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Critical Analysis of Wrong done by Others

KETAN KUMAR¹

ABSTRACT

The master-servant relationship—a topic covered in this RESEARCH PAPER—is vicarious responsibility. When one person is made liable for another's acts or inactions, this is referred to as having vicarious liability. The concept of vicarious liability is given in this research article, along with an explanation of the many conditions that must be satisfied to establish vicarious liability. The many terminologies and varied interactions are described. The goals are initially set before interpretation and case law are offered to back up the claimed purposes and research issues. In-depth information about vicarious liability is given in this article. The study as a whole is based on secondary data, which includes documents from many sources like journals, articles, research papers, internet portals, and other materials. An overview of vicarious responsibility is given in the introduction, followed by a summary of the three different situations in which someone may be held accountable for the actions of another in the interpretation section, and finally, case law examples are given in the conclusion section to help the reader understand the subject even more. Administration, which refers to the state or government's accountability for the wrongdoings of its agents, is a complex topic, especially in developing countries where the range of the state's activities is expanding. Both the British common law principles of public law and constitutional requirements control government tort liability. Vicarious responsibility is when one person is held responsible for another's actions. As a result, in a circumstance involving vicarious liability, both parties are accountable for each other's actions. The person issuing the order and the one carrying it out are equally responsible in a case of vicarious liability. As a result, employers are responsible for any legal wrongs done by workers while they are on the job. Regarding state accountability, the constitution takes the following position: Article 300, clause (1), provides that the union of India and the state governments may sue or be sued on behalf of the Indian government. It is essential to comprehend the administration's present liability rules since they closely mirror those of the East India Company.

Keywords: vicarious responsibility, master-servant, agent, parties.

I. INTRODUCTION

The author discusses the concept of tort in this paper. The word "tort" is the French translation

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of the word "wrong" in English. The Latin term *tortum*, which meaning twisted, crooked, or incorrect in contrast to the English word *rectum*, which indicates straight, is also the source of the word *tort* (*rectitude* uses that Latin root). A *tort* is hence behaviour that is twisted, crooked, or otherwise not straight. The Norman jurists brought the phrase into English law.

Every individual is responsible for their own actions and is not responsible for those of others, however there are certain circumstances in which a person is responsible for the actions of another person, a scenario known as vicarious responsibility. Therefore, in order for this to occur, there must be a certain type of connection between the two parties, and the act must be related to the relationship. These connections might be between a principal and an agency or a master and a servant.

A person is liable for another person's actions as a result of their interpersonal connection, which is known as vicarious responsibility. For instance, Gaurav sent Saurav, his driver, to deliver his buddy Suryash to the airport. Due of his erratic driving, Saurav runs into Mahesh as they travel. Gaurav wasn't even in the vehicle when it struck Mahesh in this case, yet he was nonetheless held accountable for the mishap that Saurav caused. The reason for this is vicarious responsibility.

Important Concepts in Vicarious Liability The following are the prerequisites for vicarious liability:

1. There must be a certain kind of relationship between the parties.
2. Someone else must have perpetrated the wrongdoing.
3. The wrongdoing must take place while the employee is on the job.

Some Relationships with Vicariously Liable

Therefore, this responsibility can only exist when one party has a social advantage over the other party, and the superior party will be held responsible. These connections include, for instance:

Owner and independent contractor, partners in a partnership firm, principal and agent, company and its directors, and master and servant are just a few examples.

(A) Literature review

- **Articles**

Vicarious Liability for Agency Contracts ²- Edward A. Mearns, Jr

² Edward A. Mearns, Jr. ,Vicarious Liability for Agency Contracts, *Virginia Law Review*, Vol. 48, No. 1 (Jan., 1962), pp.

The justification for agency contract law is different from the justification for agent torts. However, in the first instance, the courts look for both an agency relationship and some type of "power" to bind the principle. In the second example, the master-servant link and "scope of employment" are the decisive elements in defining the employer's responsibility. Professor Mearns argues that modern business practises need a new justification, similar to that used in agency tort law, to bind a principal on an agent's unauthorised commitments since conventional agency contract law, with its requirement of "authorization," is a remnant of the Nineteenth Century.

RECASTING VICARIOUS LIABILITY³-Phillip Morgan

For the purposes of vicarious liability, the law is developed enough to recognise non-contractual employees. Up until this point, the law has tended to try to fit non-economic actors into poorly justified additional categories of vicarious liability that are not taken into account in traditional vicarious liability doctrine. Currently, it is possible to rationalise these various forms into a single category that includes all existing and potential future forms of vicarious liability. When deciding whether a principal should be held vicariously liable for an actor, the twin axes of daily control and role discretion can be applied to all situations. Contrary to the relationship close connection test, the twin axes approach considers the fact that associations in the context of constructive, purposeful activities are more relevant to vicarious liability than associations between individuals.

Vicarious Liability for Violent Employees⁴- Robert Weekes

Flamingo's recruited a new bouncer. I believe it's great that he was accustomed to kicking out consumers. The club owner urged the bouncer to eject his customers. When a client refused, a brawl erupted and the bouncer left. He assaulted another customer with a knife outside his home. The court declared the club's owner vicariously accountable for the damage. The assault didn't happen there. First club event has gone. The owner didn't reprimand the missing employee since he was acting on his own desire for retribution, not his employer's. The owner's sponsorship and hiring of the aggressive bouncer determined vicarious culpability. It's also permissible to "authorise" employer-prohibited behaviours. Lord Wilberforce said, "the key concept remains that a servant may so plainly stray from the limits of his employment that his master will not be accountable for his illegal behaviour." How much wrongdoing must occur before an employee's

50-57 (8 pages),JSTOR, <https://doi.org/10.2307/1071099>

³ Phillip Morgan, RECASTING VICARIOUS LIABILITY, *The Cambridge Law Journal* Vol. 71, No. 3 (November 2012), pp. 615-650 (36 pages),JSTOR, <https://www.jstor.org/stable/41819932>

⁴ Robert Weekes, Vicarious Liability for Violent Employees, *The Cambridge Law Journal* Vol. 63, No. 1 (Mar., 2004), pp. 53-63 (11 pages),JSTOR, <https://www.jstor.org/stable/4509075>

behaviour is declared an unapproved "frolic"?

- **Books**

Ratanlal & Dhirajlal(The law of torts)⁵

The author of this chapter briefly covers actions taken for the benefit of another without taking any responsibility for them; but, if such actions are subsequently authorised by the principle, they are considered to be the act of the principle. In such a case, the principle is bound by the action to the same extent as by, and with all consequences that follow, the same action performed by his previous authority, whether it is to his profit or harm, and regardless of whether it is based on a contract or a tort. Everything must be retrorhacked, and the prior command must be fulfilled (every ratification of an act relates back and thereupon becomes equivalent to previous request)

Winfield & Jolowincz (Law of Torts)⁶

Edvin Peel and James Goudkamp have articles in the 19th edition of Winfield and Jolowicz on Tort. In this chapter, the authors discuss relationship-based accountability. According to him, "vicarious liability" refers to D's potential culpability to C for any injury caused to C as a consequence of A's negligence or other misconduct. The fact that D exists, however unlikely it is that he would be sued or have a judgement entered against him, does not, of course, relieve A of responsibility. Vicarious liability may arise even though D did not participate in the tort's actions in any way. Similar to direct culpability, vicarious liability does not need that D has transgressed a legal duty owed to C. There must be a specific relationship between A and D as well as a way to link A's actions to that connection. This must occur in order for the condition to be met. However, for D's neglect to be implicated in the situation at hand, A must first accept responsibility for it. D has a tight sense of accountability.

SP Singh (Law Of Tort)⁷

according to the author, The primary tenet was that each individual should be held accountable for his own mistakes. the author also showcases how Plato has also argued that a person should be held accountable for his own faults under his laws. However, he also bring in light to the fact that it was firmly established in England in the thirteenth century that the master would be accountable for his servent's wrong following the Norman invasion. Due to an increase in economic activities, this restricted type of liability was deemed unsatisfactory in the seventeenth

⁵ Ratanlal & Dhirajlal,2018,The Law Of Torts, published by LexisNexis,27th edition,ISBN:978-93-5035-741-5.

⁶ Winfield & Jolowincz,2015,Tort,published by ThomsonReuters,9th edition,ISBN:978-93-84746-40-7

⁷ SP Singh,2015,The Law Of Tort, published by universal law publishing,7th edition,ISBN:978-93-5035-552-7

century. Since the master would be accountable for his servants' tort if he had his implicit order, a new development occurred in 1697 when sir john holt made this ruling. Therefore, if a servant commits a tort while on the job, the master is responsible for it. Justice Holt established the contemporary law of vicarious liability at that time. The most frequent example is the master's liability for wrongs done by his servant. This subject also includes issues like master servants, partners, and primary agent relationships.

(B) Statement of problem

The statement of the problem which might be noticed here is that in vicarious liability the master is accountable for the act of his servant but here in some situations it can be demonstrated that because of the independent contractor the master isn't held liable. Other than this, India's statutory framework for state culpability is completely absent. India's current situation is unclear.

(C) Rationale of study

According to the concept of vicarious responsibility, which is also known as a kind of secondary liability, employers may sometimes be held accountable for the wrongdoings of their workers even if they are totally at fault in certain situations. One of the most notable exceptions to the basic principle of the common law that responsibility for any crime is put on, and only on, the perpetrator, vicarious liability, permits the circumvention of this principle in certain circumstances (s). The defendant and the person for whose conduct they are being held accountable must have an employment connection, and the employee must have performed the tortious act while acting in the course of their job. The defendant will not be found vicariously accountable for the activities of the person for whom they are being held liable if one of these conditions is not satisfied.

(D) Research objectives

1. To examine the torts that others have committed.
2. To research the implications of vicariously liable contracting under Indian law
3. Acquaint yourself with the factors that lead to vicarious liability
4. To see the limitations on this responsibility
5. To draw attention to the court rulings addressing wrongs done by others

(E) Research questions

1. What do you mean by vicarious liability

2. What are the other ways in which others can be held liable
3. What is the scope of the liability

(F) Research methodology

The methodology that would be applied for carrying out this research is Doctrinal, Analytical and Comparative research. In this research the primary sources of data are the Constitution, Indian Contract Act, 1872, Indian Penal Code, Specific Relief Act, Limitation Act, Rules, Government Orders, Judicial Precedents, Report of various Committees. The secondary sources of data comprises of published books, journals, scholarly articles, news releases, print media, online journals, research reports and others were used.

II. MEANING NATURE AND SCOPE OF TOPIC

(A) Vicarious liability

A person is often only accountable for the wrongdoings that he himself does, but under specific conditions, he may also be held accountable for wrongdoings perpetrated by others. A person's liability for an act done by another person is known as "vicarious liability," and it results from the two parties' relationship.

There are three ways that someone might be held responsible for the wrongdoings or negligence of another

- 1) as having approved or confirmed the specific act (liability by ratification)
- 2) as having a relationship with the other person that entails accountability for wrongs perpetrated by that person (liability by relation); and
- 3) as having helped to facilitate the torturous act performed by others (liability by abetment)

1. Liability by ratification

Despite lacking any prior permission, an act performed for someone by a person who is not acting on his or her behalf constitutes an act of principle (such other person for whom the act is done). If afterwards corrected by the principle, then the act binds the principle.

Every act's ratification relates to and thus becomes comparable to a prior request, according to the Latin phrase "omnio ratihabitio ritrorahitur et mandato prioro oequi paratur."

Conditions for ratification

- The individual giving approval must be fully aware of the act's unlawful character.
- a prohibited or null conduct that is not punishable

- A person is solely accountable for things that other people do on his behalf.

2. Liability by relation

- **Master servant relation**

The extent of the master's responsibility for the wrongdoings of his servants - The master might be held vicariously accountable for the wrongs his servants do. This obligation is founded on the principles of superior response, according to which the superior must be held accountable, and *qui facit per alium facit perse*, which translates to "he who acts via another person acts himself."

- **Extent of liability**

When does the master have third-party liability?

- 1) The master is responsible if the servant behaves in accordance with the terms of his employment.
- 2) If the master authorises an unlawful conduct or directs someone to perform an act in an illegal or unauthorised manner.
- 3) the master's responsible.
- 4) If there is a connection between bondage and the master's business, the master's responsibilities are number three.
- 5) If the servant performed an act for himself in the course of his employment, the master is not liable.

Damages claims made against the servants of the master

A lawsuit for damages for breach of an implied time restriction may be brought against the Servant if the master is required to compensate a third party for harm caused by the Servant.

- **Employer (owner) and independent contractor**- An independent contractor is a person who does tasks that are not managed by their employer. The employer may be held responsible for any errors made by personnel hired by the independent contractor if the independent contractor employs its own instructions, techniques, or ways of working to complete the task requested by the employer. We won't be held accountable.

Exceptions

If any of the following conditions exist:

- i. The employer maintains control over the independent contractor

- ii. An independent contractor is hired by the employer to do an entirely unlawful activity.
- iii. Employers are subject to laws.
- iv. Jobs held as a sole owner are particularly risky
- v. Companies are using unqualified contractors
- vi. Responsibility under jurisdiction

- **Principle agent relation** If an agent committed the conduct while working for the principle as an employee of the agency, and if the principal engaged the agent to undertake work on his behalf and granted him a power of attorney to do so, the principal is not accountable. If you do, you will be held accountable for your agent's unlawful actions.
- **Company and it's directors-** As long as the directors' activities are under the business's control, the company is responsible for any errors they make. Directors may be held in person
- **Firm and it's patners** Every single partner in the business is responsible for the wrongdoings of his fellow partners.
- **Liability of state for tort commotted by it's servant -** The sovereign may be held legally responsible for acts committed by his subjects, just as a private employer may be held accountable for the wrongs committed by his workers or by other parties.

3. **Liability by abetment** - Abettors of wrongdoing are just as guilty as those who really carry out the crime. The liability for aiding and abetting in torts is the same as that for aiding and abetting in crimes.

III. JUDICIAL PRECEDENTS IN 18TH AND 19TH CENTURY

1. *Limpus v London General Omnibus Company*⁸

The omnibus driver deliberately walked in their way to irritate them. He and the other drivers were given a card from his employers that stated: "must not race or obstruct another omnibus." According to Baron Martin, if the defendant's driver committed the act on behalf of his employer, the defendants were liable; however, if the driver committed the act on his own, the defendants were not liable. The plaintiff won.

Despite written instructions to the driver to take care, the employer is still held responsible for

⁸ *Limpus v. London General Omnibus company*, CEXC 23 JUN 1862 ER859

the accident. Because the driver injured himself while performing his master's orders, the employer was liable.

"A footman might believe that driving the coach is in his master's best interests," Lord Blackburn said, "but no one could say that it was within the footman's employment and that the master would be liable for damage from the footman's wilful act in taking charge of the horses."

2. *Laugher v. Pointer*⁹

The defendant had hired a coach from a stable, and the stable-keeper sent a driver with it, and a collision ensued, there is no traceable remnant of the literal form of the doctrine; all seemed ready to say, as Lord Kenyon did: "I admit the principle, that a man is answerable for the conduct of his servants in matters done by them in the exercise of the -authority that he has given them. From this time the general test is phrased as " scope " or " course " of "employment.

3. *Satyawati Devi v. Union of India*¹⁰

The Delhi High Court held that moving a hockey team to an Air Force Station is not a sovereign act. " An Air Force van transported a hockey team from Indian Air Force Station to a game. The driver's negligence caused a tragic collision after the contest. It was maintained that it was one of the Union of India's duties to keep the armed forces in excellent condition, and that the hockey party was conveyed by vehicle for the physical activity of the Air Force work force. The court ruled that transporting a hockey team to a game was not an act of sovereign sovereignty and that the Union of India was accountable for the plaintiff's damages.

4. *Saheli, A Women's Resources v. Commissioner of Police*¹¹

Saheli v. Commissioner of Police was a significant turning point in the study of reimbursement law in writ courts. Asturi Lal correctly referenced the outstanding decision in *Vidyawati* in this circumstance, which he had earlier frozen. It was determined that the state was accountable for the death of a nine-year-old boy who died as a result of abuse and beating by police officers. The Delhi Administration was ordered to pay a compensation of Rs. 75,000/-, according to a court ruling. The *Vidyawati* ratio was helped by this lawsuit, and it also helped the Delhi Administration recover financial losses from the officers who were blamed for the accident. These are the two main reasons why this case is notable.

5. *Mersey Docks & Harbour board v. Coggins & Griffith (Liverpool)Ltd*¹². (1947)

⁹ *Laugher v. Pointer* 1826,108ER 204

¹⁰ *Satyawati Devi v. Union of India*, AIR 1967 Delhi 98, (1969) IILLJ 195 Del

¹¹ *Saheli, A Women's Resources v. Commissioner of Police* 1990 AIR 513, 1989 SCR 488

¹² *Mersey Docks and Harbour Board Ltd v Coggins and Griffith (Liverpool) Ltd* [1946] 2 All ER 345 HL

It was stated that "a harbour board had engaged competent workers as the cranes' drivers and had owned a number of mobile cranes. The board regularly released the mobile cranes, each being operated by a qualified driver who worked for them. For the purpose of loading a ship, some stevedores (loaders) also hired the driver of a crane. But in this instance, X was hurt while loading a ship as a result of the driver's carelessness. The Harbour Board, who was the driver's general and ongoing employer, was found responsible for X by the House of Lords. Even though the driver was negligently loading goods for the stevedores at the time of the accident, the stevedores were not held accountable.

IV. JUDICIAL VIEW IN 21ST CENTURY

1. Sunil Bharti Mittal v. Central Bureau of Investigation , 2015¹³

From the high-profile 2G Spectrum Scam Case came two further petitions, which became known as Sunil Bharti Mittal v. Central Bureau of Investigation. The petitioner, Sunil Bharti Mittal, is one of the directors of a private firm who was held responsible for unlawful actions taken under the company's name and has filed this civil appeal. The then-Minister of Telecommunications authorised Unified Access Services Licenses in 2008. Subsequently, the Central Bureau of Investigation (CBI) learned that Unified Access Services Licenses had been used in connection with unlawful operations, resulting in substantial losses to the national treasury.

The directors and private firms were held responsible and summoned when it was revealed that the acquired Uniform Access Services License had been accessed and utilised in an unauthorised manner. Civil appeal via special leave petition under article 136 of the Constitution of India, 1950 was allowed to the directors of certain corporations so that they might dispute the verdict of the High Court of Delhi.

Since a corporation is seen as a legal person under the concept of attribution, even if it is technically a "Alter-ego," it will be held liable for the criminal acts of its members. In the case of Sunil Bharti Mittal, the 'Alter-ego' doctrine is used to ascribe the members of the firm to the criminal actions of the company. Since the idea of vicarious responsibility cannot be at odds with other legal principles, the Supreme Court has a difficult time forcing its application. In addition, the directors must be held legally vicariously responsible for the company's actions. Considering that the concept of vicarious responsibility was not previously established in criminal law, the statutory language describing the commission of an offence based on vicarious

¹³ Sunil Bharti Mittal v. Central Bureau of Investigation , , AIR 2015 SC 923; (2015) 4 SCC 609

liability by means of legal fiction was deemed required.

To the Court's dismay, the Special Judge's approval of the CBI's attached files lacked specificity and was thus deemed insufficient. Taking into account the totality of the facts, the Supreme Court overturned the Special Judge's ruling from March 19 and ruled in favour of Sunil Bharti Mittal's appeal.

2. Pooja Ravinder Devidasani v. State Of Maharashtra &Ors ¹⁴

Pooja Ravinder Devidasani began working at M/s Elite International Pvt. Ltd. on July 1, 2004. (the "Company"). She delivered a Letter of Guarantee to the Respondent on January 19, 2005. The Appellant resigned from his position as a Director on December 17, 2005, according to the 2006 Annual Return.

A loan business filed seven complaints against the appellant and others under the Negotiable Instruments Act of 1881.

There was no information provided about the appellant's involvement in regular company operations.

Between April and September 2008, checks were given out. The appellant departed before the checks were distributed. According to the court, the appellant's ongoing criminal prosecution under Sections 138 and 141 of the Act is an abuse of the judicial system and must be stopped.

The Court determined that the Appellant might face civil proceedings related to the Letter of Guarantee he prepared on the Complainant's behalf on January 19, 2005. The respondent asserted that the checks in question were issued as a consequence of the appellant's letter of assurance, notwithstanding the fact that the appellant was held liable under Sections 138 and 141 of the Act. This claim was rejected by the court.

3. Dayle De Souza vs Government Of India Thr. Deputy ... on 29 October, 2021 ¹⁵

Not all directors are subject to Section 141. Anyone who committed the offence must have been in control of the company at the time. The person claiming liability must have had control over the company's affairs. (ii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956, but only if the necessary declarations are made to hold the accused vicariously liable for an offence committed by the company, along with allegations in the petition stating that the accused were in charge of and responsible for the company's business and by virtue of their position that Since the Director is not at fault, it must

¹⁴ POOJA RAVINDER DEVIDASANI V. STATE OF MAHARASHTRA &ORS 2015 ALL MR (CRI) 419 (S.C.)

¹⁵ Dayle De Souza vs Government Of India Thr. Deputy (CRL.) NO. 3913 OF 2020

be stated."Comparing Section 22C (2) to Subsection (1). Even if a director, manager, secretary, or other officer was not in overall charge of the company's day-to-day operations at the time the violation was committed, vicarious responsibility under Section 22C(2) may result from the person's personal behaviour, functional position, or transactional involvement. Vicarious liability develops when a company's director, management, secretary, or other official consents to, assists in, or fails to stop an offence. When a business commits a crime, the Negotiable Instruments Act holds corporate executives legally accountable. Sheoran Agarwal and Anil Hada were overturned by a three-judge panel in *Aneeta Hada v. Godfather Travels & Tours Private Limited*. The High Court erred when it ruled that the corporation may be charged/arrested without complying with Section 138. The initial submission by the appellant is incomplete. Travel & Tours by Godfather (P) Ltd. If the authorised signatory of a corporation might face legal action under Section 138 of the Negotiable Instruments Act of 1881 without the firm suffering any consequences. Judges' decisions are in SCC,. According to us, a company's offence is a prerequisite for vicarious liability. As a result, the phrase "as well as the corporation" makes it clear that, although the company may be fined, only the other organisations may be held vicariously accountable for the offence, subject to a petition and supporting evidence. The business is a respectable jurist. Its reputation would suffer if it were discovered. A company's reputation might be damaged by director indictments. Similar decisions include (SCC p. "Our findings indicate that arraigning a firm as an accused is required in Section 141 cases. Other offenders are caught via vicarious responsibility.

4. Philip J vs Ashapura Minechem Ltd. And Anr on 29 January, 2016¹⁶

We think that a company's offence is a requirement for others' vicarious culpability when stringent construction is used. Therefore, it is obvious from the words "as well as the firm" in the Section that only the other categories might be held vicariously accountable for the offence, subject to the petition and evidence thereof, when the company can be punished. The company has its own reputation as a legal entity. Its reputation would suffer if proven guilty. An organization's reputation could be harmed by indicted directors. In my judgement, section 141 of the NI Act, which addresses vicarious responsibility, is what the Apex Court relied on to reach its findings in *Aneeta Hada* (supra), not only because the corporation is a distinct legal organisation and juristic person. The Supreme Court referenced section 141 of the NI Act and emphasised that a company's offence is a condition prior to others' vicarious culpability in paragraphs 58 and 59 of the aforementioned judgement. The phrase "as well as the company"

¹⁶ Philip J vs Ashapura Minechem Ltd. And Anr on 29 January, 2016 ABC 2016(I) 273

in the section makes it apparent that only the people listed in the other categories may be held vicariously accountable for the offence when a corporation is prosecuted, subject to the petition and evidence thereof. Other types of offenders, such as the firm's partners or directors, may only be apprehended under the provision's vicarious culpability clause. Because of the directors' vicarious accountability and not necessarily because the corporation is a legal entity with its own reputation for respectability, the Supreme Court has determined that arraigning the company as an accused is necessary to continue the prosecution under section 141 of the NI Act. The Supreme Court took that into account as an additional circumstance when ruling that arraigning a company as an accused is necessary, but the main factor in coming to that decision was the directors' or partners' vicarious liability towards the company; without linking them to the company on the basis of vicarious liability, they cannot be charged. Partnership businesses might use the ratio from *Aneeta Hada* (above). Vicarious responsibility involves suing the partners. The partnership firm is a legal entity. It is crucial that a business partner be charged on the basis of vicarious culpability, just as with company directors. There is no need to distinguish between the legal requirements for corporations and partnership firms.

5. Nitu Gupta And Another vs State Of Odisha (Vigilance) ¹⁷

The leaseholds of just 145 suspects were prosecuted. Vicarious accountability must be shown. An official cannot be indicted since the Indian Penal Code does not impose "vicarious culpability" on a person who has not been accused. Business management and operation, according to the lawyer, are separate. Each defendant's "running the firm" must be alleged by the complaint or prosecution. Identify the accused. Untrue. Innocent director. The attorney stated that the petitioners' section 120-B charge is a serious offence. *S.M.S. Pharmaceuticals v. Neeta Bhalla*², *Keki Hormusji Gharda v. Mehervan Rustom Irani*³, and *Pepsi Foods v. Judicial Magistrate*¹ were mentioned. Prepare a petition under Section 200 or Section 156(3). The Penal Code does not impose vicarious liability on directors. No assessment of whether the petition amounted to personal responsibility was made by the learned Magistrate. Corporate. Directors and the Managing Director may be held liable. Vicarious responsibility is now present. Use the concept of vicarious liability. The legal framework must expressly define "vicarious" liability. Since none of the aforementioned IPC clauses provide for vicarious culpability, the prosecution must demonstrate defendant involvement. Prabhakaran tracked down the director of a contractor using vicarious responsibility. In light of the fact that the IPC does not hold corporate directors criminally culpable, the court determined that a director's position inside a fund-raising

¹⁷ *Nitu Gupta And Another vs State Of Odisha (Vigilance)* on 8 October, 2021 CRLMC No. 440 & 454 of 2021

business did not automatically expose him to vicarious liability in the absence of specific allegations.

V. CRITICAL ANALYSIS

Corporate executives are liable for the misconduct of their agents under agency law. A victim of an agent's tortious behaviour has no reason to sue the agency's principal if the agent can compensate them fully. To deal with agents who are immune to judgement, there is vicarious responsibility. A corporate principal's "control" or "power" to "manage" his agent's physical behaviour is the foundation of vicarious accountability. If a tort is committed while the agent is working for a client, control is sufficient but not necessary for vicarious culpability. If principals' agents engage in "inherently dangerous actions," they become vicariously liable. The concepts used to describe these liability rules are insufficient. In order to evaluate whether vicarious responsibility is an effective liability rule, this research paper suggests a formal economic model of the principal-agent interaction. This efficiency research takes into account two factors. Preventive behaviour is impacted by financial incentives. Vicarious responsibility is a good regulation if alternative liability rules don't influence cautious behaviour. The principal's ability to monitor preventative behaviour is crucial when financial incentives have an influence. If the principle has the ability to monitor the agent's actions, vicarious accountability is an effective rule. If the principal is unable to monitor the agent's caution, vicarious responsibility may not be effective. The moral consequences of the proposed economic model are different from existing agency law. The law ignores whether financial incentives have an influence on preventative behaviour. Vicarious responsibility is based on the principal's ability to "manage" the agent, even if the practical indicators of control that courts utilise are only tangentially related to the principal's power to monitor the agent's preventative behaviour. Despite these restrictions, the notion may be used to handle essentially damaging behaviour legally.

VI. SUGGESTIONS AND CONCLUSION

The correct conclusion that the state can generally be held accountable for the illegal acts committed by others if those actions took place during the state's exercise of non-sovereign powers can be reached based on the discussion that has so far taken place as well as the case laws that have been cited. This conclusion was drawn as a result of the fact that it is conceivable to correctly conclude that the state may be held accountable for the illegal acts carried out by its workers if such acts occurred while The distinction between sovereign and non-sovereign action, on the other hand, does not have the same weight in the modern world as it did in the

past. Because of this, it depends not only on the characteristics of power but also on the methods used to wield it. It is still not apparent whether or not the Kasturi Lal case judgement was changed, despite the fact that the notion of sovereign immunity and the underlying justifications for it have grown outmoded and are no longer applicable in contemporary society. This is true despite the fact that both the idea of sovereign immunity and the justifications for it have aged poorly. I'd want to conclude by arguing that the present situation requires the elimination of state immunity from tort responsibility and that it is vital to build a working process for evaluating state culpability and compensating the affected parties. Both of these are immediate needs. Furthermore, I would want to argue that the present circumstances call for the elimination of state immunity from tort responsibility. Before continuing, both of these conditions must be satisfied.

VII. REFERENCES

• ARTICLES

- Vicarious Liability for Agency Contracts-¹ Edward A. Mearns, Jr. ,Vicarious Liability for Agency Contracts, *Virginia Law Review*, Vol. 48, No. 1 (Jan., 1962), pp. 50-57 (8 pages),JSTOR, <https://doi.org/10.2307/1071099>
- RECASTING VICARIOUS LIABILITY- Phillip Morgan, RECASTING VICARIOUS LIABILITY, *The Cambridge Law Journal* Vol. 71, No. 3 (November 2012), pp. 615-650 (36 pages),JSTOR, <https://www.jstor.org/stable/41819932>
- Vicarious Liability for Violent Employees Robert Weekes, Vicarious Liability for Violent Employees, *The Cambridge Law Journal* Vol. 63, No. 1 (Mar., 2004), pp. 53-63 (11 pages),JSTOR, <https://www.jstor.org/stable/4509075>

• Books

- Ratanlal & Dhirajlal,2018,*The Law Of Torts*, published by LexisNexis,27th edition,ISBN:978-93-5035-741-5.
- Winfield & Jolowincz,2015,*Tort*,published by ThomsonReuters,9th edition,ISBN:978-93-84746-40-7
- SP Singh,2015,*The Law Of Tort*, published by universal law publishing,7th edition,ISBN:978-93-5035-552-7

• Case Laws

- *Limpus v. London General Omnibus company*, CEXC 23 JUN 1862 ER859
- *Laugher v. Pointer* 1826,108ER 204
- *Satyawati Devi v. Union of India*, AIR 1967 Delhi 98, (1969) IILLJ 195 Del
- *Saheli, A Women's Resources v. Commissioner of Police* 1990 AIR 513, 1989 SCR 488
- *Mersey Docks and Harbour Board Ltd v Coggins and Griffith (Liverpool) Ltd* [1946] 2 All ER 345 HL
- *Sunil Bharti Mittal v. Central Bureau of Investigation* , , AIR 2015 SC 923; (2015) 4 SCC 609
- *Pooja Ravinder Devidasani v. State Of Maharashtra &Ors* 2015 ALL MR (Cri) 419 (S.C.)

- Dayle De Souza vs Government Of India Thr. Deputy (CRL.) NO. 3913 OF 2020
- Philip J vs Ashapura Minechem Ltd. And Anr on 29 January, 2016 ABC 2016(I) 273
- Nitu Gupta And Another vs State Of Odisha (Vigilance) on 8 October, 2021 CRLMC No. 440 & 454 of 2021
- **WEBSITES DATABASES**
 - www.jstor.com\
 - www.livelaw.in/
 - www.westlawasia.com/
