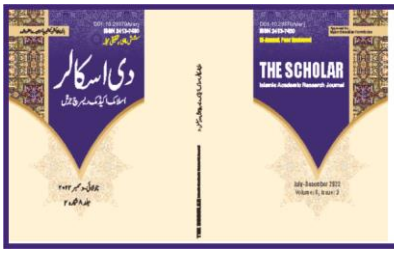

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TORTIOUS LIABILITY OF THE STATE: AN EVOLVING DOCTRINE UNDER ISLAMIC AND COMMON LAW PERSPECTIVES

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TORTIOUS LIABILITY OF THE STATE: AN EVOLVING DOCTRINE UNDER ISLAMIC AND COMMON LAW PERSPECTIVES

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ABSTRACT:
The fundamental idea of liability, state liability, and its evolution in Islam, British India, India, Pakistan, and other specific global jurisdictions are covered in this paper. It also highlights relevant clauses of liability that are established in the legislation of different states. The primary focus of the study is how the laws of the State and its employees establish liability for tortious acts committed against its people while they are performing their duties. This study employs an exploratory research strategy in conjunction with a doctrinal research methodology. It demonstrates that these states initially gave the sovereign complete immunity from lawsuits. However, they have gradually moved away from this ideology and are now approaching this issue differently than the dogma that is in place in Pakistan. Additionally, it identifies the gradual development of a mild sense of state accountability. The "rule of law," which mandates that everyone be treated equally under the law, has served as a foundation for the push to limit immunity in tort. Therefore, this study suggests that efforts to promote this movement be supported and that immunity in various forms of tort law be regularized at the federal, state, and local levels.

KEYWORDS: Tortious liability, State liability, Immunity, Liability in Islamic law, Liability in Common law

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Introduction:

In any modern society, interactions between the state and its people are numerous, frequent, and crucial from the perspective of how they affect the lives and fortunes of the populace. These kinds of interactions often lead to legal issues that need to be resolved by using various doctrines and rules. There are a number of issues that arise in the field of tort law. In Pakistan, there is no particular law that governs the state's responsibility for the wrongdoings of its employees. The current study focuses on the tortious liability of the Pakistani government. First, from the standpoints of common and Islamic law, it provides the concept of liability and state liability. It draws attention to the liability laws and provisions in other countries so that their laws can be used. It evaluates the current scheme of the liability that exists in the laws. The primary goal of this study is to investigate the need for comprehensive legislation to provide consistent legal methods for the prompt resolution of disputes and to offer the impacted party fair compensation for the torts committed by state employees. This study employs an exploratory research approach in conjunction with a doctrinal research methodology. To solve the issue, it recommends codifying tortious liability law and regularizing immunity clauses.

1. The Concept of Liability:

The definition of "liability" includes "the state of being legally responsible for something,"[1] "the state of being liable,"[2], and "the state of being bound

[1]Legal Dictionary, s.v. "Liability," http://legal-dictionary.thefreedictionary.com/liability (November 11, 2024)

[2] Black's Law Dictionary, s.v. "Liability," http://thelawdictionary.org/liability/ (November 12, 2024)

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or obliged in law or justice to do, pay, or make good something."[3] Salmond defines the liability as "the bond of necessity that occurs between the wrongdoer and the remedy for the wrong".[4] A violation of an obligation that is actionable by law or morality might be considered a wrong. Moral wrong and legal wrong are two different things. When a legal responsibility is violated, there will be a legal remedy available; when a moral duty is violated, there will be social pressure as a consequence. Legal obligations fall into two categories: civil law and criminal law. In criminal law, the perpetrator faces punishment, but in civil law, the victims are compensated. In all situations, the victim has the right to hold the perpetrator accountable; therefore, the wrongdoer is required to abide by their claim.[5]

2. Tortious Liability:

In other words, there are two types of liability: criminal liability and civil liability.[6] Criminal liability, on the other hand, deals with criminal actions; civil liability deals with the plaintiff's claim against the defendant in civil cases. It can also be separated into rehabilitative and punitive categories. Remedial liability is when the only goal is to uphold the victims' rights rather than penalize the offender.[7]

Therefore, the debtor's responsibility is to pay back the creditor and avoid being imprisoned in jail. Remedial liability is the term for this type of

[3] Oxford Dictionary, s.v. "Liability," https://en.oxforddictionaries.com/definition/liability (November 12, 2024)
[4] P.J. Fitzgerald, ed., *Salmond on Jurisprudence* 12th ed. (London: Sweet & Maxwell, 1966), 4th re.pt., (Bombay: N.M. Tripathi Pvt. Ltd, 1999), 349.
[5] Ibid.
[6] Ibid.
[7] Ibid.

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liability.[8] When the law deems it impractical to enforce a duty, it explicitly accomplishes its goal by punishing the violator, which is known as penal liability. However, committing an act of wrongdoing alone does not result in criminal liability; one must have done so with a guilty mentality.

Therefore, two requirements must be met for a wrong to be considered criminally liable: a) material, or the act committed by the accused, and b) formal, or the mensrea of the guilty mind with which the conduct should be performed.[9] However, the main topics of discussion in this study are state criminal liability generally and civil liability (tortious liability) specifically.

Under English law, tortious liability is predicated on cause, duty of care, and violation of duty.[10] The Donoghue v. Stevenson case from 1932 explains the obligation of care.[11] In light of this observation, "Who is my neighbor in law?" The response is "someone who is so directly and intimately impacted by an act of commission or omission that I should reasonably consider them to be so impacted".

The duty of care was also covered in certain cases that followed this one.[12] Determining that the duty of care was violated is the second component. The objective standard of a reasonable man's conduct will be used to

[8] There are, however, three exceptions to this general rule: i) "duties of imperfect obligations; ii) the duty breached is by its very nature incapable of enforcement; iii) the specific enforcement of the duty is inexpedient". Ibid.
[9]Ibid., 349.
[10]Walid Fuad Kais, "Distinguishing between Contractual and Tort Liability," (Master Diss., University of Amsterdam, 2011), 8.
[11]*Lord Atkin, Donoghue vs. Stevenson:* 1932 A.C. 562 H.L.
[12]*Home Office vs. Dorset Yacht Co Ltd:* 1970 UK H.L 2; *Anns vs. Merton London Borough Council:* 1978 AC 728H.L; *Caparo Industries plc vs. Dickman & Ors:* 1990 UK H.L 2; *Karim Buksh vs. KESC*: 1997 CLC 507.

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evaluate this.[13] The cases will be decided based on reasonableness standards, just like medical professionals.[14] The "but for" test is utilized in this case because the duty of care violation and the injury or damage done or caused must be closely related to the cause.[15] Furthermore, the most dynamic tort is thought to be negligence, which is defined as "a violation of the legal obligation to take care that consequences in damage to the victims".[16] The tort of negligence, which is a component of the duty of care, protects English law. Specifically, it must be demonstrated to whom the duty of care applies and, more precisely, what the duty must be to safeguard one's economic standing, property, and personal integrity.[17]

3. The Concept of Liability from an Islamic Perspective:

Being a natural and global religion, Islam addresses every aspect of human existence, including behavior and acts, as well as their significance to the hereafter. Humans are not allowed to exist aimlessly because the Creator has not allowed them to be unchecked or uncontrolled. Allah[18]first, set aside a goal for them, which is to achieve eternal bliss in the hereafter. He then mandated that they follow the general rules of Islam in their daily lives.

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[13]*Caparo Industries pIc vs*. *Dickman & Ors*: 1990 UKHL 2.
[14]*Bolam vs*. *Friern Hospital Management Committee*: [1957] 2 All ER 118.
[15]*Barnett vs. Chelsea*, [1969] 1 QB 428; *McGhee vs. National Coal Board*: [1972] 3 All ER 1008; *Wilsher vs*. *Essex*: [1988] 1 All ER 871.
[16]W.V.H. Rogers. *Winfield & Jolowicz on Tort*, 17th Edition (London: Sweet &Maxwell Ltd, Aug 2006), 132.
[17]*Donoghue* vs. *Stevenson* 1932 A.C. 562 H.L.350. See also chapter 1, 11-54 for further study on the concept of Legal Liability by "Carole Rhian Harlow, Administrative Liability: A Comparative Study of French and English Law (Phd diss., University of London, December 1979).
[18] Allah is an Arabic term which is used for God by Islam; the one Supreme Being. Available: http://www.dictionary.com/browse/allah (November 12, 2024)

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Every person must fulfill their role in this world to the best of their ability. For example, patients have particular capacities, while doctors have additional capacities. Similarly, a woman's capacity differs from a man's. Even though each of these people is accountable for or obligated to perform distinct tasks based on their unique situations and standing, they are all subject to almost identical values and regulations that they must constantly adhere to. In this sense, the state, through its employees, can act on its own and is bound by the same laws and values as other people. These guidelines and precepts—such as accountability, trusteeship, and transparency—are referred to as the fundamental principles of the Islamic good governance system, which includes the state. The following fundamental ideas—accountability, trusteeship in particular, and transparency in general—are being covered.

3.1. Accountability (*Mas'oliyyah*):

One important principle of the Islamic system of good governance, which includes the State, is accountability. The definition of accountability is "the process by which a person or group can be held to account for their conduct".[19] It is a person's responsibility for their conduct. A person must explain whatever they do. In the good governance perspective, accountability means the accountability of State officers. It is among the most important components of the nation's good governance.[20] Every human being bears responsibility and accountability for their acts while

[19]Muhammad Ali, "Governance and Good Governance: A Conceptual Perspective", *Dialogue* 10, no. 1 (2015): 71. Available at: http://www.qurtuba.edu.pk/thedialogue/The%2520Dialogue/10_1/Dialogue_January_March2015_65-77.pdf.

[20] A. C. Fernando, *Corporate governance: Principles, policies and practices*, 2nd ed. (India: Dorling Kindersley Pvt. Ltd, 2009), 61.

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performing their job. From the Prophet Muhammad's (PBUH) Hadith, this idea has been deduced as: "Every one of you is a shepherd and is responsible for his flock".[21]

According to an Islamic point of view, human beings are held accountable for two things: their actions in this world and their actions in the hereafter.[22] Only human accountability in this world will be covered in this study.

3.2. Accountability of Human Beings in this World:

Everyone is aware of the Islamic justice system's emphasis on individual accountability and duty in this world. In this system, everyone who commits a crime faces punishment from the courts.[23] Islam holds that the purpose of punishment for people in this world is to shield them from the unbearably agonizing punishment that awaits them on the Day of Judgment. It implies that on the Day of Judgment, people will be held accountable for their wicked actions. Individuals have civil rights against one another in addition to their criminal rights against other individuals. For instance, the opposing party may file appropriate claims with the court if one of the parties fails to uphold the covenant. Similarly, when public rights are at stake, citizens have the right to question those in positions of

[21] Al-Bukhari, Muhammad, Sahih Bukhari, Hadith no. 6719; Al-Naysaburi, Muslim ibn al-Hajjaj, Sahih Muslim, Hadith no.1829. Also see: Muhammad Ayaz, "Corporate Governance from Shariah Perspective: A Comparative Study of Pakistani and Malaysian Corporate Governance for Islamic Financial Institutions" (PhD diss., International Islamic University Islamabad, 2017).

[22] Accountability of persons for their actions in the life hereafter is confirmed from these verses of the Qur'ān and is given great importance. Al- Qur'ān 2:284; 2:281; 3:30; 102: 8; 36:17; 99:7-8; 101:1-11.

[23] As in the case of *Qisas* and *Hudood* Laws, which were enforced in 1979 in Pakistan, such as the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979; The Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

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authority, and those in such positions are accountable and liable for their conduct. The authority of Khaleefa Umar (R.A.), who was asked to account for more cloth than the customary portion of each companion, is the source of this regulation. At that time, he gave a suitable explanation.[24] As a political idea, it implies that God has entrusted people with carrying out and advancing His will via justice and equity in their daily lives. The Qur'an enshrines the idea that everyone becomes the beneficiary of such a trust and must, therefore, stand in awe before his people, for whom he will be called upon to fulfill his responsibility.[25]

During the time of Abu Bakr al-Siddique (RA), who highlighted the importance of accountability in his first speech to the Muslims following his election as Caliph (ruler), the practice of accountability was also prevalent in early Islamic political life.[26] After Abu Bakr (RA), the role was identical to that of Umar ibn al-Khattab (RA). He stressed the need for responsibility in his government and the rights of all citizens, especially minorities, in his first speech as Caliph. The rudimentary practice of public censure and oral complaints was not the end of Umar's (RA)

[24] Mohammad Ali Taba, Al Fakhri, trans. C.E.J. Whitting (London: Luizac & Co., 1947), 25.

[25] The Qur'ān says: "Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity." (Al-Qur'ān 3:104.

[26] Allah says that: "I have been given authority over you, but I am not the best of you. If I do well, help me, and if I do ill, then put me right……The weak among you shall be strong in my eyes until I secure his right if God will; and the strong among you shall be weak in my eyes until I wrest the right from him…Obey me as long as I obey God and His apostle, and if I disobey them, you owe me no obedience."(A. Guillaume, *The Life of Muhammad* (London: Oxford University Press, 2006), 687).

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accountability program. To address public administrators' responsibilities, a dedicated office was created. Investigating complaints against State officers was the office's primary goal.[27] In his well-known letter to his Egyptian governor, Malik al-Ashtar, Ali (RA) demonstrated his commitment to accountability.[28]

The ruler and his servants are not completely immune under Islamic law. A person whose hand the ruler orders severed because he has stolen is an illustration of how this law can be derived. This penalty would be more severe than planned if the victim dies as a result of his injuries. In this instance, the ruler bears responsibility for the harm (death of the individual). However, Imam Abu Hanifa maintained that the Imam (ruler) would be held accountable as he had the authority to punish the culprit by amputating his hand instead of killing him; the Imam is responsible for paying the diyyah to the perpetrator's heirs.[29] This demonstrates that neither the king nor his subjects are above the law.

Islam is a strong proponent of the rule of law. Because of this, nobody in the Islamic State is above the law or immune from punishment. The Prophet (PBUH) stated that in this regard: “I am the first one to submit to

[27]Ibid.

[28] He wrote as under: “Out of your hours of work, fix a time for the complainants and for those who want to approach you with their grievances. During this time, you should do no other work but hear them and pay attention to their complaints and grievances. For this purpose, you must arrange a public audience for them. During this audience, for the sake of Allah, treat them with kindness, courtesy, and respect. Do not let your army and police be in the audience hall at such times so that those who have grievances against your regime may speak to you freely, unreservedly and without fear.” Ibid.

[29] Al-Kasani, *Badai al-Sanai,* vol.17, p39. As cited by Abdul Basir bin Mohamad, “The Islamic Law of Tort”, 1997.

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the will of Almighty."[30] In the historic Hadith cited by "Ayisha (R.A.)," He (PBUH) firmly established the principle of the rule of law by saying: "…by *Allah*, if *Fatima*, the daughter of *Muhammad,* stole, I would cut off her hand…."[31]

These examples from reliable literature show how important accountability is to effective governance in an Islamic state. One may argue that, from an Islamic standpoint, state employees are held to two levels of accountability. They are first and foremost responsible for their deeds in this world. In case they fail to adequately explain their behavior in this world. Second, in the afterlife, they will fully explain their deeds.

3.3. Trusteeship (*Amanah*):

In addition to accountability, trusteeship (Amanah),[32] is a crucial aspect of sound governance and the rule of law. "Shelter, protection, safety, peace, and security" is what it symbolizes.[33] The thing or item presented as amanah will be safe in the care of the amanah-holder, who will never betray the trust, according to the amn viewpoint.

The Holy Quran contains descriptions of the amanah covenant.[34]

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[30] Al-Qur'ān 6:14.

[31] Al-Bukhari, Muhammad, Sahih Bukhari, vol. 4, Book 56, Hadith no. 681.

[32] The Arabic term '*amanah',* according to *Al-Raghib Al-Asfahani*, is from the Arabic word '*amn'*, which means 'tranquility of heart and demise of fear'. (Abul Qasim Hussain Ibne Muhammad Al-Raaghib Al-Asfahani, *Mufradat fi Gharib Al- Qur'ān* (502 A.H/-1108 A.D)). As cited by Muhammad Ayaz, "Corporate Governance from *Shariah* Perspective: A Comparative Study of Pakistani and Malaysian Corporate Governance for Islamic Financial Institutions," 2017.

[33]Sofiah Bt. Samsudin and Md. Sirajul Islam, "Value of Al-Amanah in Human' Life." *International Journal of Science and Research Publications* 5, no. 4 (2015): 1.

[34]Allah says in the Qur'ān: "We offered our amanah to heavens, earth and mountains, but they refused to bear it and they afraid, but human bore it." Al-Qur'ān 33:72. Cited by Hafiz Imaduddin Abu al-Fida Ibne Katheer, Urdu Trans.

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Furthermore, an Ahadith of the Prophet Muhammad states that authority is also a trust,[35]that betrayal in *amanah,*[36] is to take more than the allowance granted, [37]and misappropriation of public funds would be demanded in the hereafter.[38]

It is said that the power granted to the State and its representatives as public servants is likewise amanah, based on these Ahadith of the Prophet (PBUH). They must therefore carry out the amanah with extreme caution and refrain from betraying or acting disloyally by abusing their position of power. The State and public employees will be held accountable for their acts if they are careless or misbehave in carrying out their responsibilities. Transparency is necessary for accountability to apply the amanah. Transparency is therefore being explored as follows.

3.4. Transparency:

The concept of 'Transparency'[39] (in Islam *shafafiyyah)* refers to "the degree to which information flows freely within an organization, among administrators and employees, and outward to stakeholders."[40] In an

By Molana Mohammad Juna-gharri, *Tafseer Ibne Katheer 4* (Lahore: Maktaba Quddoosiyah, 2006), 711.

[35] Al-Naysaburi, Muslim ibn al-Hajjaj, Sahih Muslim, Book No. 4, Hadith No. 1825.

[36]Ibid*., Hadith* No. 1826.

[37] As-Sijistani, Abu Dawud Sulayman ibn al-Ash'ath, Sunane Abu Dawood, Book No.20, *Hadith* No. 2943.

[38] Al-Naysaburi, Muslim ibn al-Hajjaj, Sahih Muslim, Book No. 4, Hadith No. 1833.

[39] Transparency derives from the Latin word *"transparere"*, *"trans"* means through, and *"parere"* means to appear.
Available: www.oxforddictionaries.com/definitionenglish/transparent (December 08, 2024)

[40] Benjamin Fung, "The Demand and Need for Transparency and Disclosure in Corporate Governance," *Universal Journal of Management* 2, no. 2 (2014): 75.

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Islamic state, it is still another important benefit of good governance.[41] Because their actions will be visible, it ensures that the administration is not engaged in any improper or illegal activities. Achieving transparency, using the right accounting techniques, and disclosing all relevant information are necessary.[42]

The principles of transparency in the conduct of those in positions of authority form the basis of transparency (shafafiyyah) in Islam. Transparency in the activities of those in positions of authority is directly related to some Ahadith of the Prophet (PBUH). For instance, *Buraida* (RA)[43] and *'Abd b. 'Amira al-Kindi*[44]narrated *Ahadith* in this regard. These two *Ahadith* suggest that the only benefits that the holders of authority are permitted to receive are those that are specifically disclosed to them. To emphasize transparency, the second Hadith prohibits anybody in a position of power from hiding anything.

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[41] Mohamed Asri and Mohamed Fahmi, "Contribution of the Islamic Worldview Towards Corporate Governance." MSc*., Accounting Sem* 2 (2003). Available: http://www.iium.edu.my/iaw/Students%20Term%20Papers_files/Asri%20and%20Fahmi%20IslWWandCG.htm
(December 08, 2024)

[42]Benjamin Fung, "The Demand and Need for Transparency and Disclosure in Corporate Governance," *Universal Journal of Management*, (2014): 73. Cited by Muhammad Ayaz, "Corporate Governance from *Shariah* Perspective: A Comparative Study of Pakistani and Malaysian Corporate Governance for Islamic Financial Institutions", 2017).

[43]The Prophet (PBUH) stated that: "When we appoint someone to an administrative post and provide him with an allowance, anything he takes beyond that is unfaithful dealing." (Imam Abu Dawud Sulaymanibn al-Ash'ath as-Sijistani, Sunane Abu Dawood, Book No. 20, Hadith No. 2943).

[44]The Prophet (PBUH) says: "Whosoever from you is appointed by us to a position of authority and he conceals from us a needle or something smaller than that, it would be misappropriation (of public funds) and will (have to) produce it on the Day of Judgment." (Imam Muslim ibn al-Hajjaj al-Naysaburi, *Sahih Muslim*, Book No. 4, Hadith No. 1833). As cited ibid.

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Thus, according to the Islamic notion of good governance, those in positions of authority ought to guarantee openness in the affairs of institutions such as the State. It is said that the conduct of state employees must be open, as they possess authority as well. All relevant information must be appropriately disclosed for this reason in order to guarantee that their actions are transparent. Transparency is guaranteed when the most relevant and significant information is revealed. In light of this, it is said that Islamic principles aim to increase transparency to boost public trust in government operations. Along with that, it protects them from potential future abuses and safeguards their particular rights and obligations.

Furthermore, the concept of transparency is linked to the accountability and liability of the state and its servants. This is because the concept of transparency ensures that the servants are held accountable and liable. Holding officials and servants accountable is difficult in the absence of openness. Transparency in the State employees' acts is crucial to ensuring that all of their actions are in accordance with Allah's instructions. When public funds and their other rights are at stake, openness becomes even more crucial as a matter of trust with state employees. The idea of transparency pertains to the duties and obligations of public servants to provide effective governance within the state.

4. The Concept of Liability of the State in Common Law:

As discussed above that a wrong may be committed by a breach of duty enforceable by law or morality. So, "the liability may be imposed as a legal consequence of a person's act or omission if he is legally bound to act under a legal duty".[45] The liability is considered as remedial wherever

[45]Ibid.

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the State enforces a right that is because of the plaintiff, and its objective is not the punishment of the defendant. Though the objective of the law is completely or partially the punishment of the wrongdoer, therefore, the liability is illustrated as penal. As the major objective of criminal law is the punishment of the offender, criminal liability is constantly penal. But civil liability is not constantly remedial, as the instant purpose of civil proceedings is compensation. Sometimes, however, there is an objective of punishment of the wrongdoer as well.[46]

The problems of an individual with respect to the state are becoming increasingly complex in contemporary society. They are observed presently in the eyes of society rather than an individual. Each right has a duty as well. The desire to blend right with duty has been historically recognized in order to attain the purpose of a unified community.[47]Generally, a right is that which may be demanded or claimed as just, moral, or legal by a person who is entitled to this. The relation of the rights of the person to other persons in society has regularly led to thoughtful changes in the legal values of contemporary democracy. In the 20th century, the state liability concept marked a move from a moral to a metaphysical base and followed the direction of searching for the greatest danger bearer and most efficient loss sharing. Usually, liability is grounded on some finding of wrong or fault, as well as a finding of accountability and responsibility for some happening.[48]

To be a ground of liability, the law must have imposed a duty of carefulness and caution. Particular legal systems will put down their own

[46]*Donoghue vs. Stevenson:* (1932 A.C. 562 H.L. 350).
[47]*Simranjith Singh Mann vs. Union of India:*2002 Cr. L. J. 3368.
[48]P.J. Fitzgerald, 350.

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cases where there would be a duty to take care.[49] It appears that where law makes an obligation, it must give assurance for the definite enforcement of it. Hence, it is obvious that 'liability' proposes 'legal liability' and the law imposes obligation and responsibility on each person to repair loss undergone by another person.[50] However, some problems appear concerning state liability, for instance, the state is not an "individual," although the state can act merely through an individual. If liability is fixed on the state, one has to establish a criterion to decide in what circumstances and subject, to what situations, the acts of the individual may be attributed to the state concerned.[51] Another problem that may happen is that sometimes individuals are conferred immunity for valid grounds. Although they can be held accountable through the ordinary rules of liability but there are cases of immunity from liability for state actions.[52] The scope of immunity depends upon each state's policy. Some examples in this regard are the act of state, judicial immunity, statutory immunity, sovereign immunity, and immunity conferred on public functionaries for action taken in good faith. There may be an impact of all these on the liability of the state, enlightening the particular purpose.[53]

4.1. Liability of the State & Its Developments in British India:

History is the record of past events, developments, trends, and traditions

[49] A.K. Sarkar, *Summary of Salmond's Jurisprudence* 14th ed. (Nagpur: LexisNexis Butterworths Wadhwa, 2010), 154.
[50] Ibid.
[51] A.K. Sarkar, *Summary of Salmond's Jurisprudence* 14th ed. (Nagpur: LexisNexis Butterworths Wadhwa, 2010), 154.
[52] Ibid.
[53] Ibid.

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resulting from human activity.[54] It explores the gradual development of any subject, like State Liability.[55] So, it is essential to refer back to some case laws and legal positions for a better understanding of the position related to the degree of liability of the state in Pakistan and India. This portion deals, in some detail, with state liability laws prevailing in other jurisdictions. First, it is being discussed the developments of state liability law in British India till 1947.

4.2. East India Company and Liability of the State:

The development of state liability law starts with the advent of "the East India Company" in the Sub-Continent, which was established under "the Charter Act, 1600". It was made, basically, for the business and was an autonomous corporation which has no link between servant and the British Crown. Therefore, the immunity power utilized by the Crown was never expanded to the Company.[56] The Supreme Court of Calcutta was given the powers under regulating "the Act, 1773" to handle matters against the Company. [57]Under "the Bengal Regulations," the Company was made vicariously liable for the torts committed by its servants.[58] The privileges

[54]K.M. Munshi, *The History and Culture of the Indian People-The Vedic Age, Foreword,* vol.1, 6th ed. (Bombay: Bharathiya Vidhya Bhavan, 1971), 25.
[55]"Historical Perspective of the Liability of State in India", chapter 2, 38. http://shodhganga.inflibnet.ac.in/bitstream/10603/201573/8/08_chapter%202.pdf (December 13, 2024)
[56]*A.G. of Bengal vs. Ranee Surnomoy Dossee:* (1863) 9 M.I.A; 387, 424.
[57]M.C.J. Kazzi, Constitution of India, 4th ed. (1984), 23.
[58]According to the preamble, "the authority of the laws would extend not only to private disputes, but the Government would also be precluded from injuring private property." (Bengal Regulations of 111, 1793. Preamble). See at:https://archive.org/stream/in.ernet.dli.2015.110208/2015.110208.The-Regulations-Of-The-Bengal-Code_djvu.txt (December 14, 2024).

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of the Company were stopped under "the Charter Act, 1833".[59]It was liable same like an ordinary individual through the different decisions of the courts.[60] The liability of the Company emerged in the case of *Dhakjee Dada Jee* vs. *East India Company*.[61] The immunity was confirmed in the case of *East India Company* vs. *Syed Ally*, 1827.[62] These cases conclude that "the East India Company" was liable vicariously for the tortious acts done by its servants except in the case of 'Act of the State'.[63]

4.2.1. Secretary of the State, the Government of India Act, 1858, and Liability of the State:

The Company ceased to exercise its powers and control over the territories of the Company.[64]"The Secretary of State in Council for India" had a liability similar to the Company. The extent of liability was administered under "the Government of India Act, 1858". The Secretary of State had the right to sue and be sued[65] and the liability of the Secretary and Company was made very clear under the instant Act.[66]The court started to inquire into the determination of the liability of the secretary for torts committed by its servants. The important question related to the liability of the state

[59] Charter Act, 1833, Section 10.
[60]*The Bank of Bengal vs*. *East India Company*: (1831) 1 Bignwel's Report at 119-122. The court held that: "the Company is not a sovereign entity but subject to the control of Crown and parliament"; *Gopee Mohan Deb vs*. *The East India Company*: (1840), (Morley's Digest, vol. 11. (307-335). The Calcutta Supreme Court held that: "an action of trespass would lie against the Company."
[61]*Dhakjee Dada Jee vs*. *East India Company*: (1843) 2 Morley's Digest 307. 71.
[62]*East India Company vs*. *Syed Ally*: (1827) 7 MIA. 555.
[63] An Act of State "is an act exercising power or a country that cannot be overturned by the courts." Black's Law Dictionary, s.v. "Act of State," http://thelawdictionary.org/act-of-state/ (December 16, 2024).
[64]"Historical Perspective of the Liability of State in India", chapter 2, 49.
[65]Government of India Act, 1858, Section 65.
[66]Ibid., Section 66-68.

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was answered in the P & O Steam case.[67]The secretary was liable to give compensation to the plaintiff as a result of the negligence of its workmen. Further, the Secretary was not eligible to use the sovereign shield of the Crown for immunity.[68]

4.2.2. The Government of India Act, 1915, and Liability of the State:

"The Government of India Act, 1915" was passed for individuals to sue the state, for uniformity, and to widen the liability of the state.[69]There were not many changes related to liability after "the 1858 Act". To provide this, Section 32 was interpreted in the case of *Venkata Rao* vs. *Secretary of State*.[70]

4.2.3. The Government of India Act, 1919, and Liability of the State:

The India Act was passed in 1919. The individual could get a proper remedy as a result of the infringement of his rights by the servants of the state.[71] The important decision, however, was made between the procedural aspect of suability and the substantive aspect of liability by

[67]*Peninsular and Oriental Steam Navigation Company vs. Secretary of State India*: (1861) 5 Bom. H.C.R. App. 1

[68]Sir Barnes Peacock observed: "In determining the question, the East India Company would, under the circumstances, have been liable to an action; the general principles applicable to the Sovereigns and States, and the reasoning deduced from the maxim of the English Law that the King can do no wrong, would have no force." Ibid.

[69] See Section 32 (1) and (2), which are important provisions related to the rights and liabilities of the Secretary of State in Council. (The Government of India Act, 1915. Section 32 (1) and (2)).

[70] The court observed: "Their Lordships are not disposed to think that this section, which is a section relating to parties and procedure, has an effect to limit or bar the right of action of a person entitled to a right against the Government, which would otherwise be enforceable by action against it, merely because an identical right of action did not exist at the date when the East India Company was the body, if any, be sued." (*Venkata Rao vs. Secretary of State:* (1937) 39 BOMLR 699).

[71]"Historical Perspective of the Liability of State in India", chapter 2, 38.

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section 32 (2) of "the India 1915 Act". In *Kessoram Podder & Co.* vs. *Secretary of State*,[72] it was held that: "the commanding order was one which no one but the government could make and being an act of the sovereign authority, the secretary could not be sued regarding it."[73] Further, in the case of *Mata Prasad* vs. *Secretary of State*,[74] it was held that: "a person charged by a competent court and punished for that offence is not entitled to sue the Secretary for damages in respect of the act of the government in exercise of its sovereign powers."[75]

4.2.4. The Government of India Act, 1935, and Liability of the State:

The above-discussed Acts and cases reveal that the state liability emerged gradually. But an important Government of India Act was passed in 1935, which was a milestone to a responsible government in British India. An important right to make laws was given to the federal and provincial legislatures. This either removed or granted a right to sue the federal and provincial governments.[76] A right was given under section 176(1) to the legislature to make any law to exempt the secretary from liability.[77] So, it would not be liable for those actions that are performed during sovereign powers/functions. This concept was given in the case of *Elti* vs. *Secretary of State;* the court exempted the State from liability.[78] In another case of *Gurucharan Kaur* vs. *Madras Province*,[79] the court held that "the

[72]*Kessoram Podder & Co. vs. Secretary of State*: A.I.R. 1928 Cal.74.
[73]Debanshu Mukherjee & Anjali Anchayil, *Vicarious Liability of the State in Tort in India: A Case for Reform (*New Delhi: Vidhi Centre for Legal Policy, 2015), 6.
[74]*Mata Prasad vs. Secretary of State*: A.I.R. 1931 Oudh. 29
[75]Ibid.
[76] Government of India Act, 1935. Section 176.
[77]Ibid., Section 176(1).
[78]*Elti vs. Secretary of State*: AIR 1939 Mad 663.
[79]*Gurucharan Kaur vs. Madras Province*: AIR 1942 Mad. 539.2 MLJ 14.

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government is not liable for the acts of police done in discharge of their statutory duty in good faith." Further, the State is not liable when loss is caused during the performance of sovereign functions. This fact was held in the *Secretary of State* vs. *Nagerao Limbaji* case.[80]

Under the above discussion, it can be stated that the duty to pay compensation in British India on the part of the King was not present under British law. The reason behind this was that the immunity did not wide to "the East India Company" or "the Secretary of the State in India," which was otherwise available to the British Crown. Hence, the sovereign immunity principle is only a judicial creation in India, which has its source in verdicts of the judiciary, when the matter of liability of the state in tort was brought in the case of '*Peninsular'* before the Supreme Court of Calcutta in 1861. In this historical and significant case, Lord Peacock declined to widen the doctrine "the King can do no wrong" to torts committed by the servants of "the Secretary of the State in India". He also cleared the proposition that "the East India Company" was not doing any sovereign function. However, the functions of the state were divided into "sovereign and non-sovereign functions" for the determination of tortious liability of the state.

5. Liability of the State in other Jurisdictions of the World:

In history, almost unlimited 'immunity'[81] has been enjoyed by the states

[80] The court held that: "the provision of facilities for bombing practice was a public duty undertaken by the State to provide training for the army. Such duties are not exercised by the State for its own benefit, but for the protection of the entire population." (*Secretary of State vs*. *Nagerao Limbaji*: (AIR 1943 Nag. 287)).

[81]Immunity is "an exemption from performing duties that the law generally requires other citizens to perform, or from a penalty or burden that the law

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against the legal claims by citizens for a remedy in tort. The origin has been that of 'sovereign immunity' both in the civil and the common law societies. The well-known maxim, such as "*the King can do no wrong,"* [82]reflects quite precisely the common understanding of the existing legal remedy for harm undergone by people as a consequence of actions or omissions of the state.[83] However, the rule of absolute immunity has experienced noteworthy erosion from the 19th century onwards as well as particularly in the 20th century.[84]

The idea of sovereign immunity and tortious liability of the state has developed very distinctly in various jurisdictions.[85] For example, in **Asian jurisdictions,** state liability is used first and foremost to monitor the public

generally places upon other citizens." (Legal Dictionary, s.v. "Immunity," https://legal-dictionary.thefreedictionary.com/immunity (December 20, 2024).

[82]The maxim "proves to have played a vital role in the development of governmental accountability in England, sometimes serving precisely the opposite function that a casual reading of the maxim might suggest." (The Origins of Accountability: Everything I know about sovereign immunity, I learned from King Henry III, Guy I Seidman, 49 *St. Louis U.L.J.* 393 (2004-2005): 5.

[83]*Le roi ne peut mal faire* (a Latin term). The maxim "the king can do no wrong" can stand for 4 different things such as:(1) "The King is literally above the law and cannot do wrong by definition;(2) Even if the king's actions are not lawful by definition, there is no remedy for the king's actions through the courts;(3) (True Origin) The King has no power or capacity to do wrong (King Henry III as the example) and;(4) The King is eminently capable of doing wrong but cannot do so lawfully." ("The Origins of Accountability: Everything I know about sovereign immunity, I learned from King Henry III", Guy Seidman, 49 St. Louis U. L.J. 393 2004-2005): 5. Further, "Common law sovereign immunity was based upon the theory that the king could do no wrong. The king was believed to be divine in nature, and it would be a contradiction of the king's perfection to allow suits against the king." (W. Holds worth, A History of English Law, 5th ed. (1942), 458-69).

[84]Giuseppe Dari-Mattiacci, Nuno Garoupa and Fernando Gómez-Pomar, "State Liability," *European Review of Private Law 18*, no. 4, (2010): 7.

[85]Ibid., 45. Annexure 'A' "briefly discusses the continental approaches in relation to sovereign immunity and state liability in tort."

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employees, which seems to be a common practice.[86]

State liability is complicated **in Chinese** law. The existing principles regarding liability of the state are exemplified by "the State Compensation Law, 1994". The individual public servant would also be held liable for criminal liability as well as administrative.[87] There are a noteworthy case regarding state liability in China, especially "wrongdoings by public prosecutors, corroborating the general notion that Chinese authorities employ the State Compensation Law to monitor public servants and to ensure they act lawfully."[88]

Hong Kong promulgated "the Crown Proceedings Ordinance" in 1957, which was followed by "the Crown Proceedings Act, 1947" of the UK. The principles of liability of the state were made by Macao in 1991, set by "the 1976 Portuguese Constitution" into law, under "the Decree-Law 28/91".[89]Article 2 reads as: "the administration, collective public bodies and agents shall be liable for the illegal acts during public management."[90]

"The State Compensation Law of **Taiwan**" (SCL) was passed in 1980 along with "the Enforcement Rules for SCL," which were passed in 1981. Article 24 of "the Constitution of Taiwan, 1947" was the foundation of compensation law and its enforcement rules.[91]

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[86]Ibid.
[87]The State Compensation Law, 1994, Article 24.
[88] Keith Hand, "Watching the Watchdog: China's State Compensation Law as a Remedy for Procuratorial Misconduct," 9 *Pac. Rim L. & Poly* (2000): 95.
[89]Giuseppe Dari-Mattiacci & Ors, 46.
[90]Decree-Law 28/91, Article 2. Ibid.
[91]Article 24. It says that, "any public employee who, in violation of law, infringes upon the freedom or right of any person shall, in addition to being subject to disciplinary measures in accordance with law, be liable to criminal and civil

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State liability i**n Japan** is guaranteed by "the Constitution, 1946" under its Article 17.[92]"The Law on Compensation by the State, 1947" deals with this, which really extends liability of the public administration in tort.[93] Cases of state liability are dealt with in ordinary courts since the abolishment of the administrative courts. Though the features of public laws are still potted in proceedings against the government as well as its administrative bodies.[94]

In South Korea, state liability is established by "the State Compensation Law, 1951," which was revised in 1967 and has been amended six times. Tortious conduct of public servants or employees during the performance of official duties has been regulated under this law. **Vietnam** also enacted its law on State Liability to Pay Compensation in 2009.[95]

State liability in **Thailand** is regulated by two laws, namely: i) "the Act on Government Administrative Practices, 1996" and ii) "the Act on Establishment of Administrative Court and Administrative Court Procedure, 1999". It is worth mentioning here that reforms in this legislation were started in Vietnam and Thailand to increase transparency for public administration.

State liability in **Latin America** inclines to pursue the European

action. The victim may, in accordance with law, claim damages from the state for any injury suffered." (The Constitution of Taiwan, 1947).

[92] Article 17 says: "Every person may sue for redress as provided by law from the State or a public entity; in case he has suffered damage through an illegal act of any public official." (The Constitution of Japan, 1946).

[93]*Sawarabi Kabushiki Kaisha vs*. *City of Kyoto*: 691 Hanrei Jiho 57 (Kyoto Dist. Ct. 1972).

[94]KatsuyaUga, *Development of the Concepts of Transparency and Accountability in Japanese Administrative Law in Japan: A Turning Point,* ed. Daniel H. Foote (University of Washington Press, 2007).

[95] Law on State Compensation Liability (no. 35/2009/qh12).

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practices that are the French kind of doctrines, though with certain limited real enforcement.[96] In **Brazil**, the doctrine of sovereign immunity, for instance, was never actually present. State liability has been guaranteed by "the Brazilian Constitution, 1988" under its Article 37,[97] reinforced by "the Brazilian Civil Code, 2002" under its Article 43.

State liability has been developed through case law in **Argentina** and in **Chile,** as well as the liability of judicial branches as well as the legislative branch of the government; nevertheless, there is a practical issue for its application. State liability is mentioned as well in "the **Colombian** Constitution, 1991" under its Article 90.[98] "The Constitution of **Ecuador**, 2008" under its Article 11 mentions the state liability in Ecuador.[99] In **Uruguay**, the state liability has been incorporated in "the Constitution of Uruguay, 1967" under Article 24.[100] Same to Article 113 of "the Constitution of **Mexico"** enshrines state liability.[101]

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[96]Giuseppe Dari-Mattiacci & Ors, 47.

[97] Article 37, The Brazil's Constitution, 1988.

[98]"The State will answer materially for the extra-legal damages for which it is responsible, caused by the acts or omissions of public authorities…'." (The Colombian Constitution, 1991).

[99] Article 11 says that, "the exercise of rights shall be governed by the following principles…, (9) the State shall provide redress to the person who has sustained damages as a result of this judgment; when the responsibility for such acts by public, administrative or judicial servants is identified, they shall be duly charged to obtain restitution." (The Constitution of Ecuador, 2008).

[100]According to Article 24, "the State, the Departmental Governments, the Autonomous Entities, the Decentralized Services, and in general any agency of the State, shall be civilly liable for injury caused to third parties, in the performance of public services, entrusted to their action or direction." (The Constitution of Uruguay, 1967).

[101]Article 113 says that, "the laws regarding administrative responsibilities shall determine the obligations of public officials, with the purpose of safeguarding the legality, honor, loyalty, impartiality, and efficiency in the discharge of their functions, positions, duties, and commissions; the sanctions applicable for acts or

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In the **United Kingdom** (UK), the immunity was available to the sovereign from liability for torts committed by him for a very long time.[102] Though a limited relief was granted to the victim against the Crown as a matter of grace. Two landmark cases as *Adams* vs. *Naylor*[103] and *Royster* vs. *Cavey* gave the instant momentum for law reform in the UK.[104]"The Crown Proceedings Act, 1947" (CPA) was passed; consequently, it totally changed the legal regime. For example, it established that the Crown is liable in tort same as a private individual of full age and having capacity, though certain exceptions in favor of the police officials as well as certain statutory corporations are reserved.[105]

In the **USA**, "the Federal Tort Claims Act (FTCA), 1946" provides the concept of liability of the state. A victim, subject to certain exceptions, can bring a matter against the US for tortious acts committed by government servants or federal agencies during the performance of official

omissions that they incur, as well as the procedures and authorities to apply them...." .(The Constitution of Mexico).

[102] See Giuseppe Dari-Mattiacci & Ors, which also explains the tort liability of the state in tort in the UK, USA & France.

[103] *Adams vs. Naylor*: (1946) AC 543.

[104] *Royster vs. Cavey*: (I947) KB 204.

[105] Section 2(1) (a) "imposed a general tortious liability on the Crown for the acts committed by its employees or agents. the liability of Crown was made similar to that of a private agent under the common law proceedings. Section 2(1). The Crown would be liable as well for all acts or omissions of its agents committed in the course of their employment. Section 2(1) (b) and (c) impose liability." The liability of the Crown, under this Act, has been laid down for breach of statutory duties. Sub-section 2 (2) and 2(3). The Crown Proceedings Act, 1947. See also Konrad Schiemann, The State's Liability in Damages for Administrative Actions, *Fordham International Law Journal* 33, no.5 (2011): 548-563. See chapter 2, 54-108 for further study Carole Rhian Harlow, "Administrative Liability: A Comparative Study of French and English Law" (Phd diss., University of London, December 1979).

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duty.[106] The Act also specifies certain exceptions for liability, for example, intentional torts,[107] exercise of statutory powers,[108] discretionary function exception, [109]armed forces, [110]and "Section 1983 Actions" [111]respectively. The landmark decision in *Bivens* vs. *Six Unknown Named Agents* [112]changed the position in liability law. Since this case, a remedy against federal officials can be given when the constitutional rights of citizens are also violated.

Tortious liability of the state law **in France** has slowly developed from "limited immunity for the sovereign to that of absolute state liability".[113] In 1870, a system of 'administrative guarantee' was done away with by judgment.[114] Tortious liability of the state in France has grown through case law. Under the principles enclosed in the Civil Code,

[106] Under the provision, United States is liable, "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." (The Federal Tort Claims Act (FTCA), 1946: 28 U.S. Code, Section 1346 (b)).

[107]Ibid., 28 U.S. Code, Section 2680(h). However, it should be pointed out that "the exception does not prevent the government from being held liable for a suit based on negligence that led to the intentional tort." (*Sheridan* vs. *United States*, 487 U.S. 392).

[108]Ibid., 28 U.S. Code, Section 2680 (a).

[109]28 U.S. Code, Section 2680 (a).

[110]Ibid., 28 U.S. Code, Section 2680 (j).

[111]Ibid., Section 1983 provides for the liability.

[112]*Bivens vs.* Six *Unknown Named Agents:* (1971) 403 U.S. 388.

[113] Harry Street, *Governmental Liability: A Comparative Study*, Issue 4 (London: Cambridge University Press, 1953), 57.

[114] Frederick F. Blachly & Miriam E. Oatman, Approaches to Governmental Liability in Tort: A Comparative Survey, 9 *L*aw and *C*ontemporary *P*roblems vol.9. No. 2 (Spring, 1942): 182.

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the important case of *Blanco*[115]did away with the determination of state liability. The rule of liability of the state changed to one founded on risk from 1919 onwards. Consequently, the state can be held liable for the risk involved in its actions.[116]It is the affected individual who needs to show that the injury caused was due to the official or the body during the performance of duty.[117]

"The Civil Code of **Germany**, 1900" (BGB) establishes the liability of the officials of the state under its important Section 839(1).[118] Further, in private law, the state is liable for the torts committed by its officers under Article 34 GG of "the Basic Law of the Federal Republic of Germany".[119]For the violation of official obligation by officers, these provisions impute liability to the state or the public authority that employs them, which must be distinguished by looking into the objective of the duty.[120]

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[115] Rec. Cons. d'Et 1873, Supp. 1, 61.
[116]Ibid., 209.
[117]Ibid., 209.See chapter 1, page 11-54 for further study Carole Rhian Harlow, "Administrative Liability: A Comparative Study of French and English Law" (Ph.D diss., University of London, December 1979).
[118] It says that, "if an official commits a breach of official duty intentionally or negligently and causes harm to another person, consequently, the victim may seek compensation for the damages from the official, with the condition that the victim cannot get relief in another place, for instance, through social security." (The Code of Germany, 1900).
[119]Article 34. "Liability for violation of official duty": "If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body that employs him. In the event of intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity."
[120] Gerald Spindler and Oliver Riekers, *Tort Law in Germany* (Aspen: Kluwer Law Int'l, 2011), 66. See also Alska Scherer, State Liability-Ten Years of Francovich Is German State Liability Law Compatible with EU?, (Master thesis,

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According to the state **liability law of Spain**, the state is liable for the tortious actions and omissions of the public servants.[121] The concerned public administration is bound to pay compensation to any individual victim provided that the injury was caused of the normal or abnormal, doing performance of public tasks.[122] It is broader than liability laws in other states because the fault is credited on a "no-fault basis".[123]In Spain, according to legal commentators, "overcompensation" or a practical "social insurance" structure has been established under the blanket of liability of the state.[124] Tortious state liability has seen important growth through a judgment of the Court of Cassation in **Italy**. The Italian courts, in a path-breaking judgment, *Cassazione Sezioni Unite* held that, "civil courts may hold liable to public authorities to compensate damages for legal wrongs caused to a private person."[125]Since it credited special capability to administrative courts for the establishment of liability and, in

Lund University, Spring 2001), 19; see also Ulrich Gagnus, the Reform of German Tort Law, *Working Paper* No. 127 (April, 2016).

[121]Debanshu Mukherjee & Anjali Anchayil, *Vicarious Liability of the State in Tort in India: A Case for Reform* (New Delhi: Vidhi Centre for Legal Policy, 2015), 31.

[122] Organic Law Regulating Public Administration, 1976, Section 139.

[123] Pablo Salvador Codrech & Carlos Ignacio Gómez Ligüerre, *Vicarious Liability and Liability for the Actions of Others, InDret*. (July 03/2002).

[124] Teresa Rodríguez de las Heras Ballell, *Introduction to Spanish Private Law: Facing the Social and Economic Challenges* (Madrid: Rout ledge-Cavendish, 2010), 30.

[125] The decision from the *Cassazione Sezioni Unite,* 22nd July 1999, no. 500 performed a new judicial concept or innovation. "It finally adopted the thesis of the reparability of harm caused by the state and public authorities to private parties." (The previous situation of Italian law is summarized by Thomas Glyn Watkin, *The Italian Legal Tradition* (London: Dartmouth Publishing Company, 1997); Giuseppe Dari-Mattiacci, Nuno Garoupa and Fernando Gómez-Pomar, "State Liability," 18 *European Review of Private Law*, no. 4, (2010): 10).

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case of violations, award of compensation to the victims.[126]

A scheme of liability of public functionaries for their acts has been established through case laws in **Netherlands,** which is known as "the *Egalite* Principle which is based on the principle of equal apportionment of public burdens."[127]In the Netherlands, private law operates as a security net, and it makes it possible for sufferers to get compensation if the administrative law presents no ways of alternatives.[128]

Conclusion:

The discussion above examined the ideas of liability and state liability, as well as the evolution of state liability laws for tortious acts in different states, including Islam. It also highlighted relevant clauses found in other states' laws. It demonstrates that these states initially gave the sovereign complete immunity from lawsuits. However, they have gradually moved away from this ideology and are now approaching this issue differently than the dogma that is in place in Pakistan and India. A moderate perception of state culpability has also developed throughout time, according to an analysis of state liability law practices in other states and jurisdictions. This is true, especially in "Continental Europe," where constitutions have incorporated the idea of state liability. Judicial rulings have upheld these constitutional provisions, which have increased the state's tortious culpability. Many jurisdictions have evolved principles on

[126]Giuseppe Dari-Mattiacci & Ors, 11; Debanshu Mukherjee & Anjali Anchayil, 31.
[127]The Free Dictionary' s.v. "*Egalite*," https://www.thefreedictionary.com/egalite (December 27, 2024).
[128] Debanshu Mukherjee & Anjali Anchayil, 32. See also Esther Engelhard et al., Egalité as the Foundation of Liability for Lawful Public Sector Acts, *Utrecht Law Review* vol. 10, no. 3 (June 2014): 55-76.

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the subject, such as Spain, France, and Italy, which take a highly liberal stance on state culpability. Comparatively speaking, the UK and the USA, two significant common law nations, have been sluggish to impose the state's tortious liability. Almost every jurisdiction in the world has limited immunity under tort law within the past 25 years. In tort law, a number of states have abolished immunity for entire organizations and groupings. The "rule of law," which mandates that everyone be treated equally under the law, has served as a foundation for the push to limit immunity in torts. Despite this movement's efforts, there are still many forms of immunity in tort law at the federal, state, and municipal levels that need to be regularized.