

## **STATUTORY AUTHORITY: AN ABSOLUTE DEFENCE**

Written by **Milind Rajratnam**

1st Year B.A.LL.B.(Hons.) Student, Dr. Ram Manohar Lohiya National Law University,  
Lucknow

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### **INTRODUCTION**

Statutory authority in the law of tort is a defence to claim that the defendant was authorized by some statute to do an act for which he was accused. A statutory authority is a body established up by law which is authorized to enact legislation on behalf of the country or relevant state. It is the authority that is derived from a statute or law, or a piece of legislation. The most fundamental underlined philosophy behind this principle is that lesser private right might yield to the greater public interest. This authority exist because of lesser personal rights can be ignored in favor of a larger public good also the defence exists not only because of the acts authorized by the act but also to all inevitable consequences of that act. This includes harm that is accompanying the exercise of such authority. The powers conferred by the legislature should be exercised with judgment and caution so that no unnecessary damage is done, the person must do so in good faith and must not exceed the powers granted by the statute otherwise he will be liable.

The defence of statutory authority can be applied when an act or conduct is authorized by a statute, but it can extend to all inevitable consequences of that act. If the act is not authorized by any statute and any injury (must be *Damnum sine injuria*) comes, the plaintiff is entitled to compensation. But if the act done by any persons who has the power to do that by the statute does something for which he is not authorized and does something beyond the course of employment he cannot take the defence of statutory authority and the state will also not be liable because at the time of the wrong committed he was not in the course of employment. In this defence the plaintiff must show that there is negligence on the side of the accused in order to claim compensation. The act committed by the person who is authorized by the statute must show that the act was for the public good and it was with due care and no

negligence was there in accordance of the act. The compensation can be awarded when the act committed was foreseeable and then also it was committed.

### **THE ABSOLUTE NATURE OF STATUTORY AUTHORITY**

The Legislature as an authority has great powers, it has a power to reverse any principle of common law through an act of parliament so any tortious act or omission within the circle of common law could specifically be made legal by the help of a statute. The term Statutory Authority under the law of torts is used as a defence; it is used in a situation when the defendant wants to claim that he was acting under statutory authority. The well-known tort of nuisance is known in England as a strict liability and the defence of statutory authority is also available in the cases of nuisance. There are certain principles, which shows the absolute nature of statutory authority, these principles have emerged through the judicial decisions,

It could be easily noticed here that the legislature confers absolute power in one of two ways. The legislature could order to do a specific thing regardless of whether it does an injury to the other person. This is known as Absolute authority or the Imperative authority. In cases like this the authority covers not only harm which has to obviously occur, but also the harm which is incidental to the exercising of the authority. Let us explain this by taking an example it is not possible to build a railway with no interference in the land of the people (private land). In the case of *Dunne v. North West Gas Board*<sup>1</sup>, what happened was that gas was leaked due to a burst (by water) and the gas escaped in the sewer and travelled along, there was a series of explosions observed, many people were injured including a cyclist, two children playing in the field, a couple etc. In this case principle of strict liability was applied while deciding the case and the defence of statutory authority came out as an absolute defence, the defendant was not found liable.

Similarly, it has been held in India that if an act is authorized by the legislature and the authority given is absolute, no action will be going to lie against the person who has been directed by the statutory authority to do the act, provided that the act done was not negligent, this statutory authority acts as a defence not only for the act but also the

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<sup>1</sup> *Dunne v North West Gas Board*, (1964) Bom LR 415.

necessary consequences of the act, it is that if the legislature authorizes an act, it should also authorize with implications on all inevitable results of that particular act. It is evident that the statutory powers are not the charters of immunity for any of the injurious acts done while exercising the statutory powers but the condition is that the acts done in pursuance of the statutory authority have to be done without any negligence otherwise an action lies, as it happened in the case of *Ramchandram Nagaram Rice and Oil Mills, Ltd., Gaya vs. The Municipal Commissioners of the Purulia Municipality*<sup>2</sup>. What happened in this case was that the plaintiff send 1000 canisters filled with mustard oil from Gaya to Purulia with the help of a van which belonged to E.I. Railway. As these canisters reached Purulia, the Municipal committee of that place rushed to the place and applied the Bihar and Orissa Municipal Act, for a search warrant under section 287 on the ground that the oil was not good, the defendant committee seized the bad oil and loaded that oil in a scavenger's truck with the help of workers. In the present case the court held that the defendant acted unreasonably in order to prevent the spread of beriberi in the municipality, the court observed that if a person exercises his rights under the statutory authority he would not be made liable until and unless it is proved that he acted out of malice and was negligent in exercising his rights. One important and interesting concept in connection to the statutory authority is permissive or conditional authority, under this the legislature can merely permit to perform an act, here also there is no liability but for negligence. In the case of *Faiyaz Hussain v. Municipal Board of Amroha*<sup>3</sup>, the facts were that the Shia Mohammedans claimed that they had a right to move along with their Tazias which are of 27 feet in height in the streets of Amroha but through certain fixed routes and the defendant have to raise the electric wires to such an extent that the procession of tazias do not get interfere as it was their right. The court held that when according to statute the legislature has authorized some act and has given the authority which is just permissive and not absolute or imperative, the legislature means that the execution of work must be carried out in such a manner that it does not interfere with the common law rights of people. In this case the judge observed that "there is nothing on the record of the present case from which it could be argued that that the fixing of the wires at the height of 27 feet

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<sup>2</sup> *Ramchandram Nagaram Rice and Oil Mills Ltd Gaya v The Municipal Commissioners of the Purulia Municipality*, AIR 1943 Pat 408.

<sup>3</sup> *Faiyaz Hussain v Municipal Board of Amroha*, AIR 1939 All 280.

was an impossibility or that some other arrangements could have been made so that the inherent right of the plaintiff was not to be interfered with..." After a healthy discussion on the nature of statutory authority and after some examples of the cases, it is clear to us what actually the nature of statutory.

### **APPLICATIONS OF THE DEFENCE OF STATUTORY AUTHORITY**

Statutory authority is a defence by which the defendant gets the immunity from the charges brought against him. But there are some criteria that need to be fulfilled by the act to come under the ambit of statutory defence. What does the statute mean? How can an act fully satisfy the defence of statutory authority? And does plaintiff entitle for the compensation? These questions will be tried to answer in this section.

The power that is vested by the government to take the property (personal) from the individual is deep rooted in the idea of eminent domain. The state can use the personal property, to ensure the public good (like a house can be demolish or a building can be demolish for the construction of railway station) This is because the state has the responsibility to ensure the welfare of the people at large, enshrined in the Latin maxim, *Salus populi suprema lex esto*, meaning that the "welfare of the people is the paramount law". This is quite like the defence of statutory authority because in this defence the welfare of the public at large is supreme and a lesser personal right can be ignored in favor of a larger public good. The defence of statutory authority can be applied when an act or conduct is authorized by a statute, but it can extend to all inevitable consequences of that act. If the act is not authorized by any statute and the any injury (must be *Damnum sine injuria*) comes, the plaintiff is entitled to compensation. But if the act done by any persons who has the power to do that by the statute does something for which he is not authorized and does something beyond the course of employment he cannot take the defence of statutory authority and the state will also not be liable because at the time of the wrong committed he was not in the course of employment. The Supreme Court in *Kasturi Lal and Ralia Ram Jain v. State of U. P*<sup>4</sup>., held the State is not liable on the view that tort was committed by the police officers in the

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<sup>4</sup> *Kasturi Lal Ralia Ram Jain v State of UP*, (1965) 1 SCR 375.

exercise of delegated sovereign powers. The Court observed: "it must be borne in mind that when the State pleads immunity against the claims for damages resulting from injury caused by negligent acts of its servant, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or employment which referable to the exercise of delegated sovereign powers." The plaintiff can also get the compensation if the act was faceable and was negligent in their conduct. In a particular case the railway worker company negligently trimmed the grass and hedges *Kasturi Lal Ralia Ram v. State of U.P.* near the railway track, and no proper care was exercised in doing this job. Later, sparks set by the passing train from the train set the grass and bushes on fire. Due to the presence of strong winds, the fire was carried to the plaintiff's house. The house was a few metres away from the railway track. In this case it was not unforeseeable that in the event of a fire brought on by the sparks, the house could be affected. So, the railway company was held liable for the damage.

The plaintiff is not entitled to any damages if the action was with due care and all the necessary precautions were taken. In *Manchester Corporation v. Farnworth*<sup>5</sup>, Justice Cockburn said "When Parliament has authorized a certain thing to be made or done in a certain place, there can be no action for nuisance caused by the making or doing of that thing if the nuisance is the inevitable result of the making or doing so authorized. The onus of proving that the result is inevitable is on those who wish to escape liability for nuisance, but the criterion of inevitability is not what is theoretically possible but what is possible according to the state of scientific knowledge at the time, having also in view a certain common sense appreciation, which cannot be rigidly defined, of practical feasibility in view of situation and of expense". But the public authority is liable when its servant who is under their course of employment acting illegally, public authorities are liable for their actions in precisely the same way as private individuals. As early as 1866 in the case of *Mersey Docks & Harbor Board Trustees v. Gibbs*<sup>6</sup> (1866) L.R. 1 H.L. 93 the House of Lords held that statutory bodies were liable for the wrongful acts of their servants.

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<sup>5</sup> *Manchester Corporation v. Farnworth* (1930) AC 171.

<sup>6</sup> *Mersey Docks & Harbour Board Trustees v. Gibbs* (1866) LR 1 HL 93.

Statutory bodies such as the National Coal Board, the British Railways Board, and the British Airports Authority all have the same liability in tort or contract as private individuals<sup>7</sup>.

In *Allen v. Gulf Oil Refining Ltd.*,<sup>8</sup> it was held that;

- (a) the limit of the statutory authority and immunity depends on the relevant statute.
- (b) Where statute has directed to perform any action or authorized for any function or to construct/demolish with immunity from any action based on nuisance.
- (c) the person who has been authorized by the statute to do any work should carry out the work without any negligence in order to be immune from any charges brought against him and should work for the benefit and in the interest of other people.
- (d) There will be no immunity or a person if the term of the statute is permissive only, in which case the power must be exercised in strict conformity with the individual rights. (e) the immunity will extend to any nuisance which is the inevitable result of doing the act authorized by the act.

### **SOVEREIGN POWERS**

Sovereign powers are powers which if exercised, and during which a tortuous act is committed, no action will lie against the wrongdoer as these are the powers / functions those are assented / delegated by the central or state government or by any department under the government and which otherwise cannot be done and would not be lawful.

### **SOVEREIGNTY**

In order to fully understand the “sovereign powers”, it is necessary to understand from where these powers are derived from. The sovereign functions are delegated either directly or indirectly by the (central/state) government. The government run the country and as we all

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<sup>7</sup> Report from the United Kingdom, KENNETH MYNETT QC.

<sup>8</sup> *Allen v Gulf Oil Refining Ltd*, [1981] 2 WLR 188.

know (and as enshrined in our preamble as well) that ours is a sovereign nation. It won't be incorrect to say that the meaning and roots of sovereign powers belongs under the concept of sovereignty.

Sovereignty is a term that is used to refer to the independence and autonomy of modern nation states. Sovereignty means that nation states are free to decide for themselves about the kind of democracy that they want, the kind of rulers that they want, and their policies internally and externally.

Sovereign nations are expected to be autonomous and independent when they pursue policies through a complex system of delegation of powers and functions to individuals/ institutions/ authorities/ bodies/ companies etc.

### **DOCTRINE OF SOVEREIGN IMMUNITY**

The Age-old concept of "Sovereign Immunity" that basically postulates to - "Kings can do no wrong" and the king (state) is not responsible for any tortuous act and the aggrieved person gets no compensation.

The liability of the state (if at all), arose first in the *P. & O. Steam Navigation Co. v. Secretary of State*<sup>9</sup> Case. "The Court laid the definitions of the 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<sup>10</sup>".

A case in which the principle laid down in Steam Navigation case was followed was *Kasturi Lal Ralia Ram Vs. State of UP*<sup>11</sup>. 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

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<sup>9</sup> *P. & O. Steam Navigation Co. v. Secretary of State*, 5 BOM HCR Appendix a1.

<sup>10</sup> Neeraj Arora, 'Doctrine of Sovereign Immunity' (Neeraj Arora, 9 July. 2009) <http://www.neerajaarora.com/doctrine-of-sovereign-immunity/> accessed 20 January 2019.

<sup>11</sup> *Kasturi Lal Ralia Ram Jain v State of UP*, (1965) 1 SCR 375.

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 even though the negligent act was committed by the employees during their employment because the employment was of a category which could claim the special characteristic of a sovereign power. The court held that the tortuous 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<sup>12</sup>”.

### **NON- SOVEREIGN POWERS**

Although there is no statutory definition of Non-Sovereign Powers but it basically means any act or function done in the conduct of undertakings which might be carried on by private person-individuals without having such power. There is no immunity from judicial proceedings if a tortuous act that has not been authorized by a sovereign body is done, even if in the course of employment of the government or any department of the government.

For a better understanding let us take a case of pre-constitution era, wherein the court held the state liable in case of non-sovereign functions and to point out as to how far the state was liable in tort. *State of Rajasthan v. Mst. Vidyawati*<sup>13</sup>617, in this case, the claim for damages was made by the family of a person who died in an accident caused by the negligence of the driver of a jeep of the government for official use of the Collector of Udaipur, while it had been being brought back from a workshop after some 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 government officials, this activity could not be counted as a sovereign function in any way. The court held that –

“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.”

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<sup>12</sup> Neeraj Arora, ‘Doctrine of Sovereign Immunity’(Neeraj Arora,9 July. 2009)<http://www.neerajaarora.com/doctrine-of-sovereign-immunity/> accessed 20 January 2019.

<sup>13</sup> *State of Rajasthan v Mst Vidyawati*, (1962) AIR SC 933.



## **IMPORTANCE OF STATUTORY AUTHORITY IN INDIA**

India is a fast-growing economy and is also emerging as an important country in the political sphere as well. In this hour we need a strong development plan for our country that is supported by a strong administrative machinery which takes us to the formation of statutory authority and why they are of importance. The state has a responsibility to look after the welfare of the people and for that matter any person's personal loss can be overlooked as inscribed in the Latin maxim *Salus populi suprema lex* which implies that the "welfare of the people is the paramount law".

Example: The power to take personal property of a citizen to serve the purpose of public welfare is deep rooted and mentioned in the idea of eminent domain. This eminent domain is the state's power to take private property for public use. Likewise, In India, the Land Acquisition Act of 2013 gives the power to the state or union government to acquire a piece of land from an individual this unchallenged authority has been given to these bodies so that the minor infringement of rights that is caused by these bodies does not hamper the working of the administrative bodies. Thus, no matter how much misuse can be done through this defence but it is required for effective functioning.

### **4.1 NUISANCE AND STATUTORY AUTHORITY**

Nuisance has been defined as any act done to or which results in hurting or annoying another individual by directly or indirectly invading his personal rights. Nuisance is of two kinds' public nuisance and private nuisance. Public nuisance comes under the ambit of criminal law while private nuisance is a civil wrong. This project focuses on private nuisance. "Private nuisance occurs when a person disrupts or otherwise prevents another person from using and enjoying his own property."<sup>14</sup> For instance, if a person is playing songs on his music system after midnight at a high decibel which ends up causing annoyance to the neighbours. The court will entertain the lawsuit of nuisance only if the wrong has been committed repetitively even after being intimidated. Also, the decibel of sound and the timing should be unreasonable.

Statutory Authority is a valid defence to private nuisance. When undertakers act under a mandatory or rather statutory obligation, they may avoid liability if the tortious act committed

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<sup>14</sup> *Ratanlal and Dhirajlal, Law of Torts.*

is expressly required to be undertaken as prescribed in the statute. This principle can be illustrated with the example of *Allen v Gulf Oil Refining Board*<sup>15</sup>. “The plaintiff brought an action in nuisance for the smell, noise and vibration created by an oil refinery which had been constructed by the defendant on their land. The defendant’s action in constructing the oil refinery was authorized by an Act of Parliament. The court held that the defendant was not liable to pay damages to the plaintiff as he was acting under a statutory authority assigned to him by the parliament through a statute.”

However as discussed in *Department of Transport v North West Water Authority*<sup>16</sup>, if the statute holds a separate nuisance clause, the immunity of statutory authority no longer exists and may draw liability upon the defendant<sup>17</sup>. But if the acts done are ultra vires to the provisions of the statute, the immunity of the defendant will be dissolved and he may be held liable. This principle was evolved in the case of *Home Office v Dorset Yacht Co. Ltd.*<sup>18</sup>

#### **4.2 NEGLIGENCE AND STATUTORY AUTHORITY**

Negligence is the breach of duty of care owed to a neighbour which ends up in causing injury to the neighbour and draws liability. The definition of neighbour may include all those persons who may be affected proximately by ones acts and he owes them a duty of care. The misfeasance, malfeasance or nonfeasance to fulfil the duty of care leads to negligence. The perfect example of negligence can be seen in the famous ginger bottle case of *Donoghue v Stevenson*<sup>19</sup>.

The defence of statutory authority can be claimed only if the act carried out is sans any negligence. Any misfeasance malfeasance or nonfeasance on behalf of the defendant will dissolve the defence of statutory authority and will attract liability. This principle has been laid down in the *Allen v. Gulf Oil Refining Board*<sup>20</sup>.

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<sup>15</sup> *Allen v. Gulf Oil Refining Ltd*, [1981] 2 WLR 188.

<sup>16</sup> *Department Of Transport v North West Water Authority*, (1983) 3 WLR 105.

<sup>17</sup> *Allen v. Gulf Oil Refining Ltd*, [1981] 2 WLR 188.

<sup>18</sup> *Home Office v Dorset Yacht Co Ltd*, (1970) 2 WLR 1140.

<sup>19</sup> *Donoghue v Stevenson*, 1932) UKHL 100.

<sup>20</sup> *Allen v. Gulf Oil Refining Ltd*, [1981] 2 WLR 188.

## CONCLUSION

While reading about the defence of statutory authority, I referred different books and took help from different online sources. By doing this healthy research and discussing all the facts and different cases related to defence of statutory authority. I came to the conclusion that statutory authority is the authority that allows people or a group of people to enact legislation on behalf of the relevant government. Also, statutory authority gives people or a group the right to act on behalf of the government. Statutory authority is considered as a major defence in the law of tort in India in which anybody derives its power from a law or a statute that is made by the parliament of India. The statutory authority in the law of torts extends not only to the act that is authorized by the government or statute, but to all inevitable consequences of that act, this includes harm which is incidental to exercise of this authority, the defence of statutory authority exists in India just because of the fact that a lesser personal right can be ignored in favor of a larger public good. If any harm is caused to anyone deriving the performance of statutory work then he/she can't claim damages for the loss in value of their property, bodily harm or any other monetary or physical harm. So, this is the conclusive form of what I have studied during the research. Also, this research helps us a lot in deep and broad understanding of one of the major defence of the law of tort which we see in our daily life that is used by different officers appointed by the statutes or directly by the Government.