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Author:
Aniket Kamboj
Symbiosis Law School, Noida
1st Year, BA LL.B.

VICARIOUS LIABILITY: TORTUOUS ACTS OF DIRECTORS OF THE COMPANY**ABSTRACT**

In this article we have basically talked about what is vicarious liability, its essentials, The relationships in which the concept of vicarious liability arise and certain acts in which one can be held vicariously liable with its some examples and also some case laws are discussed with respect to tortuous acts of Directors of the company that when and when not the directors can be held vicariously liable there are even certain conditions in which the companies could be made guilty for the acts of the directors we have also talked about how vicarious liability works out in different countries how vicarious liability works in different countries basically it means a comparative study between the laws of vicarious liability prevailing In different countries , this article also contains my personal opinion of how vicarious liability is good and bad for the society even though there are some good points that favor vicarious liability but still this law contains some loop holes which are still not solved by the present laws. The Law Specifically seems to have no basis for imposing vicarious liability to the Executive Director or the Board of Directors of the Company where the guilty is the Corporation but there are still some cases in which the corporation is made guilty for the misdeed committed by the director

KEY WORDS

Tortuous acts, Directors, Corporation, liability, Wrongs, Vicarious liability

INTRODUCTION

Liability arising out of special relationship is also known as Vicarious liability, It is a kind of liability in which one person is made responsible for the wrongs done by someone else with whom he or she shares special relationship is known as vicarious liability. It does not mean that the wrong doer will not be punished he will be punished for the wrong up to which his liability

arises. When a person has a control on another person with whom he shares a special relation but the former does not fulfill his obligations that he ought to do then vicarious liability might arise. Actually, according to the common understanding one can't be punished for the wrongs of someone else but there are always certain exceptions that all come under the concept of vicarious liability.

“A person may be liable in respect of wrongful acts or omissions of another in three ways: -

1. As having ratified or authorized the particular act;
2. As standing towards other person in a relation entailing responsibility for wrongs done by that person; and
3. As having abetted the tortious acts committed by others”.¹

But there are some essentials which must be there without which the concept of vicarious liability is incomplete.

These are certain essentials of vicarious liability:

1. An established special relation between the parties is really necessary.
2. Someone else must have committed the wrongdoing.
3. The wrongdoing must occur while the employee is on his course of employment.

RELATIONSHIPS IN WHICH VICARIOUS LIABILITY ARISE

The liability can't arise without any reason, so just because a stranger to the person x committed a wrong then we can't say that x is liable; instead, For vicarious liability the special relation is necessary. So, suppose X and Y are in the special relationship then only Y will be held liable for X's wrongdoings.

There can be many special relationships which are as follows;

1. The relationship that a master shares with his servant
2. if there is a relation of an agent and a principal
3. If there are partners who own a partnership firm
4. The relationship of owner and independent contractors
5. Activities of directors of the company

¹ Singhal, K. (2014, November 8). *Vicarious Liability In Criminal Law - Academike*. Academike. <https://www.lawctopus.com/academike/vicarious-liability-in-criminal-law>

This relationship is mainly based on two legal maxims

1. “*Qui facit per alium facit per se*”: –Latin legal term which means, “He who acts through another does the act himself.” It means that if a person has work done for him or her by another person, then it is considered as he or she must have performed the deed himself.
2. “*Respondeat Superior*”: –Latin legal term which means: “let the master answer” It means that the superior should be held accountable for his subordinate's actions².

Let’s understand the relationship with the help of an example;

If X owns a jeep and Y’s work is to drive him to and from work on weekdays. As X was running late, he urged Y to speed up the jeep and help him to reach his destination as quickly as possible, and the jeep Y was engaged in an accident as a result of over speeding. In this situation, because the accident occurred during the course of work and the improper act is related to the particular relationship that is present between the two; X will be held vicariously accountable for the accident, even though he did not drive the automobile himself.

In the particular article we will mainly talk about the tortuous activities of the directors of the corporation

In their relationship to the corporation, directors serve in three positions.

As agents operating on the company's behalf, as trustees of the company's total assets, and As corporate personnel. A director is expected to behave fairly and professionally, using his thinking and carrying out his tasks as a man of his competence and expertise would. It has been described in the duties of directors what is required of him in terms of appropriate due care.

"A director must operate in the same manner as a man of affairs dealing with his own concerns with appropriate care and circumspection..."

As a result, Directors would unquestionably be held accountable for failing to do what they could have done under the circumstances

LIABILITY OF THE TORTUOUS ACTS COMMITTED BY THE DIRECTOR OF THE CORPORATION

Tortuous responsibility is a legal obligation that comes from a breach of a statutory duty. Tortuous responsibility is imposed on a director if he actively participates in the conduct of a tort or enables or advises anybody to commit such a tort. In general, a corporation is accountable for any activities performed by its directors or other officials, as long as such acts are performed in a manner appropriate to the director's position.

A director must perform the obligations imposed by law, and as long as the director performs his responsibilities, he isn't really accountable. Any conduct committed by the director in breach of

² Thakur, A. S. (2019, April 22). *Vicarious Liability In Case Of Master-Servant Relationship In Tort Law*. iPleaders. <https://blog.iPLEaders.in/vicarious-liability-case-master-servant-relationship-tort-law>

his legal responsibilities may result in responsibility being imposed only on him and not on the firm.

The business or companies are liable for the activities of the company's leaders since they act on the company's behalf and make all significant decisions related the corporation. The corporation which is being represented by them is held vicariously accountable for all of the activities they conduct while on the job that influence the company's standing or create a new connection with any another party. Directors act as caretakers for the resources of an organization, manage a company, and function as spokespersons. Moreover, the directors of corporations are held liable for the unlawful activities of the corporations.

For example, If a director makes a choice that makes the firm to lose money for a given year, the company will be unable to pay Karan. In this case, if Karan brings a lawsuit, it will be against the corporation, not the director, despite the fact that the conduct was committed by the director.

WHY THE COMPANY SHOULD BE MADE LIABLE FOR THE ACTS OF THE DIRECTOR?

It is a legal doctrine that prevents directors and other officials from being personally accountable for the company's debts and other obligations by isolating a corporation's character from the characteristics of the persons who work in it. The corporation has a veil or some form of cover that conceals the individual members while holding the firm answerable as a collective. So, when an action is filed, the firm is a party to the complaint and is liable even though the conduct was performed by actual members. Illustration: Daffy and Pelly work as directors for Gn Private limited the corporation fails to pay taxes for third year in a row, and the tax agency plans to bring a recovery suit. In this case, the claim will be launched against the corporation rather than the directors.

SITUATIONS IN WHICH THE COMPANY CANNOT BE HELD LIABLE FOR THE TORTUOUS ACTS OF THE DIRECTORS

1. If the company's acts are improper or fraudulent Manner.
2. The court may hold the directors accountable if they engage in wrongful and illegal activities in the company's name.
3. If Company's creditors incurred an unfair cost.
4. If any third party with whom the company transacted business is left unsettled, resulting in losses and needless expenditures, the court may declare it to be the liability of the director.
When there is no separation of powers between the company and the director

If the directors don't really create a boundary between the company and themselves, which is particularly common. If the directors are doing personal business under the umbrella of a fictitious corporation, the court may order that the directors be held accountable.

SITUATIONS IN WHICH ONLY THE DIRECTORS ARE RESPONSIBLE FOR THEIR ACTS

1. When the director's action goes beyond his authority.

This signifies that the director behaved beyond the jurisdiction, i.e. not during the course of his job or in a way in which he was not permitted to act.

In such a circumstance, if the director acted beyond the scope of his powers and responsibilities and caused injury to a third person, the firm would never be made responsible for the director's actions.

2. When the directors do not perform their functions properly

When the directors behave in a way that does not accomplish their obligations and tasks, the directors are held accountable, not the corporation. If the director acts in line with his obligations, he is protected by legal precedents, and the corporation is held vicariously accountable for his actions. If the director fails to discharge his obligations, he is subject to a penalty and is penalized by a fine of not less than one lakh rupees which may extend to five lakh rupees.

3. When the directors does any illegal acts

If the director acts illegally and falsified the corporation the director would be held individually accountable for his actions, but the corporation would not be held guilty. This covers situations in which the director commits a breach of trust or an act of willful misconduct.

4. When directors are unable to perform their functions owing to negligence

If a director behaves negligently or recklessly, or if his activities are not in the interests of the corporation, or if the director's conduct is motivated by selfish enrichment, the company is not vicariously accountable

JUDICIAL INTERPRETATION

1. IRIDIUM INDIA TELECOM LTD. V. MOTOROLA INC., (2005) 2 SCC 145

The Supreme Court ruled in the landmark decision of Iridium India Telecom Limited v. Motorola Inc that corporate entities may no longer claim immunity from criminal punishment on the grounds that they lack mens rea. As a result, the conduct of the alleged directors of the company was clearly related to the company's business, making the corporation legally accountable under both common law and statute law. In India, it is widely accepted that, although being a legal person, a corporation is accountable for its acts and failure to act that lead in the commission of a criminal offence punishable by law.

2. SUNIL BHARTI MITTAL VS CBI AIR 2015 SC 923; (2015) 4 SCC 609

Without a question, a corporate entity is a fictitious person who operates from its employees, directors, chief executive, chairperson, and so on. If such a firm violates the law involving mens rea, the purpose and activity of that individual acting on behalf of the corporation must ordinarily constitute the purpose and activity of the company. It would be much more so if the horrific crime was one of conspiracy. Simultaneously It is a fundamental premise of justice system that there is no vicarious liability except if the legislation expressly states otherwise.

3. MAKSUD SAIYED V. STATE OF GUJARAT (2008) 5 SCC 668

The Law Specifically seems to have no basis for imposing vicarious liability to the Executive Director or the Board of Directors of the Company where the guilty is the Corporation. If the legislation raises the possibility for vicarious responsibility, the Managing Director and Director would be liable. Laws must unquestionably include provisions addressing such vicarious liabilities. Even for this purpose, the complaint is required to present the necessary claims that would draw the clauses creating vicarious liability.

VICARIOUS LIABILITY IN UNITED STATES

In the United States, vicarious liability exists.

This is often used to offences that do not necessitate criminal intent, such as those that have an impact on public welfare but do not necessitate the imposition of a jail sentence. The concept is that in such instances, the public interest takes precedence over personal benefit, and so vicarious liability is enforced to discourage or provide opportunities for employers to implement harsher standards and more carefully oversee employees. In *Commonwealth v. Koczwar*, the defendant was the licensed owner of a bar that was found to have served alcohol to minors. When implemented vicariously, the infringement became one of strict or absolute liability due to the need to safeguard poor and disadvantaged people, and the exclusion of words such as "deliberately", "purposefully", or "intentionally" in several of the violations demonstrated an intent of the law to allow for this possibility³.

VICARIOUS LIABILITY IN ENGLISH LAW

The principal exemption derives from legal principles, at which verb used to characterize the action in the actus reus involves both the individual's physical activity and the company's legal proceedings. For example, "driving" is essentially a physical action carried out by the person behind the wheel. However, when a cashier accepts money in exchange for products, this is just the physical activity of selling. In order for items to be sold, the owner must transfer legal ownership to those goods. In the absence of this, the consumer would commit the actus reus of stealing. As a result, the owner sells the items while the employee collects the money. Therefore, just the owner of rights may provide a license to another or allow someone else to do something that might otherwise be forbidden. Most of these are strict liability or regulatory offences, but the

³ Wikipedia contributors. (2020, August 18). Vicarious liability (criminal). In *Wikipedia, The Free Encyclopedia*. Retrieved 13:51, February 12, 2022, from [https://en.wikipedia.org/w/index.php?title=Vicarious_liability_\(criminal\)&oldid=973630196](https://en.wikipedia.org/w/index.php?title=Vicarious_liability_(criminal)&oldid=973630196)

notion has been applied to impose responsibility on a wide range of industrial or business operations.⁴

CONCLUSION

To conclude we can say that there are a lot of special relationships in which a person can be held vicariously liable for the wrongs of others. It is an exception to the rule of torts that the person can be held liable for his or her wrongs only. The person who has to be held vicariously liable must be superior from the wrongdoer. Only lawful behavior counts in the course of employment. The third person can't be held for any illegal activities. Observing the above information we can say that the concept of vicarious liability is very necessary for the society to function properly so that there is a balance between the employee and the employer even though some people use it for their personal gains or for destroying someone's reputation but still there is its positive side on which we can look upon. In my point of view of analyzing the whole concept of vicarious liability we come to know that it's very important for our country as a whole because if this concept isn't there then the Corporation/employer/master/owner they will get rid of their liability and all the burden will be on employee. Real fact is whether vicarious liability was meant to make individuals and bigger companies answerable as well as to assure that one or the other is made responsible for injustice caused to victims. The disadvantage of vicarious responsibility is that it can result in useless, dumb, and unjust judicial proceedings being brought over workers, businesses, and perhaps other fairly harmless or unknowing persons.. It is back drop of this rule that even if the person had left his job then also he becomes the liability of the company for any wrong done by him during he was doing the job in the company, It not only annoys the company's customers, but it also harms the company's reputation. When we think about vicarious liability it is very questionable to when vicarious liability should and should not stop. Sometimes people may file the case for just harming the clients or customer of a particular company. So the courts must look upon the cases of vicarious liability at a very depth because these sort of cases may lead to permanent loss to reputation of the the principal/master/employer or owner.

⁴ Wikipedia contributors. (2020, August 18). Vicarious liability (criminal). In *Wikipedia, The Free Encyclopedia*. Retrieved 13:51, February 12, 2022, from [https://en.wikipedia.org/w/index.php?title=Vicarious_liability_\(criminal\)&oldid=973630196](https://en.wikipedia.org/w/index.php?title=Vicarious_liability_(criminal)&oldid=973630196)