

LIABILITY

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Introduction: -

Object of Doctrine of Liability is to maintain civilised society. If an intention is to be a determinative factor for imposing liability, it is not only an intention but also negligence interference could result. Then it is necessary that wrong does shall repair the damage unless and until he establishes the privilege or a liberty to do so.

After independence, Since State is a biggest employer, or social welfare state, it is the duty of the state to provide social security, to those entire employee in various industry.

It is the task of the state as being social welfare state to provide safety measure for those employed in private industry.

Some statutory provisions are made with intend to provide social security. Therefore it is called as social security legislation e.g. labour laws, Workman compensation Act, and Employer's state insurance Act (ESI) Provident fund Act.E.g. A carpenters while doing his work he went to meet his friend and there accident happened. Even if it is during the course of employment but out of employment. Therefore employer was immune from the liability.

Doctrine of Notional extension:- This phrase evolved by S.C. to give wider scope to” in the course of and out of the employment.” **"Saurashtra Salt Manufacturing Co. v. Bai Valu Raja"** the fact was that workers were required to travel to go to the place of employment. One day while travelling by boat, that boat was dropped into water. Issue come up that whether that accident occurred in the course of employment.

S.C. rejected the contention of the company that the accident was not occurred in the course of employment. and held that premises could be extended to symbolically because the worker were going to that company, therefore company shall not exempt from Liability.

Tortious liability: -

doctrine of liability in relation to person or property went on to change throughout the world. In tort- No one could commit an aggression upon a person or property otherwise he has to pay damages. Even state is not exempt from the liability. Indian constitution itself contained u/Art. 300 That liability in tort could be imposed on state.

Liability in relation to person: -

A Matter of defamation wherein defamation is two way

1. Libel
2. Slander

defamation is jeopardising one's status or reputation by verbal (slander) or in written (Libel) then Liability could be imposed.

U/Art.21 of the constitution- right to life include live with dignity, therefore the defamation, which is an intentional aggression of a person which is liable to imposition of liability, unless he has a privilege to do so.

e.g. parliamentarian can enjoy certain privileges to speak whatever inside the house they are not subject to any imposition of liability.

Assault and battery. Both cause a kind injury to a person. Assault is only a kind of threat attempt to hurt while battery- there is actual physical injury. In both the cases liability could be imposed.

In malicious prosecution: Alleged accused has to prove how that prosecution is Malicious, then also it amount to imposition of Liability.

"R. Rajagopal v. State of T.N."(Auto Shankar case)

U/Art. 21 citizen has right to safeguard the privacy of his own, his family etc. none can publish anything without his consent whether truthful, *laudatory* or critical. But right to privacy can claim only by an common person and not by know or famous person.

Strict Liability: Justice Blackburn in **Ryland v. Fletcher, (1868) 3 HL 330.**

(Water Reservoir's case) evolved this doctrine of Strict liability. it was held that respondent is liable whenever respondent bring something and kept in his custody which is not dangerous in nature, but it escaped from his custody and caused damage to plaintiff then respondent is strictly liable to pay damages because it is a lapse of duty though it is not intentional, standard of care is to be taken. this is called strict liability. **But there is certain exception to this:**

1. **Vis Major (Act of God):** i.e. earthquake, flood, Natural phenomena/ calamity. In such cases the owner of the things which is escaped from his custody, is not liable

2. **When plaintiff himself or any third party is responsible for such escaped.**

Whenever doctrine of strict liability applied, this is to be applied with these exceptions.

M.C. Mehta and Another v. Union of India and Others

(oleum gas leakage case)

S.C. went ahead and held that where an enterprise is carried out hazardous and inherent dangerous activity and harm caused to anyone on account of an accident while in operation of inherent dangerous substance i.e. escape of toxic gas then that enterprise is absolutely liable for that and such liability is not subjected to nay exception

Liability is not strict but an absolute wherein no such exception to their there is no defence available. it is not only limited to the industry but it extended to outside the society who is affected due to such accident.

S.C. did not stop here and went ahead held that compensation to be paid shall not be mere compensatory rather damages shall be exemplary and depending upon the capability had the enterprise i.e. richer the enterprise. High amount of compensation.

But having done this great job, this judge did not applied the rule in the given case itself. Therefore there is no precedent binding to

prospective court, C.J. Rangnath called it as massive obiter while Upendra Bakshi called it as grant obiter,

Transformation from strict liability to concept of absolute liability. The main deference that between these two is that-

1. In **strict liability** substance may not be dangerous in nature but **in absolute principle** substance is. itself dangerous or hazardous in nature.
2. **In strict** compensation could be merely compensation but **in absolute** it depends on the capacity or Magnitude of the enterprise.
3. **In strict liability** occurs when accident happens within the premises But **in absolute-** premises extended symbolically.
4. In **strict liability** impose with an exception but **in absolute**, there is no exception, enterprise is absolutely liable.

"Union Carbide Corporation v. Union of India"(Bhopal GasLickage case)

In this case due to Methyl Isocyanate (MIC), a highly toxic gas lickage, several people lost their eyesight some become handicapped, several people went died, several loss their limbs or lives .This was the worst industrial disaster in the history of industry.

State took a responsibility to claim the compensation from the U.C. C. L. a Multi-national company

Since it is a multinational company proposed compensation was 820 million dollar. But negotiations came down from 820 to 470 million dollar.

After that case. Statutory liability was created which was **Public Liability Insurance Act, 1991**.

The person beyond the enterprise who suffered, they are also liable to get compensation by the enterprise. This was applicable only to outside the enterprise and society at large while Workmen Compensation protects the workman inside the enterprise.

This is an attempt made by the state to protect society at large. But state is also not exempted from liability.

Sir B. Peacock in Peninsular and Oriental Steam Navigation Co. v. Secretary of State, 5 Bom H.C. R. App 1.

Court stated if state acted with their sovereign function then there is no liability on the part of state. But that function is non-sovereign then state is liable.

But in **AIR 1962 SUPREME COURT 933 "State of Rajasthan v. Vidhyawati"** S.C. altered above principle and held that state is liable u/Art. 300(1) even if that function is sovereign or non-sovereign.

In **Khatri V.State of Bihar 1981 (Bhagalpur blinded prisoners' case)** S.C. directed that compensation to be given to the victim, who were blinded by the police in Fake encounter.

In **Rudul Shah V. State of Bihar 1983**- Supreme Court directed to Bihar government to pay compensation of 35, 000 to Rudul shah who had remain in jail for 14 years even after his acquittal

In **Bhim Singh V. State of J & K 1985** - 50,000 awarded to the petitioner a MLA who was prevented from attending session of the legislative assembly. He was arrested and detained in police custody.

In **Saheli v. Commr. Of Police AIR 1990** the S.C. directed the Delhi administration to pay Rs. 75,000. As exemplary compensation to the mother of a 9 yrs. Old child who died due to beating by the police officer.

In **Nilabati Behra V.State of Orissa** , 1993, S.C. created new Law held that Right to get compensation is fundamental right u/Art 21. In this case S.C. awarded compensation Rs. 1,50,000 to the mother the deceased who died in the police custody due to beating.

In **Charanjit Kaur V. Union of India AIR 1994** the S.C. awarded a widow of a deceased army officer, died in service due to negligence of army officers, a compensation of Rs. 6 Lakhs.

In **Bodhisathwa Gautam V. Subhra Chakraborty (1996)** the compensation was awarded to a lady against her husband. As an interim compensation of Rs 1000/- to that lady, victim of rape until the charges of rape are decided by the trial court.

Since the right to compensation is fundamental right under part 3 which is only available against state. But in this case it was awarded against her husband as, a private person.

In Chairman, Railway Board V. Chandrima Das AIR 2000 – a Bangladesh lady, was waiting in Railway platform she was raped by Railway employees. Contention raised was that as she was a foreigner, she has no right to claim u/Art. 21 right to compensation. But court held that there is no boundary to the person who was the commuter of the crime

In that sense the criminal liability in Bodhisattva and Chandrima Das was felt upon the crime committer. They are not exempted from the liability.

Therefore we may say that the main object behind to impose liability is to provide general security.

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