



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ABSOLUTE LIABILITY: A COMPARATIVE ANALYSIS OF THE BHOPAL GAS

TRAGEDY, 1984 AND VISHAKHAPATNAM GAS LEAK CASE, 2020

Abstract:

The principle of Strict Liability, i.e., no-fault liability to provide compensation for damage caused by dangerous substances is an established principle of English Law. The Supreme Court of India in 1987 ventured to crystallise a stricter standard of no-fault liability in case of damage occurring from the escape of hazardous substances, the land being used non-naturally, in the Oleum Gas Leak case. This rule is that of Absolute liability and it does not provide any defence to a hazardous enterprise from which the escape of an inherently dangerous substance causes damage to the surroundings. The court gave two reasons for the same, viz. any enterprise engaging in a potentially hazardous activity for private benefit owes a social responsibility to compensate for any loss which occurs therefrom, (Polluter Pays Principle), and, that only such an enterprise possesses the resources for absorbing the social and environmental loss thus occasioned, making it liable to compensate. (Deep Pocket theory). The experience of the Bhopal Gas Tragedy (1984) where justice eluded the victims even after protracted litigation to achieve compensation, propelled the Supreme Court to propound this principle. This article incorporates the trajectorial analysis of events of the Bhopal Gas Tragedy and undertakes a comparative analysis of the same with the incident of Gas Leak in Vishakhapatnam (2020). The article focuses on the difference in judicial approach in dealing with incidents of such nature, with time, and expounds on the ways and means to prevent such incidents in the future by effective regulations and efficient compensatory mechanisms. The article begins with an introduction of the concept of absolute liability vis-à-vis Strict Liability in part I, followed by the trajectory and jurisprudential analysis of events and award of Bhopal Gas Tragedy in part II, and that of Vishakhapatnam Gas Leak in part IV. Thereafter, the Public Liability Insurance

Act, of 1991 is examined in part V, followed by, Suggestions and Recommendations in Part VI and Conclusion in part VII.

Keywords: Absolute Liability, Strict Liability, damage, compensation, insurance, regulation

I. INTRODUCTION

The Supreme Court of India propounded the principle of Absolute Liability in the landmark case of *M.C. Mehta v. Union of India*¹ i.e., the Oleum gas leak case. This rule makes people liable for hazardous actions even when they weren't directly at fault. The case originated from an oleum gas leak that occurred in Delhi in 1985 and resulted in fatalities as well as extensive property damage. In circumstances of industrial accidents and environmental disasters, the court stressed the necessity for strong accountability and rejected the antiquated Strict Liability principle.

The essential elements of Absolute Liability are:

1. Dangerous Thing:

The liability in this case is imposed only on the escape of a 'dangerous' thing, that is, likely to cause harm to other people or property on its escape. Things like water, gas, electricity, sewage, noxious fumes, rusty wires, flag posts, explosives etc. have been held to be dangerous things under various tort cases.

2. Escape:

The thing that is likely to cause such harm must escape to outside the defendant's premises to harm the plaintiff. As in the case of *Read v. Lyons and Co.*², the plaintiff was working in the defendant's company that used to produce explosives. An accident happened when the plaintiff was working within the company's compound. A shell that was being manufactured, exploded. The plaintiff got injured in this explosion. In the case that was filed by the plaintiff, court absolved the defendant ruling that the explosion took place inside the premises of the defendant and there was no element of escape involved.

3. Non- natural use of land:

¹ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

² *Read v. Lyons and Co.*, 1947 AC 146.

The invocation of liability must entail some ‘non-natural’ use of land. The use should be “*some special use bringing with it increased danger to others, and must not merely by the ordinary use of land or such a use as is proper for the general benefit of community.*”³

In *Rylands v. Fletcher*, storage of water in a reservoir in a large quantity was held to 4
Growing of non-poisonous trees, electric wiring in a house or shop, water installation in a house, etc. are some examples that have been held to be natural uses of land.

4. Damage or Mischief:

Some harm must be caused to the defendant as a consequence of the escape of the hazardous substance. For instance, health problems in an area can be caused due to the disposal of industrial waste by a factory in a waterbody that is used locally as a source for domestic usage of “water”.⁴

The court created absolute liability as a means of holding persons responsible who run risky and dangerous businesses in highly populated regions. Without permitting defences that fall under strict liability, the court upheld the rule established in *Rylands v. Fletcher*⁵, guaranteeing a wide application. Crucially, absolute culpability can be imposed with just one death. The court emphasised the need to change law to address modern issues by acknowledging that 19th-century legal precedents could not serve as a guide for contemporary liability standards. India's courts bravely developed a new theory of responsibility that applies to businesses operating in risky sectors⁶.

According to the court, a business operating in a hazardous or intrinsically dangerous industry has an absolute and non-delegable duty to the community at large. It has to make sure that none of its actions cause harm. Regardless of whether reasonable care was used or negligence occurred, the business is fully accountable for any harm produced. In the event that a hazardous activity causes an accident (e.g., toxic gas release), the business is obligated to provide

³ Richards v. Lothian, 1913 A.C. 263 [280].

⁴ RATANLAL & DHIRAJLAL, THE LAW OF TORTS (Akshay Sapre ed., 28th ed. 2019).

⁵ Rylands v. Fletcher, 1868 LR HL 330.

⁶ RK Bangia, R.K. BANGIA'S THE LAW OF TORTS GOOGLE BOOKS, http://books.google.ie/books?id=rz58tQEACAAJ&dq=Bangia%2Bon%2Btorts%2Blates%2Bedition&hl=&cd=1&source=gbs_api (last visited Jun 1, 2024).

compensation to all parties involved. his liability is not subject to exceptions in the tort principle of strict liability under the rule in *Rylands v. Fletcher*⁷.

It explained the position in the following words:

*“If the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise also has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards.”*⁸

STRICT LIABILITY

The elements of Strict Liability are the same as those of Absolute Liability but the following defences against the former were laid down in *Rylands v. Fletcher*⁹ and certain later cases:

1. Plaintiff at fault: Damage brought on by the escape owing to the plaintiff's own fault can be defended against as well.
2. Act of God: It has always been believed that when an occurrence happens as a result of an unforeseen circumstance that no human being can control, that person cannot be held accountable for any liabilities that may arise or for any incident that results from it.
3. Consent of plaintiff: The defendant will not be found liable in such situation if the plaintiff freely agrees to bear the injury for the benefit of both parties
4. Third-party Act: The defendant will not be held responsible for any damages suffered by the plaintiff if the defendant suffers harm as a result of a third person who was neither the defendant's servant nor linked to the defendant, without any of the defendant's fault.

⁷ *Id.*

⁸ *Supra* note 1.

⁹ *Id.*

5. Statutory authority: An act done under the authority of law cannot be a tort.

II. THE APPLICATION OF TORTIOUS LIABILITY IN BHOPAL GAS TRAGEDY, 1984

1. BACKGROUND

Methyl isocyanate (MIC), a chemical that leaked from Union Carbide India Ltd.'s (UCIL) pesticide facility on the night of December 2, 1984, transformed the city of Bhopal into a massive gas chamber. It was the first significant industrial accident in India. More than 15,000 individuals were killed and more than 600,000 workers were impacted by at least 30 tonnes of methyl isocyanate gas. It is said that the Bhopal gas tragedy is the biggest industrial disaster in history.

E610, E611, and E619, three 68,000-liter liquid microbiocidal storage tanks, were located in Union Carbide India's Bhopal site. Tanks were being filled and MIC production was in motion prior to the accident. Each tank was pressurised with inert nitrogen gas to pump out liquid MIC, and it was not permitted to fill to more than 50% of its capacity. Nevertheless, tank E610 was no longer able to hold onto nitrogen gas pressure, which prevented it from pumping liquid MIC. This tank carried 42 tonnes of liquid MIC, even though regulations said each tank could only hold 30 tonnes. Due to this malfunction, UCIL had to stop producing methyl isocyanate and close the plant in part for maintenance. On December 1, an unsuccessful attempt was made to repair the damaged tank. By that time, the majority of methyl isocyanate safety measures were not working properly. Water seeped into the broken tank on December 2, setting off a chemical reaction that went out of control. The pressure within the tank rose quickly, and by midnight, the MIC area's workers were helpless.

The UCIL plant was founded in 1969 to manufacture the herbicide Sevin, with methyl isocyanate (MIC) serving as an intermediary. Trade unions in Bhopal began to voice concerns about internal pollution by 1976. A worker tragically died within hours after unintentionally breathing in a substantial volume of poisonous phosgene gas. A vigilant reporter looked into the plant and revealed her findings in the local newspaper in Bhopal, alerting the people that they were living "on the edge of a volcano." About 45 workers who were exposed to phosgene

were admitted to the hospital before the Bhopal tragedy. Phosgene, carbon tetrachloride, methyl isocyanate, and monomethylamine leaked between 1983 and 1984.¹⁰

2. LITIGATION

The largest-ever class action lawsuit for damages resulted from the greatest industrial disaster on record. On behalf of thousands of victims, American solicitors filed over 145 cases against UCC in various US courts shortly after the catastrophe. Following their joining, these cases were assigned to the Southern District of New York District Court, where a consolidated complaint took precedence over the separate ones. In accordance with the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 (the "Bhopal Act"), which gave it the authority to represent the Indian plaintiffs, the Union of India filed a separate complaint with the court on June 29, 1985. John F. Keenan, United States District Judge, dismissed the case on May 12, 1986. The American actions were dismissed by United States District Judge John F. Keenan on May 12, 1986, on the grounds that a United States court was not the proper forum for resolving the legal problems at hand. On January 14, 1987, the United States Court of Appeals before the Second Circuit upheld this ruling. On October 5, 1987, the US Supreme Court denied a writ of certiorari challenging the appellate court's decision.

The legal drama then returned to India. In accordance with the Bhopal Act, which granted the Union sole rights to represent any claims against UCC, the Union of India filed the case before the Madhya Pradesh District Court. In around 800 lawsuits that had already been filed, this action halted any further proceedings in anticipation of future actions. On December 17, 1987, M. W. Deo, the District Judge of Bhopal, issued an order for interim relief of 350 crore rupees, or US\$270 million, setting in motion an unprecedented legal event, using the powers conferred by sections 94 and 151 of the CPC, which talked about the inherent powers of the Court to do justice.¹¹ Reliance was placed on the case of *M.C. Mehta v. Union of India*,¹² to award interim compensation for tortious liability. To get this order revised, UCC filed an appeal with the Madhya Pradesh High Court for revision. The revision was partially accepted by the High Court on April 4, 1988, and a lower interim compensation award of 250 crore rupees (US\$195

¹⁰ What was Bhopal Gas Tragedy, Cause of Bhopal Gas Tragedy, Bhopal Gas Tragedy News, BUSINESS STANDARD, <https://www.business-standard.com/about/what-is-bhopal-gas-tragedy> (last visited Jun 1, 2024).

¹¹ The Code of Civil Procedure, 1908, § 94, 151, No. 5, Acts of Parliament, 1908 (India).

¹² *MC Mehta v Union of India*, AIR 1987 SC 965.

million) was issued; nevertheless, UCC's duty to compensate the victims was still fixed.¹³ The High Court allowed the compensation as interim damages under the substantive law of Torts on the basis of a *prima facie* case in the plaintiff's favour. The High Court ventured to pierce the "corporate veil" of Union Carbide India Limited (UCIL), which was effectively controlled and managed by Union Carbide Corporation (UCC). The damages were decreed invoking the principle of Absolute liability by the Supreme Court in the oleum gas leak case.¹⁴ The High Court referred to the Administration of Justice Act 1969 of England, which permitted the award of interim damages and applied the principle in the case at hand. This was the first case of award of '*interim damages*' under Law of torts, due to the sheer magnitude of the damage suffered by the victims. The high Court judgement was a unique and revolutionary one in a revision petition. The High Court's decision to order the interim payment of damages seemed to resolve the matter and provide minimal room for more delay. UCC filed a complaint against this order with the Supreme Court of India, and new settlement talks were initiated. UCC and the Union of India reached a settlement amount of US\$470 million (about 715 crore rupees) as full compensation when the case was before the Supreme Court of India. On February 14 and 15, 1989, the Supreme Court issued a ruling for payment of the amount.¹⁵ The order of the Supreme Court was one which gave more weight to the human suffering caused by the catastrophe and the compulsions for immediate relief to the victims, over the judicial discourse. On multiple petitions for reconsideration of the award, the Supreme Court ruled that until further orders, the Union of India and UCC would both remain under the jurisdiction of Indian courts.¹⁶ The Supreme Court ruled on December 22, 1989, that the Bhopal Act was constitutional.¹⁷ In doing so, the Court the Court had in mind, the settlement and the subsequent events. Even after acknowledging the fact that the victims were not given the right to be heard before the settlement was sealed, it was justified by Mukharji C.J. on the grounds that "*to do a great right, after all, it is permissible to do a little wrong.*" The Supreme Court then started adjudication on the review petitions spearheaded by some private parties, but the settlement was upheld.¹⁸ The court held that since the quantum of values of UCIL's assets in India was about Rs. 100 crores, any excess amount would have to be decreed by the courts of USA, where the settlement was likely to be disputed due to the principle of strict liability being applicable

¹³ Union Carbide Corporation v. Union of India, in the Madhya Pradesh High Court, (1988) Civil Revision Petition no. 26.

¹⁴ MC Mehta v. Union of India, (1984) 3 SCC 161.

¹⁵ Union Carbide Corporation v. Union of India, (1989) 1 SCC 674.

¹⁶ Union Carbide Corporation v. Union of India, (1989) 2 SCC 540.

¹⁷ "Bhopal Gas Leak Act Upheld", The Statesman Weekly, 30 Dec 1989.

¹⁸ Union Carbide Corporation & Others v Union of India & Others, (1994) 4 SCC 584.

there, instead of absolute liability applied in India, and to make good of the deficit, the Union of India was held responsible as a welfare state.

After various failed attempts to reopen the settlement, the Union of India, through a curative petition in 2010, sought to reopen the settlement and increase the amount of settlement. In a unanimous judgement by a five-judge bench, the petition was dismissed by the Supreme Court on the basis that the Union's plea lacked any legal basis and the awarded settlement amount also lay unutilised to an extent that the victims can be granted, the number of original damages, all over again. The court said that the revision was only possible if the Union submitted that the settlement was obtained by fraud on the part of Union Carbide, which was not pled by the Union as it would have led to setting aside of the settlement *ab initio* and *in toto*.¹⁹

3. CRITICAL ANALYSIS

The Indian Law has been adopted from the common law tradition of UK and has evolved to include some of its own doctrines to emerge as a complete discipline. It has been criticised as a “transplant” of the colonial system, which has little wherewithal to perform the duties expected of it and is inefficient and unsuitable for Indian conditions. The system is characterised by the monumental backlog of cases which go on for generations, move at a snail's pace and have become a “gigantic problem”²⁰.

However, with the advent of Social Action Litigation in the 1980s, the courts started to proactively look into the dire conditions which affect and endanger public welfare²¹, rising above the hitherto practice of normal adversarial litigations arcanelly contested by lawyers, which yielded little to no results. It has been designed to bring social justice to the common man at a faster pace and with reduced complexities.

The development of torts law in India has entirely drawn upon the tradition in United Kingdom and it has deviated only to the extent required by the peculiar conditions of India. With limited scope of innovation and novelty, the development of Law of Torts has been plagued by scanty litigation, due to the following reasons:

¹⁹ Union of India & Ors v. M/S Union Carbide Corporation & Ors., 2010 Curative Petition (civil) no. 345-347 in RP no. 229/1989 & 623-624/1989 in CA no. 3187-3188/1988 and SLP (C) no. 13080/1988.

²⁰ LAW COMMISSION OF INDIA, REPORT NO. 14 ON THE REFORM OF JUDICIAL ADMINISTRATION, 1958 (1958); LAW COMMISSION OF INDIA, REPORT NO. 27 ON THE CODE OF CIVIL PROCEDURE, 1964 (1964).

²¹ Upendra Baxi, Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India, 1985 THIRD WORLD LEGAL STUD. 107 (1985).

- The legal system's institutional nature discourages the pursuit of civil remedies to ease interpersonal conflicts within the community;
- Judges and advocates employ an extremely technical approach that ignores the evolving requirements of Indian society.
- The preference, observed in the majority of eastern countries, for the mediation process over the legal process;
- The expensive nature of a lawsuit, including the time, labour, and money spent at each level of the litigation process;
- The delays associated with the litigation process
- The inadequate state of the substantive law on some issues, such as the State's accountability for the torts of its servants
- The ambiguities that the coexistence of many statute provisions causes litigants to perceive
- The general public's low level of legal awareness
- The difficulty in accessing the legal system, as much of the tort law is still uncoded
- The bureaucratic attitude of government officials, which discourages citizens' valid claims even when they are legally enforceable.²²

Despite the above challenges, the approach of combining torts and damages with breach of rights in constitutional law is a praiseworthy approach.²³

Also, the enactment of the Bhopal Act reaffirms the innate capability of the Indian legal system to effectively respond to challenges and accommodate effective remedies. The Act served to protect the victims' right of action which would not have moved in the otherwise slow legal system. The Act provided for statutory claims and thereby served to streamline tenuous procedures involved in civil litigation by empowering the Government to provide effective and speedy remedies.

²² C.M. Abraham & Sushila Abraham, *The Bhopal Case and the Development of Environmental Law in India*, 40 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 334–365.

²³ *Rudul Shah v. State of Bihar* AIR [1983] SC 1086; *Bhim Singh v State of Jammu and Kashmir* [1985] 4 SCC 6

III. VISHAKHAPATNAM GAS LEAK INCIDENT, 2020

1. BACKGROUND

In the wee hours of 7 May 2020, a gas leak accident took place in R.R. Venkatapuram village in Gopalapatnam neighbourhood of Vishakhapatnam, Andhra Pradesh. The incident took place from the LG Polymers Private Limited plant, where Styrene monomer gas evaporated due to increase in temperature and spread over a radius of three kilometres affecting five villages. The malfunction in the cooling system of the manufacturing company claimed the lives of 12 people and injured 1000 others. Due to the gas exposure, hundreds of people rushed to hospitals complaining of breathing problems and the sensation of burning eyes. A significant number of livestock including cattle and other animals were also impacted as they lay unconscious on the ground.²⁴

Styrene gas was used in the production of expandable plastics at temperatures below 20 degrees Celsius. Due to lockdown, the cooling facility of the factory had malfunctioned. This caused styrene to evaporate, building pressure in the storage tank and ultimately the valve of the tank broke and gas started leaking from the tank. This caused the release of three metric tonnes of Styrene in the surroundings. The factory's obsolete Volatile Organic Compounds Detection System was not equipped to detect the leakage of Styrene. The factory is spread over 600 acres including some nearby residential areas.²⁵

2. INVESTIGATION

It was revealed that the factory LG Polymers Ltd. was doing business in violation of the Environment Impact Assessment Notification of 2006²⁶. The Andhra Pradesh Pollution Control Board had merely given its approval for the formation and operation of the business. For over two decades, during the period 2006-2018, the plant managed to operate without a valid environmental clearance and even undergo expansion for five times.²⁷

²⁴ Keith Varghese, Shyama Kuriakose, *A Critique of the NGT's Rulings in the Vizag Gas Leak Case vis-à-vis the Environmental Rule of Law Concept*, 7.2 RGNUL Std. Res. Rev. 198 (2021).

²⁵ A CASE STUDY ON VISHAKHAPATNAM GAS LEAK CASE – ALL INDIA LEGAL FORUM, <https://allindialegalforum.com/2020/08/16/a-case-study-on-vishakhapatnam-gas-leak-case/> (last visited Jun 1, 2024).

²⁶ Environment Impact Assessment Notification, 2006

²⁷ *Supra* note 25

3. JUDGEMENT

The Andhra Pradesh High Court took suo moto cognizance of the matter²⁸ and directed the State Government to promptly undertake requisite steps to mitigate the environmental impact of the incident. The National Green Tribunal, also in its suo - moto cognizance through its interim orders, constituted a five-member committee for investigating at the site of the incident, and also directed LG Polymers Limited to deposit an amount of rupees fifty crores with the District Magistrate of Gopalapatnam for the diminution of the damage caused due to the incident.²⁹ This order of the tribunal in accordance with the *Polluter Pays* principle of environmental law. *Polluter Pays* is a well-established and acclaimed tenet of environmental law. The principle entails the liability of the wrongdoer to compensate for the mitigation of environmental damage caused due to his omissions and commissions. The principle is based on the premise that the polluter is naturally possessed with the ability to make restitution for the loss to environment. This principle can be said be a corollary of the Deep Pocket theory of torts law.

The National Green Tribunal had imposed Strict Liability upon the company³⁰, against Section 17 of the National Green Tribunal Act, 2010³¹ which provided for “no fault liability” to compensate in cases of damage of property, lives and environment as a result of certain activities. This would have allowed the company to plead defences and get away by pleading no negligence on its part.

However, the Tribunal vide its final orders imposed absolute liability on the company and its adjudicating bench observed that investigation revealed that the company was operating without the requisite environmental clearance and the consents to establish and operate the industry was obtained in violation of the law from the State Pollution Control Board.³² The company continued to carry out its operations even after being de-listed and denied the requests for expansion, due to the negligence of the State and Central authorities.³³

²⁸ Poisonous gas leakage in Vishakhapatnam v. State of Andhra Pradesh, 2020 Suo moto WPs (PIL) nos. 112,117 &119.

²⁹ Gas Leak at LG Polymers Chemical Plant, In re, 2020 SCC OnLine NGT 128.

³⁰ *Id.*

³¹ National Green Tribunal Act, 2010, s 17, No. 19, Acts of Parliament, 2010 (India).

³² LG Polymers did not have environmental clearance, alleges HRF, THE HINDU (2020), <https://www.thehindu.com/news/cities/Visakhapatnam/lg-polymers-did-not-have-environmental-clearance-alleges-hrf/article31561365.ece> (last visited Jun 1, 2024).

³³ Gas Leak at LG Polymers Chemical Plant, In re, 2020 SCC OnLine NGT 129.

The Tribunal constituted a committee with representatives from the Union Ministry of Environment, Forests and Climate Change, the Central Pollution Control Board and the State Government to devise a restoration plan.

The Tribunal also ordered that the operations of the company shall not restart without duly fulfilling statutory requirements and that such operations being restarted shall be brought to the notice of the tribunal to ensure compliance with the law.

The Andhra Pradesh High Court directed seizure of the company's premises by the state government, prohibition of shifting of any assets, machinery etc. and surrender of passports of the Company's directors.³⁴

The complicity and negligence of the State and Central authorities' officials allowing the company to establish and operate resulted in the gas leak which has resulted in permanent genetic damage and loss of precious lives. The concerned negligent and complicit officials must be proceeded against for criminal dereliction of duty for their callous approach towards public duty. The investigations and prosecutions must be undertaken in the supervision of the High Court and maximum sentences must be awarded to establish a deterring example for posterity.³⁵

IV. PUBLIC LIABILITY INSURANCE ACT, 1991

The growth of hazardous enterprises affects everyone, whether directly or indirectly. These accidents cause injury to people and animals, damage to private and public property, and fatalities. Regretfully, the majority of those impacted are from economically disadvantaged backgrounds and suffer greatly as a result of delayed recompense. The community is not guaranteed assistance unless they go through drawn-out legal procedures, even if workers at hazardous plants are protected. Accident victims are rarely offered anything in the way of compensation by industries, leaving them with little choice but to pursue protracted legal action.

³⁴ Poisonous gas leakage in Vishakhapatnam v. State of Andhra Pradesh, 2020 Suo moto WPs (PIL) nos. 112,117 &119.

³⁵ Wasim Beg, Swarnendu Chatterjee & Kritika Khanna, BHOPAL TO VIZAG - A JURISPRUDENTIAL ANALYSIS OF THE TORTIOUS LIABILITY FOR COMPANIES SCC TIMES (2020), <https://www.sconline.com/blog/post/2020/06/15/bhopal-to-vizag-a-jurisprudential-analysis-of-the-tortious-liability-for-companies/> (last visited Jun 1, 2024).

The Public Liability Insurance Act of 1991³⁶ was enacted to offer emergency assistance to people injured in accidents involving the handling of dangerous chemicals and associated problems. The Act requires all owners of hazardous materials to execute one or more contracts containing a direct compensation clause.

The Act mandates all businesses handling or producing hazardous substances are obliged to carry insurance. This guarantees that in the event of an accident involving "hazardous substances," the insurance sum paid by the business owner can help victims and other impacted parties (apart from employees) as soon as possible.

This statute provides for liability insurance to compensate for the expenses of administering emergency care to accident victims and handling medications that may cause mistakes and associated problems.³⁷

V. SUGGESTIONS/RECOMMENDATIONS

The foregoing portions of the paper have highlighted various problems encountered while redressing chemical gas disasters. These problems range from protracted legal battles for compensation, quibbles of jurisdiction, and failure of advance warning systems. The following can be some suggestions for the resolution of certain issues.

1. COMPENSATION TO VICTIMS

The two main methods used in the US to compensate victims of industrial disasters are negotiated settlements and tort action. The U.S. tort lawsuit system became well-known after the Bhopal tragedy as the main means by which victims could pursue justice. Supporters of the tort system contend that it assigns blame, allows for in-depth inquiries into the reasons behind tragedies like Bhopal, and provides compensation to victims. While the discovery process makes pertinent documents available to the public, it also gives Union Carbide and the Indian government access to them, which is thought to improve the adversarial aspect of court hearings and investigative rigour. Given that American juries frequently grant significant punitive damages, holding trials in front of jurors is thought to be a good method. Opponents of the tort system, however, have other opinions. They draw attention to the inevitable delays in civil action because there may be several appeals before a final ruling. In

³⁶ The Public Liability Insurance Act, 1991, No. 6, Acts of Parliament, 1991 (India).

³⁷ The Public Liability Insurance Act, 1991, INDIA CODE, <https://www.indiacode.nic.in/bitstream/123456789/1960/1/A1991-06.pdf> (last visited Jun 1, 2024).

addition, the way that attorney fees and court charges are organised increases up the cost of access. Certain alternative measures of compensation can be:

1) Insurance

One way to use technologies that carry significant public risk is to only use them in conjunction with a thorough disaster insurance programme. An insurance scheme like this would set up a fund that could be used in the event of an accident, specify victim rights, designate a principal financial responsible party, ensure quick reimbursement and set fixed liability limits.

2) Host government compensation systems

Plans could be created to ensure that victims receive prompt compensation (via an administrative procedure) from a host government agency that was specifically established by statute for this purpose. Such an organisation may be established prior to handle future disasters falling under a certain categorization, or it could be established post-facto to address that particular calamity.

3) Mixed tort litigation and negotiated settlement schemes:

An effective compensation system would probably include judicial and administrative processes in many emerging nations. A Quasi-Judicial Commission with specific expertise could determine culpability and look into causality. Their conclusions would direct later steps. The total amount of damages to be granted to victims will be decided by civil courts based on the commission's conclusions. To discourage such acts in the future, criminal courts would impose penalties. Penalties may be imposed in lieu of punitive damages in tort cases. The administration would oversee the payment of compensation to victims. Furthermore, the fines gathered can go towards funding preventive measures meant to avert such tragedies in the future.³⁸

2. CRIMINALISATION APPROACH TO BRING ABOUT DETERRENCE

In addition to regulations, the establishment of criminal liability for firms' careless and reckless actions can help avert disasters. It is essential to hold business entities and their decision-makers responsible. Because they respect their prestige, high-level executives have been discouraged by the fear of criminal sanctions. Even brief incarceration can make people wary of putting lives in danger. The deterrent power of criminal prosecution is greater than that of

³⁸ Clarence J Dias, *That They Shall Not Have Died In Vain*, 28 JOURNAL OF THE INDIAN LAW INSTITUTE 53–71 (1986).

ordinary financial damages, which businesses frequently bear. Although tort law recognises punitive damages, criminalization is a more effective form of punishment that politicians should take into consideration.³⁹

3. THE NEED FOR EFFECTIVE REGULATORY FRAMEWORK

The tragedies have brought to light the need for devising effective regulatory and monitoring capabilities to prevent disasters. The processes like laboratory research, manufacturing processes, product testing, storage and transportation of toxins etc. The regulatory authorities should be invested with functions like standard setting, monitoring, sanctioning, public education etc and in addition to being specialised scientific agencies, they must have jurisdiction at their disposal, effective enforcement mechanism and financial independence.⁴⁰

VI. CONCLUSION

The case of Bhopal Gas Tragedy exposed the inadequacies of the regime of regulation of hazardous enterprises and the dearth of laws providing for immediate compensatory and exemplary relief by damages. After the initial quibbles over jurisdiction, the application of absolute liability on Union Carbide provided for relief to the victims. The enactment of the Bhopal Gas Tragedy (Processing of Claims) Act gave impetus to the process.

The principle of absolute liability evolved with the Oleum gas leak case and imposed liability without any defences of want of negligence or plaintiff's consent/ fault, Act of God or statutory authority. Absolute liability results in liability only out of escape of some hazardous substance which causes damage on escaping. The principle was evolved to fix accountability of the owners of industrial enterprises who indulge in potentially harmful activities to be liable in case of occurrence of any damage to the surrounding. It is premised upon the 'Deep-pocket' theory which believes that the wrongdoer possesses the capability to compensate for the damage caused due to his acts.

The Oleum gas leak case was filed under Article 32 of the Constitution as a writ petition for enforcement of the right to life under Article 21. The court relied on the case of *Bandhua Mukti Morcha v. Union of India*, Article 32 not only gave the authority to issue directives, orders, or writs for the enforcement of fundamental rights but also imposed a constitutional obligation on

³⁹ *Id.*

⁴⁰ *Id.*

the Court to protect the people's fundamental rights, for which it had all incidental and ancillary powers, including the authority to create new remedies and devise innovative techniques to enforce fundamental rights. The court went on to say that in certain circumstances, the ability to award compensation may be part of the courts' authority to grant remedial relief, drawing from the earlier cases of *Rudul Sah v. State of Bihar*⁴¹ and *Bhim Singh v. State of Jammu and Kashmir*⁴².

The Court noted that the goal of this extension was to enhance human rights jurisprudence, mainly to instil respect for human rights and social conscience in our corporate structure, rather than to undermine the fundamental justification for the creation of corporations. The Mehta case did resolve the legal question of how much a business involved in a hazardous or intrinsically dangerous industry must pay if someone is killed or seriously injured as a result of an accident that occurs due to the escape of hazardous substances from the premises.

This case created a constitutional law requirement governing hazardous industrial activities in the form of the rule of absolute liability without exceptions. This rule was promptly applied in the Bhopal.

The enactment of the Public Liability Insurance Act, 1991 is also a milestone in the direction of codifying the liability of industries and others in cases of accidents occurring due to their activities.

The application of the rule of absolute liability has strengthened over time and therefore was aptly and quickly applied against LG Polymers in the Vishakhapatnam Gas leak case.

The two incidents highlight the propensity of large industrial enterprises of non-compliance with regulatory provisions and the complicity of government officials in the non-enforcement of laws, which results in the loss of human lives. The law must ensure that such culprits are brought to book and that a deterring example is created to prevent the recurrence of such unfortunate tragedies.

It is believed that the suggestions provided in hereinabove shall be helpful in prevention of occurrence of such tragedies of gas leaks, and in the unfortunate event of occurrence, the process of compensation is streamlined and efficiently targeted towards the victims.

⁴¹ *Rudul Sah v. State of Bihar*, AIR 1983 SC 1086.

⁴² *Bhim Singh v. State of Jammu and Kashmir*, AIR 1986 SC 494.

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