

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- Vicarious liability

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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.