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**CONCEPT OF SOVEREIGN IMMUNITY****INTRODUCTION**

The doctrine of sovereign immunity contemplates that the state or the sovereign can commit no legal wrong and is immune from civil suits and criminal prosecution.

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Sovereign Immunity originates from a common law principle derived from Britain called 'rex non protest peccare' that basically means 'the king can do no harm'. This concept developed in the common law jurisprudence. Historically it is evident that for ages together rulers be it kings or emperors have ruled on basis of their own decisions and opinions in all aspects of society. The rulers being solely responsible for running the state effectively and efficiently have been immune from getting sued civilly or prosecuted criminally because it was presumed that Sovereign or State can commit no wrong. Thus, this concept incentivised the government by giving protection from lawsuits as also criminal prosecutions. India has adopted the doctrine in a limited manner confined under Code of Civil Procedure, 1908 and more particularly in Section 86 thereof.

CONCEPT

Article 300 of the Constitution specifies how the State can be held liable in civil suits filed by or against the State. The said Article also provides that be it the Central Government or the State Government, both can sue or be sued by their respective names. The Article further provides that both the Union and the State Governments may sue or be sued qua their respective actions or affairs as if this Constitution had not been enacted, subject however to any provisions of any legislation/Act of Parliament or State Legislature enacted under powers granted by the Constitution.

This Article provides:

¹ *Doctrine Of Sovereign Immunity: The Development In India*, LEGAL BITES ACADEMY (June 2,2020), <https://www.legalbites.in/doctrine-of-sovereign-immunity/>

- (i) Cause title of such suits and the form of the suit which must state that Union or State may sue in their respective names or be sued in their respective names.
- (ii) Whether it's the Union or the State it may sue or get sued qua their respective cases as the erstwhile Dominion of India and the erstwhile Provinces or the corresponding states may have been sued as if this Constitution had not been enacted.
- (iii) The Parliament or the State Legislature can legislate and enact Statutes under the powers conferred on them under the Constitution.

TYPES OF SOVEREIGN IMMUNITY

1. Immunity from jurisdiction: This form of immunity is premised on the principle that courts of one nation do not have jurisdiction to decide cases in which another country or its organisations or international organisation is a party except where such an entity(s) have waived such immunity.
2. Immunity from execution: This form of immunity is contemplated as seizing of assets of one state by another state to execute judgment/award would be deemed unsuitable. States can waive immunity from execution also.

LANDMARK CASES

1. State of Rajasthan v. Vidhyawati AIR 1962 SC 933 : In this case the driver employed for a jeep for use by a civil servant was held by the Supreme Court to be not in exercise or connected to the sovereign power of state. The Apex Court rejected the argument that State would be immune and held that said state was liable for the driver's tortious act. The Supreme Court held development of this concept in the U.K was on the notion that King was incapable of doing wrong, and this was because the King knew that he could not be sued in his own courts. The Court held that when this doctrine no longer existed in the United Kingdom, such sovereign immunity could not be held to have any validity in India.²
2. Bhim Singh v. State of J&K-1985(4) SCC677: This was a case where also Supreme Court held that this doctrine could not cover a case of unlawful detention. Under Article 32 with exercise of writ jurisdiction the petitioner was awarded by the apex court Rs 50,000/- as compensation for his illegal arrest and wrongful detention.³
3. State of Andhra Pradesh v. Challa Ramakrishna Reddy-2000(5)SCC712 : The Supreme Court held that this concept cannot be validated anymore, and that sovereign immunity could not hold precedence over violation of fundamental rights of a citizen. In the said case, father of the petitioner lost his life while in Police Custody which in facts of the case was held to be violative of Article 21.⁴
4. Ethiopian Airlines v. Ganesh Narain Saboo 2011(8) SCC 539: In this case where the Respondent had filed a complaint under Consumer Protection Act, 1986 seeking compensation from Ethiopian Airlines (Appellant before Supreme Court), the Apex Court rejecting the preliminary objection of Appellant that it could not be sued as it enjoyed sovereign immunity. The Apex Court held that the Parliament while enacting both the Consumer Protection Act,

² State of Rajasthan v. Vidhyawati AIR 1962 SC 933 (India).

³ Bhim Singh v. State of J&K-1985(4) SCC677 (India).

⁴ State of Andhra Pradesh v. Challa Ramakrishna Reddy-2000(5)SCC712 (India).

1986 and the Carriage by Air Act, 1972 recognised that Section 86 of the Code of Civil Procedure, 1908 was both moderation as well as a limitation on principle of foreign entities having sovereign immunity. The Court held that the Parliament by enacting these two legislation has further limited Section 86's applicability, and as such a foreign entity like the Appellant could no longer plead foreign sovereign immunity. The Court took a view that Countries who have business with and in different countries, if granted sovereign immunity, would not only operate with impunity, but would consider themselves above the rule of law and result in commerce, business and international trade coming to a standstill.⁵



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⁵ Ethiopian Airlines v. Ganesh Narain Saboo 2011(8) SCC 539 (India).

ANALYSIS AND CONCLUSION:

Even though according to India's Law Commission's first report it was recommended that sovereign immunity be abolished, the bill for the same could not be passed in Parliament. As a consequence, the Indian Courts were burdened with a heavy workload of cases and had to repeatedly adjudicate upon when this immunity would be applicable and when it would be in conflict with the constitution.

Sovereign immunity has its origin in a monarchical form of government where the power of King was absolute and therefore the King could do no wrong. Such doctrine has no place in democratic form of government where who rules is decided by the citizens and therefore it is the welfare of the common man that must be sacrosanct. India adopted this doctrine with reservations and by building exceptions into the constitution itself where the legislature has the power to enact laws which waive this immunity.

The Parliament by enacting statutes such as Consumer Protection Act and Carriage by Air Act has recognised Section 86 of Code of Civil Procedure to be a modification and restriction on foreign sovereign immunity. Parliament by enacting these acts, considerably narrowed down the scope of foreign sovereign immunity being pleaded as defence in cases against foreign entities/companies.

Apex Court has repeatedly and in diverse circumstances held that this doctrine to be no longer valid and having no place in a democratic society like India based on principles of justice, liberty and equality and where the government is for the people and by the people.

The Parliament must today recognise that the State cannot be confused with a police state. The Parliament must be sanguine that India is actually a social welfare state who owes care of duty to its citizens right from birth till death. The Parliament must legislate by recognising that governments are voted into power solely due to vote based on the expectation that welfare of citizens is paramount and the doctrine cannot be allowed to override such expectations of the electorate.

It is true that exceptions and safeguards must exist. The Executive must be able to perform without the worry of always looking over its shoulder but Sovereign Immunity is not the solution. Such immunity can only be in times of utmost crisis such as war or fight against terrorism when state action is immuned by "*privatum incommudum probano puublico pensatur*" i.e greater interest of public comes before individual interest

Sovereign Immunity can never override the Fundamental Rights of the Citizen. While we borrowed this doctrine from the United Kingdom, Indian Parliament unlike the U.K. has yet to legislate and enact a law to distinguish between what qualifies as worthy of claiming state immunity and what doesn't.

Such demarcation shall remove all ambiguity in the minds of the public along with lessening the burden on the judicial system of adjudicating upon such doctrine being pleaded routinely in cases involving the government or foreign governments and institutions. This also allows the state to be more structured and methodical about performing its duties without the fear of

legal action being brought on them based on the functions being carried out or getting pushed into litigation for performance of its duties.

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