

## **Absolute Liability in India Necessity and Reforms**

*Asang Wankhede, Third Year Student of National Law University Delhi<sup>1</sup>*

### **Abstract**

Absolute liability in its basic sense refers to no fault liability, in which the wrong doer is not provided with exceptions which are provided in rule of strict liability. Absolute liability is more stringent form of strict liability, the rule laid by Rylands v. Fletcher and was recognized by Supreme Court of India in M. C. Mehta v. Union of India (Oleum gas leak case). Thus it is necessary to analyze the use of principle of absolute liability by Indian judiciary. Has the judiciary in India recognized absolute liability? This question consist of two parts; part one deals with the analysis of the very requirement of principle of absolute liability, in which the researcher will first formulate and provide broadly the principle of absolute liability and then deal with the aspect of the necessity. The second part deals with the very critical analysis of the fact that whether judiciary has recognized the concept or not. No, judiciary in India has recognized the concept of absolute liability and there is a need for recognition of principle of absolute liability. The paper deals with principle of absolute liability in India its necessity and reform. It also contains both the technical and theoretical aspect of absolute liability; moreover it discusses the basic meaning of the concept and will analyze various elements of the same.

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<sup>1</sup> Author is available at [asangwankhede@gmail.com](mailto:asangwankhede@gmail.com)

## Introduction

Absolute liability in its basic sense refers to no fault liability, in which the wrong doer is not provided with exceptions which are provided in rule of strict liability. Absolute liability is more stringent form of strict liability, the rule laid by Rylands v. Fletcher<sup>2</sup> and was recognized by Supreme Court of India in M. C. Mehta v. Union of India<sup>3</sup>(Oleum gas leak case).<sup>4</sup> This case originated in the aftermath of oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi. This gas leak occurred soon after the infamous Bhopal gas leak and created a lot of panic in Delhi.<sup>5</sup> Bhagwati CJ. was a pioneer in this important development, and he didn't follow the rule laid in Rylands v. Fletcher<sup>6</sup>, on an important ground that the principles established in the said case are not in keeping with the present day jurisprudential thinking.<sup>7</sup> Justice Bhagwati also stated that the rule of strict liability was evolved in 19<sup>th</sup> century, the time when nature industrial developments was at primary stage, in today's modern industrial society where hazardous or inherently dangerous industries are necessary to carry out development programme, thus this rule cannot be held relevant in present day context. Also one cannot feel inhibited by this rule which was evolved in the context of totally different social and economic structure.<sup>8</sup>

A clear distinction between Strict and Absolute liability rule was laid down by SC in M.C.Mehta v. Union of India<sup>9</sup>, giving four basic points for it: First, only those enterprises will be liable which are betrothed in hazardous or inherently dangerous activity, this implies that other industries not falling in the ambit stated

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

<sup>3</sup> AIR 1987 SC 965

<sup>4</sup> Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed., pp.520-521

<sup>5</sup> S.P.Singh, LAW OF TORT,5<sup>th</sup> ed.,pp.281-282

<sup>6</sup> (1868) LR 3 HL 330:LRI

<sup>7</sup> S.P.Singh, LAW OF TORT,5<sup>th</sup> ed.,pp.281-282

<sup>8</sup> *Ibid*

<sup>9</sup> AIR 1987 SC 965

above, will be covered under Strict liability rule.<sup>10</sup>Second, the escape of a dangerous thing from one's land is not necessary, which means that the rule will be applicable to those injured within the premise and person outside the premise. Third, rule doesn't have an exception, which is provided in rule of Strict Liability. Four, the quantum of damages depends on the magnitude and financial capability of the enterprise. SC very aptly also contended that ,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 such activity, the enterprise must be absolutely liable to compensate for such damage and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm transpired without any negligence on its part.<sup>11</sup>

### **Necessity of the Principle of absolute liability in India**

Our country being a pioneer in industrial development and demographs of such development soaring high each day, also with complexity in both life and geography, it is necessary to have a stricter and more absolute principle of liability with respect to no- fault liability. Moreover the principle so established in Rylands v. Fletcher<sup>12</sup> of strict liability cannot be used in the modern world, as the very principle was evolved in 19<sup>th</sup> century, and in the period when the industrial revolution has just begun, this two century old principle of tortuous liability cannot be taken as it is in the modern world without modifications<sup>13</sup>.

The present condition of our country when it is on the verge of being one of the most globalised countries of the world, inclusion of multinational

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<sup>10</sup> Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed.,p.520

<sup>11</sup> Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed.,p.520

<sup>12</sup> (1868) LR 3 HL 330:LRI

<sup>13</sup> W.V.H Rogers, WINFIELD AND JOLOWICZ TORTS,8<sup>th</sup> ed. 2010 pp. 248

corporations (MNCs) in the jurisdiction of our country raises both points of appreciation and concern<sup>14</sup>. The technological complexity and the nature of industrial development, being increasing at a high rate and also industrial sector being a major contributor to our GDP<sup>15</sup>, the protection of the very human rights and lives of people should be taken into consideration. Thus the rule of strict liability cannot be still considered as the only redressal principle. Also pointed out by Bhagwati J. in *M. C. Mehta v. Union of India*<sup>16</sup>, paragraph 31 of the case that “This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country”<sup>17</sup>. Also the fact that the industrial development cannot be done without the existence of hazardous and inherently dangerous industries, it is very much necessary to put

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<sup>14</sup> [www.californiaattorneygroup.com/strict-liability.html](http://www.californiaattorneygroup.com/strict-liability.html) accessed on 30th march 2012

<sup>15</sup> [www.jstor.org/stable/1069096](http://www.jstor.org/stable/1069096) accessed on 30th march 2012

<sup>16</sup> AIR 1987 SC 1086

<sup>17</sup> *M. C. Mehta v. Union of India*, AIR 1987 SC 1086

responsibility on the shoulders of such industries for the protection of the people from any type of accidents etc<sup>18</sup>.

Justice Bhagwati also contended that “Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards” also observing. Thus from the above mentioned points it is a key necessity for such a principle to be evolved as it will not only shape our jurisprudence but also will help us to not carry the absolute principle of Strict liability in modern society<sup>19</sup>.

Thus the necessity factor as discussed in the above section clearly helps us to understand as to the principle of absolute liability is not only required to protect the basic human rights of the people, but also to develop tort law in India and to expand our own countries jurisprudence.

#### **Analysis of M. C. Mehta V. Union of India<sup>20</sup>:**

It is very important to analyze this case, as to know whether in actual sense the principle of Absolute liability exists or not. It was this case in which justice Bhagwati contended the above discussed preposition. The facts of the case are that there was leak of oleum gas from one of the units of Shriram Foods and Fertilisers Industries, on 6<sup>th</sup> December,1985, in the aftermath of the Bhopal gas

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<sup>18</sup>Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed.,p.523

<sup>19</sup> M.C.Mehta v. Union of India, AIR 1987 SC 1086

<sup>20</sup> AIR 1987 SC 1086

tragedy, the application was filed to get compensation to the persons who had suffered harm on account of leak of the oleum gas. The important question before the court was that whether as to continue with the principle of strict liability for the compensation or to evolve our very own principle which is more strict and binding. SC in the above case apart from dealing with the point of law regards the ambit of Art. 12 and 34, also gave a new rule of absolute liability, where by giving various features of the same and clearly differentiating between the earlier existing principle and the new principle.<sup>21</sup>

Although there is a difference between obiter and ratio of a case, and as the case of M.C. Mehta<sup>22</sup> reads, it is clearly stated that the ratio of the case is "Courts shall order authorities for enforcement of fundamental rights of citizens and to protect fundamental rights of people."<sup>23</sup> The principle of absolute liability is to be considered here as a obiter, as it was justice Bhagwati with 4 other respected judges, constituted this rule, it is not cited under the ratio of the case. Going by the common law practice and the judicial interpretation, the absolute liability principle is not binding on the courts and not on SC itself. The observation just made has two fold consequences, one that there does not exist a principle called absolute liability in India if we go by strict common law terms, as the principle was so given by judges in the oleum gas leak case<sup>24</sup> was an obiter, then we cannot accept the very fact that it is binding concept. On the other hand the very recognition of the rule by SC in different cases and also by various high courts in their judgments, it is clear that to an extent judiciary in India has recognized this very concept, also SC in Indian Council for Environmental Legal

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<sup>21</sup> Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed.,p.520

<sup>22</sup> AIR 1987 SC 1086

<sup>23</sup> <http://www.manupatrafast.in/pers/Personalized.aspx> accessed on 29/4/2012

<sup>24</sup> AIR 1987 SC 1086

Action v. Union of India<sup>25</sup> held that the rule of absolute liability established in M.C.Mehta case<sup>26</sup> was not obiter and is appropriate and suited the conditions of our country. Thus we can conclude that although going by a technical sense, the very rule comes under obiter, but by SC interpretation it makes absolute liability principle an established principle.<sup>27</sup> The above proposition and key finding will be supported by analysis of relevant case laws in the next section.

### **Recognition of principle of Absolute liability by Judiciary in India**

This section is in reference to the point dealt in the earlier section, and with the help of precedents or case laws, both of Supreme Court and High courts, the point will be analyzed, whether the observation is correct or not.

In the case of Charan Lal Sahu v. Union of India<sup>28</sup>, this case was in accordance with the Act formulated for the protection of the victims of Bhopal gas tragedy, is valid or not, doubts were expressed by Mishra C.J as to correctness of rule as it was held that Mehta case was an obiter and was differentiated from the western countries. The doubts so expressed in the above case were not accepted in Indian Council for Environmental Legal Action v. Union of India<sup>29</sup> and Mehta case rule was not called to be an obiter.<sup>30</sup> This case related to hazardous chemical industries, releasing highly toxic sludge and toxic untreated waste water which had percolated deep into the soil rendering the soil unfit for cultivation and water unfit for irrigation, human or animal consumption resulting in untold misery to the villagers of surrounding areas.<sup>31</sup> SC directed the government determine and recover the cost of remedial measure from the private

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<sup>25</sup> AIR 1996 SC 1446

<sup>26</sup> <http://www.lexuniverse.com/torts/india/Vicarious-Liability-&-Rules-Of-Strict-And-Absolute-Liability.html> accessed on 30th march 2012

<sup>27</sup> S.P.Singh, LAW OF TORT,5<sup>th</sup> ed.,pp.284

<sup>28</sup> AIR 1990 SC 1480

<sup>29</sup> AIR 1996 SC 1446

<sup>30</sup> S.P.Singh, LAW OF TORT,5<sup>th</sup> ed.,pp.285

<sup>31</sup> Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed.,p.521

companies which polluted the environment by attaching all their assets and further use to restore soil, forest etc. These industries were characterized by the SC as 'rouge industries' and were ordered to be closed down. In recognition of the principle of absolute liability, the concept mentioned above is based on 'polluters pay'<sup>32</sup>. Considering the position of high court on the principle of absolute liability, division bench of the Madhya Pradesh High Court applied the rule in the case<sup>33</sup>, where due to negligence of electricity board a person died of electric shock, high court recognized the principle of absolute liability here as it was due to negligence on the part of the board as it failed to maintain the wires properly. SC in the case of Madhya Pradesh Electricity Board v. Shail Kumari<sup>34</sup>, applied the same rule, in this case a cyclist was entrapped and electrocuted by a live-wire. The board tried to defend by stating that the wire on the ground was a wire diverted b a stranger to misuse the energy. The court held that the particular responsibility to supply electric energy is statutory conferred on the board. If the energy so transmitted causes injury, it is the primary liability to compensate the sufferer is that of the supplier of the electric energy.<sup>35</sup> The court also stated that a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury, irrespective of any negligence or carelessness on the part of the managers of such undertakings<sup>36</sup>. In an important case of Union Carbide Corporation v. Union of India<sup>37</sup>, paragraph 15 of the case clearly states that in determining the compensation payable to Bhopal gas victims, absolute liability principle was adopted.<sup>38</sup> The inappropriateness of compensation given to the victims, being a different issue all together, the

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<sup>32</sup> *Ibid*

<sup>33</sup> Jagdish v. Naresh Soni (2007) 3 MPHT 234

<sup>34</sup> JT 2002 1 SC 50

<sup>35</sup> *Ibid*

<sup>36</sup> S.P.Singh, LAW OF TORT,5<sup>th</sup> ed.,pp.285

<sup>37</sup> AIR 1990 SC 273

<sup>38</sup> Ratanlal and Dhirajlal, THE LAW OF TORTS, 26<sup>th</sup> ed.,p.521



relevant factor here is that of recognition of the concept of absolute liability while paying compensation.

Prior to conclusion of this section a very recent case needs to be discussed in here, which is of *Mushtaq Ahmend v. State of Jammu and Kashmir*<sup>39</sup>, in this case the state was negligent in maintaining electricity wire and the victim died due to electric shock. The court held that state being engaged in undertaking the activity of electricity supply, is liable under the law of torts to compensate the petitioners for the death of the victim irrespective of any negligence or carelessness on their part. Strict liability principle was held here, although the principle so used was not of absolute liability, but the compensation provided by court was in accordance with it.<sup>40</sup>

This part of the project being of great importance as to it helped us to determine the very existence of principle of absolute liability, we can see that to an extent the judiciary in India has recognized the principle and clearly stated the principle is not merely an obiter but suits to the current situations in the country.

### **Conclusion and Suggestions**

The principle of Absolute liability so stated in *M.C.Mehta, oleum gas leak case*, has been extensively discussed and arguments formulated in the paper were solely based on the question and hypothesis formulated in the chapter. It is necessary to conclude the project, as researcher believes that there is a need to formulate findings and provide for suggestions.

The research questions has two parts first being is there a need for recognition of concept of absolute liability and other being whether judiciary has

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<sup>39</sup> AIR 2009 J and K 29

<sup>40</sup> S.P.Singh, LAW OF TORT,5<sup>th</sup> ed.,pp.285

recognized the same principle. Dealing with the first part, the conclusion is that there is an urgent and inherent need for a principle of absolute liability as, the rule of strict liability which is followed in most of the countries, cannot be taken as the sole principle to provide for compensation, it being formulated about two centuries ago, when the level of technological development was nearly nothing in comparison with today's development. For the purpose of providing better remedy under civil law and broadly development of our own jurisprudence, to suit our own needs we require a principle which will be just to both the wrongdoer and the sufferer. Absolute liability is in accordance with the prevailing situation in our country, we are destination for globalization and large investments and when the nature of industries is mostly hazardous.

Second part of the question deals with the existence of the principle of absolute liability in India or recognition of principle by our judiciary. A very important finding here is that yes to a extent there exist a principle of absolute liability and judiciary recognizes, and the principle so given by court in the case of M.C.Mehta is not merely an obiter but is an important aspect which suits our present day conditions. The word extent used above is of great significance, researcher believes that although the judicial recognition has been done, but it is not in accordance with the required level which is very much required looking at prevailing situations in our country. Also the principle of absolute liability, according to the researcher, should not pay compensation to the sufferers on the basis of the paying capacity of the industries. Agreeing with the SC explanation of the very point that, it will help one to get exemplary damages and also larger the industries more the compensation can be provided to the sufferers, the consequences will be that if the industry is small, then the compensation will be paid to the victim not in accordance with the damage suffered, which is the basic principle of tortious liability, but in relation to the paying capacity of the

wrongdoer. Thus according to the researcher the element of paying capacity should be restricted to the large industries and for the rest the quantum of damages suffered should be used which is in accordance with tort law.

Concluding, the research question formulated before, the findings are mix as the first part stands true that there is a need for recognition of concept of absolute liability and the later part is not true as, judiciary has recognized the principle to an extent. The hypothesis is so dealt also has the same reply as, the first part of it stands false and the second part of it stands true. Thus there is a need for more recognition of concept of absolute liability in India

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