

Liability –Government Servant

Prof.(Dr.)A.S.Ramachandra

Former Professor

LBSNAA

MUSSOORIE

- I have a daughter who is 27 years old and working as a software engineer in HYD and earning a lakh per month. I felt that now I have to see her married and asked her whether she likes anyone or can I search for a suitable boy and what are her requirements. She says that she does not have anyone in mind and I can search but the boy should be taller than her, handsome, stable job, earns more than her and belong to a good family. I take 10 months for finally choosing 5 matches according to her requirements and place before her the options. She selected one and they talked to each other, find acceptable to each other and I got them married. (Decision= KNOWL/ EXP/WISDOM)

Caselet 1:

- **Vinod is the driver of the official car of the Director General of the Institute of Good Governance, Hyderabad, an institute belonging to the Central Government. Vinod is a government employee. On the afternoon of 22.07.2024, the Director General asked Vinod to drop him at the airport, and Vinod promptly complied, dropping the Director General at 1 pm. He was then asked to report back to his office. On his way back, he drove the car to his parents' residence to inquire about his father's health and spent just a few moments there. He also accepted the request of his seventeen-year-old brother, Binod, for a lift to a destination midway. While returning to the Institute and before dropping his brother at his destination, his car hit a pedestrian, Sanjeev, who collapsed and died immediately at the spot. Discuss the liability of Vinod in the following situations:**

- **Situation 1 Caselet 1: What if the pedestrian crosses the road ignoring the red signal? In this scenario, the fault lies with the pedestrian.**
- **Situation 2 Caselet 1: What if the accident took place because of the negligence of Vinod?**
- **Situation 3 Caselet 1: What if the victim does not die, and the accident only causes a grievous hurt?**
- **Situation 4 Caselet 1: What if Vinod hits and goes away to escape detection of the offence?**
- **Situation 5 Caselet 1: What if Vinod allows his brother to drive the car and the accident takes place when his brother operates the vehicle?**

Answer & Reasons (Situation 1 Caselet 1):

FAULT OF THE VICTIM

- **Criminal liability:** This is an act within the course of employment but an unauthorized act; however, Vinod will not have any criminal liability as it occurred due to the fault of Sanjeev, the pedestrian.

Civil Liability:

- This is an act within the course of employment but an unauthorized act. For an authorized act, undoubtedly the State will be liable. However, for unauthorized acts, generally, there will be no liability for the government servant concerned, and the State would be vicariously liable on behalf of the government servant. Here, though there is no fault on the part of the driver, liability will still exist to the extent of five lakhs rupees as per Section 164 of the Motor Vehicles Act to be paid to the legal heirs of the victim. However, if death is not caused and grievous hurt is caused it is two and a half lakh rupees.
- Now, let us assume that a private individual caused this accident. In such a case, that private individual's insurance company, with whom they are insured under third-party insurance, will pay on behalf of the person who caused the accident to the victim or their legal representatives without the requirement of proving any fault under Section 164. However, the issue arises as third-party insurance is not a requirement for either the Central Government or State Government, and generally, government vehicles are not insured. In such cases, the State will have to pay the five lakh rupees in compliance with Section 164.

Disciplinary Action for Violation of Conduct Rules:

- Since there is no fault on the part of Vinod, any disciplinary proceeding initiated against him would not be justified and will not stand. It may be noted that initiating a disciplinary proceeding, in any case whatsoever, is discretionary.

Answer & Reasons (Situation 2 Caselet 1): (FAULT OF THE GOVT. SERVANT & DEATH IS CAUSED)

- **Criminal liability:** There will be criminal liability for Vinod as per Section 106 (1) of the BNS for causing death by a rash or negligent act, with the maximum punishment being 5 years of imprisonment. Additionally, there may also be criminal liability for Vinod as per Section 184 of the Motor Vehicles Act for driving dangerously, with the maximum punishment being 6 months of imprisonment. The State as an employer will have no criminal liability even though such an offence is committed within the scope of employment. However, sanction to prosecute the government servant should be obtained before any Court takes cognizance of the offence as Vinod is a government servant according to section 218 BNSS as he is a public servant.

- **Civil liability:** As mentioned earlier, generally, with respect to civil liability, a civil action is brought against the State and the State would be vicariously liable on behalf of the government servant and the government servant will not be liable even though there is no bar against the victim to proceed against the government servant concerned. Here, as there is fault on the part of the driver, the victim is entitled for just compensation considering the loss sustained by the family for the death of the victim which will be decided by the Claims Tribunal according to section 168 of the Motor Vehicles Act.
- **Disciplinary Action for Violation of Conduct Rules:** Vinod may face disciplinary action also for the misconduct but initiating a disciplinary proceeding is purely discretionary. Such action shall be for violating rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Answer & Reasons (Situation 3 Caselet 1): (FAULT OF THE GOVT. SERVANT & GRIEVOUS HURT IS CAUSED)

- **Criminal liability:** There will be criminal liability for Vinod as per Section 281 of the BNS for causing grievous hurt by rash driving, with the maximum punishment being 6 months of imprisonment. Additionally, there may also be criminal liability for Vinod as per Section 184 of the Motor Vehicles Act for driving dangerously, with the maximum punishment being 6 months of imprisonment. The State as an employer will have no criminal liability even though such an offence is committed within the scope of employment. However, sanction to prosecute the government servant should be obtained before any Court takes cognizance of the offence as Vinod is a government servant according to section 218 BNS as he is a public servant.

- **Civil liability:** As mentioned earlier, generally, with respect to civil liability, a civil action is brought against the State and the State would be vicariously liable on behalf of the government servant and the government servant will not be liable even though there is no bar against the victim to proceed against the government servant concerned. Here, as there is fault on the part of the driver, the victim is entitled for just compensation considering certain factors like present earnings, future earnings, present and future medical expenses, etc., which will be decided by the Claims Tribunal according to section 168 of the Motor Vehicles Act.
- **Disciplinary Action for Violation of Conduct Rules:** Vinod may face disciplinary action also for the misconduct but initiating a disciplinary proceeding is purely discretionary. Such action shall be for violating rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Answer & Reasons (Situation 4 Caselet 1): (HIT & RUN CASE)

- **Criminal liability:** If the offence is detected, there will be criminal liability, for Vinod as per Section 106 (2) of the BNS for causing death by a rash or negligent act and escaping without reporting, with the maximum punishment being 10 years of imprisonment since hit-and-run cases are viewed seriously by the law. Additionally, there may also be criminal liability for Vinod as per Section 184 of the Motor Vehicles Act for driving dangerously, with the maximum punishment being 6 months of imprisonment. The State, as an employer, will have no criminal liability even though such an offence is committed within the scope of employment. However, sanction to prosecute the government servant should be obtained before any court takes cognizance of the offence since Vinod is a government servant according to Section 218 of the BNSS, classifying him as a public servant.

- **Civil liability:** In hit & run cases, if it is not known as to who caused the death or grievous hurt, still the victim's legal heirs get Rs.2 lakhs and in cases of grievous hurt Rs.50,000 as per section 161 of the Motor Vehicles Act. This will be paid from the "Motor Vehicle Accident Fund". For this fund, contribution is made by the Insurance Companies proportionate to the policies that are insured with those companies
- **Disciplinary Action for Violation of Conduct Rules:** If the wrong is detected, Vinod may face disciplinary action also for the misconduct but initiating a disciplinary proceeding is purely discretionary. Such action shall be for violating rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Answer & Reasons (Situation 5 Caselet 1): (MINOR BROTHER DRIVES THE CAR)

- **Criminal liability:** There will be criminal liability for Vinod as per Section 106 (1) of the BNS for causing death by a rash or negligent act, with the maximum punishment being 5 years of imprisonment, even though he did not cause the accident; it was his minor brother. It is presumed that Vinod has caused the accident and is responsible for the death. Moreover, Vinod will also be liable under Section 180 of the Motor Vehicles Act for allowing an unauthorized person to drive a vehicle, with the punishment for such an offence being a maximum imprisonment of 3 months. However, sanction to prosecute the government servant should be obtained before any court takes cognizance of the offence as Vinod is a government servant, classified as a public servant under Section 218 of the BNSS.

Criminal liability(Continued)

- Binod, the minor brother, would also be liable under Section 106 (1) of the BNS for causing death by a rash or negligent act, with the maximum punishment being 5 years of imprisonment. However, as he is a juvenile and has not completed 18 years of age, and the offence is not a heinous offence (considered serious under the JJ Act, 2015 as the maximum punishment is 5 years of imprisonment), he cannot be tried as an adult and awarded the punishment prescribed for the offence. Instead, he will be treated as a child in conflict with the law according to the Juvenile Justice Act, 2015, and dealt with accordingly for having committed a serious offence. However, in a hit and run case, if detected, as the punishment for such an offence is maximum 10 years imprisonment, he can be tried like an adult, as the offence is considered a heinous offence. As per section 55 (A) read with section 199A of the Motor Vehicles Act, **the vehicle registration may be cancelled for a year on the ground that the vehicle was allowed to be used by a juvenile.** After one year, a fresh application for registration is allowed to be submitted.

- **Civil liability:** As mentioned earlier, generally, with respect to civil liability, a civil action is brought against the State and the State would be vicariously liable on behalf of the government servant and the government servant will not be liable even though there is no bar against the victim to proceed against the government servant concerned. Here, as there is fault on the part of the government servant, the victim is entitled for just compensation considering the loss sustained by the family for the death of the victim which will be decided by the Claims Tribunal according to section 168 of the Motor Vehicles Act.
- **Disciplinary Action for Violation of Conduct Rules:** Vinod may face disciplinary action also for the misconduct but initiating a disciplinary proceeding is purely discretionary. Such action shall be for violating rule 3 of the Central Civil Services (Conduct) Rules, 1964. Generally, such a misconduct i.e. allowing a minor drive the car, is considered to be quite serious and may lead to the dismissal of Vinod.

VICARIOUS LIABILITY

- Generally, a person is liable for his own wrongful acts and ***one does not incur any liability for the acts done by others.*** In certain cases, however, the vicarious liability, that is ***the liability of one person for the act done by another person may arise.*** In order that the liability of A for the act done by B can arise, ***it is necessary that there should be a certain kind of relationship*** between A and B, and ***the wrongful act should be, in a certain way, connected with that relationship***
- ***RESPONDENT SUPERIOR/Let the Master Answer***

LIABILITY BY RELATIONSHIP

Vicarious liability for wrongful act arises from the relation existing between-

1. Master and Servant.
 2. Principal and agent
 3. Company and director
 4. Firm and partner
- Vicarious liability is based upon the principles of 'respondent superior' (i.e., **responsibility must be that of the superior**) and 'quifacit per alium facit per se' (i.e., **he who acts through others is deemed in law as doing it himself**)

Master & Servant=Joint Tortfeasors

- Since for the wrong done by the servant, the master can also be made liable vicariously, **the plaintiff has a choice to bring an action against either or both of them.** Their liability is joint and several as they are considered to be joint tortfeasors. For the wrong done by the servant=**master is liable and also the servant. However, with respect to Government servants – it is an unwritten law that for the wrongs done by the servant-the master is liable and not the servant towards the third party.** Nevertheless, for the wrong done the servant is subject to disciplinary proceedings.

Unauthorized Acts

- However, for an unauthorized act, the liability arises if that is within the course of employment, i.e., it is a wrongful mode of doing that what has been authorized. Thus, *if I authorize a servant to drive and he drives negligently, or I authorize a servant to deal with the clients and he deals with them fraudulently. or if I authorize a servant to help the railway passengers, but he mistakenly causes harm to them,* in each the servant is doing the act which he has been authorized to do but his mode of doing is wrongful. Each one of these acts is, therefore within the course of employment and the master can be made liable for the same.

Century Insurance Co. v. Northern Ireland Road Transport Board(1942)

- In this case, the driver of a petrol lorry while transferring petrol from the lorry to an underground tank, **struck a match to light a cigarette and threw it on the floor**, and thereby caused a fire and explosion which did great damage. **The master were held liable because the negligence was in the discharge of the duty by the servant.** Although the act of **lighting the cigarette was something the driver did for himself**, it could not be regarded in the abstract and was a negligent method of conducting the master's work.

Ricketts v Thos Tiling Ltd(1915)

- In Rickett's case, *the driver of the omnibus asked the conductor to drive the omnibus* and turn it round to make it face in the right direction for the next journey. The master was held liable vicariously because the *driver was negligent in the performance of the master's work*. The driver in fact was seated by the side of the conductor at the time when the omnibus was turned round. In other words, *the turning round of the vehicle was an act within the employer's business and not something outside it.*

Beard v. London General Omnibus Co.,(1900)

- In Beard v. London General Omnibus Co., the conductor *attempted to turn the omnibus on his own initiative and caused the accident.* The *company was held not liable because it was not a part of the conductor's duty to drive the omnibus.* It was not negligence in the course of employment.
- Servant is exclusively liable

Sovereign and Non-Sovereign Functions:

- The concept of sovereign functions refers to acts that are integral to the state's governance, such as defence, maintenance of law and order, and administration of justice. Non-sovereign functions, on the other hand, encompass activities that could be performed by private individuals or entities, such as commercial ventures, transport services, and public utilities. However, the line between "sovereign functions" (immune from lawsuits) and "non-sovereign functions" (subject to lawsuits) can be blurry.

No well-defined tests to know what Sovereign Powers are. -

- Sovereign powers are not easily defined and lack well-defined tests. Traditional sovereign functions include lawmaking, justice administration, order maintenance, crime repression, war conduct, and treaty-making. Non-sovereign functions encompass trade, business, commerce, and welfare activities. **Activities that private individuals can engage in are non-sovereign functions.**
- TRAINING

Contemporary Perspectives – Dilution of the Principle of Sovereign Immunity:

- The contemporary understanding of state liability in India is characterized by a more nuanced approach, where the courts increasingly emphasize the need to hold the state accountable for wrongful acts while recognizing the practical challenges of governance. The judiciary has been proactive in expanding the scope of non-sovereign functions and limiting the immunity traditionally accorded to the state. According to the modern thinking the State is treated in performance of its functions like a private company. It is therefore obviously liable for negligence of its officers

Nagendra Rao v. State of A.P. (1994):

- Nagendra Rao, the appellant was involved in business of fertiliser and food grains under licenses issued by appropriate authorities. Police Inspector and Vigilance Cell seized huge stocks of fertiliser, food grains, and non-essential goods from the appellant's premises on 11-8-75. District Revenue Officer directed the disposal of seized stock under Essential Commodities Act, but the Assistant Agricultural Officer did not comply.
- On 29-6-1976, proceedings under Section 6-A of the Act were decided in favor of the appellant, and the confiscation order was quashed due to lack of proof of guilt in black-marketing or adulteration. The AAO did not release the stock despite a Collector's Order.

Nagendra Rao v. State of A.P. (1994):

- In March 1977, the AAO informed the appellant to take delivery of the stock, but it was found to be spoilt in quality and quantity. The appellant demanded compensation for the spoilt stock, but the demand was rejected. The appellant filed a suit for recovery of the amount, contested by the State on the grounds of sovereign immunity. The trial court ruled in favor of the appellant, holding the AAO negligent and decreed the suit for recovery.
- The State appealed to the High Court. The High Court set aside the decree. The appellant filed an appeal in the Supreme Court against the judgment of the High Court. The Supreme Court held that the State was liable vicariously for the negligence committed by its officers in discharge of public duty conferred on them under a statute.

Sovereign Immunity Doctrine and Fundamental Rights

- Sovereign immunity is ***not a valid defence in cases of fundamental rights violations.*** The government can be held liable to compensate victims of fundamental rights violations. Courts have ordered the government to compensate victims of torture for violation of their fundamental right to life and liberty guaranteed by Article 21 of the Constitution. The Supreme Court has consistently ruled against sovereign immunity in cases of fundamental rights violations.
- ***Constitutional Torts***

Rudal Sah v. State of Bihar (1983)

- In this case, the petitioner was acquitted by the Court of Sessions in 1968 but was released from jail more than 14 years later in 1982. The petitioner sought release, rehabilitation, reimbursement of medical expenses, and compensation for unlawful detention in a habeas corpus petition. The State could not provide a justifiable cause for the petitioner's detention, claiming it was for medical treatment of mental imbalance. The Supreme Court ordered the payment of Rs.30,000 as interim compensation, in addition to Rs.5,000 already paid by the State of Bihar. The petitioner was also allowed to bring a suit to claim appropriate damages from the State and its officials. In this case, the Court held that there was a violation of the right to life and personal liberty guaranteed by Article 21 of the Constitution.

Bhim Singh v. State of J.&K. (1986)

- In this case, the petitioner, who was an M.L.A., was wrongfully detained by the police. The petitioner was prevented from attending the assembly sessions. The Supreme Court ordered the payment of Rs.50,000 as compensation to the petitioner. The Court held that there was a violation of the right to life and personal liberty guaranteed by Article 21 of the Constitution.

Smt.Kumari v. State of Tamil Nadu (1992)

- The case involved Smt. Kumari as the appellant against the State of Tamil Nadu. In the case, her six-year-old child died after falling into a ten feet deep sewerage tank in Madras. The Supreme Court directed the State of Tamil Nadu to pay compensation of Rs.50,000/- to the appellant with 12% interest from Jan. 1, 1990, until the date of payment. The State of Tamil Nadu was given the option to recover the compensation from the local authority or any other responsible party for keeping the sewerage tank open.

Remedy in public law for breach of fundamental rights different from remedy in private law:

- The remedy for breaches of fundamental rights in public law differs from the remedy in private law. Public law encompasses legal actions against the State, including Constitutional Law, Administrative Law, and Criminal Law. The remedy in public law pertains to these specific legal domains. Unlike a civil suit for damages in private law, compensation for fundamental rights violations under public law operates differently. One key distinction between the remedies in public and private law is that the former addresses violations of public law, particularly those concerning the Constitution, while the latter deals with matters under private law. Furthermore, a notable contrast lies in the discretionary nature of public law remedies compared to the rights-based nature of private law remedies. Public law remedies are subject to the discretion of the legal system, while private law remedies can be sought as a matter of entitlement. Additionally, it is possible to pursue a public law remedy alongside a private law remedy. The claim in public law for compensation for unconstitutional deprivation of a fundamental right is in addition to private law remedy