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Principles of Strict & Absolute Liabilities of Corporates – Case Studies

Purto Srivastava¹ and K. Aishwarya²

Abstract

The objective of this research paper is to trace out the history and evolution of the Absolute and Strict liabilities as these are the liabilities that arise when an entity is at fault. It determines the extent of the obligation of the entity towards the victim. This paper begins with an *Introduction*, which brings out the liabilities into the picture and their importance to show the liability and that the guilty entity cannot escape out of it. It also mentions the objectives undertaken, the research questions framed by the researchers that fill the lacuna of the concepts, and the methodology tool used by the researchers in completing the paper. Then, begins *Chapter I* which discusses the categories of liabilities in detail starting from their evolution and going to the main essential elements and exceptions highlighted to make it more comprehensive and lucid. Reference to the cases has also been made wherever necessary. *Chapter II* discusses two landmark cases of Absolute liability in detail. *Chapter III*, establishes the relationships existing between Absolute liability and Corporate Governance to show an entity is liable towards its employees and any individual who faces repercussions. Lastly, the paper is concluded by the *Conclusion*, which summarises the above-mentioned chapters.

¹ 4th Year, Law Student, Bennett University, PS9783@bennett.edu.in

² 4th Year, Law Student

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Introduction

Absolute and Strict liabilities are the concepts of No-Fault liabilities, wherein even if the person is not at fault, there arises his obligation for liability. These are similar but different concepts in Tort law. It contradicts the principles of Negligence. Strict liability evolved first but with the changing times, there arose a need for making entities completely liable because of the grave effect of the fault. The rule of absolute liability got a wider acceptance after the landmark incidents of the Bhopal gas tragedy case, one of the biggest industrial disasters the country has ever witnessed, and the Shri Ram Food Fertilizers case witnessed in the food industry. The rule of Strict liability and the three essential principles established out of it was initially laid down in the case of *Rylands vs. Fletcher*³ has been given a wider scope by the Supreme Court than House of Lords initially. The research paper discusses Strict liability in detail to explain the evolution of absolute liability from it which is widely accepted in today's judicial world.

All the above-mentioned principles play a crucial role in fixing the liabilities on these corporations that try to escape their guilt and obligation towards the victim. The concept of corporate governance gained huge importance in recent times. Fixing corporate liability on the corporations will be significant when it comes to the interest of other companies whose interest is given utmost importance and protected under the concept of corporate governance. The paper also analyses the same.

Objectives of the Study

- To understand the evolution and background of the concepts of No-Fault liabilities.
- To analyze the landmark Supreme Court cases involved in the evolution of liabilities.
- To determine the relationship between these liabilities and Corporate Governance.

³ *Rylands v. Fletcher* (1868) LR 3 HL 330.

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Research Questions

Chapter I – What are the concepts of No-Fault Liabilities?

Chapter II- What are the judicial precedents involving liabilities?

Chapter III- What is the relation between Absolute liability and Corporate Governance?

Research Methodology

The researchers have completed this research paper by following the Doctrinal approach. This includes Acts, Regulations, Rules, Case laws to examine and study the above-mentioned research questions. However, references have also been made through secondary sources, including books, articles from reliable websites, reports to understand and examine the concepts of No- Fault Liabilities, and landmark cases in detail.

Chapter 1 – Concepts of No-Fault Liabilities

The Principle of Strict Liability

In the case of *Rylands vs. Fletcher*⁴, wherein the petitioner and the respondent were neighbors. The petitioner had his mines in his land whereas the respondent had a mill in his land. The respondent thought of building a reservoir on his land because the operation of the mill required lots of energy and that energy could be derived from that. For this purpose, he appointed a few independent contractors and engineers. While building the reservoir, the contractors noticed a few mine shafts to which they paid no attention and successfully built the reservoir. Later, water started flowing from the reservoir to the petitioner's land, and his mines got affected out

⁴ *Rylands v. Fletcher* (1868) LR 3 HL 330.

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of which he suffered heavy loss. Then, a petitioner filed a suit against the respondent. The issue, in this case, was- Whether Fletcher was responsible for the damages against Rylands? The House of Lords held that the respondent would be liable for the damages against the petitioner and from there arose this concept of Strict Liability.

This case evolved three basic principles of Strict Liability; they are:

- **Dangerous thing** - Setting up any such hazardous thing (non-natural use of land).
- **Escape** - That hazardous thing escapes from its origin.
- **Prima-facie liability** - On the face of it, there arises liability.

The burden of proof always lies on the defendant in such cases and he is supposed to prove why there exists no liability on his part.

However, there exist exceptions for the defendant in such cases:

1. **Plaintiff's fault**- In the case of *Ponting vs. Noakes*⁵, there were two neighbours A and B. A had poisonous trees and B had horses in their respective premises. The horses of B went to A's land and ate away the leaves of the trees and then, the horses died. Subsequently, B sued A for strict liability. However, the court held that A had no liability as trees did not escape on their own and hence, the above-mentioned principles were not satisfied.
2. **Vis-Major (Act of God)**- In the case of *Nichols vs. Marsland*⁶, due to unpredictable heavy rain, the water flowed from the artificial lake of a person to his neighbour's premises resulting in damage to his bridges and walls. The neighbour demanded damages from Marsland. However, the court held that the heavy rain was out of control of anyone and therefore, there arises no liability on behalf of Nichols.
3. **Volenti Non-Fit Injuria/ Mutual Benefit**- This means that if two persons set up any non-natural thing that benefits both of them but later causes damage to either of them, then none of them can claim against each other.

⁵ *Ponting v. Noakes* (1849) 2 QB 281.

⁶ *Nichols v. Marsland* (1876) 2 ExD 1.

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4. **Act of Stranger-** If any stranger causes damage from the premises of one person to another, then this does not result in liability of the person whose land it belonged to as it was the stranger who initiated it. However, if the person was aware that the stranger was to cause such damages, then the concerned person is duly obligated to take due care.
5. **Statutory Authority-** This implies that if the actions of the government or the State causes damages to any person, then there arises no liability on anyone.

The Principle of Absolute Liability

The concept of Absolute liability is one of the most popular concepts under the scope of the tort. This concept of liability is very stringent as compared to the concept of strict liability. The concept of strict liability is subject to certain exceptions. While the concept of absolute liability has no such kind of exceptions.⁷ The person will be liable irrespective of having taken enough care or any other safety measures. To prove the case of absolute liability, one has to establish the presence of hazardous or inherently dangerous activities, escape of such dangerous things is not required. No exception. This concept applies to both natural and non-natural uses of land.⁸

In case of absolute liability, the corporation will be completely responsible for all and any possible damages which result from the activity carried on by the corporation. Even if the corporations or industries have taken all measures and yet there is damage even though all the safety measures are taken, even after taking any kind of safety measures, the corporation will still be responsible. This will ensure that the corporations are not just merely taking any safety measures but are at their best when it comes to taking these safety measures. Even though it is true that the exceptions of the concept of strict liability do not apply to the concept is absolute liability, there are still some exceptions such as the plaintiff's own mistake, plaintiff's consent, natural disaster, etc. But the Indian Judiciary made a very strong attempt in the case of Bhopal

⁷ Nupoor Agrawal, the Rule of Strict Liability and Absolute Liability in Indian Perspective, 4(3) IJLMH Page 3104-3116 (2021)

⁸ Ibid

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Gas Tragedy, to ensure that the public has a greater amount of protection. The doctrine of absolute liability was evolved in the Oleum Gas Leak case and proved to be a tough tool against the negligent corporations which are negligent towards public health. The doctrine as stated was much powerful than that of the concept of strict liability. Under this principle, the corporation can be held liable, even if the defaulter is a third party when the public and their health are at risk. This is to ensure that the corporations will comply with strict standards to ensure public safety.

Chapter 2 – Analysis of the Judicial Precedents for Liabilities

M.C. Mehta v. Union of India & Ors.⁹

Facts of the Case

M.C. Mehta, an environmentalist and an advocate was the petitioner in this case, who filed a writ petition in an attempt to lay down the guidelines of strict or absolute liabilities for the industries that place hazardous things or is involved in hazardous production in their premises and for the closure of Shri Ram food Fertilizers industry as it was harmful to the community. The Delhi Cloth Mills Ltd., 1949 established and ran a caustic Chlorine plant run, Shri Ram. While the petition filed by M. C. Mehta was pending, the parliament had asked to submit an inquiry report about the hazardous nature of Shri Ram and a committee headed by Mr. Manmohan Singh had submitted it outlining various safety recommendations. On 4th December 1985 Oleum gas leakage took place that affected the lives of the employees and the residents nearby the plant. Two days later, a similar incident on a smaller scale took place. On 6th December 1985, the Delhi Magistrate ordered for the closure of Shri Ram under Section 133 (1) of Code of Criminal Procedure, 1973 as it was not safe for anyone and that similar incident does not take place again. Another writ petition was filed under Articles 21 and 32 of the

⁹ *M.C. Mehta vs. Union of India & Ors.*, 1987 SCR (1) 819

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Constitution of India, 1950 for permanent closing of such harmful industries and thus was later closed down.

Issues Raised

- Whether such hazardous industries be placed at such dense locations?
- If yes, then what should be the measures and protocols for the same?
- In case of any mishappening, how would the compensation and liability be calculated?

Contention of the Petitioner

The petitioner contended that Shri Ram food fertilizers be closed down permanently as the operation of this plant was hazardous to the community and therefore would be violating the right to life and personal liberty of the public at large under Article 21 of the Constitution of India, 1950. Although the Constitution of India does not specifically mention health. However, it is assumed to be incorporated under Article 21 and in the Directive Principles of State Policy which mentions raising the standard of health care in the community even if these principles are not enforceable by law. It serves as guidelines to abide by it. Therefore, this industry must be closed down owing to the risk and threat to people nearby it and the workers in the industry as this industry is involved in the production of hazardous products like Caustic Chlorine, and any leakage from it again would be disastrous. Also, that there arises absolute liability on the part of the industry against any mishappening and that the industry should be liable for the compensation to the injured as the court deems fit.

Contention of the Respondents

The respondents have contended that since the employment of more than 4000 employees is dependent on the industry, the permanent closure of the industry would lead to economic loss. The industry has complied with all the recommendations given by various committees. The permanent closing down of the industry should be avoided as the risk factor to the health and

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safety of everyone is reduced by complying with the norms and taking measures. They have also raised the point that Shri Ram is not liable for the compensation whatsoever as it is not defined within the premises of 'State' under Article 12 of the Constitution of India, 1950 and is not a statutory body rather is a private enterprise and also the issue of compensation was not raised initially in the writ petition and the same cannot arise in another petition.

Decision of the Court

The court held that the permanent closure of such industries would impede the development activities of the country and on the face of it, such industries are riskier therefore, setting up proper measures and protocols would be required for the functioning of such industries. The court ordered Shri Ram to pay 20 lakhs and furnish 15 lakhs as a bank guarantee within three years of the incident taking place to the victims. The principle of Absolute liability was applied in this case owing to the risks involved and the amount of compensation would vary by magnitude and scope of the industry.

Analysis

This case brought about amendments in the Environment law in India as it was the first time when the industry was held liable and was required to pay compensation. . The Supreme court played the role of an Extra-judicial entity and balanced the growth of industrialization and the accidents that might take place out of it. Initially, It gave a ray of hope to believe in the justice system and rectified all the false claims and actions against the courts, there was the concept of Strict liability. However, with changing times there arose a need for absolute liability due to such industries, the lives of these many people are at stake and also conserving and saving the environment.

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Union Carbide Corporation v. Union of India¹⁰

The case of UNION CARBIDE CORPORATION VS UNION OF INDIA is one of the worst tragedies that India has ever witnessed. The tragedy was a result of a leak of methyl isocyanate gas from the manufacturing plant, Union Carbide India Ltd (*hereinafter referred to as UCIL*) which is engaged in manufacturing pesticides. The leak resulted in severe health effects including vomiting, severe eye irritation, long-term chronic illness, etc. Thousands of lives were lost to this tragedy and several suffered the above-mentioned injuries. It is to be noted that the cause for this tragedy is that the safety measures were not functioning and those functioning were not in a proper condition. Following this incident, the Government of India has filed a case with the U.S. Supreme Court claiming \$3.3 billion from UCIL. After a while, the case was transferred to India for the sake of convenience.

The Bhopal Gas Leak Disaster (Processing of Claims) Act was passed which made the Central government be the sole representative of the victims of this tragedy and ensuring speedy justice. After this, an out-of-court settlement deal was entered upon by the Government of India and UCIL. The result of this settlement is that there is a full and final settlement of \$740 million. Any amount beyond this claim will be taken by the Government of India. The settlement also limited the liability of UCIL from civil as well as criminal liabilities. The settlement also limited the future issues and made the UCIL not liable for any future issues arising out of this tragedy. The settlement along with the Government of India received huge criticism from the public. As a result, several petitions were filed at the Supreme Court, seeking to invalidate the settlement. The main grounds for the criticism are that the amount of compensation agreed is too less and that the re-opening clause is absent as this prevents any future claims against the UCIL.

The Supreme Court has rejected these contentions as the Supreme Court is of opinion that the settlement and the subject matter of the settlement are not illegal and that there are no other

¹⁰ *Union Carbide Corporation vs Union of India Etc*, 1990 AIR 273

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valid reasons which make it to be a void settlement. Though the settlement only limits the liability, still the victims are not at a loss because the deficiency of funds for compensation will be bore by the Union of India. The Supreme Court only upheld the contention against the quashing of criminal proceedings. The main reason for such a hasty settlement is to meet the urgent demands to compensate the victims of this tragedy. This is a landmark judgment when it comes to the principle of absolute liability. The principle of Absolute liability is not used at its best in this case. If there is no settlement out of court, the company would be made liable to every victim of this tragedy. This settlement limited the liability of the accused by limiting their compensation. Even though the principle of Absolute liability is not completely applied in this case, still, it can be said that this case played an important role in the evolution of the concept of the principle of Absolute liability, along with the Oleum Gas Case. This is because, even though certain deficiency is bore by the government of India, still UCIL is made absolutely liable.

Analysis

The principle of Absolute Liability will be at its best use if applied strictly and without any other government decision or intervention. The out-of-court settlements shall be used for the benefit of the public at large but not to help the corporates. Even though in the present case, the main aim of the government might be to speed up the justice process, still in the researcher's opinion, this had a positive impact on the cooperation. They thought about justice only from one aspect, which is proving the claims to the victims. But another aspect of justice, that is punishing the convict proportionately is not done in this case. In such cases, especially, where the industries or plants dealing with these harmful gasses, they should be treated strictly, irrespective of whether they were negligent or not. This is the main essence of the concept of Absolute liability. But, in the present case, when the settlement is made and the government aid the deficiency amount, the liability is almost shared by the government. This will act as a negative incentive to corporations and industries.

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When such kind of tragic incidents happens, it is such an unfortunate time, when certain standards are to be set up. When proper standards are not set up at such times, the scope for more of these unfortunate tragedies increases. Though this case is a landmark judgment, it would be much more important if the UCIL is solely made liable for every victim of this tragedy. However, that not being the case, in my opinion, lead down the importance of this case. However, the principle, if applied in its true spirit, stands high and will act as a great standard and makes sure that the industries and the plants are complying with really high safeguards, both predictable and are also prepared for something unpredictable. Allowing the industries not to be completely liable for this kind of incident will not be appropriate because, when coming to profits sharing, decision making, and all, the company or industry solely are enjoying the fruits when reaped after sowing these poisons substances for their usage. When there are any damages because of them, then the industries or the corporations shall alone be responsible for compensating for such damages. When the corporations are made absolutely liable for such kinds of disasters, then the essence of corporate governance is to ensure benefits even to the stakeholders, including the government, public, society, etc., will be achieved at its best.

Chapter 3 – Relation of Absolute Liability to Corporate Governance

The concept of Absolute Liability is in close association with the benefits arising as a result of corporate governance. This concept plays a crucial role in corporate governance. Corporate governance is much more inclusive towards the public. Now addressing the question as to how the concept of absolute liability is related to corporate governance can be explained through the following points: interrelation between the corporate governance and the absolute liability

- **Positive impact on the company-** When absolute liability is taken by the company itself, then it will not only increase the goodwill of the company but also promotes a sense of responsibility within the company itself. This results in brand formation. This

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is because, when a company is held liable under absolute liability, it is not always that the company has committed some mistake on its part, but also like a company taking sole responsibility. If this is taken by the company voluntarily, the goodwill, as mentioned, will increase.

- **Minimizes wastages, corruption, etc.** – When the concept of absolute liability is implemented in its strict sense, then it will narrow down the scope of corruption. This will also cut down the wastage of time by fixing the liability on the corporation and works towards speedy addressing of issues.
- **Attracts investments-** When this principle of absolute liability is implemented properly, investors will be very cautious about where they are investing. This will ensure that the investors invest in companies that take proper care and caution at their best. Even if all companies take caution, the one with the best caution and with readiness to most unpredictable incidences will be able to attract good investment.
- **Easy finance for best corporations-** As mentioned, when firms take the best safety measures, they can easily obtain good investments from other institutions and investors. This concept of absolute liability will inculcate the habit of preparing to avoid any kinds of future risks.
- **Transference, accountability-** The principle of absolute liability will lead to good governance because it will ensure that there is transparency and also there is proper accountability on the part of the corporations. The corporations will be accountable for all the things in their possession.
- **Risk reduction-** As corporations know that there will be huge risks if they are negligent or because of any other reasons which will result in some injury to a third person, they take the best caution because of the fixed liability. This will for sure in some of the other ways reduces the risks which can be avoided by proper care and caution.

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Concluding the Discussion

It is dangerous to be right when the Government is wrong.

- Voltaire (1694 – 1778)

It is a common understanding that a man will be at fault if he commits a wrong. The concept of no-fault liabilities is an exception to this. This is because, in the case of no-fault liabilities, as the name suggests, the man will be held liable, even if he does not commit any fault. The concept of no-fault liability, i.e., strict and absolute liabilities have evolved even into the field of non-human entities, that is corporations. The corporation, may not have committed any wrong per se, but, still, mere of few grounds, which are discussed in the papers, is sufficient to make the corporations liable under absolute or strict liability, as the case may be. The landmark cases in this concept of no-fault liabilities, *namely Rylands vs Fletcher, M.C. Mehta vs Union of India, and Union Carbide Corporation vs Union of India* discussed at great length in this paper. The Indian Cases are analysed thoroughly.

The concept of absolute liability, in essence to corporate governance is discussed. The advantages and the relation between the concept of absolute liability and corporate governance are discussed simultaneously. The researchers believe that the fixing of liability will contribute towards good corporate governance, which will, in turn, helps the corporation itself. Fixing liability by way of strict and absolute liability will prove to be good governance practice and help the stakeholders, including the society and environment. The plain reading of these concepts might appear arbitrary because one is held liable, even if he is not at fault. But the reasoning that he is the one who reaps the benefits because of any dangerous substance kept in his possession, he should alone be liable for the damages caused because of its escape, even if he did not know or even if he takes due care and all safety measures. All these lead to the

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development of the Public Liability Insurance Act, 1991, according to which the owner takes several insurances concerning the industry, even before its commencement. This proves to be a useful precaution taken by the employers.

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