

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 3 | Issue 3**

**2020**

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# Vizag Gas Leak Liability: 'Strict' or 'Absolute'!

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## ABSTRACT

*During the wee hours of 7th May, 2020, a major leak of Styrene gas occurred from a polymer plant near Visakhapatnam, impacting villages in a five-km radius, leaving many people dead and scores of citizens suffering from breathlessness and other problems. The National Green Tribunal took the cognisance of the gas leak incident and suo moto began a probe into the matter. By the order dated 8th May, 2020, the tribunal observed that LG Polymers had prima facie not complied with the provisions of the Manufacturer, Storage and Import of Hazardous Chemical Rules, 1989 and accordingly said that the principle of 'strict liability' would apply in this case to determine their liability for the incident. While the NGT's proactiveness is laudable, the application of the 'strict liability' rule in this case is a matter of concern.*

## I. AN AVOIDABLE CATASTROPHE:

As India battles with the COVID-19 pandemic, the people living in Visakhapatnam, Andhra Pradesh were forced to deal with another life-threatening hazard. On 7<sup>th</sup> May, 2020, sometime around 3 am in the morning, a toxic gas, believed to be Styrene, leaked from a chemical plant owned by LG Polymers Ltd. in Visakhapatnam area killing 11 people and injuring several others.

Styrene is included in the schedule of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989. There are strict norms on how it should be handled and stored. It is a flammable liquid that is used in the manufacturing of rubber, fiberglass and latex. Short Term Exposure to styrene can result in respiratory problems, irritation in the eyes, irritation in the mucous membrane, and gastrointestinal issues. Long Term Exposure can affect the central nervous system drastically and lead to other related problems like peripheral neuropathy. It can also lead to cancer.

LG Polymers' plant is located in a densely populated locality at RR Venkatapuram. The gas spread over a 3-kilometre radius, affecting at least 5 villages and forcing roughly 2,000 people to evacuate from the area. According to eye-witness reports, the incident was initially

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thought to be a fire accident, however, as the pungent smell spread, several people rushed out of their respective homes. While a few people collapsed on the street.

## II. LEGAL CONSEQUENCES OF THE CATASTROPHE:

- The local police have registered a case against the management of LG Polymers under various sections of the Indian Penal Code. These includes Section 278, vitiating atmosphere to make it noxious to health; Section 284, negligent conduct of poisonous substances; Section 285, negligently conducting fire or any combustible matter; Section 337 and 378, causing hurt and grievous hurt and endangering life and safety of others and Section 304, culpable homicide not amounting to murder.
- The High Court of Andhra Pradesh has taken suo moto cognizance<sup>2</sup> of the incident of Vizag gas leak incident. The High Court has directed the State to take all necessary steps to mitigate the loss that may be caused due to this incident. The court has directed the State Government to issue an order directing all private hospitals in Visakhapatnam to open for medical aid to the needy. A committee of officers not below the rank of Principal Secretaries must be appointed by the State Government to monitor the activities and to file compliance report. The Court has appointed Senior Counsel YV Ravi Prasad as Amicus Curiae in the case and directed the District Level Service Authority to provide proper assistance through para legal volunteers.
- The National Human Rights Commission has also taken suo moto cognizance<sup>3</sup> of media reports about Vizag incident. The Commission has observed that though prima facie, as of now, there are no reports regarding human error or negligence but the fact that so far at least 8 innocent citizens have lost their lives and thousands have fallen sick, is indeed a serious issue of violation of human rights. Right to life of the victims has been grossly violated.
- In a suo moto case<sup>4</sup> registered against the above-mentioned fatal incident of chemical gas leak at Vizag in Andhra Pradesh, the National Green Tribunal has constituted a five-member Committee to inspect the site and submit a report.

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<sup>2</sup> Shruti Mahajan, Vizag gas leak Andhra Pradesh High Court takes suo moto cognizance of the incident, directs State to take all necessary mitigating steps, Bar and Bench (May 7, 2020, 11:12 PM IST), <http://www.barandbench.com/news/litigation/vizag-gas-leak-andhra-pradesh-high-court-takes-suo-moto-cognizance-of-the-incident-directs-state-to-take-all-necessary-mitigating-steps>

<sup>3</sup> Live Law News Network, Vizag Gas Leak: NHRC Takes Suo Moto Cognizance; Issues Notice to Centre and AP Govt, Live Law (May 7, 2020, 08:57 GMT)

<sup>4</sup> In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh; Original Application No. 73/2020.

A bench comprising of Justice Adarsh Goel, Chairperson; Justice Sheo Kumar Singh, Judicial Member and Dr. Nagin Nanda Expert Member have in the interregnum directed LG Polymers India Private Ltd., owner of the plant from where the gas leaked, to deposit a sum of Rs. 50 Crore, with the District Magistrate, Visakhapatnam. “Having regard to the prima facie material regarding the extent of damage of life, public health and environment, we direct LG Polymers India Private Ltd., to forthwith deposit an initial amount of Rs. 50 Crore, with the District Magistrate, Visakhapatnam, which will abide by further orders of this tribunal,” the Tribunal has ordered.

Styrene gas is a hazardous chemical as defined under Rule 2(e) read with Entry 583 of Schedule I to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989. The Rules require on-site and off-site Emergency Plans to ensure prevention of damage. “There appears to be failure to comply with the said Rules and other statutory provisions. Leakage of hazardous gas at such a scale adversely affecting public health and environment, clearly attracts the principle of ‘strict liability’ against the enterprise engaged in hazardous or inherently dangerous industry. Such an entity is liable to restore the damage caused under the Environment Law, apart from other statutory liability” the court observed.

### III. THE LIABILITY:

The Principle of “strict liability”, evolved in the year 1868 in the case of *Rylands v. Fletcher*<sup>5</sup>, has become obsolete now with the evolution of “absolute liability” principle in the case of *M. C. Mehta v. UOI*<sup>6</sup> and *Bhopal Gas Leak*<sup>7</sup> case.

As per ‘strict liability’ principle, any person who indulges in “non-natural” use of land and who keeps “hazardous substances” on his premises and causes any “damage” any person or property. However, this principle allows for exception<sup>8</sup> from liability if such damage has been caused by:

- i. The Plaintiff’s own fault;
- ii. An Act of God;
- iii. Act of a Third Party; or
- iv. If the hazardous activity was being carried out with the consent of the Plaintiff.

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<sup>5</sup> 1866 L. R. 1 Ex.256. 1868 L. R. 3 HL 330.

<sup>6</sup> 1987 SCR (1) 819 (Oleum gas leak case).

<sup>7</sup> AIR (1989) (1) SCC 674: AIR 1992 SC 248

<sup>8</sup> Supra 7.

In this principle, the concept of strict liability contemplates the accountability of a person/firm/industry carrying out hazardous activity in cases where some sort of “negligence” is attributed to them.

Later on, this principle was overruled by the Indian Supreme Court in the celebrated decision of *MC Mehta v. Union of India*<sup>9</sup>, whereby the top court evolved the concept of ‘no-fault liability’, formally known as the principle of “Absolute Liability”, to remedy the “undeserved suffering of thousand of innocent citizens”.

Under this principle, “an enterprise, which is engaged in hazardous or inherently dangerous 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 duty, to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken.” This principle offers no exception to the industries involved in hazardous activities and they are absolutely liable for the damage so caused, despite observance of due diligence.

The rule of absolute liability is similar to the rule of strict liability with some modification. This rule applies without any limitation or exception and creates an individual completely liable for any fault. The property to make anyone absolutely liable for the fault and imposition of high retraction make this liability as absolute liability.

By explaining the rule of No fault liability<sup>10</sup> *Blackburn J.* said that “We think that the rule of law is that the person who for his own purposes brings on this lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape.”<sup>11</sup>

Finding the principle of strict liability “woefully inadequate” to protect citizens’ rights in an industrialized economy like India, the Apex Court formulated the principle of absolute liability in the above-mentioned case<sup>12</sup>. The country was then reeling under the shock of the 1984 Bhopal gas tragedy. The court under then *Chief Justice P. N. Bhagwati* wanted corporations to be made fully liable for future “undeserved suffering of thousands of innocent citizens”. So, under this principle, the apex court held that a company which is in a hazardous industry cannot claim any exemption. It has to mandatorily pay equitable compensation,

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<sup>9</sup> Ibid 4.

<sup>10</sup>Dr. S. R. Kapoor on Law of Torts 7<sup>th</sup> Edition pg.272.

<sup>11</sup> The Rule in *Rylands v. Fletcher*. Part I by Bohlen, Francis H. (1911).

<sup>12</sup> Ibid 4.

whether or not the disaster was caused by its negligence. The court also observed that a hazardous enterprise has an “absolute non-delegable duty to the community”.

*Justice Bhagwati* wrote, “if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm, irrespective of the fact that the enterprise had taken all reasonable care and that the harm occurred without any negligence on its part”<sup>13</sup>.

The principle has thereafter also been reaffirmed by the Supreme Court on various occasions, including in the case of *Charan Lal Sahu v. UOI*<sup>14</sup>, whereby it was highlighted that this rule is “absolute and non-delegable” and the enterprise cannot escape liability by showing that it had taken reasonable care or there was no negligence on its part.

To sum up, the principle of absolute liability, was evolved by the Supreme Court to ensure that the profit-oriented industrial enterprises carrying on inherently hazardous activities do not escape their liability in terms of the exceptions available under the principle of strict liability. Therefore, the use of words “strict liability” under the NGT order opens up a convenient window for the company, LG Polymers, to escape the liability on showing that there was no negligence on their part.

An appeal had been filed by the company before the Supreme Court against the NGT order which directed for the deposit of Rs. 50 Crores by the company and formed a Committee to inquire into the tragedy. The Court held that the questions raised by Appellant are legal in nature. Therefore, Appellant is given liberty to raise appropriate concerns before the NGT.

The specific details of Vizag gas leak are yet not known. Under the principle of absolute liability, it should be noted that there exists no defence thereby LG Polymers’ duty lies to pay compensation for such accident. Additionally, it is essential to take note that the number of loss of life will not be applicable as an argument for defence.

The Andhra Pradesh Government has already declared<sup>15</sup> that aid of Rs. 1 Crore to be paid to the families of deceased in this incident. Additionally, critically ill or patient on ventilators will get aid of Rs. 10 lakh each and other people who are hospitalized will get Rs. 1 lakh each. The state government will also give compensation to the individuals who needed to visit the emergency clinic, the families which needed evaluation, and the individuals who lost their cattle to the incident. These aids and compensation be that as it may, are ex gratia

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<sup>13</sup> Ibid 4.

<sup>14</sup> AIR 1990 SC 1480.

<sup>15</sup> <https://www.thehindu.com/news/nation/andhra-pradesh/compensation-paid-to-people-affected-by-vizag-gas-leak/article31618208.ece/amp/>

payment by the state government, and totally separate from the company's liability.

#### **IV. DIFFERENCE BETWEEN ABSOLUTE AND STRICT LIABILITY:**

Apart from availability of various exception under the principle of strict liability, the rule is also at variance from the principle of absolute liability when it comes to the extent of damages to be paid. Whereas, under strict liability, compensation is payable as per the nature and quantum of damages caused but in cases of absolute liability, damages to be paid are exemplary in nature, and depend upon the magnitude and financial capability of the enterprise.

Further, the element of "escape" is not an essential under the doctrine of absolute liability. This means that even if any hazardous substance does not leak from premises of the industry but causes harm to the workers inside, the enterprise may be held absolutely liable.

Inter alia, absolute liability can be upheld by the courts even in those cases where a single death is reported and there is no mass destruction of property or pollution of the environment.

#### **V. PUBLIC LIABILITY INSURANCE ACT, 1991:**

Over and above the compensation/aid that may be awarded by the Courts, the victims are also entitled to compensation under the company's Public Liability Insurance, available in terms of the Public Liability Insurance Act, 1991. The compensation payable under this Act is also irrespective of the company's neglect. The victims who are exposed to hazardous substances used by an industry may file a claim with the Collector within 5 years of the incident.

#### **VI. CONCLUDING REMARK:**

The situation of hapless victims of unfortunate gas leak tragedy is a quick reminder that safety is of utmost importance when existing the lockdown. The immediate focus of the Andhra Pradesh Government must be on the medical needs of those who have been grievously affected by the incident. Adequate payments and compensation for the victims and families are important, but so is access to the highest quality of health care for the victims.

The National Green Tribunal Act, 2010 under Section 17 read alongside Schedule I, recognises only absolute or no-fault liability principle. That is, a hazardous enterprise is liable even if the disaster is an accident and not caused by the negligence of the company. The Act of 2010 fully incorporated the principle of 1986's Oleum gas leak judgment.

The company LG Polymers, similar to Union Carbide, is also owned by foreign enterprise, making it similar like the Bhopal Gas leak tragedy. While the casualties in the Vizag gas leak

is fewer than those in Bhopal in 1984, and the styrene gas is not reported to cause the long-term harm, the standard of absolute liability should imply that a significant measure of compensation should be paid to the people in suffering. Thereby, the use of “strict liability” principle by the National Green Tribunal in the order dated 8<sup>th</sup> May, 2020, gives LG Polymers’ a loophole and an advantage which otherwise would not have prevailed.

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