

Polluter Pays in Practice: Evolving legal boundaries in environmental liability in Sri Lanka

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Environmental liability occupies a distinct position within the law, as it transcends the confines of personal injury and property damage to encompass harm to ecosystems and successive generations. Such harm is frequently irreversible and enduring, thereby necessitating engagement with public law considerations, including constitutional protection. In Sri Lanka, strict liability for environmental damage, particularly in cases involving the escape of hazardous substances, derives from the common law doctrine articulated in *Rylands v Fletcher*, rather than from statutory environmental provisions. This doctrine corresponds closely with the internationally recognized Polluter Pays Principle, which has been judicially endorsed in a series of Sri Lankan decisions concerning pollution. In the recent *MV X-Press Pearl* Marine Environmental Pollution Case, the Supreme Court affirmed that the Polluter Pays Principle establishes a standard of absolute liability. The Court further determined that this principle constitutes part of Sri Lanka's common law and extends to non-state actors, including shipowners and insurers. Significantly, the Court exercised its fundamental rights jurisdiction under Articles 17 and 126 of the Constitution to impose such liability, thereby disrupting the conventional divide between public and private law. This study undertakes a critical analysis of the rationale underlying this judicial departure from the traditional dichotomy in determining absolute environmental liability. Through a qualitative examination of the *MV X-Press Pearl* decision alongside selected earlier precedents, it evaluates the emerging judicial approach and its broader implications for legal reform. The findings are intended to inform policymakers in the development of future legislative and regulatory frameworks.

Keywords: *Polluter pays, Strict liability, Absolute liability, MV X-Press Pearl case*