

A COMPARATIVE STUDY ON VICARIOUS LIABILITY IN TORTS AND ADMINISTRATIVE LAW IN INDIA

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ABSTRACT:

This paper deals with vicarious Liability which means Master and Servant relationship. Vicarious Liability refers to a situation where someone is held responsible for the actions or omissions of another person. The term administration is refer for state or government would liable for the torts committed by its servants is a complicated problem especially in developing countries with ever widening state activities. The liability of the government in tort is governed by the principles of public law inherited from British common law and the provisions of the constitution. Vicarious Liability deals with cases where one person is liable for the acts of others. So in a case of vicarious Liability both the person is liable for the acts of others. So in a case of vicarious Liability both the person at whose command the act is done as well as the person who does the act are liable. This, employers are vicariously liable for the torts of their employees that are committed during the course of employment. The Position of state Liability as stated in article 300 of the constitution is as under: Clause (1)of article 300 of the constitution provides that the government of India may sue or be sued by the name of the union of India and the government of the state. East India company in order to understand the Liability parameters of the administration today because the liability of the administration today is in direct succession to that of the east India

company. East India established for commercial corporation but gradually acquired sovereignty. Political powers that distinction made between Sovereign and non-sovereign functions.

Method: This research paper has been in Analytical and descriptive method to resolved into elements and constituent parts not only that but also the structure of the issues has been classified.

Result: This research paper has divided into 2 elements where the establishment of the vicarious liability and played a vital role been discussed.

conclusion : The government is liable for the servant during exercise sovereign function. The act of the statutory expert in such a case is a act improved the situation and for the State.

Keywords: Vicarious Liability, master and servant, administration, course of employment, East India company, sovereign, non-sovereign.

INTRODUCTION :

The vicarious Liability in administrative law deals with sovereign and non sovereign government which means master and servant relationship. The tortious Liability of the state is tortious act of its government. **Winfield** explains the doctrine of vicarious Liability: The expression ‘vicarious Liability’ signifies the Liability which A may incur to c for the damage caused to c by the negligence or other tort of B. It is not necessary that A shall have participated in any way in the commission of the tort nor that a duty owed by law by A to c shall have been broken.(Takwani & Thakker 2008)

Thus, the master may be held liable for the Torts committed by his servant in the course of employment.

The Doctrine of vicarious Liability is based on two maxims:

1. Respondeat superior (let the principal be liable)
2. Qui facit per alium facit per se (he who does an act through another does it himself)

Liability in tort article 300(1) provides that the government of India may be sued in relation to its case affairs like dominion of India. Before the constitution came into force suit would lie against dominion of India question arises and parliament didn't took any effective for making law. When the commencement of constitution state legislature don't enact any law. Course of employment servant committed any tortious act secretary of the state council is liable when parliament didn't enact the law. East India company and after government of India act 1858, which transfer the government of India to majesty court with rights and Liability before the present constitution came into force.

Aim of the study:

To study about vicarious liability of the state in exercising its sovereign powers

Objectives :

1. To study about impact of vicarious Liability in India.
2. To study about the factors indicating the vicarious Liability in India.
3. To study about the constitutional provision relating to vicarious Liability in India.
4. To evaluate the scope and extent of the defence of act of state.

RESEARCH QUESTIONS:

Whether the tort act 1992 plays vital role implementing vicarious Liability in India or not ?

MATERIALS AND METHODS :

This study is collected from secondary sources like books and publication from various websites in study of vicarious Liability in India.

History of vicarious Liability

The vicarious Liability origin from England. During the kings rule of an ancient period legal maxim Rex Non Potest Peccare (The king can do no wrong). (Wade & Forsyth 2014) During the course of employment the tort committed by king servant and king is not liable under the vicarious Liability. This remedy will available only in Torts and not in contract to recovery the property. According to Manu, the king duty to uphold law and himself as subject to law like ordinary citizen. In England absolute rights and Liabilities lies in crown hands.(Magnus et al. 2004) Tortfeasor could not be sued in the name of crown course of employment.

Tobin vs R : the court observed, If the crown were liable in tort, the king can do no wrong would have seemed meaningless. But with the increase of governmental functions, the immunity afforded to the crown in tortious Liability proved to be incompatible with the demands of justice. In various decisions the kings court criticized this exemption were against justice, equity, and good conscience. The crown proceeding act 1947 by abolishing the maxim, king can do no wrong act passed in British parliament. The course of employment principle of respondeat superior and king can also be sued for his servant tortious act. Through this everyone are equal before law, no one is superior and inferior to another.

POSITION IN INDIA :

In India sovereignty is assumed in crown during 1858 and took over the administrative hands of company. Th act declared to statute is secretary of India to be corporate body for the purpose of using and being sued. Section 32 of 1915 government(Feldman 2015) of India act declared corporate assumptions:

1. The name Secretary of State council may sue and be sued as a body corporate.
2. The East India company and government of India company act 1858 of the act did not passed , Secretary of State in council shall have remedies for all person.
3. This provision was again mentioned in section 176(i) of the Government of India Act, 1935.

The organization may sue or be sued by the name of the alliance of India and the commonplace governments may sue or be sued by the name of region and without partiality to the ensuing arrangement of this section, might be, liable to any arrangements which might be made by the act of the league or common lawmaking body authorized by prudence of forces gave on that assembly by this demonstration, sue or be sued, in connection to their particular issues in the like case as the secretary of State for India in gathering may have sued or been sued in this demonstration has not been passed.

The kingdom of sovereign power of the state and such state is not liable for omissions, the state Liability used the cat in broader defense. The state Liability first interpretation during east India company was made in john Stuart cases 1775.(Cornford 2016) It was held that first time the governor in general has no immunity from the court jurisdiction cases involving dismissal of government servant. In moodaly privy council doctrine of sovereign immunity is not applicable to India. British crown later the assumption of sovereign powers were enacted the administration of country during government of India act 1858.

The vicarious Liability in administrative law as sovereign and non- sovereign powers they are distinct by the court in exercise of non sovereign power in act done with conduct of undertakings might carried by individuals without having the power. (Gageler 2017)Non sovereign function some assumptions will arise. The East India company had a two-fold character are

- (a) As a sovereign power and
- (b) As a trading company.

The responsibility of company could only extend in respect of its commercial dealings with the act that done in exercise of delegated sovereign power. In the present case, the harm was done to the offended party in the activity of non-sovereign capacity, i.e. the upkeep of Dockyard which should be possible by any private individual with no appointment of sovereign power and consequently the Government was subject for the torts of the workers. The Secretary of State was not obligated for anything done in the activity of sovereign powers.

Nobin Chandra Dey v. Secretary of State for India

This doctrine of immunity, for acts done in the activity of sovereign capacities, was connected by the Calcutta High Court in Nobin Chander Dey v. Secretary of State. The plaintiff for this situation battled that the Government had made an agreement with him for the issue of a permit for the sale of ganja and had conferred break of the agreement. The High Court held that upon the confirmation, no break of agreement had been demonstrated. Also regardless of whether there was an agreement, the demonstration had been done in exercise of sovereign power and was subsequently not noteworthy.

Secretary of State v. Hari Bhanji

In this case the Madras High Court held that State immunity as limited to act of State. In the P and O Case, the decision did not go beyond act of State, while giving outlines of circumstances where the immunity as accessible. It was characterized that Acts of State, are acts done in the activity of sovereign power, where the act grumbled of is professedly done under the endorse of municipal law, and in exercise of forces gave by law. The insignificant actuality that it is finished by the sovereign powers and isn't an act which should be possible by a private individual does not expel the jurisdiction of the civil court. The Madras judgment in Hari Bhanji holds that the Government may not be at risk for acts associated with public safety, even though the fact that they are not act of State.

Rose vs Plenty: (1976), the facts were milkman advised by his managers not to give children a chance to encourage him while he was doing his rounds. In any case, he allowed a child to help and the kid was harmed while riding on his milk float, because of the careless driving of milkman. The court of appeal found the employer vicariously at liable. The employee as doing his activity, within in the scope of employment let him know not to. All things considered, in light of the fact that the work he was performing was for the advantage of the employer's business.

Mathis v Pollock [2003] the Court of Appeal. In this case, the Claimant was stabbed by a doorman that was employed by the Defendant to work in the Defendant's club. The Defendant expected the doorman to do his obligations in a 'forceful way'.(Cornford 2016) Where, like in this case, a worker is relied upon to utilize brutality as a feature of completing their obligations, the odds of a court finding a specific act of violence of be within the scope of employment is substantially higher.

LAISSEZ-FAIRE JUDICIAL THINKING AND THE EXCLUSION OF SOVEREIGN FUNCTION.

In the old colonial era when the Government was concerned more with policing capacity than with welfare exercises, the majority of the capacities practiced by the Government of India were considered as sovereign capacities. Likewise safeguard elements of the State, (R. J. F. B. & B. 1923) upkeep of peace, administration of equity through courts and matters incidental thereto and furthermore inconvenience and gathering of duties were translated as sovereign capacities.

CONSTITUTIONAL PERSPECTIVE

This provision has been incorporated in Article 300 (i) of the Constitution of India: The government of India may sue or be sued by the name of the union of India and the government of the state may sue or be sued by the name of the state, (Pandey & Srivastava 2014) and may subject to any provisions which may be made by act of parliament or of the legislature of such state enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the dominion of India and the corresponding Indian States might have sued or been sued if the constitution had not been enacted. (Kulshreshtha & Gandhi 2005)

Neither the legislature of the states nor the parliament has made any law as contemplated by clause (1) of Article 300 of the Constitution of India. The present position is that the state would be liable for damages, if such suit could be filed against the corresponding province

RESULT OF THE STUDY : The kingdom of sovereign power of the state and such state is not liable for omissions, the state Liability used the crown in broader defense. The ancient period crown played vital role in vicarious liability.

Comparative study of tortious Liability and administrative Liability in various country- India and U.k

Law of tort is a part of English civil law. A tort is an act that harms somebody somehow, and for which the harmed individual may sue the wrongdoer for harms. A careless or purposeful common wrong isn't arising out of an agreement or statute. (Anon 1982) These include "intentional torts, for example, battery or defamation, and torts for carelessness. At the point

when there is an obligation of care and a breach of that obligation which causes a harm that makes the tort of carelessness.

The definition of tortious liability is as:

“Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.”

Law prior to the Crown Proceedings Act :

There were two ancient but fundamental principles before the Crown Proceedings Act, 1947 representing the law identifying with the risk of the (Massey 2008) Crown and its workers: (i) The rule of substantive law that the King can't be blamed under any circumstance, and (ii) the doctrine of procedural law that the King couldn't be sued in his own Courts. The survival of these tenets into the twentieth century implied that till first January, 1948 the Crown could be sued neither in regard of wrongs that had been explicitly approved nor in regard of wrongs submitted by Crown's servant course of employment .

The King can do no wrong : The maxim that the "The king can do no wrong" is an ancient and cardinal principle , however it doesn't imply that the King is exempt from the laws that apply to everyone else and that all that he does, is fundamentally just and legal. It has two meanings as per the according observer Firstly, that whatever is exceptionable in the conduct (Giliker 2008) of public affairs is not imputed to the King, nor is he answerable for it personally to his people for this doctrine would totally destroy that Constitutional independence of the Crown, which is necessary for the balance of Power in free and active and therefore compounded Constitution: and secondly, it means that the prerogative of the Crown extends not to do any injury; it is created for the benefit of the people and therefore cannot be extended to their prejudice. Maitland then again clarified the maxim in this way: " English law does not provide any means (Voyiakis 2017) whereby the King can be punished or compelled to make redress". The maxim simply implied that the King was not privileged to do wrong. In the event that his act were illegal, they were injuria. In this way, what the King does by and by, the law presumes (A. L. G. & A. 1924) won't be a wrong, what he does by his summon to his servant can't not be right in him for if the order be unlawful, it is in law no charge and the servant is by and by in charge of the unlawful act. King couldn't be sued in

his own Courts The decide that the King couldn't be sued in his own Courts depended on the pyramid remnant that a medieval Lord couldn't be held obligated in his own particular Court. The social states of England were in charge of the non-responsibility of the Crown (Van Hoecke 2011). The medieval rulers were Supreme. The law was of a very antiquated compose. The Lords practiced their forces and even secured their men who had submitted the offenses. As indicated by Street, "Similarly as no Lord could be sued in the Court which he held to attempt the instances of his inhabitants, so the King, at the zenith of the pyramid and subject to the jurisdiction of no other Court, was not suable". A judgment of the King's Court declared (Harlow 2002)"our Lord the King can't be summoned or get an order from anybody." Subsequently, under civil Law no human organization could implement the law against the King. He could be an plaintiff party but he couldn't be made a defendant . The oblivious injustice form that the Crown couldn't be sued for the wrongs of his servant , was to some degree looked to be lightened by the Courts by making a legitimate fiction of selected respondent, in which, the lawful procedure was issued exclusively against the individual servant , however his guard was practically speaking led by the Crown, and if harms were granted they were paid out of open assets. Government offices did their best to be useful influencing this training to work easily, and if there was any uncertainty as to which worker to sue, they would supply the name of a filed case. This practice was otherwise called fiction respondent, However the report was Pigeon holed as it was contradicted by some administration offices. Donoughmore Committee again suggested a case for enactment, however the Administration of Justice (Miscellaneous Provisions) Act, 1933 just improved the Crown's situation as a defendant and it didn't make the Crown subject in tort.

Liability for Breach of Statutory Duty : An action for a breach of statutory obligation is not the same as an activity alleging careless exercise of statutory powers. The general rule is that a breach of statutory obligation provides for a man harmed in this way a privilege of activity for harms if that is given by the statute breach actionable. Occasionally , a statute expressly states whether a breach will be actionable. Section 2(2) of the Crown Proceedings Act forces two limitations on the obligation of the Crown. They are (a) the Crown is bound by a statutory obligation just if the Act being referred to so gives, and (b) the Crown is subject just where statutory obligation is binding upon people other than the Crown and its officers. The Crown isn't accordingly, obligated where the obligation ties just itself. Street is very critical of the second provision when he says.that there is no justification for last requirement.

Can civil liability arise as a consequence of the violation of constitutional right?

Though the fact state Liability risk was incorporated way back during British rule, the fundamental concern was that whether a common obligation can emerge as a result of the infringement of protected right. In this way, the main case (Cane n.d.) which managed this issue was **Rudul shah v. State of Bihar**, In this case, the petitioner Rudul Shah suffered an unlawful detention for around 14 years. It was for this situation that the court held that it would be lip-service as to assurance of central rights if the advocate isn't (Gifford 2010) granted the ideal compensation or the gross infringement of Right to life and freedom. After the previously mentioned case the idea of protected tort was featured in various cases one such being **Bhim Singh v. State of Jammu and Kashmir**, For this situation, the court held that if a person complains that his/her lawful right has been attacked the court has ward to give the bothered party financial compensation.

In **Nilabati behera v. State of Orissa**, the court gave an essential suggestion that sovereign immunity from tortious acts of state authorities is unique in different to state's liability for contravention of the fundamental right. Consequently, the protection of sovereign immunity finds no place in the claim for constitutional remedies under Article 32 and 226 opposite the pay for compensation of established rights.

State of Rajasthan v. Vidyawati :

The respondents filed a suit for the harms made by a employee of a State and the case addressed whether the State was question for the (Voermans & Stremmer 2017) tortious act of its servant – The Court held that the liable of the State in regard of the tortious act by its worker inside the extent of his business and working functioning was like that of some other employer . It was held for this situation that the State ought to be as much obligated for tort in regard of tortious acts submitted by its servant in course of employment and working thusly, as some other employer. The facts of this case shortly stated . All things considered, the claim for harms was made by the dependants of a man who passed on in a misfortune caused by the carelessness of the driver of a jeep kept up by the Government for official utilization of the Collector of Udaipur while it was being brought once again from the workshop after repairs. The Rajasthan High Court took the view-that the State was liable , for the State is in no better position in so far as it supplies and keeps drivers for its Civil Service. In the said case the Hon'ble Supreme Court has held as under:

“ Act done in the course of employment but not in connection with sovereign powers of the State, State like any other employer is vicariously liable.” In the aforementioned case, the Hon'ble Apex Court while approving the qualification made in Steam Navigation Co's. case between the sovereign and non-sovereign Function observed that the immunity of crown in the United Kingdom depended on the old feudalistic thoughts of Justice, specifically, that the King was incapable of doing wrong. The said common law immunity never worked in India.

Kasturi Lal v. State of U.P.:

The ruling for this situation was given holding the act, which gave rise to the present claim for harms, has been submitted by the employee of the respondent throughout its employment. Likewise, that employment had a place with a class of sovereign power (Giliker n.d.). This removed any obligation with respect to the state. For this situation, the plaintiff had been arrested by the police officers on a doubt of having stolen property. Upon investigation, a large quantity of gold was found and was seized under the provisions of the Code of Criminal Procedure. Eventually, he was discharged, yet the gold was not returned, as the Head Constable accountable for the maalkhana, where the said gold had been put away, had fled with the gold. The plaintiff immediately brought a suit against the State of UP for the arrival of the gold or on the other hand, for harms for the misfortune caused to him. It was found by the courts underneath, that the concerned cops had neglected to take the essential care of the gold seized from the respondents, as gave by the UP Police Regulations. The trial court announced the suit, yet the pronouncement was switched on claim by the High Court. At the point when the issue was taken to the Supreme Court, the court found, on a valuation for the evidence that the cops were careless in managing the plaintiff property and furthermore, that they had not agreed to the arrangements of the UP Police Regulations. However, the Supreme Court dismissed the plaintiff case, on the ground that "the act of carelessness was conferred by the cops while managing the property of Ralia Ram, which they had seized in exercise of their statutory powers. The ability to capture a man, (Wambaugh & Baty 1916) to seek him and to seize property found with him, are powers conferred on the specified officers by statute and they are powers which can be appropriately sorted as sovereign forces. Consequently the premise of the judgment in Kasturi Lal was two-fold – The act was done in the indicated exercise of a statutory power. Also, the demonstration was done in the activity of a sovereign Function.

Satyawati Devi v. Union of India

The Delhi High Court held that the carrying of a hockey group in a military truck to the Air Force Station to play a match isn't a sovereign function . For this situation an Air Force vehicle was carrying hockey group of Indian Air Force Station to play a match. After the match was finished, the driver would stop the vehicle when he caused the fatal accident by his carelessness. It was argued that it was one of the function of the Union of India to keep the armed force fit as a fiddle and tune and that hockey group was carrying by the vehicle for the physical exercise of the Air Force work force and along these lines the Government was not obligated. The Court dismissed this contention and held that the conveying of hockey group to play a match could by no procedure of augmentation be named as exercise of sovereign power and the Union of India was consequently at risk for harms caused to the plaintiff.

Chairman, Railway Board v. Chandrima Das

In this case, the Supreme Court held that the functions of the State not only relate to the defence of the country or the administration of justice, but they extend to many other spheres e.g. education, commercial, social, economic, political etc. These activities cannot be said to be related to sovereign power.

Saheli, A Women's Resources v. Commissioner Of Police : Saheli v. Commissioner of Police was another milestone in the evaluation of compensation jurisprudence in writ courts. The masterpiece judgement in Vidyawati, which was freezed by asturi Lal was rightly quoted in this case. The State was held liable for the death of nine year old child by Police assault and beating. Delhi Administration was ordered to pay compensation of Rs. 75000/-. The significance of this case is that firstly, the revival of Vidyawati ratio and secondly that the Delhi Administration was allowed to recover money from those officers who are held responsible for this incident.

Basava Kom Dyamgonde Patil v. State of Mysore :

Wherein Articles seized by the police were produced before a Magistrate, who guided the Sub-Inspector to keep them in his sheltered care and to get them checked and esteemed by a goldsmith. The articles were lost, while they were kept in the police watch room. In a

procedure for the reclamation of the merchandise, it was held that when there was no at first sight safeguard made out, that due care had been taken by officers of the State to protect the property, the court can order the State to pay the estimation of the property to the proprietor.

RESULT OF THE STUDY: The comparative study of vicarious liability in India and England, State in regard of the tortious act by its worker inside the extent of his business and working functioning was like that of some other employer.

Conclusion

In all of the cases discussed previously, the substance looked to be made subject isn't the legislature yet the State. So far as the legislature is concerned, it might well say that the statutory specialist is neither responsible nor subordinate to it. Subsequently the legislature can't be charged with the results spilling out of a wrong request made by a statutory specialist. To the extent the State is concerned, it can't advance any such request in as much as the statute is established by it by Legislature. The appointment of the specialist is additionally done either by the Statute itself or by such expert as might be approved by the Statute. The act of the statutory expert in such a case is a act improved the situation and for the State. Consequently the state is held liable. The government is liable for the servant during exercise sovereign function. State's risk for the act of statutory specialists emerges just in situations where the statutory expert acts outside his legitimate specialist while implying to act according to the lawful specialist presented upon him and the act, which causes or results in harm to a man, isn't inside the ambit of the statutory assurance, assuming any, contained in such establishments. The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any arrangements which might be made by Act of Parliament or of the Legislature of such State authorized by uprightness of forces gave by this Constitution, sue or be sued in connection to their separate undertakings in the like cases as the Dominion of India and the comparing Provinces or the relating Indian States may have sued or been sued if this Constitution had not been established." Consequently hypothesis is proved.

Suggestion:

1. The modern welfare State no more stays as a Passive observer however eagerly attempts social and monetary administration functions.
2. There is a need to sanction a law on State liability keeping in see the current legal patterns and human rights jurisprudence.
3. sovereign immunity inapplicable to a procedure under public law. It is presented that the legal needs to take realistic perspective of the doctrine and dispose of it out and out from the Indian legal framework.
4. From sovereign immunity to the improvement of an full fledged arrangement of State duty is a long and unending journey frequently including the cooperation of numerous different and clashing interests.

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