

## A COMPARATIVE STUDY ON PRINCIPLES OF ABSOLUTE AND STRICT LIABILITY

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### ABSTRACT:

The aim of the present study “A comparative study on absolute liability and strict liability” is to know To study about the essentials of strict liability, To analyze 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 make 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. This reason impact relationship is vital for building up obligation, for without a reason or source for the wrong, duty all in all can't be joined – the component of 'fault' is required to ascribe harm and claim remedy. The rule for this situation lays on the possibility of foreseeability- of harm; the individual who is the wellspring of harm is punished for neglecting to deflect the sensibly predictable harm. Strict liability and absolute liability are probably the most key ideas in the law of torts, and appreciation of their disparities is basic for any law understudy. In this article, the circle of tortious liability in so far as it identifies with strict and absolute liability will be broke down, through the point of interest instances of Rylands v. Fletcher and M.C. Mehta v. Union of India. At last the researcher concludes that there should be proper legal provisions and and there

should be rigorous liability on polluting the environment in strict and absolute liability.

**KEYWORDS:** Absolute liability, Dangerous, Exceptions, Hazardous, Negligence and Strict liability.

### **INTRODUCTION:**

The undertaking carrying on such risky and inalienably unsafe action for private benefit has a social commitment to repay those torment along these lines, and it should assimilate such misfortune as overhead; and, The endeavor alone has the asset to find and shield against such perils and threats. The Court clarified its situation in the accompanying words: "If the venture is allowed to bear on any unsafe or naturally risky action for its benefit, the law must assume that such authorization is contingent on the endeavor engrossing the cost of any mischance emerging because of such perilous or innately hazardous action as a proper thing of its overheads. This standard is additionally supportable on the ground that the undertaking likewise has the asset to find and make preparations for risks or threats and to give cautioning against potential hazard." The Court likewise set out that the measure of pay payable, that it ought to be related to the limit of the endeavor, with the goal that it can have the obstruction impact and the bigger and more prosperous ventures giving a more noteworthy measure of remuneration for the harms they have caused. The outright obligation is the utilization of strict risk, yet without the exceptions. The manage of supreme risk was advanced on account of *M.C. Mehta v. Association of India*, and took strict risk well beyond by communicating that an undertaking which is involved with a risky or perilous development is absolutely subject for the harm coming to fruition as a result of the errand of such activity, and to compensate to each one of the people who are influenced by the mishap. Total risk in its fundamental sense alludes to no blame obligation, in which the transgressor isn't furnished with exemptions which are given in govern of strict obligation. Total obligation is more stringent from of strict risk, the manage laid by *Rylands v. Fletcher* and was perceived by Supreme Court of India in *M. C. Mehta v. Association of India* (Oleum gas spill case). This case began in the outcome of oleum gas spill from Shriram Food and Fertilizers Ltd. complex at Delhi. This gas spill happened not long after the notorious Bhopal gas spill and made a ton of frenzy in Delhi. Bhagwati CJ. was a pioneer in this critical improvement, and he didn't take after the lead laid in *Rylands v. Fletcher*, on an imperative

ground that the standards set up in the said case are not with regards to the present day jurisprudential thinking. Justice Bhagwati additionally expressed that the lead of strict obligation was advanced in nineteenth century, the time when nature mechanical improvements was at essential stage, in the present current modern culture where risky or inalienably unsafe businesses are important to complete advancement program, in this way this control can't be held applicable in show day setting. Additionally one can't feel hindered by this run which was advanced with regards to entirely unexpected social and financial structure. The aim of the present study "A comparative study on absolute liability and strict liability" is to know To study about the essentials of strict liability, To analyze the necessity of absolute liability in India, To know the exception under strict liability, To examine the difference between absolute and strict liability.

Absolute Liability and Strict Liability | RACOLB LEGAL

#### **Aim of the Study:**

To study about the essentials of strict liability, analyze the necessity of absolute liability in India, know the exception under strict liability and examine the difference between absolute and strict liability.

#### **LIMITATIONS:**

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

#### **RESEARCH METHODOLOGY (MATERIALS AND METHODS):**

1) The research is based on secondary source of data , which includes :

- Articles.
- Book .
- Journals .

2) TYPES OF RESEARCH :

- Applied research .

**REVIEW OF LITERATURE:**

1) Absolute Liability in India Necessity and Reforms Asang Wankhede, Third Year Student of National Law University Delhi, 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.

2) Paul H. Robinson, University of Pennsylvania Law School, Date Written: January 2, 2017, Abstract: It is easy to understand the apparent appeal of strict liability to policymakers and legal reformers seeking to reduce crime: if the criminal law can do away with its traditional culpability requirement, it can increase the likelihood of conviction and punishment of those who engage in prohibited conduct or bring about prohibited harm or evil. Similar arguments support the use of criminal liability for regulatory offenses. Greater punishment rates suggest greater compliance.

3) Strict & Absolute liability: With Special Reference to India by, Author Manoj Kumar, Abstract: A rule specifying strict liability makes a person legally responsible for the damage and loss caused by his/her acts and omissions regardless of culpability. Absolute liability is a standard of legal liability found in tort and criminal law of various legal jurisdictions. To be convicted of an ordinary crime, in certain jurisdictions, a person must not only have committed a criminal action, but also have had a deliberate intention or guilty mind.

**HYPOTHESIS:**

1) H<sub>0</sub>: There is no liability for polluting environment under strict and absolute liability.

2) H<sub>1</sub>: There is liability for polluting environment under strict and absolute liability by courts.

**CASE ANALYSIS: CASE ANALYSIS:****Strict liability:**

Facts: Rylands and Fletcher were neighbors. Fletcher claimed a factory, for the vitality motivations behind which he enlisted self employed entities and architects to develop a water supply on his property. It so happened that there were old unused shafts under the site of the repository which the architects neglected to notice and piece. Because of the carelessness of the temporary workers, when water filled Fletcher's supply, the water entered Rylands' coal mine and caused immense loss, for that is the place the poles drove. In this manner, Ryland documented a suit against Fletcher. The respondent asserted that it was the blame of the temporary workers', and the reason for harm was obscure to him.

**Issues:** The issue was extremely succinct – Can the litigant be held at risk, regardless of whether it was the act of another person because of which an element on his territory got away? It was remarkable in light of the fact that there was no carelessness or expectation on part of the litigant.

**Judgment:** The House of Lords dismissed the supplication of the respondent and held him at liable for every one of the damages to Rylands' mine. As per the rule set by this case, if a man expedites his territory and keeps there any hazardous thing, a thing which is probably going to do insidiousness on the off chance that it get away, he will be at first sight liable to the harm caused by its escape despite the fact that he had not been careless in keeping it there. Regardless of there being no blame or carelessness with respect to the litigant, he was held at liable since he kept some unsafe thing on his territory and the said hazardous thing has gotten away from his property and caused harm.

**ABSOLUTE LIABILITY:**

**Facts:** On the fourth and the sixth of December, 1985 in Delhi, there was serious spillage of oleum gas which this occurred in one of the units of Shriram Foods and Fertilizers Industries, which had a place with the Delhi Cloth Mills Ltd. Because of this, a backer honing in the Tis Hazari Court had kicked the bucket and numerous others were affected by the same. A writ appeal to by method for open intrigue suit (PIL) was conveyed to the court.

**Issue:** It was challenged that if every one of the tragedies emerging from the direct of the huge production lines take after the control of strict liability, they will fall under the exemptions and escape scot free for the harm they have caused in the lead of their action.

**Judgment:** The Court had noticed this was the second instance of expansive scale spillage of a fatal gas in India inside the time of a year in India, as a year sooner in excess of 3000 individuals had passed on because of the spillage of gas from the Union Carbide plant in Bhopal and lakhs of others were subjected to different sorts of ailments. On the off chance that the control of strict risk set down in Rylands v. Fletcher was connected to such circumstances, at that point the individuals who had built up "hazardous and dangerous " businesses in and around thickly populated regions could get away from the obligation for the destruction caused in this manner by arguing some exceptions. The Supreme Court subsequently developed another administer – the run of "Absolute Liability", as authored by the then Chief Justice of India PN Bhagwati. [Strict and Absolute Liability](#)

#### **PRECEDENT CASE LAW:**

1)SC in the case of Madhya Pradesh Electricity Board v. Shail Kumari, 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. 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. (Mark Wilde,2002)

2)In an important case of Union Carbide Corporation v. Union of India, 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 relevant factor here is that of recognition of the concept of absolute liability while paying compensation.(C.Dernbach,2009)

3) Mushtaq Ahmend v. State of Jammu and Kashmir, 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. 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. (Fabrizio Cafaggi, 2006)

#### **LEGAL PROVISIONS:**

The Public Liability Insurance Act, 1991: This act has the significant point of giving prompt help to the people influenced unintentionally happening while at the same time taking care of any risky substances for issues associated with the occurrence. The fundamental focal point of the Act is to make an public liability protection finance which can be utilized to remunerate the victims. The Act expresses that any individual who is completing characteristically hazardous or dangerous exercises ought to have protections and approaches set up where he will be guaranteed against Liability to give pay to the victims in the event that any accident happens, and some damage happens. In regard of officially settled units, protection approaches must 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 guideline of "no fault liability" or as it were, the manage of strict liability and absolute liability. This is the statement in the Section 2(c) of the Public Liability Insurance Act, 1991. [Section 2\(c\) in The Public Liability Insurance Act, 1991](#)

#### **TO STUDY ABOUT THE ESSENTIALS OF STRICT LIABILITY :**

Certain qualifications were given to decide whether a liability is strict liability or not. Only after these essential qualifications are satisfied, can a liability can be termed as strict liability. These essentials, which are elucidated upon further on, are:

- Some unsafe thing more likely must be brought by a man on his land .
- The thing thus brought or kept by a person on his land must escape.

- It must be non-natural use of land.

**Dangerous Thing:**

This essentially implies the litigant will be at risk when the thing that got away from his premises was a dangerous thing. The word 'dangerous ' here infers that it is probably going to do any kind of mischief in the event that it escapes from the land. The gathered water in Fletcher's supply was the dangerous thing in the previously mentioned case.

**Escape:**

It is also essential that the thing causing harm must escape from the premises of the defendant, and it should not be within the reach of the defendant once it escapes.

**Non-Natural Use Of Land:**

For the use to be non-natural, it must be some special use that brings with it increased danger to others. It must not be the ordinary use of land or use as is proper for the general benefit of community. Strict and Absolute Liability:- A critique

**TO ANALYZE THE NECESSITY OF ABSOLUTE LIABILITY IN INDIA:**

Our country being a pioneer in industrial development and demo-graphs 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 of strict liability cannot be used in the modern world, as the very principle was evolved in 19th century, and in the period when the industrial revolution has just begun, this two century old principle of tortious liability cannot be taken as it is in the modern world without modifications. The present condition of our country when it is on the verge of being one of the most globalized countries of the world, inclusion of multinational corporations (MNCs) in the jurisdiction of our country raises both points of appreciation and concern. 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, 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. We need not

feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law cannot afford to remain static. 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 responsibility on the shoulders of such industries for the protection of the people from any type of accidents etc. 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. 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. [ABSOLUTE LIABILITY](#)

#### **TO KNOW THE EXCEPTIONS UNDER STRICT LIABILITY:**

There are certain special exceptions to the rule of strict liability, which are-

**Offended party's Fault:** If the offended party is to blame and any damage is caused, the litigant wouldn't be held at risk, as the offended party himself interacted with the dangerous thing.

**Act of God:** The expression "Act of God" can be characterized as an occasion which is outside the ability to control of any human agency. Such acts happen solely because of characteristic reasons and can't be anticipated even while practicing alert and premonition. The litigant wouldn't be subject for the misfortune if the dangerous substance got away in view of some unexpected and common occasion which couldn't have been controlled in any way.

**Act of the Third Party:** The rule additionally doesn't make a difference when the damage is caused because of the act of an outsider. The outsider implies that the individual is neither the servant of the respondent, nor the litigant has any agreement with them or control over their work. Be that as it may, where the act of the outsider can be predicted, the respondent must take due care. Else, he will be considered dependable. (Jorge, [vinuales,2915](#))

**Consent of the Plaintiff:** This special case takes after the guideline of *volenti non fit injuria*. For example, if A and B are neighbors, and they share a similar water source which is arranged on the place where there is A, and if the water escapes and makes harm to B, he can't claim damages, as A wouldn't be obligated for the dam. [Rules of Strict and Absolute liability](#)

## **TO EXAMINE THE DIFFERENCE BETWEEN ABSOLUTE AND STRICT LIABILITIES:**

### **Absolute liability:**

- Hazardous or inherently dangerous activities
- Escape not necessary – liability within and outside premise
- No exceptions to the rule
- Applies to Non-Natural and Natural uses of land

### **Strict liability:**

- Any other activities
- Escape necessary
- Provides for exceptions
- Applies only to Non-Natural use of land

The difference between Strict and Absolute liability was clearly mentioned by the Supreme Court in *M.C.Mehta v. Union of India*, where the court summarised it broadly as follows: In Absolute Liability just those endeavors might be held at risk which are associated with risky or inalienably hazardous exercises. The escape of the dangerous thing from one's own property isn't fundamental. Absolute liability is material to those harmed inside the start and outside the preface. The rule of Absolute liability does not have any special exceptions, not at all like the rule of Strict Liability. The control clarified upon in *Ryland v. Fletcher* applies just to the non-normal utilization of land, however outright risk applies even to the common utilization of land. In the event that a man utilizes a dangerous substance and if such substance get away, he might be held obligated despite the fact that he have taken legitimate care. The degree of dangerous relies upon the size and money related capacity of the establishment. The Supreme Court additionally expressed that the undertaking must be held to be under a "commitment to guarantee that the hazardous or innately dangerous exercises in which it is locked in must be directed with the most standard of safety and security and if any damage comes about because of such careless movement, the endeavor/organization must be held absolutely liable to adjust. for any harm caused and no open door is to given to reply to the venture to state that it had taken all sensible

care and that the damage caused with no carelessness on his part".What is the difference between strict liability and absolute liability in criminal law? - Quora

**FINDINGS:**

- 1)Provisions are less regarding absolute and strict liability.
- 2)Lack of negligence.
- 3)Punishments are less for absolute and strict liability.

**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 can be viewed as exception . A man is made subject just when he is to be at fault. In any case, the guideline overseeing these two principles is that a man can be made at risk even without his fault. This is known as the principles of "no fault liability." Under these principles, the liable individual might not have done the act , but rather despite everything he'll be in charge of the harm caused because of the act. On account of strict liability , there are a few exemptions where the respondent wouldn't be made at risk. Be that as it may, on account of absolute Liability , no exceptions are given to the respondent. The litigant will be influenced at risk under the strict liability to administer regardless. Tort is a common wrong for which the cure is a precedent-based law activity for unliquidated harms and which isn't solely the rupture of an agreement or the break of a trust or other just fair commitment. (Vinod Shankar mishra, 1994) There are numerous standards representing the law of torts. For the most part, a man is subject for his own wrongful acts and one doesn't cause any liability for the act done by others. In the event that an individual commits a fault , he is at risk for it. In any case, there is a rule which asserts an individual liable without his being to fault. This is the 'no fault liability principle '. For this situation, the at risk individual might not have done any act of carelessness or may have put in some positive endeavors however the rule claims

him for the pay. This guideline has its foundations in the two historic point cases-Rylands v Fletcher (strict liability) and M.C.Mehta v Union of India(absolute Liability). The principles of strict liability obviously expresses that a man who keeps hazardous substances in his premises is in charge of the fault if that substance escapes in any way and causes harms. This principle stands genuine if there was no carelessness in favor of the individual keeping it and the weight of evidence dependably lies on the litigant to act how he isn't at risk. Though the rule of absolute Liability held that where an undertaking is occupied with a hazardous or dangerous movement and it hurt outcomes to anybody by virtue of a mischance in the task of such risky or characteristically hazardous action coming about, the venture is strictly and absolutely liable to repay to every one of the individuals who are affected by the accident. Both these rules take after the 'no fault liability principle ', a rule in which the respondent is held subject regardless of whether he isn't specifically or by implication in charge of the harms caused to the offended party.[http://shodhganga.inflibnet.ac.in/bitstream/10603/129463/12/12\\_conclusion.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/129463/12/12_conclusion.pdf)

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