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# A Critical Analysis of Absolute Liability and its Role in Environment Law

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SANJANA PARISABOINA<sup>1</sup>

## ABSTRACT

*It has been testified repeatedly that though Indian legal system derives its essence from the English Common Law system that has existed since medieval times, over the years, the stalwarts of the Indian Legal System, have shaken off the colonial fetters and shaped the law to accommodate Indian circumstances. The story of evolution of the Doctrine of Absolute Liability enunciates the intricacies that Indian jurists went into to secure justice for the Indian masses. This paper attempts to analyse the applicability of absolute Liability in the Indian System. Furthermore, it tries to understand the reason behind the paradigm shift from strict Liability to Absolute Liability while discussing various case laws.*

**Keywords:** Tort, Absolute Liability, Environmental Law.

## I. INTRODUCTION

Absolute Liability is a term used to explain a case where Liability attaches to someone on a given condition, despite any care that that person might have taken despite any facts that suggest that the incident was outside human foresight. The principle of absolute Liability came in as there was criticism in Rylands vs Fletcher's case<sup>2</sup> on the ground that an accidental escape caused by the forces of nature is within the risk that must be accepted by the defendant when he accumulates the substance on his land.<sup>3</sup>

In India, absolute Liability is a standard of both tortious and criminal Liability which stipulates that where an enterprise is engaged in a hazardous or inherently dangerous activity. Harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in the escape of toxic gas the enterprise is strictly and liable to compensate all those affected by accident. Such Liability is not subject to any exceptions that operate vis-à-vis the tortious principle of Strict Liability.<sup>4</sup> It may be understood

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<sup>1</sup> Author is a student at Symbiosis Law School, Hyderabad, India.

<sup>2</sup> (1868) LR 3 HL 330

<sup>3</sup> W.V.H Rogers, WINFIELD AND JOLOWICZ TORTS, 19th ed. 2014 16–032

<sup>4</sup> Parkhi Saxena, *Absolute Liability in the Indian Context*, LEGAL SERVICES INDIA (Nov. 10, 2020 19:46 PM) <http://www.legalservicesindia.com/law/article/1236/5/Absolute-Liability-In-Indian-Context>

as widening the litigant's responsibility for environmental nuisance caused by him and reducing the probabilities of absolving him of his Liability or somewhat nullifying the possibilities of his acquittal.

In India, the Absolute Liability principle is an inalienable part of Article 21 of the Indian Constitution, and NGT Act 2010, under Section 17, incorporated the no-fault law.

Absolute Liability was initially used only in cases involving public hazard. Still, with the transition of the concept of Liability, courts started applying this concept whenever and wherever wellbeing of any individual is concerned. The courts can also uphold absolute Liability in case of a single death without any mass destruction of property or pollution of the environment.

### **(A) Research Questions**

- Is Absolute Liability applicable in the Indian Scenario?
- What was the need to introduce Absolute Liability?
- What is the relevance for the rule of Absolute Liability?
- How is Absolute Liability different from Strict Liability?

### **(C) Literature Review**

- "Absolute liability: The rule of Strict Liability in the Indian Perspective"<sup>5</sup> by Ayush Goyal and Bharat Parmar explains how the law has progressed over the years while also describes how the law has changed over the years and clarifies the Court's views on the Bhopal leak cases and the MC Mehta case in more detail.

- The article by Asangh Wankhede on "Absolute liability in India, Necessity and Reforms"<sup>6</sup> gives a clear-cut understanding regarding the need for recognising absolute Liability via the Indian courts and discusses whether the Judiciary accepts this principle.

- Parkhi Saxena's article in Legal Services India on "Absolute Liability in the Indian Context"<sup>7</sup> gives an in-depth analysis of the transition of Liability by the Indian Judiciary and the need for such a shift.

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<sup>5</sup> Bharat Parmar & Ayush Goyal, *Manupatra*, ABSOLUTE LIABILITY: THE RULE OF STRICT LIABILITY IN THE INDIAN PERSPECTIVE (NOV. 15, 2020, 11:30 AM) [HTTP://ELIBRARY.SLSH.EDU.IN:2057/PERS/PERSONALIZED.ASPX](http://elibrary.sls.edu.in:2057/pers/personalized.aspx)

<sup>6</sup> Asangh Wankhede, *Kayadepundit*, ABSOLUTE LIABILITY IN INDIA NECESSITY AND REFORMS (NOV.15, 2020, 12:15 PM) [HTTP://WWW.KAYADEPUNDIT.COM/ARTICLE/ABSOLUTE%20LIABILITY%20IN%20INDIA%20NECESSITY%20AND%20REFORMS.PDF](http://www.kayadepundit.com/article/absolute%20liability%20in%20india%20necessity%20and%20reforms.pdf)

<sup>7</sup> *Supra* n.4

- To obtain a clear picture of the absolute Liability, the researcher referred to "The Law of Torts"<sup>8</sup> authored Ratanlal & Dhirajlal which has extensive material on torts' law. The book describes absolute Liability while citing relevant cases.
- "Law of Tort"<sup>9</sup> by P.S.A Pillai is a comprehensive book on torts that helped the researcher clear ambiguity regarding the topic at hand by quoting English and Indian cases.
- "The Doctrine of Absolute Liability: The Vizag Gas Leak Angle"<sup>10</sup> briefs the reader on absolute Liability, its essentials and its evolution over the years.

## II. ABSOLUTE LIABILITY

Rapidly accelerating industrial development has brought with it a myriad of virulent health problems. Enterprises are civil components with rights and responsibilities towards the public and are responsible not to harm human health and nature. They have an "absolute non-delegable duty" to the community. In *Hoy v. Miller*<sup>11</sup>, Justice Golden expounded the term Absolute Liability with great expertise, "absolute liability is a liability without fault – a liability for which there is no excuse." The Principle of Absolute Liability was formulated and verbalised primarily in *M. C. Mehta v. Union of India* in 1986, and later in Bhopal Gas Tragedy case. Absolute Liability is a tortious component. This principle enforces the duty of care owed to the public by companies that deal with hazardous elements. Any institution engaged in the production and use of harmful substances must make sure that no harm is done to that area's residents. If a person is harmed, the enterprise shall be liable, and no defence or exceptional circumstances may relieve them of such liability. Those liable cannot use defence such as negligence, fault, act of God, error to seek an exempt status from reimbursement and liability. Hazardous components are the prerequisites for the implementation of Absolute Liability. The Courts can only apply this principle if an element hazardous to one's health and the environment puts life at risk. Examples of hazardous elements include toxic gas, vibrations, explosive materials, etc. However, in the case of Absolute Liability 'escape' as an element is not necessary. Unlike Strict Liability, escape of the element is not required; the rule will apply to those injured in and outside the premise. Additionally, Strict Liability's principle involves land to be of non-natural; however, that is not the case with Absolute Liability. Moreover, the number of deaths is irrelevant while considering the extent of Liability and compensation to be

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<sup>8</sup> RATANLAL & DHIRAJLAL, THE LAW OF TORTS (Lexis Nexis, 28th ed., 2019).

<sup>9</sup> P.S.A Pillai, Law of Torts, (EBC Publishing House, 9<sup>th</sup> ed, 2004)

<sup>10</sup> Doctrine of absolute liability: Vizag gas leak angle, LEXLIFE

<sup>11</sup> 146 P. 3d 488

paid.

### III. DISTINCTION BETWEEN STRICT AND ABSOLUTE LIABILITY AS MENTIONED BY THE SUPREME COURT IN THE CASE OF M. C. MEHTA V UNION OF INDIA<sup>12</sup>

- In the rule of *Rylands v. Fletcher*<sup>13</sup> failure to cover cases of damage to persons within the premises of the law requires an escape from an object's premises, which causes damage. The new rule does not allow such a differentiation to be made between persons within the premises in which the enterprise operates and persons outside the property. The thing that causes damage to the premises is not a prerequisite for implementing the rule.

- Additionally, the rule in *Rylands v. Fletcher*<sup>14</sup> although strict and not reliant on the defendant's misdoing, the current rule is not absolute, as it is subject to several exceptions. However, the Mehta case's new rule is not only strict but absolute and is subject to no exception at all.

- Another critical point of distinction between the two rules is in the matter of award of damages. Damages awardable where the rule in *Rylands v. Fletcher*<sup>15</sup> is applicable. However, it shall be ordinary or countervailing in cases where the applicable law is laid down in M.C. Mehta's case; the Court may grant exemplary damages and the larger and more prosperous the enterprise the greater the amount of compensation to be paid.

### IV. NEED FOR ABSOLUTE LIABILITY

#### (A) High rate of industrial growth

India is one of the fastest developing economies. The old rule was set in an era where there was no unprecedented growth of industries and economies and hence is not appropriate for the current scenario.

#### (B) Varying use of land

When *Rylands v. Fletcher*'s rule came into place, it was not common to store water in a big tank for irrigation purposes. In England, the agricultural practices were different, and it wasn't a country that depended on agricultural activity. On the other hand, India is a country where,

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<sup>12</sup> *id*

<sup>13</sup> (1868) LR 3 HL 330

<sup>14</sup> *id*

<sup>15</sup> (1868) LR 3 HL 330

even today, agriculture is the primary source of income for many citizens and hence storing water in a tank for such purposes seems normal. Such differing practices also make this rule inappropriate for the Indian system.

### **(C) Applicability of rule has become redundant in the modern era**

The old rule was formulated almost a hundred and fifty years ago, and this rule can't remain applicable even now, and therefore a need for such a rule rose.

## **V. EVOLUTION OF ABSOLUTE LIABILITY IN INDIA**

Sir Fredrick Pollock, in 1886 through his draft of the Indian Civil Wrongs Bill, Section 68, proposed a provision, which stated that: "a person keeping dangerous things is bound to take all reasonably practicable care to prevent harm, and is liable as for negligence to make compensation for harm". This bill, however, wasn't codified and therefore didn't see the light of day.

In 1982, the Andhra Pradesh High Court in the case of *K. Nagireddi v. Union Of India*<sup>16</sup> emphasised the need to alter the old principle and stated its view that "In India, the general rule of *Ryland v. Fletcher*<sup>17</sup> is accepted, though the principle is needed to be modified in its application. to the Indian consideration".

Finally, in 1987 the Supreme Court enunciated the principle of 'Absolute Liability' in the *MC Mehta v. Union of India*<sup>18</sup> case where there was a leak of Oleum gas from the Shriram Foods Fertilisers Industries in Delhi, belonging to Delhi Cloth Mill Ltd. In this leakage, one advocate had died, and several others were affected. The industry was set in a densely populated area, thus posing high risk and panic among the people considering that the incident had occurred in the Bhopal Gas Tragedy wake. This was when the Supreme Court had decided it was time for a new rule to come into place and held:

"We are of the view that an enterprise, which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an Absolute and non-delegatable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of

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<sup>16</sup> AIR 1982 AP 119

<sup>17</sup> *Supra* n.12

<sup>18</sup> AIR 1987 SC 1086

such activity the enterprise must be absolutely liable to compensate for such harm and it should be no answer to enterprise to say that it has taken all reasonable care and that the harm occurred without any negligence on its part."

The Supreme Court also held that the measure of compensation should be proportionate to the industry's size to have a deterrent effect and ensure that such a situation does not arise in the future.

This principle was then applied in the *Bhopal Gas Tragedy*<sup>19</sup> case, which is considered the world's worst disaster. With the rising number of petitions being filed concerning the incident, the government promulgated the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (the Bhopal Act) on 29 March 1985. This Act gave the government the right to act as 'parens patrie' on behalf of those affected in matters concerning India's tragedy and overseas. Absolute Liability was then invoked in this case. However, the Union Carbide Corporation distanced itself from the Union Carbide India Limited, which was the Indian subsidiary to escape the liabilities. The damages to be recovered was set at 3.3 billion USD. However, the Government of India and the Union Carbide Corporation (UCC) reached a settlement. The UCC ended up paying only 470 million USD, roughly only 15% of the original sum. The terms of the settlement were such that it limited the Liability of UCC for all future petitions, the present criminal and civil proceedings against them were quashed. This step by the government was massively criticised because the amount received as compensation was woefully inadequate. The Liability of the UCC was limited to only a certain extent.

Absolute Liability was deemed to be not only binding on the Indian Courts but also considered to be the most appropriate one, and this was felt by the judges in *Indian Council for Environmental Legal action v. Union of India*<sup>20</sup> where they directed the defendant liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and the underground water. Hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area.

Absolute Liability started playing a significant role in Environmental Law as the Court in *Vellore Citizens' Welfare Forum vs. Union of India*<sup>21</sup> interpreted the meaning of the meaning of the Polluter Pays Principle as the absolute liability for environmental damage extends to reimburse the victims of pollution and the cost of re-establishing ecological damage.

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<sup>19</sup> 1989 SCC (2) 540

<sup>20</sup> (1996) 3 SCC 212

<sup>21</sup> 1996(5) SCC 647

The Court also held a similar view in *M. C. Mehta vs Kamal Nath & Ors*<sup>22</sup> where the Court held that polluting the environment was considered a civil wrong done against the society.

Absolute Liability was initially used only in cases involving public risk/disaster. However, with the change of Liability, courts started applying this concept whenever and wherever wellbeing of any individual is concerned. The courts can also approve absolute Liability in case of a single death without any mass damage of property or pollution of the environment. This was held in the case of *Klaus Mittelbachert v. East India Hotels Ltd.*<sup>23</sup>, where the plaintiff, who was a German co-pilot, sustained serious injuries following his plunge into the pool of the five-star restaurant. After inspection, it was found that the pool had a flawed nature and also an inadequate amount of water. The pilot was paralysed by the injuries resulting in his death after 13 years of the crash. The Court held that five-star hotels that charge significant sums owe a high level of care to their guests. This rendered the hotel responsible for damages to the plaintiff.<sup>24</sup>

The principle of Absolute Liability surely has helped a lot of people gain their rights back and claim compensation for damage down by making the people involved Absolutely Liable however there have been cases where Absolute Liability was not applied regardless of all pre-requisites being fulfilled. The recent *Vizag Gas leak case*<sup>25</sup> is an example of such situation. Here, the LG Polymers industry in Vishakapatnam witnessed the leak of Styrene Gas leaving 12 people and 32 cattle dead. The State Government then took *Suo Moto* cognisance of the case however the National Green Tribunal held that the LG Polymers was Strictly Liable. Experts compared this incident with the Bhopal Gas Tragedy as both the situations were eerily similar. Upon further investigation, it was found that LG Polymers was functioning with expired permissions and licences.

A Parallel can be drawn between the Bhopal and Vizag Gas leaks. Both the companies were let off with limited Liability despite the harm caused though the number of deaths in Vizag was comparatively lesser. It is to be noted that the number of deaths is not a determining factor in deciding absolute Liability. It ultimately comes down to enforcing the Liability and the companies taking responsibility for their erroneous actions.

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<sup>22</sup> (1997)1 SCC 388

<sup>23</sup> AIR 1997 Delhi 201

<sup>24</sup> Shramana Dwibedi, *Strict Liability and Absolute Liability*, LEGAL SERVICES INDIA, (Nov.10,2020 20:30) <http://www.legalservicesindia.com/article/2155/Strict-and-Absolute-Liability.html>

<sup>25</sup> (2020) 6 SCC 619

## **VI. CONCLUSION**

Absolute Liability's scope is enormous in all its aspects compared to the old law since it has no exceptions. Not only does it cover up public negligence or wrongdoing, but it also includes personal harm caused on an individual level. However, enforcement seems to be the biggest issue. Though it's been almost thirty-four years since the Bhopal Gas Tragedy case, the Vizag gas leak verdict shows that there is still much to change when it comes to corporate giants owning up to their actions and taking the liability upon themselves. Albeit the principle of absolute Liability does not have any loopholes, they (loopholes) seem to find their way when it comes to enforcing absolute liability. A robust mechanism needs to be put in place in the form of a forum that will ensure Companies are absolutely liable for the damage done. In this way, law enforcement must ensure that the relevant erring authorities must be dealt with in an absolute manner so as not to endanger the lives of the common man.

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