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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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DEVELOPMENT OF VICARIOUS LIABILITY IN INDIA: ANALYSING THE CASE OF KASTURI LAL V. STATE OF UTTAR PRADESH

AUTHOR – VEDANSH RAJ, SECOND YEAR LAW STUDENT AT RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB (RGNUL)

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ABSTRACT

This research examines the landmark case of Kasturi Lal Ralia Ram Jain v. The State of Uttar Pradesh, decided on September 29, 1964, by the Supreme Court of India. The case revolves around the negligent handling of confiscated goods by police officers, specifically gold and silver, leading to a claim against the State for compensation. Central to the dispute was the application of sovereign immunity, shielding the State from liability for torts committed by its employees during the exercise of sovereign powers. The Court's decision in this case established significant precedents in defining the scope of governmental liability and the concept of sovereign functions under Indian law.

Keywords: Kasturi Lal Ralia Ram Jain, State of Uttar Pradesh, sovereign immunity, negligent handling, Supreme Court of India, tort liability, sovereign functions

I INTRODUCTION

A. PARTIES INVOLVED

APPELLANT:

- KASTURI LAL RALIA RAM JAIN

RESPONDENT:

- THE STATE OF UTTAR PRADESH

DATE OF JUDGEMENT:

- 29TH SEPTEMBER, 1964.

BENCH:

- GAJENDRAGADKAR, P.B. (CJ);
- WANCHOO, K.N.;
- HIDAYATULLAH, M.;
- DAYAL, RAGHUBAR;
- MUDHOLKAR, J.R.

B. FACTS OF THE CASE

Brief Facts:

Kasturi Lal Ralia Ram Jain, a partner in an Amritsar-based registered business dealing in bullion and other products, arrived in Meerut on September 20, 1947, to sell gold, silver, and other

items at the Meerut market. While travelling through the market with his wares, he was arrested by three police officers and detained. The police apprehended him at the Kotwali police station, confiscated his things, including gold and silver, and held them in police custody. Upon his release, just the silver was returned to him, leaving the gold unfound. As a result, Kasturi Lal launched a lawsuit against the State of Uttar Pradesh, seeking the recovery of his gold or its monetary worth.

Facts in Detail:

- Kasturi Lal Ralia Ram Jain was a partner in the appellant's company that sold jewels in Amritsar. Kasturi Lal Ralia Ram Jain arrived in Meerut with plans to trade gold and silver.
- He was arrested by three police officers on suspicion of possessing stolen stuff.
- Property taken from him included gold weighing 103 tolas, 6 mashas, and 1 ratti, as well as silver worth 2 maunds and 6 1/2 seers, which were stored in a police station.

4. A few days later, on September 21, 1947, Kasturi Lal was freed on bail, and after some time, only the silver that had been taken by police personnel which was stored in the maalkhana was given to him, not the gold.
5. Ralia Ram then made numerous requests and demands for the return of the wealth that had been confiscated from him, but he was unable to obtain the gold from the police officials.
6. After failing to recover the gold, he filed a lawsuit against the respondent and requested that the things confiscated from him
 - Must be returned to him or replaced.
 - It's worth should be directed to be paid to him at interest.
7. He submitted a claim for Rs. 11,075-10-0 as the price of gold and Rs.335 as interest for damages and future interest.
8. The respondent denied the claim, claiming that they were not obligated to return the gold or pay the value of the gold with interest.
9. Respondent alleged that on October 17, 1947, Mohammad Aamir, the chief constable of the malkhana over which he was in charge, departed to Pakistan with gold and other monies that he had stolen.
10. Police attempted to take action against Mohammed Amir, but despite their best efforts, nothing substantial was accomplished. Hence, the respondent maintained that they couldn't be found guilty.

II ISSUE INVOLVED

A. LEGAL ISSUE

- 1) Were the police personnel in question negligent in terms of properly caring for the gold confiscated from Ralia Ram?
- 2) Was the respondent responsible for compensating the applicant for the

damage caused by the carelessness of state-employed public servants?

- 3) Can the tort of carelessness committed by a public worker while performing his statutory role be classified as sovereign powers and held liable?

III LEGAL PERSPECTIVE

A. VICARIOUS LIABILITY

Background:

Prior to the implementation of the Constitution, the Government's absolute immunity was not accepted in the Indian legal system, and in a number of cases, the Government was found accountable for tortious conduct of its workers.

Law of Tort in India:

Tort has existed in India since before independence. India typically follows the UK method, although certain variances may reflect judicial intervention, sparking controversy. Tort law in India, like its common law equivalents, is derived from both legislation and common law. However, tort law itself has not been codified.

Vicarious Liability:

Under the common law doctrine of agency, respondent superior refers to the responsibility of a superior for the actions of a subordinate or any third party with the "right, ability, or duty to control" the violator's activities. Respondent Superior meaning, "Let the master answer." In some situations, a master can be held liable for their servant's wrongdoing, whereas a principal can be held accountable for their agent's. This idea holds the master liable for a servant's lack of care towards persons to whom they owe a duty of care, as long as the failure occurs during their employment.

The doctrine only applies if there was a master-servant relationship between the defendant and the offender at the time of the harm, namely in the transaction that caused it. The respondent superior theory holds employers vicariously accountable for their workers' negligent acts or omissions during employment

(also known as the "scope of employment"). To be regarded within the course of employment, an act must be authorised or related to an authorised act, even if it is an incorrect style of performance.

Until recent cases, Salmond's Law of Torts stated that a wrongful act is considered in the course of employment if it is either

- (1) authorised by the master or;
- (2) an unauthorised mode of doing an authorised act.

The Latin legal expression "*qui facit per alium facit per se*" translates to "He who acts through another does the act himself." It is a key principle of the law of agency. This aphorism is commonly used when addressing an employer's culpability for employee actions.

B. DEVELOPMENT OF VICARIOUS LIABILITY OF STATE IN INDIA

Following the Indian Rebellion of 1857, the British Crown assumed direct control of India by the **Government of India Act of 1858**, ushering in the new British Raj. **Section 65** of this Act, which is the source of the law relating to the Government's liability, states that "*all persons and bodies politic shall and may have and take the same suits, remedies, and proceedings, legal and equitable, against the Secretary of State for India as they could have done against the said Company.*"⁷¹⁷ The Crown could not be held liable in tort for conduct committed by its employees while on the job. However, it was not acknowledged in this nation even under the authority of the East India Company. The East India Company, which first arrived to India for trading, eventually ruled over large parts of the nation and subjugated others. It was a Crown-appointed delegation rather than a sovereign body. British Parliament introduced measures to gradually constrain its powers and political authority. In the absence of statutory rules, the Government's vicarious responsibility is determined by the amount and exercise of authority by its head.

⁷¹⁷ S 65 of the Government of India Act, 1858.

During the pre-independence period, the scope of the state's tortious liability and immunities was disputed before existing courts. "The culpability of the State was determined by the nature of the conduct and the category of power in which it was placed, namely sovereign or non-sovereign authority of the State. Sovereign powers of the state were never defined, and because there was no clear distinction between sovereign and non-sovereign powers of the state, courts of law had difficulty settling conflicts.

In matters of State responsibility, the State's argument used to be that the alleged activities were within the scope of its sovereign powers and hence not accountable. The Government of India Acts and **Article 300(1)⁷¹⁸ of the Indian Constitution** continue these provisions, allowing the Union of India to sue or be sued, and a State's Government to sue or be sued under its own name.

The Constitution allows the Government of India or a State to sue or be sued in the same way that the Dominion of India, Provinces, or Indian States would have done if the Constitution had not been enacted. However, this rule is subject to any provisions made by an Act of Parliament or the Legislature of the relevant State.

Prior to the constitution, various measures such as the *Government of India Act of 1833, 1915, and 1935* addressed the government's obligation. Despite the passage of more than 50 years after the Constitution's inception, Parliament has yet to enact the law outlined in article 300, leading to misunderstanding.

The Supreme Court's inconsistent decisions have not helped clear up misunderstanding on the matter, as seen by the following.⁷¹⁹

C. WHAT ARE SOVEREIGN FUNCTIONS AND NON-SOVEREIGN FUNCTIONS?

A sovereign function is one that is only done by the government under the state's sovereign powers, or those authorised by law. Examples

⁷¹⁸ Article 300(1) of the Indian Constitution 1950.

⁷¹⁹ Ratanlal and Dhirajlal, Law Of Torts, 27th Edition.

include Army functions and police capabilities under the Police Act. Non-sovereign functions include those conducted by private enterprises as well.

D. SOVEREIGN IMMUNITY

Sovereign immunity, sometimes known as royal immunity, protects the sovereign or state from legal action, including civil and criminal proceedings. In constitutional monarchies, the courts are established by the king, who holds historical power. The courts were established to defend the sovereign's subjects and did not have the authority to bind the royal.

Sovereign immunity principles ban lawsuits against un-consenting sovereigns, including states, tribes, foreign nations, and the federal government, for monetary damages. When suits fall outside of this structure, courts frequently struggle to determine how far the doctrine should apply. Sovereign immunity, based on the ancient belief that the **"king can do no wrong,"** protects states from the jurisdiction of other nations' courts. This idea is recognised by almost all governments worldwide. The state is immune from lawsuits when exercising sovereign tasks.

E. PRECEDENTS

In India, the **doctrine of Sovereign Immunity** originated with the decision of *Peacock C.J. in Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*⁷²⁰. The case used the terms "Sovereign" and "Non-sovereign" to determine the East India Company's liability for torts committed by its servants. The Government of India Act, 1858 was first interpreted by the Calcutta Supreme Court. C.J. Peacock classified the East India Company's activities as "sovereign" or "non-sovereign" to determine vicarious responsibility.

The plaintiff company's servant was driving a carriage with two horses on a roadway. A horse in the plaintiff's carriage was wounded due to

carelessness on the part of government employees. The East India Company was held accountable for an accident caused by its servants' carelessness in non-sovereign activities, resulting in liability for the state secretary. The East India Company was not a sovereign and could not claim all the exemptions of a sovereign. They were also not public servants and thus did not fall under the principle of liability for such persons. However, as a company with delegated sovereign powers, the state was held liable.

In the case of **Hari Bhan Ji v. Secretary of State**⁷²¹, the Madras High Court ruled that the immunity of the East India Company only applied to "acts of state," and that the distinction between sovereign and non-sovereign functions was not well-founded. This decision sparked two opposing views in the courts. The cases do not clearly distinguish between sovereign and non-sovereign functions.

The **State of Rajasthan v. Vidyawati**⁷²² case was the first important case brought before the Supreme Court to determine the government's culpability for employee torts after the Constitution was enacted. The court rejected the State's immunity and ruled it accountable for the driver's tortious behaviour, just like any other employer. Distinguishing between sovereign and non-sovereign acts can be challenging for courts to apply in practice.

The court ruled that the judgement in Vidyawati's case did not constitute transfer of governmental powers by the state. In *Kasturilal's* case, the ability to arrest, search, and seize falls within Sovereign powers. Finally, the court stated that the legislation in this area is unacceptable, and the legislature must take action to correct the situation. The court in the above case stated that it was a non-sovereign function. With a Republican form of government established by our constitution, there is no

⁷²⁰ *Peninsular & Oriental Steam Navigation Company v Secretary* (1861) 5 Bom HCR App I p.1.

⁷²¹ *Secretary of State v. Hari Bhanji ILR* (1882) 5 Madras 273.

⁷²² *State of Rajasthan Vs. Vidyawati*, AIR 1962 SC 933.

justification for the State to not be held liable for the tortious act of its servant.

IV CONTENTIONS RAISED

A. ARGUMENTS FROM THE APPELLANT SIDE

The plaintiff argued that the State of Uttar Pradesh should compensate M/s. Kasturi Lal Ralia Ram Jain for the injury caused by police personnel' carelessness.

B. ARGUMENTS FROM THE RESPONDENT SIDE

The respondent maintained that the matter was about property abuse, not carelessness. The reply argued that even if the police officer's carelessness was shown, the State would not be held accountable for any crimes committed by its employees.

V JUDGEMENT

The Supreme Court held in *Kasturi Lal Ralia Ram Jain v. The State of Uttar Pradesh* that police personnel who handled goods obtained from Ralia Ram were deemed to be irresponsible, although acting within their official authority. They exercised their lawful sovereign rights, including the authority to arrest, search, and take property. The officials were plainly employed by the government, but their status was unique due to the nature of sovereignty.

In this instance, a government employee did the conduct that resulted in the claim for damages while on the job. However, their job involved exercising sovereign authorities. This distinction is critical because actions taken by sovereign authority are immune from claims for damages.

This legal position is based on Chief Justice Peacock's 1861 ruling, which established that claims against the government cannot be sustained in such situations. As a result, based on this understanding and history, the current claim for damages cannot be upheld, because the police officers' acts, however irresponsible, were carried out as part of their profession, using sovereign rights granted by legislation.

VI CRITICAL ANALYSIS

In *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, the Supreme Court addressed the issue of the State's culpability. The arguments presented in this case were: *(i) whether the police officers were negligent in their handling of the gold confiscated from Kasturi Lal, and (ii) whether the state was obligated to pay Kasturi Lal for the damage caused by the state's employee.*

Gajendragadkar C.J. upheld the State of U.P.'s immunity defence and stated that police personnel acted negligently while handling confiscated goods under their statutory authority. The authority to arrest and take is bestowed by legislation and can be considered sovereign. Therefore, the claim cannot be supported. In this decision, the Supreme Court applied the ruling established in the *P.S.O. Steam Navigation* case, distinguishing between sovereign and non-sovereign activities of the state, and determined that misuse of police authority is a sovereign act, hence the state is not accountable. Vidyawati's lawsuit was limited to tortious responsibility resulting from the exercise of sovereign authority.

The Supreme Court's ruling in *Kasturilal's* case has received criticism from renowned constitutional authorities. The article overlooks the current development of legislation, including the elimination of State immunity in its original country. Although the Supreme Court's ruling in this case has yet to be reversed, subsequent decisions have significantly reduced its power and are rarely invoked as a precedent.

In subsequent years, courts liberally interpreted the State's immunity and deemed some duties non-Sovereign. To protect individuals' personal liberties against abuses of governmental authority, the Supreme Court established a new remedy of granting damages through writ petitions under *Articles 32⁷²³ and 226⁷²⁴ of the Indian Constitution*. In **Rudul Sah v. State of**

⁷²³ Article 32 of the Indian Constitution 1950.

⁷²⁴ Article 226 of the Indian Constitution 1950.

Bihar⁷²⁵, the Supreme Court granted damages in the writ suit, marking a first.

In **Bhim Singh v. State of Rajasthan**⁷²⁶, the concept established in Rudal Shah was expanded to address situations of wrongful incarceration. The Supreme Court granted Rs. 50,000 as compensation for illegal arrest and imprisonment in a suit under Article 32.

The case of **State of A.P. v. Challa Ramakrishna Reddy**⁷²⁷ demonstrates that the divide between sovereign and non-sovereign authorities is no longer relevant. The Supreme Court declared that the notion of sovereign immunity is no longer valid. The A. P. High Court dismissed the claim of sovereign immunity to compensate for a breach of basic rights under **article 21**⁷²⁸. The court ruled that immunity for sovereign functions, as defined in paragraph 1 of article 300, cannot be considered an exemption to article 21.

Article 300⁷²⁹ includes provisions for government accountability for employee torts and state immunity for sovereign tasks. However, the scope of the government's obligation under that clause remained unclear. The question is whether sovereign immunity may be claimed while violating statutory rights. Overruling the Kasturi Lal case requires a Constitutional bench of seven or more justices. As a result, the scope of government culpability in torts has expanded.

The Supreme Court emphatically reinforced the legal position of state culpability in **N. Nagendra Rao & Co. v. State of Andhra Pradesh**⁷³⁰. In this instance, the appellant was in the fertiliser industry when the police confiscated the products; nevertheless, they were not released for a long time and the commodities were spoiled. The court ruled that the state was not responsible for the degradation of the confiscated assets, as it was the obligation of

the police to maintain them properly. It also said that there is no distinction between sovereign and non-sovereign duties in the current setting.

This case differed from Kasturi Lal in terms of the facts and circumstances surrounding the exercise of sovereign powers. It is important to highlight that the state cannot claim immunity simply by claiming that the tort was committed by its employees while performing their statutory duties. Statutory functions relate to government activities that entail the exercise of sovereign power, allowing the state to claim immunity. This was clearly shown in Kasturilal's case.

In the Nagendra Rao case, it was proven that the authority was not performing a sovereign role. As a result, the Kasturi Lal case cannot be used as a precedent in this case. In subsequent instances, the courts maintained the approach of restricting the extent of sovereign immunity rather than attempting to overturn Kasturi Lal. The Apex Court's judgements have established standards to distinguish between sovereign and non-sovereign functions.

Due to the lack of a clear definition of "sovereign functions," it is necessary to interpret the phrase in accordance with other laws. The definition of "sovereign function" has been debated, with several explanations proposed.

VII CONCLUSION

Sovereign immunity is a common-law theory that arose in court rulings. Historically, the doctrine of sovereign immunity has been justified on the grounds that the King could do no wrong, diverting funds for other governmental purposes could bankrupt the State and hinder its growth, the State could perform its duties more efficiently and effectively without the threat of tort liability, and it was preferable for an individual to suffer than for society to be inconvenienced.

The original grounds for sovereign immunity are no longer applicable in today's society.

⁷²⁵ Rudul Sah v. State of Bihar, (1983) 4 SCC 141

⁷²⁶ Bhim Singh Kavia v. State of Rajasthan, 2023 SCC OnLine Raj 48.

⁷²⁷ State of A.P. v. Challa Ramakrishna Reddy, (2000) 5 SCC 712.

⁷²⁸ Article 21 of the Indian Constitution 1950.

⁷²⁹ Article 300 of the Indian Constitution 1950.

⁷³⁰ N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205.

Sovereign immunity from tort responsibility. It perpetuates injustice by preventing recovery for tortious conduct based only on the wrongdoer's position. Sovereign immunity defies the fundamental principle of tort law, which states that culpability follows carelessness and that persons and companies are liable for the negligence of their agents and employees acting in the course of employment. To determine that the State's sovereign immunity for tort responsibility is outmoded and no longer necessary.

The State's sovereign immunity from tort responsibility should be repealed prospectively, allowing the Legislature to plan ahead of time by obtaining liability insurance or setting up self-insurance funds. Thus, a **"fundamental right to compensation"** for criminal acts committed by state officials has evolved. This judicial innovation should be expanded to include additional areas where citizens want to enforce their rights.

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