 of The Constitution of India, 1950 and also the acts of the country that are performed for the public good. With those activities, if anyone suffers any damage, then such actions will account under sovereign functions of the State or not. And not for all the costs that are being come upon by the any people will not fall under the sovereign service of the Government or State.

As sovereign **Law of the Land**, i.e., **The Constitution of India, 1950** usually those who are at fault or caused grievous hurt were held liable, but with the introduction of the vicarious liability as tort now the employers can be held responsible and also with the vicarious liability of State, the Government of India and the State Government can be sued. They can be held responsible if found acting outside the ambit of sovereign function.

REFERENCES

1. <http://www.legalservicesindia.com/article/580/Vicarious-Liability-of-State-in-Sovereign-Functions.html>, visited on July 12, 2021
2. <https://www.lawctopus.com/academike/vicarious-liability-state/>, visited on July 15, 2021
3. <https://lexlife.in/2020/05/13/law-of-torts-vicarious-liability-of-state/>, visited on July 14, 2021
4. Law of Torts by Dr. R.K. Bangia Revised by Dr. Narender Kumar (24th Edition, 2017) Publisher- Allahabad Law Agency
5. Entick Vs Carrington, (1765) 19 St. Tr 1030
6. Royster versus Cavey, AIR 1947 K.B. 204
7. Crown Proceedings Act, 1947
8. The Law of Torts by Ratanlal & Dhirajlal (28th Edition) Publisher – Lexis Nexis
9. Constitution of India, 1950
10. Government of India Act, 1858
11. Nobin Chander Dey Vs Secretary of State for India, ILR 1 Cal. 11
12. P. and O.S.N. Co.'s, (1861) 5 Bom. H.C.R. App. I, p1
13. The Secretary of State for India in Council vs Hari Bhanji, (1882) ILR 5 Mad 273
14. Kasturi Lal vs State of U.P., AIR 1965 SC 1039
15. Indian Insurance Co. Association Pool Vs Radhabai, AIR 1978 MP 164
16. Pagadala Narasimham Vs The Commissioner and Special Officer, Nellore Municipality, AIR 1994
17. State of Orissa Vs Padmalochan, AIR 1975
18. State of Punjab Vs Lal Chand Sabharwal, AIR 1975
19. Negligence by CARSWELL PUBLISHERS
20. Baxi Amrik Singh Vs the Union of India, AIR 1973
21. State of Punjab Vs Lal Chand Sabharwal AIR 1975
22. Smt. Jasso Vs Union of India AIR 1962 Punjab 315
23. Union of India Vs Abdul Rehman, 1981 J K 60
24. The Law of Torts and Consumer Protection Act by M.N. Shukla
25. State of U.P. Vs Hindustan Lever Ltd. AIR 1972 All 486
26. State of M.P. Vs Shantabai, 2005 A.C.J 313 (M.P.)
27. State of Gujarat Vs Memon Mohamed, AIR 1967 S.C. 1885
28. H.S.E.B. Vs Ram Nath, 2005 A.C.J. 342 (SC)
29. Dharanidhar Panda Vs State of Orissa, 2006 A.C.J. 487 (Ori.)

30. State of A.P. Vs M/S J.K. Traders, 2011 (NOC) 225
31. People's Union for Democratic Rights Vs State of Bihar, AIR 1987 S.C. 355
32. State of Gujarat Vs Govindbhai, 1999 Guj. 316
33. Ramjan Vs State of Rajasthan, 2008 (NOC) 2168 (Raj.)
34. D.K. Basu Vs State of West Bengal, 1997 S.C. 610
35. Common Cause- A Registered Society V Union of India, 1999 S.C. 2979
36. N. Nagender Rao Vs State of A.P. 1994 S.C. 2663
37. State of Rajasthan Vs Vidyawati 1962 S.C. 933
38. Kasturi Lal Vs State of U.P. 1965 S.C. 1039