



LIABILITY (JURISPRUDENCE)

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Abstract :

A comprehensive legal term describes the condition of being actually or potentially subject to legal obligation. Joint liability is an obligation for which more than one person is responsible.

Joint & several liabilities refer to the status of those who are responsible together as one unit as well as individually for their conduct. The person who has been harmed can institute a lawsuit & recover from any or all of the wrongdoers but cannot receive double compensation, for instance, the full amount of recovery from each of two wrongdoers.

Primary liability is an obligation for which a person is directly responsible; it is distinguished from secondary liability which is the responsibility of another if the party directly responsible fails or refuses to satisfy his or her obligation.

Definition

According to Salmond: “liability is the bond of necessity that exists wrongdoer and the remedy of the wrong has more often been said to have contract or delict.”

According to Mark : “the word liability is used to describe the condition of a person who has a duty to perform.”

TYPES OF LIABILITIES

Current Liabilities

Current liabilities are short-term financial obligations paid off within one year or one current operating cycle, whichever is longer. (A normal operating cycle, while it varies from industry to industry, is the time from a company's initial investment in inventory to the time of collection of cash from sales of inventory or of products created from inventory.) Typical current liabilities include such accrued expenses as wages, taxes, & interest payments not yet paid; accounts payable; short-term notes; cash dividends; & revenues collected in advance of actual delivery of goods or services.

Long-Term Liabilities

Liabilities not paid off within a year (or within a business's operating cycle) are known as long-term or noncurrent liabilities. These often involve large sums of money necessary to undertake opening of a business, major expansion of a business, replace assets, or make a purchase of significant assets. Such debt typically requires a longer period of time to pay off. Examples of long-term liabilities include notes, mortgages, lease obligations, deferred income taxes payable, & pensions & other post-retirement benefits.

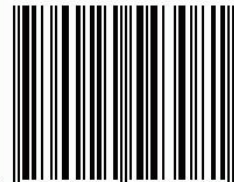
Contingent Liabilities

A third kind of liability accrued by companies is known as a contingent liability. The term refers to instances in which a company reports there is a possible liability for an event, transaction, or incident has already taken place; the company, however, does not yet know whether a financial drain on its resources will result. Contingent liabilities often come into play when a lawsuit or other legal measure has been taken against a company. An as yet unresolved lawsuit concerning a business's products or service, for example, would qualify as a contingent liability.

Legal Framework in India

The issue of civil liability in case of nuclear disasters hovered for a long time in policy circles of India but for the first time actively came up in 2006 when India put forward its plan to have civil nuclear agreement with The United States. The agreement was finally achieved in 2008 popularly referred to as the Indo-US Civil Nuclear Agreement. One of the terms of the agreement mandated for civil liability law with regard to nuclear incidents in India. As a result, about 2 years later the infamous The Civil Liability for Nuclear Damage Act of 2010 (hereafter referred to as

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‘The Act’) was passed by the Parliament. The Act by far is the most comprehensive legislation inter alia deals with compensation for the victims of such disasters.

Nature of Liability under the Act

The Doctrine of Strict Liability stands at the heart of the Act. Taking cognizance of the earlier incidents of man-made disasters such as the Bhopal gas tragedy, the parliament deemed strict liability to be better for the substantive purpose of the Act i.e. enable victims to get compensation. The Act imposes strict liability upon the operator of the plant, only in cases of ‘Act of God’ or force majeure events the government can be obligated to bear the costs.

Neglect of the Additional Costs: The incidents in the past such as the Fukushima & Chernobyl have shown apart from granting compensation there are many additional costs which the party at fault needs to bear. These costs include the cost of cleaning up & safe disposal of the nuclear waste. These activities demand a lot of money along with high level of caution & care. The Act does not provide any provision for these additional costs which can prove problematic.

Liability of Suppliers

By the virtue of Section 17 of the Act an operator has the right to recourse against the supplier. Such a right finds its basis in the contract between the operator & his supplier, who is an employee. If the nuclear accident can be attributed to the fault of the supplier due to below standard services & other defects etc. the supplier can be held liable under the contract law. The suppliers claim the act to be unfair to them, few contentions are:

Uncapped Indemnities: These contracts between the operator & supplier are fixed at the value of the contract, or at a certain proportion of the contract value. As per the contract law such contracts are of indemnity & so in the case of any mishap, the supplier would need to indemnify the operator if the accident happened due to his fault. These indemnities are unfixed under the Act & so make the position of the suppliers vulnerable.

No Scope for bargain: As the extent of indemnifying is unfixed for the supplier, the suppliers in the initial years tried to negotiate with the operator on the amount of money & often try to reach an agreement. The government of India considered such activity to be unfair & outside the purview of the Act & so was enacted Civil Liability for Nuclear Damage Rules of 2011. The Suppliers widely protested this step as being repressive.

Liability under Tort Law

The section which when harmoniously interpreted can allow compensation under the tort law is section 46. It talks about nothing in the Act or any other law in force in the country can prevent a person from bringing proceedings against the operator which can be brought under any law apart from this act. Prima facie, the section seems to permit claims under tort law. However few issues need to be dealt to make the law more efficient are:

Ambiguity of Economic Loss: The question raises doubts on the very intention of the act is whether claims in tort law for economic loss can be sustained under this section. The statute is silent on the matter & the question still remains to be solved.

Claim against supplier: Section 46 only talks about claims against operator & so the liability of the suppliers under tort law remains an area of concern. The suppliers seem to be effectively insulated from liability under tort by the section. The contention has been subject to much debate in the parliament. An amendment was tried to bring suppliers as well under the ambit of the section but it failed. The question now comes fundamentally to the intention of the statute, the courts have not dealt with the validity of Section 46 & so any comment on it is futile.

Sardar Syenda Taher Saifuddin Saheb v. The State of Bombay:



The plaintiff challenges the constitutionality of the Bombay Prevention of Excommunication Act, 1949 (Bom. 42 of 1949), it is provided "Notwithstanding anything contained in any law, custom or usage for the time being in force, to the contrary, no excommunication of member of any community shall be valid & shall be of any effect." It was enacted to keep with the "changing times" & therefore it was in the best public interest, "to stop the practice of excommunication prevalent in certain communities." The definition of the word "community" contained in the Act includes the religious denomination of Dawoodi Bohras. Holding:

Kameshwar Prasad & others v. The State of Bihar & Another.

The plaintiff holds the "Bihar Government Servants' Conduct Rules" which states "No government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service," is unconstitutional. The court held the part about prohibiting "any form of demonstrations" was in violation of the plaintiff's rights under article 19 of the constitution. However, the act cannot be struck down because it prohibits a strike, because there is "no fundamental right to resort to a strike."

Smt. Sarla Mudgal, President Kalyani & Ors. v. Union of India & Ors.,

This is a freedom of religion case. There was an attempt to create a unified personal law for all citizens of India, which mainly effects marriage. But the first PM did not think fitting of the time pass such a law. This case brings to the Supreme Court, to bring about this law. The court held: "Freedom is the core of our culture. Even the slightest deviation shakes the social fiber. 'But religious practices, volatile of human Rights & dignity & sacerdotal suffocation of essentially civil & material freedoms, are not autonomy but oppression'. Therefore, a unified code is imperative both for protection of the oppressed & promotion of national unity & solidarity. But the first step should be to rationalize the personal law of the minorities to develop religious & cultural amity.

Narmada Bachao Aandolan v Union of India & Others

The issue was whether the displacement of indigenous & tribal populations in relation to the building of a dam on the Narmada River violates their rights under the Indigenous & Tribal Peoples Convention of 1957 (ILO Convention 107). The court held treaties can be read into domestic laws of India. However the removal of the tribal people with a program of rehabilitation is not in violation of the convention. The land allotted to the tribal people should at the least be of equal quality. Displacement of the tribal people is not a violation of their fundamental human rights.

Kharak Singh v. State of UP,

The Indian Constitution does not explicitly recognize the right to privacy. This Supreme Court case was to recognize there is a right to privacy implicit in article 21 of the Constitution, which states "No person shall be deprived of his life or personal liberty except according to procedure established by law." The court ruled the police visits to a person's house at night to verify his whereabouts was an invasion of privacy.

Shri Ramakant Rai & Health Watch U.P. & Bihar v. Union of India & Others ,

Women have the human right to voluntary sterilization services are not coercive, discriminatory or violent. The court asked state governments to take steps to regulate doctors & other providers who perform sterilization procedures.

Ediga Anamma v. State of Andhra Pradesh , 1974 AIR 799, 1974 SCR (3) 329.

An "internment" order which infringed a fundamental freedom passed in violation of the Audi alter am partum rule was a nullity. A determination is no determination if it is contrary to the constitutional mandate of Art. 19." Any order made without hearing the party affected is void & ineffectual to bind parties from the beginning if the injury is to a constitutionally guaranteed right. May be in ordinary legislation or at common law a Tribunal having



Jurisdiction & failing to hear the parties may commit an illegality which may render the proceedings voidable when a direct attack was made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality & so the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void ab initio & of no legal efficacy.”

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