

Vicarious Liability of State

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Objectives of Session

The objectives of the session are to :

- **Understand the doctrine of vicarious liability**
- **Study the extent of liability of state for acts done by its employees**
- **Highlight the changing trends in judicial interpretation in India widening the scope of liability**

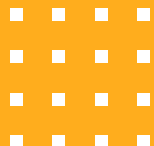
Doctrine of Vicarious Liability

- Vicarious liability deals with cases where one person is liable for the wrongful acts of others.
- It is a form of strict, secondary liability
- Nature of vicarious liability is jointly and severally.
- Most common form of vicarious liability - **‘Master – Servant’ relationship.**



In general a person is responsible only for his own acts, but there are exceptional cases in which the law imposes on him vicarious responsibility for the acts of others, however, blameless he himself is”.

- Salmond



Principles of Vicarious Liability

Vicarious liability is based on the following maxims:

- *Qui facit per alium per se* - 'he who acts through another is deemed in law as doing it himself'
- *Respondent superior* - 'let the principal be responsible' or 'superior must be responsible'.
- *Socialisation of Compensation*

Conditions for Applicability

- *firstly*, the relationship of master and servant must exist between the defendant and the person committing the wrong complained of.
- *Secondly*, the servant must in committing the wrong have been acting in the course of his employment.





I am answerable for wrong of my servant or agent not because he is authorised by me or personally represents me, but because he is about my affairs and I am bound to see that my affairs are conducted with due regard to the safety of others’.

Fredrick Pollock , Torts (Amer. Ed. 89, 90)



Applicability of Doctrine of Vicarious Liability against State


Position in England

- Under the English Common Law the maxim was "The King can do no wrong"
- King was not liable for the wrongs of its servants committed in course of their employment.
- Crown Proceedings Act enacted in 1947 making Crown liable for a tort committed by its servants just like a private individual.
- servant and Crown are jointly and severally liable.
- But extent of vicarious liability is not absolute because of the exemption clauses.

Position in India

- **No legislation relating to governmental liability in torts.**
- **Present State liability in India is defined by the Article 300(1) of the Constitution**
- **Article 300 of the Indian Constitution imposes same liability on the Union and the States as that of the liability of the Dominion and the provinces before the enactment of the Constitution.**





Article 300. Suits and proceedings.—(1) 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 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 Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

Position in India

- Before the Constitution there was a chain of enactments which ultimately made the liability same as that of the East India Company before the passing of the Government of India Act 1858.
- S 65 of the Government of India Act, 1858, while dealing with the scope of liability of the Secretary of State for India, merely stipulates that the scope of liability of the Secretary of State for India would be the same as that of the East India Company

Article 300 of the Indian Constitution



Section 176 of the Government of India Act, 1935



Section 32 of the Government of India Act, 1915



Section 65 of the Government of India Act, 1858



same as that of the East India Company before 1858



Judicial Interpretation of Liability

Peninsular & Oriental Steam Navigation Company v Secretary (1861) 5 Bom HCR App 1

- **Court made a distinction between sovereign and non-sovereign functions as the basis of liability.**
- **If the function is one that can be carried on by a private individual without delegation of sovereign powers it is a non-sovereign function and liability can be imposed on the Government.**
- **On the other hand if sovereign power or delegation of such power is essential for the carrying out of the act in question, the function is "sovereign" and no liability can be imposed.**
- **This test formed the basis for determining the liability**





- **In Laissez-Faire era most of the functions exercised by the Government of India were considered as sovereign functions.**
- **Defence functions, maintenance of law and order, administration of justice through courts and matters incidental thereto and also imposition and collection of taxes were interpreted as sovereign functions.**
- **As a consequence in many cases the private individual did not get any compensation for huge losses suffered.**



Kasturilal v. State of UP: AIR 1965 S.C 1039

- In this case the trader suffered huge loss as the gold kept in police custody was lost. However, failed to get compensation from the Government because of the wide interpretation given to the term 'sovereign function.
- The ruling in this case was given holding that the act, which gave rise to the present claim for damages, has been committed by the employee of the respondent during the course of its employment.
- Also, that employment belonged to a category of sovereign power. This removed any liability on the part of the state.



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- **With proliferation of the welfare functions a restrictive interpretation has been given to term 'sovereign function'.**
 - **Commercial functions, welfare functions, civilian functions of the military etc. are included in the non-sovereign category.**
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State of Rajasthan v. Vidyawati : AIR 1962 SC 933

- **The Court held that the liability of the State in respect of the tortious act by its servant within the scope of his employment and functioning as such was similar to that of any other employer.**
- **This case opened a new trend in this direction.**
- **The multifarious activities undertaken by Government in a Welfare State involve not only use of sovereign powers but also its power as employer.**



- **Traditionally, all acts of military employees in the discharge of their duties were held to be sovereign functions.**
- **But contrary to the earlier approach now the judicial tendency is to include civilian functions of the military in the category of non-sovereign functions**



- **Judicial attitude shows today the tendency to widen the scope of Governmental liability through a liberal interpretation of non-sovereign functions.**
- **In the Welfare State the multifarious activities newly undertaken by the Government are added by judicial interpretation to the category of non-sovereign functions.**
- **Besides this, the changed judicial attitude has restricted the scope of sovereign functions by including matters incidental to sovereign functions also in the non-sovereign category.**



The distinction between sovereign or non-sovereign power thus does not exist. It all depends on the nature of the power and manner of its exercise.. It would be in conflict with even modern notions of sovereignty. The old and archaic concept of sovereignty thus does not survive. Sovereignty now vests in the people. The legislature, the executive and the judiciary have been created and constituted to serve the people. In fact the concept of sovereignty in the Austinian sense, that king was the source of law and the fountain of justice, was never imposed in the sense it was understood in England upon our country by the British rulers. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society.

N. Nagendra Rao v. State of AP. [AIR 1994 SC 2663]

Questions

- **What is meant by Doctrine of Vicarious Liability?**
- **State main features of Vicarious Liability?**
- **What is the extent of liability of state under the Constitution?**
- **In present times, how far the state can be held liable for tortious acts of its employees?**
- **Critically examine the development of law relating to Vicarious Liability of state**



Thanks!

Any questions?