Absolute Liability: The Rule of Strict Liability in Indian Perspective

Bharat Parmar & Aayush Goyal*

The present article is to analyse the long old principle of Strict liability laid down in Ryland V Fletcher[1] in year 1866 and its development in Indian perspective. The Article also emphasis on how the famous principle of House of Lords started a new era in the field of law of torts and its impact on Indian legal system and its evolution. Why, It is now required to modify it. And the various case laws and views of judges of Supreme Court of India on the Old principle.

Introduction

The rule of absolute liability is similar to the rule of strict liability with some modification. This rule applies without any limitation or exception and creates a individual completely liable for any fault. The property to make anyone absolutely liable for the fault and imposition of high retraction make these liability as absolute liability.

The rule of Absolute liability was laid down by the Honourable Supreme Court of India in the case of *M.C. Mehta* V *UOI*[2] and *Bhopal Gas Leak*[3] case. Where the Hon'ble Apex Court maximise the limit of rule of *Ryland V. Fletcher*. The rule laid down by the SC is much wider with respect to the rule laid down by House of Lords.

By Explaining the rule of No fault liability[4] Blackburn J. said that "We think that the rule of the law is 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]

Need to modify the 19th century Rule

The Modern position of Rule of *Ryland V Fletcher*

The rule of Strict Liability[6] was subject to many exceptions therefore practically very little ruled was left. The old rule being with many exceptions was not capable to make any individual strictly liable for his negligence. Therefore it was essential to make harder rule with same purpose.

Indian judiciary's View

By analysing the need to modify the 19th century rule of Strict Liability the apex court of India in M.C. Mehta case stated that "Moreover the principle so established in Ryland v. Fletcher of strict liability cannot be used in the modern world, as the very principle was evolved in 19th century, and in the

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* Bcom & BBA LLB 3rd Year (Batch 2013-18) Amity Law School, Jaipur.

[1] 1866 L.R. 1 Ex.256. 1868 L.R. 3 HL 330

[2] 1987 SCR (1) 819

[3] AIR (1989)(1)SCC 674: AIR 1992 SC 248

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

[5] The Rule in Rylands v. Fletcher. Part I by Bohlen, Francis H. (1911).

[6] The rule was formulated by Blackburn, J. in Exchequer Chamber in Fletcher v Rylands, (1866) L.R. 1 Ex 265 and the same was approved by the House of Lords in Rylands v Fletcher, (1868) L.R. 3 H.L. 330.

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"[7].

Justice Bhagwati also stated that the rule of strict liability was evolved in 19th 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 old 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.[8]

The Division Bench of Andhra Pradesh High Court also in the case of *K. Nagireddi* V. *Union Of India*[9] *emphasised the need to modify the old principle and expressed its view* that "In India the general rule of *Ryland V. Fletcher is accepted, though the principle is needed to be modified in its application to the Indian consideration."*

The term 'Absolute Liability', as misnomer.- In his judgement, Blackburn , judge, referred the liability as 'absolute'. But the liability in fact is strict and in no way absolute. The rule in *Rylands v. Fletcher* is subject to so many exceptions that in fact very little of the rule is left[10].The recent trend is to limit the scope of the rule, and to bring it adjacent to the modern theory that there will be no liability without any fault. In view of these reasons, the term 'absolute liability' is misnomer and the appropriate term is 'Strict Liability'[11]

Why the old Rule was inappropriate in Indian Perspective

High Industrialisation Growth

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

Agriculture use of land

In India the land is mostly used for land. Therefore it is appropriate to store the water in big tank for the purpose of irrigation. The same thing do not prevails in the country from which it decided. Therefore it does not fit in Indian perspective.

Very old rule not appropriate in present world

The old rule was given in 19th century, about more than one 150 years ago, when the social and economical condition was totally different. Therefore it was necessary to make rule as per present requirement.

Difference Between Strict Liability and Absolute Liability

The difference between Strict and Absolute liability rules was laid down by Supreme Court in *M.C. Mehta v. Union of India*, where the court explains as:

Firstly, In Absolute Liability only those enterprises shall be held liable which are involved in hazardous or inherently dangerous activities, this implies that other industries not falling in the above ambit shall be covered under the rule of Strict liability.

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[7] W.V.H Rogers, WINFIELD AND JOLOWICZ TORTS, 8th ed. 2010 pp. 248.

[8] ibid MC Mehta case

[9] AIR 1982 AP 119.

[10] St Anne's well Browery v. Roberts. (1829) 141 LT at p.6, per Scrutton, L.J.

[11] Ibid Dr. S.K.Kapoor.

Secondly, the escape of a dangerous thing from one's own land is not necessary; it means that the rule of absolute liability shall be applicable to those injured within the premise and person outside the premise.

Thirdly, the rule of Absolute liability does not have an exception, whereas as some exception were provided in rule of Strict Liability. Also in the case of *Union of India V. Prabhakaran Vijay Kumar*[12] the view of constitutional bench was that the rule of MC Mehta is not subject to any type of exception.

Fourthly, the Rule of *Ryland V Fletcher* apply only to the non natural use of land but the new rule of absolute liability apply to even the natural use of land. If a person uses a dangerous substance which may be natural use of land & if such substance escapes, he shall be held liable even though he have taken proper care.

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[13].

Supreme Court View Our Supreme Court found that in modern times of science and technology the rule of Rylands v. Fletcher was not suitable. So it was replaced by the rule of absolute liability. Two most important decisions of the Supreme Court on the point are:

M.C. Mehta v. Union of India[14]

Facts: At 4th and 6th December, 1985 leakage of oleum gas from one of the units of Shriram Foods and Fertilisers Industries in Delhi, belonging to Delhi Cloth Mill Ltd. In this leakage one advocate practising in the Hazari Court had died and several others were affected.

Case:- A writ petition under Article 32 of the Constitution was brought by way of Public Interest Litigation. The Supreme Court took a hard and holds decision holding that it was not bound to follow the 19th Century rule of English Law, and it could evolve a rule which is suitable to prevail in the Indian of social and economic at the present day. It evolved the rule of 'absolute liability' as a part of Indian Law in preference to the rule of strict liability laid down in Ryland v. Fletcher, Bhagwati, C.J. observed in this context –

"This, rule (Ryland v. Fletcher) 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 norm and the needs of the present day economy and social structure. We do not feel inhibited by this rule which was evolved in the 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 this country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot allow our judicial thinking to be constrained by reference of the law as it prevails in England or for the matter of that in other foreign legal order. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done."

So Supreme Court evolved a new rule creating absolute liability for harm caused by dangerous substance. The following statement of Bhagwati, C.J. which laid down the new principle may be noted:

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[12] (2008) 9 SCC 527: (2008) 2 KLT 700.

[13] Ratanlal & Dhirajlal : Law of Tort 26th edition pg 520

[14] AIR 1987 SC 1086

"We are of the view that an enterprise, which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an Absolute and non-delegatable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm and it should be no answer to enterprise to say that it has taken all reasonable care and that the harm occurred without any negligence on its part."

The Court also laid down that the measure of compensation payable within the capacity of the enterprise, so that the same can have the deterrent effect. The Court held that "We would also like to point out that the measure of compensation in the kind of eases referred to must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The large and more prosperous the enterprise, greater must be the amount of the compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by the enterprise. "The rule laid down in MC Mehta was also approved by the Apex Court in ***Charan Lal Sahu v Union of India***[15] The Court pointed out that that this rule is 'absolute and non-delegable' and the enterprise cannot escape liability by showing that it has taken reasonable care and there was no negligence on its part. The Supreme Court also explained the basis of this rule as follows: -If an enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the court of any accident (including indemnification of all those who suffer harm in the accident) arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads; and -The enterprise alone has the resource to discover and guard against hazards or dangers and to provide a warning against potential hazards[16].

Bhopal Gas Leak Disaster Case[17]

In 1984, on night of December 2/3 mass disaster, the worst in the recent times, was caused by the leakage of Methyl Isocynate and other toxic gases from the Union Carbide India Ltd, (UCIL) at Bhopal. It is a subsidiary of Union Carbide Corporation (UCC), a multinational company registered in USA. About 2660 people died instantaneously and lacs of people were seriously injured. However, the toll of death had risen to 4000. Several suits were filed against UCC in the United States District Court of New York by the legal representatives of the deceased and many of the affected persons for damages. The Union of India under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 took upon itself the right to sue for compensation on behalf of the affected parties and filed a suit for the same. All the suits were consolidated and dismissed by Judge Keenan on the ground of forum inconvenience. On 12th May, 1986, Judge Keenan held that Indian judiciary must have the "opportunity to stand tall before the world and to pass judgment on behalf of its own people."

After the judgment of Keenan Judge the Government of India in the exercise of its power under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 filed a suit in the District of Bhopal which awarded interim compensation for the amount of Rupees 350 crores. This amount, on an appeal to Madhya Pradesh High Court preferred by UCC, was reduced to rupee 250 crores. This order was challenged in Supreme Court.

While the suits were pending in the New York District Court, an offer of 350 million dollars had been made by UCC for the settlement of the claim. This effort continued when the dispute arising out-of interim compensation ordered by the District Court of Bhopal came before the High Court.

However, the decision of the Madhya Pradesh High Court was challenged by both, UCC and the Union of India. The Government of India assailed the reduction in the amount of interim compensation

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[15] AIR 1990 SC 1480

[16] Ramaswamy Iyers: The Law of Torts: A Lakshminath, M Sridhar (tenth edition) year 2010

[17] (1989)(1)SCC 674: AIR 1992 SC 248.

and UCC contended that in a suit for damages where the basis of liability was disputed the Court had no power to make an award of interim compensation. It is in this case that the matter was settled by two orders dated 14th and 15th of February, 1989. On 14th February, 1989, the Supreme Court recorded the settlement for claims reached between the parties in the suit for 470 million U.S. Dollars and as a consequence, all civil and criminal proceedings against UCC and UCIL and their officers were terminated. On 15th February 1989 the terms of settlement signed by learned Attorney General for the Union of India and the Counsel for the UCC was filed.

The Settlement of the claims which was recorded by the Supreme Court was assailed mainly on two grounds

(a) The criminal cases could neither have been compounded nor quashed nor could the immunity have been granted against criminal action,

(b) The amount of compensation was very low.

As to the withdrawal of criminal cases it was held that "the quashing and termination if the criminal proceedings brought about by the orders dated 14th and 15th February, 1989 required to be, and are, hereby reviewed and set aside."

As to quantum of compensation it was argued that the principle laid down in M.C. Mehta v. Union of India, should be adopted. It was held by the court that the "settlement cannot be assailed as violative of Mehta principle which might have arisen consideration in a strict adjudication. In the matter determination of compensation also under the Bhopal Gas Leak Disaster (PC) Act, 1985, and the Scheme framed there under, there is no scope for applying the Mehta principle inasmuch as the tort-feasor, in term of the settlement- for all practical purpose – stand nationally substituted by the settlement and which now represent and exhausts the liability of the alleaged hazardous entrepreneurs, viz. UCC & UCIL. We must all add that the Mehta principle can have no application against Union Of India inasmuch as requiring it to make good deficiency. If any, we do not impute to it the position of a joint tort-feasor but only of a welfare state".

Indian Council for Environment Legal Action V Union Of India[18]

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."

Scope Of New Rule of Absolute Liability

The Scope of new rule is very wider in all terms than old rule.

-Do not have any exception

-Very wide scope.

-Cover not only public negligence or fault but cover even personal injuries caused due to the negligence of neighbour.

-Now cover not only the occupier of land but also non occupier of the land[19].

[18] AIR 1996 SC 1446

[19] J.N. Panday : Law of Torts.

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