
STUDY ON THE NEED OF ABSOLUTE LIABILITY IN INDIA

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ABSTRACT

The purpose of this study is to compare absolute and strict liability. To learn the basics of strict liability, to assess absolute liability in India, To understand the distinction between absolute and strict responsibility. Tort responsibility is based on the principle that injuring others is wrong, regardless of whether specific insurances exist. When a person's actions or inactions cause a result, they are said to be lawfully at risk. In order to assign harm and claim remedies, the component of 'fault' is essential. The rule in this case is that the person who causes the injury is penalized for failing to deflect the reasonably expected harm. Strict responsibility and absolute liability are two major concepts in tort law, and understanding their differences is essential for any law student. This article will examine tortious liability in relation to strict and absolute liability, focusing on the cases of *Rylands v. Fletcher* and *M.C. Mehta v. Union of India*. Finally, the researcher suggests that strict and absolute culpability for environmental pollution should be established by law.

KEYWORDS: *Absolute Liability, Dangerous, Hazardous*

1. INTRODUCTION

The venture that undertakes such a risky and inalienably dangerous action for private gain has a social obligation to repay those who have been harmed along these lines, and it should assimilate such misfortune as overhead; and, the Endeavour alone has the asset to find and protect against such perils and threats. In the following words, the Court clarified its position: "If the venture is permitted to engage in any dangerous or naturally risky activity for its own benefit, the law must assume that such permission is conditional on the venture bearing the cost of any mishap arising from such perilous or naturally risky activity as a normal part of its overheads. This requirement is

further supported by the fact that the project has the ability to identify and prepare for risks or hazards, as well as to provide warnings about potential dangers." The Court further stated that the amount of money due should be proportional to the scope of the initiative, so that it can have an impediment effect, with larger and more successful businesses paying a higher amount of remuneration for the harms they have caused. The use of rigorous risk is a legal requirement, but there are no exceptions. *M.C. Mehta v. Association of India* advanced the concept of supreme risk management, which stated that an undertaking engaged in a risky or perilous development is completely liable for any harm that occurs as a result of the errand of such activity, and must compensate each and every person affected by the mishap. Total risk, in its most basic form, refers to a no-fault obligation in which the transgressor is not granted any exceptions to the stringent obligation. The manage laid forth by *Rylands v. Fletcher* and observed by the Supreme Court of India in *M. C. Mehta v. Association of India* is that total duty is more harsh than tight risk (*Oleum gas spill case*). The case started with an oleum gas spill at the Shriram Food and Fertilizers Ltd. facility in Delhi. This gas leak occurred not long after the infamous Bhopal gas leak, causing a huge uproar in Delhi. Bhagwati CJ. Was a trailblazer in this vital advancement, refusing to follow the precedent set in *Rylands v. Fletcher* on the ground that the criteria established in that case do not reflect current jurisprudential thinking? In the current modern culture, where risky or inalienably dangerous businesses are necessary to complete the advancement programme, Justice Bhagwati also stated that the lead of strict obligation was advanced in the nineteenth century, at a time when nature mechanical improvements were at an essential stage. As a result, this control can't be held applicable in a show day setting. Furthermore, this run, which was advanced despite a wholly unforeseen social and financial framework, cannot be considered a hindrance. The purpose of this study, titled "A Comparative Study on Absolute and Strict Liability," is to learn more about To learn about the fundamentals of strict responsibility, to assess the need for absolute liability in India, to understand the exceptions to strict liability, and to compare and contrast absolute and strict liability.

2. AIM OF THE STUDY

To study about the essentials of strict liability, analyze the necessity of absolute liability in India, know the exception under strict liability and examine the difference between absolute and strict liability.

3. LIMITATIONS OF THE STUDY

- Lack of secondary source of data
- Restricted accessibility to primary source of data.

4. RESEARCH METHODOLOGY

The research is based on secondary source of data, which includes:

Articles

Books

Journals

Types of research

Applied Research

5. HYPOTHESIS

1. HO: There is no liability for polluting environment under strict and absolute liability
2. H1: There is a liability for polluting environment under strict and absolute liability by courts.

6. CASE ANALYSIS

6.1 STRICT LIABILITY

Facts: Rylands and Fletcher lived next door to each other. Fletcher claimed a factory and hired self-employed companies and architects to create a water supply on his site for vitality reasons. There were old unused shafts beneath the repository's site that the architects failed to notice and piece together. When water filled Fletcher's supply due to the recklessness of the temporary

workers, the water entered Rylands' coal mine and caused massive damage, as that is where the poles drove. Ryland used this method to document a lawsuit against Fletcher. The responder claimed that the temporary workers were to blame, and that the cause of the harm was unknown to him.

Issues: The question was straightforward: may the litigant be held liable regardless of whether an element on his property escaped due to the actions of another person? It was surprising in light of the fact that the litigant had shown no carelessness or expectation.

Judgment: The House of Lords denied the respondent's application and found him accountable for all of Rylands' mine's damages. According to the rule established by this case, if a man expedites his territory and keeps any dangerous thing there, a thing that is likely to cause insidiousness if it escapes, he will be liable for the harm caused by its escape at first sight, despite the fact that he had not been careless in keeping it there. Despite the fact that the litigant had no fault or carelessness on his part, he was held accountable because he maintained something dangerous on his premises, and the dangerous thing got away and caused harm.

6.2 ABSOLUTE LIABILITY:

Facts: On the fourth and sixth of December, 1985, a severe oleum gas spill occurred in one of Shriram Foods and Fertilizers Industries' units in Delhi, which was affiliated with the Delhi Cloth Mills Ltd. As a result of this, a backer honing at the Tis Hazari Court had died, and countless others had been affected. The court received a writ appeal through method for open intrigue suit (PIL).

Issues: It was argued that if all of the disasters arising from the handling of massive production lines are subjected to tight liability control, they will fall within the exemptions and be free of blame for the harm they have caused as a result of their actions.

Judgment: The Court noted that this was the second large-scale spillage of a lethal gas in India within a year, since more than 3000 people died a year ago as a result of a gas spillage from the Union Carbide facility in Bhopal, and lakhs more were affected by various illnesses. If the tight

risk control established in *Rylands v. Fletcher* was tied to such situations, then those who had built up "hazardous and dangerous" companies in and around densely inhabited areas may argue that they were not responsible for the destruction wrought by asserting specific exceptions. Following that, the Supreme Court devised a new rule – "Absolute Liability," authored by then-Chairman of the Supreme Court of India PN Bhagwati.

6.3 PRECEDENT CASE LAW

The Supreme Court adopted the same rule in the case of *Madhya Pradesh Electricity Board v. Shail Kumari*, in which a cyclist was caught and electrocuted by a live-wire. The board attempted to defend themselves by claiming that the wire on the ground had been rerouted by a stranger with the purpose of misusing the energy. The court ruled that the board's specific responsibility for supplying electric energy is statutory. If the energy thereby conveyed causes injury, the supplier of the electric energy bears the primary responsibility for compensating the victim. The court further stated that, regardless of any negligence or carelessness on the part of the administrators of such activities, a person engaging in an activity involving dangerous or unsafe exposure to human life is liable under tort law to compensate for the injury.

The case of *Union Carbide Corporation v. Union of India* clearly establishes that the absolute liability principle was applied in evaluating the compensation owed to Bhopal gas victims. Although the appropriateness of compensation granted to victims is a separate problem, the relevant component here is the acceptance of the concept of absolute liability for providing compensation.

In the case of *Mushtaq Ahmend v. State of Jammu and Kashmir*, the state was careless in maintaining electricity cable, and the victim died as a result of an electric shock. The court ruled that because the state is engaged in the business of supplying energy, it is obligated under tort law to compensate the petitioners for the death of the deceased, regardless of negligence or carelessness on their part. Although the basis employed was not absolute liability, the compensation given by the court was in agreement with it. This section of the project is crucial because it assisted us in determining the existence of the principle of absolute liability. We can see

that the Indian judiciary has recognized the principle and clearly stated that it is not merely an orbiter but is applicable to the country's current circumstances.

6.4 LEGAL PROVISIONS

The Public Liability Insurance Act of 1991 entails the following provisions: This act is crucial in that it provides immediate assistance to persons who have been impacted accidentally while also addressing any hazardous substances that may be present as a result of the occurrence. The primary goal of the Act is to establish a public liability insurance fund that may be used to compensate victims. The Act specifies that anyone engaging in typically hazardous or dangerous activities should have safeguards and procedures in place to ensure that he is protected from liability to compensate victims in the event of an accident. In the case of formally established units, protective methods must be taken as soon as possible, and the administrator granted the proprietors a year to enter into protection contracts. This liability is based on the principle of "no fault liability," or, to put it another way, the balance between strict and absolute culpability. Section 2(c) of the Public Liability Insurance Act of 1991 states as much.

6.5 ANALYZE THE NECESSITY OF ABSOLUTE LIABILITY IN INDIA

With our country being a pioneer in industrial development and the demo-graphs of such progress soaring higher by the day, as well as the complexity of life and geography, a tougher and more absolute culpability principle with respect to no-fault liability is required. Furthermore, the strict liability principle established in Rylands v. Fletcher cannot be applied in the modern world because the principle was developed in the nineteenth century, and in the midst of the industrial revolution, this two-century-old tortuous liability principle cannot be applied in the modern world without modification. The inclusion of multinational corporations (MNCs) under the jurisdiction of our country, which is on the verge of becoming one of the world's most globalised countries, generates both points of admiration and alarm. Because of the rising technical complexity and the nature of industrial development, as well as the fact that the industrial sector is a major contributor to our GDP, the protection of people's very human rights and lives should be taken into account. As a result, strict responsibility cannot be considered the only principle of redress. We don't have

to be restricted by this norm, which was developed in the context of a completely different type of economy. The law can no longer afford to be static. Also, because industrial progress cannot occur without the presence of hazardous and inherently dangerous businesses, it is critical to place responsibility for the protection of people from accidents and other hazards on the shoulders of these industries. As a result of the foregoing, it is critical that such a theory be developed, as it will not only shape our jurisprudence but also assist us in avoiding the absolute principle of strict liability in modern society. Thus, the necessity element stated in the preceding section clearly demonstrates that the principle of absolute culpability is required not only to defend people's basic human rights, but also to develop tort law in India and grow our own country's jurisprudence.

6.6 TO KNOW THE EXCEPTIONS UNDER STRICT LIABILITY

There are a few exceptions to the strict responsibility rule, including the following: Fault of the offended party: If the aggrieved party is to responsible for any damage, the litigant is not at risk because the offended party engaged with the risky thing himself. Act of God: An "Act of God" is an occurrence that is beyond any human agency's ability to control. Such activities occur for unique causes and are impossible to predict, even while training alertness and foresight. The litigant would not be liable if the dangerous substance escaped due to an unforeseeable and common occurrence that could not have been prevented in any manner.

Act of a Third Party: The rule is also unaffected when the damage is caused by the actions of a third party. The term "outsider" means that the person is neither a respondent's servant nor does the litigant have any agreement or control over their work. In any case, where the outsider's action may be expected, the reply must exercise caution. Otherwise, he will be seen as trustworthy. Plaintiff's Consent: In this unique circumstance, the rule of *volenti non fit injuria* applies. For example, if A and B are neighbours and share a similar water supply that is located on the property where A is located, and the water escapes and causes harm to B, B cannot sue for damages because A is not responsible for the dam.

7. FINDINGS AND SUGGESTIONS OF THE STUDY

There are fewer provisions relating absolute and strict liability.

- Negligence is not present.
- Punishments for absolute and strict responsibility are less severe.
- There should be additional absolute and strict liability restrictions.
- There must be no sloppiness.
- Punishments for absolute and stringent liability should be increased.

8. CONCLUSION

Strict liability and absolute liability are two exceptions to the rule. When a guy is found to be at fault, he is made a subject. In any case, the guiding concept governing these two principles is that a man can be put in danger even if he is not at fault. The concepts of "no fault liability" are what they're called. Under these principles, the liable individual may or may not have committed the act, but he will be responsible for the injury created as a result of the act. There are a few exceptions to strict responsibility where the respondent would not be put at danger. Regardless, the respondent is not granted any exceptions due to total liability. Under the stringent liability to administrate, the litigant will be influenced at risk. Tort is a common wrong for which the remedy is a precedent-based legal action for unliquidated harms that isn't solely the breach of an agreement, trust, or other reasonable and fair promise. (1994, Vinod Shankar Mishra) The tort law is represented by a number of standards. For the most part, a man is responsible for his own wrongdoings, and he is not responsible for the actions of others. This is referred to as the "no fault liability principle." In this case, the at-risk individual may not have committed any acts of negligence or made any beneficial contributions, yet the rule still requires him to be paid.

This principle is based on two landmark cases: Rylands v Fletcher (strict liability) and M.C.Mehta v Union of India (absolute Liability). The rules of strict liability clearly state that a person who retains dangerous substances on his premises is responsible for any injury caused if the substance escapes in any way. This principle is valid if there was no carelessness on the part of the person

who kept it, and the burden of proof consistently falls on the litigant to act in a way that does not put him in danger.

Though the rule of absolute liability held that where an undertaking is engaged in a hazardous or dangerous activity and it causes harm to anyone as a result of a mischance in the task of carrying out such a risky or typically hazardous activity, the undertaking is strictly and absolutely liable to repay to all those who are harmed by the accident. Both of these laws are based on the 'no fault responsibility concept,' which holds the respondent liable even if he isn't directly or indirectly responsible for the damages caused to the offended party.

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