

CONSTITUTIONAL TORT LAW

Muskan Rathore¹

Abstract: Since the advent of tort law, people gave much less emphasis on the liabilities of the state as it was the governing institution but gradually there were cases in which the state was sued. This led to the formation of Constitutional Tort Law which imposed a liability on the state for the wrongful acts of its servants giving the exception of it acting within its sovereign powers. This paper goes for understanding the complexities of vicarious liability within the ambit of the state.

Keywords: Sovereign functions, Vicarious Liability, Article

INTRODUCTION

It all starts with the Latin maxim, Res Non Potest Peccare which translates to “the king can do no wrong”. This medieval English concept implied that the king being the son of God cannot do any injustice and therefore cannot be sued. This maxim gives an idea of sovereign and governmental immunity. But gradually as the concept emerged it was later on taken into account that the state could be held liable for the wrongful acts it does, be it its servants doing the act just like private individuals. This concept is not well versed in India and has thus raised many debates in the judicial area.

Constitutional Tort Law is generally a concept of Vicarious Liability of the state. Here, it all lies on whether the employer, here the state, is liable for the wrongful acts of its servants during the course of employment. But the exception that arises here is of sovereign powers, if the act was done in regard to the governmental functions.

Sovereign Functions: The functions of the state which are not answerable before the court of law and could only be exercised by the state, police functions, taxation, law and order, legislative reforms could be covered within these.

Before the Constitution came into force, India was ruled by the East India Company, then Her Majesty, the Secretary of State Council and therefore the Supreme Court ruled that they were liable for the tortious acts of their servants during the course of employment.

In the case of “P. & O. Steam Navigation Co. v. Secretary of State²”, the facts of the case were that a servant of the plaintiff's company was proceeding on a highway in Calcutta, driving a carriage which was drawn by a pair of horses belonging to the plaintiff. He met with an accident, caused by negligence of the servants of the Government. For the loss caused by the accident, the plaintiff claimed damages against the Secretary of State for India. It was held by the court that the rule had an application on the East India Company and also drew a distinction between the Sovereign and non-sovereign functions—which can be carried on by private individuals.

Article 300³ states that the Government of India may sue or be sued by the name of Union of India and Government of a State may sue or be sued by the name of the State, or the Legislature of a State. Thus the Constitution makes the Union and the States as juristic persons capable for owning or acquiring property, making contracts, carrying on trade or business, bringing and defending legal action, just as private individuals. The legal personality of the Union of India, or a State of Indian Union is thus placed beyond doubt by the express language of Article 300.

Article 300(1)⁴ provides the Government of India may be sued in relation to its affairs in the like case as the Dominion of India, subject to any law which may be made by the Act of Parliament. The Parliament has not made any law and therefore the question has to be determined as to whether the

¹ 1st Year, National University of Study and Research in Law.

² (1911) ILR 38 Cal 230

³ Constitution of India

⁴ Constitution of India

suit would be against the Dominion of India before the Constitution came into force. Thus, so long as the Parliament or the State Legislature do not enact a law on the point, the legal position in this respect is the same as existed before the commencement of Constitution.

Take into account the Landmark case of “Kasturilal v. State of U.P.”⁵, the facts were that Head Police Constable in exercise of his sovereign duties confiscated certain amount of gold and fled to Pakistan. The government thus failed in providing safe custody to plaintiff’s gold. Two questions arose here, whether the respondent was negligent in taking care of the gold and, whether the respondent was liable to compensate the appellant. The district court passed a decree, appeal to high court was dismissed while the Supreme Court held that this was done in exercise of sovereign duties, therefore state could not be held liable for the gold confiscated since it was done in the course of employment.

But as a matter of time courts started ruling in favor of the Plaintiffs which could be seen in the case of “State of Rajasthan v. Vidyawati”⁶, the facts stated Lokumal driving a police jeep back after repairs, along a public road and knocking down a man walking down the footpath and injuring him. The plaintiffs, victim’s wife and daughter sued the state for the injuries that incurred. The court said that the driver’s act was not connected with sovereign functions of the state and therefore, held the state liable for damages.

In “Fatima Begum v. State of Jammu & Kashmir”⁷, the High Court rejected the defence plea of sovereign immunity taken by the state when a truck belonging to the Government Transport Undertaking had knocked down a cyclist while it was engaged in transporting police personnel from the place of duty to their barracks.

Conclusion

The concept of Constitutional Tort Law is based on the archaic English law but now has a modern jurisprudence which states that the state like any other ordinary individual can be sued for the acts of its servants, but also it makes a clear distinction between the sovereign and the non-sovereign functions of the state.

⁵ 1965 AIR 1039.

⁶ 1962 AIR 933.

⁷ 1976 ACJ 194