

**5. What do you mean by state responsibility? Discuss various types of state responsibility.**

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- iii. Acts of Armed forces
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- i. By their own consent
- ii. By their own mistake

- iii. When they are themselves wrongdoer
- iv. By the inevitable accident
- v. By the act of God
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- vii. By the act of retaliation
- viii. During the civil war

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- ii. Restitution
- iii. Compensation:-
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### **1. Introduction**

The law of state responsibility is one of the fundamental principles of International law. It defines those circumstances in which a state would be held responsible for their unlawful acts or omissions and become liable to pay compensation to injured state against breach of obligation. The law of state responsibility comes into force when any obligation is breached between the two or more nations and these rules applied on such kind of violation. Since formerly states alone were recognized as subjects of international law, the general topic of international responsibility for wrong used to be discussed under the heading State Responsibility. In international law, responsibility is the corollary of obligation; every breach by a subject of international law of its international obligations entails its international responsibility. The law of State responsibility defines when an international obligation is to be held to have been breached, as well as the consequences

of that breach, including which States are entitled to react, and the permissible means of that reaction. Unlike national laws, wherein different rules often apply according to the source of the obligation breached (e.g., contract law, tort law, criminal law), international law does not concern itself with the source of the obligation that is breached; in principle (and unless otherwise specifically provided) the same rules apply to the breach of an obligation whether the source of the obligation is a treaty, customary international law, a unilateral declaration, or the judgment of an international court.

## **2. Definition of state responsibility**

- State responsibility is such responsibility when a state commits an international wrongful act or wrongful omission according to rules of international court of justice and held responsible for their act or omission, is called state responsibility.

## **3. Meaning of the term state responsibility**

- A state has certain obligations under international law. The state responsibility concerning international duties is, therefore a legal responsibility, for a state cannot abolish or create international law in the same way that it can abolish or create municipal law.
- Thus, the rules of international law as to state responsibility concern the circumstances in which and the principles where by the injured state becomes entitled to redress for the damage suffered.
- As pointed out by Starke, The law of state responsibility is still in evolution and may possibly advance to the stage where individuals are also fixed with the responsibility for breaches of international law which are international crimes.

- Conditions of state responsibility
  - i. During time of war
  - ii. During time of peace

#### **4. Essentials of state responsibility**

- i. Obligation**
- ii. Breach of obligation**
- iii. Damage**

##### **i. Obligation**

- To hold a state responsible, there should be an obligation between the two states where both of the states are under an obligation to do something or not to do something.

##### **ii. Breach of obligation**

- To hold a state responsible, the obligation must be breached by doing something or by not doing something where parties were not entitled to do or not to do.

##### **iii. Damage**

- To hold a state responsible, there should be the damage in result of violation of the obligation

#### **5. Types of state Responsibility**

- Original responsibility of the state are for the works of its government and vicarious responsibilities are for its citizens and the works done by its agents. When the private individuals of a state cause harm to other states through their acts, the question of vicarious liability arises.

- In such a situation it becomes the duty of the state to punish the individuals concerned and compel them to pay compensation,
- Original responsibility is borne by a state for acts which are directly imputable to it, such as acts of its government or those of its officials or private individuals performed at the governments command or with its authorization.
- Vicarious responsibility, on the other hand, arises out of certain internationally injurious acts of private individuals (whether national or aliens in the states territory) and of officials acting without authorisation.
- It is apparent that the essential difference between original and vicarious responsibility in this sense is that where as the former involves a state being in direct breach of legal obligations binding on it and is accordingly a particularly serious matter, with the latter the states responsibility is at one to remove the injurious conduct complained of

## **A. Act of state**

### **a. Direct State Responsibility**

#### **i. Acts of Executive / Administrative**

#### **ii. Acts of judiciary**

#### **iii. Acts of Armed forces**

#### **iv. Diplomatic Representative**

#### **i. Acts of Executive / Administrative**

- State is responsible for the wrongs if these wrongs have been committed by the it's government organs and causes an injury to aliens. In this case aliens can file the case against the state for compensation.

- Who are responsible to do day to day work of a state, for example- Head of department, Head of government, Head of state, authorised person if these type of persons violates any rights or any obligation which are ratify by state in international level, in these cases state is directly responsible for the aggrieved state.

## **ii. Acts of judiciary**

- When courts are passing judgements, if any court pass such order which violates any convention or treaty(agreement) international obligation, in these situations because of these acts of judiciary, state is directly responsible

## **iii. Acts of Armed forces**

- Armed forces of any country, who is at authorised position, In official capacity, under the command and of the state violate any convention or treaty(agreement) in these type of cases, state is directly responsible of his behalf for the violation of any international law.

## **iv. Diplomatic Representative**

- If any diplomatic representative (ambassador) commit any act on command of sending state, in this situation the diplomatic representative have immunity but the sending state, on whose command diplomatic representative done any act is directly responsible.

## **b. Indirect State Responsibility/ Vicarious liability**

### **i. Acts of mob/ Violence**

### **ii. Act of Insurgents**

### **i. Acts of mob/ Violence**

- State responsibility for mob violence is same as acts of private individuals. Generally, state may be held responsible for mob violence only when it has *not made due effort to prevent it*.
- Outbreak of mob violence resulting in injury to the aliens raise regularly the question of prevention as well as redress. While occasional outbreaks of mob violence may be accepted in any state, and their mere occurrence is not of responsibility, the state is expected to use due diligence to prevent them.
- But this test is uncertain and ambiguous. What constitutes due effort is a question of time and circumstance. This test is so ambiguous that often jurists express the view that there is no state responsibility in respect of mob violence. But this view is not correct.
- THE rioters and militants also seized the occupants and held them as hostages. Since the rioters and militants were persons without official status in the initial stages their acts could not be attributed to the state.
- The international court of justice held Iran not responsible for the initial stages of their act.
- But subsequently the situation changed where the militants became agents of the state and hence Iran was held responsible for their acts.

### **ii. Act of Insurgents**

- So far as the state responsibility for the acts of insurgents is concerned, the general rule is that it is the responsibility of the states to try to prevent the violent acts of revolutionaries
- But there is a controversy that if the states are not able to prevent violent activities, whether they will be responsible or not.

- According to Feriwick, state responsibility for the acts of insurgents is different from state responsibility for the acts of mob violence.
- When there is a revolution/ insurgency, there is a presumption that the state shall make due efforts to prevent it because it is in the interest of the state to suppress it. Because it is an open attack on its Authority.

## **B. Act of individual**

### **i. International delinquency**

#### **ii. Acts of aliens**

#### **iii. Acts of govt organs**

#### **iv. Contract with foreigner**

### **i. International Delinquency**

- As pointed out by prof. Oppenheim an international delinquency is any injury to another state committed by the head or government of a state in violation of an international legal duty.
- Equivalent to acts of the head and government are acts of officials or other individuals commanded or authorized by the head of the government.
- The notion of an international delinquency ranges from ordinary breaches to treaty obligations involving not more than pecuniary compensation to violation of international law amounting to a criminal act in the Generally accepted meaning of the term.
- On the other hand, crimes are violations of customary or treaty rules of international law.
- For international delinquency generally the remedy is pecuniary compensation.

## **ii. Acts of aliens**

- Under international law it is generally agreed that Aliens living in a state should also be conferred upon the same rights which are given to the citizens. IT is the responsibility of the state to protect rights of aliens in the same way as they protect the rights of their citizens.
- The duty of the state is to simply exercise effort and where injurious acts have nevertheless been committed, procure satisfaction and reparation for the wrongful act as far as possible, by punishing the offenders and compelling them to pay compensation if necessary.
- If the citizen of a state cause some damage or harm to an alien in that state, the alien gets the right to file the suit for compensation according to the law of that state.

## **iii. Acts of govt organs**

- The state concerned has responsibility for the acts performed by its representative or high officials toward the alien persons.
- But state responsibility is accepted only to the extent where the officials concerned have acted out of their powers and jurisdiction.
- The traditional doctrine of international law, which restricts state responsibility to persons officially connected with government, as distinct from private persons, is predicted on the assumption that the latter are free from government direction to control in their action affecting foreign states.

## **iv. Contract with foreigner**

- The alien person, however has the remedy to avail the local means available to him in the state law, of the state concerned.

- If the matter is not resolved to the satisfaction of the alien person, then he may try to settle it through a medium of his home state by resorting to political and diplomatic means.
- In the words of Fenwick, in general the alien, believing himself to be the victim of breach of contract by foreign govt. must first exhaust such local remedies as are available to him. These failing him, he may seek to press the claim through the foreign office of his government.

## **6. Exceptions to State Responsibility**

- i. By their own consent
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## **7. Consequences of State Responsibility**

- i. Restitution
- ii. Indemnity
- iii. Satisfaction

## **8. Conclusion**

**liability for the acts of multinational corporations**

## **Bhopal gas leak disaster.**

- THERE is lack of definite international law in respect of liability of transnational or multinational corporations.
- The charter of Economic rights and duties adopted by the General assembly on 12 Dec, 1974 recognises the right of each state to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws.
- Rules and regulations and conform with its economic and social policies.
- But developed countries such as US, UK, Germany and Japan voted against this.

## **IN MC MEHTA V/S UNION OF INDIA 1986**

- which is more popularly known as OLEUM GAS leak case (4th dec, 1985), the SC of India held,
- The enterprise must be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standard of safety and if any harm results on account of such activity the enterprise must be ABOSOLUTELY liable to compensate for such harm and it cannot say that it had taken all reasonable care and that the harm occurred without any negligence on its part.
- The enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in RYLANDS VS FLECTHER.
- After having consolidated all claims relating to Bhopal gas leak disaster and having acquired Exclusive right to represent and make the claim by passing Bhopal gas leak Disaster ( processing of claims Act )1985.

### **Legal control on the Transboundary movements of hazardous wastes .**

- The most important convention in this respect is 1989 Basel convention of the control of Transboundary movement of Hazardous wastes and their Disposal .
- It was adopted in 1989. It entered into force in 1992 .
- This convention was ratified by 183 countries .
- But unfortunately, the united states of America, the largest generator of hazardous waste, has not ratified the convention.
- The object of the convention is to minimize the generation of hazardous wastes, to promote disposal of hazardous wastes as close as possible to their, source of generation , to encourage to take precaution to control pollution and to reduce transboundary movements of hazardous and other wastes covered by Basel conventions.
- According to Art. 1 of the protocol the objective of the protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

### **State responsibility for environment development :**

- Environmental consequences of industrialization and economic development and the pollution of air, water and soil on which our life depends is the high or dear cost which man has to pay for economic progress.
- Development and Environment are invariably related to each other . Even the developing countries cannot afford to ignore the environmental consequences of the process of development.

- Hence an essential and grave problem is to maintain harmony between development and environment
- The future of the developing countries greatly depends of the several other human rights.
- Art. 55 of the UN Charter describe economic development and respect for human rights as the twin foundations of friendly and peaceful relations among nations.
- Economic development and human rights are thus intimately connected with each other.
- There is a close relationship between development and conservation of environment. This relationship was acknowledged in 1972 stockholm conference on Human Environment.

## **7. Consequences/ Reparation of State Responsibility**

### **i. Cessation**

- Under international law, a state responsible for wrongfully injuring a people "is under an obligation to a) "cease the act if it is continuing, and, b) offer appropriate assurances and guarantees of non-repetition..."

### **ii. Restitution**

- Restitution means to "re-establish the situation which existed before the wrongful act was committed." Changes traced to the wrongful act are reversed through restoration of freedom, recognition of humanity, identity, culture, repatriation, livelihood, citizenship, legal standing, and wealth to the extent they can be, and if they cannot, restitution is completed by compensation.

### **iii. Compensation**

- The injuring state, institution or individual is obligated to compensate for the damage, if damage is not made good by restitution. Compensation is required for "any financially accessible damage suffered..." to the extent "appropriate and proportional to the gravity of the violation and circumstances."

### **iv. Satisfaction**

- Satisfaction is part of full reparation under international law for moral damage, such as "emotional injury, mental suffering, and injury to reputation." In some instances where cessation, restitution, and compensation do not bring full repair satisfaction is also needed. Apology falls under the reparative category a satisfaction.

### **v. Rehabilitation**

- Rehabilitation shall be provided to include legal, medical, psychological and other care and services.

*Asst. Prof. Shraddha S Choudhary*