DOCTRINE OF SOVEREIGN IMMUNITY

-APPLICABILITY TO CLAIMS UNDER THE MOTOR VEHICLE ACT

The Old and archaic concept of Sovereign immunity that "King can do no wrong" still haunts us, where the state claim immunity for its tortious acts and denies compensation to the aggrieved party.

The doctrine of sovereign immunity is based on the Common Law principle borrowed from the British Jurisprudence that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and as such cannot be responsible for the negligence or misconduct of his servants. Another aspect of this doctrine was that it was an attribute of sovereignty that a State cannot be sued in its own courts without its consent.

The point as to how far the State was liable in tort first directly arose in **P. & O. Steam Navigation Co. Vs. Secretary of State.** The facts of the case were that a servant of the plaintiff's company was proceeding on a highway in Calcutta, driving a carriage which was drawn by a pair of horses belonging to the plaintiff. He met with an accident, caused by negligence of the servants of the Government. For the loss cased by the accident, the plaintiff claimed damages against the Secretary of State for India. Sir Barnes Peacock C. J. (of the Supreme Court) observed that the doctrine that the "King can done wrong", had not application to the East India Company. The company would have been liable in such cases and the Secretary of State was thereafter also liable. The Court also drew the distinction between sovereign and non-sovereign functions, i.e. if a tort were committed by a public servant in the discharge of sovereign functions, no action would lie against the Government – e.g. if the tort was committed while carrying on hostilities or seizing enemy property as prize. The liability could arise only in case of "non-sovereign functions" i.e. acts done in the conduct of undertakings which might be carried on by private person-individuals without having such power.

The aforesaid judgment laid down that the East India Company had a two fold character:

(a) As a sovereign power and

(b) As a trading company.

The liability of the company could only extend to in respect of its commercial dealings and not to the acts done by it in exercise of delegated sovereign power. As the damage was done to the plaintiff in the exercise of non-sovereign function, i.e. the maintenance of Dockyard which could be done by any private party without any delegation of sovereign power and hence the government cannot escape liability and was held liable for the torts committed by its employees.

Distinction between Sovereign and Non-sovereign functions followed in subsequent cases:

The aforesaid case was of pre-constitution era, making the distinction between sovereign and non-sovereign function of state and holding the state liable in case of non-sovereign functions was followed by the Hon'ble Apex Court in its subsequent judgments. The point as to how far the state was liable in tort first directly arose after independence before the Hon'ble Supreme Court in **State of Rajasthan v. Mst. Vidyawati, AIR 1962 SC 933.** In that case, the claim for damages was made by the dependants of a person who died in an accident caused by the negligence of the driver of a jeep maintained by the Government for official use of the Collector of Udaipur while it was being brought back from the workshop after repairs. The Rajasthan High Court took the view-that the State was liable, for the State is in no better position in so far as it supplies cars and keeps drivers for its Civil Service. In the said case the Hon'ble Supreme Court has held as under:

"*Act done in the course of employment but not in connection with sovereign powers of the State, State like any other employer is vicariously liable*."

In the aforesaid case, the Hon'ble Apex Court while approving the distinction made in Steam Navigation Co.'s case between the sovereign and non-sovereign function observed that the immunity of crown in the United Kingdom was based on the old feudalistic notions of Justice, namely, that the King was incapable of doing a wrong. The said common law immunity never operated in India.

Another case in which the principle laid down in Steam Navigation case was followed was **Kasturi Lal Ralia Ram Vs. State of UP AIR1965SC1039.** In this case partner of Kasturilal Ralia Ram Jain, a firm of jewellers of Amritsar, had gone to Meerut for selling gold and silver, but was taken into custody by the police of the suspicion of possessing stolen property. He was released the next day, but the property which was recovered from his possession could not be returned to him in its entirety inasmuch as the silver was returned but the gold could not be returned as the Head Constable in charge of the Malkhana misappropriated it and fled to Pakistan. The firm filed a suit against the State of U. P. for the return of the ornaments and in the alternative for compensation. It was held by the Apex Court that the claim against the state could not be sustained despite the fact that the negligent act was committed by the employees during the course of their employment because the employment was of a category which could claim the special characteristic of a sovereign power. The court held that the tortious act of the police officers was committed by them in discharge of sovereign powers and the state was therefore not liable for the damages caused to the appellant.

Initially aforesaid principles laid down by Apex Court were followed in MV Act cases also:

How far sovereign immunity is available in motor accident cases has however, been the subject-matter of consideration in a large number of cases of various High Courts as well as of the Supreme Court. It would be interesting to note that the aforesaid distinction of the sovereign & non-sovereign functions of state and denying the compensation in case of sovereign functions were extended to Motor Vehicle Accident cases also. The cases were mostly those involving

government vehicles, mainly Military Vehicles or paramilitary force vehicles. The trend of the judgments revealed that the court basically examined the question whether the military vehicle was engaged in the act which can alternatively be exercised by the private parties or the act is of purely sovereign nature, like act of war, movement of troops and armaments which cannot be delegated to the private parties. Let us now notice the relevant case laws on the subject:

In **Satyawati v. Union of India, (AIR1957Delhi98)** an Air Force vehicle was carrying hockey team of Indian Air Force Station to play a match. After the match was over, the driver was going to park the vehicle when he caused the fatal accident by his negligence. It was argued that it was one of the functions of the Union of lndia to keep the army in proper shape and tune and that hockey team was carried by the vehicle for the physical exercise of the Air Force personnel and therefore the Government was not liable. The Court rejected this argument and held that the carrying of hockey team to play a match could by no process of extension be termed as exercise of sovereign power and the Union of lndia was therefore liable for damages caused to the plaintiff.

In **Union of India v. Smt. Jasso, AIR 1962 Punj 315 (FB)** a military driver while transporting coal to general head-quarters in Simla in discharge of his duties committed an accident. It was held that the mere fact that the truck happened to be an army truck and the driver was a military employee cannot make any difference to the liability of the Government for damages for the tortious acts of the driver as such things could be obviously done by a private person also.
In Union of India v. Sugrabai , (AIR 1969 Bom 13) The Bombay High Court overruled the plea of sovereign immunity when a military driver driving a motor truck carrying a Records Sound Ranging machine from military workshop to military school of artillery killed a cyclist on the road. It was held that the driver was not acting in exercise of sovereign powers. The Bombay High Court observed in following words:

"*Sovereign powers are vested in the State in order that it may discharge its sovereign functions. For the discharge of that function one of the sovereign powers vested in the State is to maintain an army. Training of army personnel can be regarded as a part of the exercise of that sovereign power. The State would clearly not be liable for a tort committed by an army officer in the exercise of that sovereign power. But it cannot be said that every act which is necessary for the discharge of a sovereign function and which is undertaken by the State involves an exercise of sovereign power. Many of these acts do not require to be carried out by the State through its servants. In deciding whether a particular act was done by a Government servant in discharge of a sovereign power delegated to him, the proper test is whether it was necessary for the State for the proper discharge of its sovereign function to have the act done through its own employee rather than through a private agency*."

In **Baxi Amrik Singh v. Union of India, (1972 Punj LR 1)** The truck was part of an Army Division which had moved to the Front during the 1971-Indo-Pak War. It was during the movement of this Division back to its permanent location after the war, that the accident took place. The truck was at that time carrying Jawans and rations. It was held by P&H High Court that the accident occurred during the exercise of sovereign functions of the State and consequently the

Union of India could not be held liable for the tort committed by its servant-the driver of the military truck.

In **Thangarajan v. Union of India, (AIR1975Mad. 32)** an army driver was deputed for collecting CO_2 gas from the factory and to deliver it to a naval ship. As a result of rash driving he knocked down the appellant, a minor boy aged about 10 years. It was held that the accident was caused to the plaintiff while the driver was driving the lorry for the purpose of supply of CO, to the ship, I.N.S. Jamuna, which was in exercise of sovereign function of the State for maintaining military purposes. However, in view of the peculiar circumstances of the case, the Court strongly recommended to the Central Government to make an ex-gratia payment of Rs. 10,000 to the appellant. The Court said, "It is cruel to tell the injured boy who has suffered grievous injuries and was in hospital for over 6 months incurring considerable expenditure and has been permanently incapacitated that he is not entitled to any relief as he had the privilege of being knocked down by a lorry which was driven in exercise of sovereign functions of the state".

In **Mrs. Pushpa v. State of Jammu & Kashmir, 1977 ACJ 375,** a truck under the use of the army knocked down a cyclist causing his death. At that time the truck was loaded with crushed barley for being used as a feed for the mules. It was held that the truck could not be said to be engaged in the performance of the act of sovereign function.

In **Fatima Begum v. State of Jammu & Kashmir, 1976ACJ 194,** the same High Court rejected the defence plea of sovereign immunity when a truck belonging to the Government Transport Undertaking had knocked down a cyclist while it was engaged in transporting police personnel from the place of duty to their barracks.

In **Union of India v. Miss Savita Sharma, 1979 ACJ** 1 a military truck had dashed against a tempo from behind while it was carrying Jawans from the railway station to unit headquarters. The above High Court again rejected the defence on the ground that the act of carrying Jawans could not be said to be in exercise of any sovereign function as that act could be performed by any individual.

In **Iqbal Kaur v. Chief of Army Staff, AIR 1978 Ail 417,** an accident occurred due to the negligent driving by a Sepoy of a Government truck while he was going for imparting training in motor driving to new recruits. It was held that this would not constitute an act in exercise of sovereign power, and the driver and the Union of India both were liable for damages.

In **Union of India v. Kumari Neelam, AIR 1980 NOC 60 (MP)** A military vehicle while bringing vegetables from the Supply Department for prisoners of war knocked down a girl on the road. It was held that no immunity was available for the accident as the activity was not a sovereign act.

In **Union of India v. Hardeo Dutta Tirtharam, AIR 1986 Bom 350**, A driver of a military truck while collecting tents from outdoor training place and bringing them to the regiment knocked down a Subedar. The High Court took the view that since the particular duty the driver was

carrying out in the military area could have very well been carried out by any other private truck, sovereign immunity could not be claimed.

The aforesaid judicial pronouncement clearly laid down the earlier approach of judiciary as revealed from various judicial pronouncements was to make distinction between sovereign and non-sovereign functions and exempting the government from tortuous liability in case the activity involved was a sovereign activity. Later on, there has been significant change in the judicial attitude with respect to "Sovereign and Non-Sovereign dichotomy" as revealed from various judicial pronouncements where the courts, although have maintained the distinction between sovereign and non-sovereign functions yet in practice have transformed their attitude holding most of the functions of the government as non-sovereign. Consequently, there has been an expansion in the area of governmental liability in torts. The same was true with respect to motor vehicle accident cases also.

The Doctrine of Sovereign Immunity is not applicable to MV Act-Apex Court

The Apex Court Judgment of **Pushpa Thakur v. Union, 1984 ACJ 559** has settled the dichotomy between sovereign and non-sovereign functions and settled once for all in clear terms that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned. In this case the Hon'ble Apex Court reversing a decision of the Punjab & Haryana High Court (1984 ACJ 401) which in its turn placed reliance on a Full Bench decision of that very Court in **Baxi Amrik Singh v. Union of India (1973) PLR Vol. 75 p.1: 1974 ACJ 105** (already stated supra) held that where the accident was caused by negligence of the driver of military truck the principle of sovereign immunity was not available to the State.

The decision of Pushpa Thakur has been followed in subsequent cases:

Usha Aggarwal and Ors. Vs. Union of India & Ors. cited as AIR 1982 PH 279: In this case the appellant's husband Sushil Kumar Aggarwal died as a result of the injuries he sustained when the motor-cycle, he was travelling on met with an accident with the ITBP truck which had been deputed to fetch arms from the Railway Station at Ambala and was returning with these arms when the accident occurred. The Tribunal vide its order declined compensation to the claimants on the ground that the offending Indo-Tibetan Border Police truck DHL-79 was engaged in the performance of the sovereign functions of the State when the accident occurred. The appellant appealed in the P&H High Court. The Hon'ble P& H High Court followed the decision of SC in Pushpa Thakur and rejected the contention of Mr. H. S. Brar, appearing for the Union of India in that case who attempted to press in the judgment of the Full Bench in **Bakshi Amrit Singh v. Union of India 1974 Acc CJ 105** in the following words:

"*This is, however, of no avail here as the judgment of this Court in Pushpa Thakur's case (supra), which the Supreme Court, upset, was based upon this very authority*."

The Hon'ble High Court further observed that: "*….it does not behave the State to seek cover under the plea of sovereign immunity merely to avoid liability for the consequences of the*

negligence of its servants. Such a plea is wholly out of place in a welfare State, in a case like the present where instead of providing for the needy, left so by the acts of its servants in the course of their employment, the attempt is to look for immunity founded upon the dubious privilege of the injured or the deceased, as the case may be, being run over by a vehicle engaged in the discharge of the sovereign functions of the State."

In the said case, the Hon'ble High Court differed from Tribunal ruling in the following words:

"*The Tribunal was also in error in absolving the truck-driver from liability on the ground that he too was engaged in the performance of a sovereign function at the time of the accident. The plea of sovereign immunity, when available, cannot absolve the actual wrong-doer. It can ensure only for the benefit of the State where it is sought to be held vicariously liable for the acts of its servants, acting in the course of their employment. In other words, if an accident is caused by rash and negligent driving, the driver of the offending vehicle would undoubtedly be liable, whether or not the claim of the State, his employer, for immunity from liability on the ground that the accident had occurred in the discharge of the sovereign functions of the State, is sustained. This being the settled position in law, it was clearly incumbent upon the Tribunal to have dealt with and returned a finding on the issue of negligence*."

- **Gurbachan Kaur Vs. Union of India, (2002 ACJ 666):** In this case, the Hon'ble Punjab & Haryana High Court held as under:

  "The plea that the driver was on sovereign duty is not open to the Govt. vis-a-vis its citizens especially in a welfare State."

- **N. Nagendra Rao & Co. v. State of A.P. reported as AIR 1994 SC-2663:** The Hon'ble Supreme Court in this very judgment in para 13 in very positive words while noting that the field of operation of the principle of sovereign immunity has been substantially whittled down by the subsequent decisions of the apex court has taken note of the decision of Supreme Court in Pushpa Thakur case supra and observed as under:

  "In Pushpa Thakur v. Union of India and Anr. (1984) ACJ SC 559, this Court while reversing a decision of the Punjab & Haryana High Court (1984 ACJ 401) which in its turn placed reliance on a Full Bench decision of that very Court in Baxi Amrik Singh v. Union of India (1973) PLR Vol. 75 p.1 : 1974 ACJ 105 held that where the accident was caused by negligence of the driver of military truck the principle of sovereign immunity was not available to the State."

- **State of Rajasthan Vs. Smt. Shekhu and ors, 2006 ACJ 1644** has categorically ruled out the application of doctrine of sovereign immunity to the Motor Vehicle Act and held as under:

  "…. after the amending Act 100 of 1956, by which section 110A of the Motor Vehicles Act, 1939, was inserted, the distinction of sovereign and non-sovereign acts of the State no longer existed as all owners of vehicles were brought within the scope of that section. Sec.

166 of the new Act of 1988 reproduces Sec. 110A of the old Act. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer res integra."

- **Union of India Vs. Rasmuni Devi and Ors. (2008 (2) JKJ 249:** In this case decided by the Hon'ble Jammu and Kashmir High Court, the fact was that a military truck collided with BSF vehicles and caused injuries to the standing constables of the BSF who later on succumbed to the injury. The Hon'ble J&K High Court in this case did not consider the issue of sovereign immunity and awarded the compensation.

No application of Sovereign Immunity to negligence causing threat/deprivation to life under Article 21 of the Constitution:

Without prejudice to the aforesaid judicial pronouncements, even otherwise the concept of immunity in respect of sovereign functions has no application where the fundamental right to life as guaranteed by Article 21 of the Constitution of India has been transgressed as held in the judgment of the High Court of Andhra Pradesh in **Challa Ramkonda Reddy Vs. State of AP, (AIR 1989 AP 235),** which has been subsequently approved by the Supreme Court in. **State of A.P. v. Chella Ramakrishna Reddy (AIR 2000 SC 2083).** From the said judgments, the following points emerge:

- The sovereign immunity is not applicable to the cases in public domain i.e. in cases of writ petitions under Article 32 & 226 of Constitution of India. The principle is equally applicable to private law domain, i.e. claim of damages under tort law, where the right to life as guaranteed by Article 21 Constitution of India is violated, as the said right is sacrosanct, inalienable, and indefeasible.

- Though the principle of Kasturi Lal Case (AIR1965SC1039) is not applicable where the right to life as guaranteed by Article 21 is transgressed. In such cases, damages have to be awarded for the tortuous acts of government servant depriving the person of his life and liberty except in accordance with the procedure established by law.

- The Negligent act causing the deprivation of life and property of a person is to be held as violative of Fundamental right to life as guaranteed under Article 21 of the Constitution of India.

- Last but not the least, the Hon'ble Supreme Court has also concluded in the following words.

"….. the law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State, which must fail."

Principle of Sovereign Immunity has been ignored in other cases:

There are catena of judicial pronouncements in which the judiciary has ignored the principle of sovereign immunity and also differed from the ruling laid down in Kasturi Ram Case (supra) and held the government liable for the tortuous acts committed by its servant. The various cases are as follows:-

Saheli, a Women's Resources Centre v. Commissioner of Police, Delhi, AIR 1990 (SC) 513: The state was held to be liable for the tortuous acts of its employees when a 9 year boy had died due to the beating by the police officer acting in excess of power vested in him. The court directed the Government to pay Rs. 75000/- as compensation to the mother of the child.

Common Cause, A Registered Society v. Union of India and Ors. (AIR 1999 SC 2979): In this case the entire history relating to the institution of suits by or against the State or, to be precise, against Government of India, beginning from the time of East India Company right up to the stage of Constitution, was considered and the theory of immunity was rejected. In this process of judicial advancement, Kasturi Lal's case (supra) has paled into insignificance and is no longer of any binding value.

Shyam Sunder and Ors. v. State of Rajasthan (AIR 1974 SC 890): Where the question of sovereign immunity was raised and reliance was placed on the ratio laid down in Kasturi Lal's case (supra), this Court after considering the principle of sovereign immunity as understood in English and even applied in America observed that there was no 'logical or practical' ground for exempting the sovereign from the suit for damages.

Last but not the least it would be interesting to note that in Australia also this doctrine of sovereign immunity has been ignored as can be seen from the decision in **Parker v. The Commonwealth of Australia, 112 CLR 295 (Aus)** where two ships of the Royal Australian Navy, viz. Melbourne and Voyager, came into collision on the highseas about 20 miles off the Australian cost. Melbourne struck the Voyager and she sank along with some men therein resulting in the death of one Parker. His widow brought an action against the Commonwealth for damages on the basis that her husband's death was caused by the negligence of the officers and crew of the ships of the Commonwealth. The deceased Parker was a civilian employed by the Navy Department in a technical capacity. In those facts and circumstances Windeyer, J., of the High Court of Australia held that the Commonwealth was liable in tort for damages and that the widow of Parker could bring in the suit for damages for the negligent acts or omission of the members of the Royal Australian Navy

The plea of defense based on the old and archaic concept of sovereignty immunity as borrowed from British jurisprudence prevalent during colonial rule is based on old feudalistic notions of justice namely the "King can do no wrong". This common law immunity do not exist in the realm of welfare state and is against the modern jurisprudence where the distinction between sovereign or non-sovereign power does not exist and the state like any ordinary citizen is liable for the acts done by its employees as has been ruled by the Hon'ble Apex Court and various High Courts in its various judicial pronouncements. Moreover as, the said doctrine should not be applicable to the motor accidents claim under the Motor Vehicles Act, 1988 which is a

beneficial legislation. Thus, from the above aforesaid judicial pronouncements of Hon'ble Apex Court followed by various High Court decisions as stated supra, it is established that the sovereign immunity to claims under the Motor Vehicle Act, is no longer res integra.

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