

EVOLUTION OF ABSOLUTE AND STRICT LIABILITY

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Abstract

The purpose of this paper is to study and review the evolution of absolute liability over some time. The present paper attempts to analyse how absolute liability principles are applied in today's time. The aim of the present study "A comparative study on absolute liability and strict liability" is to study the essentials of strict liability, to analyse the necessity of absolute liability in India, to know the exception under strict liability, to examine the difference between absolute and strict liability. The concept of liability in torts depends on the key rule that it is wrongful to hurt different people, regardless of whether particular insurances are missing. In law, a person is said to be lawfully at risk when she/he is legitimately in charge of something – a result that has happened because of the individual's activity or omission.

In this article, the circle of tortious liability in so far as it identifies with strict and absolute liability will be broken down, through the point of interest instances of ¹Rylands v. Fletcher and ²M.C. Mehta v. Union of India. At last, the researcher concludes that there should be proper legal provisions and there should be a rigorous liability on polluting the environment in strict and absolute liability. This article strives to examine and explain the paradigms shift from traditional legal redress to PIL in invoking the absolute liability principle. Additionally, it describes shortcomings of strict liability and the conventional concept of locus standi. Thus, modern analysis and interpretation of absolute liability are done explaining most aspects through case laws, treaties etc. We researched with a qualitative approach. The research will gather secondary data which includes reports, websites, etc. Further, primary data includes statutes, case laws, etc.

¹ Rylands v Fletcher (1868) LR 3 HL 330

² M.C. Mehta And Anr vs Union of India & Ors., 1987 AIR 1086, 1987 SCR (1) 819

Introduction

There are situations when a person may be liable for some harm even though he is not negligent in causing the same, or there is no intention to cause them harm, or sometimes he may even have made some positive efforts to avert the same. In other words, sometimes the law recognizes No liability. In this connection, the rules laid down in two cases, firstly, in the decision of the House of Lords in Rylands v. Fletcher, (1868) and, secondly in the decision of the Supreme Court of India in M.C. Mehta v. Union of India, (1987) may be noted.

The rule laid down in Rylands v. Fletcher is generally known as the Rule in Rylands v. Fletcher' or 'Rule of Strict Liability. Because of the various exceptions to the applicability of this rule, it would be preferable to call it the rule of Strict Liability, rather than the rule of Absolute Liability. While formulating the rule in M.C. Mehta v. Union of India, the Supreme Court itself termed the liability recognized in this case as Absolute Liability and expressly stated that such liability will not be subject to such exceptions as have been recognized under Rylands v. Fletcher.

The rule of absolute liability is similar to the rule of strict liability with some modification. This rule applies without any limitation or exception and creates an individual completely liable for any fault. The property to make anyone liable for the fault and imposition of high retraction makes these liabilities an absolute liability. Absolute liability and strict liability are the two most fundamental concepts of liability in the Law of Torts, with some very minor, yet distinct differences. One can also say that the law of Absolute liability is modified; thus, a more modern version of the law of strict liability, which won't be much far off either. While the strict liability lays off some defence, the law of absolute liability holds an individual completely liable for the fault without any limitation or exemption which are still applicable in the other liability. Both of them may be similar, but they have some key differences which are critical for any law student to know and understand. In this paper, we'll analyse both the liabilities along with their key differences through their origin and landmark cases of each liability respectively.

Background**Concept of Strict Liability**

The strict liability first emerged in the landmark case in the late 19th century named Rylands v. Fletcher, in 1868, the House of Lords laid down the rule recognizing 'No fault' liability. The liability was known to be 'Strict Liability', i.e., even if the defendant was not negligent or rather, even if the defendant did not intentionally cause the harm or he was careful, he could still be made liable under the rule.

In Rylands v. Fletcher, the defendant, got a reservoir constructed, through independent contractors, over his land for providing water to his mill. There were old disused shafts under the site of the reservoir, which the contractors failed to observe and so did not block them. When the water was filled in the reservoir, it burst through the shafts and flooded the plaintiff's coal mines on the adjoining land. The defendant did not know of the shafts and had not been negligent although the independent contractors had been. Even though the defendant had not been negligent, he was held liable.

ESSENTIALS AND EXCEPTIONS OF STRICT LIABILITY

ESSENTIALS OF STRICT LIABILITY

There are certain essentials or 'qualifications' that determine whether or not a liability is a strict liability. These essentials are as follows:

1. DANGEROUS THING

According to this rule, the liability for the escape of a thing from one's land arises provided the thing collected was a dangerous thing i.e., a thing likely to do mischief escapes. In RYLANDS VS FLETCHER the thing so collected was a large body of water. The rule has also been applied to gas, electricity, vibrations, yew trees, sewage, flag pole, explosives, noxious fumes and rusty wires.

2. ESCAPING FROM THE PREMISE

One of the most important essential for strict liability is that the potentially harmful substance must escape from the premise of the defendant and it should not be in reach or capability to stop, once it escapes.

3. NON-NATURAL USE OF LAND

This simply means that there must be some special use (activity) of land that increases the danger of damage to others nearby. It must not be the ordinary use of land or use as is proper for the common benefit of the community.

These are the three essentials of strict liability. The issue is that only when every single one of these essentials is satisfied, would the liability be termed as strict liability.

EXCEPTIONS OF STRICT LIABILITY

Exceptions are mostly a set of defences or 'excuses' that the defendant can plead to escape strict liability, only if his/her actions have qualified a specific set of conditions respective to each defence mentioned. Each defence depends on the facts of the case and can change accordingly. The ones given below are the major exceptions of the law of strict liability:

The following exceptions to the rule have been recognized by Rylands v. Fletcher and some later cases: (i) Plaintiff's default; (ii) Act of God; (iii) Consent of the plaintiff; (iv) Act of the third party; (v) Statutory authority.

1. DEFAULT OF THE PLAINTIFF

If the damage caused to the plaintiff is solely because of the act or default of the plaintiff himself/herself, there is no remedy for him/her.

2. ACT OF GOD

The Act of God or Vis Majeure can be described as an event which is directly and exclusively resulted from natural causes that were not foreseeable or preventable by the exercise of proper precaution by the defendant. Thus, if the potentially harmful substance escapes the premises due to some natural cause and without any human intervention, then the defendant will not be liable.

3. CONSENT OF PLAINTIFF

In the case of *volenti non fit injuria*, i.e., where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule *Rylands v. Fletcher* does not arise. Such consent is implied where the source of danger is for the 'common benefit' of both the plaintiff and defendant. For example, when two persons are living on the different floors of the same building, each of them is deemed to have consented to the installation of things of common benefit, such as the water system, gas pipes or electric wiring. When water has been collected for the common benefit of the plaintiff and the defendant, the defendant will not be liable for the escape of such water unless there is negligence on his part.

4. ACT OF A THIRD PARTY

When the damages are caused due to a third party who is not affiliated with the defendant in any way, such as servant, worker, secretary, contractor, etc., then the defendant cannot be held liable; unless the act of the third party is foreseeable and the defendant did not exercise proper caution to avoid that act.

5. STATUTORY AUTHORITY

It has already been noted above that an act done under the authority of a statute is a defence to an action for tort. The defence is also available when the action is under the rule in *Rylands v. Fletcher*. Statutory authority, however, cannot be pleaded as a defence when there is negligence. In *Green v. Chelsea Waterworks Co.*, the defendant Co. had a statutory duty to maintain a continuous supply of water. The main belonging to the company burst without any negligence on its part, as a consequence of which the plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.

Concept of Absolute Liability

The concept of absolute liability evolved in India after the case of *M.C Mehta vs Union of India* famously known as the *Oleum Gas Leak* case. This is one of the historic cases in the Indian Judiciary. The case of *M.C Mehta* is based on the principle of strict liability but with no exception were given and the individual is made liable for his acts. It is based on this principle that the defendant won't be allowed to plead defence if he/she was at fault as it was laid down in

the Ryland vs Fletcher case. After the Bhopal gas leak case, many people lost their lives and are suffering from some of the fatal diseases throughout the generation and because of this, there was an urgent need to develop a rule under strict liability which had no exceptions available to the defendant to escape from the liability. The rule laid down by the Honourable Supreme Court of India is much wider concerning the rules laid down by the House of Lords in the case of Ryland vs Fletcher. It was propounded by the Supreme Court that where an enterprise is engaged in a hazardous or inherently dangerous activity and if any harm results to anybody on account of the accident in operation, the enterprise would be held strictly and liable to compensate to all those who are affected by the accident.

Essential Elements of Absolute Liability

The essential elements of absolute liability are-

1. DANGEROUS THING

As per the rules laid down, the liability of escape of a thing from an individual's land will arise only when the thing which is collected is a dangerous thing that is a thing which likely causes damage or injury to other people in person or their property on its escape. In various torts cases which have happened all over the world, the doctrine of strict liability has held a large body of water, gas, electricity, vibrations, sewage, flag-pole, explosives, noxious fumes, rusty wires etc are certain things which come under the ambit of dangerous things.

2. ESCAPE

Anything which has caused damage or mischief should have escaped from the area which was under the control of the defendant to come under the ambit of absolute liability. Like it happened in the case of ³**Read vs Lyons and Co.** where the plaintiff was working as an employee in the defendant's company which was engaged in manufacturing shells. The accident happened while she was on her duty that day within the company's premises. It happened when a piece that was being manufactured there exploded and due to which the plaintiff suffered harm. After this incident a case was filed against the defendant's company but the court eventually let go of the defendant and gave the verdict that strict liability is not applicable here in this particular case.

³ Read v Lyons [1945] KB 216

This was declared by the court because the explosion that took place was within the defendant's premises and not outside. And the concept says that it should have escaped the dangerous thing like shell here from the boundaries of the defendant premise which didn't happen and was missing over here. So, the negligence on the part of the defendant could not be proved in court.

3. NON-NATURAL USE OF LAND

Water collected on land for domestic purposes does not amount to non-natural use of land but if one is storing it in large quantities like in a reservoir as was the case in **Ryland vs Fletcher** then it amounts to non-natural use of land. The difference between natural and non-natural use of land by keeping in mind the surrounding social conditions. The growing of trees and plants on land is considered as a natural use of land but if one starts growing poisonous trees then it will be considered as non-natural use of land. If an issue arises between the defendant and the plaintiff even though the defendant is using the land naturally, the court will not hold the defendant liable for his conduct.

4. MISCHIEF

To make the person liable under this principle, the plaintiff at first needs to show that the defendant had done the non-natural use of land and escaped the dangerous thing which he has on his land which resulted in the injury further. In the case of ⁴**Charing Cross Electric Supply Co. vs Hydraulic Power Co.**, the defendant was assigned to supply water for industrial works. But he was unable to keep their mains charged with the minimum pressure that was required which led to the bursting of the pipeline at different places. This resulted in causing heavy damage to the plaintiff which was proved in the court of law. The defendants were held liable despite this that they were not at fault. These are the few rules where this doctrine is applied.

EVOLUTION

The evolution and origin of a legal concept can't be better examined and studied, than through understanding the evolution of the principle of 'Absolute Liability'. The said principle may be a tortious, civil law concept that has morphed into the realm of constitutional and environmental law principles. In analysing the evolution of absolute liability, a detour into the concept of strict

⁴ Charing Cross Electricity Supply Co v Hydraulic Power Co, [1914] 3 KB 772

liability is remitted, because the former principal garners its foundational backing from the latter. Absolute Liability, in essence, refers to the principle of finding a private engaged in some hazardous/dangerous act, as a result of which they cause harm/wrong to the environment and public, absolutely responsible for their acts and actions, regardless of their intent to commit a wrong, and/or knowledge that their acts and actions would cause the commission of a wrong. The concept was developed for your time, from myriad precedents, and other relative tenants of tort law, which make the principle of absolute liability as distinguished and independent as it stands today.

EVOLUTION OF STRICT LIABILITY

Primarily before the year 1868, the concept of No-Fault Liability was availed.

In the concept of No-Fault Liability basically, a test is conducted during which it's seen that whether the defendant has done any negligence or any fault on his/her part, if there's any fault then the defendant is responsible for his/her negligence or act and if there's no fault it's very clear that the defendant will not be held liable. However, this idea of No-Fault Liability wasn't appropriate and a replacement test was evolved called the Strict Liability test within the year 1868 within the case of Rylands v. Fletcher.

Rylands v. Fletcher, 1868

Facts: there have been two men living next to every other, Rylands and Fletcher. Fletcher owned a mill for whose energy requirement; he constructed a water reservoir on his land. To get this work done, he had hired independent contractors and engineers. There were old unused shafts under the location of the reservoir which the engineers didn't notice and thus didn't block. Due to the negligence of the contractors, the shafts that led thanks to Rylands' land burst when water was filled within the reservoir. This caused huge damage and loss to Ryland because the water entered his coalpit. Thus, Ryland filed a suit against Fletcher.

Issue: it had been clear that the difficulty was whether Fletcher was responsible for the act or the negligence of the contractors?

Fletcher here raised a defence as per the No-Fault Liability Test that it had been not his fault but was of the contractors and he didn't know of the very fact that there were unused shafts under the

reservoir. However, during this case, Fletcher (defendant) was held liable and it became an exception of No-Fault Liability and therefore the concept of Strict Liability was evolved.

In the judgement Justice Blackburn said: We think that the true rule of law is that the person, who for his purposes brings in his land and collects and keeps there anything likely to try to mischief if it escapes, must keep it at his peril and if he doesn't do so is clearly in charge of all the damage which is that the natural if it escapes.

EVOLUTION OF ABSOLUTE LIABILITY

Though the concept of absolute liability has its roots as back as the 19th century, this concept arrived quite late in India. Only after the Oleum Gas Leak Case (M. C. Mehta's Case) occurred, that the judiciary realized the need for strict and absolute enforcement of liability into the Indian Context. Till now what was being followed, was the doctrine enshrined within the Common Law, but it received a modification in India within the sort of the introduction to the concept of absolute liability. The modifications in the existing doctrine- Strict Liability of the case of Rylands v. Fletcher (1868) led to the doctrine of absolute liability that prevented the defendants of M.C. Mehta v. UOI Case from taking over any defence against payment of compensation:

If an industry or enterprise is involved in any inherently dangerous activity, then for any damage arising out of the conduction of that activity, the defendants (the owners of the industry) will have no access to any defence or exception and will be liable to pay compensation to the aggrieved parties. The enterprise is going to be held liable for all possible damages or consequences resulting from the activity. This will make such industries provide safety equipment to their workers to stop any mishap. Therefore, this may safeguard the interests of the workers and can give them a refined, safe working atmosphere. In cases where strict liability applies, compensation paid is consistent with the character and quantum of damages caused but in cases of absolute liability, compensation or damage to be paid is exemplary. The amount decided upon should be more than the damage caused as industrial hazardous accidents generally cause mass death and destruction of property and the environment.

The principle of absolute liability was considered as a tool of prevention of mass destruction or avoidance of danger to the lifetime of masses. But with the transition of the concept of liability, courts started applying this concept whenever and wherever the wellbeing of any individual is

concerned. Absolute liability also can be upheld by the courts just in case of one death with no mass destruction of property or pollution of the environment. This was held in the case of ⁵**Klaus Mittelbachert vs. East India Hotels Ltd.** In this case, the plaintiff who was a German co-pilot suffered serious injuries after he dived into the swimming pool of a five-star restaurant. After investigation, it had been acknowledged that the pool had a defective design and also an insufficient amount of water. The pilot's injuries made him paralyzed which consequently led to his death after 13 years of the accident. The court held that five-star hotels that charge hefty amounts owe a high degree of care to their guests. This was violated by Hotel Oberoi Intercontinental, New Delhi where because of the defectively designed swimming pool, the plaintiff died a painful death. This made the hotel responsible for the payment of damages to the plaintiff. The compensation of Rs.50 lakhs was decided by the court for the plaintiff for the accident caused. In India, absolute liability is a standard of both tortious and criminal liability which stipulates that is where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident within the operation of such hazardous or inherently dangerous activity resulting, for instance, in the escape of toxic gas the enterprise is strictly and susceptible to compensate all those that are suffering from the accident and such liability isn't subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule of Rylands v. Fletcher.

Though India follows English laws since pre-independence, necessary amendments have been made up from time to time to suit the need of your time. Many rules which were not quite applicable according to the Indian context, had been modified accordingly. As far as the doctrine of absolute liability cares, it has not been touched upon even within the English laws. Slowly and gradually change occurred. In the Indian context, it came even more lately. Only after two tragic incidents of Bhopal Gas Tragedy and Oleum Gas Leak occurred, the Indian judiciary realized the need for modification of principles to suit the Indian Context. New principles need to be evolved and new norms need to be laid down which might adequately affect the new problems which arise during a highly industrialised economy. In India, the rule of absolute liability evolved within the case of M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 1086. This is one of the most landmark judgments which relates to the concept of absolute liability.

⁵ Klaus Mittelbachert vs East India Hotels Ltd. on 3 January 1999 ACJ 287

M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 1086

Facts: The case deals with the aftermath of the oleum gas leakage from the Shriram Food and Fertilizers Ltd. Complex in Delhi. This company dealt with the manufacture of hazardous chemicals. As the accident occurred soon after the Bhopal Gas Tragedy, it created huge panic. The facts of the case are that some oleum (O₃S- Fuming Sulphuric acid) gas escaped due to leakage in a particular area in Delhi. Due to the leakage, many people were affected-death and injury-causing damage. The Apex Court then evolved the rule of absolute liability on the rule of strict liability and stated that the defendant would be responsible for the damage caused without considering the exceptions to the strict liability rule. The Supreme Court held that the strict liability rule despite being so stringent was inadequate in modern times. This is because scientific advancements have made modern industries even more dangerous and hazardous. Hence, the court laid down the absolute liability rule in this case.

Ratio (Rule): According to the rule of absolute liability, 'if any industry/enterprise/person is involved in any inherently dangerous or hazardous activity, and if any harm is caused to any person due to an accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person (owners of industry) who is carrying out such activity will be held liable to pay compensation to the aggrieved parties. The exception to the strict liability rule also wouldn't be considered'.

Application of the Rule: The rule laid down within the case of M.C. Mehta v. Union of India was also followed by the Supreme Court while deciding the Bhopal Gas Tragedy case. To ensure that victims of such accidents get quick relief through insurance, the Indian Legislature passed the general public insurance Act within the year 1991. According to the absolute liability rule, no exceptions of strict liability shall apply in certain cases. Therefore, the people that cause damage will have unlimited liability to compensate victims adequately. The Courts in India have applied this rule in many cases to make deterrence. The enterprise will be held responsible for all possible damages or consequences resulting from the inherently dangerous activity. This will make such industries provide safety equipment to their workers to stop any mishap. Therefore, this may safeguard the interests of the workers and can give them a refined, safe working atmosphere.

The Bhopal Gas Tragedy

The Bhopal Gas Tragedy⁶ is one of the foremost devastating accidents within history. It was a mass disaster caused by the leakage of Methyl Isocyanate (MIC) and other toxic gases from a plant set up by the Union Carbide India Ltd. for the manufacture of pesticides in Bhopal on the night of December 2, 1984. UCIL is a subsidiary of Union Carbide Corporation (UCC), a multinational company registered in the U.S.A. More than 27 tonnes of methyl isocyanate and other deadly gases turned Bhopal into a death chamber. None of the six safety systems at the plant was functional, and Union Carbide's documents prove the corporate designed the plant with 'unproven' and 'untested' technology and performed on safety and maintenance to save money. The disaster resulted in the death of at least 3000 persons and there were serious diseases and injuries to many people. Some people permanently lost their eyes, hearing senses, some suffered from neurological disorders and scores of other complications. The Supreme Court laid the rule of absolute liability in preference to strict liability. The defence of the UCC on the grounds of sabotage was rejected and therefore the principle laid by the Supreme Court within the M.C. Mehta v Union of India was followed.

The Relevance of Public Liability Insurance Act, 1991

This Act was incorporated on 22nd January 1991. This Act has been established to provide immediate insurance for the person who met with an accident while handling a hazardous substance and other similar circumstances. This will help the weaker section of the people that handles such hazardous substances and chemicals from delayed relief of compensation. This act provides immediate insurance relief to such persons with genuine inquiry occurring through an accident as prescribed during this Act. All owners of such factories or industries handling hazardous substances shall take several insurance policies to supply immediate relief to its employee during such unforeseen accidents or injury or maybe death while handling such chemicals or substances. No person shall claim for relief just in case if such an accident occurs thanks to his wrong handling or negligence

The Indian court has declared in unequivocal terms that the principle of 'Absolute Liability' is well established and has become a part of the tortious law and also the environmental

⁶ Union Carbide Corporation vs Union Of India Etc, 1990 AIR 273, 1989 SCC (2) 540

jurisprudence, with no statutory mandate. The courts are responsive and innovative during this time. They need continuously reclaimed people who have suffered because of harmful chemicals and pollution, be it nature or man.

Conclusion

There are several laws on numerous fields that are currently out-of-date because of their restricted utility in modern times. One such law is that the rule of strict liability, that even supposing it is employed still, has several such loopholes which might be simply exploited in today's times. Thus, to correspond with the modern world, the rule was required to be changed.

Absolute liability is extremely the same as strict liability, however, it's no-exceptions half avoids the exploitation and injustice to the suffering party. There was an instantaneous and inherent want for such a principle because the rule of strict liability cannot be taken. After all, the sole principle to supply for compensation because it has been formulated 2 centuries ago, once the amount of technological development was simply at its initial stage, as compared with today's overall development. The rule of strict liability and absolute liability may be seen as exceptions. an individual is made liable only if he's guilty. However, the principle governing these 2 rules is that an individual will be without liability even while not his fault. This can be called the principle of "no-fault liability." under these rules, the liable person might not have done the act, however, he'll still be answerable for the harm caused thanks to the acts. Within the case of strict liability, there are some exceptions where the suspect wouldn't be created liable. However, within the case of absolute liability, no exceptions are provided to the suspect. The suspect is created liable underneath the strict liability rule regardless of what.

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