
THE MORALITY OF STRICT LIABILITY

Pratham Gupta, Kirit P Mehta School of Law, Mumbai

CHAPTER-I

Abstract

One approach to legal theory aims to produce a reasonable reconstruction of the entire body of common law or a significant portion of it. For legal philosophers, this has traditionally meant attempting to rationalize a body of law using one or more justice principles. The efforts of leading tort theorists to offer a moral basis for tort law - in the sense of rational reconstruction based on purported moral principles - are examined in this study.

Introduction

What are Strict Liability and its moral aspects?

Strict liability as a concept has significance in tort law, At its very basic sense, the meaning of the term strict liability is liability without one's fault. To further elaborate the very definition, The term Strict Liability refers to the imposition of liability on an individual or entity without having to prove their negligence or mistake. The rule of strict liability originated from the famous case of *Rylands v Fletcher*¹, to which the court reprimanded and explained the concept of strict liability stating that, If someone keeps something on his property for his benefit, it should not escape and harm others. If it escapes, the owner of that thing is obligated to compensate the victim even if he was not negligent.

This research article aims to examine, the concept of Morality of strict liability under which people can be accounted liable for the damages that are even not their fault. They have to compensate victims even if they took all necessary precautions, also permissions to function activities mentioned as such often include this principle as a pre-condition, this leads to speculations and contemplation of very adjudications which are being followed to justify this practice. Mens rea or commonly called the intention of wrongdoing is a very basic element of

¹ **Rylands v. Fletcher**, (1868) LR 3 HL 330

any crime/wrong, but the concept of strict liability is a departure from this requirement of mens rea². This paper defines morality in terms of strict liability in words of notable theorists and philosophers, It further explains the concept in terms of practical perspectives, and un-justifies the moral aspects in the doctrine of strict liability

Research Objectives

- To define and analyze the Morality of strict liability in tort law.
- To un-justify the concept of Morality of Strict liability.

CHAPTER-II

Review of Literature

Stephen Cohen (1982) The author has written on Justification for a doctrine of strict liability. By the medium of this scholarly article, the author has dispelled some sweeping objections to the doctrine of strict liability which helps us to counter the moral luck or moral aspect of strict liability, which is the main highlight of this research article. The author has primarily discussed strict civil liability that directly deals with compensation, not punishment. It has been argued by the medium of the article that, the moral aspect when taken into consideration by the respective authorities, lets the case skid away from the concept of justice and rationality as it indicates the absence of mens rea (intention of wrongdoing)

The author concludes by stating that one is liable simply as an untoward event occurred, even it was said that, when it is weighed with the doctrine of negligence, the doctrine of strict liability loses prima facie plausibility that it might have had.

Jules L. Coleman (1982) The author has tried to imply that his approach to legal theory is to provide some sort of rational reconstruction of all, or a large body of common law. The author has explored the philosophies of leading tort theorists to provide a moral basis in the sense of rational reconstruction on alleged moral principles. The author has mentioned the divergence of moral from legal (tort) fault is the result of the objective (or external) standard of fault articulated in the case of *Vaughan v Menlove*³. A defendant is at fault whenever he fails to exercise reasonable care, but the inducted moral aspects imply penalizing someone to

² Cohen, S., Justification for a Doctrine of Strict Liability. *Social Theory and Practice*, 8(2), pp.213-229 (1982)

³ *Vaughan v. Menlove* 3 Wing NC 468.

compensate for the loss, which happened without any negligence which is contrary to basic principles of justice.

John C.P. Goldberg & Benjamin C. Zipursky, (2007). The basic structure of this article investigates that whether torts have transformed into the law of bad luck in terms of strict liability rather than the law of wrongs. Negligence is an objective method in determining the liability of a faulty system, When employers are broadly responsible for the negligence of their employees, it contradicts and weakens the moral element.

W. Robert Thomas (2012) This research work has linked the moral principle associated with strict liability in terms of both civil and criminal activity with an emphasis on tort law. This paper has tried to identify a moral-criminal correspondence by looking at two distinct moral frameworks upon which criminal principles are justifiable⁴. This note situates presumption in terms of moral institutions about the unique nature of penalization in tort law. The author has talked about various guidelines which can be followed by respective courts to improve the functionary. The moral aspect has also been challenged on the mere principles of fairness, again with his note author has highlighted that strict liability is based more on irrational thinking than on law and logic.

Justin A. Capes (2019) Some think that strict liability has a moral counterpart in tort law, a person is, they say, morally obligated to make restitution to those he harms or whose property he damaged, but the whole concept of strict liability makes him pay for these very repercussions even when he took all the necessary care and the event that occurred was untoward and can be anticipated at any costs. The author argues that strict liability is in the moral domain with the support of his adequate research. Any attempts to make sense of strict liability that fails to address the very basic questions of its fairness and logic are hard to entertain.

The Morality of Strict Liability

Meaning of term ‘morality’ in the doctrine of Strict Liability.

Strict liability in tort law has a moral counterpart, it asserts that a person is, or can be they say, morally obligated to make restitution to those he harms or whose property he damages, regardless of whether he is culpable for the injury or the behavior which it resulted.

⁴ The term moral framework is not meant in technical terms

Morality aspects of Strict Liability as defined by notable philosophers

(1) The doctrine of strict liability as **Aristotle** stated '*holds someone accountable for, should be thought of, as an excusable non-voluntary action*'. As such strict liability is an anomalous facet of a legal or moral system; which is unjustified on two grounds

- It advocates penalizing someone or holding someone liable for compensation of something which is not its fault or worse, outside his control.
- For those who are not even negligent, it presides efficiency or expediency over fairness and justice.

(2) **Richard A. Posner's**- *A theory of negligence*, explains the flaw in the moral aspect of strict liability with a brief story as-

- Two drivers, named Fate and Fortune, were on a city street one morning in their automobiles as they passed through a shopping district, each took his eyes off the road, turning his head for a moment to look at the bargains advertised in a storefront window... In Fortune's case, this momentary distraction passed without event. Fate, however, was not so fortunate. His car plowed into a motorcycle ridden by a Mr. Hurt.
- Hurt was flung from the motorcycle and gravely injured. When Hurt recovered consciousness in [the] hospital, the first thing he did was instruct his lawyers to sue Fate for negligence. Considering the extent of his injury, the sum he sought was quite modest-\$5 million⁵.

The text achieved from the cited source, explains the faulty reasoning behind the scenario of strict liability, many may argue that Hurt has the right to claim compensation as he has suffered but, No one would think it appropriate to require him to pay Hurt \$5 million; yet his behavior, morally speaking, was indistinguishable from that of fate. By the support of his research author has been evident to prove that, the whole concept of the morality of strict liability is rigged and is not supplemented any solid statutes and rational objectives.

(3) **Hugo Grotius** another famous Dutch lawyer of the 16th century named who has been profound in the fields of philosophy, political theory, and the law has given his views of the moral aspect of strict liability

⁵ Richard A. Posner, *A Theory of Negligence*, *IJ. LEGAL STUD.* 29, 31-32 (1972)

- In terms of Grotius's idea of strict liability from a moral standpoint, proved that it was difficult for Grotius to think of liability outside of the context of blame. As a result, strict liability is a rare occurrence, according to Grotius. Wouter Druwe's analysis of Grotius contemporary Netherlandish jurists' practice-driven legal *Consilia* and juridical treatises from the Low Countries around 1600 reveals a dominant trend among Grotius contemporary Netherlandish jurists to read a presumption of fault into instances of strict or qualitative liability. They were, in a sense, the heirs of the medieval is commune's jurists and canonists⁶.

(4) Historical Account of Morality in Strict Liability.

Historical sources do not even present a consensus about the use of the term strict liability, which is used in this dossier as a present-day category for many different types of torts.

‘Justinian’ an emperor of the Roman empire distinguished between four types of obligations in the 5th BC which also included the concept of quasi-tort (*quasi maleficium*), under which the reflected principle of fault-less liability was picked up by canonists as Hugo Grotius did later. Those scholars adapted the existence of strict liability based on positive law. However, They were unable to find any natural law or deontological grounds for it or did so at the expense of reading fault into moral instances of strict liability⁷.

DECODING THE MAIN ARGUMENTS ON WHICH MORALITY IS BEING JUSTIFIED IN TERMS OF STRICT LIABILITY AND THEIR COUNTER.

Some explanations or justifications of either fault or strict liability (or both) which are highly advocated in the moral context of issues regarding this very principle have been discussed in the note. I argue that none of these arguments is fully capable of performing the ambitious explanatory and justificatory tasks set for them by their proponents, despite their flaws, several of these arguments are insightful and will play a role in any full theory of torts, but that in the end, no single moral principle or consistent set of moral principles requires the tort system.

Following are the arguments which are used as a facet to justify the Morality of Strict liability.

(1) The Retributive Argument

⁶ Joe Sampson, ‘The Place of Fault in Grotius’ Conception of Liability for Wrongdoing’

⁷ *The Historical Foundations of Grotius’ Analysis of Delict* (2018)

- The concept of retributive justice argument relies on the claim that being at fault in torts is to act in a morally culpable manner and that tort liability is imposed on individuals to justly punish or penalize their moral fault, Neither of these claims, however, can be supported. A person can be guilty of torts without being morally culpable. The objective (or external) criterion of culpability defined in *Vaughan v. Menlove*⁸ is responsible for the distinction between moral and legal (tort) fault.
- Lack of capacity to comply with the standard of due care may free an individual from moral sanction. If the notions of moral fault and fault in torts converge so that every person who is at fault in torts is morally culpable, the retributive argument could not adequately explain why it is that the victim is compensated by his injurer.

(2) The Argument from Reciprocity of Risk

- Liability is imposed in the Reciprocity View not to punish misbehavior, but to foster security, As a result, the demand for forgiving situations acts as a side limitation on the quest for optimum security.
- But in context with the reciprocatory view, The pursuit of security cannot be accomplished at all costs. To secure it consistent with considerations of justice, liability cannot be imposed on those who offer a legitimate excuse for their departures from acceptable levels of risk-creation.

(3) The argument from the Theory of Responsibility

- The Responsibility thesis fails because it ignores the difference between two meanings of the term "responsible." In some ways, assigning responsibility for an action is the same as identifying authorship, Ex- When we say that A is accountable for B's loss, we imply little more than that A is the author of the action that caused the loss, not someone else.
- Responsibility in this sense crucially depends on the notion of causation. However, from the fact that A is responsible in this sense for B's loss, nothing follows about the appropriateness of shifting B's loss to him; indeed, from this fact alone we cannot determine whether B's loss is one for which he should recover.

⁸ Supra. P. 3

Critical Analysis- Morality of Strict Liability.

Various analogies and theories put forward in the paper have been argumentative and influential in their approach towards un-justifying the morality concept of strict liability even citing it as moral luck because the whole concept of strict liability is based on negligence and fault on the plaintiff. It infers that one should be liable even if he has taken adequate care, and compensation in monetary or any other terms must be provided to the concerned. The author in his approach has repeatedly proved with support of research that, In the case of civil liability, Moral aspects are irrational according to the principles of law and justice. This hypothesis is supported by the comments analyzed from the underwritten case analysis.

Case Analysis

Nitin Walia Minor V/S Union of India⁹

A bench of Judges - Arun Kumar, A.K. Sikri, JJ

Facts of the Case

One of the major cases in India, associated with the doctrine of liability and tort law, Nitin Walia appellant in the present case, at the mere age of 3 years lost his right arm in an unfortunate accident, This incident occurred on 19th March 1988, The boy was very excited to visit the National Zoological Park, Delhi with his family members to see various animals placed inside the zoo. When he arrived at the enclosure where the white tigress was kept, he was overjoyed. He was with his father and other members of his family. The tigress was being closely observed by the entire household. The young youngster, who had never seen such an animal before, was ecstatic. For him, it was awe-inspiring. Iron bars were used to confine the white tigress. Before that, there was railing. Appellant lunged for the railing without realizing what he was getting himself into. The tigress suddenly grabbed his hand and pulled it in through the railing. Other family members came to the appellant's aid and attempted to confine the tigress. However, irreversible damage had already been done. The appellant's right arm had been bitten by Tigress. The appellant's father was traumatized and agitated, so he took his son to the All India Institute of Medical Sciences (AIIMS) and had him admitted. To prevent additional loss of limbs or the child's life, the appellant's right arm had to be amputated up to two and a half inches below the shoulder. Appellant was an indoor patient for over a month before being

⁹ Nitin Walia V/S Union of India AIR 2001 Delhi 140, <https://indiankanoon.org/doc/489841/>

released on April 25, 1988. The appellant will now have to live the rest of his life without a crucial organ, which inhibits and affects a person's ability to function properly. He'll remain crippled for the rest of his days. The level of disability is 100%. He had to endure bodily anguish, stress, and agony at a young age as a result of this tragedy. His mental anguish would last for the rest of his life, and he might find it impossible to forget such an incident.

Judgment

As the appellant (or, for that matter, his father and guardian) saw it, the Zoo officials were to blame for the tragedy since they did not take sufficient precautions to confine wild animals in the Zoo. A lawsuit for damages was filed, with an initial claim for damages of Rs. 7,10,000/-. The claim was then limited to Rs. 5 lacs, plus interest at the rate of 18 percent per annum from the time the complaint was filed until it was settled. The Appellant/Plaintiff had brought the claim as an "indigent person," and the Trial Court had permitted him to do so by order dated March 14, 1991. The appellant was awarded interim compensation of Rs. 40,000/- throughout the pendency of the proceedings. He was authorized to withdraw this money after filing the required Court Fee. The Supreme court of India, in its judgment, quoted the principle of strict liability as the damage suffered by the appellant were not recoverable and will impact his normal functioning of life, verdict mentioned the doctrine of strict liability of zoo as a keeper of dangerous animals, as an occupier of premises and duty to take care, verdict quoted the judgment of *Shashendra V/S Unicef and Ors*¹⁰.

Case Perspective

Nitin Walia at the mere age of 3 years, suffered irreplaceable harm which handicapped him for his entire life, at the age of 3 the boy doesn't know the requirements which could have prevented that unfortunate accident. According to the verdict of the court, the Zoo authorities were held strictly liable for the incident, citing negligence on their part, even when the parents and family members were also clearly negligent in handling their ward at those dangerous premises. Zoo authorities were ordered to compensate the boy not only for the hospital bills but also for the problems which he will face in his later life due to that event. In a widely contradicted view, The moral aspect to strict liability is termed to be based on more of moral thinking than that of law and logic, it also contradicts with the very fact that the defendant (in the case) is also liable

¹⁰ *Shashendra Lahiri v. UNICEF and Ors.*, 1998 ACJ 859

even if, he has or not been negligent, as the railing is the last step to cross in case of the zoo, but accidental liability shifted on the Zoo, authorities.

CHAPTER-III

FINDINGS

This paper argues that even if, The use of principles of justice may render defensible by many (but by no means all) of the claims to repair and to liability which is recognized in torts, it cannot explain why we have adopted a tort system as the approach to vindicating those claims. Some other principle - probably not one of justice - is needed to explain why it is that the victim's claim to repair is satisfied by having his losses shifted to his injurer - rather than through some other means of doing so. The paper concludes that the law of torts cannot be understood in the sense of being given a rational reconstruction under any one principle of morality.

- The whole concept of strict liability makes someone pay for these very repercussions even when he took all the necessary care and the event that occurred was untoward and can be anticipated at any costs.
- The procedure of awarding compensation to victims, which is quantified from the damages suffered lacks rational and logical analogy and is more based on moral thinking rather than facts
- Research has indicated that counting negligence as a parameter in determining faulty liability is a very objective approach.

CONCLUSION

Tort law distinguishes between circumstances in which the plaintiff must prove that the defendant was negligent in causing him harm and cases in which the plaintiff may recover even if the defendant was not negligent. The first type of case is considered to be regulated by fault liability principles, whereas the second is governed by strict liability standards. The issue for the common philosopher and objective of this research article analyses whether any moral principle or consistent set of such principles can adequately explain and (because they are moral principles) justify both fault and strict liability. After comparing different theories and philosophies by the medium of this note it has been relinquished that no single moral principle

or set of moral principles require a tort system. If any of the torts is to be defended on grounds of justice, it will be fault liability only, Strict liability is to be viewed either as morally unjustified or as a justifiable departure from the principle of justice.

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