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**STATE LIABILITY ON ADMINISTRATIVE ACTION: SOME BASIC WORKOUT****Mahendra Subhash Khairnar***Asst. Professor**Bharati Vidyapeeth's Yashwantrao Chavan Law College, Karad*

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**Prologue**

Need of having State is undoubtedly accepted. State is a protector and guarantor of civil rights of civilians. Administration is inevitable organ of the state. The state is a juristic person it has to act through its agents and employees. State performs varied welfare functions. It is expected that the state should provide and protect the rights of people. However many times the state machinery fails not only to protect the rights but also to ensure the existence of rights of people. In such circumstances tussle between administrative action and civil rights of people emerge. At present there are scattered pieces of legislations with regard to regulation of administrative authorities of the state. For e.g. Right to Information Act, Right to Services Act, so on and so forth. However these patches are not enough to guarantee the civil rights. Hence liability of state arises time and again as a demon to democracy. This article intends to provide some light on basic aspects of this domain.

**State Liability**

It is pertinent to know the term state. Term 'state' has been described under article 12<sup>1</sup> of the Constitution of India not in narrow sense but it shall have been interpreted in broader sense. All the public undertakings and public authorities shall come under the domain of 'state'.

Liability means that the consequences of the realization of responsibility for the action of public administration. The term 'administrative liability' refers to carry out some sort of remedial action in the light of actual or potential damage.

The term 'Liability' signifies 'consequences' of one's own act or act of others also. Generally these consequences are fixed by the law depending upon the legal system of the place.

**Doctrine of Tortious Liability**

The word 'tort' is derived from the latin term *tortum*-to twist, and implies conduct which is twisted or tortuous. It now means a breach of some duty independent of contract giving rise to a civil cause of action and for which compensation is recoverable.

To constitute tort there must be a wrongful act. The word 'act' in this context is used in wide sense to include both positive and negative act, i.e. acts and omissions.

The duty with which the Law of Torts is concerned is the duty to abstain from willful injury, to respect the property of others, and to use due diligence to avoid causing harm to others. Liability for a tort arises, therefore, when the wrongful act complained of amounts either to an infringement of a legal private right or a breach of or violation of a legal duty.

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<sup>1</sup> 12. Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

### **Vicarious liability of the state**

Law of Tort is a general law. It covers any area where there is no specific law as such. Any act done by a person infringing the legal right amounts to civil wrong. If such wrongful act which resulted in loss, damage or breach of rights of any individual done by a public servant during the course of employment, within the scope of his duty the State will be held liable vicariously. In simple term vicarious liability means a liability for the acts of another.

It is well known principle of law that, he who acts through another is presumed to act itself.<sup>2</sup> In this backdrop the state is held liable for wrongful act done by its servants and the state has to pay compensation to the victim.

### **Administrative action**

Administrative action is stated to be the broad area of governmental activities in which the repositories of power may exercise executive, quasi-legislative, quasi-judicial functions.<sup>3</sup>

An administrative action can be classified into four categories:

- i. Rule making action or quasi-legislative action.
- ii. Rule-decision action or quasi-judicial action.
- iii. Rule-application action or administrative action.
- iv. Ministerial action.

The increase in administrative functions has created a vast new complex of relations between the administration and the citizen. The modern administration impinges more and more on individual; it has assumed tremendous capacity to affect the rights and liberties of the people.<sup>4</sup> In securing the balance between public power and personal rights, it is necessary to have efficient administration.

### **Constitutional Aspects**

It is pertinent to note that the State's tortious liability is recognized by the Supreme law i.e. the Constitution of India. In this relation it is to be pointed out that Article 300<sup>5</sup> of the Constitution of India, specifies the liability of the Union Government or the State Government which may arise 'out of any contract or otherwise'. The term 'otherwise' clearly connotes that the said liability may arise for tortious acts as well. Article 300 of the Constitution of India, determines the extent of such liability by and which the Government of a State is liable for tortious acts of its officers, servants or employees, however, such liability generally cannot be enforced through a Writ.

### **Judicial approach**

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<sup>2</sup> Qui facit per alium facit per se – Latin term

<sup>3</sup> P. M. Bakshi, Interpretation of Statutes Edited by R. P. Kataria & R. Chakraborty, 1Edn., Reprint 2012, Orient Publ. Co., New Delhi

<sup>4</sup> M P Jain & S N Jain, Principles of Administrative Law, , 4<sup>th</sup> Edn. 2003

<sup>5</sup> Article 300 in The Constitution Of India 1949

300. Suits and proceedings

(1) The Governor of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted

In judicial review, the court does not go into the merits of the administrative action because the authority to whom decision making is entrusted is supposed to substitute its decision for that of the administrative authority.<sup>6</sup>

If the servant of the State in the course of his duties has committed any act infringing the fundamental right of the citizen, the State will be held liable.<sup>7</sup> The jurisdiction to award compensation for deprivation of Fundamental Rights of a person through writs was specifically recognized by the Court in *Rudal Shah v State of Bihar*.<sup>8</sup> The decision of the Supreme Court in *Rudul Shah* made it clear that, through the exercise of writ jurisdiction, the superior Court have powers to award compensation for the violation of Fundamental Rights. This decision has been followed in a number of matters bearing the similar situations of disobedience of the Right to Life and liberty of a person.

The Court had clearly mentioned in several cases that the State could not be relieved of the liability for the negligence of its servants.<sup>9</sup>

### **Concluding remark**

Frequent counter between administrative action and civil rights is a symptom of ill democracy. This needs to be cured as early as possible. Keeping this in mind the constitutional framers have made a provision. However it is not being implanted yet. The apex court time and again pronounced the need of legislation to codify and regulate the conduct of administrative authority in the interest of civil rights of ‘we the people of India’.

In England, Legality of administrative action may be challenged also in an action for damages where the unlawful act committed by the Government or its servants or some other statutory authority constitutes a ‘tort’ or a civil wrong.<sup>10</sup>

There is plethora of cases holding the state liable for the wrongful administrative action. However till today there is no law to fix the liability of the state and its machineries. The constitutional scheme under article 299 is still awaiting.

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<sup>6</sup> The principles of judicial review of administrative action summarized in 1985 by Lord Diplock in *CCSU vs. Minister for Civil Services* [1985 (1) AC 374].

<sup>7</sup> *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746.

<sup>8</sup> *Rudal Shah v State of Bihar* AIR 1983 SC 1086

<sup>9</sup> *Kishen Pattanayak v. State of Orissa*, AIR 1989 SC 677; *M.C. Mehta v. Union of India*, AIR 1987 SC 1086 and *State of H.P. v. Umed Ram*, AIR 1986 SC 847.

<sup>10</sup> *London Passengers Transport Board v Upson*, (1949) 1 All E. R. 60 (67) H. L. cf *D. D. Basu*, at pg. 535