VICARIOUS LIABILITY UNDER CRIMINAL LAW IN INDIA

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Abstract

Vicarious liability is a form of a strict, secondary liability that arises under the common law. This paper discusses the doctrine of Vicarious Liability under Indian criminal law. Vicarious liability also known as joint responsibility liability is a legal theory of liability that empowers the court to hold a person liable for the acts of other. Under this doctrine individuals can be made vicariously liable for a criminal act of others even if they merely helped to further the crime in some way example aiding and abetting criminal activities. This often occurs in the context of civil law. In a criminal context, vicarious liability assigns guilt, or criminal liability, to a person for wrongful acts committed by someone else. This doctrine is considered to be fundamentally flawed under criminal law because it is based on “respondent superior” principles that are concerned with distributing loss caused by tortious act. The paper mainly focuses on the vicarious liability of the state in criminal offences, and also of corporations.

Keywords-criminal law, intention, responsibility, vicarious liability

Introduction

Vicarious liability is a form of a strict, secondary liability that arises under the common law doctrine of agency; respondeat superior – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party. ¹

Vicarious liability also known as joint responsibility liability is a legal theory of liability that empowers the court to hold a person liable for the acts of other. Under this doctrine individuals can be made vicariously liable for a criminal act of others even if they merely helped to further the crime in some way example aiding and abetting criminal activities. This often occurs in the context of civil law—for example, in employment cases.

In a criminal context, vicarious liability assigns guilt, or criminal liability, to a person for wrongful acts committed by someone else. This doctrine is considered to be fundamentally flawed under criminal law because it is based on “respondent superior” principles that are concerned with distributing loss caused by tortious act.

Vicarious liability is one of those liabilities that is imposed on one person for the wrongful actions of another person. Such a liability arises usually because of some or the other legal relationship between the two. The important point to be noted to impose such a liability on

¹The Definitive Guide to Accident & Personal Injury Claims”, 'Legally Advised'.

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some other person is that an act on which such a liability is imposed should have happened in the course of employment.²

Vicarious liability
It was where one person, himself blameless, is held liable for another person's conduct. The rule is often justified by reference to two Latin maxims: respondeat superior ('let the master answer') and qui facit peralium facit per se ('he who acts through another acts himself'). It is now accepted as a matter of policy, shifting the burden of the cost of accidents upon someone more likely to be able to pay. The most widely used example is the employer's liability for his employee. There is, however, generally no liability for an independent contractor like a taxi driver or removal firm. For there to be vicarious liability in respect of an employee, the traditional rule is that the acts must be 'in the course of his employment', which does not rule out negligent or even deliberate wrongs by the employee but excludes cases where the employee has gone off on a frolic of his own. However, recently the House of Lords has accepted that there may be liability where there is a 'close connection' with the employer's work, even where the conduct of the employee is wrong and unforeseen, as in one case where a bouncer went home to get a weapon to attack a patron and in another of child abuse in a children's hostel by one of the staff.

For there to be liability in respect of an agent, the relationship will be examined to see whether the wrongdoer is acting on the other's business or for his instructed purposes. However, there is not in the UK any concept of a family car that would, without more, make one spouse liable for the other spouse's driving.

Research Methodology

The researcher has adopted doctrinal method of legal research. The sources of data are books, articles, blogs, websites, legal databases, online journals, acts, etc.

Reasons for vicarious liability

Several reasons have been advanced as a justification for the imposition of vicarious liability:
(1) The master has the ‘deepest pockets’. The wealth of a defendant, or the fact that he has access to resources via insurance, has in some cases had an unconscious influence on the development of legal principles.

(2) Vicarious liability encourages accident prevention by giving an employer a financial interest in encouraging his employees to take care for the safety of others.

(3) As the employer makes a profit from the activities of his employees, he should also bear any losses that those activities cause.

In the words of Lord Chelmsford: “It has long been established by law that a master is liable to third persons for any injury or damage done through the negligence or unskilfulness of a servant acting in his master's employ. The reason of this is, that every act which is done by servant in the course of his duty is regarded as done by his master's order, and, consequently it is the same as if it were master's own act”.3

Constituents Of Vicarious Liability

(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 in Criminal Law

A person can be criminally liable for the acts of another if they are a party to the offense. For instance, the driver of the get-away car is guilty of the armed robbery of a store even though the driver never left the car, and the entire robbery itself was committed by others. The essence of vicarious liability in criminal law is that a person may be held liable as the principle offender that is the perpetrator of a crime whose actus reus is physically committed by someone else. It is believed that person merely performing the actus reus on the say of another is not innocent and thus is also made liable for the offence. The law sometimes focuses upon the relationship between the defendant and the performer of the physical acts and by virtue of that relationship; it attributes the acts of the latter to the former. It should be emphasised at the outset that this form of liability in criminal law is very much an exception rather than the rule. The concept of

3 Michael A. Jones, Textbook on Torts, 2000, p379.
vicarious liability is mainly a civil law principle whereby an employer is made liable for the negligence or breach of duty of his employees.

IPC makes a departure from the general rule in few cases, on the principle of respondent superior. In such a case a master is held liable under various sections of the IPC for acts committed by his agents or servants.

- **Section 149** provides for vicarious liability, it states that if an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed.\(^5\)

- **Section 154** holds owners or occupiers of land, or persons having or claiming an interest in land, criminally liable for intentional failure of their servants or managers in giving information to the public authorities, or in taking adequate measures to stop the occurrence of an unlawful assembly or riot on their land. The liability on the owners or occupiers of land has been fixed on the assumption that such persons, by virtue of their position as land-holders, possess the power of controlling and regulating such type of gatherings on their property, and to disperse if the object of such gatherings becomes illegal.\(^6\)

- **Section 155** fixes vicarious liability on the owners or occupiers of land or persons claiming interest in land, for the acts or omissions of their managers or agents, if a riot takes place or an unlawful assembly is held in the interest of such class of persons.

- **Section 156** imposes personal liability on the managers or the agents of such owners or occupiers of property on whose land a riot or an unlawful assembly is committed.

- **Section 268 and 269** explicitly deals with public nuisance. Under this section a master is made vicariously liable for the public nuisance committed by servant.

- **Section 499** makes a master vicariously liable for publication of a libel by his servant. Defamation is an offence under this section.

**Vicarious liability under Special Statutes**

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\(^5\) Munivel vs. State of T.N. *AIR 2006 SC 1761*

\(^6\) In certain cases, a fellow criminal may be liable for the acts committed by the other accused on the principle of vicarious liability. Barker v. Levinson (1920) 2 All ER 823- a master isn’t criminally liable for the acts committed by his agents or servants in the course of employment in case such acts are outside the general scope of that employment.
The doctrine of vicarious liability is more frequently invoked under special enactments, such as Defence of India Rules 1962, The India Army Act 1911, The Prevention of Food Adulteration Act 1954, The Drugs Act 1940, etc. A master is held criminally liable for the violation of rules contained under the aforesaid statutes, provided that his agent or servant, during the course of employment, committed such act. In *Sarjoo Prasad v. State of Uttar Pradesh*, the appellant, who was an employee, was convicted under the Prevention of Food Adulteration Act 1954 for the act of the master in selling adulterated oil.

**Vicarious Liability of the State**

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).
- Socialisation 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 authorised 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.

**Liability of state for acts of employees**

In England, the state is not liable for the criminal acts committed by its servants. This is based on the doctrine *Rex non-potest peccare* which means the King can do no wrong and that the king is...
not bound by a statute unless he is expressly named or unless he is bound by necessary implication.

In India till 1967 the position was similar to that in England and the state was not to be proceeded against under the IPC or under any other statute. However, in *Superintendent and Remembrance of Legal Affairs, West Bengal v. Corpn of Calcutta*, a Full Bench of nine judges of the Supreme Court overruled its earlier decision in *Director of Rationing and Distribution v. Corpn of Calcutta* and held that common law doctrine, which states that the Crown is not bound by a statute, save by express provisions or necessary implication, is not the law of the land after the Constitution of India came into effect. Both civil and criminal statutes apply to citizens and states alike. In the case of *Sahali v. Commissioner of Police* also, it was held that with the evolution of strict constitutional regimes and law-sovereign immunity has been waived by most jurisdictions with respect to most subject matter.

**Position in India:** Unlike 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 extend of liability of the East India Company in order to understand the liability parameters of the administration today because the liability of the

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9 AIR 1970 SC 1767
10 AIR 1960 SC 1355
11 1990 AIR 513
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.

- **State of M.P. v. Chironji Lal**\(^{13}\)

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.

- **Khatri(II) v. state of Bihar**\(^{14}\)

An important question was raised regarding liability of government for wrongful arrest and detention. Moving ahead in the direction of new dimension of the right to life and personal liberty, Justice Bhagwati said: “Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental rights to life and personal liberty.” It may be noted that the Government of India have not signed treaty which provides for compensation for wrongful arrest and detention. This amply proves the lack of government’s concern for the precious of the precious rights of the people for the sake of discounting its own inefficiency and lawlessness.

- **Rudal Shah v. State of Bihar**\(^{15}\)

In this case it was laid down a most important principle of compensation against government for the wrong action of its official the important judgement was handed down by the Supreme Court against the Bihar Government for the wrongful and illegal detention of Rudal Shah in Muzaffarpur jail for as many as 14 yrs after he was acquitted by the Sessions Court in June 1968. The Court ordered compensation of Rs 30,000 for the injustice and injury done to Rudal Shah and his helpless family.

- **Chairman, Railway Board v. Chandrima Das**\(^{16}\)

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\(^{13}\)A.I.R 1981 M.P. 65.
\(^{14}\)(1981) 1 SCC 627.
\(^{15}\)(1983) 4 SCC 141.
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.

- **State of Gujarat v. Haji Memon**

It was held in this landmark judgment, that is bound to be of great use to the public, that if any property (moveable) is seized by the police/custom officials or any other department of the government, they are under the same responsibility as a Bailee to take care of the goods as an ordinary man would take care of his own goods under similar circumstances. The state cannot seek to evade responsibility for loss of goods under its custody under the cloak of sovereign functions and under the fallacious argument that Bailment can only arise by a contract (s.148) as the said section is not exhaustive upon matters of bailment.

In all the cases discussed before, the entity sought to be made liable is not the government but the State. So far as the government is concerned, it may well say that the statutory authority is neither accountable nor subordinate to it. Hence the government cannot be visited with the consequences flowing from a wrong order made by a statutory authority. As far as the State is concerned, it cannot put forward any such plea inasmuch as the statute is enacted by it by Legislature. The appointment of the authority is also done either by the Statute itself or by such authority as may be authorised by the Statute. The act of the statutory authority in such a case is an act done for and on behalf of the State. Hence the state is held liable. State’s liability for the acts or omissions of statutory authorities arises only in cases where the statutory authority acts outside his legal authority while purporting to act pursuant to the legal authority conferred upon him and the act or omission, which causes or results in damage to a person, is not within the ambit of the statutory protection, if any, contained in such enactments. This rule is evolved for the obvious reason that an act done under a statute and in accordance with the statute can never amount to a tort as was said by the Supreme Court by following cases. The Court said “A result flowing from a Statutory provision is never an evil”. “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.”

**Liability of Corporations for Criminal Wrongs**

17 A.I.R. 1967 S.C.
Generally the doctrine of vicarious liability recognises that a person may be bound to answer for the acts of another. Similarly in the case of corporations – the company may be liable for the acts of its employees, agents, or any person for whom it is responsible. The doctrine of vicarious liability developed originally in the context of tortious liability, was imported into the criminal law, when this type of offences were essentially absolute liability offences.  

Although it was early said that a corporation could not commit a crime,” this view has been rejected. Argument has even supported the opposite extreme that a corporation should be held guilty of any crime if its human agents who commit it so act that their conduct is within the course of their employment as tested by the standards applied to tort liability. In determining whether this contention is justified, the problem first arises whether existing legal concepts permit the imposition of such extreme liability. Second, assuming criminal responsibility can be imposed, under what circumstances is it justified? A corporation can act only through its agents. And as the share-holders are the persons, punished when a corporation is convicted, corporate criminal liability is necessarily vicarious – the liability of shareholders for acts of their agents. Where criminal intent is immaterial, corporate criminal responsibility for the physical acts of agents has long been clear. It should be equally obvious that the distinction between physical acts and mental states of agents presents no logical barrier to imposing vicarious responsibility.” Instead of regarding the problem as one of vicarious liability, however, the courts have stumbled over the theoretical difficulties of ascribing criminal intent to a corporation. It has been affirmed repeatedly that corporations by their very nature are incapable of committing such crimes as bigamy, perjury, rape, and murder. But courts have now progressed to the position of recognizing that corporations can be guilty of crimes involving criminal intent.

**i. HL Bolton (Engineering) Co. Ltd. v. T.J. Graham & Sons Ltd.**

A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the

19 V.K.AGGARWAL, CORPORATE CRIMINAL LIABILITY — THE ISSUE REVISITED IN THE CONTEXT OF RECENT SUPREME COURT DECISION http://www.icsi.edu/webmodules/Programmes/33NC/CORP.CRIMINALLIABILITY.pdf Accessed on 22nd April 2015 at 20.00 IST.

20 [1957] 1 QB 159.
company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.\textsuperscript{21}

\textit{ii. State of Maharashtra v. Syndicate transport Co (P) Ltd.}\textsuperscript{22}

In this case, there was an agreement that bus would be transferred in the name of the complainant, and would be run by the company on the hire purchase agreement till the satisfaction of the advance money.

But the bus was not transferred to the complainant, as per the agreement. Consequently, the complainant moved to the trial magistrate who booked the company under sections 403\textsuperscript{23}, 406 and 420, for violating the terms and conditions of agreement. The company preferred a revision before the Sessions Court to quash the charge against the company. The Session’s Judge was of the view that since a corporate body acts only through its agents or servants, the \textit{mens rea} of such agents or servants can't be attributed to the company, and he referred it to High Court for quashing charges. 

While accepting the reference and quashing the charge, the Court sent back the case for trial in accordance with law. The court said that the scope within which criminal proceedings can be brought against institutions which have become so prominent a feature of everyday affairs’ ought to be widened so as to make corporate bodies indictable for offences flowing from the acts or omissions of their human agents. Ordinarily, a corporate body like a company acts through its managing directors or board of directors or authorised agents or servants and the criminal act or omission of an agent including his state of mind, intension, knowledge or belief ought to be treated as the act or omission, including the state of mind, intension, knowledge or belief of the company.

\textit{iii. Aligarh Municipal Board v. Ekka Tonga Mazdoor Union}\textsuperscript{24}

In this case court held that there is no doubt that a corporation is liable to be punished by imposition of fine and by sequestration for contempt for disobeying orders of competent courts directed against them. A command to a corporation is infact a command to those who are officially responsible for the conduct of its affairs. If, they after being apprised of the order directed to the corporation, prevent compliance or fail to take appropriate action, within their

\textsuperscript{21}HL Bolton (Engineering) Co. Ltd. v. T.J. Graham & Sons Ltd. [1957] 1QB 159 at 172
\textsuperscript{22}AIR 1964 Bom 195
\textsuperscript{23}S.403 deals with- Dishonest misappropriation of the property, s.406-Punishment for criminal breach of trust and 420-Cheating and dishonestly inducing delivery of property.
\textsuperscript{24}AIR 1970 SC 1767
powers, for the performance of the duty of obeying those orders, they and the corporate body are both guilty of disobedience and may be punished for contempt.

**Conclusion**

An employer can be held liable for his employee’s crime, as a general rule, only where the is a participant in them within the rules governing. It is a matter of our understanding that imposition of vicarious liability is the work of the courts rather than of Parliament. Statutes do occasionally say, in terms, that one person is to be liable for another’s crime. It is more common, however, for the courts to detect such as intension in statutes. The reason most commonly advocated by the judges for holding a person liable under vicarious liability is that the statute would be rendered nugatory and the will of Parliament thereby defeated if he were not made liable. It may seem rather odd for the courts to be willing to impose liability for the acts of another on grounds of expediency when the foundation of the criminal law is that a person should be made liable only for his personal wrongdoings. But in certain cases it becomes utmost important to make the principal also liable for the act of his subordinate so as to protect the interest of both the parties i.e. the injured and the offender and to stop the blame game amongst the principle and his subordinate.

It can be concluded by saying that though principle of vicarious liability is a civil concept yet in a recent scenario it has taken a wide role under criminal jurisprudence too. To a certain extend it is good also but every case decided under criminal law for vicarious liability should be guided by basic rationality and clear evidence in order to classify the test of just, fair and equal.

Also, the State too has vicarious liability in criminal offences. Moreover, the principle of vicarious liability, though not mentioned specifically under any statute, but is well settled by the decided case laws. According to American Realism, which relies on judge-made laws, vicarious liability in criminal wrongs is well established through the judgements, which is incorporated under the Indian Constitution, under Article 141(law declared by Supreme Court to be binding on all courts).

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