

# The Concept of Vicarious Liability under the Indian Contract Act, 1872

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**ABSTRACT:** *The paper initially begins by defining the term “vicarious liability”. Vicarious liability is a case wherein the unlawful behaviour of a third individual is always considered ramblingly accountable by one of the parties. In the cases whereby the person is expected to be accountable for a third person and is negligent in aiding out that obligation and administering that authority, vicarious liability may develop. Further, the paper moves onto discussing about the constituents of vicarious liability along with its exceptions and the perspective of Indian judiciary on the same. An employer may, for example, be found answerable for an employee's unlawful actions, such as victimization or employment discrimination. If an individual uses equipment and vehicles in a reckless or improper fashion that results in harm to properties or personal damages to the company, an employer may still be found answerable. In common, an individual is answerable for his own unlawful activities and no accountability is experienced for the deeds committed by others. That being said, in some conditions, vicarious liability, that is, one party's accountability for the act of another party, may occur.*

**KEYWORDS:** *Actions; Accountable; Conduct; Liability; Vicarious; Wrongdoing.*

## INTRODUCTION

Vicarious Liability compacts with circumstances in which one party is answerable for others actions. In the area of misconduct, an exception rather than the rule of thumb is known to be because the person is accountable only for his own activities. It is founded on the notion of *qui facit per alium facit per se*, which means, "He is considered by law to do it alone who does an act through another." Therefore, both the individual, at whose direction the act is executed and the person who executes the act are answerable in a case of vicarious liability. Companies are also vicariously answerable for the wrongdoing of their workers performed mostly during period of jobs[1].

Indeed, a wage earner and an agent are appointed to execute some of the company's jobs, but the legitimate arrangement that the company has with them contrasts. A wage earner is hired underneath a service agreement, while an individual employee is hired underneath a service contract. The company's accountability for the mayhems executed by his worker is more burdensome than his accountability for the mayhems executed by an individual employee. If, in the course of his work, a slave performs a terrible crime, the manager is responsible for it. The worker is still responsible, of course[1].

The unreasonable activity of the wage earner is also considered to be the action of the owner. The notion of, the master's responsibility for his slave's action is focused on the ‘dominant maximum response’, which implies ‘let the boss be responsible’ and places the owner in the same place as if he had executed the act itself. It also draws connotation from the proverb “*qui facit per alium facit per se*”, which indicates that “he who acts through another is considered to go through it alone by law.” Because the owner may also be found answerable vicariously for the prejudice committed by the worker, the claimant has an option to bring a case towards one or the other of them[2].

Their duty is shared while they are known as mutual wrongdoers. Due to its larger account as well as the opportunity to transfer on the accountability of compulsion by compensation, the explanation for the ‘maximum answer dominant’ seems to have been the tougher spot of the owner to satisfy the statement. Even if the worker acted against both the explicit order, and for no advantage of his owner, the obligation occurs[2].

Vicarious liability is a lawful concept used to define the statutory obligation that a person can have for harm-causing acts, even though they are not the person that caused the destruction specifically. Vicarious liability, often referred to as ascribed responsibility, claims that even if the behaviour cause damage to the other individual, any person who is in an official legal arrangement with yet another person is possibly answerable[2].

Vicarious liability is a term which is coupled with vicarious and liability components. Vicarious implies encountered or felt by watching and reading someone else do anything really instead of doing it yourself. And, responsibility implies the fact of being liable for doing something lawfully[3].

Vicarious may then be characterized as a term often used strictly to impose accountability on a party who is not principally answerable, that is, not even at risk. Vicarious responsibility is not a misdeed. It simply means that one person is responsible for the wrongs of someone else. The boss is responsible for his worker's wrongdoing. This responsibility only exists if the worker is behaving in the context of his or her work[3].

There are a number of cases in which vicarious responsibility can be attributed to a party. For instance, as a consequence of the reckless functioning of a delivery truck, a contractor may be responsible for an error made by a worker. Sometimes, parents can be considered vicariously accountable for their toddler's acts or omissions[3].

Where only an obligation of responsibility enforced on a worker has been violated, vicarious liability can be identified, although the complainant can not specify which worker has violated it. A contractor, then, would not avoid blame if it is not possible to locate a single employee of his who was accountable for the violation. In the case of *Roe vs. Minister of Health*, it was alleged that wherever the plaintiff developed wrongdoing on the part of one or more of the staff of the defendant's hospital, regardless of the fact that the plaintiff could not demonstrate which of the staff had been incompetent, the prosecutor entity was vicariously responsible. Connections amongst manager and worker, wrongful act of neglect performed and within the scope of employment are the three main components that really need to be identified and treated[4].

Underneath the doctrine of vicarious responsibility, one party is held liable for another's misconduct. The vicarious liability principle is sometimes recognized by the form of mutual responsibility. For both state and federal law, vicarious liability will happen. Such a responsibility exists only if there is a certain legal agreement between the two parties, or if the parties are related to one another in any way[4].

Within criminal procedure, if he is a participant to the crime, one individual will also become responsible for another's action. For e.g. even if the driver did never get out of the vehicle, a driver of the vehicle who enters and robs a bank would still be responsible. The theory observed in criminal procedure is that, even if the actus reus was performed by any other individual, a person can be found accountable as the primary perpetrator. The one who, on the advice of another, commits the action would not be declared innocent and therefore will be held responsible[4].

While the principle of vicarious liability is typically limited to civil law, it is also relevant to criminal prosecutions in certain special situations. In compliance with Section 149 of the IPC, if any individual of a disorderly conduct performs any crime in order to accomplish a collective purpose, each representative of that disorderly conduct shall be held responsible for that crime[5].

Section 154 of the IPC refers to the tenants or owners of a house. If that tenant or holder, or any individual possessing a stake in a patch of property, fails to notify the appropriate government body of the illegal gathering of that patch of property, or fails to take the required action to take effect on that patch of property, those actions shall also be found accountable. The responsibility is fixed under the premise that the holder or tenant of the land is the one who would be able to regulate the events that take place on their lands[5].

Section 155 also makes an individual vicariously responsible for the negligence of their administrator or management to the holder of the estate if any action takes place on the estate and the administrator or management does not prohibit unlawful actions on their estate from taking place. Section 156 establishes

personal responsibility on the administrator or management if the actual property is subject to any unlawful activity[5].

Vicarious liability may be characterized as responsibilities under which a party is held responsible for an act carried out by someone else. In the area of negligence, an exception rather than the rule of thumb is presumed to be something a person is responsible only because of his own actions. In order for an individual's responsibility for somebody else's action to occur, there ought to be a specific relationship that exists between both the parties and the malicious program. This should be linked to their friendship[5].

There really is no specific provision underneath the Indian Contract Act on the words 'vicarious liability'. However, these terminology including 'principal', 'agent' as well as separate clauses related to the principal - agent and also their responsibilities and obligations are specified by the Law. Such rules are mentioned in sections 182 to 238 of the Law. It also makes provisions on the essence of the arrangement between principal - agent, and even some extending all principal - agent responsibilities[5].

Within section 183, the Code outlines that no individual can become an agent until he meets the age of consent and also has a functioning brain. In Lord Chelmsford's terms, "it has already been established by the government that an owner is liable to the third party for just about any loss or death due to the carelessness or experience and level of a worker working in the employment of his owner." The explanation is that any act committed by the worker in the process of his duties is considered as performed by the command of his owner, and it is thus same for as though it were the behaviour of the mentor'[5].

It's indeed necessary to the manager to demonstrate underneath the Contract Act if the offense done by his representative doesn't really fall under the scope of their principal agent agreement and if he fails to support so, he would be found accountable underneath the context of vicarious responsibility for the act performed by his representative. There are separate instances in India concerning crimes carried out by the employee and the manager is responsible for the very same[5].

## DISCUSSION

Each individual is answerable for actions, the individual performs and is not responsible for the acts of someone else, but is regarded as vicarious responsibility in such cases where a person is responsible for the acts of yet another individual. Therefore, for something like this to occur, there has to be a certain kind of partnership between all parties and the action must be related to the partnership. Such encounters may be between the manager and the subordinate or the leader as well as the handler[6].

So, vicarious liability just relates with the case where the party is responsible for the actions of every other entity. It is treated as an exception to rule of thumb that the man is entirely responsible for his actions. Vicarious responsibility is founded on the "qui facit per alium facit per se" theory, which implies "he who acts by another is considered to go through it oneself" by statute. A slave is only an employee that his boss monitors and supervises. The slave, then, operates as per the boss, which suggests that he works the same way the boss wishes the job to be completed. The responsibility for the conduct of the slave, however, has to be the master's. The boss still retains the benefit gained by the slave's actions, but he often has to suffer the damage incurred by the slave's action, but just in the scope of business[6].

The manager is financially secure relative with that of a slave. The boss is, however, more eligible to compensate for the loss incurred by the slave's tort committed. But to protect themselves from certain circumstances, the bosses are required to take fair notice and safeguards[7].

The tort rule that holds one party liable for the inability of someone else from whom the individual has a unique bond (like children and parents, boss and worker, or car owner and chauffeur) to practice such caution as would be used under comparable circumstances by a fairly conscientious individual[7].

Vicarious responsibility is a legal concept that transfers blame for a harm to a person that seems to have a clear legal connection with the individual who has behaved unlawfully, but who hasn't even caused the accident. That is sometimes alluded to as Liability Imputed. The bond among parents and kids, married

couple, holder of a car and driver, and boss and worker are civil relationships that may contribute to assessed incompetence. The sole fault of one individual is not usually attributable to some other individual[7].

The "let the owner reply" theory of response supreme is focused on the relationship between employer and employee. In regard to some of those to which the worker owes a duty of care, the doctrine holds the employer liable for a loss of treatment on the part of the company. For supreme responsiveness to exist, the neglect of the worker must exist inside the context of her work[7].

The company is threatened with civil liability for the worker's incompetence because the worker is deemed to be a company's representative. The contractor will be found liable for negligence where a wrongful action is performed by a worker behaving inside the common outline of her or his work. For instance, if a gasoline distribution driver hits a red light on the way to a petrol station and hit another vehicle, causing harm, if the operator is proven to be incompetent, the gasoline delivery service will be responsible for the losses. Because if the operator is incompetent, the corporation will necessarily be held guilty, the better response is a type of Strict Liability[7].

The attribution of responsibility to the proprietor of a vehicle is yet another prominent example of assessed carelessness, where even the driver of the vehicle has perpetrated a neglectful offence. The family car principle has also been marked this form of connection. The theory is based on the idea that a vehicle for the family's use is provided by the head of the family and, thus, the driver of the car serves as the owner's representative. For instance, when a baby operates a vehicle registered with a parent for a personal reason, the parent is liable for the children's careless actions at the wheel[7].

It is also possible to ascribe blame to a holder of a vehicle who loans it to a neighbour. Here, the vehicle's operator is working as the boss's representative. If the proprietor is badly hurt by the carelessness of the operator and decides to sue the operator, the proprietor can lose the case since this driver's wrongdoing can be attributed to the proprietor, yielding him irresponsible. This term can be defined as assessed neglect in contributions[8].

There is a large amount of grey ground around what defines "damage." In some cases, behaviour may be undertaken that damage a corporation's customers and clients. In the interest of, on request of, and under the control of, the business in question, third-party vicarious issue can arise if it can be shown that a client or customer has been hurt[8].

It is necessary to remember that a company can still be held vicariously responsible for the actions of a worker for a while after the accused individual employee retirement. When vicarious liability does, and does, stop, there is still a significant amount of legal grey area about[8].

Responsibility where one man, itself guiltless, is considered responsible for the actions of another individual. By respect to specific Latin maxims, the rule is sometimes acceptable: respondeat superior ('let the owner response') and qui facit per alium facit per se ('he who works by themselves by some other offence'). It is now recognized as a policy issue, transferring the responsibility of injury expenses to someone who is more likely to be willing to compensate. The much more commonly used instance is the responsibility of the employer to his worker. In particular, though, there really is no responsibility for an unpaid volunteer, such as a cab driver or a removal company. The standard rule is that even the actions must be 'in the course of its operations' in order for there to be vicariously liable with regard to a worker, that does not leave out the worker's incompetent or even intentional wrongs, but prevents situations where the staff member has been on a romp of his own. Lately, nevertheless, the House of Lords has acknowledged that there could be a responsibility if there is a 'close link' to the job of the boss, even though the individual employee behaviour is incorrect and unexpected, as in one case when a bouncer returned home to get a gun to assault a supervisor and then in another case of child violence by one of the workers in a toddler's guesthouse[9].

The previous opinion was that an organization should not make a fraudulent mistake. But in the current situation, the perspective has shifted. A company has a distinct legal body and is an arbitrary human. Yet it can't run on its own, via its agents it operates. Thus, if a corporation that lawful commits any act, its employees are prosecuted and therefore the responsibility is inherently voyeuristic. An organization is not

allowed to commit offences such as robbery, assassination, fraud, etc. But it has been accepted that an agency can conduct acts that have nefarious liability[9].

The very same situation prevailed in India until 1967, too, and the government could not be prosecuted over the actions of its employees. But in the landmark judgment of the *Superintendent and Remembrance of Legal Affairs, West Bengal v Corp. of Calcutta*, the Court ruled that, since the full implementation of the Constitution, the rule that the Government is not constrained by any legislation is not the rule of the country. Judicial and criminal laws are now accessible both to individuals and to the administration. In the matter of *Saheli v, Commissioner of Police*, the Court had ruled that the principle of diplomatic immunity is not consistent with the development of the rule and that it is therefore necessary to make the Constitutional System and the Government responsible[10].

The contractor is accountable for the actions committed by his worker in the process of the job. And if the actions were carried out according to the licensee's orders, he would also be found responsible. This proposed rule was made explicit in the matter of *Emperor v. Magadevappa Hanmantappa*. Under the Indian Explosive Act, 1884, the suspect had a permit. The Act specified that all weapons should be made away from a habitation. This should be achieved in a building designed specifically for the purpose of development. The worker took some stuff from the warehouse one day to try out a certain production process. There was an accident at the moment. The suspect was contended responsible for doing the same[10].

Just at core of all statutory tort legal systems exists the ideology of vicarious liability. It is not a misdemeanour, but a policy of liability that makes the employer guilty for the wrongs committed by another. The classic case is that of the contractor and the worker: the company is strictly responsible for the fault of its workers if they are incurred during the occupation of the claimant. In certain cases, not just because with his own unethical act, but also because of his association with the claimant, blame is placed upon the contractor[10].

The law of vicarious liability can be attributed directly from the popular principle of "*qui facit per se per alium facit per se*," meaning that the action itself is committed by one who performs an act by another. Thus, even if he is ignorant of the deed, a manager would be held responsible for the actions committed by his worker. However, anyone who hires a vendor to fight for the rights of that individual is not liable, other than in such special circumstances, for any crime performed by the employee in the process of doing the job[10].

The creation of a partnership between the principal and the agent is solely dependent on the confidence that the leader has in his assistant. The action contributing to strict liability, then, obviously corresponds to the assistant's breach of the faith. Therefore, representatives are cautioned not to conduct all such operations that lead in an act that makes their leader accountable. In another side, the manager must still be really concerned about his assistant's actions, so that even if he discovers that the employee is not qualified to resume his job, the manager will take some steps to terminate the employee from operating for the manager[10].

Such automatic firing is not feasible in businesses, since there are undoubtedly other concerns surrounding the hiring and dismissal of workers. In these situations, businesses should follow stringent rules on the workers' code of ethics and their jobs so that they are prohibited from doing certain actions that render the higher official accountable[10].

The Vicarious Responsibility Concept may also be pointed to as the foundation of the tort scheme of civil law. It serves as a protection provision for the subordinate, who serves for their commander's unjust action that actually adds to the illegal acts within tort law. Broadly speaking, it is the idea that the individual is liable for both the unjust actions committed by himself and that no one will incur the blame for his actions. Yet one party may be held responsible for the conduct of the other in some conditions, and this is where the principle of strict liability falls[10].

Contributory infringement, under civil law, is a type of direct, legal responsibility. Vicarious liability is a legal principle of obligation that encourages the jury to keep an individual responsible for the actions of

another, also recognized as collective responsibility obligation. Human beings may be held indirectly accountable for an illegal act by another under such a theory, particularly though they simply contributed to encourage the offense in certain way, such as supporting and promoting illicit acts[10].

In the sense of common law, this also happens. Contributory infringement attributes blame, or criminal penalties, to an individual in a criminal case for unjust actions taken by somebody else. Under criminal procedure, this methodology is regarded to be inherently defective since it is founded on "respondent superior" concepts which affect the allocation of damages incurred by wrongful actions. The article reflects largely on the vicarious responsibility of the government of serious crimes, as well as of businesses[10].

Vicarious liability is a legal principle of accountability that encourages the jury to keep an individual responsible for the actions of another, also recognized as shared responsibility obligation. Human beings may be held indirectly accountable for an illegal act by another under this theory, particularly though they simply contributed to encourage the offense in certain manner, such as supporting and promoting illicit acts. This also happens in the sense of civil law, in job situations, for instance. Contributory infringement attributes blame, or criminal penalties, to an individual in a criminal case for unjust offenses done by somebody else. Under criminal procedure, this theory is deemed to be inherently defective since it is founded on the values of the experienced professional that affect the allocation of damage incurred by defendant's conduct[10].

## CONCLUSION & IMPLICATION

Vicarious Responsibility deals with situations in which one party is blamed for another's actions. In the area of misconduct, an exception to the rule of thumb is known to be something a person is responsible only because of his own actions. It is founded on the concept of *qui facit per alium facit per se*, which says, "He is considered by law to do it oneself and does an act through yet another." Therefore, both the individual for whom request the action is committed and the individual who executes the action are responsible in a situation of strict liability.

Workers are also indirectly responsible for the wrongdoing of their workers performed mostly during period of jobs. In fact, for A to be liable for the conduct committed by B, there must be a particular type of person partnership between A and B, and the unlawful act must be related to that partnership in a certain manner. So, if the act is committed in the course of the project, a boss is responsible for the actions of his slave. But if someone uses an independent consultant to do tasks on his behest, he is not normally liable, except under certain special circumstances, for any damages incurred by the contracting company in the duration of the performance of the project.

Thus, the worker and individual employee are both under terms of service and contract of sale. The conventional view to differentiate between both the two was primarily that of the control measure. But this is not an adequate measure in current situations, because there is no standardized study. Only by combining various considerations with the assistance of multiple measures, such as: the essence of the job test, the "essential aspect of the market" test, the distribution of financial risk/economic reality test/multiple test together with the control experiment, will the essential result be obtained.

Nonetheless, it is a concept at conflict with the conventional emphasis of negligence on general concepts of individual liability. A simple definition of tort law, historically known as 'the legislation of public nuisance' can be summarised as holding the wrongdoer responsible for doing a wrongly that has caused injury to the next. In context of retribution, a rather more nuanced theory may be asserted: Restorative justice is the principle that responsibility rectifies the wrong done upon other by one individual. Vicarious liability removes this causal connection.

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