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Comparision of Concept of Vicarious Liability of State between U.K, U.S.A and India

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Abstract

The state is the most powerful political institution in modern society. This might of state raises an important questions like can we sue the state under the law of tort? Is their any difference between the tortuous liability of state across the countries? This paper attempts to explain and compare the doctrine of Vicarious liability of the state across the three biggest democracies of the world i.e. United Kingdom, United States of America and India. In order to place the paper into its context I first briefly described the concept of Vicarious liability. Subsequently, the history and development of jurisprudence related to the concept of state liability is discussed for all the three countries separately. Through the discussion of their history and development, attempt was to highlight the nature difference between them. Emphasis was made on the shortcomings in all the three systems that is uncertainty regarding the provisions of sovereign immunity. In the most important part of the paper, I compared the concerned laws from all the three countries. In order to make a comprehensive comparison I discussed the similarity and differences of all the three countries simultaneously. Finally, suggestion were made on how these countries can improve and learn from their counterparts. I have taken the examples of multiple case laws to succinctly illustrate the application of this concept. I studied multiple case laws, books and research papers to do justice with this paper.

Keywords: State, Vicarious liability, Sovereign function, non-soveriegn function, Article 300, Sue

INTRODUCTION

Despite the emerging popularity of the idea of the minimalist state, the state remains the most powerful institution that can shapes the lives of the people. The modern liberal welfare state not only controls law and order but has an all-pervasive influence in various aspects of life. Most of the contemporary modern states across the world controls education, medical facilities, transport (road, railways, and airways), cleaning of cities and towns, and supply of daily essential items like water, electricity, and L.P.G gases [1].

Now the moot question emerges whom can we hold liable if the employees of the state committed wrong while during their employment? Is there a differentiation between some basic essential functions of state and non-essential functions of state when we look for tortuous liability? The answer to this question lies in the concept of state liability.

BRIEF EXPLAINATION OF VICARIOUS LIABILITY

In the law of torts, often a person is held liable for wrongful acts committed by himself. An exception to this rule lies in the concept of vicarious liability. In simple words, in vicarious

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liability a person is held liable indirectly for the tortuous acts committed by another person. This whole concept rests on the Latin maxim of "Qui facit per se per alium facit per se" which essentially means if one person does any act with the help of his servant law treats as the act was done by master himself [2].

The various rationale was provided for the concept of Vicarious liability. Firstly, the deep-pocket principle which means that plaintiff should held someone liable who can pay the compensation to him (It assumes masters have much deeper pockets than servants). Secondly, it was also argued that this type of imposition of liability will help the employers to maintain quality and standard in their services as they know they will be held liable even in negligence of their employees [3].

Following are the elements of vicarious liability which should always be fulfilled for a claim to succeed:

- There must be superior-subordinate relation. This may include the relationship between the servant and the master or principal and agent or relations between the partners in a business.
- Secondly, the tortious act of negligence must be committed. It means a servant must do what he is not supposed to do or not do what he is supposed to do.
- Third and most importantly, the wrongful act of a servant must be committed in the course of employment. The course of employment not only means those acts which were explicitly authorized by the master but also those acts that are intrinsically connected to the nature of the employment of the servant [4].

LIABILITY OF STATE IN U.K

The United Kingdom is traditionally a state where the crown was seen as a venerated figure. Since medieval times, a maxim operated in the U.K which states that "the king can do no wrong". It principally means that the crown is not liable in civil and criminal proceedings initiated against it because the law assumes the crown is never wrong. In the case of Tobin v Queen, it was held that although the wrongdoer can be held personally liable court presumes whatever done in the exercise of the crown's command is never wrong [5].

However, as time passed and the ideas of democracy and equality started getting entrenched in Western Europe, no liability of the crown come under scrutiny. The state has already emerged as the biggest job provider, occupied a substantial amount of property, and provided some essential services. Additionally, there is also a problem of identifying the personal wrongdoer when negligence is committed by state servants. In an attempt to rectify these complications British parliament passed Crown Proceedings Act in 1947. Although the act exempts the crown from being held liable personally, it provides that the crown can be held liable vicariously if he was a person of full age and ability. Symbolically this act try to preserve the immunity of the state, practically it equated the crown with the private individuals in tort proceedings [6].

The essence of this liability of state can best be illustrated with the example of the Home Office v Dorset Yacht case. In this case, some borstal officers (employees of the crown) were in charge of some trainees. Trainees escaped and damaged the yacht of the plaintiff. The court in this case held the state liable as it’s due to the negligence of its servants that trainee got escaped and caused injury to the plaintiff [7].

The liability of the State in the United Kingdom further increased because of its active involvement in international conventions. For example: U.K has to pass its human rights act in the year 1992 to give effect to the European human right convention. This act provides that the British state is responsible for the effective implementation of the convention and if the state fails to fulfill its role leading to violation of the right of anyone that person can be held the state accountable [8].

LIABILITY OF STATE IN UNITED STATES

The United States was also one of the colonies of British and thus British tradition influenced American Tort Law. When the U.S. A was a colony of British, same maxim of no liability of crown operated in legal traditions. However, changes occurred with the independence in 1776 and the adoption of the constitution. The liberal tradition got its place in the bedrock of the country and the state was held to be accountable to the people [9].

After the adoption of the constitution, Sovereign Immunity got reduced to judicial officers only. Problems in this system became when owing to fear of excessive answerability that many people become disinclined to join the service of the state. Additionally, making a claim for compensation in the cases of tortuous acts of the servant of the state becomes ineffectual when the state officer is not fiscally well to compensate the plaintiff [10].

U.S decided to resolve these problems by passing of Federal Tort Claims Act of 1946. This act ends the substantial part of state immunity in tort actions. As per this law, Federal Government can be held liable similar to a private citizen in tort claims. However, the point to be noted is that several wide exceptions were provided in this act. Exceptions range from basic intrinsic administrative functions of the federal government to the incident happening in foreign jurisdictions. Additionally, U.S federal Government cannot be held liable in intentional tort committed by its servant. Thus, although the state can be held liable its liability is substantially enfeebled under wide exceptions given in law [11].

We can understand it by considering the example of Dalehite v United States of America. In this case, explosion happened during loading-unloading of chemicals injuring the plaintiff. Supreme court of U.S.A held that the federal government is not liable because the loading and unloading of chemicals were in the exercise of discretion provided under the federal tort claim act [12].

LIABILITY OF STATE IN INDIA

In India, from ancient times sovereign was considered to be similar to common people. He enforces Dharma and also got subjected to it. This trend continued in various parts of the country in medieval times too. Nevertheless, after the establishment of the East Indian Company rule in India, things changed irreversibly [13].

To the present date, India does not have any specific laws relating liability of the state. The only provision in India explaining the tortuous liability can be found in article 300 of the Indian Constitution [14]. Article 300 mentions that the Government of India or the government of the state can sue or be sued in the name of the Union of India or the State. Remarkably, it explicitly states that the liability of the Government of India is the same as those of the Dominion of India or the British ruled Province before the enactment of the constitution. Before the enactment of the Constitution in 1950, there are some British Acts containing the provisions relating to the liability of the State. In the end, these provisions make the liability of the Government of India the same as that of East Indian Company prior to the Government of India Act, 1858 [15].

The milestone case relating to the liability of state in India is, without doubt, Peninsular Oriental Steam Navigation Co. V. Secretary of State (1861). In this case, the government employees in a dockyard negligently plopped some iron funnels in dockyard injuring the horses of the plaintiff who was coming in a horse-driven carriage. The moot question was whether the state is liable under the government of India Act 1858. Section 65 of the concerned act states that the liability of the British state is the same as that of the company. In the judgment, a distinction was made between sovereign and non-sovereign functions of the state, and the government was held liable as maintenance of the dockyard is not a sovereign function of the state [16].

In same case, Erstwhile Chief Justice of India, Barness peacock, evolved this sovereign and non-sovereign function distinction. According to him, the function of the state which could only be lawfully performed by the state are sovereign functions. For example: Maintenance of law and order.

On the other hand, those functions that can be performed by private individuals without entrusting of Sovereign Power are non-sovereign functions of the state. For example: maintenance of dockyard or medical services. An action against the state will only succeed when the state is performing non-sovereign functions [17].

This doctrine of Justice Peacock is still widely accepted in the country. Although, it puts some amount of responsibility it provides wide leeway to the government in the form of no liability in sovereign function. There is no hard and fast differentiation between sovereign non-sovereign functions giving huge discretion to the courts which we can understand with the help of the following two cases [18].

In the case of Kasturi Lal Ram Jain v State of U. P, a police constable escaped taking away the gold of the plaintiff that was confiscated and kept in the custody of the police. The court in this case decided that arrest, detention, and seizure of property are a sovereign function of the state. Thus, the court held that the state cannot be held liable in this case even though the police officers were negligent [19].

In the case of Shyam Sundar v State of Rajasthan, the Supreme court of India held that government is not liable for the negligence of a truck driver of state who was engaged in famine relief work. The court based its reasoning on the ground that famine relief work is not one of the sovereign functions of the state [20].

COMPARISION BETWEEN THE THREE JURISDICTIONS

In this important part of the project, I will try to critically compare the provisions relating to vicarious liability of state in the three jurisdictions of the U.K, U.S, and India. I will divide this section into two parts discussing the similarities and differences between the three jurisdictions.

Similarities

First of all, all three jurisdictions have a common history of Tort law. Both U.S and India are former colonies of the U.K and inherited a large number of provisions from colonial rule. Their common history has a general movement from the concept of no liability of the crown to limited liability and finally to equate the state with common citizens of the nation.

All three countries have provisions using which state can be held liable in its tortuous acts. In the U.K they can be found in Crown Proceedings Act, in the U.S.A they can be found in the Federal tort claim act, and in India, there is a provision in the constitution itself.

The third similarities lie in the fact that exception is provided for the state in tortuous acts. Although the exact nature of exceptions may wary, this exception provides sufficient freedom to the government to carry on their basic functions without the fear of suits of vicarious liability [21].

Difference

The most visible differences between the liability of state in the three countries lie in the codification of tortuous liability. Whilst U.K and the U.S.A have separate statutes explicitly stating the liability of the state India doesn't have any particular law and has only one wide provision in the constitution.

Importantly, the extent of accountability of state in the tort law is also wary across the states due to different exceptions in different countries. U.K is have the most liberal policy and the accountability of state is exceptionally high. Crown is nearly equated with private citizens of the country with no wide exceptions. Moreover, U.K's involvement in European Convention is increasing the liability of the state. In the U.S.A, although the federal government can be held liable wide exceptions were provided like no liability of state in torts done intentionally by the servants [22].

India has the most limited liability of state as a result of its transient distinctions between sovereign and non-sovereign functions of the state. The court can decide the sovereign and non-sovereign functions on a case-to-case basis creating uncertainty regarding the liability of the state.

CONCLUSION

In the world's three most powerful democracies, U.S, U.K, and India, apparent differences are there despite limited similarities in the concept of liability of the state. Although all the three countries have some sort of liability of state nature of exceptions make the distinctions. The U.K exception is quite narrow making the crown accountable in most of the matters. In U.S.A state is held responsible but wide exceptions are also given. In India, sustenance of the concept of sovereign-non sovereign distinction provides the widest liberty to government.

The distinction between sovereign and non-sovereign functions is riddled with the problem due to a lack of objectivity. As judges have distinctions to decide the case on the case-to-case basis judge's outcome of the case depends on the political inclination of judges more than the provision of the laws. India can learn from U.K and U.S in this aspect and can implement a separate law stating the vicarious liability of the state.

As the idea of the welfarist state is getting popular and the state got access to the digital world to regulate the lives of the liable more liability is bound to be imposed for the negligence of its servant across the three jurisdictions.

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