DOCTRINE OF COMMON EMPLOYMENT – A COMPARATIVE ANALYSIS BETWEEN INDIA AND U.S

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ABSTRACT

The problems of Industrial relations are the basic elements in the economic and social life of any country and as such, likely interest in it has persisted from the very dawn of history of modern times. The maintenance of industrial relations is one of the basic requirements of public welfare. Many factors have been influencing the industrial revolutions that need to be focused and many such problems arise due to the lack of proper employer-employee relationship. There are many controversial areas within the relationship and one such is the various defenses that the employers claim as a defence to escape from the liability of compensation to the employees and one such was the ***"Doctrine of Common Employment"*** or "***Fellow Servant's Rule***". Though the wages and bonus are given more concern there was a persistent problem with the working conditions, and compensation due to this doctrine. In United States there was also another prevalent principle called the **"Doctrine of Assumed Risk"** where the contract of employment was in such a way that the employers can't be held liable for the damages or the injury that the employees face during the working hours. But these Doctrines are contradicting with the principle of vicarious liability of the masters.

The "***Doctrine of Common Employment***" otherwise known as "***Fellow Servants Rule***" limits the liabilities of the Employer by restricting the rights of the Employee to sue the Employer for Compensation in the case where the aggrieved employee was injured due to the act of another employee, be it a voluntary/negligent/carelessness act or misconduct. In such a case the injured employee has to bring a suit against the fellow employee for recovering the damages.

The main issues that devolves around this article is to analyse whether the said doctrine is an exception to the vicarious liability and its applicability in India and U.S; and to analyse the

position/prevalence/applicability/Scope of the Doctrine before and after various employment laws, for the labour welfare like workmen's compensation Act and Employer's Liability Act, Law Reforms (Personal Injuries) Act, were enacted.

INTRODUCTION

The problems of Industrial relations are the basic elements in the economic and social life of any country and as such, likely interest in it has persisted from the very dawn of history of modern times. The maintenance of industrial relations is one of the basic requirements of public welfare. Many factors have been influencing the industrial revolutions that need to be focussed and many such problems arise due to the lack of proper employer-employee relationship. There are many controversial areas within the relationship and one such is the various defences that the employers claim as a defence to escape from the liability of compensation to the employees and one such was the "***Doctrine of Common Employment***" or "***Fellow Servant's Rule***". Though the wages and bonus are given more concern there was a persistent problem with the working conditions, and compensation due to this doctrine. In United States there was also another prevalent principle called the "***Doctrine of Assumed Risk***" where the contract of employment was in such a way that the employers can't be held liable for the damages or the injury that the employees face during the working hours. But these Doctrines are contradicting with the principle of vicarious liability of the masters.

Subsequently a question may arise as to whether the employers be allowed to claim for such defences. The answer to it would be affirmative but the defences claimed if reasonable then there will be no problem in due. So there comes the need for the government to interfere to protect the interest of the general body (People of the state – either resident or a citizen) by way of legislation. But the solution for all the problems cannot be ascertained as such, as it differs from case to case. And also the legislative enactments shall not prejudice for either parties of a dispute. So only a general layout and rules for maintaining the proper relation between the employer and the employee. The problem in relationship between employer and employee is not a private concern rather it is a relation of public importance affecting the welfare of the community as a whole.1

[1] The Factors such as the intervention of the State, the growth of trade Unions and their federations, employer's association has led to this point of development.

Each community must find and apply the Principles relevant to its own circumstances that will enthuse men and social groups engaged in industry to go in for willing cooperation and purposeful action. Any worker whether skilled/unskilled will not be able to contribute much in production. So it becomes essential, therefore to understand the problems of human relations in management, if we want efficient and involved workers, good industrial relation and more and better production.

The reason for the enactment of the Employees Compensation Act 1923 in India was that 'the growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, rendered it advisable that they should be protected, as far as possible from hardship arising from accidents. One of the benefits secured to the workers by a new law was a right to receive compensation from their employer for injuries suffered in the course of employment, irrespectively of any fault or breach of duty on part of the employers.In United States the first law of the state was held unconstitutional till 1909 only then the validity of law of workmen's compensation was conceded by the courts. Then after there have been both federal and state laws.

This article moves on in the path of explaining the concept of the Doctrine as such and then moving on to the history of the said doctrine and also how the doctrine evolved itself. The main aim of this article is to compare the prevalent position, and the applicability of the doctrine in India and Unites States. This article mainly deals with two issues to deal with. One being the to analyse whether the Doctrine is an exception to the concept of the vicarious liability, whether an exception to this Doctrine and the next will be analysing the position of the doctrine before and after the enactment of various labour welfare legislations.

DEFINITION

The rule that prevented an injured employee from suing the employer if a fellow employee negligently contributed to the injury. The common law Doctrine that if the employer has provided safe and suitable tools, machinery and appliances, in accordance with the duty imposed upon

him by law, he is not liable for an injury to an employee resulting from the misuse or non-use of the instrumentalities by another employee.[2]

Fellow Servant

A co-worker having the same employer; especially, an employee who is so closely related to another employee's work that there is a special risk of harm if either one is negligent.

Fellow Servant Rule, 1905

A common-law Doctrine holding that an employer is not liable for an employee's injuries caused by a negligent co-worker. This doctrine has generally been abrogated by workers,-compensation statutes. In some jurisdictions, employees were considered fellow servants when they were working with one aim or result in view. In others, the relation of fellow servant was tested by "doctrine of vice principal" or the "Superior-Servant rule", meaning that an employer is liable for injuries to an employee if they result from the negligence of another employee who is given power of control or direction over the injured employee.3

Different Department Rule: 1896 Employment law

A doctrine holding that people who work for the same employer are not fellow servants if they do not do the same work or do not work in the same department. This rule, which creates an exception to the fellow-servant doctrine, has been rejected by many jurisdictions.4

MEANING:

The "Doctrine of Common Employment" otherwise known as "Fellow servants Rule" limits the liabilities of the Employer by restricting the rights of the Employee to sue the Employer for Compensation in the case where the aggrieved employee was injured due to the act of another employee, be it a voluntary/negligent/careless act. In such a case the injured employee has to bring a suit against the fellow employee for recovering the damages.

[2] See : P.Ramanatha Aiyar's Advanced Law Lexicon, Volume 2, 4th Edition, pg.1859,Lexis Nexis Butter worths Wadhwa
[3] Black's Law Dictionary, Pg.735, 10th Edition
[4] Ibid at pg. 551

HISTORY

In India the Law of Workmen's compensation was introduced in 1923, 26 years after it has been introduced in England. England borrowed the concept from Germany, which introduced it in 1884. In Germany it was introduced by the Iron Chancellor, Bismarck. One of the benefits secured to the workers by a new law was a right to receive compensation from their employer for injuries suffered in the course of employment, irrespectively of any fault or breach of duty on the part of the employers.

The English Act fell short of the German Act in one aspect. While the German Act required the employers to indemnify injured workmen, or in the case of fatal accidents, their families, and it also set up an insurance system under which the employers were obliged to insure the risk, the British Act only made indemnification at prescribed rates obligatory, but left the insurance of the risk to remain optional.

Initially in England there were laws to regulate the apprenticeship and services, fixing the rates of wages and restricting the movement of labour from one part of the country to the other. That being the situation during the middle of the 18th century it was felt that there were too much of government intervention which destroys the individual initiative and thereby it affects the prosperity of the nation. This felt to the evolution of the Doctrine of Laissez faire which means 'let things alone'.

Then everything was made liberal and the employers and employees are free to enter upon a contract and also to decide upon the terms and conditions of the work which simply means the free bargaining. When everyone feels that everything is set right and they are moving forward to the development of the nation the doctrine of laissez faire started exhibiting its drawbacks. Since there were no governmental intervention the employers started making arbitrary rules and made the employees work for unreasonable time and working conditions and also with minimal amount of wages. There were no laws governing the same. Even in the case where there was an accident due to which the employee was injured he can seek remedy only under the common law, under which workmen's claim could be allowed only if he was able to establish some negligence or breach of duty on the part of employer as the sole cause of the accident resulting in the injury.

In addition to it there is this doctrine called the "Doctrine of Common Employment" which the employers use to evade away from the liability. It meant that there was always an implied term in a contract or service that the servant agreed to accept the risk of injury from the negligence of a fellow servant and, consequently, when such negligence was the cause of the injury, he could not claim damages from the master.

These actions made the workers to protest and set aside the laissez faire doctrine which paved way for a comprehensive series of labour legislation being enacted with a view of liberating the workers from their helplessness against the power of the men who owned the factories and establishment where they worked. Thus in England the compensation has ceased to be a matter of decree of the courts and it became an insured benefit obtainable from the state out of a special fund maintained for the purpose.

In England National Social Insurance (Industrial Injuries) Act was enacted in 1946, that replaces the workmen's compensation Acts,1925-1945. The use of the doctrine of common employment was not accepted as a good defence in England after this Act came into force on July 5, 1948.

In U.S after the Industrial Revolution there was a rapid increase in diseases, deaths and injuries among the industrial workers. On one hand the class of people who plunder in wealth and on the other hand the class of people who toil and get injured and not even get proper remuneration. Under these circumstances in order to provide remedies to the working class the law of workmen's compensation has been developed.

The underlying principle of the legislation was that Negligence and fraud are highly immaterial, both in the sense that the employee's contributory negligence does not lessen his right and in the sense that the employer's complete freedom from faults does not lessen his liability.5 In U.S after experiencing these incidents it came up with the Federal Employer's Liability Act 1908, after which the employees can claim for damages under state or federal courts. This system of workmen compensation was first adopted in Germany in 1884 and in 1897 in Britain followed by 1900 in U.S. In India the Act of 1923 came into operation in July 1924.

[5] See : Arthur Larson, The Law of Workmen's Compensation, (1915), pg.32-39

The question of first raising the issue about the worker's compensation for serious or fatal accidents was raised in India in 1884 but the question of framing legislation was taken up by the Government of India only in the end of 1920 and finally enacted in 1923. The enactment was due to the influence made by the International Labour Organisation. This was made in the first session of the ILO held in Washington in 1919 and India as an original member of the League of Nations also participated. Before this Act the employees were eligible to get compensation only for the fatal accidents that occurred under the Indian Fatal Accidents Act 1855, which depends on English Act. But even after the enactment of the workers compensation Act there were a prevalent use of this doctrine. The Royal Commission on labour regarded it as an unequitable doctrine and recommended the measures to be enacted to abrogate this doctrine. As a result of that the "Employers Liability Act, 1938" was enacted. But even then the use of the doctrine was not reduces as such and it becomes necessary for an amendment to be made and so was the "Employers Liability Act,1951" was born, thereby removing the defect in the previous legislation (S.3(d).

Before India adopted the employment laws a series of conventions and Recommendations dealing with workmen's compensation gave been adopted between 1919 and 1939 by the International Labour Conference. They cover not only industrial accidents but also occupational diseases. The workmen's compensation (Accidents) convention (No.17),1925 recommends that workmen who suffer industrial injury should receive compensation.

The discussion about the employer-employee relationship leads to the tortious concept with regard to their relationship which is the vicarious liability of the employer for the acts of the employee. So there comes the contradiction between this Doctrine of Common Employment and the uncodified law viz. Torts. In such a case which will have a dominance/ superintendence or to put it in a simple terms which will prevail over the other.

The said doctrine was claimed to be abolished followed by the abolition of the doctrine of assumed risk in 1939. But in the United States even after they claimed to abolished the doctrine certain courts entertained the said doctrine as a defence and it again proves to be detrimental to the employees injured during the course of employment. So there comes the need for the analysis of when does the doctrine get abolished completely and so as to analyse that there is a need to understand the nature and reasoning behind the application of the doctrine in the U.S courts and

so as the need to analyse the position of the doctrine before and after the labour law amendments for the welfare of the employees.

LIABILITY OF THE EMPLOYER

Before the abolition of the Doctrine of Common Employment, there is a desperate need to distinguish the failure of employer's duty and negligence of a fellow employee, where the employer is liable in the former and not in the latter event.[6] So the need arises for defining the duty of the employer viz. "the provision for a competent staff, adequate material, and a proper system of effective supervision.[7] The employer will be liable for the failure to exercise proper duty even he delegated such a function to someone.[8] By the virtue of the concept of Vicarious Liability the employer can be held liable by the strangers for the acts of the servant in the course of employment. But is this the same case where an employee sues the employer for the injury caused by the co-employee. It is not the case; the employee cannot say to his master that it is your duty to protect one employee from the other. Because it is implied that when he contracted, he also accepted with the risk before his eyes, and also the dangers associated with the service.[9] Any stranger can hold the master liable as it is a tortious act[10] but not the employee as because of the Doctrine of Common Employment.

So this doctrine is likely to be an exception to the Vicarious liability rule. But is the exception even apply to the Independent contractors[11] is one more concern. The rule of fellow servants is applicable only for the fellow servants, and not the independent contractors as their original employer is different.[12] And even the rule does not apply as between a servant and a vice-principle. A servant who has the authority to employ other servants under his immediate supervision takes the place of the master and is not a fellow servant to the other persons over whom he has control.[13] But the aspect of instruction need to be considered. When a person is

[6] See Winfield & Jolowicz, Sweet & Maxwell; 18th Revised edition Pg. 415
[7] See Wison's and Clyde Coal Co. v. English, 1938 A.C 57
[8] Ibid
[9] 1842 4 Met. 49
[10] See Mc Dermid v. Nash Dredging and Reclamation,1987 A.C 906
[11] An independent Contractor is one who is ordered to accomplish a certain thing, but uses his own method of accomplishment.
[12] See Jonhson v. Lindsay & Co.,L.R.1891 App.
[13] See Mo. Pac. Ry. Co. v. Williams, 75 Tex.4 (1889)

hired, whose instruction he is following determines the liability. If the person hired follows the instruction of the general employer then such a person is considered as an independent person and that he won't be called as a fellow servant and there is no defence be claimed by the employer.[14]

But there is a probability of other situations also where the employee can sue the employer, and the other instance where the stranger fell under the defence. In the former case such an employee may sue in the capacity of the stranger and not as an employee. As when an employee after his working day is over and he has left the employer's premises he is no longer a fellow servant of any of his co-employees.[15] In the latter case when a stranger voluntarily offers his service, having no interest in the work, when injured by an employee of the master to whom he is volunteering his service, cannot hold the employer liable.[16]

The reason for which the defence available to the employer is that, 'it is the employees who knows the acts of the fellow employee's than the employer, and so the employees themselves would be able to influence the position of another employee in exercising the proper care in their duties.[17]

So only if there is any breach of duty of the employer, he will be liable to the employee for the injury caused and not vicariously liable.[18]The employer, whether an individual or a company, need only to show that proper care was taken to appoint a qualified person to avoid the liability.[19] It was also held that the employer cannot claim the doctrine of Common Employment where it was proved that a defective system of working was proved.[20]The employers obligation to perform his duty is fulfilled by exercise of the due care and skill.[21]So in the case where the employee claim that the employer breached his personal duty and so the defence by the doctrine is not applicable, then if the employer proves that he exercised reasonable care and skill for prevention of injuries, then he can't be held liable.

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[14] SeeDowd v. W.H.Boase & Co., Ltd.1945 K.B.301
[15] See Baird v. petit, 70 pa. 477 (1872)
[16] See Eason v. R.R.Co.65 Tex. 577 (1886)
[17] See Beulter v. Grand Trunk junc. Ry. Co., 224 U.S 85 (1911)
[18] See QualCast Ltd. v. Haynes (1959) 2 ALL ER 38
[19] See Prof.G V Anjappa, The Doctrine of Common Employment in India : A critical Study (RLR Volume I Issue III) Pg.4
[20] See Wilson & Clyde Coal Co. v. English , 1938 A.C. 57
[21] See 1937 3 ALL ER 628 , 648

The duty of the employer is to be performed by the employer per se i.e., by the employer himself and not entrusting its fulfilment in the hands of the employees, even in the case they are selected after exercising due diligence and skill.[22]

DOCTRINE OF COMMON EMPLOYMENT IN INDIA

The Doctrine of Common Employment do not have much application in India and its history can be traced back to three important cases. The first case in India where the Doctrine traces its existence is Mary Anne Turner v. Scinde, Punjab and Delhi Railway Company[23]

In this case the Plaintiff's husband was a platelayer and for this purpose he need to travel up and down the track. So he was provided trolley's and coolies and also he was provided with the duty pass to travel in any train. On one such day while returning to home in a train the disabled and the engine moved further and completely disabled after some distance. The engine driver didn't inform that the engine was laying separately from that of the other compartments. While rescuing the plate layer was injured and later died, so the plaintiff claimed for compensation. The subordinate court dismissed the petition by applying the doctrine of common employment and also the assumption of natural risks and perils. In H.C Turner.J came to a conclusion that since he was using the duty pass to return he is still in the course of employment with the engine driver, a fellow servant.

But the C.J contradicts and said that his days' work was over and only after that he is returning and such that he is not in the course of employment at the time of his death. In this case there were not much discussion about the doctrine of common employment, as the C.J said that the person was not in the course of employment and so the doctrine was not applicable.

The Second case in which the doctrine directly had its application was Blanchette v. Secretary[24] There was a collision due to which a driver was killed. There was a negligence on part of some of the employee. It was contended by the plaintiff that the respondent company maintained incompetent staff, and that the company neglected to supply suitable and safe machinery and appliances for working on line.

[22] See Lochgally Iron & Coal Co. Ltd. (1934) ACI
[23] See 1904 Allahabad Law Journal 653
[24] (1912) 13 IC 417

The court went against the plaintiff in this case. It is perfectly clear in this country where there is no legislation analogous to the Employers' Liability Act that a servant has no cause of action against his master for the neglect of another servant in the common employment of the same master and this notwithstanding the fact that the nature of the employment of the servant suffering the injury and the servant whose neglect causes the damage is very dissimilar."[25] But the reasons for the application of the Doctrine in India was not mentioned. But the H.C applied the doctrine in India, on the ground that since the common law principle had its operation in India and so the doctrine has.[26]

The next case is Abdul Aziz v. Secretary of the State.[27] In this case the employee was injured during the transfer of cargo. The additional commissioner Rupchand found that "there is no allegation much less evidence that defendants 2 or any of their servants was any way concerned either in the piling of cases or the shunting of the wagon." Since the suit was dismissed it is clear that the Railways were not negligent in their work.

It is in the case of Secretary of State v. Rukhminibai[28], Niyogi A.J.C said that thought the common law principles are not applicable as such, courts are having recourse to it for the sake of Justice, Equity and Good Conscience. It is manifestly anomalous and illogical to apply in the name of justice, equity and good conscience, to India the doctrine of common law which is no longer regarded at its source as fair and equitable and enforced as such.[29]

Justice Pollock observes "No such doctrine appears to exist in the law of any other country in Europe, and in my opinion the doctrine is not, under the conditions of to-day, in accordance with the principles of justice, equity and good conscience."[30]He clearly states that the doctrine is unsuitable to the Indian condition, and quotes the view expressed by the Royal Commission on Labour in India which also felt that the doctrine was inequitable.

[25] 1912 13 IC 417,p.418S
[26] See Prof. G V Ajjapa ,The doctrine of common employment in india : a critical study- (Rlr volume I issue iii) p.9
[27] AIR 1933 Sind 129
[28] AIR 1933 Sind 130
[29] See AIR 1933 Sind 130, pg.362
[30] Ibid at pg.365

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In this case the C.J contradicts and says that the doctrine has its application in India and ordered against the plaintiff. But the majority of the judges opines that the Doctrine has no application in India.

In the case of Brookle Bank Ltd. v. Noor Ahmode[32], the doctrine has no role to play but was taken into consideration unnecessarily, which the privy council in the appeal said there is no need to discuss the doctrine and its policy and its practical aspects in this case as it does not arise in this case.[33]

The Employers liability Act 1938 was enacted after the Royal Commission on Labour in India's observation of the 2 doctrines that were claimed as a defence by the employer i.e., The doctrine of common employment and the doctrine of assumed risk.[34] For this doctrine to be claimed as a defence the employer must prove that he has exercised his duty properly that there was no principle negligence on part of his duty like providing proper working environment and other facilties to be given which was now defined in S.3(d) of the Employer's Liability Act 1938. So the govt. were in a position to make a proper legislation in this regard. It was during the time of the Willsons case. Finally in Willsons & Clyde Coal Co v. English [35] the nature and the extent of the common law duty of the employer was held to be personal to him. By the time the Indian Bill was passed into the law Willsons & Clydecase had been decided and it is surprising as to why the Indian legislature took the trouble of introducing these detailed provisions in the Act. The effect could have been achieved by providing in a simpler Act a declaration that the doctrine of common employment has no application in India.

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[31] Ibid
[32] See AIR 1938 Cal. 104 and in appeal to Privy Council. AIR 1940 p.v. 225
[33] See AIR 1940 PC 225
[34] See Report of the Royal Commission on Labour in India 1931, Jene.P314
[35] (1973) 3 AIL E.R. 628

One consequence of the Act as it stood before the amendment, particularly section (3) was that it raised a problem of interpretation in Constance Zena v Governor-General of India[36]The Privy Council, however, upheld the second interpretation [37] and reversed the judgment of the Lahore High Court. This interpretation, it said, "accords better with the grammatical construction of the paragraph and is the more natural reading of the language used which, as its title to the particularly of the several paragraphs of sec. 3 go to show, was intended not to abolish the doctrine of common employment but rather to reduce its scope.

DOCTRINE OF COMMON EMPLOYMENT IN U.S

Before the F.E.L.A., the claims of injured workmen, whether employed by railroads or other industries, were controlled by the law of master and servant, as developed under the common law. Along with the advent of the railroads themselves, the law was embellished with the judicial brain children of the era. These new concepts came to be known as the fellow-servant doctrine, assumption of risk, and contributory negligence. As the establishment of any one of the three had the effect of defeating liability, it was not important to distinguish the defenses sharply or carefully, so long as the facts would sustain one of them.[38]

Only in 1842, the fellow-servant doctrine was accorded the dignity of authority in Farwell v. Boston & Worcester R. Co.' Chief Justice Shaw there held that the responsibility of the master under Respondeat superior applied only to strangers, but that the servant's claim must be maintained, if at all, upon contract. In 1850 the rule was first applied to the case of a railroad employee in England, 'where it was known as the doctrine of common employment."

The injustice of the rule became obvious as the burden of shop casualties caused by negligence was thrown upon the one least able to bear it, the employee. Decades later, Workmen's Compensation Laws codified the view that the State should undertake responsibility to spread the financial loss among employers for all industrial accidents rather than attach liability upon a particular employer for each individual accident.[39]

[36] AIR 1946 Lahore p 50 and in appeal to PC AIR 1950 PC 22
[37] AIR 1950 PC 22, 22-23
[38] See Defences under FELA, Https://kb.osu.edu/dspace/bitstream/handle/1811/67897/OSLJ_V17N4_0416.pdf
[39] Ibid at pg.3

In C. C. & C. R. Co. v. Keary,'[40] where recovery was again allowed to a brakeman for injury caused by negligence of his superior co-employee, the conductor[41].The rule that a servant assumed the risk of certain dangers of injury during his employment was first given judicial expression, along with the fellow-servant doctrine, in *Priestly v. Fowler.* The two defences were often confused; but, as previously stated, it made little difference upon which theory recovery was denied. However, it did become a matter of serious consequence when exceptions were made to the fellow servant rule, and particularly when the fellow-servant doctrine was abolished by the F.E.L.A.[42]

Assumed risk derives from the maxim volenti non fit injuria" The assent (volenti) has been interpreted as extending even further than under the contract theory. Although the employee under his contract of employment did not assume the risk that his employer would violate a statute enacted for his safety, it was held that if he was consciously aware of such violation he assented, and hence assumed the risk.[43]

Throughout the history of the law of master and servant, and particularly under the F.E.L.A. and the Safety Appliance Acts, the greatest difficulty has been encountered in defining and distinguishing assumption of risk and contributory negligence, and in classifying a set of facts as one or the other. The distinction between the two has been expressed in terms of chronological sequence in that assumption of risk occurs before the negligent act of the employer, whereas the employee's action thereafter, if improper, constitutes contributory negligence.[44]

By enactment of the F.E.L.A. in 1908, contributory negligence was no longer a bar to recovery, but could be asserted in diminution of damages. Thus, before 1908 contributory negligence was a complete defence, and after that date it was a partial defence to liability under the F.E.L.A. Assumption of risk was a complete defence that was not affected by the F.E.L.A. until the amendment in 1939," which entirely eliminated that defence from the F.E.L.A. But in all the cases

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[40] 3 0. S. 201 (1854)

[41] "But they (employees) cannot be made to bear losses arising from carelessness in conducting the train, over which their employer gave them no power or control, either separately or collectively, until we are prepared to say that justice and public policy require the consequences of duty omitted-by one party to be visited upon the other, although stripped of all power to prevent such consequences."

[42] Supra note 38, at pg.5

[43] Ibid at pg.6

[44] See Johnson v. Mammoth Vein Coal Co., 88 Ark. 243, 114 S.W. 722 (1908). "The preliminary conduct of getting into the dangerous employment is said to be accompanied by assumption of risk. The act more immediately leading to a specific accident is called negligent."

the Doctrine was not applicable to the children those who are employed.[45]So in such a case the employer cannot.

ABOLITION OF THE DOCTRINE

In Mc Dermid v. Nash Dredging & Reclamation Co. Ltd[46]. the plaintiff employee was seriously injured owing to the negligence of the captain of a tug on which he was working on the instructions of his employees, an English company and sole defendant in the action.

This confusion is explicable but unnecessary. The doctrine of common employment established that an employee could not make his employer liable for the tort of a fellow employee committed in the course of their employment; the apparent harshness of this rule was often mitigated, before its abolition by section 1 of the Law Reform (Personal) Injuries Act 1948, and the decision of the House of Lords in Wilsons & Clyde Coal Co. Ltd. v. English [1938] A.C.

Illinois Central R. R. v. Skaggs, 240 U. S. 66, 70 (1916) (Fellow servants rule). Though the fellow servants rule was claimed to be abolished after the FELA, under the guise of assumed risk the doctrine was apparently resurrected.

But a recent amendment to the Federal Employers' Liability Act of 1908 provides: " in any action brought against any common carrier under this Act to recover damages for injuries to, or death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted from the negligence of any of the officers, agents, or employees of such carrier.[47]

Under the doctrine of respondent superior, an employer generally is liable for injuries caused by the negligent acts of his employees.[48]The import of this rule, which has been criticized as unjust by courts and commentators, has been diminished by workers' compensation and employers'

[45] See Holdman S .Hamlyn (1943) 1 K.B.664
[46] [1986] 3 W.L.R. 45
[47] See." Pub. L. No. 382, 76th Cong.,ist Sess. (Aug 11, 1939) See also ; Employers' Liability Acts. Federal. Amendment Abolishing Assumption of Risk as a Defense, Harvard Law Review , Vol. 53, No. 2 (Dec., 1939), pp. 341-342 (Fellow 9)
[48] See Burger Chef Sys. V. Govro, 407 F.2d 921, 925 (8th Cir. 1969)

liability laws[49]. Inspite of this the rule was not completely abolished, it may be invoked as an effective defense in actions instituted by employees in occupations not covered by workers' compensation. Buchalski v. Kramer,[50]

Finally in Lawrence v. City of New York[51], the Appellate Division, Second Department, confronted with such a situation, abolished the fellow servant rule, holding that it is not a viable defence to an employee's action against his employer for injuries sustained due to the negligence of a co-employee.

CONCLUSION

The Doctrine finds its origin through a case and finally its reign also ends in a case. The need for this doctrine arose when the employer was sued for even the petty acts of the fellow servants. This doctrine though seems to benefit the employer, it is affecting the employee a lot and so the courts were indulged to abolish such a doctrine from its existence. In India the doctrine don't have much applicability than that of the U.S. The doctrine acts as an exception to the tortious liability i.e., the vicarious liability of the employer, where the employee do not claim from the employer damages for the acts of the fellow servants. But once the doctrine is removed from its existence or to put it another way the abolish the application of the doctrine the employers were mandated by the law to maintain proper working environment and to ensure the implementation of the regulations inside the working area, thereby to avoid the occurance of the accidents. But after the prevalent usage of the employers liability Act and the workmen compensation Act the employers become cautious so that they won't end up in a tragedy of suits and also when the employer fails to perform the duties and also the regulations, the law won't wait for any of the incidents to occur for hearing the appeal and to sue the employer, rather it can do so if the employer didn't comply with. So the prevalence of the doctrine during a period made the employers state of condition more liberal but after its abolition there is a huge impact on the

[49] See N.Y. EMPLOYERS LIAB. LAW § 2 (mckinney 1955 & Supp. 1980-1981). Under Section 2 of the New York Employers' Liability Law, the fellow servant rule is barred as a defense only when a negligent employee had been acting for his employer in a supervisory capacity

[50] See 243 App. Div. 703, 704, 277 N.Y.S. 91, 92-93 (2d Dep't 1935)

[51] 82 App. Div. 2d 485, 447 N.Y.S.2d 506 (2d Dep't 1981), af'g N.Y.L.J., Dec. 13, 1979, at 14, col. 5 (Sup. Ct. Kings County).

employers. The major reason for the abolition of the doctrine is its non-compliance with the Natural Justice principle.

But the position of premises rule is still unclear as some courts, recognizing the harshness of the premises rule, have attempted to extend the premises rule to include injuries that occur within a reasonable distance of the employer's premises. And most courts recognize the compensability of an injury that occurs off the employer's premises when an employee is going to or coming from work, where the trip itself is a substantial part of the employee's service to the employer. The position in U.K also covers injury that has been caused in the course of employment but employment begins when he arrives at his place of work and ends when the person and the workmen can claim compensation for injuring caused while travelling or commuting only under the exceptions. It is fair that such a doctrine is abolished and thereby ensures the willingness of the employees towards the job as the workmen the safety was guaranteed by the State. But instead of delaying the abolition of the doctrine by the act of the judiciary, the parliament would have taken steps for its abolition. Though ultimately the doctrine was abolished after the Acts of the legislature, the intent of the legislature was not clear as the Judiciary interpreted it in a wider sense and held that the Legislature didn't intent to abolish the doctrine as such but to reduce its scope. Instead of creating such a confusion which leads to a chaos the Legislature would have responded in a simple manner that such a doctrine is not applicable anymore rather than implementing the laws that will impose restrictions. But the point of the ILO's action of passing conventions regarding this issue, is not clear as to whether it had an impact in the creation of the Legislation in this regard.