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Critical Analysis of Vicarious Liability

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ABSTRACT

This paper is about vicarious liability, “or the relationship between a Master and a Servant. A case in which someone is held liable for the acts or omissions of another person is known as vicarious liability. This research paper presents an overview of what vicarious liability actually is and it explains the different essential conditions to establish to hold one liable under vicarious liability. It explains the various terms and the different kinds of relationships. Firstly, the objectives are mentioned and in the latter part there are interpretation and case laws provided to prove the given objectives and the research questions. This paper gives a short and detailed summary of vicarious liability . The entire research is based on secondary data which includes newspapers, blogs, articles, research papers, online websites and various documents from various sources. The introduction part presents an outline about vicarious liability, the interpretation part gives a gist of the three various condition to make one liable through the act of others and finally the case laws are given to elucidate the same and hence follows the conclusion. The term administration refers to the state or government's liability for the torts committed by its servants, which is a complicated issue, especially in developing countries with expanding state activities. The standards of public law derived from British common law, as well as the rules of the constitution, regulate the government's tort liability. Vicarious Liability refers to situations in which one party is held responsible for the actions of another. As a result, in a case of vicarious liability, both the individual and the other are responsible for the actions of the other. In a case of vicarious liability, both the person who orders the act and the person who performs the act are responsible. As a result, employers are held vicariously responsible for the torts incurred by their workers while on the job. The constitution's position on state liability is as follows: Clause (1) of article 300 states that the government of India can sue or be sued in the name of the union of India and the government of the state. Since the administration's liability today is in direct succession to that of the East India company, it is essential to understand the liability criteria of the administration today. East India Company was established as a commercial entity, but it eventually gained sovereignty. The distinction between sovereign and non-sovereign roles is made by political forces.”

Keywords: Vicarious Liability, Master and servant, Administration, Course of

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employment, East India company, Sovereign, Non-sovereign

I. INTRODUCTION

Vicarious is derived from the Latin word “vice” i.e., in the place of. By this phrase we mean that liability of a person for a tort of another in which one had no part. It may arise under the common law or under statutes. It is a principle under which an individual could be held liable for an act which he himself not committed but because of the wrongful act of some another person. In torts usually a person is liable for the wrongful act² which is actually done by he himself and no one else is held liable for the wrongful act committed. He who commits wrong is said to be liable or responsible for it. Liability or responsibility is the bond of necessity that exists between the wrong doer and the remedy of the wrong. Where the remedy is a civil one, the party has the right to demand the redress allowed by law, and the wrongdoer has a duty to comply with this demand. But in cases of Vicarious Liability, a person who may have not committed the act may be held liable and his liability may arise because of the wrongs done by some other person because of the relationship between the two persons. In the case of vicarious liability, to held the other person liable there must be a established relationship between both of them, if the persons involved are not connected or the act which has been committed is not connected to them, then the other person would not be held liable for the wrongful act. There must be any of the three kinds of relationship between them: -

- a) Master- Servant Relationship- In this case a master can be held liable for the wrongful act committed by the person in the course of the employment
- b) Principal Agent Relationship- In this case the principal can be held liable for the wrongful act committed by his agent in course of his employment.
- c) Liability of partners of each other torts- In this case, all the partners are held liable for any wrongful act committed by any of the person. In administrative law, vicarious liability refers to the relationship between sovereign and non-sovereign governments, or master and servant. The state's tortious liability is a tortious act committed by its government. The theory of vicarious liability is explained by Winfield: The term "vicarious liability" refers to A's potential liability to c for harm caused to c as a result of B's negligence or another tort. It is not appropriate for A to have engaged in the commission of the tort in any way, nor for A to have breached a legal duty owed to c. As a result, the master may be held

² FIND A LEGAL FORM IN MINUTES WRONGFUL ACT LAW AND LEGAL DEFINITION | USLEGAL, INC., <https://definitions.uslegal.com/w/wrongful-act/>

responsible for the torts committed by his servant while on the job. The vicarious liability doctrine is founded on two maxims:

1. Respond with superiority³ (let the principal be liable)
2. What is done for the sake of the alium is done for the sake of the alium (he who does an act through another does it himself)

Article 300(1) of the Indian Constitution provides that the government of India may be sued in connection with its case relations, such as the dominion of India. Before the constitution came into effect, a lawsuit would have been filed against India's dominion, and parliament would not have taken any action to make laws. The state legislature did not pass any laws when the constitution was adopted. When parliament fails to pass the legislation and a servant commits a tort, the secretary of the state council is responsible. Before the present constitution came into effect, the East India company and the government of India act of 1858, which transferred the government of India to the majesty court with rights and liabilities. Georgia's effective law, which governs the occurrence of vicarious liability, varies significantly from that of other nations. It should be noted that the Civil Code of Georgia⁴ establishes vicarious liability only during the life of an employment relationship and, unlike international law, does not extend it to other civil legal relationships, such as the existence of an assignment arrangement. The Georgia Civil Code does not regulate the rule of duty between employer and employee where there is an enterprise risk and the employer's behavior increase the risk. Since a person experiences similar relationship in daily life, precise control of the aforementioned issue is essential. The vicarious liability is total liability when an individual is held liable for harm incurred by a third party acting in the principal's best interests and in the principal's favor. The vicarious liability is a type of strict liability under which the principal and the agent are jointly liable to pay the harm caused by the agent in the process of performing the duty.

According to this agreement, not only the agent, but also the principal, is obligated to maintain law and order, and their actions must be carried out within the legal framework. This type of regulation is effective because the principal will always try to monitor the agent as much as possible and will take all appropriate precautions to prevent damage.

Meanwhile, in the majority of cases, the liable party is the solvent principal, who works with the tortfeasor agent to help the claimant fulfil his or her demand for inflicted harm.

³ Respondent superior Encyclopaedia Britannica, <https://www.britannica.com/topic/pondeat-superior> (last visited Apr 20, 2021)

⁴ Bataan Death March Wikipedia, https://en.wikipedia.org/wiki/Bataan_Death_March (last visited Apr 20, 2021)

(A) Hypothesis

The presence of vicarious liability can theoretically be explained on both legal/policy and organisational grounds (Lockwood, 2011). The legal reasons are justified because the employee's wrongful act is so closely linked to their responsibilities that it can be properly and honestly treated as occurring in the course of employment (Lockwood, 2011). The employee made a mistake by exceeding the maximum speed limit, resulting in a near-fatal collision with a pedestrian. Since the employee was driving a company car, the company or employer may be held liable. From a legal standpoint, vicarious liability means that an employer may be held responsible for an employee's tortious behaviour if it occurred during and within the scope of the employee's employment, but not if the act occurred beyond the employee's jurisdiction or for the employee's own personal gain (Smiley, 2018).

(B) Literature Review

- In the research paper of vicarious liability by the author Fatima Tariq, “it is mentioned about the various definitions of vicarious liability by different scholars and discusses the statement and explains how, if at all recent developments promote the policy reasons for vicarious liability and explains the terms duty of care, when is the duty of care breached, what could a person be entitled to if a duty of care is breached. It explains the application of vicarious liability in modern context of employment. It gives a historical, comparative and philosophical study of the same.”

- In the research paper titled “Vicarious Liability or Liability for the Acts of Others in Tort: A Comparative Perspective”, the author Paula Gliker has examined the concept of vicarious liability from a comparative perspective by the scholar (or liability for the acts of others, to use civilian terminology). She identifies a traditional legal system that spans common and civil law, and she focuses on three main issues in deciding the extent of strict liability⁵: Is it better to have a strict liability policy or a fault-based policy? Which relationships should result in liability, and should liability be applied to temporary or agency employees, given the disintegration of conventional working patterns? When can a tort be considered in the ‘course of jobs,’ in the functions to which they have been assigned, or in the execution of the contract? The author argues that a comparative perspective increases our understanding of core principles and helps us to understand them better by examining case law from the common law (England and Wales, Canada, Australia) and the civil law (France, Germany), as well as relevant

⁵ STRICT LIABILITY LAW TIMES JOURNAL, <http://lawtimesjournal.in/strict-liability/> (last visited Apr 20, 2021)

provisions of the Principles of European Tort Law and the Draft Common Frame of Reference.

- In basic terms, vicarious liability refers to the legal liability for the actions and omissions of an employee or other person for whom you are legally liable. Kumado (2009) describes vicarious liability as a type of strict secondary liability arising from the common law doctrine of agency: the superior/responsibility employers for the actions of their subordinates/employees/servant. Vicarious liability, according to Booth (2007), is a principal's liability for an agent's losses incurred by a violation of some defined duty or failure to fulfil contractual obligations. A principal, as described in this definition, is a person or agency who initiates a course of action, in part by enlisting the help of other people known as agents.

- Many employers are unaware that they can be held responsible for a variety of acts taken by their workers while on the job. Bullying and abuse, as well as abusive or racist acts, libel, and copyright violations, are examples of these actions. It's also possible to sue an employer for the actions of third parties, such as employers and consumers, if these individuals are considered to be under the employer's influence (ACAS, 2012). Vicarious liability is the concept of holding contractors liable for the wrongdoings of others.

- There is no statutory concept⁶ of vicarious liability in tort law (Rose, 2009); it is a common law paradigm that evolves to meet changing needs and developments in society. As a result, vicarious liability now covers almost any aspect of the law, including fraud, conversion, and misrepresentation; personal injury caused by negligence; personal injury caused by intentional batteries or crimes; product liability claims; consumer protection laws and deceptive practices; consumer product and warranty claims; environmental clean-up liability; civil rights claims (Beyer, 2006).

(C) Research Objectives

The objectives of this research paper are as follows:

- a) To study about impact of vicarious Liability in India.
- b) To study about the factors indicating the vicarious Liability in India.
- c) To study about the constitutional provision relating to vicarious Liability in India.
- d) To evaluate the scope and extent of the defence of act of state.

⁶ STATUTORY LIABILITY INVESTOPEDIA, <https://www.investopedia.com/terms/s/statutory-liability.asp> (last visited Apr 20, 2021)

(D) Research Questions

- a) Is the tort act of 1992 relevant for introducing vicarious liability in India?
- b) How can a master be held liable for the tort committed by his servant?
- c) How can a principal be held liable for the acts committed by his agent?
- d) How can all the partners be held liable for the act committed by any one of the partners?
- e) Quoting of cases from each type as mentioned above and giving examples consisting of the same.

(E) Research Methodology

In the analysis of vicarious liability in India, secondary sources⁷ such as books and publications from various websites were used. This research paper used analytic and descriptive methods to break down the issues into elements and constituent sections, as well as classify the issues' structure. The method of research used in this research paper is based on the secondary data that means it is based on some pre-existing information which is known as primary data. In the secondary research, the primary data is amalgamated and integrated with various data and combined to give a result to a new data that is called secondary data. Secondary research is convenient and time saving therefore in today's world a lot of people prefer to go forward with this method of research. The various data that has been mentioned in the research paper are as follows: -

- Internet accessible data- The various data that are easily available on the internet and that too free of cost. It provides an ample amount of information to the people.
- SSC online and E-proxy- The data available on these websites are really authentic and very useful for law students.

II. RESEARCH ANALYSIS**(A) History of Vicarious Liability**

The vicarious Liability is a term that originated in England. During the reign of an ancient monarch, the legal maxim *Rex Non Potest Peccare* was in effect (The king can do no wrong). Wade and Forsyth (2014), Wade & Forsyth (2014), Wade & Forsyth (2014), Wade & Forsyth (2014). During the course of work, a king servant commits a tort for which the king is not liable under the vicarious liability doctrine. To reclaim the land, this remedy will be available only in Torts,

⁷ MSG MANAGEMENT STUDY GUIDE SECONDARY DATA - MEANING, ITS ADVANTAGES AND DISADVANTAGES, https://www.managementstudyguide.com/secondary_data.htm (last visited Apr 19, 2021)

not in Contracts. According to Manu, the king's responsibility is to follow the law, and he himself is subject to the law in the same way as ordinary citizens are. In England, the crown holds sole rights and liabilities. (Magnus and colleagues, 2004) The tortfeasor could not be prosecuted in the guise of crown jobs. The court found in *Tobin vs R* that if the crown was liable in tort, the king's ability to do no wrong would have appeared meaningless. However, as the government's responsibilities grew, the protection granted to the crown in tortious liability became incompatible with the demands of justice. The king's court condemned this exception in many decisions, saying it was against fairness, equity⁸, and good conscience. The crown proceeding act of 1947, which repealed the maxim that the king cannot do anything wrong, was passed by the British parliament. The respondent superior principle applies in the workplace, and a king may be sued for a tortious act committed by his servant. Everyone is equal before the law as a result of this, and no one is superior or inferior to another.

(B) Interpretation

The doctrine of “vicarious liability” is generally termed as liability for the acts of others. Thus, liability for wrongs committed by others is a vicarious liability. A servant is a person employed by another to do work under the directions and control of his master. A master is a person who employs other person to do work under his direction and control. The term course of employment means that the act which is done should be during the period of work assigned and it should be the authorised work which has been assigned to the person by the master as a general rule, master is liable for the tort of his servant but he is not for the tort of an independent contractor. Thus, it is so clear that this liability of a person is for the tort that committed by another person and in that defendant had no part. However, plaintiff can sue him as per the common law or under the statute for wrongs committed by others. Vicarious Liability in case of master and servant- In the case of master-servant relationship, the master is vicariously liable for the wrongful act done by his servant in the course of employment. Therefore, if a servant does a wrongful act in the course of his employment, the master is liable for it, however, in such situation, the servant is also liable. The essential conditions to establish a tort of vicarious liability under master servant relationship⁹ are as follows. It must be committed by the servant. It must be committed within the course of employment. Vicarious liability in the context of principle and agent means inflicting responsibility on the principal on the acts of the agent. Thus, when an agent commits a tort in the course of performance of his duty as an agent, the

⁸ Article 14 Equality before law Legal Service India - Law, Lawyers and Legal Resources, <http://www.legalserviceindia.com/legal/article-353-article-14-equality-before-law.html> (last visited Apr 20, 2021)

⁹ Vicarious Liability in case of Master-Servant Relationship in Tort Law iPleaders, <https://blog.iPLEaders.in/vicarious-liability-case-master-servant-relationship-tort-law/> (last visited Apr 20, 2021)

liability of the principal arises for such a wrongful act. The agent would also liable because he has done the wrongful act. The principal is liable vicariously because of principal-agent relationship between two. Therefore, they can be made liable for the same wrongful act and considered to be joint tortfeasors. Their liability is joint and several. The relationship between partners is like principal and agent relationship. Thus, when the wrongful act is done by one partner in the ordinary course of the business of the firm, all the other partners are vicariously liable for the same. All the partners of the firm, i.e., the guilty partners and the others are considered to be joint tortfeasors. Their liability is also joint and several.

(C) Position in India

In India, the crown gained sovereignty in 1858 and took over the company's administrative functions. The secretary of India is declared to be a private body for the purposes of using and being sued under the act. Section 32 of the Government of India Act of 1915 (Feldman 2015) declared the following corporate assumptions:

1. As a body corporate, the Secretary of State Council can sue and be sued.
2. If the East India Company and Government of India Company Act of 1858 is not passed, the Secretary of State in Council shall have all remedies.
3. Section 176(i) of the Government of India Act, 1935 reintroduced this clause.

Without regard to the ensuing arrangement of this section, the organization may sue or be sued in the name of the alliance of India, and commonplace governments may sue or be sued in the name of region, and without regard to the ensuing arrangement of this section, the organization may be liable to any arrangements made by the act of the league or common lawmaking body approved by the prudence of forces provided on that assembly by this demonstration, sue or be sued in the name of region. The kingdom of sovereign control of the state, and such state is not liable for omissions, used the cat in a broader defense. The first understanding of state liability during the East India Company was made in the John Stuart cases in 1775. (Cornford et al., 2016) For the first time, the governor in general was found to be immune from judicial jurisdiction in cases concerning the firing of government employees. The sovereign immunity doctrine of the privy council does not apply to India. The administration of the nation was implemented during the government of India act 1858, after the British crown assumed sovereign powers. The vicarious liability in administrative law is distinguished by the court as sovereign and non-sovereign powers in acts performed with conduct of undertakings that may be carried out by persons without possessing the authority. (Gageler et al., 2017) Any conclusions will emerge as a result of the non-sovereign role. The East India Company had two

distinct personalities.

(a) In its capacity as a sovereign power and

(b) As a commercial enterprise.

The company's liability could only be limited to its business dealings and acts performed in the exercise of delegated sovereign authority. In this case, the harm was done to the offended party in a non-sovereign position, namely, the maintenance of the Dockyard, which could be done by any private citizen with no appointment of sovereign power, and as a result, the Government was held liable for the workers' torts. The Secretary of State was not responsible for any actions taken by sovereign powers.¹⁰

III. CASE LAWS

The case laws under the three mentioned category of vicarious liability are as follows :-

(A) Master servant relationship

In *Mersey Docks & Harbour board v. Coggins & Griffith (Liverpool)Ltd. (1947)*¹¹, a harbour board owned a number of mobile cranes and had employed skilled workmen as the drivers of the cranes. It was usual for the board to let out the mobile cranes, each driven by the skilled driver employed by them. Certain stevedores (loaders) hired a crane together with the driver for loading a ship. But in this case, due to the negligence of the driver, while loading a ship, X was injured. The House of Lords held that the Harbour Board, who was the general and permanent employer of the driver, was liable for X. The stevedores (loaders) were not liable, even though at the time of the negligence, the driver was loading cargo for the stevedores.

(B) Principal-Agent Relationship

In *Trilok Singh v. Kailash Bharti (1986)*¹², while the owner of the motorcycle was outside the country, his younger brother took the motorcycle without his knowledge or permission and caused the accident. It was held that the younger brother could not be deemed to be an agent of the owner of the motorcycle and the latter could not be vicariously liable for the accident.

(C) Partner's Liability

In *Hamlyn v. Houston & Co. (1903)*¹³, one of the two partners of the defendant's firm, acting within the general scope of his authority as a partner, bribed the plaintiff's clerk and induced

¹⁰ SOVEREIGNTY LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/sovereignty>. (last visited Apr 20, 2021)

¹¹ *Mersey Docks & Harbour board v. Coggins & Griffith (Liverpool)Ltd.* 2 All ER 354 HL

¹² *Trilok Singh v. Kailash Bharti* AIR 1986

¹³ *Hamlyn v John Houston and Co* [1903] 1 KB 81 1903

him to make a breach of contract with his employer (plaintiff) by telling secrets relating to his employer's business. It was held that both the partners of the firm were liable for his wrongful act (inducing breach of contract) committed by only one of them.

Nobin Chandra Dey v. Secretary of State for India ¹⁴

The Calcutta High Court linked this doctrine of immunity for actions performed in sovereign capacities in *Nobin Chandra Dey v. Secretary of State*. The plaintiff in this case argued that the government had entered into an arrangement with him for the issuance of a permit for the selling of ganja, and that the agreement had been broken. The High Court ruled that no breach of understanding had been shown following the confirmation. Regardless of whether an agreement was reached, the demonstration was carried out in the exercise of sovereign authority and thus was unremarkable.

Secretary of State v. Hari Bhanji ¹⁵

The Madras High Court ruled that state immunity is limited to acts of the state in this case. The decision in the P and O Case did not go beyond acts of state, but it did outline conditions in which immunity could be available. Acts of State, it was established, are acts carried out in the exercise of sovereign power, where the act complained of is purportedly carried out under the sanction of municipal law and in the exercise of powers conferred by law. The fact that it is completed by sovereign powers and is not an act that should be possible by a private citizen does not negate the civil court's jurisdiction. The *Hari Bhanji* decision in Madras holds that the government cannot be held liable for actions related to public safety, even though they are not acting of the state.

Rose vs Plenty (1976)

The facts were milkman told by his managers not to give children a chance to inspire him when he was doing his rounds in *Rose vs Plenty (1976)*. In any case, he allowed a child to assist him, and the child was injured while riding on his milk float due to the carelessness of the driver, a milkman. The employer was held vicariously responsible by the court of appeal. As an employee, let him know not to do his action within the framework of his job. All in light of the fact that the work he was doing was for the benefit of the public it is the employer's company.

¹⁴ *Nobin Chandra Dey v. Secretary of State for India*

¹⁵ *Secretary of State v. Hari Bhanji*

Mathis v Pollock (2003)

A doorman hired by the Defendant to work in the Defendant's club stabbed the Claimant in this case. The Defendant expected the doorman to carry out his duties 'forcefully.' (Cornford et al., 2016) Where a worker is expected to use abuse as part of their job, as in this case, the chances of a court considering a particular act of violence to be beyond the scope of employment are significantly higher.

Laissez-Faire Judicial thinking and exclusion of Sovereign Function

The majority of the capacities” exercised by the Government of India were called sovereign capacities during the old colonial period, when the government was more concerned with policing capability than with welfare exercises. Likewise, sovereign capacities were interpreted as safeguard elements of the state, (R. J. F. B. & B. 1923) maintenance of peace, administration of equity by courts and matters incidental thereto, as well as inconvenience and collection of duties.”

IV. CONSTITUTIONAL PERSPECTIVE

The government of India may sue or be sued in the name of the union of India, and the government of the state may sue or be sued in the name of the state, according to Article 300 I of the Indian Constitution. (Pandey & Srivastava 2014) and may sue or be sued in relation to their respective affairs in the same cases as the domination of India and the corresponding Indian States would have sued or been sued if the constitution had not been enacted, subject to any provisions made by act of parliament or the legislature of any state enacted by virtue of powers conferred by this Constitution. (Gandhi & Kulshreshtha, 2005)

Neither the state legislatures nor the parliament have passed any laws as required by clause (1) of Article 300¹⁶ of the Indian Constitution. The current position is that if a claim should be brought against the corresponding jurisdiction, the state would be responsible for damages.

V. RESULT OF THE STUDY

The state's kingdom of sovereign authority is not responsible for omissions, and the state is not liable for such omissions. The crown was used by Liability in a wider protection. The crown played an important role in vicarious responsibility during the ancient period.

Comparative study of tortious Liability and administrative Liability in various country

¹⁶ DOCTRINE OF CONSTITUTIONAL TORT: EVOLUTION AND EVALUATION, <http://www.legalservicesindia.com/articles/dct.htm> (last visited Apr 20, 2021)

India and U.K

Tort law is a branch of English civil law¹⁷. A tort is an act that causes another hurt and allows the victim to sue the wrongdoer for damages. A reckless or intentional common blunder isn't the result of a contract or statute. (Anonymous, 1982) That include "intentional torts," such as battery or slander, as well as torts for negligence. Where there is a duty of care and a violation of that duty causes injury, the tort of carelessness is created.

Tortious liability is defined as follows: Tortious liability results from the infringement of a duty primarily imposed by law; this duty is owed to all people, and its violation is redressable by a suit for unliquidated damages.

Law prior to the Crown proceedings Act:

Before the Crown Proceedings Act of 1947, which represented the law identifying with the danger of the Crown and its staff, there were two ancient but basic principles: (I)

The substantive law rule that the King cannot be held responsible in certain circumstances, and the procedural law rule that the King cannot be sued in his own courts. The fact that these tenets survived into the twentieth century meant that until January 1, 1948, the Crown could not be sued for wrongs that had been expressly sanctioned or for wrongs committed by Crown's servants in the course of their work.

The King can do no wrong

The proverb "The king can do no wrong" is an ancient and universal concept, but it does not mean that the King is above the law and that everything he does is morally just and lawful. According to the observer, it has two meanings. For this doctrine would completely destroy the Constitutional independence of the Crown, which is essential for the balance of Power in a free and active and therefore compounded Constitution: and secondly, it means that the prerogative is not imputed to the King, nor is he personally answerable to his people for whatever is exceptionable in the conduct (Giliker 2008) of public affairs; and thirdly, it means that the prerogative is not imputed to the King, nor is he personally answerable to his people "English law does not have any means (Voyiakis 2017) by which the King may be disciplined or forced to render restitution," Maitland explained once more. The maxim clearly said that the King did not have the authority to do wrong. His actions were injuria in the event that they were unconstitutional. In this way, the law presumes (A. L. G. & A. 1924) that what the King does by and by won't be a wrong, and that what he does by summoning his servant can't be wrong

¹⁷ ENGLISH LAW WIKIPEDIA, https://en.wikipedia.org/wiki/English_law (last visited Apr 20, 2021)

in him, even if the order is unlawful, there is in law no charge, and the servant is by and by in charge of the unlawful act. Even his own courts, King could not be prosecuted. The decision that the King could not be prosecuted in his own courts was based on the ancient precedent that a mediaeval Lord could not be held liable in his own court. The Crown's non-responsibility was the responsibility of England's social states (Van Hoecke 2011). The kings of the Middle Ages were supreme. The legislation was written in an antiquated style. The Lords honed their forces and even secured the men who had been charged with the offences. "Similarly, no Lord could be sued in the Court which he kept to try the cases of his inhabitants," Street writes, "so the King, at the pinnacle of the pyramid and subject to no other Court's jurisdiction, was not suable." "Our Lord the King can't be summoned or get an order from anybody," the King's Court proclaimed (Harlow 2002). As a result, no human organization may enforce the rule against the King under civil law. He might be a plaintiff in a lawsuit, so he couldn't be a defendant. The obvious injustice that the Crown could not be sued for the wrongs of his servant was partially alleviated by the Courts by inventing a legitimate fiction of selected respondent, in which the legal procedure was issued exclusively against the individual servant, but his guard was practically led by the Crown, and if damages were awarded, they were paid out. Government offices did all they could to make this training go smoothly, and if there was any doubt about who to prosecute, they would have the name of a lawsuit that had already been filed. This activity was dubbed "fiction respondent" by some administration offices, but the study was pigeonholed because it was refuted by some administration offices. The Donoughmore Committee recommended enactment once more, but the Administration of Justice (Miscellaneous Provisions) Act, 1933 only changed the Crown's position as a defendant, not making it liable in tort.

Liability for Breach of Statutory Duty

A claim for a violation of statutory duty differs from a claim for the reckless exercise of statutory powers. The general rule is that if the statute violation actionable, a breach of statutory duty provides a man injured in this way with a right of operation for harms. A law can specifically state whether or not a violation is actionable. The Crown's liability is limited in two ways under Section 2(2) of the Crown Proceedings Act. They are (a) the Crown is bound by a statutory obligation only if the Act in question expressly states that it is, and (b) the Crown is subject only if the statutory obligation binds persons other than the Crown and its officers. The Crown isn't obligated where the obligation just binds itself, as a result. If Street says that the last condition has no basis, he is referring to the second clause.

Can civil liability arise as a consequence of the violation of constitutional right?

The fundamental issue was whether a collective duty could arise as a consequence of the violation of a protected right, even though the fact state liability risk was introduced long before British law. *Rudul Shah v. State of Bihar* was the main case (Cane n.d.) that dealt with this issue. Rudul Shah, the plaintiff in this case, was held incommunicado for nearly 14 years. The court held that if the advocate isn't given the perfect compensation or the gross violation of his or her right to life and liberty, it would be nothing more than lip service in terms of guaranteeing fundamental rights (Gifford 2010). Following the above-mentioned case, the concept of a covered tort was used in a number of other cases, one of which was *Bhim Singh v. State of Jammu and Kashmir*. In this case, the court decided that if an individual complains that his or her lawful right has been violated, the court must compensate the aggrieved party financially.

In *Nilabati behera v. State of Orissa*, the court made the important point that sovereign immunity from state officials' tortious actions is distinct from the state's responsibility for violations of constitutional rights. As a result, the argument for constitutional redress under Article 32 and 226 against the payment for restitution of existing rights does not include the security of sovereign immunity.

Satyawati Devi v. Union of India

The Delhi High Court ruled that transporting a hockey team to the Air Force Station in a military truck to play a game is not a sovereign act. In this case, an Air Force vehicle was transporting an Indian Air Force Station hockey team to a match. When the match was over, the driver would come to a halt when his carelessness resulted in a fatal accident. It was argued that it was one of the Union of India's functions to keep the armed forces in good shape, and that the hockey party was transported by vehicle for the physical exercise of the Air Force work force, and that the Government was not obliged in this regard. The Court rejected this argument, holding that the transportation of a hockey team to play a match could not be defined as an exercise of sovereign control, and that the Union of India was thus liable for the plaintiff's damages.

Chairman, Railway Board v. Chandrima Das¹⁸

The Supreme Court ruled in this case that the State's duties include not only the defense of the country and the administration of justice, but also education, commercial, social, fiscal, and political matters. These practices have little to do with sovereign authority.

¹⁸ *Chairman, Railway Board v. Chandrima Das* ,

Saheli, A Women's Resources v. Commissioner of Police¹⁹

In the assessment of reimbursement jurisprudence in writ courts, *Saheli v. Commissioner of Police* was another watershed moment. In this scenario, Asturi Lal correctly cited the masterpiece judgement in *Vidyawati*, which was frozen by him. The state was found responsible for the death of a nine-year-old boy who died as a result of police abuse and beating. The Delhi Administration was ordered to pay Rs. 75000/- in compensation. The importance of this case is twofold: first, it revived the *Vidyawati* ratio, and second, it helped the Delhi Administration to recover money from the officers held responsible for the accident.

Result of the Study: The state in regard to the tortious act by its worker within the scope of his company and working functioning was like that of every other employer, according to a comparative analysis of vicarious liability in India and England.

VI. FINDINGS AND SUGGESTIONS

- Vicarious Liability refers to situations in which one party is held responsible for the actions of another. It is considered an exception to the general rule that an individual is only responsible for his own actions in the field of Torts. It is based on the concept of *qui facit per se per alium facit per se*, which means "He who performs an act by another is deemed to perform it himself in law." In a case of vicarious liability, both the person who orders the act and the person who performs it are held liable. As a result, employers are held vicariously responsible for the torts incurred by their workers while on the job.

- As a result, a master is responsible for his servant's actions if they occur during the course of employment. However, if anyone hires an independent contractor to do work on his behalf, he is not normally liable for any torts committed by the contractor during the course of the work, except under such unusual circumstances as discussed above.

- Any willful, careless, or improper act of a servant in the course of employment is punishable by the master. For example, if a waiter injures a customer because he was rude to him, both the waiter and the hotel are responsible for the waiter's negligence. Under vicarious liability, the hotel is responsible.

- Since in cases of work involving expertise, such as a doctor operating in a hospital, the owner of the hospital cannot advise the doctor on how to treat a patient and can only instruct

¹⁹ *Saheli, A Women's Resources v. Commissioner of Police*,

him to treat patients, the old Control test²⁰ is not valid as an exhaustive test. As a result, other tests for deciding the Master and Servant Relationship have been established.

- If a person shares a Master-Servant relationship with another person, he or she may be held responsible for the torts committed by that person. Since the servant performs the act on behalf of his employer, tort law mandates that any unjust act committed by the servant in the course of his employment makes the master liable. There have been many tests for deciding the relationship between master and servant, and the Court also uses its discretion to assess such a relationship based on the facts of the case.

VII. CONCLUSION

The material that seemed to be made subject in any of the cases previously mentioned was the State, not the legislature. In terms of the legislature, the legislative professional could be said to be neither liable nor subordinate to it. As a result, the legislature cannot be questioned about the outcomes of a faulty request submitted by a legislative expert. Insofar as the State is concerned, it is unable to advance any such request due to the statutes enacted by the Legislature. The appointment of the professional is often made either by the Statute or by an expert who has been approved by the Statute. In such a scenario, the legislative expert's action changed the situation and benefited the state. As a result, the state is held accountable. During the exercise of sovereign function, the government is liable for the servant. The state's danger for statutory experts' actions arises only when the statutory expert acts beyond his legal specialist while implying to behave according to the lawful specialist provided to him, and the act, which causes or results in harm to a man, isn't covered by the statutory guarantee, if any, found in such establishments. The Government of India may sue or be sued in the name of the Union of India, and the Government of a State may sue or be sued in the name of the State, and may sue or be sued in connection with their separate undertakings in the like, subject to any arrangements that may be made by Act of Parliament or the Legislature of such State approved by the uprightness of forces given by this Constitution. As a result, the theory is proven.

²⁰ VICARIOUS LIABILITY IN CASE OF MASTER-SERVANT RELATIONSHIP IN TORT LAW IPLEADERS, <https://blog.ipleaders.in/vicarious-liability-case-master-servant-relationship-tort-law/> (last visited Apr 20, 2021)