
SAHELI V. COMMISSIONER OF POLICE, 1990 AIR-513: A CRITICAL ANALYSIS

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ABSTRACT

The case of Saheli v. Commissioner of Police is concerned with the concepts of Vicarious Liability of the employer for the acts of its employees. It is a landmark judgment that holds strong precedent for cases concerning compensation through damages and the state being liable if the tortfeasor is the state's employee. This case was chosen to analyse for this research as it is an extremely important case that follows the events of a crucial fight against the system that was fought by the plaintiff.

This paper consists of a detailed analysis of the facts of the case, and an in-depth timeline of its events, followed by an analysis of its judgment and all the relevant tortious concepts that apply. The paper also goes in-depth within the history of the doctrine of 'vicarious liability of the state' and analyses it from the viewpoints of various landmark judgments, and offer a personal interpretation of the same.

Keywords: Vicarious Liability, Vicarious Liability of State, Trespass, Assault, Brutality, etc.

Literature Review

Compensation for Arbitrary Arrest and Custodial Death : A Basic Human Right by Furqan Ahmed¹ (Ahmad, 2003)

In this paper, the author highlights how Arbitrary Arrests and Custodial Deaths are extremely violative of basic human rights and fundamental rights of people and how institutions and authorities that are established for uplifting these rights are often the ones curbing them. The author highlights with a number of cases as references why compensations of some sort is necessary in these situations and the plaintiff is entitled to it after the various hardships they face under those violative situations.

Monetary Compensation for Violation of Human Rights- It's Development and Prospects in India by G.I.S. Sandhu² (Sandhu, 1995)

This paper explores the prospects of various ways of claiming monetary compensation for violation of human rights, like through writ jurisdiction, constitutional remedy, etc. and the development of the issue in the Indian context. The issue is elaborated upon by the author in a very resourceful manner along with various relevant cases.

Ratanlal and Dhirajlal's The Law of Torts 28th edition.³

This book acts as the perfect reference and guide to understand the law of tort. It covers all possible offences under tort law, their defenses, etc. The book was a great help in understanding all tort concepts relevant to this paper.

Vicarious liability in tort: A comparative perspective by Paula Giliker 4 (Giliker, 2010)

The paper covers all elements of vicarious liability and its significance and explains the concept from the basics in a very resourceful and educational format.

Saheli v. Commissioner of Police, Delhi⁵ is an unforgettable and bone-chilling case whose events took place in the locality of Anand Parbat in the city of New Delhi in the year 1987. It

¹ Furqan Ahmed, *Compensation for Arbitrary Arrest and Custodial Death : A Basic Human Right*, Cochin University Law Review, 41, (2003)

² G. I. S. Sandhu, *Monetary Compensation for Violation of Human Rights—Its Development and Prospects in India*, HUMAN RIGHTS IN INDIA, 407, (1995),

³ Ratanlal & Dhirajlal, *The Law of Torts* 11.2 (28 ed. 2021).

⁴ Paula Giliker, *Vicarious liability in tort: A comparative perspective* (Vol. 69) Cambridge University Press, (2010),

⁵ Saheli v. Commissioner of Police, AIR 513 1989 SCR 488 1990 SCC.

is a renowned and path breaking judgment where compensation was provided to the aggrieved party in the events of excess brutality on part of the Indian Police Force. In the occurrence of the events of this case, a 9 year old boy called Naresh was killed after he succumbed to his injuries that were sustained in the course of trying to protect his mother from physical abuse that the police was inflicting on her. The events of the case follow the life of Ms. Kamlesh Kumari, a strong and tenacious woman, who did not submit to the oppressive ways of her landlords but ultimately had to pay the price with the life of her son.

With relevance to tort law, there are occurrences of multiple tort offences along the timeline of the case. The case proceeds along the issue of Vicarious Liability. The concept is described as “the imposition of liability on one person for the actionable conduct of another ⁶” in Black’s Law Dictionary. More specifically, the case approaches the notion of ‘vicarious liability of state.’ It proposes that the state shall be accountable for the tortious wrong doings of the people working under it. In this case, ‘state’ being the Delhi Police Department and ‘employees’ being the police officers who misconducted.

Apart from this issue, the case also involves the transgressions of Trespass, described as “to enter unlawfully upon the land of another⁷” in the Merriam Webster dictionary, Assault, that is “the crime of trying or threatening to hurt someone physically,” Battery, which is “an offensive touching or use of force on a person without the person’s consent,” Nuisance, which is described as “a condition or situation that interferes with the use or enjoyment of property,” False Imprisonment, that is “Any intentional detention of the person of another not authorised by law⁸ and Negligence, i.e., “the failure to exercise the standard of care that a reasonably prudent person would have exercised.”

These will be discussed in profound details as the paper progresses. It will discuss and critically analyse these tortious acts in-depth with reference to the facts and the judgment of the case.

This paper aims at understanding the concept of tortious liability and Police Brutality through the case *Saheli v. Commissioner of Police 1990* and also the concept of vicarious Liability of state through this case and other landmark judgments.

⁶ Bryan A. Garner, Black's Law Dictionary (11 ed. 2019).

⁷ Merriam & Webster, Merriam-Webster's dictionary of law (2016).

⁸ Henry Campbell Black, Black's Law dictionary (2 ed. 1910).

The primary interest of conducting this research is centred on understanding the concept of Vicarious Liability of State through the case of *Saheli v. Commissioner of Police*, 1990. Through this case, the paper also aims at analysing other concepts of tort law like Trespass and False Imprisonment, etc. and present them in a narrative that is more easily comprehensible to future researchers and laymen. A secondary objective of the paper is to get a candid look at the police system in the NCT of Delhi in the year 1990, police brutality and reflect upon loopholes in the system that were spotlighted in this case.

The petition in this case is pursued under **Article 32⁹** of the Indian Constitution, 1950. The case deals with issues regarding the Responsibility of State, Tortious Acts of Employees, Death of an individual due to police brutality, direction to the state by court to compensate aggrieved party, etc. The main persons involved in the case were:

- i. **Naresh**, deceased 9-year old boy
- ii. **Kamlesh Kumari**, mother of the deceased child
- iii. **Saheli**, a non-profit organization
- iv. **Maya Devi**, neighbour of Kamlesh Kumari
- v. **Puran Chand**, landlord
- vi. **Shambu Dayal** and **Prakash Chand**, sons of landlord Puran Chand
- vii. **Lal Singh**, SHO, Anand Parbat Police Station

In 1974, Kamlesh Kumari along with her husband Inder Singh and three children, Saroj, Lt. Naresh and Suresh, moved into their rented room in a two storey house in the locality of Anand Parbat. Maya Devi was also a tenant in a room in the same house and lived with her husband and children. Both their husbands were truck drivers, hence had to stay away from their home for longer durations.

There was an ongoing dispute about the ownership of the house. The new landlord, Puran Chand, along with his sons, Shambu Dayal and Prakash Chand, was illegally evicting tenants and managed to evict all of them except Kamlesh Kumari and Maya Devi. When they refused to budge, a series of events of physical and mental harassment began, which were inflicted by

⁹ INDIA CONST. art. 32 Remedies for enforcement of rights conferred by this Part.

the landlord and his sons in union with the Station House Officer of the local police station, Lal Singh.¹⁰

The following is a timeline of events as they occurred in this case:

S no.	Occurring Event	Time of Event
01.	Kamlesh Kumari and husband Inder Singh start residing in a rented room in the Anand Parbat area with their three children Saroj (13), Naresh(9) and Suresh(7)	1974
02.	Old landlord Tajinder Singh sold his property to Manohar Lal, who sold the property to Puran Chand, who is illegally evicting all the tenants.	1984
03.	Kamlesh Kumari gets a stay order from court on her forceful eviction.	(date unknown)
04.	Water and electricity cut off to Kamlesh's room by the landlord.	October 1987
05.	, Lal Singh, who was the SHO of Anand Parbat Police Station, summoned Kamlesh to the station and asked her to empty the room.	2 nd November 1987
06.	She is called again and the SHO, in the presence of the landlords, offered her money to leave the room. Kamlesh Kumari asks for some time since her kids are studying in schools in the area.	4 th November 1987

¹⁰ Saheli, A Women's Resource Centre v. Commissioner Of Police, Delhi, 1990 AIR 513, 1989 SCR 488.

07.	Kamlesh was again called to the station and verbally threatened by the SHO that she would be put in lockup if she refused to leave the rented property.	12 th November 1987
08.	Kamlesh went to Tis Hazari court to consult her lawyer, and finds children missing on return. Maya Devi tells her that a sub Inspector of Anand Parbat Police Station took her kids. His name was K.L. Nanda. SHO Lal Singh had locked her children up and they won't be allowed to go unless Kamlesh vacates the rooms. Her lawyer got the children released with great difficulty.	13 th November 1987
09.	On the same day, Shambhu Dayal trespassed into her room and hits her head with a brick. Kamlesh rushes to the police station, but no actions taken by police against the assailant. Only a medical examination was conducted.	13 th November 1987
10.	Kamlesh Kumari was ambushed and attacked by the sons of the landlord Shambu Dayal and Prakash Chand. Lal Singh in regular civilian clothes along with sub inspector Sham Lal and two other officers was also present. They beat her and sexually harassed her. Her nine year old son Naresh clutched her in order to shield her from the attackers. Then Lal Singh pulled him off and threw him on the floor with great force. He commanded Shambu Dayal to beat Naresh. Kamlesh Kumari was arrested and locked up. A false criminal case was imposed upon her for trespass.	14 th November 1987
11.	Kamlesh is released from the lock up. She returns to find her children in the care of her neighbors. Her son Naresh sustained injuries and is in a critical condition.	16 th November 1987

12.	Naresh is admitted to Dr. Ram Manohar Lohia hospital. No medical case is registered.	18 th November 1987
13.	The ACP of Patel Nagar registered a medical case at the late hour of 11.30 p.m. The FIR No. was 143/87. The ACP had recorded that Kamlesh stated that no policeman had physically abused her son, even though she had specifically named Lal Singh and others.	23 rd November 1987
14.	Naresh expired in the hospital succumbing to high fever and pneumonitis caused due to the injuries sustained by him.	26 th November 1987

After this, the Central Bureau of Investigation was brought in for a thorough investigation and they filed a report opposing bail for Shambu Dayal, stating that the D.D. entries that were made in the bail application should be proof of collaboration with officers in the local police station. A writ petition was taken to the court to provide directions to the respondents to compensate with damages to Kamlesh Kumari for the demise of her 9 year old son.

On 22nd August, 1988, the court provided the respondents with two weeks' time to file a counter affidavit. The Deputy Commissioner of Police Kanwaljit Deol Delhi, on behalf of Commissioner of Police put forth an affidavit in counter which declared that an FIR was filed in Patel Nagar and Shambu Dayal was arrested on 24th November 1987 under section 308¹¹/34¹² of the Indian Penal Code. On Naresh's death on the 26th of November, 1987, a post mortem was conducted and the findings stated that the beatings injuries sustained by him were not sufficient enough to cause death and that pneumonitis was the reason of the demise, which was diagnosed clinically and then the offence was substituted by Section 304¹³/34 IPC. The counter affidavit also said that it was evident that the landlord illegally evicted Maya Devi on the 13th of November 1987. It was also written that Shambu Dayal got Kamlesh Kumari

¹¹ IPC § 308 Attempt to commit culpable homicide

¹² IPC § 34 When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

¹³IPC § 304 Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

arrested by falsely accusing her for the offence of trespass under section 448¹⁴ IPC. She was physically and sexually abused and her minor son wasn't spared either. He sustained multiple injuries, with a grievous one on his left leg, and couldn't be attended to by a doctor as his mother was in lockup. He died due to high fever and pneumonitis, resultants of injuries.

A report that was put forth by Puran Singh, inspector at the crime branch of Delhi stated that providing bail to Shambu Dayal would alter the fair proceedings of the investigation and that a high level conspiracy was underway in collaboration with the local police to illegally evict tenants. Bail for Shambu Dayal was strongly opposed by them.

The Supreme Court bench that heard this case consisted of 2 esteemed judges Justice Bankim Chandra Ray and Late Justice S. Ratnavel Pandian. The court held that-

“A claim to damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, battery and false imprisonment, the damages are large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death.”¹⁵

The counter affidavit filed by the commissioner of police and the report submitted by the Crime Branch officer, along with the investigations, were considered as deciding factors in the case. It was settled that the state is accountable and liable for the tortious acts of its employees and that the Delhi Administration (respondent no. 2) was directed to pay damages of Rs. 75,000/- to Kamlesh Kumari for the brutal demise of her son inside four weeks of the date when the judgment was delivered. The Delhi administration may take measures within itself for the recovery of the amounts paid as compensation or part thereof from the officers who were found responsible.¹⁶

After obtaining a deeper understanding of the facts and the judgment of the case, the various tortious concepts that were present become much easier to understand. A recurring tortious offence in the case was that of trespass. In the Black's Law Dictionary, the offence of trespassing is defined as “an unlawful act committed against the person or property of another person; in particular, unlawful entry into the real property of another person.”¹⁷ Trespass to

¹⁴IPC § 448 Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

¹⁵ Saheli, A Women'S Resources ... vs Commissioner Of Police, Delhi ... on 14 December, 1989, , <https://indiankanoon.org/doc/467223/> (last visited Jan 3, 2022).

¹⁶ Saheli, A Women's Resources v. Commissioner Of Police, Delhi, AIR 513, 1989 SCR 488.

¹⁷ Bryan A. Garner, Black's Law Dictionary (11 ed. 2019).

person is when there is unreasonable and unwanted interference with the body of a person and is committed either by real harm or just the perception of any oncoming force. Trespass to property can be defined as the illegal entering of another person's property. Kamlesh Kumari and Maya Devi undergo various instances of trespass through verbal intimidation and physical violations by the respondents while they were trying to forcefully evict them from their respective rooms. Both of them face trespass to property when the respondents forcefully enter into their rooms to illicitly evict them. Another recurring tortious concept is assault. The trespass of assault can be defined as "An attempt or a threat to do a corporeal hurt to another, coupled with an apparent present ability and intention to do the act."¹⁸ In the course of this case, instances of assault are present. Lal Singh who was the Station House Officer of the Anand Parbat station, verbally threatened Kamlesh Kumari when he called her to the police station and asked her to vacate the rooms. There are multiple cases where the sons of the landlord Shambu Dayal and Prakash Chand assault Kamlesh Kumari. In this case, assault was often followed by battery. Battery can be defined as "the intentional and direct application of any physical force to the person of another. It is the actual striking of another person, or touching him in a rude, angry, revengeful, or insolent manner." Kamlesh is subjected to battery when Shambu Dayal hit her with a brick on her head. Kamlesh and her son are subject to battery on 14th November 1987 when Shambu Dayal, Prakash Chand, Lal Singh, Sham Lal and two other inspectors beat both of them brutally, and it resulted in nine year old Naresh's death.

Throughout the case we also see instances of nuisance. Nuisance can be defined as "A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance, to the public or to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right." Kamlesh and her family's right to enjoyment of their residence were hindered when the landlords resorted to cutting off light and water supply to their room. Their constant interference in Kamlesh's residence, despite a stay order from a court, amounts to nuisance.

There are also instances of False Imprisonment, which is the state of being imprisoned without legal authority. After Kamlesh refuses to leave the rooms despite of the collective efforts of the landlord, his sons and the SHO, the police falsely imprison her children in lockup and tell her

¹⁸ Ratanlal & Dhirajlal, *The Law of Torts* 11.2 (28 ed. 2021).

that they won't be freed until she agrees to vacate the rooms. This imprisonment was not authorised by a court of law, and hence illegal.

The general understanding of the common law of torts tells us that a person is liable only for his own tortious acts. The concept of Vicarious Liability serves as an exception to this general understanding. Vicarious Liability is a legal term used to explain the responsibility one party may hold for actions that cause harm, even if they aren't the party that directly caused the harm.¹⁹ Vicarious Liability is related to the Legal maxim "**Qui facit per alium facit per se**" which means that "he who acts through another does the act himself." Certain constituents to Vicarious Liability are that there must be a relationship of some kind between the party who committed the tort and the party that is being held vicariously liable; that the wrongful act must be somehow connected to the relationship between the two parties and that the wrongful act must be done within the course of this relationship.

Relationships in a situation of vicarious liability can be compared to a master-servant or an employer-employee relationship. It is often argued that "vicarious liability is justified, on grounds either of moral reparation or of deterrence, because of a presumption of the master's fault."²⁰ (Williams, 1957) It is also argued that the doctrine of vicarious liability is important to ensure that punishment for an act that may be done in the course of employment due to some form of compulsion is not only suffered by the tortfeasor and that the parties with authority and economic interests in the relationship also suffer the necessary repercussions.

Sir John Holt, who was the Lord Chief Justice of England from 1688-1710 asserted that the master was liable for acts done both at his expressed and implied commands. Sir Holt established this in the case *Herne versus Nichols*.²¹

The doctrine of vicarious liability is generally under civil law, but it also makes an exception in certain criminal cases. The Indian Penal Code covers various situations of vicarious liability, for instance, "when a member of an assembly commits an offence in furtherance of a common objective, every member of that assembly will be held liable for that offence."²² Other situations it covers are of liability of manager if illegal activities take place on a property, the

¹⁹ Vicarious Liability, , CORPORATE FINANCE INSTITUTE , <https://corporatefinanceinstitute.com/resources/knowledge/other/vicarious-liability/> (last visited Jan 3, 2022).

²⁰ Glenville Williams, *Vicarious Liability and the Master's Indemnity*, 20 MOD. LAW REV. 437–446 (1957).

²¹ Original citation: (1795) 1 Salk 289 English Reports Citation: 91 E.R. 256

²² §149, The Indian Penal Code, 1960.

liability of master if the servant creates public nuisance²³, the liability of master if the servant defames someone²⁴, etc.

In the Indian law, there are no real provisions in place that deal exclusively with the vicarious liability of the state. The tortious liability of the government is evaluated through the principles of fundamentals of public law from the British Common law.²⁵ Clause (1) of Article 300 of the Indian Constitution of India, 1950 states that

“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.”

With respect to the case of Kamlesh and Naresh, the court said that “the state is responsible for the tortious act of its employees”. The commissioner of Police, Delhi was held liable in the case for the tortious acts of its employees SHO Lal Singh and other inspectors in the Anand Parbat police station. They were held liable to pay compensations to the petitioner Kamlesh Kumari for the untimely demise of her 9-year-old son Naresh due to brutality concluded by their employees.

The concept of tortious liability of the employer is extremely relevant in today’s age. Since all acts done under the employment can be called direct orders of the employer, he/she is motivated to ensure that the employees follow a precise course of action and that their actions don’t harm any third parties, as the employer itself is responsible to pay damages. The state has the power to hire or fire the employee hence it is liable to keep the actions of the employee under check as well. The following cases are landmark judgments that define this concept.

1. *State of Rajasthan v. Vidyawati*²⁶

Lokumal was the driver of a government car and on his way back from a repairs workshop, hit Jagdishlal, who got severely injured and later died. His widow Vidyawati sued the government

²³ § 268, 269 The Indian Penal Code, 1960.

²⁴ § 499, The Indian Penal Code, 1960.

²⁵ Vicarious Liability of State - Academike, <https://www.lawctopus.com/academike/vicarious-liability-state/> (last visited Jan 3, 2022).

²⁶ The State Of Rajasthan vs Mst. Vidhyawati And Another 1962 AIR 933, 1962 SCR Supl. (2) 989.

in power of Rajasthan for damages. The court ruled that the state was as responsible as any other employer for the actions of its employee in the course of the employment.

2. *Kasturi Lal v. State of Uttar Pradesh*²⁷

In this case, the plaintiff was suspected of possessing stolen property. On further search, a large amount of gold was obtained. The plaintiff was released but the gold acquired by the police was not returned to the plaintiff. The head constable of the station had acquired and absconded with the gold. The plaintiff sued the state seeking recovery of gold or damages. The Supreme Court rejected this plea as the act of the employee was in the exercise of their sovereign power, provided through statutes. The suit was dropped as the act was that of a sovereign function.

3. *State of Gujarat v. Haji Memon*²⁸

In this landmark case, the court observed and established that if any government department seizes movable property of the plaintiff, they hold the same responsibility as that of a bailee, and are expected to take reasonable care of these goods. The state official cannot evade responsibility under the guise of sovereign function. The argument that bailment only arises out of a contract is flawed as the relevant section (s. 148)²⁹ is not exhaustive on the matter of bailment.

4. *Bhim Singh v. State of Jammu and Kashmir*³⁰

In this case, the Court awarded the huge cost of Rs 50,000 as damages to the plaintiff owing to the authoritarian and brutal manner in which the police infringed the liberty and human rights of the petitioner.

The aim of this paper was to understand important concepts like vicarious liability of state, tortious liability of the employer for the act of the employee, and other tortious concepts like trespass, assault, battery, nuisance and false imprisonment. The paper also aimed at candidly observing the police system in Delhi, and look at their inhumane practice of police brutality.

²⁷ Kasturilal Ralia Ram Jain vs The State Of Uttar Pradesh on 1965 AIR 1039, 1965 SCR (1) 375

²⁸State Of Bombay (Now Gujarat) vs Memon Mahomed Haji Hasam 1967 AIR 1885, 1967 SCR (3) 938.

²⁹ A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

³⁰ Bhim Singh, Mla vs State Of J & K And Ors. AIR 1986 SC 494, 1986 CriLJ 192, 1985 (2) SCALE 1117, (1985) 4 SCC 677, 1986 (1) UJ 458 SC.

In order to understand the case of *Saheli v. Commissioner of Police*, the paper elucidated in great detail the facts of the case, which helped in understanding the need for the state, in this case the police commissioner in Delhi, to take accountability for its action and why the petitioner needed to be provided certain damages as compensation. This landmark judgment from about 30 years ago still holds great relevance and precedent in governing cases regarding compensation for the excess lawlessness on part of the Indian police force. It acts as deciding precedent in various cases regarding vicarious liability. The case helps make the process of understanding concepts of vicarious liability of state much more direct and elementary.

The paper gave a clear perspective of police brutality, the liability of state, and other tortious elements through this case and other landmark judgments. Following the events of this case, we get a candid look at the harsh reality of the brutality of police and the loopholes in the policing system. The fight against the system that Kamlesh and her supporters fought for her son is a source of great inspiration for everyone. Kamlesh, with her strong will and perseverance fought for her rights from the first day to the last and ensured that justice be served and those who murdered her son are met with the consequences for their actions.

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