Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

An Empirical Study on Liability in Torts –A Critical Analysis

Dr.P.Angayarkanni[1]

ABSTRACT

Tort is a civil wrong that causes harm to another person by violating a protected right. The specific rights protected give rise to the unique "elements" of each tort. A Court imposes liability for torts to compensate an injured party for an act or an omission.Unfair act implies any demonstration, error, or exclusion disregarding the law, particularly the common law of torts. Improper demonstration curtails the privileges of another to his/her harm, except if it be done in the activity of an equivalent or unrivaled right. Generally liability arises from breach of duty but in the primitive period, liability was based more on a desire on the part of the aggrieved, in taking revenge on the wrongdoer. Later this jurisprudence based on taking revenge, upon the wrongdoer was changed to the idea of refinement. The Indian Judiciary attempted to endeavor following the Bhopal Gas Tragedy, December, 1984 (Union Carbide Company versus Association of India) to uphold more noteworthy measure of assurance to the Public. The Doctrine of Absolute Liability was subsequently advanced in Oleum Gas Leak Case and can be said to be a solid legitimate device against maverick partnerships that were careless towards wellbeing dangers for people in general. This legitimate convention was substantially more dominant than the lawful Doctrine of Strict Liability created on account of English tort law Rylands v Fletcher [1868]. This implied the defaulter could be held obligated for even outsider mistakes when the open was at a practical hazard.

Total risk is utilized for certain administrative offenses in which it is vital for people occupied with conceivably risky or unsafe action to practice the outrageous.Absolute Liability has no exceptions, it implies that a person cannot avoid liability on the ground that she or he acted under a reasonable mistake of fact that the act was done with innocence. This study focuses on the importance of various liabilities under the torts and the remedies available to the aggrieved party by the acts of defendant. The aim of the study is to provide relief to injured parties for harms caused by others, to impose liability on parties responsible for the harm, and to deter others from committing harmful acts.This study uses SPSS

[1] Associate Professor , Saveetha School Of Law, Saveetha School Of Medical and Technical Science [SIMATS], Saveetha University, Chennai-77,

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

software to analyze and present the data collected from the frequency table,cross tabulation, chi square test. The conclusion is that the aggrieved party does not have to prove that the defendant was negligent in order to win a claim of damages. The sample size of the respondents through survey is 1827. Since the value is less than0.05, the null hypothesis is rejected and there is significance between the respondents profile and the various liabilities available under torts.

Keywords: Strict Liability,Absolute Liability,Vicarious liability,Damages,Aggrieved party, Torts.

INTRODUCTION

Under torts the strict liability is a concept that makes a litigant responsible for hurt caused by their product or activities notwithstanding fault. Strict liability is imposed when a defendant infringes the legal right of another person. As legal rights differ in character, there are two different categories of strict liability: conduct-based strict liability and harm-based strict liability. Contrary to Strict Liability,Absolute liability makes the wrongdoer liable for the damages and consequences caused to the plaintiff even in the absence of intention and there is no negligence on his part.In cases of Vicarious Liability,under joint and a few risk or all aggregates, an inquirer may seek after a commitment against any one gathering as though they were together at risk and it turns into the duty of the litigants to deal with their particular extents of obligation and payment. Tort law has historically provided the principal mechanism for remedying harms to the environment. The complexities of modern environmental harms and the actual or perceived inadequacies of the common law, however, have led policy makers such to enact wide-ranging laws that provide legal remedies. This right of control is infringed whenever the defendant engages in conduct that is antithetical to that control for which he is liable for the act committed by him without intention and negligence.

OBJECTIVE:

1) The main objective is to create a system where victims can get redress without restoring to vigilante justice.

2) To provide relief to injured parties for harms caused by others, to impose liability on parties responsible for the harm, and to deter others from committing harmful acts.

3) To restore the victim so that they were at before the injury occurred and to punish the wrongdoer in cases where the wrongdoer acted maliciously to be in concern.

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

4)The objective of the study is to ponder the capability of ex-risk security guideline and tortious obligation joined in ensuring the ecological.

5) Strict liability is a legal doctrine that makes a person or company responsible for their actions or products which cause damage regardless of any negligence on their fault part.

6)Strict liability often applies when people engage in inherently dangerous activities

REVIEW OF LITERATURE

1. A tort, in common law jurisdictions, is a civil wrong that causes a claimant to suffer loss or harm resulting in legal liability for the person who commits the tortious act. It can include the intentional infliction of emotional distress, negligence, financial losses, injuries, invasion of privacy, and many other things.("Absolute Liability in Tort")

2.Tort law, where the purpose of any action is to obtain a private civil remedy such as damages, may be compared to criminal law, which deals with criminal wrongs that are punishable by the state. Tort law may also be contrasted with contract law.(Grings,1953)

3.A person could be guilty even if there (Grings 1953; Wilson 2009; Hoyt and United States. 1949; Keegan 1974)was no intention to commit a crime. The difference between strict and absolute liability is whether the defence of a "mistake of fact" is available: in a crime of absolute liability, a mistake of fact is not a defence. Strict or absolute liability.

4. Can also arise from inherently dangerous activities or defective products that are likely to result in harm to another, regardless of protection taken, e.g. owning a pet rattlesnake; negligence is not required to be proven.(Tank 1983; Goldie 1985)

5.It discourages reckless behavior and needless loss by forcing potential defendants to take every possible precaution. It has the beneficial effect of (Anyangwe 2011; Gordon, Cuddy, and Wesson 1998)simplifying and thereby expediting court decisions in these cases, although the application of strict liability may seem unfair or harsh, as in *Re Polemi*

6.To be convicted of an ordinary crime, in certain jurisdictions, a person must not only have committed a criminal action, but also have had a deliberate intention or guilty mind (*mensrea*). In a crime of strict or absolute liability, a person could be guilty (Grings 1953; Wilson 2009; Hoyt and United States. 1949) if there was no intention to commit a crime. The difference between strict and absolute liability .

7. In Canada, absolute liability is one of three types of criminal or regulatory offences. In *R. v. City of Sault Ste-Marie*, the Supreme Court of Canada defined an absolute liability offence as an offence "where it is not open to the accused to exculpate himself by showing that he was

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

free of fault." This can be compared to a strict liability offence (where an accused can raise the defence of due diligence) and *mensrea* offences (where the prosecutor has to prove that the accused had some positive state of mind).

8.In escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of (strict liability under the rule in *Rylands v. Fletcher*)

PRESENT LAW IN INDIA

In India, the genesis of the rule of strict liability may be traced in the rules of liability for nuisance, cattle trespass and extended form of negligence or "negligence without fault". Nuisance is termed as a wrong to occupation of land while strict liability imposed for the wrongs arising from occupation of the land. In case of trespass, and particularly cattle trespass the injury is caused directly while in case of strict liability the injury is being caused as consequential. The strict liability is also regarded as an offshoot of the negligence. It was evolved as an exception of general requirement of fault. However the strict liability have various exceptions such as plaintiffs own default ,Act of God ,Act of the third party etc.

Vicarious Liability depends on the standard of qui facit peraliumfacitperse which signifies, "He who does a demonstration through another is regarded in law to do it without anyone else's help". So for a situation of vicarious risk both the individual at whose command the demonstration is done just as the individual who does the demonstration are obligated. In this way, Employers are vicariously subject for the torts of their workers that are submitted over the span of business.

JUDICIAL INTERPRETATION

The rules of no-fault liability can be traced before the pronouncement of the celebrated judgment of Blackburn J., in Rylands v. Fletcher[2]. Blackburn, himself admitted that he was a founding a new rule called strict liability in the year 1868.According to this rule,in this case it was laid down that any person keeping any hazardous substance on his premises would be held liable if the substance escapes and causes harm to others.The principal enunciated is that

[2](1868) LR 3 HL 330

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

the defendant is liable for the harm caused to the plaintiff for its consequences, even though he is not negligent.

Strict liability is a legal doctrine that holds a party responsible for their actions or products, without the plaintiff having to prove negligence or fault with exceptions.On the other hand, Absolute Liability is a concept with no exception as that of the case of Strict Liability. This concept evolved in India,after the case of M.C.Mehta.v.Union of India[3] popularly known by the name of oleum gas leak case,which is a landmark judgment of absolute liability.Under this the defendant cannot plead the defense of strict liability.In this case it was held by the Supreme Court that there could be no defense for the act done by the defendant to the plaintiff and he is liable for the same.

Another landmark judgment, relating to environmentalpollution was decided in M.C.Mehta.v.Kamalnath[4],the Supreme Court ordered to pay heavy damages for restoration of environment and ecology.In addition to damges,the person guilty of causing pollution can also be held liable for the exemplary damage in order to deter others not to cause pollution in any manner.

The concept of Vicarious Liability deals with the situation where someone is held responsible for the action or omissions of another person.In the field of Torts it is an exception to the general rule that a person is liable for his own acts only.The Judgmentpronounced in the case namely,State of Rajasthan.v.Vidyawati[5] was that the state is vicariously liable for the tort committed by its servant within the scope of employment comes within the purview of sovereign functions.

INTERNATIONAL DIMENSION OF JUDGMENT IN FOREIGN COURTS

Anthony Gray, Professor of Law at the University of Southern Queensland, engages in a critique of common law, liability based on a study[6] of UK, Canadian, US and Australian case-law.

[3]1987 SCR (1) 819, AIR 1987 965
[4](1997) 1 SCC 388
[5]AIR 1962 SC 933
[6] Vicarious Liability: Critique and Reform (Hart Publishing, 2018)

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

The highest courts of the UK and Australia in 2016 and 2017 delivered no less than four leading judgments determining the scope of the doctrine. Some of judgments relating to liability include:

- **Cox v Ministry of Justice**[7]
- **Mohamud v WM Morrison Supermarkets**[8]
- **Armes v Nottinghamshire**[9]
- **Prince Alfred College Inc v ADC**[10]

For Gray, comparative analysis of the relevant case-law leads to the conclusion that the common law of vicarious liability has lost its way and is unduly influenced by notions of enterprise risk emanating from **the United States**. He notes, in his chapter on US law, that ironically the US courts nevertheless continue to adopt a restrictive approach to vicarious liability for sexual assaults when such cases have been a primary instigator of expansion in Canada **(Bazley v Curry)**[11]and the UK **(Lister v Hesley Hall Ltd)**[12]**.** Vicarious Liability: Critique and Reform (Hart Publishing, 2018). Enterprise risk as a justification for vicarious liability is subjected to a detailed critique, dissecting the relevant literature across the common law world.

COMPARATIVE ANALYSIS

The idea of liability is one that translates and moves across legal cultures, even in relation to hybrid socialist systems. Divergence will arise due to the nature of local legal cultures. To explain how liability operates in other countries let us take for an example 'vicarious liability and insurance'.

Vicarious liability is a rule of responsibility which is found across the common law of tort and typically renders an employer strictly liable for the torts of its employees provided that the tort takes place in the course of employment. The idea of holding an employer liable to pay compensation to victims of its employees' torts, regardless of the absence of personal fault, is not, however, unique to the common law.

[7][(2016) UKSC 10]
[8][(2016) UKSC 11]
[9][CC [2017] UKSC 60]
[10]([2016] HCA 37).
[11][1999] 2 SCR 534)
[12][2002] 1 AC 2

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

Ideas of strict liability for the torts of others may also be found in civil law systems, although in some systems it is subject to a rebuttable presumption of fault.[13]

- The **insurance crisis in Australia**, for example, in the 2000s led the courts to adopt a restrictive approach towards tort liability. However, in the recent times, Australian high courts rejected that stand paving way for more liberal interpretation.
- In contrast, **in the UK and France**, insurance seems to be assumed (rightly and sometimes wrongly) to be present to ensure compensation will be paid.
- **China**, with more limited insurance provision, is clearly at a disadvantage here in terms of expansion, although claims against state-owned enterprises and wealthy for-profit corporations are still envisaged. Thirdly, linked to this is the extent to which the jurisdiction accepts risk-based reasoning which clearly prospers more readily in jurisdictions dominated by free market concerns.

There are two more issues which seem to be influential across legal systems – the importance given to the goal of ensuring compensation for personal injury victims and the discretion given to the judiciary to develop principles of vicarious liability over time.[14]

METHODOLOGY ADAPTED.

The study conducted uses an empirical research design to inquire the general opinion of the public with regards to the research topics.Since the research is based on the work life balance of working people in Chennai, the study used a structured questionnaire as a tool through which public inquiry was done. Through the implementation of random sampling method or also known as convenient sampling method the data was collected from 1827respondents. Both primary data and secondary data have been used for this study. The study used SPSS Software to analyze the data collected through statistical measurements like frequency tables,cross tabulations,chisquare method.

RESULT

Sample size: 1827

Independent variable: Age,Occupation, Education Qualification.

Dependent variable:

[13]Giliker, *Vicarious Liability in Tort* (CUP, 2010)
[14] Professor Paula Giliker, *Understanding Vicarious Liability in Tort – The value of a comparative perspective*, British Association of Comparative law (can be referred in https://british-association-comparative-law.org/2019/02/17/understanding-vicarious-liability-in-tort-the-value-of-a-comparative-perspective/)

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

1.Rule of Absolute Liability has no Exceptions

2. Strict Liability as a Fundamental Error in the Law of Torts.

3. Applicability of Law of Torts is Effective in India

4. State vicariously liable for the Tort committed by its Servant

5.Masters Liability for the Act of Independent Contractors

HYPOTHYSIS:

ALTERNATIVE HYPOTHYSIS

There is significant under torts to impose liability on parties responsible for the harm, and to deter others from committing harmful acts.

NULL HYPOTHYSIS

There is no significant under torts to impose liability on parties responsible for the harm, and to deter others from committing harmful acts.

DATA ANALYSIS

Crosstab

1. **Educational qualification *Rule of Absolute Liability has no Exceptions**

Count

		Rule of Absolute Liability has no Exceptions					
		Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Educational qualification	No formal education	0	2	14	38	1	55
	HSC	0	3	133	193	73	402

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

	PG	11	65	66	117	46	305
	UG	22	73	178	329	296	898
	Others	0	71	67	6	23	167
Total		33	214	458	683	439	1827

Chi-Square Tests

	Value	Df	Asymptotic Significance (2-sided)
Pearson Chi-Square	411.444[a]	16	.000
Likelihood Ratio	429.737	16	.000
Linear-by-Linear Association	11.561	1	.001
N of Valid Cases	1827		

a. 2 cells (8.0%) have expected count less than 5. The minimum expected count is .99.

This survey is taken under different form of people under different categories in which agree 214 and strongly agree 33 strongly disagree 439 and disagrees 683 and neutral 458 and 1827 survey was under proceeded. The P value is less than 0.05 since the null hypothesis is rejected and there is significant association between Age and Tortious liability and its impact on Environment

The significant value between profile of respondent and supervision is 0.000 which is less than the standard value 0.05.The null hypothesis is rejected.There is significant association between education and Rule of Absolute Liability has no Exceptions.

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

2. Occupation*Strict Liability as a Fundamental Error in the Law of Torts.

Crosstab

Count

		Strict Liability as a Fundamental Error in the Law of Torts.					
		Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Occupation	Public Sector		1	209	164	62	436
	Private Sector	5	137	139	81	7	369
	Bussiness	1	146	32	98	17	294
	House Maker	24	10	81	157	70	342
	Others	21	43	113	116	93	386
Total		51	337	574	616	249	1827

Chi-Square Tests

	Value	Df	Asymptotic Significance (2-sided)
Pearson Chi-Square	628.330[a]	16	.000
Likelihood Ratio	695.932	16	.000
Linear-by-Linear Association	9.417	1	.002
N of Valid Cases	1827		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.21.

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

INFERENCE:

The survey was taken by various methods under different forms of occupation based on different categories in which 51has strongly agreed and totally 1827 responses were found in the survey.The P value is less than 0.05 since the null hypothesis is rejected and there is significant based on strict liability as a fundamental error in the law of torts.

3.Age*Applicability of Law of Torts is Effective in India

Crosstab

Count

		Applicability of Law of Torts is effective in India					
		Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Age	Below 20	5	91	109	91	136	432
	21 - 30	4	90	226	196	29	545
	31 - 40	116	100	143	108	35	502
	41 - 50	0	56	57	86	22	221
	Above 50	5	0	23	38	61	127
Total		130	337	558	519	283	1827

Chi-Square Tests

	Value	Df	Asymptotic Significance (2-sided)
Pearson Chi-Square	575.819[a]	16	.000
Likelihood Ratio	549.304	16	.000
Linear-by-Linear Association	.972	1	.324
N of Valid Cases	1827		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 9.04.

INFERENCE:

Totally 1,827 responses were collected from the general public for analysis In this from public sector strongly agreement was 130,agree was 337 ,neutral 558,disagree was 519,strongly disagree and remaining 283 strongly disagree. P value is less than 0.05 and hence null hypothesis is rejected which shows that there is no significant association between Age and Applicability of Law of Torts is Effective in India

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

4. Occupation * State vicariously liable for the Tort committed by its Servant

Crosstab
Count

		State vicariously liable for the Tort committed by its Servant					
		Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Occupation	Public Sector	11	17	63	270	75	436
	Private Sector	2	113	164	49	41	369
	Bussiness	1	139	117	18	19	294
	House Maker	0	39	63	66	174	342
	Others	16	71	78	91	130	386
Total		30	379	485	494	439	1827

Chi-Square Tests

	Value	Df	Asymptotic Significance (2-sided)
Pearson Chi-Square	791.070[a]	16	.000
Likelihood Ratio	766.912	16	.000
Linear-by-Linear Association	5.146	1	.023
N of Valid Cases	1827		

a. 1 cells (4.0%) have expected count less than 5. The minimum expected count is 4.83.

INFERENCES:

This survey is taken under different form of occupation gathering people under different categories in which agree 379 and strongly agree 30 and disagrees 494 strongly disagree 439 and neutral 485. and 1827 survey was under proceeded. P value is less than 0.05 and hence null hypothesis is rejected which shows that there is no significant association between Occupation and State vicariously liable for the Tort committed by its Servant

5.Educational Qualification *Masters Liability for the Act of Independent Contractors

Crosstab
Count

		Masters Liability for the Act of Independent Contractors		
		Yes	No	Total
.Educational Qualification	No formal education	25	30	55
	HSC	225	177	402
	PG	196	109	305
	UG	615	283	898

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

	Others	138	29	167
Total		1199	628	1827

Chi-Square Tests

	Value	Df	Asymptotic Significance (2-sided)
Pearson Chi-Square	51.459[a]	4	.000
Likelihood Ratio	52.914	4	.000
Linear-by-Linear Association	47.903	1	.000
N of Valid Cases	1827		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 18.91.

INFERENCES:

This survey is taken under different form of educational qualification gathering people under different categories in which yes 1199 and no 628 was under proceed. P value is less than 0.05 and hence null hypothesis is rejected which shows that there is no significant association betweenEducational Qualification and Masters Liability for the Act of Independent Contractors

CONCLUSIONS AND SUGGESTIONS.

The Strict and Absolute Liability Report conjointly suggested that the Attorney-General's Department ought to coordinate a brand new project to confirm that existing strict and absolute liability provisions are amended wherever acceptable to supply a standardized an identical the same a regular an even and uniform standard of safeguard,the government didn't settle for this recommendation for a variety of reasons, as well as that the Criminal Code harmonization project has achieved a major degree of certainty and consistency within the application of strict and absolute liability but, the trend in legislation brought before the Parliament to harmonize provisions with the Criminal Code is that it doesn't think about the policy deserves of imposing strict or absolute liability. These amendments merely get to confirm that existing strict or absolute liability offences still operate intrinsically, despite the introduction of the Criminal Code by expressly stating that the relevant offences are strict or absolute liability offence

Vicarious Liability deals with cases where one person is liable for the acts of others. In the field of Torts it is considered to be an exception to the general rule that a person is liable for

Annals of R.S.C.B., ISSN:1583-6258, Vol. 25, Issue 6, 2021, Pages. 7668 - 7681
Received 25 April 2021; Accepted 08 May 2021.

his own acts only. It is based on the principle of qui facit per se per aliumfacit per se, which means, “He who does an act through another is deemed in law to do it himself”. So in a case of vicarious liability both the person at whose behest the act is done as well as the person who does the act are liable. Thus, Employers are vicariously liable for the torts of their employees that are committed during the course of employment.

The idea of tort law is that people are liable for the consequences of their actions. Before a court will hold a defendant responsible, the plaintiff must demonstrate that he has a legitimate prima facie case. To do so, he must prove the existence of several factual conditions. These conditions vary depending on the type of liability rule the law adopts.

The explosion of environmental statutes over the past forty years, giving rise to the field of environmental law, has created a critical and evolving question in our legal system as to how this comparatively new field of law intersects with the common law of torts. Defining the proper role of tort law in remedying environmental injuries is an important matter of public policy; the answer will determine what the tort system can and cannot achieve, inform what it should and should not achieve, and clarify which common law enforcement areas are actually voids. This information assists the judiciary on its role in addressing alleged injuries to the environment, and guides the legislative and executive branches as to whether and when action is required to fashion a legal remedy

Paper pile

1. “Absolute Liability in Tort.” n.d. *Encyclopedia of Public Health*. https://doi.org/10.1007/978-1-4020-5614-7_8.
2. Anyangwe, Carlson. 2011. *Criminal Law in Cameroon: Specific Offences*. African Books Collective.
3. Goldie, L. F. E. 1985. “Concepts of Strict and Absolute Liability and the Ranking of Liability in Terms of Relative Exposure to Risk.” *Netherlands Yearbook of International Law*. https://doi.org/10.1017/s0167676800003500.
4. Gordon, Winston, Philip Cuddy, and Andy Wesson. 1998. *Introduction to Road Traffic Offences*. Waterside Press.
5. *R. v. City of Sault Ste-Marie*,Supreme Court of Canada.
6. Strict liability under the rule in *Rylands v. Fletcher*.