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Conceptual Dimensions of Sovereign Immunity under Law of Tort in India

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ABSTRACT

A justification for wrongs done by the state or its officials, presumably based on reasons of public policy, is known as sovereign immunity. Therefore, responsibility can be avoided even though all of the components of a claim that can be litigated are shown, provided that this reason is provided.The concept of sovereign immunity originates from the principle of common law, which was later adopted by British jurisprudence. This principle states that because the King does not commit any wrong, he cannot be guilty of personal negligence or misconduct, and as a result, he cannot be held responsible for the negligence or misconduct of his servants. This idea forms the basis of the doctrine of sovereign immunity. Another facet of this idea is that it holds that a state cannot be sued in its own courts without first obtaining that state's permission. This is one of the characteristics of sovereignty.

Key words: Sovereign immunity, tort, British jurisprudence.

The concept of the state's immunity from legal challenge known as "sovereign immunity" has its origins in the medieval era of English history. This immunity of the Crown was established on the basis of a number of concepts, including "The king can do no wrong," "The king is the fountain head of justice," and that "The king cannot be sued in his own court." Therefore, the idea of sovereign immunity was exported from England to a variety of other legal systems around the world.

In India "the story of the birth of the doctrine of Sovereign Immunity begins with the decision of *Peacock C.J. in P.&O. Navigation Company* v. *Secretary of State for India*[1]*;* in which the terms 'Sovereign' and 'non sovereign' were used while deciding the liability of the East India Company for the torts committed by its servants. In this case the provision of the Government of India Act, 1858 for the first time came before the Calcutta Supreme Court for judicial interpretation and C.J. Peacock determined the vicarious liability of the East India Company by classifying its functions into sovereign and non sovereign."[2]

The ruling that the Madras High Court made in the case of *Hari Bhan Ji v. Secretary of State*[3]"is considered to be the most significant. In this particular case, the Madras High Court came to the conclusion that the immunity enjoyed by the 'East India' business was limited to what were referred to as the 'acts of state,' technically so defined, and that the differentiation between sovereign and non-sovereign functions was not a valid one".

The Calcutta H.C."in one of its earlier cases of *Nobin Chunder Dey* v. *Secretary of State for India,* had taken the view that in respect of acts done in the exercise of sovereign function by the East India company no suit could be entertained against the company".

In case of *Secretary of State* v. *Cockraft*[4], "a further test that if the State derived benefit from the exercise of Sovereign powers, it would be liable. No attempt however has been made in the cases to draw a clear and coherent distinction between Sovereign and Non-Sovereign functions at all".[5]

The case of *State of Rajasthan v. Vidyawati*[6]"was possibly the first significant case that was brought before the Supreme Court after the beginning of the Constitution. The case's purpose was to determine whether or not the government was liable for the torts committed by its employees. In this particular case, the court did not buy the state's argument that it was immune from liability and instead decided that the state, like any other employer, was responsible for the negligent actions of its employees".

In a later case, *Kasturi Lal v. State of Uttar Pradesh*[7], the "Supreme Court of India took a different stance, and as a result, the entire situation became even more muddled. In this particular case, the Supreme Court distinguished between sovereign and non-sovereign functions of the state in order to apply the rule that was established in the P.S.O. Steam Navigation case. Based on this distinction, the court determined that the abuse of police power is a sovereign act, and as a result, the state is not liable for the misconduct".

In actuality, making a clear distinction between acts carried out in the performance of sovereign functions and those carried out in the performance of non-sovereign tasks is unlikely to be simple and is quite likely to be a significant challenge for the judicial system. The judgement in the case of Vidyawati was distinguished by the court because it concerned a conduct that cannot be regarded as being referable to, or ultimately predicated on, the delegation of governmental powers of the State. As a consequence of this, the court arrived to the conclusion that the decision should not be implemented. On the other side, an example of what are commonly referred to as sovereign powers is the authority that was used in the Kasturilal case to make arrests, conduct searches, and seize items. The court indicated in its decision that the legislation in this area is inadequate, and that it is up to the government to find a solution to the problem. In conclusion, the court stated that the government is responsible for providing a remedy.[8]

In later years, "the Courts, using a liberal interpretation, reduced the immunity of the State by declaring an increasing number of State tasks to be non-sovereign. This was done to limit the power of the State".

In "*State of M.P.* v. *Rumpratap*[9]the state was made liable for injury caused by a truck belonging to P.W.D. Similarly. in *Amulya Patnaik* v. *State of Orissa*[10], the state was held liable for the death of a person while traveling in a police van by rash and negligent driving of its driver. In *Shyam Sunder* v. *State of Rajasthan*[11], the court held the state liable for the tortious act of a truck driver engaged in the State famine relief work".

In order to protect people's right to personal liberty from being violated by an abuse of public power, the highest court in the land came up with a new method to award damages called writ petitions, which are authorized by the Constitution's Articles 32 and 226. "The Supreme Court granted damages in the writ petition itself for the first time ever in the case of Rudal Shah v. State of Bihar"[12]. The principle established in "Rudal Shah was subsequently expanded to

embrace cases of unlawful confinement in *Bhim Singh v. State of J&K"*[13], which was a lawsuit brought by J&K. "The highest court in the land decided, in response to a petition filed under Article 32, to grant a sum of Rs. 50,000 as compensation for unlawful arrest and incarceration".

"SAHELI, a *Women's Resource Centre* v. *Commissioner of Police, Delhi*[14], was another bold decision of the Apex court to give direction to Delhi Administration to pay compensation in case of death due to police atrocities. In *Nilbati Behra v. State of Orissa*[15,] the Apex court awarded the compensation to the petitioner for the death of her son in police custody. The court held that the principle of Sovereign immunity does not apply to the public law remedies under Article. 32 and Article 226 for the enforcement of the fundamental rights".

In a landmark decision "in the case of *Registered Society* v. *Union of India*[16], the Supreme Court of India went a step further and held that the court's power to grant damage cannot be limited only when the fundamental right to life and personal liberty under Article 21 is violated".

The case of *State of A.P.* v. *Challa Ramakrishna Reddy*[17]*"*on the point clearly indicates that the distinction between Sovereign and non-Sovereign powers have no relevance in the present times. The Apex Court held that the doctrine of Sovereign immunity is no longer valid. A careful analysis of the judicial pronouncements discloses that the distinction between Sovereign and non-Sovereign functions is not based on any clear principle. Eminent writers on Administrative law have rightly observed that there is no rational basis to distinguish between Sovereign and non-Sovereign functions in the modern administrative age. When the range of state activities has expanded so much as to pervade all spheres of life".[18]

No doubt, the Judiciary protects and has protected the rights of individuals as guaranteed under constitution through its pronouncements, from the torts committed by the employees of the State, but it is submitted that there should be legislation on this point like England and U.S.A., which may clearly define and demarcate the scope of immunity and liability of the government. The liability should be clearly defined so to cover all the illegal and arbitrary acts of the government servants and the agents of the State committed in the course of their lawful employment. It is only by such a method the justice can be rendered to the helpless victims.

CONCLUSION:

Sovereign immunity from legal action is nothing but the shield which is protectionin nature to safe guard the crown and its under from any legal action, it follows English legacy. Thoughwe inherited governance polity from England, the same doctrineof immunity, we followed, though after independence passing few more years our Indian judiciary was not agree to follow this dictum as in England. Our Constitution has its own inbuilt protective measureslike Article 105 which absolve from legal action, no action possible for discharging their duties, except that, there is no immunity and they are equally responsible before the Court of law. Judicial pronouncements had established that sovereign immunity is available in our democratic setup with limited extent.

End notes:

1(1861) 5 Bombay H.C.R.A. PP.I., P. l

2V.S. Chauhan- Sovereign immunity V.F. Rights: Gray area of tension in the constitutional law of India

3I.LR.1 Cal.11

4A.I.R. 1915 Mad. 993

5Abhinav Ashwin "Government liability in Torts in the 21st Century" A.I.R. 2003 Journal P.24

6A.I.R. 1962 S.C.933

7A.I.R. 1965 S.C. 1039

8Abhinav Ashwin "Government liability in Torts in the 21st Century" A.I.R. 2003 Journal P.24 A.LR. M.P. 219

9A.I.R. 1972 M.P. 219

10A.I.R. 1967 Orissa 116

11A.I.R. 1974 S.C. 890

12A.I.R. 1983 S.C. 1086

13A.I.R.1986 S.C. 494

14AI.R. 1990 S.C. 513

15A.I.R. 1993 S.C. 1960

16A.I.R. 1999 S.C. 2979

17A.I.R.2000 S.C. 2083

18M.P Jain and S.N. Jain, Principles of Administrative Law (4th ed. Nagpur: Wadhwa & Co., 1999) P.592