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ANALYSING VICARIOUS LIABILITY: DELOITTE V UNION OF INDIA

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The doctrine of vicarious liability, where one party is held legally responsible for the acts of another, serves as a cornerstone in the regulation of professional conduct, particularly in areas like auditing and accounting where public trust and economic stability hinge on collective responsibility. The Delhi High Court's judgment in *Deloitte Haskins & Sells LLP v. Union of India 2023*¹ is a landmark decision that sharply defines the obligations and liabilities of audit firms and their partners under Indian law. This essay examines the context, legal arguments, judicial reasoning, and the broader implications of the judgment, focusing particularly on the legal and policy landscape surrounding vicarious liability for auditors.

BACKGROUND:

India's regulatory environment for auditors underwent substantial change following large-scale corporate scandals, notably the 2009 Satyam scam, which exposed the inadequacies of a self-regulated discipline managed exclusively by the Institute of Chartered Accountants of India (ICAI). The establishment of the National Financial Reporting Authority (NFRA) under Section 132 of the Companies Act, 2013 (CA 2013)², was a watershed moment, granting statutory power to oversee, investigate, and enforce disciplinary action on the audit profession. Against this backdrop, the *Deloitte*³ case emerged as a litmus test for the scope of liability; both for entities and individuals within a modern regulatory regime.

¹ Union Of India v. Deloitte Haskins And Sells Llp, 1 Delhi High Ct. (2023)

² Companies Act, 2013, S 132 (India)

³ *Supra* note 1.

Deloitte and other respondent audit firms faced notices from the NFRA concerning alleged professional and statutory lapses in certain high-profile audits. The challenge raised by Deloitte primarily revolved around the constitutional validity of certain provisions, the power of the NFRA, and, centrally, the applicability and extent of the doctrine of vicarious liability for multi-partner audit firms organized as Limited Liability Partnerships (LLPs)⁴.

THE LEGAL ISSUE:

Vicarious liability, at its core, is intended to bridge the gap between the activity of an individual agent (such as an engagement partner) and the responsibilities of the collective entity (such as an LLP)⁵. The doctrinal debate in the *Deloitte* case focused on whether, and to what extent, an LLP or its uninvolved partners can be held liable for the fraudulent or negligent acts of one of their partners, particularly when the alleged transgression occurs “in the course of business.”

Deloitte’s argument was grounded in the nature of the LLP structure, relying especially on Sections 27, 28, and 30 of the LLP Act, 2008⁶. These provisions arguably confer a protective shield around partners not personally involved in wrongful acts, limiting their liability to their respective acts or omissions. Moreover, they invoked fundamental rights under the Indian Constitution, particularly Article 19(1)(g)⁷ (freedom to practice any profession) and Article 14⁸ (equality before the law), to assert a fair, reasonable, and proportionate standard for imposing liability.

The Union of India, defending the statutory framework, emphasised principles of agency embedded in the Partnership Act, 1932⁹, and reinforced by Section 147 of the CA 2013¹⁰. Their stance was rooted in the notion that the business of auditing is inherently collaborative and that the “firm” is the statutory auditor appointed by companies, not merely an individual partner. This mandates a regime where both the LLP and directly responsible partners can be held to account, particularly in matters affecting public interest¹¹.

⁴ *Supra* note 1.

⁵ *The Doctrine of Vicarious Liability of Auditors: Delhi High Court in Deloitte v. Union of India*, (Mar. 3, 2025), <https://indiacorplaw.in/2025/03/03/the-doctrine-of-vicarious-liability-of-auditors-delhi-high-court-in-deloitte-v-union-of-india/>.

⁶ Limited Liability Partnership Act, 2008, S 27, 28, 30 (India).

⁷ The Indian Constitution, 1950, S 19(1) g (India)

⁸ The Indian Constitution, 1950, S 14 (India)

⁹ The Partnership Act, S 1, 1932 (India)

¹⁰ The Companies Act, S 147, 2013 (India)

¹¹ *Supra* note 1.

Later, The Union of India appealed this judgment to the Supreme Court, which delivered its verdict on May 3, 2023. The Supreme Court upheld the constitutional validity of Section 140(5)¹² but clarified that resignation of an auditor after initiation of proceedings does not nullify the ongoing Section 140(5)¹³ process, especially where allegations of direct or indirect fraudulent conduct exist. The Court dismissed Deloitte's contention that resignation automatically protects auditors from liability.

In summary Delhi High Court's judgment initially provided some relief to Deloitte by holding that proceedings under Section 140(5)¹⁴ do not continue after resignation, but this was overturned by the Supreme Court, which made auditor accountability robust irrespective of resignation, upholding Parliament's intent to deter fraudulent conduct in the audit profession.

JUDICIAL REASONINGS:

The justification for expansive Vicarious Liability reflects the Court's decision to hold firms liable for wrongful acts committed by partners in business which shows an intentional policy choice. Moreover, The Court's purposive reading of Section 27(2) of the LLP Act¹⁵ is well supported. A literal interpretation that absolves LLPs (and, by extension, their partners) from the wrongful acts committed "in the course of business" would render regulatory regimes like the NFRA toothless. The purposive approach aligns law with economic reality and legislative intent, ensuring the statute embodies its public-protective rationale.

Secondly, The *Deloitte* judgment astutely navigates the tension between *limiting personal liability* of uninvolved partners (a key premise of the LLP structure) and the need for robust regulation in public-facing professions¹⁶. Section 28(2)¹⁷ shields individual partners from personal liability unless complicit or negligent. This is a necessary protection to prevent indiscriminate 'guilt by association', and the Court preserves this barrier. However, the firm itself, distinct from its individual partners, is left strictly liable. This "limited shield" is a balanced outcome: it upholds the LLP's foundational design while ensuring that the

¹² The Companies Act, S 140 (5), 2013 (India)

¹³ Ibid

¹⁴ Ibid

¹⁵ Limited Liability Partnership Act, 2008, S 27 (2) (India)

¹⁶ *Supra* note 1.

¹⁷ Limited Liability Partnership Act, 2008, S 28 (2) (India)

collective enterprise cannot escape consequences for the actions of those it empowers and profits from.

In evaluation, the Court justifiably prioritises *public interest* and *market integrity* over maximal protection for professionals. Given the societal role of auditors as watchdogs for transparency and accuracy in corporate finance, ensuring that audit firms cannot simply disown rogue partners is essential for investor confidence and broader economic stability.

The decision compels audit firms to instil rigorous internal controls. Knowing the entire firm is exposed to liability for any partner's misconduct creates a tangible incentive for firms to invest in compliance systems, ongoing training, and active supervision. This is not merely punitive; it is preventive, aligning private incentives with public goals.

However, while the ruling is well reasoned, several challenges exist within. Firstly, there is a theoretical risk that expansive vicarious liability may chill legitimate risk-taking or render partnership structures less attractive. Professionals may fear imputed liability for acts they could not reasonably oversee.

Also, The Court assumes audit firms have real capacity to monitor and control the conduct of all partners. In practice, size and geographic dispersion might make this difficult. Thus, enforcement agencies and courts must apply the doctrine with nuance, recognizing practical limits.

CONCLUSION:

The *Deloitte*¹⁸ decision stands as a landmark in the evolution of Indian professional liability law. By situating the policy objectives of transparency, accountability, and public interest at the core of judicial reasoning, the Court provides a roadmap for effective regulation not only in auditing but across all spheres where collective entities undertake duties of public trust.

In summary, the judgment is both institutionally and socially justified, overcoming potential critiques with reasoned argumentation and balance. Its long-term impact will be measured by

¹⁸ *Supra* note 1.

the extent to which it brings about a culture of compliance and ethical vigilance in India's audit sector