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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

INTRODUCTION:

The idea of liability in torts relies on the main rule that harming different people is incorrect, irrespective of whether specific insurance is absent. In law, a person is said to be legally at risk when she / he is legitimately in charge of something – an outcome that has occurred due to the activity or omission of the individual.

Relationship is essential to building up responsibility, and without a justification or source for the wrong, duty can't be joined in anything – the 'fault' component is necessary to ascribe harm and demand remedy.

The rule for this situation relies on the probability of predictability - of harm; the person who is the source of harm is punished for neglecting to avoid the predictable harm that is sensible. Perhaps the most important concepts in law of torts are strict liability and absolute liability, and the understanding of their inequalities is necessary for every law understudy.

The law of absolute liability is identical, with a certain modification, to the law of strict liability. This rule applies without restriction or exception, and creates a completely liable person for any fault. The property to make someone completely responsible for high retraction fault and enforcement renders this duty an absolute liability.¹

In the case of *M.C Mehta Vs UOI*² and *Bhopal Gas Leak case*³, the Hon'ble Apex Court of India stipulated the law of Absolute Liability, where Ryland V. Fletcher's rule limit is maximized. The rule defined by the Hon'ble Supreme Court is much broader in comparison to the rule set by House of Lords.

By describing the principle of No fault liability⁴, Blackburn J. said that "We think that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape."⁵

¹ Available at

<http://docs.manupatra.in/newsline/articles/Upload/2D83321D-590A-4646-83F6-9D8E84F5AA3C.pdf>

² M.C. Mehta Vs UOI 1987 SCR (1) 819

³ Bhopal Gas Leak case 1992 SC 248

⁴ Dr.S.K.Kapoor on Law of Torts 7th Edition pg.272

⁵ TheRule in Rylands v. Fletcher. Part I by Bohlen, Francis H. (1911)

WHAT IS LIABILITY?

In the field of law, one of the most significant terms, 'liability' means legal obligation for one's actions or omissions. Failure of a person or entity to fulfil the duty leaves him / her vulnerable to a claim for any potential damages or a court order (as in a breach of contract or statute violation).

In law of torts, liabilities are broadly categorised into two categories:

ABSOLUTE LIABILITY

STRICT LIABILITY

According to Salmond, there is no Law of Tort; it is the Law of Torts that encompasses countless wrongs along with a number of unique laws that forbid harmful acts. When an act is declared to be a tortious act, it should have three qualities that violate legal duty, wrongdoing, and harmful outcomes. A person is held liable if he/ she breaches his/ her obligation.⁶

*Ryland v. Fletcher*⁷ was the first case in which there was the breach of liability, legal in nature in the case of negligence and is still today classified as "Strict Liability." While the principle of "Strict Liability" is not acceptable in the Indian context, the new definition of Tortious Liability was introduced in court in the case of *M.C Mehta v. Union of India*⁸, under this new law; there was no significance of the exception. The Liability was consequently qualified as Absolute Liability⁹.

GLIMPSE OF THE PRINCIPLE LAID DOWN UNDER RYLANDS VS FLETCHER, IN INDIA:

The undertaking that carries out such dangerous and inalienably hazardous private benefit action has a social responsibility to repay such suffering along these lines, and it should assimilate such misery as overhead; and the initiative alone has the asset to identify and shield against these dangers and challenges. The Court clarified its situation in the accompanying words: "If the venture is permitted to bear on any unsafe or naturally risky action for its benefit,

⁶ Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/245746/8/08_chapter%201.pdf

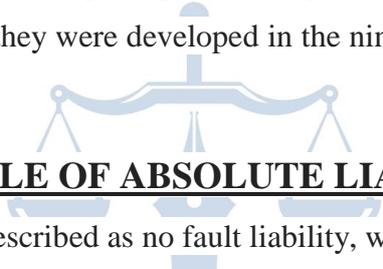
⁷ *Ryland v. Fletcher*, 1868 LR3 (HL) 330

⁸ *Ibid* Pg 1

⁹ A. M. Lakshminath Sridhar and Ramaswamy Iyer, *The Law of Torts*, 212 (2002)

the law must assume that such authorisation is contingent on the endeavour to absorb the cost of any mischance that arises as a result of such dangerous or innately hazardous action as being proper to its overhead.

The Supreme Court of India has given the recognition to Absolute liability in *M. C. Mehta v. Union of India (Oleum gas leak case)*¹⁰, thus providing acceptance to Absolute liability in its original rigorous form as laid in the ruling of *Rylands Vs Fletcher*¹¹. This case's development was the consequence of Oleum gas leak from Shriram Food and Fertilizers Ltd. Complex, Delhi. This incident spread fear amongst the people of Delhi as it happened right after the tragic leak of gas from Bhopal. Chief Justice Bhagwati played an influential role in the development, but he did not blindly obey the *Rylands v. Fletcher* decision, claiming that the concepts set out in the case were not consistent with the modern form of jurisprudential philosophy and that it became much more important to establish an inflexible and absolute principle of liability with regard to no-fault liability. Rules and principles developed in *Rylands Vs Fletcher* need to be updated with modern times as they were developed in the nineteenth century, when industrial revolution had just begun.¹²



THE RULE OF ABSOLUTE LIABILITY:

The Absolute liability can be described as no fault liability, whereby, under the law of strict liability, no exceptions are made to the wrongdoer. There are similarities though with some modifications between the rule of absolute liability and the rule of strict liability. There are no restrictions or exceptions when enforcing this rule and hence the person is entirely liable for fault.

An enterprise or any particular industry that engages in any hazardous and dangerous activity and uses the activity to achieve commercial gains, then in such circumstances, in the event that any damage is caused as a result, makes that particular enterprise liable for compensation to all those for whom damage is caused. No leverage shall be granted to the enterprise, even on the grounds that all appropriate security precautions have been taken and that the

¹⁰ Ibid Pg 1

¹¹ Ibid Pg 2

¹² Ratanlal and Dhirajlal, *The Law of Torts*, 531-533 (2013)

individual being harmed has shown negligence on their part. No exceptions, including a "Act of God" or "Act of a stranger," shall be accepted on any record.¹³

The Hon'ble Apex Court in *M. C. Mehta v. Union of India*¹⁴ clearly differentiated between the Strict and the Absolute Liability by laying four simple indicators. First, absolute liability should cover all sectors that experience extremely dangerous and hazardous activity. This means that businesses which do not fall into this category are subject to the strict liability law. Second, the rule should only apply to those lithely affected within and outside the property, and not only because a single item has escaped from somebody's ground. Third, there are no exceptions in the Absolute Liability given in the strict liability. Fourthly, the damages to be claimed would all depend on the financial capacity and the extent of the loss incurred by that particular business. The Hon'ble Apex Court has propagated that in the event of any dangerous and hazardous activity being carried out within the enterprise, it must be guarded with the highest standards of safety. And if there is any adverse consequence then the enterprise will take full responsibility for the entire settlement for the damage done in those cases and not seek to brush off their duties because that would be unreasonable.

*As pointed out by Bhagwati J. in M. C. Mehta v. Union of India*¹⁵, paragraph 31 of the case that

“this rule was adopted in the 19th century, during this time the science and technology had not evolved yet. From now on, in today's time we cannot take any guidance relating to the standards of liability from the same. We now need to establish criteria that are appropriate to the social and economic systems of the present day. We should not be under pressure to follow this law that has been developed in a completely different economy.”

It is very essential to examine the real sense of Absolute liability existed or not keeping in context the case of *M. C. Mehta v. Union of India*, this case aspired Justice Bhagwati to discuss the importance of the rule in today's context. The infamous Bhopal gas tragedy occurred on December 6, 1985, when the Shriram Foods and Fertilizers Industries units leaked the Oleum gas. This was the catastrophe in which hundreds of lives were seriously affected. Here the question stirred up who in this case is liable to pay compensation to the victims. An application was filed for this. From here on the thought process began as to whether the law still needs to proceed with the principle of strict liability or formulate new laws with tighter and binding

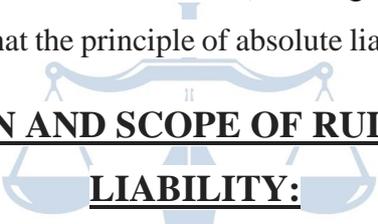
¹³ Andrews Emily, "Penal Law on Food Adulteration" 335 CULR 8 (1984)

¹⁴ Ibid Pg 1

¹⁵ Ibid Pg 1

guidelines. The Apex Court along with dealing with the development of the new point of law also considered the application of Article 12 and 34 of the Constitution. It also made new absolute liability rule and very clearly set out the principles of the same. This distinguished the existing earlier principles from the newly laid ones.¹⁶

By now it can be observed that in India there are two fold consequences, one is that the principle of Absolute Liability does not exist under the strict terms of common law. In this particular case of the Oleum gas leak, this principle was laid down by the judges and so we cannot accept it as the binding concept. Whereas on the other hand, in their judgments, the Hon'ble Supreme Court and also the Hon'ble High Courts have accepted the rule in various other cases, which leads us to the conclusion that this principle has been accepted by the judiciary. In Indian Council for environmental Legal Action v. Union of India, the Hon'ble Supreme Court clarified that the absolute liability rule established in the case of M.C Mehta was not obiter, and was well tailored to the country's conditions back then. It can be inferred from now on that theoretically the very rule comes under the obiter, although it is obvious from the Hon'ble Supreme Court understanding that the principle of absolute liability is now an existing concept.



**THE EVOLUTION AND SCOPE OF RULE OF ABSOLUTE
LIABILITY:**

Liability and rights are two sides of the coins owned by the people. The evolution of liability and the development of law and society have occurred together over the years, that is, they have evolved at the same time. As the idea of delegation started, there is a chance that vicarious liability indicated its existence. It seems that even if one child destroyed any other person's belongings or property when the cave man society was present, then his / her parents were held liable. The Liability definition has changed in every generation. Liability was redefined by the Romans who introduced the law codes, and what kind of liability should be given to the culprit. Though it is said that it was during the Islamic period that the laws and punishments regarding liability were formally formulated. The definition of *Damnum sine injuria* (damages without injury) was later given priority during the British period, and it was during this time that the liability developed further. If someone was held responsible for any wrongdoing, physical harm was not usually caused but exceptions were made in some situations.

The December 1984-Bhopal gas tragedy left a tremendous impression. It was then that the Indian judiciary took upon itself to attempt to improve the laws to protect India's citizens.

¹⁶ D. N. Saraf, The Law of Consumer Protection in India, 11 (1995)

Thereafter Absolute liability came up to be a strong legal tool to prosecute and take legal action against certain corporations who are insensitive to the health risk of the people when the Oleum Gas Leak Case took place. The legal philosophy now developed in India was much more powerful and stronger than the Strict Liability philosophy established in the *Ryland v. Fletcher case* of the U.K. From now on, whoever is held responsible in connection with making the public face high risk, even if it is the third party, will be prosecuted under the law.

The Oleum Gas leakage from Shri Ram Food and Fertilizers' Ltd. Complex at Delhi was known as the case of *M.C. Mehta v. Union of India*, where through the doctrine of Absolute liability, it gained considerable significance in the eyes of the Indian judiciary. One person had lost his life in this tragedy while some were hospitalized. Here the argument was prominent as to whether Sri Ram is to be identified as the authority within Article 12 and whether it would fall under the discipline of fundamental rights under Article 21.

In the case of *Madhya Pradesh Electricity Board v. Shail Kumari*¹⁷, another example of absolute liability was projected. In this case, a cyclist was bundled in live wires and was electrified, causing him fatal injuries. In their defense the Electricity board stated that the stranger was diverting the electric wire to misuse the energy. In this case, the court argued that the board's primary responsibility was to provide energy, taking into account citizens' health and security. Therefore, in the event of any injuries caused to a person, the electric energy supplier shall be held liable and it is the board's primary duty to compensate the victim. While acknowledging the Law of Torts, the court held that an person who conducts any operation involving danger and hazardous exposure to human life is liable for compensation in the event of any injury incurred, even if the manager of the undertakings is not reckless or careless.¹⁸

In another important case of *Union Carbide Company v. Union of India*, recognition was further granted to the principle of Absolute Liability. Under this concept compensation was payable to the victims of Bhopal Gas tragedy. The most important development and finding of this case was that when paying costs, the principle of absolute responsibility was recognized.

The Absolute Liability rule specifies that in the event that any dangerous or harmful operation is performed for the benefit of a corporation, any sort of harm caused by it will make the organization liable to pay compensation for the same. The corporation in this state shall not be

¹⁷ *Madhya Pradesh Electricity Board v. Shail Kumari* JT 2002 1 SC 50

¹⁸ S. P. Singh, *Law of Tort*, 286 (2010)

allowed to take up defense and try to justify by claiming the series of events happened without his knowledge nor was there any intention to do so.¹⁹

THE RULE OF STRICT LIABILITY:

No Fault Liability "is another phrase that can be used to describe the strict liability principle. That principle runs counter to the general principle of tort negligence. Under this, an individual can be said to be responsible for commissioning a torts, while the defendant is unable to dismiss the same, the plaintiff can prove his negligence. The defendant has acquired a dangerous item or object within their property, but despite taking a lot of care it escapes causing harm to some other person. The owner of the item shall be found liable or responsible for the effects of such circumstances. This is attributed as "No Fault Liability."

The House of the Lords acknowledged the principle of "No Fault Liability" in relation to the *Rylands v. Fletcher case*²⁰ where it was held that the defendant was liable not due to negligence but he had kept a hazardous substance in his premises. To have a good understanding of this matter one should understand all the facts in detail. The defendant (Fletcher), the owner of the mill in Farnsworth, had hired autonomous and efficient engineers to build a reservoir to boost the water supply for the mill. They came across some shafts and passages beneath the ground while doing the requisite renovations, but ignored them and did not block them. The reservoir was put to work and the water filled in it started filling in the old shafts and passages after the construction was over. This led to the plaintiff's (Rylands) besieging of coal mines that were adjacent to the reservoir. The defendant had been unaware of the occurrence. The court of law nevertheless held the defendant responsible for the repercussions, though the negligence requirements had been thrown out. The defendant here was booked under the rule of strict liability, although it would not have been enough if he had been extremely careful to free him from the scope of "No Fault Liability."²¹

Strict liability in torts is the liability which is imposed on a party without finding a fault. The plaintiff requires only evidence that the torment happened and that the defendant was responsible. The law imposes Strict Liability on circumstances considered inherently dangerous. It discourages reckless conduct and needless regulations by requiring prospective offenders to take any step possible. Even though he has not been careless in holding the material in his premises, the person from whom the property escaped will be held responsible. The

¹⁹ D. N. Saraf, *The Law of Consumer Protection in India*, 1 (1995)

²⁰ *Ibid* Pg 2

²¹ Jaanisar Khan, "Food Safety, An Analysis of FDA Food Related Import Refusal Reports", 39 EIB 32 (2017)

responsibility on his part is not levied because of neglect but because the material was stored somewhere where it was not supposed to be kept. The principle of Strict Liability came into effect on this very judicial pronouncement.

ESSENTIALS FOR A TORT TO BE HELD UNDER THE DOCTRINE OF STRICT LIABILITY:

1. Usage of the land is non-natural.
2. The dangerous thing kept in the land escapes.
3. Mischief caused by the dangerous thing.

Dangerous Thing: A thing is granted the status of being a 'dangerous thing' only when it frees itself from the land of the person who had owned it and does serious harm to someone else or his property.

Escape: An entity or object that causes damage and harm to others gets status of 'escape' when it sets itself free from its owner's power. Case that would make things clearer- *Crowhurst v. Amersham Burial Board and Cheater v. Cater*²² it was about that when a person plants a poisonous tree in his / her property and it grows spreading and out of reach in the neighbouring land and when the cattle of his / her neighbours feed on it and then fall ill who is liable. In this case, it was held that the neighbour who is the defendant in this case will be held liable even though he did not intentionally do anything.

Non-natural use of land: It does not fall into the category of non-natural use of land when the water is reserved on the land for Domestic use. But when the property is used as a reservoir in multitude then it is said that it is a non-natural use of land (*Rylands v. Fletcher*).

Mischief: To show that the defendant is responsible for the non-natural use of the land and to allow a dangerous thing to escape causing harm that is mischievous in nature, the plaintiff must provide all the necessary facts. This will prove sufficient to show that the damages suffered are solely due to the defendant's non-natural use of the land.

²² *Crowhurst v. Amersham Burial Board and Cheater v. Cater* 1878 4 Ex. D. 5

EXCEPTIONS/DEFENCES TO THE DOCTRINE OF STRICT LIABILITY:

1. Damage caused due to natural use of land;
2. Consent of the plaintiff;
3. Plaintiff's own default;
4. Act of stranger;
5. Act of god or vis major;
6. Common benefit of plaintiff and the defendant; and
7. Statutory authority.

DIFFERENCE BETWEEN STRICT LIABILITY AND ABSOLUTE LIABILITY:

The Hon'ble Supreme Court stipulated the distinction between Strict and Absolute liability rules in *M.C. Mehta v. Union of India*²³, Clarified by the court as:

Firstly, in Absolute Liability only those entities engaged in dangerous or potentially hazardous activities are held liable, this means that other sectors which do not fall under the above-mentioned category are protected by the principle of Strict Liability.

Secondly, the escape from one's own land of a dangerous thing is not necessary; it means that the principle of absolute liability extends to those who are harmed within the premise and to people outside the premise.

Thirdly, there is no exception to the Absolute Liability principle, unlike in the law of Strict Liability, as some exceptions were given. In the case of *Union of India V. Prabhakaran Vijay Kumar*²⁴ the constitutional bench was also of the opinion that MC Mehta's law is not subject to any kind of exception.

Fourthly, the Law of Ryland Vs Fletcher applies only to non-natural use of land but the current concept of absolute liability extends also to natural use of land. If a person uses a hazardous

²³ Ibid Pg 1

²⁴ Union of India V. Prabhakaran Vijay Kumar (2008) 9 SCC 527: (2008) 2 KLT 700

material that can be normal land use and if that material escapes, he shall be held responsible even though he has taken proper care of it.

Further, the extent of damages depends on the magnitude and financial capability of the institute. Supreme Court also contended that, the enterprise must be held to be under an obligation to ensure that the hazardous or inherently dangerous activities in which it is engaged must be conducted with the highest standards of safety and security and if any harm results on account of such negligent activity, the enterprise/institute must be held absolutely liable to compensate for any damage caused and no opportunity is to given to answer to the enterprise to say that it had taken all reasonable care and that the harm caused without any negligence on his part.²⁵

VIZAG GAS LEAK: 'STRICT LIABILITY' OR 'ABSOLUTE LIABILITY'?

Although issuing the order to LG Polymers to deposit Rs. 50 Crores with the DM, Vishakhapatnam on 8th May 2020, in connection with major leakage of Styrene gas from its polymer plant situated in RR Venktrapuram Village, in *re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*²⁶, the National Green Tribunal (NGT), comprising of bench of Justice Adarsh Kumar Goel, Chairperson; Justice Sheo Kumar Singh, Judicial Member and Dr. Nagin Nanda, Expert Member observed that the situation attracted *the concept of "Strict liability"*.²⁷

The NGT also noted that "Leakage of hazardous gas to such a degree adversely affecting public health and the environment clearly attracts the concept of 'Strict Liability' against the enterprise engaged in hazardous or potentially hazardous industries."

While the concept of "strict liability," in the case of *Rylands Vs Fletcher*, established in 1868, has now become obsolete with the development of the concept of "absolute liability."

²⁵ Ratanlal & Dhirajlal : Law of Tort 26th edition pg 520

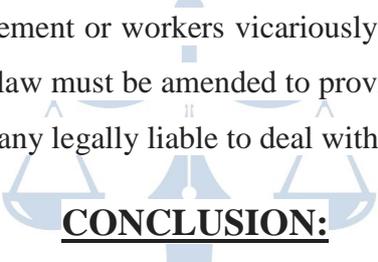
²⁶ Original Application No. 73/2020

²⁷ Available at <https://www.livelaw.in/environment/breaking-vigaz-gas-leak-ngt-directs-lg-polymers-to-deposit-rs-50-crores-constitutes-5-member-committee-for-proberead-order-156436>

In addition to acknowledging the company's Strict Liability, the Tribunal has ruled that the regulatory authorities responsible for approving and controlling such operations may also be liable, if any, for their lapses in dealing with the matter.

The company that owns this chemical plant was founded at Visakhapatnam in 1961 as 'Hindustan polymers' for the production of polystyrene and its co-polymers, and in 1978 merged with Mc Dowell & Co., Vijay Mallya's UB Group Ltd. In July 1997, Hindustan Polymers was named LG Polymers Indian Private Limited (LGPI) pursuant to a 100 percent takeover by LG Chem (South Korea).

Another issue that occurs before the court after FIR has been charged under the Indian Penal Code (IPC) is if the company's directors or other high-ranking officers are liable in a vicarious manner even though the crime is claimed to have been committed by the company, except where there is an abetment, the abettor might be joined by the principal offender or where there is a common or conspiracy involved. However, there is currently no such clause under the law that makes a company's management or workers vicariously liable for an offense committed by the company itself. Clearly, law must be amended to provide for adequate punishment and holding management of a company legally liable to deal with such or related disasters.



CONCLUSION:

The concept of strict liability extends to the responsibility of a person/ industry doing hazardous activities in situations where some kind of “negligence” is attributable to them.

According to this concept, any person who indulges in “non-natural” use of land and who holds “hazardous substances” on his premises will be held “strictly liable” if these substances “escapes” the premises and causes any “damage”.

The terms quoted from the essentials for constituting strict liability of an industry. However, this principle allows for exception from liability if such damage has been caused by:

The plaintiff’s own fault;

An Act of God;

Act of a Third party;

If the hazardous activity was being carried out with the consent of the Plaintiff.

This principle of “Strict liability” was scrapped by the Apex Court in the famous ruling of *MC Mehta Case*²⁸, whereby the top court introduced the concept of no-fault liability, formally known as the principle of “Absolute Liability”, to address the “undeserved suffering of thousands of innocent people”. Finding the principle of Strict liability “woefully insufficient” to protect citizens’ rights in an advanced economy like India, the Apex Court proposed the concept of Absolute liability.

According to the concept of Absolute Liability, “an enterprise engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons employed in the factory and residing in the surrounding areas owes an Absolute and non-delegatable obligation to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken”.

The principle of absolute liability offers no exception to the industries involved in hazardous activities and they are absolutely liable for the damage so caused, despite observance of due diligence.

To sum up, the Supreme Court established the concept of Absolute Liability to ensure that the profit-oriented industrial enterprises engaging in potentially dangerous practices do not escape their responsibility in terms of the exemptions available under the concept of strict liability.

CAVEAT:

As a caveat, this article should not be construed as implying that there lies no or little distinction between the concept of Absolute liability and Strict liability and also that the concept of Strict Liability does not prevail in Indian justice system. This is a broad summary of long-standing principles of Absolute Liability and Strict Liability which were laid down in 1866 and their development from an Indian perspective. These are relevant according to the circumstances of each situation.

Therefore, it is prudent for parties to seek legal advice and perform a thorough legal analysis of their case.

This article is for informative purpose only. Noting herein shall be deemed or interpreted as providing legal or investment advice.

²⁸ Ibid Page 1