

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- Vicarious Liability: An Introduction

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Date:- 24/07/2020

Vicarious Liability: An Introduction

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 at whose behest the act is done as well as the person who does the act are liable. Thus, Employers are vicariously liable for the torts of their employees that are committed during the course of employment. The common examples of such a liability are:

- (1) Liability of the principal for the tort of his agent;
- (2) Liability of partners of each other's tort;
- (3) Liability of the master for the tort of his servant.
- (4) Liability of the State or Liability of the Administration.

Constituents of Vicarious Liability

So the constituents of vicarious liability are:

- (1) There must be a *relationship* of a certain kind.
- (2) The *wrongful act* must be related to the relationship in a certain way.
- (3) The wrong has been done within the *course of employment*.

Vicarious Liability of the State: Introduction

The term 'administration' is used here synonymously with 'state' or 'Government'. To what extent the administration would be liable for the torts committed by its servants is a complex 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. The whole idea of Vicariously Liability of the State for the torts committed by its servants is based on three principles:

- *Respondeat superior* (let the principal be liable).
- *Qui facit per alium facit per se* (he who acts through another does it himself).
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- Socialization of Compensation.

Position in England:

Under the English Common Law, the maxim was "The King can do no wrong" and therefore, the King was not liable for the wrongs of its servants. But, in England, the position of old Common law maxim has been changed by the Crown Proceedings Act, 1947. Earlier, the King could not be sued in tort either for wrong actually authorized by it or committed by its servants, in the course of employment.

With the increasing functions of State, the Crown Proceedings Act had been passed, now the crown is liable for a tort committed by its servants just like a private individual. Similarly, in America, the Federal Torts Claims Act, 1946 provides the principles, which substantially decides the question of liability of State.

Position in India:

Unlike the **Crown Proceedings Act, 1947** (England), we do not have any statutory provisions mentioning the liability of the State in India. The law in India with respect to the liability of the State for the tortious acts of its servants has become entangled with the nature and character of the role of the East India Company prior to 1858. It is, therefore, necessary to trace the course of development of the law on this subject, as contained in article 300 of the Constitution.

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 first, that 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; secondly, that the Government of India or the Government of a *State may 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 be sued, “if this Constitution had not been enacted”, and thirdly, that the second mentioned rule shall be subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State, enacted by virtue of powers conferred by the Constitution.

Consequently, one has to uncover the extent of liability of the 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.

The East India Company launched its career in India as a purely commercial corporation but gradually acquired sovereignty. Therefore, in the beginning, the company did not enjoy the immunity of the Crown. It was only when it acquired political powers that a distinction was made between sovereign and non- sovereign functions.

Pre-Constitution Judicial Decisions:

Peninsular and Oriental Steam Navigation Company v. Secretary of State for India ^[i]

A consideration of the pre-Constitution cases of the Government’s liability in tort begins with the judgment of the Supreme Court of Calcutta in the case *P. & O. Steam Navigation Co. v. Secretary of State*. The principle of this case holds that if any action was done in the exercise of sovereign functions, the East India Company or the State would not be liable. It drew quite a clear distinction between the sovereign and non-sovereign functions of the state.

The facts of the case were that a servant of the plaintiff’s company was traveling from Garden Reach to Calcutta in a carriage driven by a pair of horses. The accident took place when the coach was passing through the Kidderpore Dockyard which was Government Dockyard. Some workman employed in the Government, Dockyard were carrying a heavy piece of iron for the purpose of repairing a steamer. The men carrying the iron-rod were walking along the middle of the road.

When the carriage of the plaintiff drove up nearer the coachman slowed its speed. The man carrying the iron attempted to get out of the way, those in front tried to go the one side of the road while those behind tried to go the other side of the road. The consequence of this was a loss of the time, brought the carriage to close up to them before they had left the center of the road. Seeing the horses and carriage they got alarmed and suddenly dropped the iron and ran away. The iron fell with a great noise resulting in injuries to one horse, which startled the plaintiff's horses which thereupon rushed forward violently and fell on the iron.

The Company filed a suit against the Secretary of State for India for the damages for injury to its horse caused by the negligence of the servants employed by the Government of India. The Supreme Court of Calcutta by Sir Barnes Peacock C. J. held that the Secretary of State for India was liable for the damages caused by the negligence of Government servants because the negligent act was not done in the exercise of a sovereign function.

The Court drew a distinction between acts done in exercise of "non-sovereign power" that is, acts done in the conduct of undertakings which might be carried on by private person-individuals without having such power. The liability could only arise in case of "non-sovereign functions". The East India Company had a two-fold character –

(a) as a sovereign power and

(b) as a trading company.

The liability of the Company could only extend to in respect of its commercial dealings and not to the acts done by it in the exercise of delegated sovereign power. In the present case, the damage was done to the plaintiff in the exercise of a non-sovereign function, i.e. the maintenance of Dockyard which could be done by any private individual without any delegation of sovereign power and hence the Government was liable for the torts of the employees. The Secretary of State was not liable for anything done in the exercise of sovereign powers.

Nobin Chandra Dey v. Secretary of State for India ^[iii]

This doctrine of immunity, for acts done in the exercise of sovereign functions, was applied by the Calcutta High Court in *Nobin Chander Dey v. Secretary of State*. The plaintiff, in this case, contended that the Government had made a contract with him for the issue of a license for the

sale of ganja and had committed a breach of the contract. The High Court held that upon the evidence, no breach of contract had been proved. Secondly, even if there was a contract, the act had been done in exercise of sovereign power and was thus not actionable.

Secretary of State v. Hari Bhanji ^[iii]

In this case, the Madras High Court held that State immunity was confined to acts of State. In the P & O Case, the ruling did not go beyond acts of State, while giving illustrations of situations where the immunity was available. It was defined that Acts of State, are acts done in the exercise of sovereign power, where the act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by law.

The mere fact that it is done by the sovereign powers and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil court. The Madras judgment in Hari Bhanji holds that the Government may not be liable for acts connected with public safety, even though they are not acts of State.

Post Constitution Judicial Decisions

State of Rajasthan v. Vidyawati ^[iv]

The respondents filed a suit for the damages made by an employee of a State and the case questioned whether the State was liable for the tortious act of its servant – 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.

It was held in this case that the State should be as much liable for tort in respect of tortuous acts committed by its servant within the scope of his employment and functioning as such, like any other employer.

The facts of this case may shortly be stated as follows. In that case, the claim for damages was made by the dependants of a person who died in an accident caused by the negligence of the driver of a jeep maintained by the Government for official use of the Collector of Udaipur while it was being brought back 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 cars 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 aforesaid case, the Hon’ble Apex Court while approving the distinction made in *Steam Navigation Co.’s* case between the sovereign and non-sovereign function observed that the immunity of crown in the United Kingdom was based on the old feudalistic notions of Justice, namely, that the King was incapable of doing a wrong. The said common law immunity never operated in India.

Kasturi Lal v. State of U.P. ^[v]

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. In this case, the plaintiff had been arrested by the police officers on a suspicion of possessing stolen property.

Upon investigation, a large quantity of gold was found and was seized under the provisions of the Code of Criminal Procedure. Ultimately, he was released, but the gold was not returned, as the Head Constable in charge of the maalkhana, where the said gold had been stored, had absconded with the gold. The plaintiff thereupon brought a suit against the State of UP for the return of the gold or alternatively, for damages for the loss caused to him. It was found by the courts below, that the concerned police officers had failed to take the requisite care of the gold seized from the plaintiff, as provided by the UP Police Regulations.

The trial court decreed the suit, but the decree was reversed on appeal by the High Court. When the matter was taken to the Supreme Court, the court found, on an appreciation of the relevant evidence, that the police officers were negligent in dealing with the plaintiff’s property and also, that they had not complied with the provisions of the UP Police Regulations.

However, the Supreme Court rejected the plaintiff’s claim, on the ground that “the act of negligence was committed by the police officers while dealing with the property of Ralia Ram, which they had seized in exercise of their statutory powers. The power to arrest a person, to search him and to seize property found with him, are powers conferred on the specified officers by statute and they are powers which can be properly categorized as sovereign powers. Hence the basis of the judgment in *Kasturi Lal* was two-fold – The act was done in the purported

exercise of a statutory power. Secondly, the act was done in the exercise of a sovereign function.

State of M.P. v. Chironji Lal ^[vi]

A new question came before the court relating to the payment of damages for the loss caused by the lathi-charge of the police in a situation where it was unauthorized and unwarranted by law. It was alleged that the police resorted to lathi-charge willfully and without any reasonable cause and thus damaged the plaintiff's property. The claim was rejected on the ground that the function of the state to regulate processions and to maintain law and order is a sovereign function.

Satyawati Devi v. Union of India ^[vii]

The Delhi High Court held that the carrying of a hockey team in a military truck to the Air Force Station to play a match is not a sovereign function. In this case, an Air Force vehicle was carrying hockey team of Indian Air Force Station to play a match. After the match was over, the driver was going to park the vehicle when he caused the fatal accident by his negligence.

It was argued that it was one of the functions of the Union of India to keep the army in proper shape and tune and that hockey team was carried by the vehicle for the physical exercise of the Air Force personnel and therefore the Government was not liable. The Court rejected this argument and held that the carrying of the hockey team to play a match could by no process of extension be termed an exercise of sovereign power and the Union of India was therefore liable for damages caused to the plaintiff.