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Vicarious Liability: A Comprehensive Analysis in Legal Jurisdictions

Abstract- This research paper delves into the concept of vicarious liability, exploring its historical roots, legal frameworks, and significant case laws. The analysis encompasses the vicarious liability relationships of master-servant, principal-agent, and partners, examining their implications and intricacies. The study extends to the position of vicarious liability in India, examining its evolution, principles, and notable case laws that have shaped its application in the country.

Introduction

Vicarious is derived from the Latin word “vice” i.e., in the place of. By this phrase we mean that liability of a person for a tort of another in which one had no part. It may arise under the common law or under statutes. It is a principle under which an individual could be held liable for an act which he himself not committed but because of the wrongful act of some other person.¹

In torts usually a person is liable for the wrongful act which is actually done by himself and no one else is held liable for the wrongful act committed. He who commits wrong is said to be liable or responsible for it. Liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong. Where the remedy is a civil one, the party has the right to demand the redress allowed by law, and the wrongdoer has a duty to comply with this demand. But in cases of Vicarious Liability, a person who may have not committed the act may be held liable and his liability may arise because of the wrongs done by some other person because of the relationship between the two persons.

In the case of vicarious liability, to hold the other person liable there must be an established relationship between both of them, if the persons involved are not connected or the act which has been committed is not connected to them, then the other person would not be held liable for the wrongful act.

¹ FIND A LEGAL FORM IN MINUTES WRONGFUL ACT LAW AND LEGAL DEFINITION | USLEGAL, INC., <https://definitions.uslegal.com/w/wrongful-act/> (Last visited on 10/2/24)

There must be any of the three kinds of relationship between them: -

- a) Master- Servant Relationship- In this case a master can be held liable for the wrongful act committed by the person in the course of the employment
- b) Principal Agent Relationship- In this case the principal can be held liable for the wrongful act committed by his agent in the course of his employment.
- c) Liability of partners of each other torts- In this case, all the partners are held liable for any wrongful act committed by any of the persons.²

In administrative law, vicarious liability refers to the relationship between sovereign and non-sovereign governments, or master and servant. The state's tortious liability is a tortious act committed by its government.

The theory of vicarious liability is explained by Winfield: the term "vicarious liability" refers to A's potential liability to C for harm caused to C as a result of B's negligence or another tort. It is not appropriate for A to have engaged in the commission of the tort in any way, nor for A to have breached a legal duty owed to C. As a result, the master may be held responsible for the torts committed by his servant while on the job.

The vicarious liability doctrine is founded on two maxims:

1. Respond with superiority (let the principal be liable)³
2. Qui facit per alium facit per se (he who does an act through another does it himself)⁴

Article 300(1) of the Indian Constitution⁵ provides that the government of India may be sued in connection with its case relations, such as the dominion of India. Before the constitution came into effect, a lawsuit would have been filed against India's dominion, and parliament would not have taken any action to make laws. The state legislature did not pass any laws when the constitution was adopted. When parliament fails to pass the legislation and a servant commits a tort, the

² Respondent superior Encyclopaedia Britannica, <https://www.britannica.com/topic/ respondeat-superior> (last visited 10/2/24)

³ Supra note 2

⁴ Christy Bieber, **What Is Vicarious Liability? Definition & Examples** <https://www.forbes.com/advisor/legal/personal-injury/vicarious-liability/#:~:text=Vicarious%20liability%2C%20or%20imputed%20liability,who%20cause%20harm%20to%20victims> (last visited 10/2/24)

⁵ The Constitution of India

secretary of the state council is responsible. Before the present constitution came into effect, the East India company and the government of India act of 1858, which transferred the government of India to the majesty court with rights and liabilities.

The vicarious liability is total liability when an individual is held liable for harm incurred by a third party acting in the principal's best interests and in the principal's favor. The vicarious liability is a type of strict liability under which the principal and the agent are jointly liable to pay the harm caused by the agent in the process of performing the duty.

According to this agreement, not only the agent, but also the principal, is obligated to maintain law and order, and their actions must be carried out within the legal framework. This type of regulation is effective because the principal will always try to monitor the agent as much as possible and will take all appropriate precautions to prevent damage. Meanwhile, in the majority of cases, the liable party is the solvent principal, who works with the tortfeasor agent to help the claimant fulfill his or her demand for inflicted harm.

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History

Vicarious Liability is a term that originated in England. During the reign of an ancient monarch, the legal maxim **Rex Non Potest Peccare**⁷ was in effect (The king can do no wrong). During the course of work, a king servant commits a tort for which the king is not liable under the vicarious liability doctrine. To reclaim the land, this remedy will be available only in Torts, not in Contracts.

According to Manu, the king's responsibility is to follow the law, and he himself is subject to the law in the same way as ordinary citizens are. In England, the crown holds sole rights and liabilities. The tortfeasor could not be prosecuted in the guise of crown jobs.

Furthermore, the court found in *Tobin vs R* that if the crown was liable in tort, the king's ability to do no wrong would have appeared meaningless. However, as the government's responsibilities grew, the protection granted to the crown in tortious liability became incompatible with the demands of justice.

⁶ Ayushi Singh, Critical Analysis Of Vicarious Liability, <https://ijlmh.com/paper/critical-analysis-of-vicarious-liability/> (Last visited on 10/2/24)

⁷Cornell Law School, [rex non potest peccare#:~:text=rex%20non%20potest%20peccare%20is,cannot%20commit%20a%20legal%20wrong](https://www.law.cornell.edu/wex/rex_non_potest_peccare#:~:text=rex%20non%20potest%20peccare%20is,cannot%20commit%20a%20legal%20wrong). (Last visited on 10/2/24)

The king's court condemned this exception in many decisions, saying it was against fairness, equity, and good conscience. The crown proceeding act of 1947, which repealed the maxim that the king cannot do anything wrong, was passed by the British parliament.

The respondent superior principle applies in the workplace, and a king may be sued for a tortious act committed by his servant. Everyone is equal before the law as a result of this, and no one is superior or inferior to another. The doctrine of “vicarious liability” is generally termed as liability for the acts of others.⁸

Thus, liability for wrongs committed by others is a vicarious liability. A servant is a person employed by another to do work under the directions and control of his master. A master is a person who employs another person to do work under his direction and control.

Moreover, the term course of employment means that the act which is done should be during the period of work assigned and it should be the authorised work which has been assigned to the person by the master as a general rule, master is liable for the tort of his servant but he is not for the tort of an independent contractor. Thus, it is so clear that this liability of a person is for the tort that was committed by another person and that defendant had no part. However, plaintiff can sue him as per the common law or under the statute for wrongs committed by others.

Vicarious Liability in case of master and servant- In the case of master-servant relationship, the master is vicariously liable for the wrongful act done by his servant in the course of employment. Therefore, if a servant does a wrongful act in the course of his employment, the master is liable for it, however, in such a situation, the servant is also liable.

The essential conditions to establish a tort of vicarious liability under master servant relationship are as follows:

- It must be committed by the servant.
- It must be committed within the course of employment.
- Vicarious liability in the context of principle and agent means inflicting responsibility on the principal on the acts of the agent.⁹

Thus, when an agent commits a tort in the course of performance of his duty as an agent, the liability of the principal arises for such a wrongful act. The agent would also be liable because he

⁸ Article 14 Equality before law Legal Service India - Law, Lawyers and Legal Resources, <http://www.legalserviceindia.com/legal/article-353-article-14-equality-before-law.html> (Last visited on 10/2/24)

⁹ VICARIOUS LIABILITY IN LAW OF TORTS, <https://dejurenxus.com/vicarious-liability-in-law-of-torts/> (Last visited on 10/2/24)

has done the wrongful act. The principal is liable vicariously because of the principal-agent relationship between two. Therefore, they can be made liable for the same wrongful act and considered to be joint tortfeasors. Their liability is joint and several. The relationship between partners is like a principal and agent relationship.

Thus, when the wrongful act is done by one partner in the ordinary course of the business of the firm, all the other partners are vicariously liable for the same. All the partners of the firm, i.e., the guilty partners and the others are considered to be joint tortfeasors. Their liability is also joint and several.

Vicarious liability of the state.

The position has been entirely changed after the passing of the Crown Proceedings Act, 1947.¹⁰ Now the Crown is liable for a tort committed by its servants, just like a private individual. Section 2 (1) of the Act provides :

“Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were person of full age and capacity, it would be subject”

- a. in respect of torts committed by its servants or agents
- b. in respect of any breach of those duties which a person owes to his servants or agents at Common Law by reason of being their employer; and
- c. in respect of any breach of the duties attaching at Common Law to the ownership, occupation, possession or control of property Provided that no proceeding shall lie against the Crown by virtue of paragraph (a) of this sub-section in respect of any act or omission of a servant or agent of the Crown unless the act or omission would, apart from the provision of this Act, have given rise to a cause of action in tort against that servant or agent or his estate.

Position in india

¹⁰ Crown Proceedings Act, 1947 <https://dejurenexus.com/vicarious-liability-in-law-of-torts/> (Last visited on 10/2/24)

In India, the crown gained sovereignty in 1858 and took over the company's administrative functions. The secretary of India is declared to be a private body for the purposes of using and being sued under the act.

Section 32 of the Government of India Act of 1915 declared the following corporate assumptions:

1. As a body corporate, the Secretary of State Council can sue and be sued.
2. If the East India Company and Government of India Company Act of 1858 is not passed, the Secretary of State in Council shall have all remedies.
3. Section 176(i) of the Government of India Act, 1935 reintroduced this clause.¹¹

Without regard to the ensuing arrangement of this section, the organization may sue or be sued in the name of the alliance of India, and commonplace governments may sue or be sued in the name of region, and without regard to the ensuing arrangement of this section, the organization may be liable to any arrangements made by the act of the league or common law making body approved by the prudence of forces provided on that assembly by this demonstration, sue or be sued in the name of region.

The kingdom of sovereign control of the state, and such state is not liable for omissions, used as a broader defense. The first understanding of state liability during the East India Company was made in the John Stuart cases in 1775. For the first time, the governor in general was found to be immune from judicial jurisdiction in cases concerning the firing of government employees.¹²

The sovereign immunity doctrine of the privy council does not apply to India. The administration of the nation was implemented during the government of India act 1858, after the British crown assumed sovereign powers. The vicarious liability in administrative law is distinguished by the court as sovereign and non-sovereign powers in acts performed with conduct of undertakings that may be carried out by persons without possessing the authority. Any conclusions will emerge as a result of the non-sovereign role.

The East India Company had two distinct personalities.

- (a) In its capacity as a sovereign power and
- (b) As a commercial enterprise.

¹¹ Supra note 6

¹² SOVEREIGNTY LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/sovereignty> (Last visited on 10/2/24)

The company's liability could only be limited to its business dealings and acts performed in the exercise of delegated sovereign authority. In this case, the harm was done to the offended party in a non-sovereign position, namely, the maintenance of the Dockyard, which could be done by any private citizen with no appointment of sovereign power, and as a result, the Government was held liable for the workers' torts. The Secretary of State was not responsible for any actions taken by sovereign powers.

CASE LAWS

The case laws under the three mentioned category of vicarious liability are as follows :-

(A) Master servant relationship

*Mersey Docks & Harbour board v. Coggins & Griffith (Liverpool)Ltd. (1947)*¹³

A harbor board owned a number of mobile cranes and had employed skilled workmen as the drivers of the cranes. It was usual for the board to let out the mobile cranes, each driven by the skilled driver employed by them. Certain stevedores (loaders) hired a crane together with the driver for loading a ship. But in this case, due to the negligence of the driver, while loading a ship, X was injured.

The House of Lords held that the Harbour Board, who was the general and permanent employer of the driver, was liable for X. The stevedores (loaders) were not liable, even though at the time of the negligence, the driver was loading cargo for the stevedores.

(B) Principal-Agent Relationship

*Trilok Singh v. Kailash Bharti (1986)*¹⁴,

While the owner of the motorcycle was outside the country, his younger brother took the motorcycle without his knowledge or permission and caused the accident. It was held that the younger brother could not be deemed to be an agent of the owner of the motorcycle and the latter could not be vicariously liable for the accident.

(C) Partner's Liability

*Hamlyn v. Houston & Co. (1903)*¹⁵

¹³ *Mersey Docks and Harbour Board v Coggins [1947] AC 1*

¹⁴ (1985) 2 ILR 263

¹⁵ [1903] 1 K.B. 81

One of the two partners of the defendant's firm, acting within the general scope of his authority as a partner, bribed the plaintiff's clerk and induced him to make a breach of contract with his employer (plaintiff) by telling secrets relating to his employer's business. It was held that both the partners of the firm were liable for his wrongful act (inducing breach of contract) committed by only one of them.

Nobin Chandra Dey v. Secretary of State for India¹⁶

The Calcutta High Court linked this doctrine of immunity for actions performed in sovereign capacities in Nobin Chandra Dey v. Secretary of State. The plaintiff in this case argued that the government had entered into an arrangement with him for the issuance of a permit for the selling of ganja, and that the agreement had been broken.

The High Court ruled that no breach of understanding had been shown following the confirmation. Regardless of whether an agreement was reached, the demonstration was carried out in the exercise of sovereign authority and thus was unremarkable.

Secretary of State v. Hari Bhanji¹⁷

The Madras High Court ruled that state immunity is limited to acts of the state in this case. The decision in the P and O Case did not go beyond acts of state, but it did outline conditions in which immunity could be available. Acts of State, it was established, are acts carried out in the exercise of sovereign power, where the act complained of is purportedly carried out under the sanction of municipal law and in the exercise of powers conferred by law.

The fact that it is completed by sovereign powers and is not an act that should be possible by a private citizen does not negate the civil court's jurisdiction. The Hari Bhanji decision in Madras holds that the government cannot be held liable for actions related to public safety, even though they are not acting for the state.

Rose vs Plenty (1976)¹⁸

The facts were a milkman told by his managers not to give children a chance to inspire him when he was doing his rounds in Rose vs Plenty. In any case, he allowed a child to assist him, and the child was injured while riding on his milk float due to the carelessness of the driver, a milkman.

¹⁶ (1876)ILR 1CAL12

¹⁷ **Secretary of State v. Hari Bhanji (1882)**

¹⁸ Rose v Plenty [1976] 1 WLR 141

The employer was held vicariously responsible by the court of appeal. As an employee, let him know not to do his action within the framework of his job. All in light of the fact that the work he was doing was for the benefit of the public it is the employer's company.

Mathis v Pollock (2003)¹⁹

A doorman hired by the Defendant to work in the Defendant's club stabbed the Claimant in this case. The Defendant expected the doorman to carry out his duties 'forcefully.' Where a worker is expected to use abuse as part of their job, as in this case, the chances of a court considering a particular act of violence to be beyond the scope of employment are significantly higher.

Laissez-Faire Judicial thinking and exclusion of Sovereign Function the majority of the capacities exercised by the Government of India were called sovereign capacities during the old colonial period, when the government was more concerned with policing capability than with welfare exercises. Likewise, sovereign capacities were interpreted as safeguarding elements of the state, maintenance of peace, administration of equity by courts and matters incidental thereto, as well as inconvenience and collection of duties.

The government of India may sue or be sued in the name of the union of India, and the government of the state may sue or be sued in the name of the state, according to Article 300 of the Indian Constitution may sue or be sued in relation to their respective affairs in the same cases as the domination of India and the corresponding Indian States would have sued or been sued if the constitution had not been enacted, subject to any provisions made by act of parliament or the legislature of any state enacted by virtue of powers conferred by this Constitution.

Neither the state legislatures nor the parliament have passed any laws as required by clause (1) of Article 300 of the Indian Constitution. The current position is that if a claim should be brought against the corresponding jurisdiction, the state would be responsible for damages.

Acts done in exercise of sovereign powers

In *Union of India v. Harbans Singh*²⁰, meals were being carried from the cantonment, Delhi for being distributed to military personnel on duty. The truck carrying the meals belonged to the military department and was driven by a military driver. It caused an accident resulting in the death of a person. It was held that the act was being done in exercise of sovereign power and therefore, the State cannot be held liable for the same

¹⁹ *Mattis v Pollock* [2003] IRLR 603, CA

²⁰ C.R. No. 3944 of 1996

Acts done in exercise of non sovereign powers

In *Union of India v. Savita Sharma*²¹, the Jammu and Kashmir High Court held that the driving of a military truck to Railway Station to bring the jawans to Unit Headquarters is a non-sovereign function and therefore, if the respondent gets injured while the truck is being driven, she is entitled to compensation.

Doctrine of res ipsa loquitur²²

Res Ipsa Loquitur is a Latin phrase that means the thing speaks for itself. In the law of torts, it is a very popular doctrine. In cases, where the evidence is itself sufficient to prove the guilt of the defendant, the maxim is used there. So, the maxim points out any circumstantial evidence or an object which itself shows that an act has been committed. It shows that if the defendant was not negligent, the accident would not have happened.

In the law of torts, to prove somebody's negligence, the burden of proof is on the plaintiff which means the person who is the victim of the tort. It becomes really difficult to prove that the defendant was at fault and also to gather evidence against his act or omission. If the plaintiff is not able to prove negligence on the part of the defendant, the defendant cannot be made liable. So, the principle of Res Ipsa Loquitur²³ came into force under which a plaintiff can use circumstantial evidence to establish negligence.

Negligence of military servants

Although the maintenance of the army is a sovereign function, this does not necessarily mean that the State will be immune from liability for any tortious act committed by the army personnel. Here also, a distinction has to be drawn between acts which could be done by the Government in the exercise of sovereign powers and acts which could have been equally done by a private individual. There is no hard and fast rule to distinguish sovereign and non-sovereign functions. Some of the cases where this question has arisen are being discussed below.

In *Vidyawati v. Lokumal*, the plaintiff's husband died after being knocked down by a Government jeep car which was driven rashly and negligently by an employee of the State of Rajasthan. At the time of the accident, the car was being taken from the workshop to the Collector's bungalow for the Collector's use. In an action against the State of Rajasthan, the State was held liable. The

²¹ O.A. No. 1320-HR-2012.

²² Cornell Law School, Res Ipsa Loquitur, https://www.law.cornell.edu/wex/res_ipsa_loquitur (Last visited on 10/2/24)

²³ Cornell Law School, Res Ipsa Loquitur, https://www.law.cornell.edu/wex/res_ipsa_loquitur (Last visited 10/2/24)

Rajasthan High Court did not find any reason for treating the State differently from an ordinary employer and held that the State of Rajasthan was liable for the wrong of the driver.

According to Dave, J. ". The State is no longer a mere Police State and this country has made vast progress since the above decision (Peninsular Case) was made. Ours is now a Welfare State and it is in the process of becoming a full-fledged Socialistic State. Everyday, it is engaging itself in numerous activities in which any ordinary person or group of persons can engage himself or themselves. Under the circumstances, there is all the more reason that it should not be treated differently from other ordinary employers when it is engaging itself in activities in which any private person can engage himself."

On appeal, the Supreme Court confirmed the decision of the Rajasthan High Court and endorsed the view expressed by it. In *State of Rajasthan v. Vidyawati*²⁴, the observations made by the Supreme Court may also be noted. "In this connection, it has to be remembered that under the Constitution, we have established a welfare State, whose functions are not

*Peninsular and oriental steam navigation co v secretary of state for india*²⁵

In *Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*, the plaintiff's servant was travelling in a horse driven carriage and was passing by the Kidderpore Dockyard in Kolkata, which is the government property.

Due to negligence on the part of the defendant's servants, a heavy piece of iron, which they were carrying for the repair of a steamer, fell and its clang frightened the horse. The horse rushed forward against the iron and was injured. The plaintiff filed a suit against the Secretary of State for India in council for the damage which was caused due to the negligence of the servants employed by the Government of India.

The Court tried to look to the liability of the East India Company. A distinction was drawn between the sovereign and non-sovereign functions of the East India Company. It was held that if the act was done in the exercise of sovereign functions, the East India Company would not have been liable, but if the function was a non-sovereign one, i.e, which could have been performed by a private individual without any delegation of power by the Government, the company would have been liable. Maintenance of the dockyard was considered to be a non-sovereign function and, as such, the Government was held liable.

²⁴ *State Of Rajasthan v. Vidyawati* (1962) Supp. 2 SCR 989

²⁵ (1861) 5 Bom. H.C.R. App. I,p.1

In *Vidyawati v. Lokumal*²⁶

The plaintiff's husband died after being knocked down by a government car which was being driven rashly and negligently by an employee of the State of Rajasthan. At the time of the accident, the car was being taken from the workshop to the collector's bungalow for the collector's use.

In an action against the State of Rajasthan, the State was held liable. The Rajasthan High Court did not find any reason for treating the State differently from the ordinary employer and held that the State of Rajasthan was liable for the wrong of the driver.

Conclusion

In conclusion, this research paper has undertaken a comprehensive exploration of the concept of vicarious liability, examining its historical evolution, theoretical foundations, and practical applications in legal jurisdictions, with a specific focus on India. The analysis sheds light on the intricate relationships of master-servant, principal-agent, and partners, and their implications in the context of legal accountability for tortious acts.

²⁶ State Of Rajasthan v. Vidyawati (1962) Supp. 2 SCR 989