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I. INTRODUCTION

The evolution of tort law in former British colonies is not only fascinating; it also holds clues into the age old question of whether law or any discrete area of law can be universal.1 The exploration into doctrinal divergences and convergences is part of a larger quest: to capture the theoretical underpinnings of tort law and, in that process, discover the universal core of tort law, if there is one.2 For example, is the central purpose of tort law efficient resource allocation, corrective justice, or simply a compensatory system for wrongs?3 To answer these questions, theorists have generally considered tort law in relatively wealthy jurisdictions that have a fairly robust tort law system: the United States of America, Australia, Canada, and the United Kingdom.4 However, there is no perspective from a developing country. This article provides a perspective from one developing country, India.

A perspective from a developing country such as India provides important insights into the core of tort law, if only as a sounding board to test the universality of proposed theories. That such an effort has not been undertaken to date is understandable because of the limited use of tort law

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1 Professor of Law, Fowler School of Law, Chapman University. Thanks to Dan Farber and Donald Kochan for advice on earlier drafts. This research would have not been possible without the excellent research assistance of Sherry Leysen and her colleagues. My thanks also to August Minke and Pari for their forbearance.


5 See, e.g., Weinrib, supra note 3, at 276, 291–92.
Marc Galanter, who has studied India’s legal system extensively, has concluded that India has a tort law deficit, which he attributes to several reasons, including steep court fees (initially introduced by the British to curb litigious lawsuits), unaffordability of lawyers’ fees, delays in adjudication, appeals, low awards of damages, and poor enforcement of judgments, as well as a culture of wariness to lower civil courts. As a result, the relevance of India’s tort law appears negligible to the study of tort law theory.

Yet, focusing on India’s tort law deficit, important though it is, overlooks at least one case and one doctrine—M.C. Mehta v. Union of India—and strict liability—which may help deepen our understanding of tort law theories. Perhaps the case is the only jewel in the crown, but it is one that represents the evolution of strict liability in India. M.C. Mehta, which was decided by the Supreme Court of India in the backdrop of ongoing litigation following the Bhopal gas leak and which exposed the potential inadequacy of India’s tort law, gave the Indian judiciary a second chance to wield tort law to redress harms.

In M.C. Mehta, a chlorine gas leak in the Delhi metropolitan area caused harm to several thousand people, resulting in a writ petition before the Indian Supreme Court to interpret the scope of the doctrine of strict liability. The Indian Supreme Court deliberately diverged not only from the traditional scope of strict liability as set out in Rylands v. Fletcher, but also from prevailing interpretations of strict liability, reasoning implicitly

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5 For example, the Indian government was so much more confident in the U.S. tort law system that it sought to move litigation to the United States following a fatal gas leak in Bhopal. See In re Union Carbide Corp. Gas Plant Disaster at Bhopal, 634 F. Supp. 842, 844 (S.D.N.Y 1986). Marc Galanter, in an affidavit filed before the Southern District of New York, argued that India’s substantive tort law was not adequately developed and lacked sophistication to handle issues arising from complex manufacturing processes. Id. at 849. As Galanter puts it, “the promise of law was only weakly connected to Indian legal culture but was primarily a reflection of US law as filtered through Indian media and sensibilities. Indeed, the reach for an American remedy was the reverse side of deep pessimism about a remedy in India, coupled with untroubled confidence in the US’ legal system and anticipation of enormous recoveries.” Marc Galanter, Law’s Elusive Promise: Learning from Bhopal, in TRANSNATIONAL LEGAL PROCESSES 175 (Michael Likosky ed., 2002).


7 [1868] 3 HL 330 (Eng.).
that one of the objectives of tort law is to provide distributive justice. The Supreme Court of India, apparently keeping within its sights the pending litigation following the Bhopal gas leak case, formulated the doctrine of absolute liability for enterprises engaged in hazardous activities—a doctrine that would eliminate defenses. In doing so, the Indian judiciary walked the legal tightrope connecting economic interests with societal justice.

This balancing act by the Indian Supreme Court is familiar to tort judges in other common law jurisdictions and could therefore contribute to the broader theoretical conversation regarding tort law.

This article offers a glimpse into the evolution of strict liability in India through a discussion of the M.C. Mehta case and the reasoning of the court in articulating the doctrine of absolute liability in certain circumstances. To facilitate a better understanding of the Indian court’s decisions, this Article also provides a comparative framework by discussing two decisions in the United States involving similar facts as well as questions regarding the applicability and scope of strict liability to such facts: Erbrich Products Co. v. Wills and Indiana Harbor Belt Railroad Co. v. American Cyanamid Co. The objective of discussing the American decisions is to demonstrate that the areas of convergence and divergence between the two legal systems strengthen the argument that the Indian decision can contribute to the general understanding of tort law theory.

The article proceeds in six parts. Part II briefly discusses Rylands v. Fletcher, the foundational case on the doctrine of strict liability. Part III discusses the decisions in Wills and Indiana Harbor Belt, which serve as

13 On December 2, 1984, there was a release of about 30 tons of toxic methyl isocyanate gas from a Union Carbide (India) Limited (UCIL) pesticide plant in Bhopal during a clean-up mishap (“Bhopal” or “the Bhopal gas leak”). Jamie Cassels, Outlaws: Multinationals and Catastrophic Law, 31 CUMB. L. REV. 311, 311 (2001) [hereinafter Cassels, Outlaws]; Alan Taylor, Bhopal: The World’s Worst Industrial Disaster, Thirty Years Later, ATLANTIC (Dec. 2, 2014), http://www.theatlantic.com/photo/2014/12/bhopal-the-worlds-worst-industrial-disaster-30-years-later/100864/. The toxic gas caused serious physical injury to thousands of people, including the death of what is now estimated to be nearly 15,000 people, because of both immediate and long-term effects of the poisonous gas. JAMIE CASSELS, THE UNCERTAIN PROMISE OF LAW: LESSONS FROM BHOPAL 11–13 (1993) [hereinafter CASSELS, THE UNCERTAIN PROMISE OF LAW]; Cassels, Outlaws, supra, at 315; Taylor, supra. The government of India attributed the incident to human error and other systemic failures. Cassels, Outlaws, supra, at 315. Following the accident, the Government of India decided to file a suit against the parent corporation, Union Carbide, in the United States on behalf of the victims. Id. at 325. Additionally, the Government of India passed the Bhopal Gas Leak Disaster (Processing of Claims) Act of 1985, under which the Indian government was designated as the exclusive legal representative of victims of the Bhopal gas tragedy. Id. at 321 n.5.
17 916 F.2d 1174 (7th Cir. 1990).
signposts to understand areas of divergence and convergence in the *M.C. Mehta* case. Part IV discusses the *M.C. Mehta* decisions. Part V presents the case for considering the *M.C. Mehta* case when thinking through general tort law theories, despite areas of divergence with American tort law.

II. *Rylands v. Fletcher*: The Foundation of Strict Liability Doctrine in India and the United States

*Rylands* is the foundational case on the modern doctrine of strict liability, familiar to any student of tort law in India or in the United States.\(^{18}\) In *Rylands*, the defendants hired a competent engineer and contractor to build a reservoir to supply water to their mill, with the permission of the adjacent landowner.\(^{19}\) While excavating the ground to construct the reservoir, the contractors found abandoned mine shafts filled with soil, but did not inform the defendants and proceeded to build the reservoir.\(^{20}\) When the reservoir was half-filled with water, the shafts gave way and resulted in water flowing through the adjacent land into the plaintiff’s mines, causing damage.\(^{21}\) The arbitrator recording the facts found the contractors negligent, but not the defendants.\(^{22}\)

The Court of Exchequer was presented with two questions: 1) whether the defendants could be held liable without any negligence on their part or that of the contractors, and 2) whether the defendants could be held liable for the negligence of the contractors.\(^{23}\) The Court of Exchequer decided against the plaintiff on the second question, and the issue was not revisited.\(^{24}\) Justice Blackburn wrote the following opinion of the court addressing the first issue:

> [T]he 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, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff’s default, or, perhaps, that the escape was the consequence of *vis major*, or the act of

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\(^{19}\) [1868] 3 HL 330 (Eng).

\(^{20}\) Id.

\(^{21}\) Id.

\(^{22}\) Id.

\(^{23}\) Id.

\(^{24}\) Id.
God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is eaten down by the escaped cattle of his neighbor, or whose mine is flooded by the water from his neighbor’s reservoir, or whose cellar is invaded by the filth of his neighbor’s privy, or whose habitation is made unhealthy by the fumes and noisome vapors of his neighbor’s alkali works, is damned without any fault of his own; and it seems but reasonable and just that the neighbor who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbor’s, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequences. On authority this, we think, is established to be the law, whether the things so brought be beasts, or water, or filth, or stenches.

On appeal, the House of Lords affirmed the decision, but Lord Caird drew a distinction between natural and non-natural use of land. He explained that a defendant would be liable for the latter and not the former. Thus, he formulated a rule that was passed down to other common law countries.

### III. WILLS AND INDIANA HARBOR BELT: A BRIEF DISCUSSION

After Rylands, American jurisprudence on the tort law doctrine of strict liability has evolved at a steady clip and has undergone revisions from Restatement (First) of Torts through Restatement (Third) of Torts. The cases discussed below reflect judicial thinking regarding the circumstances and reasons for applying strict liability to provide remedies.

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25 Id.
26 Id.
27 Id.
29 Restatement (Third) of Torts §§ 20–25 (Am. Law Inst. 2010); Restatement (Second) of Torts § 519–524A (Am. Law Inst. 1977); Restatement (First) of Torts §§ 519–524 (Am. Law Inst. 1938).
In *Erbrich Products Co. v. Wills*, raw chlorine gas from a vent in the defendant’s chlorine manufacturing facilities escaped due to unknown causes and caused personal injuries to residents in the neighborhood. The gas leak mainly damaged property, but victims also complained of personal physical injuries such as irritation to eyes and nasal passages, nausea, headaches, vomiting, as well as episodes of fainting.

Two separate groups of plaintiffs sued the defendant on several grounds, including strict liability for an ultrahazardous activity, and sought fifteen million dollars in damages in addition to an injunction—*Wills v. Erbrich Products Co.* and *Green v. Erbrich Products Co.* The trial court in the *Wills* case granted the defendant’s motion for partial summary judgment on the issue of strict liability, but not on the claim of nuisance, and then granted the defendant’s motion to certify an interlocutory appeal on the issue of nuisance. The trial court in the *Green* case denied the defendant’s motion for summary judgment entirely, including the strict liability claim, but granted the defendant’s motion for an interlocutory appeal on some claims, including strict liability. The Indiana Court of Appeals judge, before whom the interlocutory appeals were made in both cases, consolidated the two cases, but considered the question of whether the manufacture of chlorine constituted an ultrahazardous activity subject to strict liability only with regard to *Green*.

In deciding the case, the Indiana Court of Appeals applied the doctrine of strict liability as enunciated in sections 519 and 520 of the Restatement (Second) of Torts, which, as the court observed, derived from *Rylands v. Fletcher*. Sections 519 and 520 of the Restatement (Second) of Torts read as follows:

§ 519(1):

(1) One who carries on an abnormally dangerous activity is subject to liability for harm due to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.

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31 Id.
32 Id.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id. at 853 n.1, 857.
38 Id. at 854, 856.
39 Id. at 853.
§ 520:
In determining whether an activity is abnormally dangerous, the following factors are to be considered:
(a) existence of a high degree of risk of some harm to the person, land or chattels of others;
(b) likelihood that the harm that results from it will be great;
(c) inability to eliminate the risk by the exercise of reasonable care;
(d) extent to which the activity is not a matter of common usage;
(e) inappropriateness of the activity to the place where it is carried on; and
(f) extent to which its value to the community is outweighed by its dangerous attributes. 39

On the question of whether the manufacture of chlorine gas constituted an abnormally dangerous activity under section 519, the court held that although “chlorine gas, in its natural state, [was] dangerous,” its characteristics or chemical properties were “not determinative” on the question of strict liability. 40 The court observed that in “deciding whether to impose § 519 strict liability, [it] must not look at the abstract propensities or properties of the particular substance involved, but must analyze the defendant’s activity as a whole.” 41 Absent such an approach, “virtually any commercial or industrial activity involving substances which [were] dangerous only in the abstract would be deemed as abnormally dangerous. [That] result would be intolerable.” 42

Additionally, the court held that since the accident occurred due to the fact that the manufacturer’s fans had blown the chlorine gas outside, the activity did not satisfy section 520(c)’s requirement, because the risk could have been eliminated by the exercise of due care. 43 Since the harm could have been eliminated by exercising reasonable care, 44 the manufacture of chlorine gas was not an abnormally dangerous activity subject to strict liability in the opinion of the Indiana Court of Appeals. 45

For the same reasons, and as conceded by the plaintiffs’ counsel, the court found that, “the storage of chlorine gas in and of itself [was] not ultra-hazardous,” because risks associated with the activity could have been

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40 Wills, 509 N.E.2d at 856.
41 Id.
42 Id.
43 Id. at 856–57.
44 Id. at 856–57 n.3 (referring to comment h of section 520 of the Restatement (Second) of Torts, which emphasizes that the section applies to cases where the risk associated with an activity was unavoidable even with the exercise of reasonable care).
45 Id. at 856–57.
eliminated by exercise of reasonable care.\textsuperscript{46} The court also noted that unlike the defendant, who had cited to other cases,\textsuperscript{47} the plaintiffs had not cited to any case law in support of their claim.\textsuperscript{48} In the two cases presented by the defendant, the courts had also held that the manufacture of chlorine gas was subject to negligence and not strict liability.\textsuperscript{49} On balance, the court found that unless industrial activities were subject to strict liability only when risks associated with the activities could not be eliminated by reasonable care, industrial activity would be greatly impeded by this tort law doctrine.\textsuperscript{50}

\textbf{B. Indiana Harbor Belt Railroad Co. v. American Cyanamid Co.}

In \textit{Indiana Harbor Belt Railroad Co. v. American Cyanamid Co.}, the defendant, a manufacturer of a highly toxic and inflammable chemical, acrylonitrile, loaded and shipped 20,000 gallons of liquid acrylonitrile in a car leased from the North American Car Corporation.\textsuperscript{51} Two railroad companies—the Missouri Pacific Railroad and Conrail, a contractor that Indiana Harbor Belt Railroad Company (“IHB”) had hired to switch cars—transported the car to an American Cyanamid plant in New Jersey.\textsuperscript{52} The Missouri Pacific Railroad transferred the car from American Cyanamid’s plant in Louisiana to the Blue Island Railroad yard, located in the Chicago metropolitan area and owned by the plaintiff.\textsuperscript{53} Several hours after the car’s arrival at the railroad yard, employees of IHB noticed fluid leaking from a broken outlet at the bottom of the car.\textsuperscript{54} IHB’s equipment supervisor plugged the leak two hours after discovering it, but the amount of leakage was unclear.\textsuperscript{55} Given the highly toxic and inflammable nature of the liquid, the local authorities ordered the evacuation of homes near the leak, which

\textsuperscript{46} Id. at 856.
\textsuperscript{48} Id. at 856.
\textsuperscript{49} Id. at 854–56 (considering Kajiya, 629 P.2d 635 and Fritz, 75 A.2d 256 relevant to its analysis due to the deciding courts’ refusal to apply strict liability, but deciding that while these cases provided some insights, the question had to ultimately be decided under the Restatement (Second) of Torts).
\textsuperscript{50} Id. at 856–57.
\textsuperscript{51} 916 F.2d 1174, 1175 (7th Cir. 1990).
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
lasted until the removal of the car to a remote part of the railyard.\textsuperscript{56} After later discovering that only about a quarter of the acrylonitrile had leaked, the Illinois Department of Environmental Protection ordered the plaintiff to clean up the contamination, costing the plaintiff $981,022.75 in expenses.\textsuperscript{57} The plaintiff sued the defendant under the doctrines of strict liability and negligence.\textsuperscript{58}

The issue before the Seventh Circuit was whether the defendant should be strictly liable for the consequences of an accident en route to the final destination, specifically, “whether placing acrylonitrile in a rail shipment that [would] pass through a metropolitan area subjects the shipper to strict liability.”\textsuperscript{59} Writing for the majority, Judge Posner held that the district court had erroneously relied on dicta in earlier district court decisions to deny the defendant’s motion to dismiss the strict liability claim and to grant summary judgment on that claim in favor of the plaintiff.\textsuperscript{60} The court also observed that the issue before the court was a novel one.\textsuperscript{61} In deciding the issue, like the \textit{Wills} court, the Seventh Circuit relied on comment l of section 520 of the Restatement (Second) of Torts.\textsuperscript{62}

The court also referred to \textit{Rylands v. Fletcher},\textsuperscript{63} but relied on an earlier decision, \textit{Guille v. Swan}.\textsuperscript{64} In \textit{Guille}, the owner of a garden successfully sued a hot air balloonist who landed on the vegetable garden, which was damaged when the audience following the balloonist’s journey trampled the vegetables in an effort to rescue him.\textsuperscript{65} The Seventh Circuit noted that \textit{Guille} was a “paradigmatic case for strict liability,” specifically for considering the six factors listed in section 520 of the Restatement (Second) of Torts for determining strict liability.\textsuperscript{66} Judge Posner observed that in \textit{Guille} the six factors were satisfied: 1) the probability of harm was great, 2) the harm from the risk could have been severe (the balloonist could have crashed into the people), 3) the accident could not have been prevented even if due care was exercised, 4) the activity was not of common usage (thus there could be no presumption that the activity would be highly valuable despite the risk), 5) the place of the activity was inappropriate (densely populated New York City), as the activity could have been shifted.

\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id. at 1176.
\textsuperscript{60} Id. at 1175–76.
\textsuperscript{61} Id.
\textsuperscript{62} Id. at 1176 (citing RESTATEMENT (SECOND) OF TORTS § 520 cmt. l (AM. LAW INST. 1977)).
\textsuperscript{63} Id.
\textsuperscript{64} Id. at 1176–77 (citing Guille v. Swan, 19 Johns. 381, 381 (N.Y. Sup. Ct. 1822)).
\textsuperscript{65} Id.
\textsuperscript{66} Id. at 1177.
to sparsely populated areas close to the city, and 6) the value of the activity to the community was not great enough to offset its unavoidable risks (recreational air balloon flying).67

Analyzing the six factors, the court noted that the third factor—that the accident could not have been avoided even with the exercise of due care—was of signal importance in determining whether to impose strict liability, because negligence was the “baseline common law regime of tort liability.”68 Thus, in cases where accidents or hazards could have been avoided by taking due care, there was no need to apply strict liability.69

However, in cases where harm could not be avoided by exercising reasonable care, but adverse consequences could be reduced by either shifting the location or by reducing the scale of activity, the court held that imposing strict liability would provide, unlike negligence law, “an incentive . . . to experiment with methods of preventing accidents that involve not greater exertions of care, assumed to be futile, but instead relocating, changing, or reducing (perhaps to the vanishing point) the activity giving rise to the accident.”70 Judge Posner further noted that courts would be inclined to impose strict liability in cases where the risk and costs of an accident were so great that the courts would want the actor to take measures to reduce accidents.71 Also, if the activity was common, it meant either that the hazards were not so great or that there was technology to minimize the risk, and thus, there was no need to impose strict liability.72 The court noted that based on the six factors, the most common type of cases in which strict liability was “imposed involved the use of dynamite and other explosives for demolition in residential or urban areas.”73

Regarding the specific question of whether American Cyanamid should be held strictly liable, the court considered several state court decisions that imposed strict liability on manufacturers of hazardous chemicals and distinguished cases in which courts had found strict liability applied either on grounds that rules different from the Restatement (Second) of Torts applied74 or on factual differences.75 It concluded that it would be best to

67 Id.
68 Id.
69 Id.
70 Id. (citing Anderson v. Marathon Petroleum Co., 801 F.2d 936, 939 (7th Cir. 1986)).
71 Id.
72 Id.
73 Id. (citing RESTATEMENT (SECOND) OF TORTS § 519 cmt. d (AM. LAW INST. 1977)).
74 For instance, Judge Posner compared Nat’l Steel Serv. Ctr. v. Gibbons, 693 F.2d 817 (8th Cir. 1982), a case that imposed strict liability on a railroad that had transported propane gas but relied on Iowa law rather than the Restatement (Second), with Zero Wholesale Co. v. Stroud, 571 S.W.2d 74 (Ark. 1978), a case in which the court had refused to hold that transportation of propane gas was an ultrahazardous activity subject to strict liability. Id. at 1178.
apply section 520 of the Restatement (Second) of Torts in deciding whether to impose strict liability on American Cyanamid.\textsuperscript{76}

Applying section 520 of the Restatement (Second) of Torts, Judge Posner observed that the accident could have been avoided by exercising due care, because acrylonitrile was not inherently dangerous, and therefore, it could not have caused leakage due to corrosion of the car.\textsuperscript{77} He noted that the leak was instead caused by someone’s carelessness in maintaining or inspecting the car properly.\textsuperscript{78} That “someone” could have been anyone from the shipper or any of the rail companies.\textsuperscript{79} Moreover, had that “someone” been careful, the accident could have been prevented.\textsuperscript{80} Accidents such as this could, therefore, be deterred by negligence law, and there was no case for imposing strict liability.\textsuperscript{81}

On the argument that the imposition of strict liability would give the shipper an incentive to find alternative routes away from densely populated areas, the Seventh Circuit noted that it would be prohibitively expensive to reroute the shipment of hazardous waste via rail since most railroads in the country passed through major metropolitan hubs such as Chicago, and carriers, not shippers, were better equipped to reroute transportation channels.\textsuperscript{82} Judge Posner further observed that unlike cases applying strict liability, including \textit{Rylands}, the plaintiff was not seeking to hold the actors (transporters) strictly liable, but was instead seeking to hold the manufacturers of the hazardous chemical liable on the theory that imposing such liability would provide the manufacturer an incentive to find an alternative route.\textsuperscript{83} Judge Posner rejected this argument, noting that even if the manufacturer could have rerouted the chemical carrying cars, such

\textsuperscript{76} For example, the court referenced \textit{Siegler v. Kuhlman}, 502 P.2d 1181 (Wash. 1972), where the court imposed strict liability on a transporter of hazardous materials when a gasoline truck blew up, “obliterating” both the plaintiff’s car and the decedent; however, Judge Posner distinguished this decision on the particular fact that the evidence necessary to establish negligence was completely destroyed. \textit{Id.} at 1179. Further, Judge Posner noted that whereas transportation of gasoline could be considered an inherently dangerous activity to the extent that an inherent danger of accident would remain even if the driver exercised all care, such was not the case with the transportation of acrylonitrile by train. \textit{Id.} at 1179-80. Similarly, Judge Posner distinguished \textit{Indiana Harbor Belt} from a series of cases in which courts had imposed strict liability in the context of hazardous material-related accidents where the defendants were storers of the material, rather than shippers, because “the storer (like the transporter, as in \textit{Siegler}) has more control than the shipper.” \textit{Id.} at 1179.
rerouting would generally result in longer routes to avoid densely populated areas.\textsuperscript{84} This would also increase the probability of accidents.\textsuperscript{85}

The court also noted that even though American Cyanamid was an active shipper who had also undertaken to maintain the leased car,\textsuperscript{86} the criteria for applying strict liability was the ultrahazardous or abnormally dangerous character of the activity and not the substance, and that by focusing on the hazardous nature of acrylonitrile rather than its transportation, the plaintiffs had failed to make a case for applying strict liability.\textsuperscript{87} Judge Posner further suggested that perhaps it was the residents rather than the railroads that needed to relocate and that the role of strict liability was “allocative rather than distributive,” and thus, the emphasis was on picking the best liability doctrine to deter certain types of accidents rather than finding the deepest pocket to pay for it.\textsuperscript{88} On these grounds, the court reversed the district court’s decision granting summary judgment to the plaintiff on the issue of strict liability.\textsuperscript{89}

\textit{Wills} and \textit{Indiana Harbor Belt} are but two of several cases, decided in different American state jurisdictions on strict liability.\textsuperscript{90} However, because of the similarity of the facts between \textit{Wills} and \textit{M.C. Mehta}, as well as some common points raised by Judge Posner and Justice Bhagwati in the decisions respectively, these two cases provide a framework for understanding the Indian Supreme Court’s decision in \textit{M.C. Mehta}.

\textbf{IV. \textit{M.C. Mehta} and the\textbf{ Evolution of the Indian Doctrine of Strict Liability}}

The facts in \textit{M.C. Mehta} are similar to those in \textit{Wills}.\textsuperscript{91} On December 4, 1985, a storage tank containing oleum gas collapsed on the premises of Shriram Foods and Fertilizer Industries (“Shriram Foods”), a subsidiary of Delhi Cloth Mills Ltd., a public limited company.\textsuperscript{92} The leakage of oleum

\begin{footnotes}
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id. at 1181.
\textsuperscript{88} Indiana Harbor Belt, 916 F.2d at 1181–82.
\textsuperscript{89} Id. at 1182–83.
\textsuperscript{90} Id. at 1178 (listing Nat’l Steel Serv. Ctr. v. Gibbons, 693 F. 2d 817 (8th Cir. 1982); Zero Wholesale Co. v. Stroud, 571 S.W.2d 74 (Ark. 1978); Seaboard Coast Line R.R. v. Mobil Chem. Co., 323 S.E.2d 849 (Ga. Ct. App. 1984); and Siegler v. Kuhlman, 502 P.2d 1181 (Wash. 1972) as cases that discuss strict liability).
\textsuperscript{91} Compare M.C. Mehta v. Union of India (Shriram 1), (1986) 1 SCR 312, 313 (India), with Erbrich Prods. Co., 509 N.E.2d at 852.
\textsuperscript{92} Shriram 1, (1986) 1 SCR at 313.
\end{footnotes}
injured several residents in the neighborhood as well as some workers on site.\textsuperscript{93} Several legal responses followed.\textsuperscript{94}

The District Magistrate of Delhi, exercising authority under the Code of Criminal Procedure, immediately ordered Shriram Foods to remove all chlorine, oleum, superchlorine, phosphate, and other hazardous and lethal chemicals from their establishment in Delhi within seven days or show cause for non-enforcement of the relocation order.\textsuperscript{95} The Inspector of Factories, Delhi, shut down respondent’s caustic and sulphuric acid plants under section 40(2) of the Factories Act.\textsuperscript{96} The Assistant Commissioner of Delhi issued a notice to Shriram Foods to show cause for not revoking its license under section 430(3) of the Delhi Municipality Corporation Act, 1957, for violating the terms of the license.\textsuperscript{97} The Assistant Commissioner also ordered Shriram Foods to stop all other industrial use of the premises.\textsuperscript{98} M.C. Mehta, a public interest\textsuperscript{99} lawyer, sought judicial action.\textsuperscript{100} M.C. Mehta, who had filed a writ petition seeking closure and relocation of Shriram Foods’s caustic chlorine plants from Delhi’s highly populated areas prior to the accident under Articles 32\textsuperscript{101} and 21\textsuperscript{102} of the Indian Constitution.

\textsuperscript{93} Id.
\textsuperscript{94} Id. at 313–14.
\textsuperscript{95} Id. at 313.
\textsuperscript{96} Id. at 314.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} In India, public interest litigation is an important development whereby the Supreme Court and High Court adjudicate cases brought against the state to “deal with public grievances such as flagrant human rights violations by the state or seek to vindicate the public policies embodied in statutes or constitutional provisions.” Shyam Divan, \textit{Public Interest Litigation, in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION} 662, 664, (Sujit Choudhry et al. eds., 2016). This new type of judicial business is collectively called “public interest litigation.” \textit{Id}. This type of litigation is not strictly adversarial and the judicial involvement may be continuous through a series of administrative orders, rather than limited to a decision on a specific issue. \textit{Id}. Public interest litigation in India has been facilitated by the expansion of standing doctrines, which generally require that only an injured person can invoke the jurisdiction of the court, which meant that many poor people and under-represented people in India could not access the judiciary. Shyam Divan & Armin Rosencranz, \textit{ENVIRONMENTAL LAW AND POLICY IN INDIA} 134–35 (2d ed. 2001). To address this problem, the Supreme Court of India relaxed the standing requirements through a series of decisions, because of which a non-injured citizen can bring a claim on behalf of an injured person or even bring a case to enforce fundamental rights enshrined in the Indian Constitution. \textit{Id} at 135–38. Citizens could also seek the enforcement of their constitutional rights through an informal petition, even in the form of a letter, submitted to the Supreme Court or High Courts. \textit{Id} at 136. Notable among cases in which the Supreme Court expanded the standing doctrine is S.P. Gupta v. President of India, (1982) 2 SCR 365 (1981) (India) (holding that a citizen could bring a writ petition to safeguard against damage to an issue of public interest, even if the petitioner suffered no injury). \textit{Id} at 138. For a discussion on public interest litigation, see, Divan & Rosencranz, supra, at 133–40 (2d ed. 2001).
\textsuperscript{100} Shriram I, (1986) 1 SCR at 316.
\textsuperscript{101} Article Thirty-Two of the Indian Constitution provides citizens the right to enforce their fundamental rights, including Article Twenty-One. \textit{INDIA CONST.} art. 32.
\textsuperscript{102} Article Twenty-One of the Indian Constitution provides that a citizen’s right to life and liberty cannot be taken away without due process of law. \textit{INDIA CONST.} art. 21.
Constitution, filed a motion to amend his pending petition in order to address the question of whether Shriram Foods should be held strictly liable for the injury arising from the gas leak. The petitioner sought an order from the court against the re-opening of the closed plants. The law on strict liability prior to M.C. Mehta had not evolved significantly. The Supreme Court had before it the task of clarifying the law governing the liability of enterprises engaged in hazardous activities, the basis for quantifying damages, and the measure that the government had to take to relocate hazardous industries from densely populated areas. Also, since the writ petition invoked the court’s epistolary jurisdiction to enforce Articles Twelve and Thirty-Two of the Constitution of India, the Supreme Court also had to consider the question of whether it could allow a writ petition against a private enterprise to recover compensation for damages. The Supreme Court of India addressed the issues in two separate decisions, with only one decision dealing directly with the doctrine of strict liability.

In the first decision, M.C. Mehta v. Union of India (“Shriram 1”), a three judge bench considered whether Shriram Foods, which had been closed pursuant to government orders, could be reopened, if the respondent complied with safety requirements under appropriate laws. The court held that Shriram Foods should be permitted to reopen its manufacturing units subject to certain conditions, including complying with some liability requirements. In the second decision, M.C. Mehta v. Union of India (“Shriram 2”), a five judge bench considered the scope of the writ petition and the doctrine of strict liability; it expounded the doctrine of absolute liability. Although the two decisions address distinct issues, they have to be considered together for a comprehensive understanding of the court’s decision regarding the scope of strict liability.

In Shriram 1, the Supreme Court engaged in a quasi-executive function that has become its hallmark, i.e., appointing a series of expert committees to assist the court in deciding whether or not to suspend the Assistant Commissioner’s order to close Shriram Foods. The Supreme Court first

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103 Shriram 1, (1986) 1 SCR at 316–17.
104 Id. at 329.
105 See Ratan Lal Ranchhodas, Debrajil Kishavlal Thakore & Guru Prasanna Singh, The Law of Torts 494–502 (25th ed. 2006) (discussing the applicability of Rylands in India; most cases are either pre-Independence or shortly after 1945–47, although there are a few post-Independence cases as well, the facts of which mirror the facts in Rylands).
109 Id. at 332–33, 338–44.
111 (1986) 1 SCR at 345.
appointed an expert committee immediately after the accident to evaluate whether Shriram Foods had complied with a pre-existing report—the Manmohan Singh Committee Report (“Singh Report”). The Singh Report had been commissioned by the Government of India prior to the oleum gas leak accident to further evaluate safety standards at Shriram Foods’s caustic chlorine plants, after, in yet another report, a consultant who had been hired by the government following the Bhopal gas leakage listed some safety concerns at Shriram Foods. The recommendation in the Singh Report was to allow Shriram Foods to continue its operations only if it complied with several safety requirements. The committee appointed by the Supreme Court concluded that Shriram Foods was in substantial compliance with the Singh Report’s recommendations. Not convinced that the expert committee had had sufficient time to conduct a thorough investigation (six days), the Indian Supreme Court permitted the petitioner to set up a separate committee.

Petitioners established the Agarwal Committee which, contrary to the court appointed experts, concluded that Shriram Foods was not in compliance with the Singh Report’s recommendations. The Agarwal Committee recommended that safety measures at Shriram Foods plants were inadequate and the plants should not be reopened in their current locations.

To resolve the conflicting recommendations of the two expert committees, the Supreme Court appointed a third expert committee, the Nilay Choudhary Committee (“Choudhary Committee”) to specifically give its recommendations on the following: 1) adequacy of safety measures at Shriram Foods; 2) whether Shriram Foods could be reopened in its current state; and 3) if not, what measures Shriram Foods had to take to prevent hazards such as leaks, explosions, etc., so that it could be re-opened. The Choudhary Committee merely supplemented the Singh Report’s recommendations. Thus, the Supreme Court had before it three reports prepared by expert committees appointed as part of the adjudication process. The court considered all three reports, as well as a report

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112 Id. at 312–13.
113 Id.
114 Id. at 318.
115 Id. at 328–29.
116 Id. at 313, 319–21.
117 Id. at 320–21.
118 Id. at 321.
119 Id.
120 Id.
121 Id. at 321–22.
prepared by the Sethuraman Committee, which the Lieutenant Governor of Delhi had appointed separately to investigate the safety measures at Shriram Foods plants where the oleum gas leak had occurred.122

The Supreme Court first noted that all of the reports agreed on one point: that the risk to the community could be completely eliminated only if Shriram Foods was relocated.123 The Supreme Court decided that, the recommendations notwithstanding, the closure of the plants to completely eliminate the risk was a national policy decision best left to the government of India.124 The court observed that complete closure of all hazardous industries would “end progress and development,” and so, the better solution was for the government to establish a High Power Committee to examine all hazardous industries and relocate such industries to reduce risks to the community.125

On the coattails of such reasoning, the court decided to suspend the closure orders against Shriram Foods, despite the risks it presented to the community, for the following reasons: a) Shriram Foods was in substantial compliance with the Singh Report’s recommendations; b) the Congress Union’s (workers union) argument that closing the caustic chlorine operations would result in about 4,000 workers losing their jobs; c) the Additional Solicitor General’s recommendation on behalf of the Union of India and the administration in Delhi that the caustic chlorine plant should reopen if the court was satisfied with Shriram Foods’ compliance; d) Shriram Foods’s arguments that it since it had substantially complied with the Singh Report’s recommendations, its caustic chlorine operation carried a small risk and closure of the plant would result in loss of jobs and a shortage of chlorine for the Delhi Water Supply Undertaking, as well as for use in downstream products; and e) while the risk of caustic chlorine plants had been evidence in Germany and Louisiana, the risks could be addressed through regulatory measures, as well as by putting residents on notice.126

The Supreme Court also made its decision to suspend the closure orders issued by the administrative authorities in Delhi subject to certain conditions, including the establishment of an expert committee to monitor compliance with its conditions and compliance with the Government of

122 Id. at 322.
123 Id. at 325.
124 Id.
125 Id. at 344.
126 Id. at 330–33. At the time of the decision, there was no comprehensive national legislation to manage risks such as chlorine gas leaks, although the Clean Water Act was passed in 1974. Id. To date, the law that directly addresses liability for injury from hazardous activities, the Public Liability Insurance Act, 1991, is limited to those handling hazardous substances or related activities. The Public Liability Insurance Act, 1991, No. 6, Acts of Parliament, 1991 (India).
India’s general recommendations. The Supreme Court suggested that the Government of India should adopt a suitable national policy on regulating hazardous industries. The court also appointed the Chief Metropolitan Magistrate of Delhi to adjudicate compensation claims for persons injured in the chlorine gas leak, subject to their medical examination under the supervision of the Delhi Legal Aid and Advice Board.

Moreover, the court imposed several conditions as pre-requisites for allowing Shriram Foods to continue its production of chlorine. Relevant to this article are the specific conditions regarding liability. First, the court ordered the Chairman and Managing Director of Delhi Cloth Mills Ltd. and officers in actual management of Shriram Foods to provide, within one week, an undertaking that they would be personally responsible for compensating victims for death or injury caused by accidents at Shriram Foods. Second, the court required the management at Shriram Foods to deposit with the court a sum of Rupees 20 lacs as security for payment of compensation to the victims of the oleum gas leak for claims that qualified for compensation. Third, the court ordered Shriram Foods to deposit Rupees 15 lacs as guarantee towards compensation in case any leak occurred within three years of the judgment.

On balance, the Supreme Court of India performed a type of cost-benefit analysis. The court acknowledged that although the safety measures at Shriram Foods were inadequate, and although Shriram Foods should be made responsible to compensate present and potential victims of accidents at the chlorine gas plants, economic progress warranted the reopening of Shriram Foods.

In Shriram 2, a five judge bench of the Supreme Court considered several legal questions presented before it, including “the measure of liability of an enterprise which is engaged in an [sic] hazardous or

127 Id. at 337–43.
128 Id. at 344–45.
129 Id. at 320.
130 Id. at 333.
131 Id. at 341.
133 Shriram 1, (1986) 1 SCR at 343. The court ordered the Registrar of the court to invest the money in a fixed deposit account in a nationalized bank of India. Id.
134 Id.
135 See id. at 323, 330, 341.
136 Id.
inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured.’’ Specifically, the court considered the scope of the doctrine of strict liability in India, which continued to follow the rule set out in *Rylands*—that a person who brings on his land a mischief is liable for all harm caused by the escape of such a thing, unless the person is engaged in the natural use of land, the harm was caused by an act of God or stranger, the injured person caused the escape, or a statute permitted its use.\(^{138}\)

Justice Bhagawati, who wrote the majority opinion, began by sketching legal developments in England regarding what constituted natural use of land.\(^{139}\) He went on to reject English jurisprudence on the doctrine of strict liability to the oleum gas leak accident, thereby refusing to consider whether manufacture of hazardous chemicals constituted a non-natural use subject to strict liability, and if so, whether any of the defenses applied.\(^{140}\) Justice Bhagawati observed that the nineteenth century rule could not guide the court, because “evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure,”\(^{141}\) in a “modern industrial society . . . where hazardous or inherently dangerous industries are necessary to carry out part of the developmental programme[,]”\(^{142}\) required the “law . . . to grow in order to satisfy the needs of the fast changing society and keep abreast with economic developments taking place in the country.”\(^{143}\)

Justice Bhagawati also observed that the Indian judiciary could be informed, but not constrained or crippled by foreign laws, including the contemporary doctrine of strict liability in England.\(^{144}\) Instead, the court espoused the doctrine of absolute liability, “to deal with an unusual situation which [had] arisen and which [was] likely to arise in the future on account of hazardous or inherently dangerous industries.”\(^{145}\) The court defined the doctrine of absolute liability as follows:

> [A]n enterprise which is engaged in a hazardous or inherently dangerous

\(^{138}\) *Id.* at 842.
\(^{139}\) *Id.*
\(^{140}\) *Id.* at 842–44. Justice Bhagwati noted: “Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule . . . .” *Id.* at 842.
\(^{141}\) *Id.*
\(^{142}\) *Id.*
\(^{143}\) *Id.* at 843.
\(^{144}\) *Id.*
\(^{145}\) *Id.*
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 nondelegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the 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 the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity.\textsuperscript{146}

Under the court’s formulation of strict liability, a permit to carry on hazardous or inherently dangerous activities for profit did not alleviate responsibility of a permit holder, the permit holder’s permit was presumably subject to a duty to bear the cost of any accident and to indemnify injuries.\textsuperscript{147} Such a presumption was warranted since the enterprise was in the best position “to discover and guard against hazards or dangers and to provide warning against potential hazards.”\textsuperscript{148} Applying the doctrine to the case at hand, the court held that in cases such as toxic gas leaks, “the enterprise [was] strictly and absolutely liable to compensate all those who [were] affected by the accident and such liability [was] not subject to any of the exceptions which operate vis-à-vis [sic] the tortious principle of strict liability under the rule in \textit{Rylands v. Fletcher}.”\textsuperscript{149}

On the question of damages, the court held that compensation should be [C]-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in carrying on of the hazardous or inherently dangerous activity by the enterprise.\textsuperscript{150}

\textsuperscript{146} Id. at 843–44 (emphasis added).
\textsuperscript{147} Id.
\textsuperscript{148} Id. at 844.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
On balance, the Supreme Court of India in *Shriram 1* and *Shriram 2* held that while enterprises engaged in hazardous activities should be absolutely liable without any apparent defenses, it equally refused to shut down or order the re-location of existing plants. In his decision, Justice Bhagwati walked the tight rope between economic needs and distributive justice.

V. CAN M.C. MEHTA BE RELEVANT TO GENERAL TORT LAW THEORY?

The facts in *Wills* and the *M.C. Mehta* case are very similar, yet the decisions regarding the application of strict liability are entirely different; whereas the *Wills* court rejected the need for strict liability, the *M.C. Mehta* court in *Shriram 2* not only embraced the doctrine, but enunciated a less forgiving interpretation of strict liability. The facts in *Indiana Harbor Belt* and the *M.C. Mehta* cases are quite different, but the decisions, even though divergent on the applicable doctrine, have several points of convergence, as both Judge Posner and Justice Bhagwati reject relocation through judicial intervention as sound policy. These points of divergence and convergence may deepen our understanding of divergent tort law theories.

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151 M.C. Mehta v. Union of India (*Shriram 1*), (1986) 1 SCR 312, 330–33 (India); *Shriram 2*, (1987) 1 SCR at 825–26, 842–44.

152 Compare *Erbrich Prods. Co. v. Wills*, 509 N.E.2d 850, 857 (Ind. Ct. App. 1987) (“Unlike blasting operations or crop dusting where the chances of damage or injury are inevitable despite the amount of care taken, the manufacture of household bleach with chlorine gas does not encompass the same unavoidable mishaps. The exercise of reasonable care would negate the risk of chlorine gas escaping into the atmosphere.”), with *Shriram 2*, (1987) 1 SCR at 843–44 (“Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity.”).

153 Compare *Ind. Harbor Belt R.R. Co. v. American Cyanamid Co.*, 916 F.2d 1174, 1181 (7th Cir. 1990) (“It is no more realistic to propose to reroute the shipment of all hazardous materials around Chicago than it is to propose the relocation of homes adjacent to the Blue Island switching yard to more distant suburbs.”), with *Shriram 1*, (1986) 1 SCR at 332–33 (“We have therefore reflected over the various aspects of this rather difficult and complex question with great anxiety and care and taking an overall view of the diverse considerations we have, with considerable hesitation, bordering almost on trepidation reached the conclusion that, pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place, the caustic chlorine plant should be allowed to be restarted by the management of Shriram, subject to certain stringent conditions which we propose to specify.”), and *Shriram 2*, (1987) 1 SCR at 843 (“We are of the view that an enterprise which is engaged in a 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 nondelegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.”).
To be sure, the procedural aspects, including the fact-finding procedure in *M.C. Mehta*, are decidedly unconventional. The Supreme Court addressed whether strict liability should be used to compensate victims in response to a writ petition filed under Article Thirty-Two of the Indian Constitution, invoking the Supreme Court’s epistolary jurisdiction, rather than directly approaching state courts to address the question.  

The Supreme Court, therefore, was also forced to consider several additional questions: 1) whether it had jurisdiction under Article Thirty-Two of the Indian Constitution to enforce Article Twenty-One’s fundamental rights against a private enterprise such as Shriram Foods that was not a state under Article Twelve, and 2) whether it had the authority under Article Thirty-Two to award compensation and not merely order the enforcement of constitutional rights by a state.


155 Id. at 820, 831–32. Article Twelve of the Indian Constitution states: “In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” *INDIA CONST.* art. 12.

156 *Shriram 2*, (1987) 1 SCR at 287–28. The court decided that it had jurisdiction on both counts, drawing from its own prior decisions and from the American doctrine on state action. *Id.* at 824–25, 827–28, 834. It held that activities of Shriram Foods constituted state action, because 1) the manufacture of caustic chlorine was of great public importance; 2) Shriram Foods was incorporated within the schedule of industries vital for public interest under the Industrial Development and Regulation Act of 1951, and 3) Shriram Foods received substantial government subsidies. *See id.* at 831–42. It also held that in appropriate cases, the court could award compensation through a writ petition. *See id.* at 826. The court also considered the Government of India’s Industrial Policy Resolution of 1956 and Appendix I to the Industrial Policy Resolution of 1948, finding that heavy chemicals and fertilizer industries were included as “basic industries of importance the planning and regulation of which by the Central Government was found necessary in national interest.” *Id.* at 837–38.

However, the Supreme Court refused to conclusively hold that Shriram Foods was a “State” under Article Twelve of the Indian Constitution. *Id.* at 841. Justice Bhagawati wrote: “we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12.” *Id.* The court cited to its decision in *Ramanna D. Shetty v. International Airport Authority*, (1979) 3 SCR 1014 (considering the question whether a corporation was an instrumentality of the state) that “a finding of State financial support plus an unusual degree of control over the management and policies of the corporation might lead to the characterisation of the operation as State Action.” *Id.* at 833–834. It also cited to its decision in *Sukhdev v. Bhagatram*, (1975) 1 SCC 421, finding that “[i]nstitutions engaged in matters of high public interest or public functions are by virtue of the nature of the functions performed government agencies.” *Id.* Justice Bhagawati opined:

> The power of the Court to grant remedial relief may include the power to award compensation in appropriate cases . . . The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of theft[,] poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right claim compensation for infringement of a fundamental right through the ordinary process of civil courts.

*Id.* at 830 (emphasis added).
There are certainly several substantive divergences as well. For one, neither *Wills* nor *Indiana Harbor Belt* specifically reject *Rylands*, nor do they rely on *Rylands*. The discussions in the two American cases, with their scant focus on *Rylands* and extensive discussion on sections 519 and 520 of the Restatement (Second) of Torts, as well as other decisions, such as *Guille*, a pre-*Rylands* decision of a U.S. court, 

showcase a robust body of tort law. In contrast, the fact that the petitioner in *M.C. Mehta* sought intervention from the Indian Supreme Court via a writ petition to clarify the tort liability for injuries caused by hazardous activities, and the fact that the Supreme Court relied primarily on English case law for guidance and did not refer to any domestic court cases reflects the lack of development in tort law by Indian courts generally.

For another, both in *Wills* and, more specifically, in *Indiana Harbor Belt* the courts consider other tort doctrines, notably negligence law to compensate the victims. In *Wills*, the court noted that the defendant could have exercised reasonable care by preventing the gas from escaping, which would have prevented the accident. Judge Ratliff held that comment h to section 520 of the Restatement (Second) of Torts clarified that strict liability applied only to risks that were “unavoidable” even with the exercise of due care, and defendant in this case could have avoided the risk by turning off the fans.

In *Indiana Harbor Belt*, Judge Posner similarly held that the remedy under the doctrine of strict liability should be limited to cases where negligence law was not available. Judge Posner went so far as to observe that even if the accident had occurred on the manufacturer’s premises, negligence law would have been the better tort remedy, because the leakage of acrylonitrile was not inherent to the act of storing the chemical—storage did not cause corrosion of the car in which the chemical was stored and subsequent leakage—, but the leakage was caused by some damage to the cap of the storage tank, which could have occurred only due to negligent maintenance.

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157 See *Ind. Harbor Belt*, 916 F.2d at 1176; *Wills*, 509 N.E.2d at 856–57.
159 See *Shriram 2*, (1987) 1 SCR at 826–27, 842–44. This does not mean there were no strict liability cases decided by state courts in India at that point at all. See *Ranchioddas, Thakore & Singh*, supra note 105, at 504–22 (discussing the applicability of *Rylands* in India; most cases are either pre-Independence, or shortly after 1945–47, although there are a few post-Independence cases as well, the facts of which mirror the facts in *Rylands*).
160 *Ind. Harbor Belt*, 916 F.2d at 1178; *Wills*, 509 N.E.2d at 854, 856.
161 *Wills*, 509 N.E.2d at 857.
162 *Id.* at 856–57.
163 *Ind. Harbor Belt*, 916 F.2d at 1181–82.
164 *Id.*
In contrast, although the Supreme Court in *Shriram 1* discussed the lack of adequate safety measures in Shriram Foods’s plants and based on several expert committee reports concluded that the plants were maintained negligently, it did not consider even in obiter whether negligence, instead of a more stringent version of strict liability, was an adequate basis for granting compensation. The court did not inquire whether the collapse of the storage tank in which oleum gas was stored could have been avoided with reasonable care or whether oleum gas would have escaped from the joints of a pipe even with exercise of due care, although Justice Bhagawati’s decision implicitly points to such evidence. For example, the order of the Inspector of Factories, Delhi closing down Shriram Foods, referred to in *M.C. Mehta*, stated as follows:

Whereas it has appeared to me that Caustic chlorine plant and sulphuric acid plants are running without adequate safety measures being adopted by your management . . . . Earlier notices . . . asking your management to ensure proper safety measures has not been complied with fully; and . . . non adoption of the adequate safety measures have resulted in collapse of the structure on which oleum tank was mounted resulting in the massive leakage of oleum causing fumes in the environment affecting the health and safety of a large number of residents of the Union Territory of Delhi; and Whereas the factory is not still having adequate safety measures required for such plants . . . .

The Supreme Court also clarified what constitutes a hazardous activity, but assumed that storage of hazardous chemicals such as sulphuric acid and caustic chlorine (which did not leak) were inherently dangerous activities. The court’s approach is in stark contrast with Judge Posner’s approach, which actively engages with the question and notes that storage of acrylonitrile is not a hazardous activity for purposes of tort law.

Yet, *M.C. Mehta* can contribute to ongoing discourse in tort law theory, especially because some divergences speak to the core of our views on the

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165 See *M.C. Mehta v. Union of India (Shriram 1)*, (1986) 1 SCR 312, 318–21 (India).
166 *Id.* at 323.
167 *Id.*
168 *Id.* at 330–31. The court’s decision regarding the manufacturing of caustic chlorine, which did not leak or injure anyone, is a separate matter, because in so far as that issue is concerned, the court seems to lean towards a conclusion that manufacturing caustic chlorine according to all experts presents risks that cannot be completely eliminated. *Id.* at 324–25. But the court also notes that all expert committee reports were “unanimous that there was considerable negligence on the part of the management of Shriram in the maintenance and operation of the caustic chlorine plant and there were also defects and drawbacks in its structure and design.” *Id.* at 326.
role of tort law. The question of corrective versus distributive justice is one example.\textsuperscript{170} In \textit{Indiana Harbor Belt}, Judge Posner, in explaining the rationale for choosing negligence over strict liability, observed that the function of tort law is “mainly allocative rather than distributive.”\textsuperscript{171} By this, he explains that the court had to choose the law that would “control the particular class of accidents in question most effectively, rather than focusing] on finding the deepest pocket and placing liability there.”\textsuperscript{172}

Justice Bhagawati’s viewpoint is the polar opposite.\textsuperscript{173} Justice Bhagawati’s concern is not which doctrine will most effectively control those engaging in hazardous activities, but ensuring that the compensation be:

\begin{quote}
\text{co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. [As he notes,] [t]he larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of hazardous or inherently dangerous activity by the enterprise.}\textsuperscript{174}
\end{quote}

Justice Bhagawati’s approach, read with his decision in \textit{Shriram 1} that the reopening of the industry is subject to Shriram Foods’s acceptance of certain liability conditions,\textsuperscript{175} hints at distributive justice and not merely collective or allocative justice; indeed, the edifice of enterprise liability espoused by Justice Bhagawati favors distributive goals.\textsuperscript{176}

A case for studying the \textit{M.C. Mehta} decisions can also be made based on at least one broad area of convergence in \textit{Indiana Harbor Belt} and \textit{Shriram 1}—when considering the relocation of industry, both courts recognized that part of the problem is that residents had moved to the neighborhoods rapidly.\textsuperscript{177} Although through different reasoning, both Justice Bhagawati and Judge Posner were concerned with wielding tort law

\textsuperscript{171} \textit{Ind. Harbor Belt}, 916 F.2d at 1181.
\textsuperscript{172} Id. at 1182.
\textsuperscript{174} \textit{Shriram 2}, (1987) 1 SCR at 844.
\textsuperscript{175} Id. See also \textit{Shriram 1}, (1986) 1 SCR at 337–45.
\textsuperscript{176} \textit{Shriram 2}, (1987) 1 SCR at 843–44. See also \textit{Shriram 1}, (1986) 1 SCR at 337–38.
\textsuperscript{177} Justice Bhagawati observed that the Delhi metropolitan area around the industries grew in the years since the industry was set up. See \textit{Shriram 1}, (1986) 1 SCR at 317. Similarly, Judge Posner observed that it would perhaps be easier to move the residents in the Chicago metropolitan area rather than the railroad. \textit{Ind. Harbor Belt}, 916 F.2d at 1181. It should be noted that the court in \textit{Wills} also addressed the question of location, but in the context of nuisance and the applicability of the coming to nuisance rule. Erbrich Prods. Co. v. Wills, 509 N.E.2d 850, 858–59 (Ind. Ct. App. 1987).
to effectuate relocation.\textsuperscript{178} In \textit{Shriram 1}, although the court observed that relocation alone would eliminate the risk associated with producing caustic chlorine,\textsuperscript{179} the court urged the government to formulate a national policy on relocating hazardous industries from densely populated areas given the economic implications of relocation.\textsuperscript{180}

In \textit{Indiana Harbor Belt}, Judge Posner was also concerned about the cost of effectuating relocation by applying strict liability.\textsuperscript{181} Specifically, he opined that since the defendant is the least qualified to relocate the shipping route,\textsuperscript{182} the argument for imposing strict liability was weak since it would not really guide policy and that negligence law was adequate to promote safety during transportation.\textsuperscript{183}

Although the Indian Supreme Court does not delve into the implications of imposing absolute liability on relocation, it observed that deterrence, as established in English law jurisprudence, was primarily a function of criminal law and the court had to proceed carefully when combining it with civil law, which primarily focused on compensating the victim, including the amount of damages.\textsuperscript{184} Such points of convergence demonstrate that,

\textsuperscript{178} See \textit{Ind. Harbor Belt}, 916 F.2d at 1180–81; \textit{Shriram 1}, (1986) 1 SCR at 344–45.

\textsuperscript{179} \textit{Shriram 1}, (1986) 1 SCR at 324–25 (citing specifically to Dr. Slater’s and the Singh Report’s recommendations).

\textsuperscript{180} \textit{Id.} at 344–45 (“We would, therefore like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community, and when hazardous industries are located in such areas, every care must be taken to see that large human habitation does not grow around them.”).

\textsuperscript{181} \textit{Ind. Harbor Belt}, 916 F.2d at 1180. Judge Posner stated that not only would relocation be prohibitively expensive, but also, “one would hardly expect shippers, as distinct from carriers, to be the firms best situated to do the rerouting.” \textit{Id.}

\textsuperscript{182} Though the relocation in question is different in the two cases, one of the entire industry and the other of the shipping route, the role of tort law in effecting such relocation should not vary vastly. See \textit{id.}, \textit{Shriram 1}, (1986) 1 SCR at 344–45.

\textsuperscript{183} \textit{Ind. Harbor Belt}, 916 F.2d at 1180–81.

\textsuperscript{184} Charan Lal Sahu v. Union of India, (1989) 2 SCR Supl. 597, 681 (India). In this case the petitioner challenged the validity of the Bhopal Gas Leak (processing of claims) Act on several grounds, including the process for determining interim damages, based on \textit{Shriram 1}. \textit{Id.} The court rejected Justice Bhagawati’s enunciation of the basis for granting compensation, citing to an English case \textit{Rookes v. Barnard}, as follows:

The question of awarding exemplary or deterrent damages is said to have often confused civil and criminal functions of law. Though it is considered by many that it is a legitimate, [sic] encroachment of punishment in the realm of civil liability, as it operates as a restraint on the transgression of law which is for the ultimate benefit of the society. Perhaps in this case [of Bhopal Claims Act], had the action proceeded, one would have realised that the fall out of this gas disaster might have been formulation of a concept of damages, blending both civil and criminal liabilities. There are, however, serious difficulties in evolving such an actual concept of punitive damages in respect of a civil action which can be integrated and enforced by the judicial process. It would have raised serious problems of pleading, proof and discovery, and interesting and challenging as the task might have been, it is still very uncertain how far [a] decision based on such a concept would have been a decision according to ‘due process’ of law acceptable by international standards.

\textit{Id.}
for all its points of divergence, all courts face the essential core challenge of finding the right balance between different interests, and thus, decisions that address conflicts of interests can inform the broader discussion on tort law theory.

Moreover, divergences in interpretation do not imply that a particular interpretation is wrong or right; a particular interpretation may be transient. For example, even though the doctrine of absolute liability was rejected in the Bhopal litigation, it was followed in three later cases—Sundarrajan v. Union of India, Council for Enviro-legal Action v. Union of India, and Vellore Citizens Welfare Forum v. Union of India. But, the decision in Shriram 2 did not directly achieve the goals that probably motivated Justice Bhagawati’s absolute liability doctrine. One of those goals was probably to create a legal foundation for determining Union Carbide’s liability for the Bhopal gas accident by removing any exceptions to the doctrine of absolute liability given Union Carbide’s argument in the Bhopal case attributing the methyl isocyanate gas leak to a sabotage. Another goal was perhaps an

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185 Sundarrajan v. Union of India, (2013) Civil Appeal No. 4440 (India). In Sundarrajan, petitioners challenged a permit to construct a new nuclear power plant in India for safety reasons. Id. The Indian Supreme Court dismissed the decision partially on the ground that India’s Civil Nuclear Liability Act adequately applied the doctrine of absolute liability and, in case of an accident, victims would be compensated. Id.

186 Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 (India). This case was primarily an action to enforce clean up of pollution and to seek compensation for villagers affected by the activities of the chemical manufacturer. Id. In the course of its decision, the Supreme Court affirmed the doctrine of absolute liability, but did not apply it. Id. Instead, it asked individual villagers to seek remedy before civil courts. Id.

187 Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647 (India). In this case, the petitioner brought a writ petition before the Supreme Court seeking the closure of several tanneries, as well as compensation for damage to the environment and people’s health on account of the damage. Id. The court reaffirmed the doctrine of absolute liability, and ordered the Central Government of India to set up an administrative authority to identify and award compensation to villagers affected by the pollution, after consulting experts and taking into account the arguments of the polluting industries. Id.

188 Armin Rosencranz, Shyam Divan & Antony Scott, Legal and Political Repercussions in India, in LEARNING FROM DISASTER: RISK MANAGEMENT AFTER BHOPAL 44, 44–64 (Sheila Jasanoff ed., 1994) (explaining why the Supreme Court enunciated the doctrine of absolute liability: “The Shriram ruling put obvious pressure on Carbide to settle. Carbide had spent much of the previous years trying to build a case of sabotage. The notion of absolute liability effectively quashed this defense. The ruling also addressed some of the concerns of the more politicized victims’ rights groups. The new standard of compensation, if strictly applied, would mean that accidents in India should be just as expensive for multinational corporations as accidents in the developed countries. This would help stop the exportation of ’dirty’ or unsafe technologies.”).

Also, the plaintiffs’ lawyer in Bhopal had indeed argued for imposing strict liability for ultrahazardous activity and enterprise liability for multinational corporations, whereas the defendant, Union Carbide, in the United States countered that, as a separate legal entity, it could not be held liable for the acts of its subsidiary under the doctrine of vicarious liability. See Cassels, Outlaws, supra note 13, at 321–23 (“[E]ven before the return of the case, Indian courts had forged one significant bargaining endowment for the victims in anticipation of the litigation in India.”). See also DIVAN & ROSENCRANZ, supra note 99, at 534 (in the notes and questions following the discussion of Justice Bhagawati’s opinion, the authors observed: “There is nothing in the reported orders in the Shriram Case that justifies the expansion of the Rylands v.
attempt to salvage the Indian Supreme Court’s reputation following the Government of India’s decision to move the tort action to American courts on grounds that the Indian judiciary lacked the capacity to manage such a complex case by showing that it could come up with a legal principle independent of any foreign legal system.\textsuperscript{189}

Not only did the Supreme Court of India \textit{not} apply Justice Bhagawati’s principle of absolute liability in its decision in \textit{Union Carbide Corp. v. Union of India}\textsuperscript{190} to ultimately promote a settlement agreement between the parties, but the Supreme Court also rejected the application of the absolute liability doctrine on several grounds.\textsuperscript{191} One, that Justice Bhagawati’s articulation of the principle of absolute liability was merely obiter, because the Supreme Court in \textit{Shriram 2} had not conclusively decided whether Shriram Foods had to pay compensation.\textsuperscript{192} Two, that the principle of absolute liability could, at best, be a guiding principle, because it went against \textit{Rylands}, which was accepted in English and American jurisprudence.\textsuperscript{193} As such, if American courts decided to enforce the decision of the Indian Supreme Court in the Bhopal case, there was a risk that any decision against Union Carbide Corp. on the principle of strict liability would be dismissed for lack of due process.\textsuperscript{194} Further, even if the \textit{Shriram 2} court may have been eager to establish its independence from foreign law, later decisions arising in relation to the Bhopal gas leak accident, not only discouraged the divergence from English law,\textsuperscript{195} but also relied on English law to reject some aspects of Justice Bhagawati’s articulation of the principle of absolute liability.\textsuperscript{196} There is also no record that the principle of absolute liability has actually gained traction in the lower courts.\textsuperscript{197} If anything, one can perhaps only attribute to \textit{Shriram 2} the ability of the Supreme Court to foster a settlement in the Bhopal case.\textsuperscript{198}

\footnotesize{\textit{Fletcher} strict liability rule. It appears that Shriram offered none of the defences recognized as exceptions to \textit{Rylands v. Fletcher} (such as an act of God, the act of a third party, and statutory authority). Hence, there seems to have been no reason for the court to announce a new rule of absolute liability allowing no exceptions. This adds support to the supposition that the court’s hidden agenda was to anticipate and nullify the third party ‘saboteur’ defence in the \textit{Bhopal Case.”}).

\textsuperscript{189} Galanter, \textit{supra} note 5, at 175 (quoting the Chief Justice of the Indian Supreme Court’s observation that victims’ only hope lies in U.S. courts).

\textsuperscript{190} (1991) 1 SCR Suppl. (2) 251, 290, 366-67 (India).

\textsuperscript{191} Id. at 283, 366-67.

\textsuperscript{192} Id. at 283.

\textsuperscript{193} Id. at 281.

\textsuperscript{194} Id. at 284 (“The decree to be obtained in the Bhopal suit would have been a money decree and it would have been subject to the law referred to in the judgment of the U.S. Court of Appeals. If the compensation is determined on the basis of strict liability—a foundation different from the accepted basis in the United States—the decree would be open to attack and may not be executable.”).

\textsuperscript{195} Id. at 281–83, 285.

\textsuperscript{196} Charan Lal Sahu v. Union of India, (1989) 2 SCR Supl. (2) 597 (India).

\textsuperscript{197} The author is not in a position to state conclusively that there is no traction, because her research does not include an empirical search on litigation regarding absolute liability in India. \textit{See supra} notes
Tort law in American jurisprudence has also evolved, signaling that in no jurisdiction is tort law doctrine set in stone. Like in India, American law regarding strict liability was founded on *Rylands* and was followed by some jurisdictions. In the late nineteenth century, however, American courts rejected *Rylands* to promote investment of capital by protecting “infant industries from ‘excessive’ liability.”

This position was supported by the first two Restatements. Sections 519 and 520 of the Restatement (First) of Torts limited the imposition of strict liability to “miscarriage” of ultrahazardous activities. Section 520 of the Restatement (First) of Torts described ultrahazardous activities as those that carried “a risk of serious harm . . . that [could] not be eliminated by the exercise of utmost care” and that were not of “common usage.”

The standards of utmost care, in particular, placed an onerous burden for those that carried risk of ultrahazardous activities. The term ultrahazardous or in the need that the miscarriage of an activity, finding no merit in the term ultrahazardous or in the need that the miscarriage of an activity imposed strict liability. Further, section 520 of the Restatement (Second)
of Torts introduced six balancing factors to determine whether an activity could be considered abnormally dangerous, including the appropriateness of location and its value to the society. These factors were considered to both limit the applicability of strict liability and water it down to another form of the negligence standard, signaling an inclination to limit the use of strict liability.

At the same time, increased industrialization triggered a change in judicial attitude. American courts began to impose strict liability on companies, which had advanced economically and could bear the cost of tort liability, for activities such as blasting and drilling. These eventually resulted in amendments to the Restatement as well. The Restatement (Third) of Torts has amended the six factor test for abnormally dangerous activity. Under section twenty of the Restatement (Third) of Torts, an actor is liable for engaging in an abnormally dangerous activity if: “(1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and (2) the activity is not one of common usage.”

Section twenty of the Restatement (Third) of Torts rejects the consideration of appropriateness of the location and the social value of an activity as independent factors in determining strict liability, but acknowledges their potential relevance for establishing strict liability within the new definition. The location of an activity could be relevant to assess the magnitude of the risk, and the social value of an activity could inform discussion on whether an activity is in common usage, but they do not have to be considered as factors in determining the applicability of strict liability.

In the same vein, the Reporters’ Note to section twenty of the Restatement (Third) of Torts identifies problems with some of the positions taken in Indiana Harbor Belt. It challenges the view in Indiana Harbor

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208 RESTATEMENT (SECOND) OF TORTS § 520 (AM. LAW INST. 1977).
209 See id.; Nolan & Ursin, supra note 201, at 272–73.
210 Klass, supra note 200, at 909–13; Nolan & Ursin, supra note 201, at 263 (discussing two cases, Bridgeman-Russell v. City of Duluth, 197 N.W. 971 (Minn. 1924) and Green v. Gen. Petroleum Corp., 270 P. 952 (Cal. 1928), but also noting a covert reference to strict liability).
212 Id. at § 20 cmt. K.
213 Ibid. at § 20 cmt. K.
214 See id. (noting the high social value of an activity creates an assumption that the defendant was not negligent in choosing to pursue the activity; however, this is not cause for rejecting strict liability; or as comment k states: “the point that the activity provides substantial value or utility is of little direct relevance to the question whether the activity should properly bear strict liability”).
215 Id. at § 20 Reps.’ Note.
that the appropriateness of the location and the social value of the activity are good indicators for imposing strict liability in cases where the defendant could have addressed the two factors, on the ground that the two factors do not reflect ethical arguments for imposing strict liability—that sometimes fairness demands the imposition of strict liability even if the location is appropriate and the social value of an activity is great.\footnote{Id. (discussing Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co., 916 F.2d 1174, 1177 (7th Cir. 1990)).} It also challenges Judge Posner’s claim in Indiana Harbor Belt that location and appropriateness cannot serve as factors for evaluating negligence (and thus their importance in determining strict liability), but can guide a strict liability determination.\footnote{See Ind. Harbor Belt, 916 F.2d at 1177; Erbrich Prods. Co. v. Wills, 509 N.E.2d 850, 853 (Ind. Ct. App. 1987); Union Carbide Corp. v. Union of India, (1991) SCR Supl. (1) 251, 283, 366 (India) (observing that the Supreme Court’s application of absolute liability to victim compensation in M.C. Mehta was “essentially obiter” and absolute enterprise liability does not extend to liability for subsidiaries).}

In a broad sense, M.C. Mehta is just another tort case, no different from the several found in other jurisdictions. It is not universally accepted even in India, it diverges from and converges with some American decisions, and it continues to evolve.\footnote{See Nicholas W. Woodfield, The Policy/Operational Dichotomy in Intra-State Tort Liability: An Example of the Ever-Continuing Transformation of the Common Law, 29 DENV. J. INT’L L. & POL’Y 27, 29 (2000).} These traits should make the M.C. Mehta cases potential candidates to test general tort law theories, even if limited to one doctrine, in the context of a developing country, India.

VI. CONCLUSION

In all common law jurisdictions, the tort laws of the parent country, England, have transformed and evolved to suit the needs of society’s immediate or long term goals.\footnote{See Bussani & Infantino, supra note 1, at 78; Marta Infantino, Making European Tort Law: The Game and Its Players, 18 CARDOZO INT’L & COMP. L. 45, 46–50 (2010).} There is a growing interest in understanding the causes for divergences or convergences, and their implications for a general theory regarding tort law.\footnote{See, e.g., Richard Arzania, Tort Law in France: A Cultural and Comparative Overview, 13 WIS. INT’L L.J. 471, 477–83 (1995); Caroline Forell, Statutes and Torts: Comparing the United States to Australia, Canada, and England, 56 WILLAMETTE L. REV. 865, 865–66 (2000); Allen M. Linden, The American Influence on Canadian Tort Law, 50 UCLA L. REV. 407, 408–12 (2002); O’Neill, supra note 6, at 1–4.} But much of the literature focuses on developed countries.\footnote{See Bussani & Infantino, supra note 1, at 78; Marta Infantino, Making European Tort Law: The Game and Its Players, 18 CARDOZO INT’L & COMP. L. 45, 46–50 (2010).} This article explores the potential contribution that Indian tort law jurisprudence can make towards an understanding of tort law generally. By using the seminal cases on strict liability, the M.C. Mehta cases, and comparing them with American cases and law on strict liability, this article makes a case for thinking through general tort law theories from the lens of Indian tort law. This article
further acknowledges the deficits of Indian tort law, but also demonstrates that neither these deficits, nor the divergences in approaches between Indian and American courts undercut the case for considering the M.C. Mehta decisions when thinking through general tort law theories. Indeed, the divergences may be important to getting close to the core of tort law.

In the case of Shriram Foods, the Supreme Court of India rejected Rylands in favor of a more stringent strict liability doctrine, one that recognizes no exceptions and imposes liability on the actor engaged in hazardous activities regardless of whether such activities involved natural or non-natural use of land.223 The Indiana Court of Appeals in Wills and the Seventh Circuit in Indiana Harbor Belt also favored an approach that was different from Rylands; an approach set out in section 520 of the Restatement (Second) of Torts that balances six factors in determining liability.224 Both American decisions focused on negligence as the pillar of tort law and relegated the use of strict liability to cases where negligence law could not effectively regulate hazardous activities.225 The decision in Indiana Harbor Belt went a step further and considered the role of place (appropriateness of location) and the social value of an activity in determining whether to apply strict liability.226 American law on strict liability has also evolved beyond the two cases, and the Restatement (Third) of Torts has further refined the doctrine of strict liability, removing appropriateness of location and social value as separate factors.227

Clearly, Indian law on strict liability diverges from American law in several respects.228 The Indian principle of absolute liability appears to be less interested in influencing the defendant’s decision of whether to undertake a hazardous activity than it is in ensuring that the actor responsible for the harm does not escape from liability and paying compensation.229 The American doctrine of strict liability, on the other hand, struggles to find an appropriate place for the doctrine in a tort system that is dominated by negligence law.230

224 Ind. Harbor Belt, 916 F.2d at 1177; Wills, 509 N.E.2d at 853.
225 Ind. Harbor Belt, 916 F.2d at 1179, 1181–82; Wills, 509 N.E.2d at 856.
226 Ind. Harbor Belt, 916 F.2d at 1177.
227 Compare Restatement (Third) of Torts § 20 (Am. Law Inst. 2010), with Restatement (Second) of Torts §§ 519–520 (Am. Law Inst. 1977), and Restatement (First) of Torts §§ 519–520 (Am. Law Inst. 1938).
229 See Shriram 2, (1986) 1 SCR at 824.
230 Mark A. Geistfeld, Social Value as a Policy-Based Limitation of the Ordinary Duty to Exercise Reasonable Care, 44 Wake Forest L. Rev. 899, 900, 903 (2009).
These divergences may have broader implications for how law addressing liability of actors will emerge even outside the judicial system, as the Indian Supreme Court sought to do in Bhopal. It may also inform us about the lack of universalism even in laws that have the same roots. This research may provide the foundation to understand how divergences in common law influence or inform broader divergences in the rule of law. However, the key objective of this article has been to simply add to the literature on tort law, as a first step to understand whether Indian tort law can contribute to our understanding of the role of tort law generally.