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ANALYSIS OF FERES DOCTRINE

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ABSTRACT

This research paper assesses the Feres Doctrine, "an exception to the Federal Tort Claims Act," which immunes the government from its liability when military personnel is injured in military duty. The Supreme Court gives shielding from judicial review about 70 years ago, and it practically applies to every type of intra-military harm, from a careless delivery and heinous misbehaviour like sexual assault. Feres doctrine bars the service military personnel to sue the US government. This study hints the doctrine's roots, examining its historical development, background and recording its current state. It also seems that Judges applying this doctrine feels moral injury. The civil-military divide and the absence of significant people from the military must be taken into account while analysing the Feres doctrine. It is crucial to keep in mind that most educated, wealthy Americans are unaware of the existence of the regulation, which abolishes a prerogative that Americans take for granted the ability for military members to sue. The Feres theory, according to some, treats service members like second-class citizens. The findings of the study stresses that the courts don't only deny personal injury lawsuits brought by wrongdoers at the state level but also dismisses ancillary suits arising out of intra-military harm. The findings also reveal the neglected act of government's act leading to effectively denying the harm caused to non-duty survivors who are indulged in sexual assaults. The United State government now planning to enact the bill that would let the serving members to initiate suit against the government for medical malpractice.

1.INTRODUCTION:

Ordinarily, a plaintiff who is injured by the defendant may file a tort lawsuit for the wrongful act committed by the defendant. If a wrong is committed by a person who is a federal officer or service person the ordinary tort law principle does not apply. The legal principle of sovereign immunity ordinarily bars private citizens from bringing charges against the United States without its consent[1]. The congress waived the sovereign immunity by enacting the Federal Tort Claims Act. According to this Act a private person can also bring a tort lawsuit against the United States under certain conditions. The feres doctrine created an exception to the government's liability under the Federal Tort Claims Act in cases where military personnel are injured while on military duty[2]. The doctrine was first uttered in the United States Supreme Court decision in 1950 in FERES V UNITED STATES. The court held that the military members are not permitted to bring legal action against the military, navy, or coast guard for their involvement in warfare[3]. In spite of the fact that the United States government waived its sovereign immunity, a military personal cannot claim compensation in claims arising out of military activities during time of war.

The Feres theory virtually shields everyone who commits civil wrongdoing from civil accountability. The immunity covers all types of wrongdoing and poor behaviour, including off-duty car accidents, unclean dining halls, medical negligence, and boarding house that catch on fire owing to contractor mistakes. In deliberate misbehaviour, such as sexual assault and murder by soldiers on their fellow soldiers, the immunity also applies. Military leaders resolve the issues internally because the judiciary declines to hear service members' lawsuits. The Feres concept raises

[1] Kelvin M. Lewis, The Feres Doctrine: Congress, the Courts, and Military Servicemember Lawsuits Against the United States, CRS, June 5, 2019, at 1, 1

[2] Feres Doctrine, The, 11WM.MITCHELL L. REV. 1131, (1985)

[3] Id,

concerns about accountability, equal protection under the law, because service members are the only type of public employees who are not subject to judicial review.[4] The Feres philosophy actually has a variety of diverse impacts on military members. This research paper discusses about feres doctrine its application, limitation and case laws. It also discusses about the veteran's inability to sue and their mental health respectively.

2. History:

Feres v United states[5]

Feres, a service member who was killed in a fire at a military facility while on active service and not on leave, claimed that the United States had been negligent in causing his death by "quartering him in barracks known or which should have been known to be unsafe because of a defective heating plant" and by "failing to maintain an adequate fire suppression system." The court ruled that the Government is not liable under the "Federal Tort Claims Act" for servicemen's injuries whether those injuries result from or occur during service-related activities.

The Feres concept started out as a fair rule: servicemen who were already receiving military benefits could not sue the government for dental injuries under 50 various state-law standards. But the Feres theory has evolved since 1950 into something very different from its basic form.[6] The Feres theory now disallows a number of claims, including the one involving an Army intelligence officer who was discovered dead after reportedly being held and questioned for nine days by Army and CIA operatives who had discovered his plan to write his memoirs. Black servicemen alleging racially prejudiced punishments and duty assignments by a senior commander. A servicewoman alleging that a supervisor had sexually assaulted her, shows that the military has unrestricted recognition of a tort claim, and has the power of life and death over its members.

2.1 Military Remedies as a Component of a Public Tort Law System:

The underlying rationale offers a theory of public tort law that acknowledges the soldier's link to the military may give rise to tort claims despite the Feres doctrine's restriction on any intra-military tort claims.

2.2 Feres and the Public Tort Law System:

According to the Feres case, the Federal Tort Claims Act does not hold the government responsible for servicemen's injuries received while on active duty (FTCA). Before making its judgement, the court took three factors into account. First, the FTCA attempted to make the United States accountable in the same way and to the same extent that a private individual would be under analogous circumstances, as opposed to introducing new causes of action.

Second, since the government's relationship with its service members has a distinctly federal character, is governed by federal law, and service members are stationed in different states at random, it would be highly illogical for Congress to subject the government to different state standards of liability to military personnel.

Finally, the existence of a transparent, predictable, and consistent compensation plan for deaths or injuries suffered by members of the armed forces rendered further FTCA recovery unnecessary.

In Jaffee v. United States[7] an ex-serviceman filed a lawsuit against the government and other military officers, saying that their families had significant injuries as a result of their exposure to radiation while participating in training at nuclear testing facilities. The complainant alleged deliberate wrong doing on the side of the military, not just carelessness as in feres. The plaintiff asserted that the military has no right to order its members to participate as radiation experiments subjects. The court held that the feres theory is applicable regardless of whether the defendant is an individual or a government entity, whether the harm was just accidental or deliberate, and whether or not there was a constitutional violation. These decisions highlighted the feres court's opinion that the existence of a compensation programme for military injuries eliminated the need for additional tort recovery, but they also heavily relied on a concern for military discipline.[8]

[4] See Costo v U.S., 2001

[5] 1950 SCC OnLine US SC 92: 340 US 135 (1950)

[6] David Saul Schwartz, Making Intramilitary Tort Law More Civil: A proposed Reform of the feres Doctrine, vol.5, Jstor,pp 992

[7] 633 F.2d 3rd cir. 1980

[8] David Saul Schwartz, Supra note 6

On the other hand, Public Tort law seeks to promote vigorous government action while compensating victims and preventing officials from acting improperly. It important to determine these tort law functions while maintaining institutional competence. In fact, it could be argued that Feres doctrine reflects federal courts conviction that military remedies are better equipped to address intra-military tort issues. It would seem that soldiers' relationships with the military do not subject themselves to tort liability. The military's specific mission is to protect the country by using force. It imposes limitations on the personal freedom of soldiers and requires them to suffer some degree of violence and physical hardship in their living conditions. The connection between the soldier and the army establishment is not distinct enough to give rise to tort liability. Instead, they rely on a no-fault compensation system for accidents sustained while doing military tasks. This scheme represents a recognition that military activity is routinely hazardous but at the same time socially necessary. By avoiding the necessity inquiry and regularising recoveries, no-fault recovery that bases compensation schedules on injury severity rather than circumstances surrounding the injury keeps transaction costs low. This concept does not imply an unrestricted right for military commanders to hurt military members, rationalises the costs of unintentional damages inside the military. There comes a point when normative restrictions must be placed on the conditions under which the military may harm its members.

In U.S v Johnson[9],Johnson was a Coast Guard helicopter pilot who was responsible for the deaths of his crew while responding to a distress call in bad weather. The pilot asked an FFA civilian air controller for guidance, and the controller's instructions led to the helicopter crashing into a mountain, killing everyone on board. Johnson's widow filed a lawsuit under the FTCA, alleging that the federal government's teacher was at fault for Johnson's commander was at fault for Johnson's passing. Even if a government employee's carelessness resulted in the damage, the court expanded the application of Feres and found that a military member cannot bring tort claims for injuries sustained while doing military duty.

2.3 SCALIA'S VIEW:

The 1946 Act did not prohibit FTCA lawsuits brought by troops, with the exception of the wartime restriction stipulated in section 2680 (j). According to Scalia's analysis of the FTCA they "need not determine whether stare decisis should compel us, notwithstanding the clear mistake of the case feres, to leave bad enough alone, "Scalia added in her Conclusion.

Brown v United States[10]

Della Brown mother and conservator of Dan Briscoe, filed a lawsuit on behalf of her son Dan Briscoe. A Black soldier in the Nabraska National Guard was in Georgia at Fort Gordon for his yearly training exercise, which are mandated by the government. Briscoe endured racial taunts, threats, and jeers from other guardsmen while he was there. Briscoe asserted that on Memorial Day of 1976, he went to a party hosted by the Nebraska and Mississippi National Guards while off-duty for the holiday. Briscoe claimed that numerous intoxicated and drugged-out members performed a mock lynching of him at this celebration. They mislead him into thinking a lynch mob was dragging him away by placing a noose around his neck. Despite the fact that the National Guard looked into the incident, Briscoe said he wasn't interested in filing a formal complaint. However, Briscoe asked for compensation and a chance to speak with a racial relations officer. Requests from Briscoe were immediately fulfilled. Della Brown argued that although her son got the attention he wanted after the lynching, the experience caused him to fall into a severe despair. The depressive state of Briscoe persisted Until January 12, 1997 and shot with a gun and sustained heavy injury. Della Brown claimed that because the base commander and his deputies let the lynching incident to occur and because a number of non-commissioned officers from Briscoe's military unit took part in the hanging, US government should be liable. She further alleged that a number of superior officials gave inadequate supervision, failed to spot racial issues before the hanging episode and purposefully neglected to properly investigate the

[9] 107SCt 2063 (1987)
[10] 266. U.s 355, 41sCt.501 (1721)

incident. The Eighth circuit court of appeals examined Brown's Claims under the Feres Doctrine and relied upon following rationales:-

1. The unique federal nature of the connection between the US government and its military troops[11], given that military personnel may be stationed anywhere;
2. Alternative compensation is available, regardless of government negligence[12];
3. The potential impact of civil litigation on military order[13].

The Brown court relied upon the third factor stating that the Tort Claims Act as disallowing claims of that nature because of the unique and special relationship between the soldier and his superiors, the negative effects of upholding such lawsuits on discipline, and the extreme outcomes that might occur if such lawsuits were permitted for negligent orders given or negligent acts committed while performing military duty.

The court held that the Feres doctrine does not limit Briscoe's claim against the affair's participants. However, "we find that Briscoe's claims against the United States and his superior officers for failing to prevent the incident and against his superior officers for failing to conduct an adequate inquiry are precluded by the Feres doctrine." The district court's decision to grant summary judgement to individuals who are accused of being involved in the incident is thus overturned, and the case is remanded for additional proceedings in line with our reasoning.

3. Sexual Assault and The Feres Doctrine:

Kori CIOCA v Donald RUMSFELD[14]

Kori Cioca, a veteran whose story is featured in the acclaimed film" The Invisible War". When Cioca joined the service at the age of 19, a male superior started making unwelcome advances and making threatening phone calls to her. She complained about the harassment to her supervisors, but they dismissed her concerns as coming from "drinking bud dies." He exposed himself to her one evening, and when she refused, he broke her jaw. A few weeks later, he raped her after forcing her into a room. The officer was punished with a reduced pay, while she was involuntarily discharged from having an "inappropriate relationship.[15]" However, the plaintiff maintained that the alleged injuries were neither "incident to" nor "arose out of" their military service. They specifically claim that defendant have not provided any evidence proving the rape and sexual assault, and the ensuing refusal to punish the offenders, served a military mission.

In the more than 25 years since the Supreme Court's decision in Stanley that service members will not have an implied cause of action against the government for injuries sustained during or as a result of their military service under Bivens, the court held that Congress has never established an express cause of action as a remedy for the type of claim that Plaintiffs herein allege. And rather than the courts, the constitution has given congress the power to perform that task.

Despite the fact that the Department of Defense estimates that over 15,000 service members were sexually assaulted in 2016, just 143 cases resulted in a court-martial conviction for a crime connected to sexual assault. When sexual assault occurs repeatedly within a civilian organisation, the employer may be held vicariously accountable on the grounds that it was aware of the danger and did nothing to stop it from happening again.[16]

Daniel v. United States[17]

Rebekah Daniel, the estate's personal agent, brought a lawsuit in tort against the federal government on behalf of the petitioner. Rebekah, a Navy Lieutenant, passed away at a military hospital as a result of a complication brought on by the substandard medical attention. The court ruled that under the Federal Tort Claims Acts. Military troops

[11] Feres Doctrine, The, 11WM.MITCHELL L. REV. 1131, (1985)
[12] Id,
[13] Id,
[14] 720 F.3d 506, (4th cir. 2013)
[15] Dwight D. Stirling and dallis Warshaw. CLOSING THE COURTHOUSE DOOR TO SERVICEMEMBER SUITS: Understanding the "Feres" Doctrine, vol.35, No.1, pp.50-53.
[16] Id,
[17] 139 S. Ct.1713 (2019)

hurt as a result of a federal employee's carelessness cannot sue the government of the United States. The court rejected the request for certiorari. The Ninth Circuit noted that it is the only instance in which the feres doctrine has been explicitly disregarded. To that aim, several members of the 116th congress have proposed legislation that would let military personnel who are currently on active duty to file cases that Feres could otherwise forbid.

3.1 Limitations on Claims for damages under Federal Tort claims Act:

The plaintiff's options for suing the federal government for damages are restricted under the Federal Tort Claims Act. The amount of damages that a plaintiff may be awarded in an FTCA action depends on the law of the state in which the tort was committed. A plaintiff cannot receive punitive damages or prejudgment interest in addition to the majority of verdicts of attorney's fees against the government being barred. A plaintiff may not get damages in excess of those first demanded when filing his claim with the relevant agency in order to meet the FTCA's depletion, with certain limited exceptions. [18]

4. CONCLUSION:

Despite Feres' restriction on civil responsibility for in service tort injuries, judges can indeed take a number of actions to defend service member's rights. It is very important to understand the scope of the feres doctrine. While Feres doctrine does exclude lawsuits by serving personnel for injuries experienced while on duty, it does not extend to injuries suffered by veterans or by serving personnel's family members, as in Brown's case. For injuries sustained while serving in the military judges should assist former service members in applying for disability benefits from the Department of Veterans Affairs. Veterans can also receive the housing, education, and health care benefits to which they are entitled by navigating the bureaucratic maze of the VA with the aid of attorneys. The Tort Claims Act has many different interpretations, but the Feres doctrine holds a special place among them because it was decided by a process of judicial law making that aimed to integrate the Act into the entire statutory systems of remedies against the government to create a functional, consistent, and fair system.

The Major criticizing point to the feres doctrine is employees who were indulged in sexual harassment were not given proper consideration and it seamlessly outrages the humility in the working women in the United States Defence Force. From the Cioca's case it is evident that the court has never established a cause of action for crimes regarding sexual assault and has no remedy for such crimes. The feres theory is based on the idea that allowing troops to sue the government may have a negative impact on military discipline: nevertheless, the court has neglected to examine how the feres doctrine's justification for excluding all claims by servicemen actually works. The court also regularly said that Congress alone is solely responsible for any changes to the Feres doctrine that are adopted. The United State government is considering now to pass a law that would let active duty troops to sue the government for medical negligence or malpractice, despite the theory being found to have been challenged since 1950.

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[18] Kevin M.Lewis, The Federal Tort Claims Act (FTCA): A Legal Overview, pg 1-43, May 21, 2019