



STRICT LIABILITY V. ABSOLUTE LIABILITY

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ABSTRACT:

According to the topic mentioned “strict liability v. absolute liability” the main aim of doing this particular study is to compare both the liabilities. Basically both are similar. Liability arises when a person’s legal right is violated. It is the duty of every person to take care that he is not violating anyone’s right. If he do so he shall be liable for it. For it to be a liability it must be a wrongful act. Absolute liability has evolved from strict liability. When we talk about strict liability also called no fault liability, the legal right of plaintiff is violated but not by the defendant. But even then the defendant is held liable for the wrong and have to pay the compensation. There are certain essentials for strict liability like a dangerous thing should escape from ones land when the land is being used for some purpose which is not natural. There are some defences which can be used like when it is the fault of the plaintiff, act of third party, plaintiff’s own concern, act of god etc. Next, when we talk about absolute liability which is evolved from strict liability. According to absolute liability any hazardous thing which an industry is keeping it should take good care of it so that it doesn’t harm any other person. Essentials of absolute liability are that the enterprise should get engaged in any hazardous activity and it is not necessary that it escapes. So the liabilities differ according to the essentials and the defences can be taken depending upon the situation.

¹M.C. Mehta V. UOI 816 SC 1986

Keywords: Strict liability, Absolute liability, Hazardous

INTRODUCTION:

Liability occurs when a person violates another’s right. We all know that one person’s right is another person’s duty. One should respect the right of another and work according to that it does not infringes anyone’s right. It is obvious that if one infringes a person’s right one will definitely be liable for it and will have to pay compensation for it. For the liabilities to be differentiated according to its effects, law has differentiated it into three parts: *strict liability, absolute liability and vicarious liability*. The outright obligation is the utilization of strict risk, yet without the exceptions. The manager of supreme risk was advanced on account of M.C. Mehta V. Union of India¹, and took strict risk forward by saying which involved an undertaking with a development at risk is a subject for harm coming as a result of such activity and so as to compensate each other whosoever are influenced by the mishap. Entire obligation is required form of strict strict risk laid by Ryland’s v. Fletcher² and was realised by the Supreme Court of India in M. C. Mehta v. Association of India This particular case began in the outcome of M.C. Mehta case where oleum gas was spilled out from Shriram Food and Fertilizers in the capital of India. This case happened soon after the Bhopal gas leak case. Justice Bhagwati gave his reviews that in the particular era it is really important for us to update with the advancement of the society. At this particular stage mechanical improvements are really important. Yes, we all know that risky business in important in order to survive in

² Rayland V. Flether 330 UKHL 1868



today's world and also in the completion of the advanced program. There is no need of getting hindered by the advancement, but should understand that it is important for us to understand its importance of financial structure of people. Further, we will see comparative study on absolute liability and strict liability. Also we will study about the essentials of strict liability. Analyse the necessity of absolute liability in India. We will see exception under strict liability, examine the difference between absolute and strict liability.

The given two liabilities have slightly different aspects. Strict liability has few exceptions that we will discuss. On the other hand if we look at the absolute liability is a liability without any exceptions. Strict liability was introduced in the initial stage. My study mainly talks about the differences between the liabilities. Since the study which I am doing is basically based on non-doctrinal type of study, so its scope is very narrow and limited. It is limited also because as mentioned earlier, there are three parts of liabilities, strict liability, absolute liability and vicarious liability, and my study is to study the two of the liabilities.

STRICT LIABILITY:

Strict liability also known as no fault liability is a liability where the legal right of the plaintiff is violated but not by the defendant. Even then defendant will be held liable for that. And for this liability he will have to pay compensation. It is *prima-facie*. The principle of strict liability first came from 1868, House of Lords in the case of *Rayland v. Fletcher*.³

ABSOLUTE LIABILITY:

Absolute liability is a liability to which we can say is evolved form of strict liability. It is the application of strict liability but without exception. With the development of science and technology, law also needs to update itself in order to come up with the correct consequences. However, this principle is not applicable in cases where a trespasser by his own negligence intervenes in activity of another and is harmed in the process⁴. Law needs to change itself in order to satisfy the needs of people according to the current time. So, law came up with the term of liability, absolute liability. It should include some hazardous activity. And the enterprise should have detailed knowledge about the activity which they are performing. The absolute liability concept first came into the case of *M.C. Mehta v. union of India*.

HYPOTHESIS:

1. There is liability for polluting environment under strict and absolute liability by courts.

LIMITATIONS OF THE STUDY:

- 1) Lack of secondary source of data.
- 2) Restricted accessibility to primary source of data.

RESEARCH METHODOLOGY:

a) **Type of study**

This is the comparative type of study, because mainly I am trying to establish relation between the two liabilities.

b) **Nature of information**

All information are gathered from non-doctrinal sources like books, blogs etc.

³ Rayland V. Fletcher 330 UKHL 1868

⁴Mohd. Quamuddin V. UOI WP 2008

CONTENT:**Essentials of strict liability:**

1. *Dangerous thing*- a dangerous thing must have been brought by a person in his land.
2. *Escape*- that dangerous thing brought or kept by a person in his land must escape from there.
3. *Non-natural use of land*- the dangerous thing kept should have been there for some unnatural use of land.
4. *Damage*- the dangerous thing must damage something in order to say it a strict liability.

In law for everything some or the other defences are given. Therefore, in strict liability there are defences as well. So, some of the defences in strict liability are as follows:

1. **Act of god**- where the escape is due to the natural cause and due to any human intervention. Anything which a human cannot predict or foresee.
2. **Plaintiff's own fault**- if damage is caused due to the fault of plaintiff himself, then he has no remedy.
3. **Third party**- when the harm is done by any third party who is neither the plaintiff nor defendant then he has no control over him.
4. **Statutory authority**- when any act is done by any statutory authority then he will not be held liable.

Case: Rayland v. Fletcher

Facts: Rayland's and Fletcher were neighbours. Fletcher claimed a factory, for the vitality motivations at the back of which he enlisted self-employed entities and architects to increase water furnish on his property. It so passed off that there had been ancient unused shafts underneath the web page of the repository which the architects

not noted to word and piece. Because of the carelessness of the transient workers, when water filled Fletcher's supply, the water entered Ryland's coal mine and caused great loss, for that is the region the poles drove. In this manner, Ryland documented a go well with against Fletcher. The respondent asserted that it was once the blame of the brief workers', and the cause for damage used to be vague to him.

Issues: The issue of this case was very briefly expressed. Can the risk be held by the litigant, no keeping in mind that it was an act which was done by some other person because the element of the territory was taken away? It was taken into consideration in the fact that there was no expectation in the part of litigant.

Judgment: the respondents were held liable as it was dismissed by The house of Lords. He was liable for every damage which was caused in Rayland's mine. This particular case also has set a rule i.e. no man can keep any hazardous thing inside his land which is for some unnatural use. And if he keeps such thing and if that hazardous thing escapes from their land and cause trouble and harm to others, then it will be the one who has kept it in their land will be liable for it.

Essentials of absolute liability:

1. *Enterprise*- There should be an enterprise involves for it to be an absolute liability.
2. *Hazardous activity*-The enterprise should be involved in some hazardous activity.
3. *Escape not necessary*- It is not necessary that anything should escape from the enterprise.

**CASE: M.C. Mehta v. Union of India**

Facts: there was an industry of oleum gas namely Shriram Foods and Fertilizers in Delhi. On 4th and 6th December, the gas was spilled out from it creating a lot of harm in the capital. Because of this PIL was filed in the court for the industry.

Issue: It was challenged that if each and every one of the tragedies emerging from the direct of the massive production traces taken after the managing of strict liability, they will fall below the exemptions and escape scot free for the damage they have precipitated in the lead of their actions.

Judgment: it was the second instance when such case came in front of the court where a gas was spilled out at such a great volume. Also, it was thought that the particular case was connected to the case of Ryland v. Fletcher. Though there were few differences in both the cases but was almost similar. And the make separate both the cases, a particular rule, i.e. rule of absolute liability was made.

DIFFERENCE BETWEEN STRICT LIABILITY AND ABSOLUTE LIABILITY

The case of M.C. Mehta V. Union of India was the first case which brought the difference between absolute liability and strict liability into picture.

1. Absolute liability will arise only to those enterprises which are evolved in hazardous activities. Which means that the industries which are not falling under this will come under strict liability.

Its not necessary for the dangerous thing to escape from one's own land.. It means the rule of absolute liability shall be applicable to those injured within the premise and person outside the premise.

2. The rule of Absolute liability doesn't have an exception, whereas there are some exceptions furnished in rule of Strict Liability. Also within the case of "Union of

India V. Prabhakaran Vijay Kumar" the view of constitutional bench used to be that the rule of "M.C .Mehta" is not issue to any type of exception.

3. The Rule of "Ryland v. Fletcher" observes that the non-natural use of land but the new rule of absolute liability applies to even the herbal use of land. If a man or woman makes use of an unsafe substance which may also be herbal use of land and if such substance escapes, he shall be held liable even though he have taken perfect care.

LEGAL PROVISIONS:

1.The Public Liability Insurance Act, 1991: This act has the substantial point of giving prompt help to the people influenced unintentionally taking place whilst at the same time taking care of any risky supplies for troubles related with the occurrence. The necessary focal point of the Act is to make a public liability protection finance which can be utilized to remunerate the victims. The Act expresses that any individual who is completing often hazardous or risky workout routines ought to have protections and techniques set up the place he will be assured against Liability to provide pay to the victims in the event that any accident happens, and some damage happens. In regard of officially settled units, protection techniques should be taken at the earliest opportunity and the Administer gave the proprietors the season of one year to get into the protection contracts. This Liability depends on the tenet of "no fault liability" or as it were, the manager of strict liability and absolute liability. This is the declaration in the Section 2(c) of the Public Liability Insurance Act, 1991.

2. The Supreme Court Of India imposed the principle of MC Mehta case and held that "Once the activity carried on is hazardous or



inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity is by far the more appropriate and binding.”⁵

NEED TO MODIFY THE OLD RULE:

Absolute liability came up only when people thought strict liability to be old and not perfect according to the new era. So, what was the need to modify it and make it a separate branch of liabilities? This is because:

High Industrialisation Growth:

The Indian economy is highly developing economy. Strict liability is a very old rule. The Old Rule evaluates when low industrial development was there so the old rule cannot be found appropriate in highly growing economy like India.

Agriculture use of land:

Land is of high use in India. Therefore, big tank would be of great help in storing water for irrigation purpose. The same rule is not prevailed in the country from where it is prevailed. And so, it does not fit in Indian perspective.

Very old rule not appropriate in present world:

The old rule was more than 150 years old i.e. in 19th century, when economic and social condition was totally different. And so, it is really necessary to make rule as per present requirement.

SUGGESTIONS:

- 1) There should be more provisions regarding absolute and strict liability.
- 2) There should be no negligence.

3) Punishments should be made more for absolute and strict liability.

CONCLUSION:

The rule of strict liability and absolute liability are legal responsibility that can be viewed as exceptions. An individual is made responsible only when he is at fault. But the principle governing these two regulations is that a man or woman can be made responsible even without his fault. This is acknowledged as the principle of “no fault liability.” Under these rules, the dependable character may not have achieved the act, but he’ll nonetheless be accountable for the damage caused due to the acts. In the case of strict liability, few exceptions are there where the defendant would not be held liable. Whereas, no exceptions are given to the defendant in absolute liability. The defendant will be held liable no matter what.

The precept or doctrine of Absolute legal responsibility is a lot more suitable device than the doctrine of strict legal responsibility because it holds the person or any corporation accountable no longer solely for the acts done by using any party however also acts which affect the public at large. It helps to compensate for the losses brought about in a no-fault state of affairs besides any exception. The shift from strict liability to absolute liability used to be very necessary as with the industrial developments, the chance of enormous public damage grew and with this, grew the want to make certain the security of the people. This led to each growing the obligation of care on the industries and different corporate and increasing their legal responsibility by means of making it absolute in nature. The cases of MC Mehta v. UOI and Bhopal Gas Leak now

⁵ M.C. Mehta V.UOI 1996 SC 1446



not only paved the way for improvement in environmental jurisprudence, but they also led to the evolution of Absolute Liability in India.

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