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# Critical Analysis of State Liability apropos Sovereign and Non-Sovereign Functions

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## ABSTRACT

*A tort is a breach of duty amounting to a civil wrong. It arises from a person's obligation to others constituted by the law. The Constitution of India lays down that the State can sue or be sued. The Vicarious liability concept is derived from the law of torts. The concept of State liability provides relief to the citizen aggrieved in the State performing its functions. There was no concept of State liability in India before the Pre-British Era. The concept of State liability has evolved with the broadening of State functions.*

*The research paper provides an insight on the basics of the Law of Torts and the State's Liability. The paper also brings to light the differences pertaining to the Sovereign and non-sovereign functions of the State, the evolution of State's Liability in India, and the Liability of State in other countries.*

**Keywords:** *Vicarious liability, State liability, Sovereign functions, Non-Sovereign functions, Evolution.*

## I. INTRODUCTION

The Latin word 'Tortum' is the basis for the French word 'Tort,' which means twisted or wrong in English.

A tort is defined as "a civil wrong which is not exclusively a breach of contract or trust."<sup>2</sup> Prof. P.H. Winfield has determined tort as - "Tortious liability arises from the breach of a duty primarily fixed by law. This duty is towards persons generally, and its breach is redressable by an action for unliquidated damages."

Civil wrongs or harms come under the ambit of the Law of Torts. The essentials of torts are a wrongful act/omission and an infringement of a legal right. It proffers a remedy for an infringement of Jus in Rem<sup>3</sup>. The person committing the tort is called the 'tortfeasor' and the person filing the suit is called the "plaintiff". 'Injuria sine Damnum' is the legal injury caused to a person due to violation of a right without any physical damage or loss, is actionable under

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<sup>2</sup> Section 2(m) of Limitation Act, 1963

<sup>3</sup> Jus in Rem- also called Right in rem, the right which is available against the entire world. It is a negative right.

tort, and is based on the maxim 'Ubi jus ibi remedium'<sup>4</sup>. Damages(compensation) in torts are unliquidated<sup>5</sup>.

The law has its origin from British rule in India; the Charter Act of 1726 laid the foundation. It is an uncodified law due to its unlimited scope and ability to evolve. The law of torts discusses the legal principle of vicarious liability, which applies to holding one person liable for the actions of other when engaged in some activity. Vicarious liability is based on the legal maxims 'Qui facit per alium facit per se'<sup>6</sup> and 'Respondent Superior'<sup>7</sup>. ' This is generally applicable in the case of Master-servant and Principal-agent relationships.

The State<sup>8</sup> is a non-living legal entity that acts/functions through its servants. The concept of State has evolved, and its functions have become comprehensive. State's tortious liability also arises from vicarious liability, which means that the State can be held liable for any wrongful act committed or omitted by its servant, and it is called Constitutional torts. The concept's origin can be traced back to the Government of India Act, 1858 as Section 65<sup>9</sup>, after which it was incorporated as Section 176 in the Government of India Act of 1935. The section laid down the basis of Article 300(1)<sup>10</sup> of the Constitution. But not for all Constitutional torts the State answerable to the court, and it derives this power from the Doctrine of Sovereign Immunity.

The State can only be held liable for the torts that come under the ambit of non-Sovereign functions.

### **(A) Research Questions**

The following questions have been formulated only after a thorough investigation and careful examination of the significant elements of the subject:

- A.** How are the State's Sovereign and Non-Sovereign Functions different from each other?
- B.** How has State Liability evolved in India?
- C.** What is the present condition of State Liability in other countries?

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<sup>4</sup> Ubi jus ibi remedium – wherever there is a right there is a remedy

<sup>5</sup> Unliquidated Damages – Damages claimed for unforeseeable losses incurred

<sup>6</sup> Qui facit per alium facit per se - He who acts through another does the act himself.

<sup>7</sup> Respondent Superior – Let the principal be liable

<sup>8</sup> State – a political unit that has sovereignty over a territory and the people within it.

<sup>9</sup> **Section 65-** stated “All persons and bodies politic shall and may have and take the same suits, for India as they could have done against the said Company.”

<sup>10</sup> **Article 300(1)-** states that the Government may sue and be sued by the name of the Union of India and a State may sue and be sued by the name of the State.

**(B) Objectives of Research**

This research paper seeks to explain the concept of State Liability in relation to Sovereign and Non-Sovereign functions. It helps the reader understand the context in various aspects and its contemporary importance. Henceforth, the objectives of this research are as follows.

- a) Differentiating Sovereign and Non-Sovereign Functions of the State.
- b) Tracing historical developments and the evolution of State Liability in India.
- c) The condition of State Liability in other countries around the globe.

The research paper would help the reader understand and implicate the law aspect and provide viable solutions to the existing problem.

**(C) Significance of the Study**

The present study endeavors to analyze the evolution of Sovereign and Non-Sovereign functions of the State and its contemporary significance. It also seeks to trace the condition of state liability in India and puts forth the condition of state liability in other countries around the globe. The paper intends to provide the reader with the crucial aspects of the subject and acquire knowledge to benefit oneself and society.

**(D) Research Methodology**

This study is primarily based on principles of doctrinal research. The idea of referring and analyzing the existing data suggests following established research's footsteps. The researcher believes that current research depends mainly on existing laws and mutual influence. To do effective research on such a topic, it's best to rely on doctrinal research and analyze various relevant laws in place. Hence, from the researcher's point of view, these tools adopted for the current study are appropriate for the topic under discussion.

**(E) Sources Of Data**

The researcher for current research depends on preliminary and ancillary data. Preliminary data referred by the researcher includes the Constitution, Acts, judicial verdicts, and other non – interpreted content. To have a more comprehensive and unbiased perspective on the research topic, the researcher relies upon ancillary materials such as articles, journals, books authored by eminent personalities, etc., available on the web.

**(F) Review Of Literature**

The Law of Torts has been explored by many due to its volatile nature. Ancillary sources such as books, journals, articles, etc., have been referred to comprehend the present understanding of the topic.

***Ratanlal and Dhirajlal: The Law of Torts, 28th ed*<sup>11</sup>**

Written by Ratanlal and Dhirajlal, the book provides a comprehensive insight into the required aspects of the Law of Torts. First published in 1897, it is one of the best commentaries available on the subject today. The 8<sup>th</sup> part - State and its Offices, in the 3<sup>rd</sup> Chapter Personal Capacity, has been considered for this paper. The chapter puts forward the historical background of the law, its journey in India and explains State's sovereign immunity and its limitations. The chapter explicates what changes the law went through, how outer influences have impacted current laws and the rules and regulations for the same in the British rule period.

***Vicarious Liability*<sup>12</sup>**

The article expounds on the Doctrine of Vicarious Liability and the relationships under its ambit. It sheds light on relationships in the context of principal and agent, partner and master and servant, and articulates Vicarious Liability's position in England and India. The article also provides insight into some case laws related to the topic. This article helps the researcher analyze and offers a different aspect of vicarious liability, its constituents, and relations.

***Vicarious liability of State and sovereign immunity*<sup>13</sup>**

The source provides the gist of the Crown Proceeding Act, 1947, the evolution of sovereign immunity of India. It provides special mention to the critical cases involved in developing State liability in India. It illuminates the concept of the Sovereign and Non-Sovereign powers and prominent case laws related to them. The source also explains the defenses available to the State under sovereign immunity. The source provides the researcher with a deeper insight into the subject.

***Law of Torts by R.K. Bangia*<sup>14</sup>**

This book covers the whole Tort Law and the statutes that fall within it. Chapter 5 discusses the position of the law in England and India, concepts of acts and negligence, and the purview of sovereign and non-sovereign functions of the State. It also showcases how the State can be discharged from its torts and in what situations, historical changes, and how the sovereign power properly functions in India. This aids our study paper by offering extensive and mass material, as well as case laws to establish its validity. It aids the researcher in doing a thorough

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<sup>11</sup> Ratanlal Ranchhoddas, Dhirajlal Keshavlal Thakore & Akshay Sapre, *The Law of Torts* (28 ed. 2019).

<sup>12</sup> VICARIOUS LIABILITY, Sarkshi Raje, *LAW TIMES JOURNAL*, <https://lawtimesjournal.in/vicarious-liability/> (last visited Dec 15, 2021)

<sup>13</sup> VICARIOUS LIABILITY OF STATE AND SOVEREIGN IMMUNITY SLIDESHARE, <https://www.slideshare.net/reshmasuresh1884/vicarious-liability-of-state-and-sovereign-immunity> (last visited Dec 18, 2021)

<sup>14</sup> RAMESH K. BANGIA, *R.K. BANGIA'S THE LAW OF TORTS: INCLUDING MOTOR VEHICLES ACT, CONSUMER PROTECTION ACT AND COMPETITION ACT* (Allahabad Law Agency 25) (2020)

examination of the subject.

### ***Vicarious Liability of State*<sup>15</sup>**

The article elucidates Vicarious Liability, its constituents, and the law's position in England and India. The source sheds light on pre and post Constitutional judicial decisions in India. The article highlights the concept of the State's vicarious liability and its context in India, which provides a deeper insight into research.

### ***Liability of Administration in Tort*<sup>16</sup>**

The article deciphers tortious liability of State in English and Indian Law. It vividly explains the meaning of maxims Respondent Superior<sup>17</sup> and Qui facit per alium facit per se<sup>18</sup>. The article construes the compensation available to Plaintiff. It also describes the related pertinent case laws.

### ***Development of Vicarious Liability of State*<sup>19</sup>**

The article provides the background of the Vicarious Liability of State in India and differentiates between sovereign and non-sovereign functions. It explains sovereign immunity and its precedents. The paper critically analyses the *Kasturilal Ralia Ram Jain v. State Of U.P* case and illuminates other important related case laws. This source gives the researcher a better understanding of applying the State's sovereign immunity.

### ***State Liability: A New Dimension From "Rudal Shah"*<sup>20</sup>**

The article elucidates the Tortious Liability of the State and the emerging compensatory trend. It highlights the diminishing distinction between sovereign and non-sovereign functions of the State. The article touches upon human rights jurisprudence and related case laws. The source helps the researcher understand the changing trends in the subject.

### ***Liability of the State for Tortious acts: Urgent need for legislation*<sup>21</sup>**

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<sup>15</sup> VICARIOUS LIABILITY OF STATE ACADEMIKE, <https://www.lawctopus.com/academike/vicarious-liability-state/> (last visited Dec 20, 2021)

<sup>16</sup> LIABILITY OF ADMINISTRATION IN TORT IPLEADERS, <https://blog.ipleaders.in/liability-administration-tort/> (last visited Dec 20, 2021)

<sup>17</sup> Let the principal be liable

<sup>18</sup> He who acts through another does it himself

<sup>19</sup> Meher Mansi, *Development of Vicarious Liability of State (Case Comment of Kasturilal v. State of Uttar Pradesh)*, 2 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES (IJLMH), 1–8 (2019), <https://www.ijlmh.com/> (last visited Dec 20, 2021)

<sup>20</sup> Surendra Yadav, *STATE LIABILITY: A NEW DIMENSION FROM "RUDUL SAH"*, 43 JOURNAL OF THE INDIAN LAW INSTITUTE, 559–569 (2001), <https://www.jstor.org/stable/43953400> (last visited Dec 20, 2021)

<sup>21</sup> LIABILITY OF THE STATE FOR TORTIOUS ACTS: URGENT NEED FOR LEGISLATION ARTICLES ON LAW, <https://articlesonlaw.in/liability-of-the-state-for-tortious-acts-urgent-need-for-legislation/> (last visited Dec 20, 2021)

The article annotates the State's liability under Article 300 of the Indian Constitution. It casts light on the condition of the law after the Charter Act of 1858 and enunciates the outcomes of the judgments of notable cases. The article also emphasizes the importance of appropriate legislation and presses on its urgent need today. The source helps the researcher analyze the evolution of law and the need for change.

## II. MAIN CONTENT

### (A) Sovereign and Non-Sovereign Functions of the State

The origin of differentiation between Sovereign and Non-Sovereign functions can be traced back to the *Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*<sup>22</sup> case where Sir Barnes Peacock C. J. had classified the functions into two categories. This judgment laid the foundation for the functions of the State.

#### Sovereign Functions

"Sovereignty refers to the autonomous power of government over its State, without any external interference". Sovereign functions are those obligations where only the State solely holds the power to perform, and no external establishment can interfere or execute them. The functions are primarily appertaining to the defense of the country and maintenance of peace in the country. The State cannot delegate these functions to anyone else. The State performing sovereign functions through its servants is not liable/accountable to justify it before the court of law. They are performed for the country's benefit and are absolute. The State, in such a case, cannot be sued.

#### Non-Sovereign Functions

Non-Sovereign functions are those obligations of the State where the external establishment can interfere and influence the functions of the State. The State performing these functions through its servants is accountable to answer before the court of law and is not absolute. The State in such a case can be sued.

### (B) Historical Developments and Evolution of State Liability in India

The evolution of State Liability in India can be divided into five stages.

#### Stage 1 - Liability of State in Pre-British India

There is no explicit mention of State liability during the rule of various kings. But during that

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<sup>22</sup>*Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*, (1868-1869) 5 Bom HCR App 1 P.1 *Peninsular and Oriental Steam Navigation Company v. Secretary of State for India* (1861) 5 Bom. H.C.R. App. 1

period, the principle of 'Dharma' (Rule of Law') was followed, everyone was treated equally, and the King was not above the law. In accordance with the Vedic Scriptures, the King acquired his powers from Dharma, and his rule was based on the performance of kingly duties. He could be held liable and punished if he commits any wrong for maintaining the rule of law. The law was supreme and obligatory.

### **Stage 2 - Liability of State in British India**

Sir Barnes Peacock C. J. had classified the functions of State into Sovereign and Non-Sovereign in the landmark judgment of *Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*<sup>23</sup>. The case facts were that Plaintiff's horse was injured by the iron funnel that fell on the road by the Government workers in the dockyard. Due to this, Plaintiff sued the State for negligence and claimed damages, but he was denied. The verdict stated that the State could not be held liable when performing Sovereign functions.

In the *Nobin Chunder Dey v Secretary of State for India*<sup>24</sup> case difference between sovereign and non-sovereign functions was followed. Plaintiff filed the suit as he was denied a license by the government even after paying the required amount. The bench in this case also rejected the claim as it came under the ambit of sovereign functions. The case of *Secretary of State for India v Hari Bhanji*<sup>25</sup> narrowed the ambit of Sovereign functions of the State. It held that the defense is not available against a citizen. Plaintiff had filed a suit to recover the difference amount paid on the rate of duty on salt, but he was denied.

### **Stage 3 – Liability of State under the Constitution of India**

The landmark verdict of *State of Rajasthan Vs. Vidyawati*<sup>26</sup>, the Supreme Court held the State was vicariously liable for the negligence of its servant as the act was done in due course of employment. The case facts were that the servant was negligently driving and hit a pedestrian who later died due to the injuries. When the suit was filed, the State stated that it came under the ambit of sovereign functions, but the court denied it and held the State liable.

In the case *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh*<sup>27</sup>, the Plaintiff was arrested on suspicion of theft, his gold was seized and kept under the watch of the police. Plaintiff was acquitted; he realized that the police officials had misappropriated his property. He filed a suit against the State. Although his lawsuit was dismissed as the function came under the ambit of

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<sup>23</sup> *Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*, (1868-1869) 5 Bom HCR App 1 P.1

<sup>24</sup> *Nobin Chunder Dey v Secretary of State for India*, (1876) ILR Cal. 12

<sup>25</sup> *Secretary of State for India v Hari Bhanji*, (1882) ILR 5 Mad. 273

<sup>26</sup> *State of Rajasthan v. Vidyawati*<sup>26</sup>, AIR 1962 SC 933

<sup>27</sup> *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh*, AIR 1965 SC 1039

sovereign functions, he was given money to compensate for the gold's value.

### **The Bill of State Liability of 1967**

The Parliament, after the Kasturi Lal on the recommendation of the Supreme Court, decided to form legislation and ensuing it the Government (Liability in Tort) Bill was introduced to define the State's liability for wrongful acts or omissions committed by its servant. Nevertheless, the Bill was never passed, and the State lost the chance to codify the law of torts.

### **Stage 4 – The Changing Aspects after 1972**

With the increase in the State's interference in almost every part, the need to expand its liability was felt. Therefore, the Supreme Court annulled the difference between sovereign and non-sovereign functions and the cases were decided based on the circumstances. The State was held vicariously liable even if it discharged sovereign functions in few cases.

In *State of Uttar Pradesh vs. Hindustan Lever*<sup>28</sup>, the Supreme Court held that even though the State was discharging sovereign function still it is liable for the tort committed. The case facts were that Plaintiff had deposited money in a sub-treasury where it was misappropriated by the treasury officers, for which the State was held liable.

### **Stage 5 – The Recent Developments since 1983**

The cases in this scenario deal with the sovereign functions of the State and the infringement of Fundamental Rights<sup>29</sup>.

In *Khatri vs. State of Bihar*<sup>30</sup>, police were alleged to have blinded some prisoners. The court held that even though police were performing a sovereign function, this inhumane act had infringed the fundamental right under Article 21. The State compensated them.

In *Rudal Shah v. State of Bihar and Another*<sup>31</sup>, the Plaintiff was illegally detained for 14 years and was later acquitted by the court. He awarded the damages of Rs.35,000 based on the writ petition filed under Article 32.

In the case of *Bhim Singh v. State of Rajasthan*<sup>32</sup>, the court had awarded a compensation of Rs 50,000 to the petitioner (M.L.A.), who was illegally detained from attending the assembly session.

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<sup>28</sup> State of Uttar Pradesh vs. Hindustan Lever, AIR1972All 486

<sup>29</sup> INDIA. CONST. Part III - The Fundamental Rights are defined as basic human freedoms which every citizen has the right to enjoy irrespective of race, religion, caste, creed, sex or religion.

<sup>30</sup> Khatri vs. State of Bihar, AIR 1981 SC 928

<sup>31</sup> Rudal Shah v. State of Bihar and Another, (1983) 4 SCC 141

<sup>32</sup> Bhim Singh v. State of Rajasthan, AIR 1986 SC 494

In the Landmark verdict of *Nilabati Behra v. State of Orissa*<sup>33</sup>, it was held that sovereign immunity is not applicable to public remedies that come under the ambit of Article 32 and 226. The petitioner had filed the writ petition after her son's death in police custody.

In the judgment of *Chairman Railway Board vs. Chandrima Das*<sup>34</sup>, the court held that the writ petition filed by the petitioner who the railway employees raped was maintainable. It also discarded the defense of sovereign immunity, held the State vicariously liable, and granted a compensation of Rs. 10,00,000.

The concept 'King can do no wrong was never completely licit in India. It was partially used before, but the principle was no longer applicable in India after the Constitution. The High Court of Gujarat in 2017 stated that the maxim 'King can do no wrong' must be forgotten in India as in the country, the power rests in the hands of people who elect the government and not in the Crown.

### **(C) The Condition of State Liability in other countries**

The condition of the tortious liability of State in different countries around the globe is not as it is in India. The other countries' evolution and present condition must be analyzed to understand the world scenario.

#### ***England***

Initially, in the United Kingdom, the Crown could not be sued civilly or criminally for the act or omission of its servants based on the maxim "Res Non-Potest Peccare" which means 'King can do no wrong' was constituted in the English Constitution. The torts committed in the course of public affairs were not remedied, and the aggrieved citizens protested.

The Crown Proceedings Act, 1947<sup>35</sup> abolished this procedure and allowed the Crown to be sued for the torts committed by servants in the course of employment. This was done to bring relief to the citizens and restrict the Crown. Although the liability levied on the Crown is not absolute due to exemption clauses, the Crown can now be held vicariously liable in apt cases.

#### ***France***

France followed the rule that 'Sovereign could do no wrong.' But this rule was annulled during the French Revolution to recoup the outdated concept. In the French judicial system, cases suing the State can be brought before the *Conseil d'Etat* at the administrative courts. The

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<sup>33</sup> Nilabati Behra v. State of Orissa, AIR 1993 SC 1960

<sup>34</sup> Chairman Railway Board vs. Chandrima Das, AIR 2000 SC 988

<sup>35</sup> CROWN PROCEEDINGS ACT 1947 LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/ukpga/Geo6/10-11/44/contents> (last visited Dec 21, 2021)

liability of the State has been developed through case laws. The compensation scheme has been created keeping the social trend in mind.

The *Conseil d'Etat* follows the principle of 'Legalite' and 'Responsibilite'. According to 'Legalite,' the administration must be in accordance with the law, and 'Responsibilite,' the administration will be held liable to pay compensation to the citizen whose right has been infringed due to any act or omission. In France, the State can be held accountable even if there is no fault on its part.

### *Unites the States of America*

The United States of America had borrowed the Sovereign Immunity of State from the United Kingdom. Under the Federal Tort Claims Act<sup>36</sup>, passed in 1946, the government cannot be held liable for the tort committed during the careful discharge of statutory duties. But the State can be sued if a person suffers personal injury, death, damage, or property loss due to wrongful act or omission of the government's servant. The judiciary has liberalized the act of 1946 in various cases.

## **III. INTERPRETATION AND CRITICAL ANALYSIS**

Although there is no explicit mention of the concept of State liability in the era of the King's rule, it can be clearly understood that the King could be held liable for the wrongs committed. The concept of State liability emanated from England to India. C.J. Peacock laid down the differentiation between the Sovereign and non-sovereign functions of the State. The same principle was applied in the subsequent cases.

After the Constitution came into effect on 26<sup>th</sup> January 1950, the State could be vicariously sued for the wrongful act or omission of its servants under Article 300. The First Report given by the Law Commission of India in 1956 stated that the participation of the State has increased; so, the liability of State must also be increased proportionately. Based on the recommendation, a bill was introduced in Lok Sabha in 1967, but it was never passed, and it was aborted with the dissolution of Lok Sabha in 1971.

In the Vidyawati case, the State was held vicariously liable, and the relief was sought. Even though this provided relief to the citizens, it was not for long because, in Kasturilal's case, the court held the defense of sovereign functions and gave its verdict. This is, in a way was reversing the legal position in the Vidyawati case.

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<sup>36</sup>FEDERAL TORT CLAIMS ACT (FTCA)US EPA, <https://www.epa.gov/ogc/federal-tort-claims-act-ftca> (last visited Dec 21, 2021)

The Supreme Court quashed the differentiation between sovereign and non-sovereign functions in the Hindustan Lever case, and the court decided the verdict based on the circumstances of the cases. This landmark verdict opened a new dimension to the court approach in cases involving State liability.

As the functions of the State increased, the court came out with the concept of compensatory jurisprudence under Article 21 of the Constitution. This had a considerable effect on the State's liability. The court held that the writ petitions filed against State liability under Articles 32 and 226 were maintainable and were granted relief. The Rudal Shah case was the landmark judgment where the citizen's fundamental rights were given a higher stature than the Sovereign and non-sovereign functions of the State.

Initially, in the United Kingdom, the Crown enjoyed sovereign immunity. It could not be held liable for any wrongful act or omission committed by its servant as the Crown was not personally answerable to anyone. But since the Crown Proceedings Act had brought the change, the Crown can now be sued for the acts or omission of servants, although it has its limitations.

In France, the concept 'Sovereign can do no wrong' was discarded after the French Revolution to make the Sovereign liable for the torts committed by its servant. These cases are dealt with explicitly before the Administrative Courts. The law has been developed over time through case laws. The stance of French rule in state liability is liberal.

The United States of America had derived the State's Immunity from the United Kingdom. But that was changed after the commencement of the Federal Tort Claims Act of 1946. The citizens could file a suit against the State, and the relief would be granted if the duty of State has been performed negligently.

According to the researcher, Article 300 of the Constitution is obscure in laying down the extent of the State's immunity. Another hiatus is that it does not differentiate between 'Sovereign Functions' and 'Acts of State.' The law must be formulated to maintain the right to equality and for the public's satisfaction. The law that will be formulated does not require to follow the lead of the acts in the U.K. and U.S.A. as those acts have loopholes and the political condition is different in India.

#### **IV. CONCLUSION**

This conclusion recapitulates the paper. After the thorough analysis of the content, it can be postulated that the State can be vicariously held liable for the tort committed by its servant. The concept of State liability is under evolution in India. The verdict is given on the pure basis

of circumstances. It must be formulated to fill the lacuna formed due to the absence of provision or statute. Contrasting to England's Crown Proceedings Act and U.S.A.'s Federal Tort Claims Act, India does not have any statutory provisions.

The sovereignty of the State has undergone drastic changes, and the functions of the State have expanded over time which has affected the ambit of sovereign functions. The tatterdemalion distinction between sovereign and non-sovereign functions is no longer related and must not be invoked.

The principle of 'Rex non-potest peccare,' which enunciates 'King can do no wrong, was never wholly applicable in India. After the commencement of the Constitution, it lost its complete sense as the power rests in the hands of the citizens who elect their government. The concept of State liability has developed through the judicial process in the country.

## **V. SUGGESTIONS**

After the thorough analysis of the available acts, books, articles, etc., the following suggestions have been made:

- i. The need for differentiation between State's Sovereign and Non-Sovereign functions is crucial in the contemporary world, and the previous distinction must be discarded.
- ii. Article 300 of the Constitution must be adequately expanded to define the functions of the State and its limitations.
- iii. The need to formulate a comprehensive Legislation encompassing the State's tortious liability and defining the exceptions to the same. It must also lay down the compensation (damages) guidelines.

An independent department must be explicitly formulated for tortious liability for fast processing and to avoid burdening the civil courts.

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