Liability of Gov. Servants for the wrongs done/ASR

KING CAN DO NO WRONG

"The only man who never makes mistakes is the man who never does anything." – ***Theodore Roosevelt***

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.

PROBLEM

- The Supdt. Engineer of R &B Department directed the driver of a departmental Zeep to carry some bitumen drums, mechanical tools and to make over the same to the Asst. Engineer who is looking after road laying work situated 5 K.M. away from the office. The driver promptly complied with the orders of S.E. but while returning he drove the zeep to his residence just to enquire about the health condition of his wife. En route, his Zeep hit against a pedestrian who subsequently collapsed in the government hospital. The dependants of the victim filed a criminal case against the driver and claimed compensation from the R & B Department.

PROBLEM-ISSUES

Discuss:-

1. Whether State is liable for the death of the pedestrian, and if so how?
2. What is the extent of liability of the driver of the Zeep in causing the death of the victim?
3. What will be the legal position if the pedestrian crosses the road ignoring the red signal shown to pedestrians to stop?

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**

State of Maharashtra & Ors. Vs. Kanchanmala Vijay Singh Shrike/1995

- **In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way.** The employer shall be liable for such act, because ***such employee was acting within the scope of his employment and in so acting done something negligent or wrongful***. A ***master is liable even for acts which he has not authorised provided they are so connected with acts which he has been so authorised***. On the other hand, ***if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside***."

State Of Maharashtra And Ors vs Kanchanmala Vijasinci Shirke

- At that time the said Vijay Singh was driving the scooter and the jeep which belonged to the State Government dashed against the scooter because of which the victim sustained serious injuries and he ultimately succumbed to those injuries in the hospital.
- it was alleged that respondent (Clerk) was under the influence of liquor and was driving the jeep in a rash and negligent manner which resulted in the accident and death of Vijay Singh.

TRIBUNAL's DECISION

- The Tribunal on materials on record came to the conclusion that it was respondent (CLERK) who was driving the vehicle at the relevant time and he caused the accident because of his rash and negligent driving. ***It was also held that he was having no licence to drive the jeep in question***. But the ***Tribunal accepted the case of the appellants that said respondent had snatched the keys of the jeep from the driver and was driving the vehicle Unauthorisedly. In this background only respondent could be held to be liable to pay compensation to the claimants. The Tribunal directed respondent to pay Rs. 1,50,000 as compensation to the claimants***.

HIGH COURT's DECISION

- The High Court said that on the materials on record it was not possible to conclude that respondent had taken the jeep for his own private purpose, on the other hand, it had been established that the jeep was on official duty although being driven by respondent (CLERK), who had taken the charge of the vehicle under the authority of the driver of the vehicle. ***The High Court pointed out from the records including the medical examination of the driver that he had consumed liquor on that day and because of that he permitted respondent (CLERK)to drive the vehicle that night***. In this background, the State has to be held to be vicariously liable for the accident.

State Of Maharashtra And Ors vs Kanchanmala Vijasinci Shirke

- The master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the vehicles had been fully authorised to drive the jeep for a purpose connected with the affair of the state.
- ***Thereafter the High Court directed payment of Rs.2,06.000 as the compensation along with 12% interest per annum payable from the date of the application till the date of deposit/realisation. The Stale Government, the driver and respondent were jointly and severally held liable to pay the same***.

Lloyd V Grace Smith & Co(1942)

- In **Lloyd's case,** Mrs. Lloyd, a widow, who owned ***two cottages*** called at the office of Grace, Smith & Co., a firm of solicitors, to consult them as she was not satisfied with the income she was having from her property. ***She was attended by the managing clerk of the company. The managing clerk advised her to sell the cottages and sign two sale deeds for that purpose.*** She was made to sign two documents which were supposed to be sale deeds.

Lloyd V Grace Smith & Co(1942)

- In fact, ***they were gift deeds in favour of the managing clerk himself***. He then disposed of the property for his own benefit. The House of Lords unanimously held that Grace, Smith & Co. were responsible for the fraud of their agent, even though the agent was acting for his personal benefit and they had no knowledge of the fraud, as ***the fraud was committed by the agent while acting in the course of his apparent or ostensible authority.***

State Bank of India v. Shyama Devi(1978)

- **In State Bank of India v. Shyama Devi**, it was held that if a ***customer of the bank gives some amount or cheque to the bank employee (in his capacity as a friend) for being deposited in the account, without obtaining any receipt for the same***, the bank employee is not deemed to be acting within the scope of his employment. If such an employee misappropriates the amount or proceeds of the cheque for his personal gain, the bank, cannot be made liable for the same, because the act of the servant in this case has been done outside the course of employment[**Servant is exclusively liable]**

Second Schedule

- **For accidents resulting in minor injury: fixed compensation of Rs.25,000./// • For accidents resulting in permanent disability: compensation payable will be calculated based on the 'disability percentage' specified in Schedule I of the Employee's Compensation Act 1923, where the minimum compensation payable shall be not less than Rs.50,000 and the maximum compensation payable shall be Rs.5 lakhs./// • For fatal accidents: fixed compensation of Rs.5 lakhs.**
- **The notification further provides that the amounts payable in case of death, permanent disability and minor injury will be *INCREASED AT THE RATE OF 5% ANNUALLY, EFFECTIVE FROM 1 JANUARY 2019***

MVACT:Proportional Sharing Liability

- For a claim under MV act defendant's negligence need not be proved/**Can Claim** –even if there is contributory negligence on the part of the plaintiff
- ***Liability without fault in certain cases(Ss.140-144)***

(a) DEATH= Permanent disablement=

No fault liability is cast on owner and not directly on insurer: If the owner of the vehicle is found liable under S. 140, naturally, the liability of the insured also would arise

- ***Compensation the Victim gets reduced in proportion to his negligence***

NO Fault Liability

- Motor Vehicles Act,1988, however, recognizes limited ‘no fault liability’ but only in the cases of death and permanent disablement. While deciding on compensation, courts have applied rule of negligence with defence of contributory negligence. For instance, if the liability is limited to Rs. 5,00000 in the case of death
- Such compensation can be claimed without establishing any negligence on the part of owner or the driver of the vehicle. The compensation claimed exceeding the amount can prevail only if negligence is proved.

- The government has amended the compensation amount payable for third-party fatal accidents and injury claims. According to the amendment made in Motor Vehicle Act, 1988 through notification dated May 22, 2018, the amount of compensation payable ***in case of death will be Rs five lakh***. The amount payable as compensation has been decided keeping in view costs of living said the notification.
- The notification also states that if the accident results in permanent disability, compensation will be payable based on this formula: ***Compensation amount = Rs 5 lakh X percentage disability as per schedule I of the Employee's Compensation Act, 1923.***

HIT & RUN

- The Central Government has notified that Section 161 of the Motor Vehicles Act, which provides for increased compensation in hit-and-run deaths and injuries, will come into effect from April 1, 2022.
- Section 161, as amended by the Motor Vehicles Act 2019, increased the compensation for death in hit-and-run cases from Rs.25,000 to Rs.2 Lakhs; in cases of severe injuries, the compensation has been increased from Rs.12,500 to Rs.50,000. However, the said provision has not yet been notified of its impending implementation.
- The Ministry of Road Transport and Highways notified on February 25 that Section 50 of the Motor Vehicles (Amendment) Act 2019, which amends Section 161 of the Motor Vehicles Act 1988, will take effect on April 1, 2022.

Liability When the Vehicle Not Insured

- **If a vehicle is not insured against third party risk, the claimant still has a right to claim compensation. In such a case the responsibility will be fixed on the negligent driver or the owner of the vehicle, and such a person will have to pay the claim out of his own pocket. Similar is the position where a vehicle, belonging to the Central or State Government or a Corporation is exempted from being insured under Section 146(2) and (3) (1988 Act). Thus, if a vehicle belonging to a corporation is not insured, the corporation itself will be liable to pay compensation, because exemption from the requirement of getting the vehicle insured does not imply exemption from liability to pay compensation under Section 110(1939 Act)**
- No 3rd party insurance for government vehicles

CONTRIBUTORY NEGLIGENCE

- The claimant was not required to establish the presence of negligence on the part of the owner or the driver of the motor vehicle under Section 140 based on the principle of “No Fault Liability”. The contributory negligence of the claimant was not to be taken into consideration to determine the liability on the owner or the driver of the motor vehicle.
- FATAL ACCIDENT= An accident in which a person involved has died within 30 days from the accident as a consequence of the accident

Motor Vehicles Act,1988

- **Payment of compensation in hit and rum motor accident (Ss.161-163)**

(a)Death=25000/Grievous Hurt=12,500

- **Feb 27,2019:**Compensation for hit-and-run death be increased from Rs **Rs 25,000 to Rs 2 lakh: SC**
- **Solatium Fund:** This **hit and run** insurance fund is a scheme formed by the Central Government to compensate victims of **hit-and-run car accidents**. The Solatium Fund is contributed by the general insurance industry as per an agreed formula.

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SANCTION WHEN GIVEN

- ***SANCTION TO INVESTIGATE [2018 Amendment] (Recommendations/Decisions)***
- ***GENERALLY SANCTION IS GIVEN IN CASES OF CUSTODIAL DEATHS/CUSTODIAL RAPES/FALSE ENCOUNTER.***
- ***GENERALLY SANCTION IF SOMEONE CAUGHT RED HANDED IN A TRAP /RAID (FOUND POSSESSING ASSETS DISPROPORTIONATE TO THE KNOWN SOURCES OF INCOME)***

- **Bilki Bano**

- Gujarat riots victim

Vicarious Liability of the Master

- **Criminal Law**=Master liable for authorised acts along with the servant (if such an act is done in the course of employment).However, Master is not liable for unauthorised acts and only the servant is liable.(**So in all cases -servant is liable)**
- **Civil Law**=Master ***liable for authorised acts as well as unauthorised acts*** done in the course of employment, along with the servant.(**Servant is liable exclusively if the act is outside the scope of employment—This rule applies for Govt. Servants also**)

VL of the Master&servant-Criminal Law

- For authorised Acts=S is liable/M is also Liable
- For unauthorised Acts=S is liable/**M is not Liable**
- For acts outside the scope of employment=only S is liable**/GS—Sanction to prosecute is required**

VL of the Master&Servant-Civil Law

- For authorised Acts=S is liable/M is also Liable
- For unauthorised Acts=S is liable/**M is Liable**
- For acts outside the scope of employment=only S is liable
- **Gov Servant=M is liable provided the function is not sovereign(rule is diluted now to a large extent)**

Servant – always liable(Criminal or Civil

- ***<u>Exception –Govt. servants – ONLY CIVIL LAW</u>***-in the course(whether authorized or unauthorised)
- Govt servants (OUTSIDE THE SCOPE-Civil or Criminal) Liable
- Criminal=**Gov St—Sanction to prosecute is required if the act done in the course of employment**
- **No sanction required =for acts (civil/criminal)outside the scope of employment**

Master

Outside the scope of employment (Civil or Criminal)= Not liable

In the course of employment:-

Criminal Law

For authorized acts=liable

For unauthorised acts= **not liable**

Civil Law

For authorized acts=liable

For unauthorised acts= **liable**

Essentials for Master's Liability(Torts)

For the master's liability to arise, the following essentials must be there:-

(a) The person committing the tort must be *servant.*

(b) The tort committed by the servant must be in the ***course of his employment.***

(c) The act must be a wrongful act authorised by the master or a ***wrongful and unauthorised mode of doing some act authorised by master.***

- So, a master can be made liable as much for unauthorized acts ***(Fraud/Negligence etc.,)*** as for the acts he has authorized.

Theft of goods/ Tort- Conversion

- In **Roop Lal v. Union of India(1972).** the question which had arisen before the J. & K. High Court was regarding the ***liability of the master for the theft committed by his servants of the plaintiff's property. In that case, some military jawans, who were in the employment of the Central Government, lifted some firewood belonging to the plaintiff and carried the same away in military vehicles for the purpose of camp fire and fuel. The question arose whether the act of the jawans could be considered to be in the course of employment*** so as to make the Union of India liable for the same.

Roop Lal v. Union of India(1972).

- It was held that the ***act of the jawans fell within the course of employment*** and the Union of India was liable for the same. Bhatt, J. observed: "Even the learned judge has held that "the jawans were supposed to be on duty all the 24 hours." Obviously if they were and are supposed to be on duty all the 24 hours, and if they lifted the firewood belonging to the plaintiff and that too in the Army vehicles, that action of theirs would be in the course of employment of their master. ***Camp fires are a normal activity of the Army people.***
- **Note: The wrong done was the tort of conversion**

Union and the States as juristic persons

- Article 300 provides that the Union of India and the States are juristic persons for the purpose of suit or proceedings. Although the Union of India and State Government can sue and ***be sued , the circumstances under which that can be done have not been mentioned in the Constitution***. ***The extent of liability is also not fixed by the Constitution. So, one has to rely for this on leading cases decided by the courts***

State's Liability - general principle

The general principle is that if a government servant commits any wrong while exercising sovereign functions, State is not liable and if a government servant commits any wrong while exercising non-sovereign functions the Government is liable.

(King can do no wrong)

No well defined tests to know what are sovereign powers

- ***There are no well defined tests to know what are sovereign powers.*** Traditional sovereign functions are the ***making of laws, the administration of justice, the maintenance of order, the repression of crime, carrying on of war, the making of treaties of peace and other consequential functions.***
- Functions relating ***to trade, business and commerce and the welfare activities are amongst the non-sovereign functions.***
- Broadly speaking, ***such functions, in which private individual can be engaged in, are not sovereign functions.***

Baxi Amrik Singh v. Union of India[1972]

- In Baxi Amrik Singh v. Union of India, an army driver while driving an army truck caused accident to the plaintiff. At the time of accident ***the driver was deputed on duty for checking military personnel on duty for the whole day.***

Baxi Amrik Singh v. Union of India[1972]

- The Court held that the accident was caused in discharge of the sovereign function of the State because ***only military personnel could be deputed to check the military personnel on duty.*** It was for this purpose that the ***army vehicle was placed at the disposal of the person deputed for duty and he himself drove the vehicle to go from place to place.*** Therefore, the Court held that the Union of India was ***not liable***.

Thangarajan Vs. Union of India (1975)

- ***In Thangarajan v. Union of India, an army driver was deputed for collecting C02 gas from the factory and to deliver it to ship, I. N. S. Jamuna. As a result of rash driving he knocked down the appellant, a minor boy aged about 10 years.***

Thangarajan Vs. Union of India (1975)

- ***It was held that the accident was caused to the plaintiff while the driver was driving the lorry for the purpose of supply of C02 Gas to the ship***, I. N. S. Jamuna, ***which was in exercise of sovereign function of the State for military purposes.***
- You may get a doubt here-what about criminal liability

Union of India v. *Sugrabai[1969]*

- In this case, ***one Mr. Abdul Majid was knocked down by a military truck which was engaged in carrying a machine to the School of Artillery***. The machine was sent for repairs to military workshop and after repairs it was being transported to the School of Artillery. ***It was a machine meant for giving training to military officers.*** **The Government Pleader argued that training of army personnel was a sovereign function which in turn required maintenance of machines, and maintenance of machines required that they should be kept in proper condition, and that work of repairing required its transportation from workshop to military school and therefore transporting was a sovereign function.** ***The Court rejected the argument that training of army personnel was a sovereign function***

Satyawati v. Union of India(1967)

- In **Satyawati v. Union of India**, an Air Force ***vehicle was carrying Hockey and Basket Ball teams to Air Force Station to play matches***. While ***carrying the teams to play the matches*** the driver ***caused the fatal accident by negligence.*** The Court held the Union of India liable for damages on *the* ground that ***carrying of the teams to play the matches was not in the exercise of sovereign function***.

Kasturi Lal v. State U. P[1962]

- In this case, the appellant was taken into custody on suspicion of being in possession of stolen property. ***His property including certain quantity of gold and silver was taken out from him and kept in the Malkhana*** till the disposal of the case. The ***gold and silver was misappropriated by a police constable who fled to Pakistan***. After the ***appellant was acquitted, the appellant sued the State of Uttar Pradesh for return of the gold and silver***, and in the alternative claimed damages for loss caused by negligence of the Meerut police. ***The State contended that no liability would accrue for acts committed by a public servant where such acts were related to the exercise of sovereign power of the State.***

Kasturi Lal v. State U. P[1962]

- The Supreme Court held that the State was not liable.
- The State of U.P. was held to be not liable on the grounds that : (i) ***the police officials were acting in discharge of statutory powers***, and (ii) ***the power of the police official in keeping the property in the Police Malkhana was a sovereign power.***

B.K.D. Patel Vs. State of Mysore (1977)

- In this case the stolen ornaments of the appellant were recovered by the police. Again they were stolen from the police custody. After the disposal of the case, the appellant claimed the jewels or its equivalent value. The Magistrate Court, the Sessions Court and the High Court dismissed the claims. However, the Supreme Court held that that the State is liable to pay cash equivalent of the property stolen to the appellant.

Nagendra Rao's case(1994)

The facts of the case were that the appellant was carrying on business in fertiliser and food grains under licenses issued by appropriate authorities. The appellant's premises was visited by the Police Inspector, Vigilance Cell and huge stocks of fertiliser, food grains and even non-essential goods were seized 11-8-75. On the report submitted by the Inspector, the District Revenue Officer (DRO) in exercise of powers under Section 6-A of the Essential Commodities Act, ***directed the Assistant Agricultural Officer (AAO) to dispose of the stock immediately and deposit the sale proceeds in the Treasury.*** The AAO did not take any steps to dispose of the stock, as directed. On 29-6-1976, the proceeding under Section 6-A of the Act were decided in favour of the appellant and ***confiscation order was quashed*** as there was no proof that the appellant was guilty of black-marketing or adulteration.

Nagendra Rao case

Despite Collector's Order the AAO did not release the stock. However, in March, 1977, the AAO informed the appellant to take delivery of the stock. ***But when the appellant went to take the delivery of the stock, he found that the stock had been spoilt both in quality and quantity.*** He then demanded the value of the stock by way of compensation. His demand was rejected. He then filed the suit for recovery of the amount which was contested by the State that it was immune from liability on the ground of doctrine of sovereign immunity. ***The trial court did not accept the defence and held that AAO acted negligently in not disposing of the stock in time and decreed the suit.***

Nagendra Rao & Co. Vs. State of A.P. [(1994)

- 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.
- ***Rejecting the contention of the State, 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.

ONLY FEW FUNCTIONS =EXEMPT

- **In Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as *ADMINISTRATION OF JUSTICE, MAINTENANCE OF LAW AND ORDER & REPRESSION OF CRIME* etc. which are among the primary and inalienable functions of a constitutional government, the State cannot claim any immunity**

Achutrao Haribhau Khodwa v. State of Maharashtra (1996)

- In Achutrao Haribhau Khodwa v. State of Maharashtra,5 the Supreme Court held a doctor guilty of negligence for failure to act with reasonable skill and care as he had left a mop (Towel) inside the body of a woman during the sterilization operation that caused her death.
- Once death by negligence in the hospital is established, as in the case here, the State would be liable to pay the damages.

Achutrao Haribhau Khodwa

- This maternity hospital is attached to the Medical College at Aurangabad and respondent no.2 was working in the department of Obstetrics and Gynecology as a doctor and it is she who attended on Chandrikabai. Respondent no.3 was the Medical Officer of the said hospital while respondent no.4 was the Dean of Medical College, Aurangabad.

Achutrao Haribhau Khodwa v. State of Maharashtra (1996)

- The trial court decided all the issues, except issues 5 and 6, in favour of the appellants and passed a decree for Rs.36,000/- against respondent nos. 1 to 3, but the suit against respondent no.4 was dismissed.
- For the aforesaid reasons, this appeal is allowed, the judgment of the High Court of Bombay under appeal is set aside and the judgment and decree of the trial court is restored. The appellants will also be entitled to costs throughout.

Violation of Legal Right

- Remedy available under private law –Whether the function is a sovereign or a non- sovereign function.
- ***Note:-For violation of legal right there will be no remedy under public law***
- **With regard to liability of State for a sovereign function, there is only one or two decisions like Nagendra Rao . About circumstances like law and order , position still not clear**

State of Orissa v. Padmalochan[1975]

- The facts of the case are that, there was an apprehension of an attack on the office of the S.D.O and its properties by a mob which had resorted to violence there. The Orissa Military Police under the control of supervising officers and a Magistrate, cordoned the areas. ***Some police personnel assaulted members of the mob without order from the Magistrate or any higher police officer, as a result of which the plaintiff was injured.***

State of Orissa v. Padmalochan[1975]

- It was held that the ***posting of police personnel for cordoning in front of the S.D.O.'s office was in exercise of delegated sovereign function.*** The fact that the ***police personnel committed excess in discharge of their function without authority would not take away the illegal act from the purview of the delegated sovereign function.*** Thus, ***the injuries caused to the plaintiff while police personnel were dispersing unlawful crowd were, in exercise of sovereign function of the State.*** The State was held not liable.

M.P. v. Chironji Lal(1981)

- In this case, the police made a ***lathi charge on a student's procession, when the same became unruly.*** The ***loudspeaker set*** belonging to the plaintiff, which was being used by the students in their procession, got damaged.
- In an action by the owner of the loudspeaker against the State to recover compensation for damage to the loudspeaker it was held that ***maintaining law and order is a sovereign function, and the State is not liable for any damage in the exercise of that function***

DEFENCE OF STATE IMMUNITY NOT AVAILABLE WHERE FUNDAMENTAL RIGHTS ARE VIOLATED

- Before 1983, no difference between fundamental rights and ordinary rights

Violation of fundamental Rights & ENFORCEMENT OF PUBLIC DUTIES

If the wrong is done in the **exercise of a sovereign function** or ***a non-sovereign function*** (and if there is violation of a fundamental right) -**both public law remedy as well as private law remedy**

Public law remedy=remedy under ***Constitution (given by*** higher Courts***)[It is purely discretionary]***

Private Law remedy: Remedy under civil law (given by subordinate courts) (Entitled to be claimed as a matter of Right)

Constitutional Tort

- Custody death
- Encounter killing
- Illegal Detention
- Disappearances
- Police Atrocity

Chairman Railway Board v Chandrima Das/2000

Where public functionaries are involved and the matter relates to the violation of FRs or the enforcement of public duties the remedy would be available under the Public Law, notwithstanding that a suit can be filed for damages under Pvt Law.

Rudal Shah Vs. State of Bihar(1983)

- A man called Rudal Shah, in the State of Bihar, was arrested on charge but acquitted by the Sessions Court at Muzaffarpur on 3 June 1968. He was , however, ***released from jail only after more than fourteen years***, i.e., on 16 October 1982. The Supreme Court of India said that under Art. 32 of the Constitution, it was competent to order payment of the compensation to the petitioner for the deprivation of the fundamental right to life and liberty. The Supreme Court directed the Bihar Government to pay compensation of Rs. 30,000/- to Rudal Shah.
- **Before 1983, no difference between fundamental rights and ordinary rights(violation)**

BHIM SINGH V. STATE OF JAMMU &.KASHMIR (1986)

- In ***BHIM SINGH V. STATE OF JAMMU &.KASHMIR***. –an MLA, was arrested and detained by the police without sufficient reason and thereby he was prevented from attending the Session of the Legislative Assembly. ***The State was directed by the Supreme Court to pay Rs. 50,000 as compensation to the petitioner as compensation for the violation of his right of life and liberty as guaranteed by Article 21***

Sebastian M. Hongray Vs. Union of India (1984)

- The Supreme Court by a writ of Habeas Corpus required the Government of India to produce two persons before it. ***These two persons were taken to the military camp by the jawans of the army at Manipur.*** The Government failed to produce them and expressed its inability to do so as these persons had met an unnatural death. The Supreme Court directed the Central Government to ***pay exemplary damages of Rs. 1 lakh each to the wives of those persons.***

People's Union for Democratic Rights Vs. Police Commissioner, Delhi Police Headquarters, [(1989)

- One labourer was taken to the police station for doing some work. When he demanded wages, he was severely beaten and ultimately succumbed to the injuries. It was held that the State was liable to pay Rs. 75,000/- as a compensation to the family of the deceased labourer

SAHELI V. COMMISSIONER OF POLICE

- ***In SAHELI V. COMMISSIONER OF POLICE*** [AIR1990 SC513], a nine year old child was in police custody. He was beaten and tortured by the police. The beating and torture resulted in the death of the child. The Supreme Court directed the government to pay Rs.75,000 as compensation to his mother. ***The significance of this case is that the Delhi Administration was allowed to recover money from those officers who are responsible for this incident.***

In ***NILBATI BEHRA V STATE OF ORISSA*** - [AIR 1993 SC 1960]:

The petitioner's son aged 22 years was arrested by police in connection with investigation of an offence of theft in a village and kept in police custody with his hands tied. On the next day his body was found by the side of the Railway track. The mother of the deceased sent a letter to the Court alleging custodial death of her son. ***The Court treated this letter as a writ petition under Article 32 and awarded Rs.1,50,000 as compensation*** on the ground of violation of Article 21 of the Constitution. The Court said that ***proceeding under Art.32 and Article 226 is a remedy available in Public law for contravention of fundamental rights to which THE PRINCIPLE OF SOVEREIGN IMMUNITY does NOT apply-- EVEN THOUGH IT MAY BE AVAILABLE IN PRIVATE LAW.***

Biranchi Narayan Sahu vs Unknown on 11 April, 2011

- The petitioner being the father of a female student, who was raped and murdered by a teacher in a Government School during school hours within the school premises, has ***FILED THIS WRIT PETITION PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS*** or any other appropriate writ directing opposite party No.1-State of Orissa, represented through the Commissioner-cum-Secretary, School and Mass Education Department, Government of Orissa, Bhubaneswar for payment of compensation of Rs.10,00,000/- to the petitioner.// Paid 4,00,000
- Now-a-days our society experiences that the daughters are more affectionate towards the parents and performing better service in different walks of life.

- This Court (Orissa HC) in the cases of Guri Behera and others vs. Divisional Railway Manager, East Coast Railway, Khurda Road, Jatani and others in W.P.(C) Nos.3214 of 2010, 1455 of 2008 and 1456 of 2008 (disposed of on 10.02.2011), while deciding ***the aforesaid writ petitions filed by the fathers of the deceased children, who died on account of railway accident awarded compensation of Rs.3,50,000/- to each one of the petitioners and Rs.5.00 lakh to the injured claimant*** with interest @ 7% per annum on the compensation amount from the date of claim made with the opposite parties till the date of realization.

State of Rajasthan Vs. Vidyawati(1962)

- In this case, the driver of a jeep owned and maintained by the State of Rajasthan for the official use of a collector of a district, drove it rashly and negligently while bringing it back from workshop after repair and knocked down a pedestrian and fatally injured him. As a result of the injuries, the pedestrian died. The deceased person's wife claimed compensation from the Rajasthan Government. The Court held that the driving of a jeep from workshop after repair was an activity which was ***not connected with the sovereign powers and the State of Rajasthan was liable.***

Shyam Sunder v. State of Rajasthan(1964)

- In **Shyam Sunder v. State of Rajasthan**, a truck belonging to the P.W.D. was engaged in the famine relief work and a person was killed due to the negligence of the driver of the truck. The Supreme Court -***held the famine relief work as non-sovereign function*** and the ***State liable for damages.***

Non-sovereign functions

- Running a railway, functions of postal department and banking activities are all commercial activities.
- Public welfare activities—Social welfare activities like opening, and maintaining irrigation canals, conveying mails from one office to another carrying on famine-relief work, constructing projects, maintaining hospitals and running schools are also the activities which make the government liable in tort.

Non-sovereign functions(DRIVING)

- A military truck carrying milk, coal, food tiffins, vegetables, a machine and crushed barley is not performing a sovereign function so as to attract the rule of immunity from liability. Similarly, driving military officers in a military truck after training back to their barracks, bringing the jawans from station to unit headquarters, driving a motor truck and going to impart training to new recruits, transporting a patient in a fire service ambulance are all non-sovereign functions and the government is liable vicariously for the negligence of its servants.

P. and O. Steam Navigation Co. v . Secretary of State for India(1861)

- ***In this case, the plaintiff's servant was travelling in a horse driven carriage and was passing by the Kidderpore Dockyard in Calcutta, which is the government property. Due to negligence on the part of the defendant's servants, a heavy piece of iron, which they were carrying for the repair of a steamer, fell and its clang frightened the horse. The horse rushed forward against the iron and was injured.***

P. and O. *Steam Navigation Co. v . Secretary of State for India*

- The ***Company filed a suit against the Secretary of State for the damages for injury to its horse caused by the negligence of the servants employed by the Government of India.*** The Court held that the Secretary of State for India was liable for the damages caused by the negligence of Government servants, because ***the negligent act was not done in the exercise of a sovereign function.***
- ***Thus, the Court drew a distinction between acts done in exercise of "sovereign power"*** and acts done in the exercise of *"non- sovereign power"*.

AFSPA 1958/ 38 requests to sanction a prosecution

- But such sanction has never come. Of the 38 requests to sanction a prosecution under AFSPA that the Ministry of Defense received between 1991 and 2015, permission was denied in 30 cases and the decision is pending in eight, Defense Minister Manohar Parrikar informed Parliament recently.

50 requests from the J and K govt

- (Since 2001)On 1 January, 2018 the Ministry, in response to a question raised by Rajya Sabha MP Husain Dalwai, said that it had received 50 requests from the Jammu and Kashmir government seeking permission, or ‘sanction’, to prosecute armed forces personnel.
- In 47 cases, sanction to prosecute was denied. In three cases – one of them dating back to 2006 – sanction is ‘pending’
- “The reason for denial / pendency of prosecution sanction is on account of ***lack of sufficient evidence to establish a prima facie case***,” said Bhamre

NEGLIGENCE//Determination of Liability

- ***Torts=***amount of damages incurred
- Crime= Degree of the Negligence
- ***Crime=***State of Mind/Element/Mode of Committing
- **Tort=Separate or Specific Tort**