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FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester
Subject : Administrative Law
Subject code : BAL306
Faculty Name : Ms Taruna Reni Singh

ADMINISTRATIVE LAW

UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

UNIT IV:

- Liability of the administration: Contractual liability, tortuous liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Adminstrative Law, Universal Delhi
3. I. P. Massey: Administrative law

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LECTURE 37

LIABILITY OF THE ADMINISTRATION

TORTIOUS LIABILITY OF THE STATE.

Article 300 of the Constitution sets out the convoluted liability of Indian government. It peruses: "The government of India may sue or be sued by the name of Union of India and the Government of a State may sue or be sued by the name o 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." This is anyway subject to any law made by the Parliament or a State Legislature. International Journal of Pure and Applied Mathematics Special Issue 1980 In this way this makes the liability co-end with that of East India Company in light of the fact that the liability of the Dominion of India before the Constitution was same as that of Secretary of State for India under section 176 of Government of India Act 1935 and the Government of India Act 1915 made the liability of the Secretary of State for India same as that of East India Company preceding Government of India Act 1858. In this way the situation of the tortious liability was solidified at

1858 .

The company administered in a double limit Commercial and Sovereign. When it started activities in India, the company was absolutely a trade body. Bit by bit, it gained domains and furthermore the sovereign powers to make war and peace and raise armed forces. Since it was an independent company not being the hireling or specialist of the British Crown, the resistance delighted in by the Crown was never reached out to it. In its sovereign limit, it was absolved from any tortious liability. In accordance with this rule after autonomy, the invulnerability of the State proceeded in a few regards i.e. sovereign powers. (Fairgrieve 2003)

The great instance of Peninsular and Oriental Steam Navigation Company V. Secretary of State chose in pre-autonomy India features this perspective. For this situation the P and O Company made a claim for damages for injuries caused to its steed by the negligence of some laborers at the Government Kidarpur Dockyard. The Bombay High Court decided that the Secretary of State would be at risk for damages if the negligence of the hirelings was, for example, would render a standard boss at risk. The liability of the Company could emerge just in regard of its exchanging capacities in exercise of non-sovereign forces. The upkeep of dockyard should be possible by a private individual likewise and thus was a non-sovereign capacity. The scholarly judges opined that since the advantages of the Crown never stretched out to the Company, it couldn't benefit sovereign insusceptibility, however it practiced some sovereign capacities. The control executed by this case was that in exercise of sovereign powers, the State might not be at risk. Sovereign capacities implied those exercises which just the State could attempt; private gatherings couldn't take up those exercises. e.g Railways, Armed Forces, Law and Order and so forth. This lead has

been liable to different elucidations and sometimes the courts have International Journal of Pure and Applied Mathematics Special Issue 1981 tailed it truly while in some the judges have declined to incorporate certain capacities as sovereign, despite the fact that lone the State could perform them.

In Secretary of State V. Moment the Privy Council held that a suit would lie against the government for wrongful impedance with offended party's property all things considered a suit would have lain against the East India Company under the decision of P and O case. On account of Secretary of State V. Hari Bhanji, salt was being transported from Bombay to Madras ports. Amid travel the obligation payable on salt was raised and the dealer was requested to pay the upgraded obligation at goal. The sum was paid under challenge and later on a suit was documented to recoup the sum.

The Madras High Court had two issues to consider.

1) Whether the State i.e. the litigant was a sovereign and could be sued in its own courts

2) What was the idea of the demonstration against which the help was being guaranteed.

The Court held that since the insusceptibility appreciated by the Crown did not reach out to East India Company, the company was subject. Second the insusceptibility existed just for the 'Demonstrations of State' entirely purported. It was additionally said that the qualification amongst sovereign and non-sovereign capacities was not a very much established one. There is a distinction with regards to "Act of State" and the barrier of "Sovereign Immunity".

The previous streams from the idea of energy practiced by the State for which no action lies in common court though the last was created on the celestial right of Kings. The adjustments in the

sovereign insusceptibility in England by means of the Crown Proceedings Act 1947 were not reached out to India. Amid the encircling of the Indian Constitution, the subject of to what degree, assuming any, was the Union of India or the State Governments at risk in tort was left for future enactment. The Indian Law Commission in its first Report on Liability of State in Tort in 1956 had proposed such a law because of the changed situation and Constitutional arrangements. Be that as it may, such enactment has not been enacted by the International Journal of Pure and Applied Mathematics Special Issue 1982 Parliament till now. It is asked why the Parliament has not enacted such an enactment of open intrigue. The other line of cases has continued on the lines of refinement amongst sovereign and non-sovereign capacities.

In Union of India V. Harbans Singh it was held that no damages could be recouped when a man was murdered by rash and careless driving of a military truck by a military driver on obligation since it was a sovereign capacity. In Secretary of State V.Cockraft the offended party was harmed by the careless departing of a pile of rock on a military street over which he was strolling. The suit against the government was not viable in light of the fact that military and the upkeep of military streets were a sovereign and not a private capacity.

PRE- CONSTITUTIONAL AND POST- CONSTITUTIONAL JUDICIAL DECISIONS

Pre-Constitution Judicial Decisions :

• **Peninsular and Oriental Steam Navigation Company v Secretary : (1861**) 5 Bom HCR App The guideline of this case holds that if any act was done in the activity of sovereign capacities, the East India Company or the State would not be at risk. It drew a significant clear

refinement between the sovereign and non-sovereign elements of the state. • Secretary of State v. Hari Bhanji : ILR (1882) 5 Madras 273 For this situation, the Madras High Court held that State invulnerability was kept to acts of State. In the P and O Case, the decision did not go past acts of State, while giving representations of circumstances where the invulnerability was accessible. Post Constitution Judicial Decisions :

• **State of Haryana v. Santra 2000 (1) CPJ 53 (SC)** The proportion of this case was on the standards of state liability for negligence. Here it was obviously settled that the specialist while playing out the task was acting as a government hireling and acting over the span of work of the International Journal of Pure and Applied Mathematics Special Issue 1983 government. Henceforth when there was negligence, it added up to acting in lacking honesty, thus the protection of sovereign resistance couldn't be utilized by the state. In addition it was additionally held that such negligence which could have been seen by a professional who had an obligation to do as such should think about these issues and can't escape liability by asserting guard of assent by the solicitor.

• **State of Rajasthan v. Vidyawati : AIR 1962 SC 933** The respondents documented a suit for the damages made by a representative of a State and the case addressed whether the State was at risk for the tortious act of its hireling – The Court held that the liability of the State in regard of the tortious act by its worker inside the extent of his business and working in that capacity was like that of some other manager. Held: State ought to be as much at risk for tort in regard of convoluted acts conferred by its hireling inside the extent of his work and working all things considered, as some other business.

Kasturilal v. State of UP: AIR 1965 S.C 1039 The decision for this situation was given holding that the act, which offered ascend to the present claim for damages, has been submitted by the representative of the respondent over the span of its business. Likewise, that work had a place with a class of sovereign power. This evacuated any liability with respect to the state. For this situation, the offended party had been captured by the cops on a doubt of having stolen property. Upon examination, an extensive amount of gold was found and was seized under the arrangements of the Code of Criminal Procedure. At last, he was discharged, yet the gold was not returned, as the Head Constable accountable for the maalkhana, where the said gold had been put away, had fled with the gold. The offended party immediately brought a suit against the State of UP for the arrival of the gold or on the other hand, for damages for the misfortune caused to him. It was found by the courts beneath, that the concerned cops had neglected to take the essential care of the gold seized from the offended party, as gave by the UP Police Regulations.

BEFORE COMMENCEMENT AND AFTER COMMENCEMENT OF THE CONSTITUTION International Journal of Pure and Applied Mathematics Special Issue 1984 The Doctrine of Vicarious Liability depends on 'social comfort and unpleasant equity'. English law: – in England, under precedent-based law, outright insusceptibility of the Crown was acknowledged couldn't be sued in tort for wrongs conferred by its hirelings in their business. The administer depended on the notable maxim "the King can't be blamed under any circumstance". In 1863, in Tobin v. R. the court watched "if the Crown were at risk in tort, the rule (the King can't take the blame no matter what) might have appeared to be insignificant". Be that as it may, with the expansion of governmental capacities, the invulnerability stood to the Crown in

convoluted liability turned out to be inconsistent with the requests of equity. In Adams v. Naylor the Dicey gave a crazy illustration. "On the off chance that the Queen were herself to shoot the P.M through the head, no court in England could take comprehension of act". The significance of maxim would signify "king has no lawful energy to do wrongs." But the English Law never prevailing with regards to recognizing the King's two limits individual political. The time had come to nullify the general resistance of the crown in tort and in 1947 the Crown Proceeding Act was enacted. This Act put the Government in an indistinguishable position from a private person. Indian Law: a. General - So far as Indian law is concerned, the maxim 'the king can't be blamed under any circumstance' was never completely acknowledged. Total insusceptibility of the Government was not perceived in the Indian lawful framework preceding the commencement of Constitution and in various cases the Government was held subject for convoluted acts of its workers. b. Established Provision - Under Article 294 (4) of the constitution, the liability of Union Government or a state Government may emerge 'out of any contract or something else. The word generally recommends that the said liability may emerge in regards of convoluted acts too. Under article 300 (1), the degree of such liability is settled. It gives that the liability of the Union of India or State Government will be same as that of Dominion of India and the Provision before the commencement of the Constitution. International Journal of Pure and Applied Mathematics Special Issue 1985 c. Sovereign and Non-sovereign powers - (a) Before commencement of Constitution : The English law as to resistance of the Government for convoluted acts of its hirelings is somewhat acknowledged in India. The High Court saw: when in doubt this is valid, for it is a trait of sovereignty and widespread law that a state can't be utilized as its very own part courts without its assent.' Thus a refinement is tried to be made between 'sovereign capacities' and 'non-sovereign elements' of the state. The State isn't at risk in

tort. d. After commencement of Constitution –

In state of Rajasthan v. Vidhyawati , a jeep was possessed by the Rajasthan for the official utilization of the authority of a locale. The jeep driver bringing back the workshop after repairs. By careless driving of jeep a person on foot was thumped down. He kicked the bucket and his significant other sued the driver and the state for damages. A constitution Bench of Supreme Court held the State vicarious subject for the rash and careless act of the driver. The court held that the manage of resistance in light of the English law had no legitimacy in India. After the foundation of the Republican type of Government under the Constitution there was no defense on a basic level or openly intrigues that the state ought not held at risk for vicariously for the convoluted acts of its hirelings.

. MCQs

1. What is the meaning of Delegated legislation

a) When parliament confers the law making power to the judiciary.
b) When executive confers the law making power to the parliament.
c) When parliament confers law making power to state legislative assemblies.
d) When parliament confers the law making power to the executive.

2. . Which among the following Committees of parliament, is responsible for scrutinizing delegated legislation?

a) Committee of privileges
b) General purpose Committee
c) Rules Committee
d) Committee on subordinate legislation.

3. What is the purpose of Art 50 in the Constitution of India?

a) Separation of legislature from the executive.
b) Separation of law making power from law executing power.
c) Separation of judiciary from executive.
d) Separation of delegated legislation from enabling legislation.

4. Which among the following arguments favors delegated legislation?

a) Bureaucrats are incompetent and greedy.
b) Legislators have sufficient time and expertise to enact every law in full detail.
c) Legislators do not have sufficient time and expertise to enact every law in full detail.
d) Judiciary is better equipped to enact laws than legislature.

5. . The prerequisite for a delegated legislation is:

a) $2/3^{rd}$ majority of all members of both the houses.
b) $2/3^{rd}$ majority of all members of only lok sabha
c) $2/3^{rd}$ majority of all members of only Rajya Sabha