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Absolute Liability: The Dynamics of Changing 'Business-Stakeholder' Relations

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ABSTRACT

During the period of industrialization, there were many industrial hazards that took place due to the faulty equipment and lack of safety. This costed many lives and there was no law enforced to protect the rights of the people associated with the factories.

In a period, such as this, the case of Rylands v. Fletcher in 1868 brought about the rule of strict liability was established, which ensured that those industries which kept hazardous substances owed strict liability to the stakeholders of the factories, if those substances escaped leading to damages. However, this rule came with a lot of defences or exceptions available, and the factory owners exploited these defences to get away with the compensation.

From the Indian perspective, the rule of strict liability was valid until the Bhopal gas tragedy in 1984. This disaster took away many lives due to criminal negligence. It was one of the darkest days experienced in the history of India. However, soon after this, the Oleum Gas Leak case occurred. This back-to-back instances of two major industrial hazards pressed the judiciary's need for a more effective and stringent law in place; the rule of Absolute Liability. This rule came with no exceptions and the factory owners would be held absolutely liable for any negative consequences of the factories.

This paper, therefore, tries to analyse the evolution of absolute liability from strict liability and the take of Indian jurists on the same from the judiciary's perspective. It also aims to analyse the need of absolute liability rule in India and how that has affected the responsibility of businesses towards their stakeholders.

Keywords: *Strict liability, Absolute liability, Rylands v. Fletcher, MC Mehta v. Union of India, Bhopal Gas Tragedy*

I. INTRODUCTION

With the advent of steam-powered machine, came the Industrial Revolution. It was a period when mass production of products boomed. Started in the 1760s in England, it was characterized by a major shift of population from the rural areas to the urban areas. The demand

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for skilled labour seemed to deteriorate. Factory owners preferred cheap and unskilled labour for the physical operation of machinery. For this reason, they often hired women and children as they would work for half the wages of men. There were neither social considerations nor legal regulations, to ensure the safety of the workers, and the working conditions were claimed to be terrible.

Due to the poor working conditions and the sheer negligence of the factory owners, more often than not, many hazardous accidents were caused, taking the lives of many and injuring many more. However, there was no law to govern the rights of the workers and the stakeholders of the factories. Stakeholders are those individuals or groups of individuals that a business holds responsibility to. Employees, consumers, environment, government, local communities are just a few to name. This lack of laws led to businesses being unaccountable for their actions.

In order to regulate this system and protect the welfare of the stakeholders in the later stages, the rule of *Rylands v. Fletcher*² was brought in. The defendants in this case employed independent contractors to construct a reservoir on their land. The contractors found disused mines when digging but failed to seal them properly. They filled the reservoir with water. As a result, water flooded through the mineshafts into the plaintiff's mines on the adjoining property. The plaintiff secured a verdict at Liverpool Assizes. The Court of Exchequer Chamber held the defendant liable and the House of Lords affirmed their decision. Decided by Blackburn J, he explained the rule of 'No fault liability'³ by saying "We think that the rule of the law is that the person who for his own purposes brings on his land 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."⁴

In simpler words, the rule stated that any person keeping any hazardous substance on his premises would be held liable if that substance escapes from there and harms others. It would be irrelevant, if or not at that point in time, the defendant took due care. However, there were exceptions given to this rule too. Those exceptions could be taken as defenses by the defendant. Exceptions entail plaintiff's own fault, vis major, volenti non fit injuria and act of third party.

Due to the many exceptions to this rule, people found it hard to hold the defendant liable for their faults and that was when the need to bring a more stringent law, that could hold the defendant absolutely liable for their actions was considered. This led to the creation of

² (1868) LR 3 HL 330

³ Dr.S.K.Kapoor on Law of Torts 7th Edition pg.272.

⁴ The Rule in *Rylands v. Fletcher*. Part I by Bohlen, Francis H. (1911).

“Absolute Liability Rule”. To define it, absolute liability is strict liability minus the defences. The defendant does not have the right to take defences under any circumstance, if his absolute liability is proven.

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 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"⁵ .

The Division Bench of Andhra Pradesh High Court also in the case of K. Nagireddi V. Union Of India⁶ emphasized 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."

To sum up the perspective of the Indian judiciary, the rule of Strict Liability was proven redundant for various reasons. India is an emerging economy with high rate of industrialization. But the rule of Strict liability is however an old one, that would cater to an economy with lower industrial growth. Adding on, the rule of Rylands v. Fletcher dates back to 150 years, where the socio-economic conditions had a very different colour to that of now. Changed times, call for changed solutions. Hence, it is of paramount importance, for the laws to be amended for the benefit of large. These led to the adoption of Absolute Liability rule in India with regards to the responsibility of businesses towards their stakeholders.

II. DESCRIPTION OF THE STUDY

This research is dealing with the need of absolute liability rule in India and its effect on the business-stakeholder relationships with special light on the judicial pronouncements. It also throws light on what industries identify themselves under Absolute liability. It talks about the change in accountability of businesses towards their stakeholders over the years as well.

SIGNIFICANCE OF STUDY

In an emerging economy like India, where majority of the Gross Domestic Product, is a result of the contribution from the primary and secondary sectors, it is nothing but imperative to have stringent laws in place and ensure its enforcement for the triumph of justice. As much as it is important for a country to focus on development, it is of equal importance for the businesses

⁵ W.V.H Rogers, WINFIELD AND JOLOWICZ TORTS, 8th ed. 2010 pp. 248.

⁶ AIR 1982 AP 119.

to achieve development, legally and ethically. Despite profits and efficiency being the objectives of any firm to survive, social responsibility should also be one of the objectives of these firms, in order to survive in the industry for long, in an economy as dynamic as this. To emphasize the importance of corporate social responsibility, Sec 135 of the Indian Companies Act 2013, makes corporate social responsibility mandatory to all businesses having a net worth of five hundred crores and more. India is the first country in the world to make CSR mandatory, thereby highlighting the significance of the responsibility owed by the businesses to their stakeholders.

Therefore, an economy like India, that considers social responsibility to be of that importance, would also ensure 'stakeholder satisfaction'. This is the reason why Absolute Liability rule was adopted in India. This rule ensures the welfare of the workers and of the environment and the local communities. Along with this, many statutes post the Bhopal Gas Tragedy, like the Environmental Protection Act were brought in and amendments to Factory Act was also brought in.

Hence, the need for this study is indispensable as it aims to investigate how absolute liability rule has resulted in a safer working space and a more ethically responsible way of running businesses.

OBJECTIVE OF THE STUDY

The research is to analyze the long old principle of Strict liability laid down in *Ryland v. Fletcher*⁷ in year 1866 and its development in the Indian perspective. The paper also lays 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.

This study aims to investigate the need for absolute liability rule in the Indian judiciary and how it has emerged to become a determining factor between the relationship of businesses with their stakeholders by concentrating mainly on three cases; Bhopal Gas Tragedy, Oleum Gas Leak Case and the very recent Vizag Gas Leak. It also aims to look at the situation prior to the adoption of this rule, with Chasnala Mining Disaster, 1975 in the spotlight.

RESEARCH PROBLEM

The need of and effectiveness in the application of the Absolute liability rule with respect to

⁷ UKHL 1, (1868) LR 3 HL 330

the responsibilities of business and factory owners.

In the current times, our country is soaring up high and achieving the title of being a pioneer in Industrial development. Along with this the demography of the development is also reaching high standards with each passing day and so are the complexity of life and geography. Therefore, it becomes even more important to acquire inflexible and absolute principle of liability with respect to no-fault liability. Rules and Principles established in *Rylands v. Fletcher*, need to be modified to suit the needs of the current situation as these were established in the times when industrial revolution had started⁸

Today, our country is becoming one of the most globalized nations because of the increase in FDI and MNCs. But with this not only, comes appreciation but also gives rise to various concerns. Development has brought major contribution in our country's GDP as already mentioned but along with this our prime concern should be the need and right implementation of properly formulated laws to protect the rights of the stakeholders in every form. So, in this position the rule of strict liability cannot be adopted as the only redressal principal. Therefore, there has been a rising need to adopt Absolute Liability rule and to also investigate the its effectiveness in changing the responsibility of businesses and factories towards their stakeholders.

RESEARCH QUESTIONS

1. How is Strict liability different from absolute liability?
2. What kind of compensation is paid in absolute cases?
3. What kind of responsibility is owed by the businesses to their stakeholders?

HYPOTHESES

1. The need for absolute liability rule is of paramount importance
2. The absolute liability rule has made factory and business owners more watchful of their actions
3. The Absolute liability rule has benefitted the stakeholder community greatly

SCOPE OF STUDY

The scope of this study is to cover the *Rylands v. Fletcher* rule and the Absolute liability rule. It will also shed light on the landmark judgements of *MC Mehta v. Union of India* (Oleum Gas Leak) and the Bhopal Gas Tragedy. The study is confined to these statutes in particular, owed to the availability of resources and due to time constraints.

⁸ Ratanlal and Dhirajlal, *The Law of Torts*, 531-533 (2013)

LITERATURE REVIEW

The review of literature gives an idea about the research carried out by other researchers in the past. The major part of the literature that exists for the topic is in forms of judicial decisions and Articles in journals. The books and commentaries which are there are with respect to the general interpretation of the personal law. The literature is reviewed under the following heads:

1. Absolute Liability In Indian Context- Legal Services India:

This article analyses the rule of absolute liability and its development from common law to today's times. This rule is discussed with light on the landmark judgements of Bhopal Gas Tragedy and Oleum Gas Leak case

2. The rule of Absolute Liability- Shodhganga

This article talks about the role of strict liability and investigates into its validity over time. It also talks about the need of a new law outlined by Justice Bhagawati in the case of MC Mehta v. Union of India (Oleum Gas Leak case)

3. Absolute Liability - The Rule of Strict Liability in Indian Perspective by Bharat Parmar & Aayush Goyal:

This article is to understand the long old principle of Strict liability laid down in Ryland v. Fletcher in the year 1866 and its transition in Indian perspective. The article also lays emphasis on how the principle of Ryland v. Fletcher, gave rise to a new era in the field of law of torts and its impact on Indian legal system and its evolution. It also talks about the reason why it is now required to modify it. The various case laws and views of judges of Supreme Court of India on the old principle is also deliberated.

4. Major Industrial Disasters in India- Journal by ICMR:

This article has given a detailed report of all the industrial hazards in India from the 1944 Bombay Dock Explosion to the 2010 Mayapuri Radiological Incident. It has also analysed the case laws of these disasters with pointing out the rule of law applied and the extent of compensation paid. It also talks about how the role of businesses have evolved over time after the application of the Absolute Liability rule.

Latest laws.com:

This article, gives a detailed case analysis on MC Mehta v. Union of India (Oleum Gas leak case) in the FILAC method. It is very comprehensive to incorporate into the research.

RESEARCH METHODOLOGY

The research methodology adopted for the work is doctrinal method. The research would be consisting of the various legislations passed in light of Absolute liability and the judicial pronouncements rendered therein.

III. ANALYSIS

With the advent of the absolute liability rule, there was a huge change in the onus of business and factory owners towards their employees and the environment to provide an environment-friendly, safe and healthy working conditions. In this fast changing society we have to make modifications to keep up the changes taking place within our society both economically and socially. The laws formed also have to change with the time to keep up with the pace of development. Hence the law needs constant change. The fact that any industrial development is impossible without the existence of hazardous and dangerous industries has been established, but along with this a rule needs to be affirmably established whereby such industries need to take the whole responsibility upon themselves in order to protect the people of the country from any mishap. Justice Bhagwati also expressed that

“The law should make sure that the enterprises who are involved in such hazardous or inherently dangerous activities must take the full responsibility upon them in case of any unfortunate occurrence and take up step to undo the mishap. Also they should be held completely responsible for all the activities being carried out under them. This principle is supported as the enterprise is the only one who would be well aware as to how discover and guard against the hazards or provide warnings against potential hazards.”⁹

It is of paramount importance to understand the distinction between Strict Liability or popularly known as the Rylands v. Fletcher rule and the Absolute liability principle and which firms come under the ambit of absolute liability. The difference between Strict and Absolute liability rules was laid down by the Supreme Court in M.C. Mehta v. Union of India, where the court explains as:

Firstly, only those enterprises that engage in hazardous or inherently dangerous activities will come under the ambit of Absolute liability. This implies that other industries not falling in the above ambit shall be covered under the rule of Strict liability.

Secondly, the escape of a dangerous thing from one’s own land is not an essential; it means that the rule of absolute liability shall be applicable to those injured within the premise and

⁹ MC Mehta v. Union of India, 1987 SCR (1) 819

persons outside the premise.

Thirdly, the rule of Absolute liability does not have an exception, whereas as some exception was provided in the rule of Strict Liability. Also in the case of *Union of India V. Prabhakaran Vijay Kumar*¹⁰ 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* was applicable only to the non-natural use of land but the new rule of absolute liability would be applicable even to 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 has taken due care.

Further, the extent of compensation depends on the magnitude of damage and financial capability of the firm. Supreme Court also contended that, the enterprise must be obligated 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 given to the defendant to take defence of having taken due care and responsibility with no negligence on his part will not be appreciated.¹¹

Once, we understand what comes under the ambit of Absolute liability, it is necessary to analyse the actual sense of Absolute liability, keeping in context the Bhopal Gas Leak Tragedy, 1984. This was one of the worst industrial hazards that the country witnessed, and this led to the pressing need of a stricter rule, the rule of Absolute Liability to come into force.

On the night of December 23rd, 1984, a disaster, one of the worst that the country had witnessed, took place in Bhopal. It was caused by the leakage of Methyl Isocyanate and other toxic gases from the Union Carbide India Ltd, (UCIL) at Bhopal, an American multinational corporation. About 2660 people died instantaneously and lakhs 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 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

¹⁰ (2008) 9 SCC 527

¹¹ Ratanlal & Dhirajlal : Law of Tort 26th edition Pg 520

own people."

After the judgment of Keenan J., the Government of India in the exercise of its power under the Bhopal Gas Leak Disaster Act, 1985 filed a suit in the Bhopal district 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 the parties. The Government of India assailed the reduction in the amount of interim compensation 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 in that position. 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 criticised on two major 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 of 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 the quantum of compensation it was argued that the principle laid down in *M.C. Mehta v. Union of India*, should be adopted.

Further moving on to the *MC Mehta v. Union of India* (Oleum Gas leak case); Though the concept of absolute liability has its roots dated as back as the 19th century, this concept only arrived quite late into India. Only after the Oleum Gas Leak Case occurred, the Indian judiciary

realized that the strict and absolute enforcement of liability into the Indian context had become indispensable. Till now what was being followed, was the doctrine enshrined in the Common Law, but it received modification in India in the form of the introduction to the concept of absolute liability. The application of Absolute Liability rule in India gained impetus after the occurrence of two industrial hazards one after the other.

MC Mehta v. Union Of India; A case study:

Facts: on the 4th and 6th of December, 1985 there was a 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.

A writ petition under Articles 21 and 32 of the Constitution of India was filed by M.C Mehta, a social activist lawyer. He sought closure and relocation of Shriram Caustic Chlorine and Sulphuric Acid Plant as it was engaging in the manufacturing of hazardous substances and located in a densely populated area of Kirti Nagar.

The factories were closed down immediately as Inspector of Factories and Commissioner issued separate orders dated December 8 and 24, 1985 . This incident took place only a few months before Environment (Protection) Act came into force, and thus spurred the need for having an effective law such as the Environment Protection Act, 1986.

The reported orders are relevant and important as they shed new light on how highly toxic and hazardous substances industry should be dealt with and contained and controlled to minimize hazards to the workers and general public.

The Supreme Court took a tough call by deciding that the 19th century rule of the English Law, held no validity in the changed times and called for the implementation of the new rule of Absolute Liability which suited the needs of the economy then. 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 the rule 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."*¹²

So, the 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:

*"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-delegable 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."*¹³

The Court also laid down the measurement of compensation by stating that it should be payable within the capacity of an institution, so that the same can have a deterrent effect. The court also pointed out that the measurement of compensation should correlate to magnitude of damage caused. The larger the organisation is, the greater would be the amount of compensation shelled out. The rule laid down in MC Mehta was also upheld in the case of Charan Lal Sahu v Union of India¹⁴. The Supreme Court also explained the basis of this rule as follows: -if an enterprise gains access to carry on a business that is hazardous in nature or inherently dangerous, for the sole motive of making profits, then the law must presume that such access is conditional on the enterprise absorbing the cost of any such mishap including indemnification of damages, arising out of such hazardous activity. The enterprise alone has the resource to discover and guard against hazards or dangers and to provide a warning against potential hazards¹⁵

Now that, the need, relevance and effectiveness of the rule of absolute liability has been considered, one needs to understand, the condition prior to the existence of this law. There have

¹² AIR 1987 SC 1086

¹³ AIR 1987 SC 1086

¹⁴ 1990 AIR 1480

¹⁵ Ramaswamy Iyers: The Law of Torts: A Lakshminath, M Sridhar (tenth edition) year 2010

been two of the worse industrial hazards in the past that dates back to 1975 and 1944, both of which could have been avoided with the right level of safety and precaution. However, due to the sheer negligence of the factory owners and the workers, it costed many lives. Nothing could be done, to give justice to the deceased due to the absence of this rule. Two examples of the worst industrial hazards, that have hardly been heard of are Chasnala Mining Disaster 1975 and the Bombay Docks Explosion, 1944.

The Chasnala Mine Disaster that occurred on the evening of 27 December 1975, killed 372 miners in Dhanbad, India. Though the local workers' union estimated a death toll of 700 people, the government authorities preferred to maintain it at 372. On 27 December 1975, an explosion rocked the Chasnala Colliery in Dhanbad, India. The explosion was most likely caused by sparks from equipment igniting a pocket of flammable methane gas. Even a small spark can ignite the surges of gas that may suddenly fill a mine. Clouds of coal dust raised by the explosion and accompanying shock wave contribute to these sorts of mine explosions, making the flames self-sustaining. Those miners who weren't killed in the blast found themselves trapped under debris, or drowned as the water quickly filled the mine. Rescue workers continued to dig out bodies until 19th January 1976, however their efforts went in vain as there were no survivors.

This mishap could have been avoided if the mine workers were given safety gear and if the equipment were in good and safe working conditions. A case of criminal negligence was filed against the colliery however, due to lack of evidence and stringent laws, the justice for the deceased was delayed and many of them were acquitted.

After a long wait of 37 years, the deceased were finally awarded compensation in 2012. However, the compensation was not worth the wait. The then agent and manager of the colliery were convicted with one year imprisonment and a fine of Rs. 5000 each. Two other accused, died during the course of the trial.

While on one hand, where we have this case, on the other we have the Bombay Docks Explosion, 1944. The Bombay Explosion (or Bombay Docks Explosion) occurred on 14 April 1944, in the Victoria Dock of Mumbai when the freighter SS Fort Stikine carrying a mixed cargo of cotton bales, gold, and ammunition including around 1,400 tons of explosives, caught fire and was destroyed in two giant blasts, scattering debris, sinking surrounding ships and setting fire to the area killing around 800 people, though other estimates claim up to 1300 deaths. This again, was an avoidable accident as inexplicably, the cotton was stored one level below the dynamite, despite the well-known fact that cotton bales were prone to combustion.

This was again another case of sheer negligence of the workers and the factory owners. Although it being such a disaster, there has hardly been any record of the case. This again is owed to the lack of stringent laws and scrutiny of the authorities.

However, post Oleum Gas leak case, the SC in the case of *Indian Council for Environment Legal Action V Union Of India*¹⁶ 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."¹⁷

These case laws, will now be able to clearly distinguish the relationship of businesses and stakeholders, pre and post the adoption of Absolute liability rule in India and its effectiveness in safeguarding the rights of many stakeholders, in particular the employees and local communities.

IV. CONCLUSION

The principle of strict and absolute liability is a pro-plaintiff rule. The liability of criminal and tort law is one such wherein it is ensured that if the victim suffers loss of property or life, then it gets compensated as soon as possible. None must suffer due to the negligence of others. Adding on, if the danger arises due to an inherently hazardous substance, then the whole responsibility to avoid any mishap must be rested with the owner. In such cases, no leniency of any exception or defences must be given as the negligence of one has costed the lives of many.

One believes that the provision of absolute liability rule in India assures this. It is a defence without any exception. Slowly and gradually, the need for a stricter form of liability was felt which lead to the advent of this principle. Thus this principle evolved through transition to render the much needed justice.

The existence of this rule will surely be able to give justice for the deceased in the very recent Vizag Gas leak case. The moment the news broke out on the 7th of May in Vishakapatnam, most of us anticipated that this was just another case of the Bhopal Gas Tragedy, 1984 due to its uncanny resemblance with the latter's event. Though the incident was proven far less hazardous, the leak of Styrene gas from the LG Polymers factory took 11 lives, hospitalised

¹⁶ 1996 AIR 1446

¹⁷ AIR 1987 SC 1086

over 200 people, and affected 1000 people or more. Many had to be evacuated from the area immediately.

The rule of absolute was very clearly laid out that any business engaging in the dealing of a hazardous substance will be absolutely liable for any disasters. A plant like LG Polymers, surely does come under the ambit of absolute liability as it dealt with a fatal gas such as 'styrene', similar to that of oleum in Sriram Foods. The investigation by the National Green Tribunal took place with extreme caution, in order to not lose any evidence, unlike the Chasnala colliery case. The firm will be held absolutely liable and will also have to shell out huge amounts of compensation as decided by the courts to the families of the deceased. It is in times as this, where the actual operational efficiency of such laws can be tested. The firm cannot take any defence whatsoever, of the ongoing pandemic, Act of God or anything else.

Many of such possible hazards have been avoided in the past due to the existence of environmental laws and the rule of absolute liability, that puts a lot of burden on the factory owners. Owners, have become more cautious of their production methods. Therefore, absolute liability has undoubtedly changed the dynamic between the business-stakeholder relationship and will continue to do so even in the Vizag Gas leak case.

The judiciary in this regards has the crucial role to play as it is the organ responsible to modify laws to amend them to meet the demands of the society. The progressive approach undertaken by the Indian Judges in the case of M.C. Mehta is appreciable and must be continued. They had the viewpoint that they cannot afford to wait for the English Law to change as far as bringing change to the Indian legal system is concerned. They must be updated with the progress of the society and mould laws which cater to the need of the public. The transition of the principle of absolute liability had brought positive results in its applicability, therefore it must be ensured that the transitional growth of this principle and other laws continues by transformative judgements. The Scope of new rule is very wider in all terms than old rule.

1. Do not have any exception
2. Very wide scope.
3. Cover not only public negligence or fault but cover even personal injuries caused due to the negligence of neighbour.
4. Now cover not only the occupier of land but also non occupier of the land.¹⁸

¹⁸ J.N. Panday : Law of Torts.