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LIABILITY OF STATE: A COMPARATIVE STUDY OF VARIOUS COUNTRIES UNDER ADMINISTRATIVE LAW

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I. ABSTRACT

This research offers an in-depth comparative analysis of the liability of the state under administrative law in India, with parallels drawn from comparable jurisdictions. The concept of state liability is crucial to holding governments accountable for wrongful acts or omissions, which directly affect citizens. In India, this principle has evolved through judicial interpretations and is subject to various limitations under the doctrine of sovereign immunity.

This exploration investigates the historical development of state liability in India and contrasts it with approaches in countries like the United Kingdom, the United States, and France. By examining these comparative models, the paper seeks to understand the commonalities and divergences in how administrative law holds governments accountable for their actions.

Particular attention is given to the distinction between sovereign and non-sovereign functions in Indian law, and how courts have interpreted this distinction in key cases. The article further discusses the role of public interest litigation and the judiciary in expanding the scope of state liability.

Finally, the study proposes reforms aimed at enhancing the accountability mechanisms in Indian administrative law, while drawing lessons from other countries to ensure an effective framework for protecting citizens' rights.

II. KEYWORDS

State Liability, Administrative Law, Sovereign Immunity, Negligence of the state

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III. INTRODUCTION

For many decades it is believed that "REX NON POTEST PECURE" which means the king can do no wrong". But in the year 1947 England introduced the crown through which it made a statement that "THE CROWN IS NOT EXEMPTED FROM ALL THE LIABILITIES AND

CROWN CAN BE SUED" which is an acronym for the term "REX NON-POTEST PECCARE"³. Another maxim "RESPONDEAT SUPERIOR"⁴ which is of the meaning "let the principle be held liable" and "QUI FACET PER ALIUM FACIT PERSE"⁵ Which means " he who does an act through another does it himself". This above-mentioned byword displays the master-servant relationship and how the master will be accountable for the activities of his employees. These are the inferences that came after 1947.

With regard to India, the tort committed by the government was discussed for the 1st time in the year 1858. In 1858 it was said that the " secretary of state in council " would be held responsible for the actions committed by the government. Followed by this in section 32 of " THE GOVT OF INDIA ACT 1915" repeated the same.⁶ Section 176(1) of "THE GOVT OF INDIA ACT 1935" brings up that the federation of India and its provinces will be held liable "for the grievance committed by the civil servant".⁷

In contrast, our present Indian constitution of Article 300 refers that the "UNION OF INDIA AND STATE" will be made liable for the injury committed by the government agents.⁸ This research will prominently focus on the part which is about the analysis of functions of the state that is the sovereign and Non-sovereign functions, focusing on the liability of the state which is codified in various countries and provides the clarity of liabilities of sovereign and Non-sovereign functions of the state.

Also through this research, the pros and cons of the codification of the liability of

³ REX NON POTEST PECURE

⁴ RESPONDEAT SUPERIOR

⁵ QUI FACET PER ALIUM FACIT PERSE

⁶ Government of India Act 1915, Section 32.

⁷ Government of India Act 1935, Section 176(1).

⁸ Constitution of India, art. 300.

the state in India could be analyzed. The main purpose of this study is to provide a wide knowledge and understanding of the development of the liability of states in various countries.

IV. TYPES OF FUNCTIONS DISCHARGED BY THE GOVERNMENT

While understanding the liability of a state, we need to know the two types of functions discharged by the government, the First type being the Sovereign function which denotes the functions that are done by the government such as Defence of the country, raising and maintaining armed forces, making peace or war, foreign affairs, acquiring and retaining history.

There are certain other functions that are performed by government and private individuals in order to make money which are referred to as the Non-Sovereign functions like transportation, construction, and trade.

If a tort is released while performing sovereign functions the government won't be held liable for the grievances caused whereas if a tort is committed while discharging a non-sovereign function the government will be responsible for the grievances caused. These functions can be understood with a few important case laws.

- "*Peninsular and oriental steam navigation v. Secretary of State for India*", this is the first case law as far as tort by state is concerned. The court in this case reiterated that the secretary of state is liable for the negligence caused by its servant.⁹
- "*State of Rajasthan v. Vidyawati*", the court held that the state is liable for the injury caused to the plaintiff, and the plaintiff was compensated for the loss suffered.¹⁰
- "*Kasturi Ralia Ram v. State of UP*", this is a landmark case as far as the liability of a state is concerned. It was held by the court that the duty of the police officer is a sovereign function and so the state cannot be held liable

⁹ *Peninsular & Oriental Steam Navigation Co. v. Sec'y of State for India*, (1861) 6 M.I.A. 457 (P.C.)

¹⁰ *State of Rajasthan v. Vidyawati*, AIR 1962 SC 933.

for the action of its servant followed by which Kasturi Ram did not receive any compensation from the state for the loss suffered by him.¹¹

- "*Shyam Sundar and other vs state of Rajasthan*", the court, in this case, clarified that the famine relief work was not a sovereign function that could have been done by any individual and so the state is responsible for paying the compensation.¹²
- "*State of MP V. Padmalochan*", the court in this case held that it was the sovereign function of the police to control the mob during a strike and hence the compensation will not be provided for the damages caused to the speaker.¹³

V. CURRENT STANCE OF STATE LIABILITY IN ENGLAND AND INDIA

- **English law:** Post the Crown Proceedings Act 1947 it's transparent that the crown is liable for the actions of its servant.
- **Indian Law:** Indian law is still evolving as far as the liability of a state is concerned. However, there is article 300 which states that the government of India and states can prosecute and can be prosecuted. Article 300 gives the immunity to the people of India to drag the government for any grievances caused to them. There was an effort made in the year 1956 by the Law Commission of India which recommended releasing the immunity of the government In India, the fundamental aspect is that the state is not liable for acts discharged in its sovereign capacity.

However, this immunity is not absolute. There are cases where the courts have held the state liable even for its sovereign functions, especially when such actions cause harm to individuals. Some of the landmark cases are:

- **In *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh (1965)*** A gold merchant's gold was seized by the police during an investigation. The gold

¹¹ *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, AIR 1965 SC 1039.

¹² *Shyam Sundar & Others v. State of Rajasthan*, (2001) 1 SCC 506.

¹³ *State of Madhya Pradesh v. Padmalochan*, AIR 1999 SC 2116.

was later stolen by a police officer. The merchant sued the state for the return of the gold or its value. The Supreme Court held that the state was not liable because the seizure of the gold was a sovereign function. This case upheld the distinction between sovereign and non-sovereign functions but has been criticized for allowing the state to escape liability.¹⁴

- **In *N. Nagendra Rao & Co. v. State of Andhra Pradesh (1994)*** The petitioner's fertilizers and food grains were apprehended by the officials under the Essential Commodities Act. When the goods were returned, they had deteriorated due to negligent handling. The Supreme Court held that the state was liable for the loss due to the negligent handling of the goods. It observed that in a welfare state, the distinction between sovereign and non-sovereign functions becomes less relevant, especially when the state engages in activities that could be performed by private individuals or entities. This case marked a shift by limiting sovereign immunity and holding the state accountable for negligence, even when performing certain sovereign functions.¹⁵
- **In *State of Rajasthan v. Vidyawati (1962)*** The plaintiff's husband was killed in a road accident involving a government vehicle being driven negligently by a state employee. The Supreme Court held that the state was liable for the negligent act of its employee, even though the vehicle was being used for official duties. This case was an early attempt to hold the state responsible for the negligence of its employees, despite the traditional immunity for sovereign functions.¹⁶
- **In *Union of India v. Prabhakaran Vijaya Kumar (2008)*** A woman died after falling from a moving train. The Railways argued that it was not liable as it was performing sovereign functions. The Supreme Court rejected the Railways' defense, holding the state liable for not ensuring the safety of passengers. The court emphasized the need for accountability in public service

¹⁴ Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh, AIR 1965 SC 1039.

¹⁵ N. Nagendra Rao & Co. v. State of Andhra Pradesh, (1994) 6 SCC 205.

¹⁶ State of Rajasthan v. Vidyawati, AIR 1962 SC 933.

functions. This case further reduced the scope of sovereign immunity in cases where the state's negligence in public services causes harm.¹⁷

- *The P. & O. Steam Navigation Co. v. Secretary of State for India (1861)* involved an accident caused by the negligence of government employees in India. The Privy Council distinguished between sovereign and non-sovereign functions, holding that the state was liable for the latter. This case laid down the foundation of the sovereign function immunity in India but also set the precedent for exceptions in cases of non-sovereign functions.

These cases show that while the state may enjoy immunity for certain sovereign functions, courts have increasingly held the state liable when negligence or harm is caused to individuals, particularly in functions related to public welfare or services.

VI. FUNDAMENTAL RIGHTS V. STATE

The public law liability derives its sources from the Constitution of India. With felicitations to any violation of the constitutional rights mentioned in part III of the constitution namely the right to life and personal liberty, protection against illegal arrest and detention, the court has again and again held the police officers accountable and levied liability on the state for the grievances caused. A sequence of Supreme Court Judgments from the early 1980s legislate theories for holding the state accountable for any negligence and exploitation of power by the police, awarding required indemnity for the breach of constitutional rights of the citizens.

The case of *Rudul Sah v. State of Bihar*¹⁸ is decisive for making the state liable for the violation of Article 21. The three-judge bench of the Supreme Court held that the compensation was to be paid to the victim for the breach of articles 21 and 22. In this case, the plaintiff was arbitrarily detained in jail for a tenure of 14 years even after remission. After discovering that his detention was completely groundless, he appealed for compensation. The petitioner could have claimed compensation through a standard civil suit, but the Supreme Court held that it wouldn't justify on the petitioner's part by only passing an order for his release from his detention and it

¹⁷ Union of India v. Prabhakaran Vijaya Kumar, (2008) 3 SCC 50.

¹⁸ Rudul Sah v. State of Bihar, AIR 1983 SC 1086.

indeed had the authority to command the state government to pay reimbursement. Within two weeks of the order, it ordered the state to pay a sum of 30,000 as compensation for the plaintiff against his unlawful detention.

In *Sebastian Hongray v. Union of India*,¹⁹ the Supreme Court granted compensation for the two ladies who had faced immense torture and harassment after their husbands went missing after they were confiscated by the army authorities in Manipal and were put in an army camp. The detaining authority failed to produce the missing individuals, followed by a single bench order, compensation was granted succeeding Rudul Shah.

Correspondingly, in *Bhim Singh v. the state of Jammu and Kashmir*.²⁰ Bhim Singh was an MLA and was illegally detained by the police to stop him from attending the sitting of the Legislative Assembly. This case emphasized on the rigorous infringement of the violation of fundamental rights by the police authorities. The court instructed the state to award the plaintiff compensation of rupees 50,000. The court's order to award ideal compensation and condemn the actions of the police made this case distinct in validating the fundamental rights of the citizens.

In *Saheli v. Commissioner of Police*,²¹ Delhi, a young boy aged 9 was beaten to death by the police authorities. The conduct of the police in this case shows the misuse of sovereign power. The court directed the state to pay compensation to the mother of the deceased, rupees 75,000. This is a special case as the bench leans on the verdict of the case *Joginder Kaur v. State of Punjab* and *State of Rajasthan v. Vidyawati*. The main reason behind referring to the *State of Rajasthan v. Vidyawati* with the intention to justify that the state is liable for the tortious acts of its employees.

In the *State of Maharashtra v. Ravikant Patil*,²² Patil was an undertrial prisoner who was illegally handcuffed and both of his hands were tied with a rope and he was forced to parade in the streets. The Supreme Court counted on Rudul Shah's verdict and upheld the decision of the Bombay High Court to grant compensation of rupees

¹⁹ Sebastian Hongray v. Union of India, AIR 1984 SC 1000.

²⁰ Bhim Singh v. State of Jammu & Kashmir, (1985) 4 SCC 677.

²¹ Saheli v. Commissioner of Police, Delhi, AIR 1990 SC 513.

²² State of Maharashtra v. Ravikant Patil, AIR 2007 SC 2210.

10,000 by the state government. The court however calculated whether the state or the individual authority was involved in the unwarranted conduct. Forming a debate of vicarious liability, the court specified that though the official surpassed his limits, he was discharging his duty as an official and so the court realized that he could not be made personally liable.

From the aforesaid, it's evident that any infringement of fundamental rights by the authorities will open the door for liability under public law.

While differentiating India's approach towards state liability from other countries, many nations have systematized rules as to when the state can be held liable, habitually reducing the uncertainties and providing opaqueness as far as sovereign and non-sovereign functions are concerned. A detailed view of how various nations manage the liability of the state is reported below:

A. United States

Federal Tort Claims Act (FTCA), 1946

The FTCA act authorizes the U.S. government to be sued for any grievances arising from the recklessness or wrongful act of its employees, meaning the Government is immune from liability for the acts discharged as part of policy-making or sovereign functions. The FTCA differentiates operational acts, where the liability may arise, and discretionary or sovereign acts where the state retains its immunity. A discretionary function refers to a government or its agent having the right to make their opinions as to how they want to discharge their conduct, indeed there's any factual error or wrong in their opinions. However, if an agent performs any functions that don't involve any judgment, the government will be made responsible for the conduct of its servants. The main motive behind this exception is to help the Government apprehend from the legal proceedings.²³

In *Dalehite v. United States (1953)*,²⁴ the U.S. Supreme Court held that resolutions made out during the planning or policy-making period are considered discretionary

²³ Federal Tort Claims Act, 1946 (U.S.).

²⁴ Dalehite v. United States, 346 U.S. 15 (1953).

functions, and the Government is not liable in such cases.

B. United Kingdom

Crown Proceedings Act, 1947

This Law repealed the Doctrine Of Sovereign Immunity in the U.K. permitting the citizens to sue the Crown (Government) in tort similarly they can sue a private individual or entity.²⁵

Notwithstanding, the act provides certain exceptions, explicitly in the matters of policy and defense.

The Crown Proceedings depict a clear distinction between operational decisions (where the Government can be sued) and policy-based decisions (where immunity applies), thus creating more predictability and transparency in the cases of state liability.

In *Hill v. Chief Constable of West Yorkshire* (1989),²⁶ the court held that the police were not responsible for negligence as the allotment of police resources was a policy decision and could be classified as sovereign immunity.

Under Section 2(5) the Crown is barred from being sued for any exertion discharged by any individualities whose work is a bar in nature. It's apparent from this section that a crown cannot be sued for any opinions held by the judge, except it's done through an applicable plea procedure under section 9 of the Human Rights Act, 1988. Section 10 of the act protects the crown from any distinctive hurt produced by any existent in the fortified forces to another. Howbeit this section was halted by the Crown Proceedings Act (Armed Forces) 1987. The secretary of state can introduce this act if necessary. There passed certain ex post facto proceedings post 1987 Act which a claim was made with respect to the Human Rights Act, 1988, section 4 that similar impunity amicable with the European Convention on Human Rights, article 6(1). In *Mathews v. Ministry of Defense*,²⁷ the House of Lords held that the claimant could

²⁵ Crown Proceedings Act 1947 (UK).

²⁶ *Hill v. Chief Constable of West Yorkshire*, [1989] 2 WLR 446.

²⁷ *Mathews v. Ministry of Defense*, [2002] EWCA Civ 773

not assert any damages from the Ministry of Defense based on the grounds of an old legal theory called 'The King Can do no wrong'. This theory referred that the crown was traditionally protected from prosecution, inclusive of any charges for damages.

C. France

Council d'Etat - The French Administrative Court

In France, its administrative law intelligibly distinguishes between acts of public service, meaning where the state can be held liable, and acts of government, where sovereign immunity applies. The Conseil d'Etat exercises its control over the French Legal system developed clear jurisprudence as to when the state can be sued. The state can be held liable for its administrative acts that cause severe harm and damages, but it holds on to immunity for the actions that are directly tied to the sovereign authority, for instance, national defense or foreign policy. It's important for keeping up the connection with the people of the nation and the governance.

In *Blanco v. French State (1873)*,²⁸ the Conseil d'Etat held that the state was liable for the grievances induced by its employees in the discharge of the public services, bringing a clear distinction between the state's actions subject to liability and those protected by the sovereign immunity.

D. Canada

Crown Liability and Proceedings Act, 1985

This act empowers the Canadian Government to be sued in tort for the actions of its employees, being the actions do not necessitate policy-making decisions or other sovereign acts like national defense or foreign relations. The law sets limits on state liability, eliminating acts associated with war, defense, or policy-making from liability claims. In *Just v. British Columbia*,²⁹ the Supreme Court of Canada held that the Government could not be sued for decisions relating to the allocation of resources which forms a policy decision, but could be sued for any kind of operational

²⁸ Conseil d'Etat, *Blanco v. French State*, Tribunal des Conflits, 1873.

²⁹ *Just v. British Columbia*, [1989] 2 S.C.R. 198.

negligence from their end.

A noteworthy aspect of this act is pertinacious in section 9. Section 9 of the act underlines that the crown or its servants cannot be prosecuted with regards to the claim if a pension or compensation has been paid or outstanding from the Consolidated Revenue Fund or from any finances presided over by an agency of the Crown relating to the death, damage, loss with regards to which the claim is made. The aim of this section is to forbid individuals from suing the Government or its employees for extra compensation once they have already collected or are privileged to compensation from these funds of the Government.

In *Sarvanis v. Canada*,³⁰ the court emphasized that the claimants for any emoluments must stick to the rules and timelines when proceeding with a case. The court clarified how section 9 applies to the Government, especially with respect to its immunity. The court underlined the confinement on the crown's liability and held that the plaintiff's claim did not meet the legitimate benchmarks to continue.³¹

The Canadian Legal system provides a well established norms for distinguishing between sovereign immunity which includes policy decisions and state liability which involves operational acts, reducing uncertainty for claimants

E. Australia

Commonwealth of Australia Constitution Act and Statutes

The Commonwealth and different state laws empower the Government to be sued in tort. In any case much comparable to the U.S. and U.K., discretionary functions, policy decisions, and things relating to national defense are secured by insusceptibility. Whereas the state can be sued for the carelessness of its representatives, choices that include public policy, military, or discretionary actions enjoy sovereign immunity. Legal proceedings can be brought against the state against any careless activities at the same time, judgments involving public policy, military, and discretionary functions are secured with sovereign immunity.

³⁰ *Sarvanis v. Canada*, [2002] 1 SCR 921

³¹ Crown Liability and Proceedings Act, 1985 (Canada).

In *Commonwealth v. Introvigne*,³² the Australian High Court held that the government cannot be accountable for harm created by its representatives in a school arrangement, as the obligation of care was an operational liability and not a matter concerned with policy.

VII. CONCLUSION

India's approach towards codification of the state's liability is deficient, it majorly relies on the judicial precedents, to elucidate the state's liability for its discharge of sovereign functions. Cases like *Kasturi Lal* and *N. Nagendra Rao* replicate judicial trials to stabilize state immunity with liability, however, the doctrine prevails inconclusive when equated with countries like the U.S., U.K., or France, where certain ordinances promote clear regulations. Although India has made significant progress in non-sovereign functions.

The lack of wide laws such as FTCA or Crown Proceedings Act may create uncertainty where there is huge scope for injustice to occur. Codification would administer established regulations as to when the state can be obliged for its conduct curtailing instability and prejudiced judgments. This would make it accessible for an individual to comprehend their legal rights and for the state to be acquainted with its duties. Judgments in India, like *Kasturi Lal* and *Nagendra Rao*, time and time calculate the judicial precedents to establish Sovereign and Non-Sovereign functions. Codification would possibly annihilate the complexity and define uniformity in law.

³² *Commonwealth v. Introvigne*, [1982] HCA 40.