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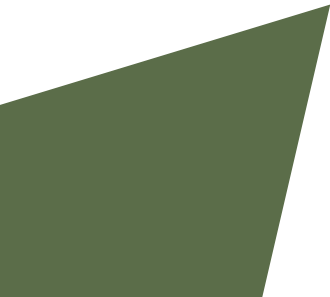
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The Visakhapatnam Chemical Disaster

Arpita Pattnaik & Ketaki Vatsa

INTRODUCTION

'Justice' has always been an abstract concept in the jurisprudence of law. The mathematics of law doesn't ensure justice hence it is called a court of law and not a court of justice. Jogging our memories back, to the years 1984¹ and 1986², was justice delivered? However, the procedure established by the law was. The humongous chemical disasters through the leakage of Oleum gas and methyl isocyanate have redefined misery for the mankind. The dawn of 7th May 2020 showed a repetition of the same when the chemical styrene leaked from the factories owned by LG Polymers in Visakhapatnam.³ The leakage which occurred at nearly 2 am left lots of people unconsciously lying on ground by the morning. The chemical named styrene has been classified as a possible human carcinogen by the International Agency for Cancer Research.⁴No doubt, the number of deaths tolled only to 12 due to the excellent response of the concerned authorities however, the fear is not limited to what we see presently.⁵ The chemical travelled in a radius of 3 km and every person affected by the same even minutely has a chance of showing symptoms of cancer, genetic disorders and other health issues across generations. Styrene is a chemical known to cross placental barriers, damage the foetus, genetically damage human fraternity just like methyl isocyanate which caused chromosome aberrations.⁶ Hence, the statements of the police officers and management of LG Polymers, that the leakage has not really impacted the human life violently, on national television holds no ground.⁷ This article seeks to evaluate the entire incident from the legal perspective and present a comprehensive study of how have the country failed in ensuring environmental protections through clearances to these industries, what shall be the legal steps ahead and the compensation which shall finally be the only way to fathom the misery of the victims.

¹The Editors of Encyclopaedia Britannica, 'Bhopal Disaster' (*Britannica*, 28 Oct 2008) <www.britannica.com> accessed 25 May 2020.

²M.C. Mehta vs. Union of India, 1987 SCR (1) 819.

³India Today Web Desk, 'Visakhapatnam Gas Leak Updates: Day after tragedy, gas fumes begin leaking again' (*India Today*, 07 May 2020) <<http://www.indiatoday.in/india/story/hundreds-fall-ill-afetr-hazardous-gas-leak-at-polymer-plant-in-visakhapatnam-panic-in-area-1675204-2020-05-07>> accessed 24 May 2020.

⁴National Toxicology Program, 'Report on carcinogens, Fourteenth Edition' (*U.S. Department of Health and Human Services*, 2011) < <https://ntp.niehs.nih.gov/ntp/roc/content/profiles//styrene.pdf>> accessed 25 May 2020.

⁵*Ibid.*

⁶Satinath Sarangi, 'Absolute Liability Needed: Bhopal Activist on Vizag Gas Leak', (*The Quint*, 07 May 2020) < <https://www.thequint.com/news/india/absolute-liability-needed-bhopal-gas-tragedy-activist-sainath-sarangi-on-vizag-gas-leak>> accessed 25 May 2020.

⁷Andhra Pradesh Bureau, 'Visakhapatnam gas leak, Updates' (*The Hindu*, 07 May 2020) < <https://www.thehindu.com/news/cities/Visakhapatnam/visakhapatnam-lg-polimers-chemical-plant-gas-leak-updates-may-7-2020/article31523178.ece>> accessed 25 May 2020.

FACTUAL BACKGROUND

On 7 May 2020, an industrial accident occurred at the LG Polymers chemical plant in R. R. Venkatapuram village of Visakhapatnam, Andhra Pradesh, India. The accident was caused by leaking vapour from the styrene monomer gas storage tank at the plant. The gas spread over a radius of about 3 kilometres, affecting at least five villages. The accident took 12 lives and hundreds from the nearby villages were hospitalised. It is considered to be one of the deadliest industrial accidents after the Bhopal Gas Tragedy of 1984.⁸

After the tragedy took place, the Gopalapatnam police registered an F.I.R. against the authorities. Charges of negligence and culpable homicide were slapped against the company. The National Green Tribunal (NGT) took *suo moto* cognizance of the matter and a committee headed by former Andhra Pradesh High Court judge, Justice B. Seshayana Reddy was set up to investigate into the cause of the accident the matter. The NGT observed that there have been multiple statutory violations and had sought Centre's response with respect to the same. The company had applied for post facto approval for expansion of its capacity. Since the application with respect to the same was pending, the operation of the plant was a violation of the green rules. The NGT also imposed an interim penalty of 50 crores on LG Polymers. The amount was decided after assessing the financial worth of the company and the damages caused to the environment and to life and public health. In its order the committee directed the application of strict liability.⁹

Apart from NGT, National Human Rights Commission and Andhra Pradesh Pollution Control Board have also set up committees to look into the matter. LG Polymers moved the Supreme Court and questioned setting up of multiple committees to investigate the matter when the High Court was already seized with it. The company informed the three-judge bench headed by Justice U.U. Lalit that it has already deposited 50 crores with the District Magistrate as directed by the Tribunal and that it did not intend to create roadblocks in the proceedings. However, the Apex Court decided not to interfere in the matter and suggested the company to bring up the issue before the NGT.¹⁰

⁸Amit Kumar, 'Vizag Gas Leak: Why the NGT Should Have Applied Absolute, Not Strict Liability?' (*The Wire*, 13 May 2020) <<https://thewire.in/rights/vizag-gas-leak-ngt-strict-absolute-liability>> accessed 24 May 2020.

⁹Vishwa Mohan, 'LG Polymers fined Rs. 50cr for Vizag gas leak by NGT, ministry says firm violated green norms' (*Times of India*, 9 May 2020) <<https://timesofindia.indiatimes.com/india/lg-polymers-fined-rs-50cr-for-vizag-gas-leak/articleshow/75638773.cms>> accessed 24 May 2020.

¹⁰Legal Correspondent, 'A.P. gas leak: Supreme Court declines to interfere with the NGT order' (*The Hindu*, 20 May 2020) <<https://www.thehindu.com/news/national/ap-gas-leak-supreme-court-declines-to-interfere-with-ngt-order/article31627889.ece>> accessed 24 May 2020.

C. CHARGES BEING LITIGATED

I. POST FACTO APPROVALS IN VIOLATION OF ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION, 2006

The Vizag Gas Leak is also, in a way, result of various statutory violations. Apparently, LG Polymers had been operating without the required environmental clearance under Environment Impact Assessment (EIA) Notification, 2006 for a substantial period. The company had admitted by way of a notarised affidavit, dated May 8, 2019 that it had been operating in violation of the EIA Notification 2006 as it had been operating and carrying out some “minor expansions” without a valid clearance. The company had been getting post facto approvals from the local assessment authority. In the affidavit, the company had also undertaken to never repeat the mistake.¹¹

The company was planning to expand its production capacity of polystyrene from 415 to 655 tonnes per day and to change the product mix when it finally applied for an environmental clearance. The plan of expansion was classified as a ‘Category A’ project. Under Clause 2 of the EIA Notification, 2006, such projects require prior clearance from the Union Ministry. Contrary to said provision, in May 2019, LG Polymers filed for clearance with the Andhra Pradesh State Environment Impact Assessment Authority (SEIAA). However, the application for clearance was transferred to the Union Ministry and has been pending since then. Despite the application being pending which means that the impact of the project on the environment was never assessed, the company had been operating.¹² The EIA Notification, 2006 provides for an elaborate procedure for obtaining environmental clearance. The procedure involves screening, scoping, public consultation and appraisal. According to Clause 5 of the EIA Notification, 2006, Central Expert Appraisal Committee is responsible for the screening, scoping and appraising of Category A projects before they decide to grant/not grant clearance to such projects.¹³ When the impact of Category A projects on the environment should be assessed more carefully, all these stages have been ignored in case of LG Polymers.

The incident has brought to light the drawbacks of making post-facto approval a part of the environment clearance process. The idea of post facto approval dilutes the importance of precautionary principles and prior clearance under environmental law. The Supreme Court had

¹¹Jayashree Nandi, ‘Vizag polymer unit didn’t have environmental nod’ (Hindustan Times, 9 May 2020) <<https://www.hindustantimes.com/india-news/vizag-polymer-unit-didn-t-have-environmental-nod/story-CSMrE8I36C3k5TTR2fVsDM.html>> accessed 24 May 2020.

¹²*Ibid.*

¹³ Environment Impact Assessment Notification, 2006, cl 5.

made it clear in case of *Alembic Pharmaceuticals v. Rohit Prajapati & Ors*¹⁴ that post-facto approvals are illegal and granting such approvals amounts to blatant misuse of power. The Court observed that allowing such practice may cause detrimental effect on the environment. Therefore, not just the companies violating the norms but also the authorities that have been granting post facto approvals to the such companies should be held accountable. The mechanism of prior approvals should not be viewed as a hindrance to the development as it is a path leading to sustainable development.

Recently the Ministry has introduced the draft EIA Notification, 2020 that proposes to make post-facto approvals the law. It looks like a permanent mechanism for the industries causing violations under the EIA Notification, 2006. Apparently, the measure has been taken to make the process easier and to encourage investment. It'll make the process of obtaining clearance more discretionary than mandatory. Once post facto clearance becomes the law, people in the business will always prefer post facto clearance to prior clearance as the process of obtaining prior clearance involves conducting public hearing and mitigation.¹⁵ Moreover, the Environment (Protection) Act, 1986, the Water Act, 1971 and the Air Act, 1981 do not provide for post facto approval. When the law made by parliament does not provide for post facto approvals, it would be ultra vires the legislation if the executive acts against the enacted law in exercise of its delegated power.¹⁶ The Ministry has sought comments from the stakeholders on the draft. In light of the Vizag Gas leak, the draft has been facing serious criticism from the environmentalists and activists. It is very important to understand the importance of prior clearance and learn a lesson from the Vizag Gas Leak incident. Public health and environment cannot be put at stake for expediting the procedure in interest of the developers and investors.

II. VIOLATIONS UNDER MANUFACTURE, STORAGE AND IMPORT OF HAZARDOUS CHEMICAL RULES, 1989

Styrene gas is a hazardous substance under Rule 2(e) read with Entry 583 of Schedule I to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989. According to the NGT, LG Polymers has failed in complying with the provisions of the said rules. Rule 13 and 14 of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 require the occupier to prepare an on-site and an off-site emergency plan respectively in case any major accident occurs.

¹⁴Mayank Agarwal, 'Government pushes for post facto environment clearances while court disapproves' (Mongabay, 6 April 2020) <<https://india.mongabay.com/2020/04/government-pushes-for-post-facto-environment-clearances-while-apex-court-disapproves/>> accessed 6 April 2020.

¹⁵Word Press Admin, 'Vizag Gas Leak: Experts question post facto approval provision in green rules' (Latest Talks, 10 May 2020) <<https://latesttalks.in/gas-leak-vizag-gas-leak-experts-question-post-facto-approval-provision-in-green-rules/>> accessed 24 May 2020.

¹⁶*Ibid.*

Rule 2(j) of the said Rules define major accidents as “*an incident involving loss of life inside or outside the installation, or ten or more injuries inside and/or one or more injuries outside or release of toxic chemicals or explosion or fire or spillage of hazardous chemicals resulting in on-site or off-site emergencies or damage to equipment leading to stoppage of process or adverse effects to the environment*”.¹⁷

The Vizag Gas Leak can be classified as a ‘major accident’ as the accident involved release of toxic chemicals as a result of which at least 12 people lost their lives and over thousand were hospitalised.¹⁸ The said rules require the occupier of an establishment dealing with hazardous chemical to be prepared for such accidents with an on-site and an off-site evacuation plan. The on-site emergency plan shall comprise of the name of the person responsible for taking actions in case of an emergency. The said rule also requires the company to carry out mock drills of the evacuation plan at regular intervals. On the other hand, Rule 14 talks about an off-site emergency plan to minimise the off-site harm likely to be caused as a result of such accident. According to the NGT, LG Polymers India has prima-facie failed in effective compliance of the aforementioned rules with respect to the Vizag Gas Leak accident.

III. CIVIL LITIGATION

The High Court of Judicature at Allahabad had taken *suo moto* cognizance in a matter and noted in its order that where gross negligence is occasioned by the public authorities and the government, where laws are disobeyed and the public is put to suffering, constitutional values are injured a constitutional court can take the matter into its own hands.¹⁹ The Visakhapatnam gas leak case is one such incident in which the judicial bodies have taken matters into their own hands.²⁰ The High Court of Andhra Pradesh has taken *suo moto* cognizance of the incident and had directed the States to take all necessary steps to mitigate the loss.²¹ The court has also posed various questions like how was the company operating without any valid environmental clearance, also the refrigeration system was un-checked neither was the inhibitor concentration in the storage tank. It had ordered

¹⁷ Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, r 2(j).

¹⁸ Amit Kumar, ‘Vizag Gas Leak: Why the NGT Should Have Applied Absolute, Not Strict Liability’ (*The Wire*, 13 May 2020) <<https://thewire.in/rights/vizag-gas-leak-ngt-strict-absolute-liability>> accessed 24 May 2020.

¹⁹ Abhishek Gupta, ‘Suo motu cognizance: A panacea or a predicament?’ (*Bar and Bench*, 23 May 2020) <<https://www.barandbench.com/columns/suo-motu-cognizance-a-panacea-or-predicament>> accessed 24 May 2020.

²⁰ Kaushik Vaidya, ‘Civil and Criminal Process That Ought to Follow the Vizag Gas Leak’ (*Bloomberg, Quint*, 12 May 2020) <<https://www.bloombergquint.com/business/civil-and-criminal-process-that-ought-to-follow-the-vizag-gas-leak>> accessed 25 May 2020.

²¹ 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*, 7 May 2020) <<https://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>> accessed 25 May 2020.

the company premises to be seized entirely and the directors are asked not leave the country without seeking the leave of the court.²²

Apart from the High Court, the National Green Tribunal, New Delhi had also taken *suo moto* cognizance of the matter and had constituted a 5-member committee to probe into the matter. It slapped a fine of 50 crores at a very initial stage on LG Polymers.²³ Though the company had deposited the same as soon, but they also proceeded to the Supreme Court through a SLP under Article 136 to bring forth various concerns such as, NGT didn't have the jurisdiction to constitute such a committee and take *suo moto* cognizance of the matter when the High Court was already dealing with the matter.²⁴ The main argument put forth by the senior advocate representing LG Polymers was how many legal bodies are actually required to be deployed to investigate one case?²⁵ In addition to the above committee constituted by NGT, there are a minimum of 7 other committees constituted by the Central Pollution Control Board, National Human Rights Commission, the Ministry of Environment and Forest and the Central government.²⁶ However, the Apex Court denied the relief of staying the formation of such committees by any of these bodies at this stage and has directed the company to take up the stand before NGT as to how it lacked the jurisdiction.²⁷

Apart from all these litigation actions, LG Polymers had also moved to the Supreme Court with a defamation suit against Andhra Pradesh Pollution Control Board (APPCB).²⁸ The essential content of the suit was that, these bodies had been contributing to the loss of reputation of the company through legal suits despite the measures taken by the firm to ensure compensation and other necessary steps.²⁹

Having said the above, what exactly matters at this point is the issues faced by the victims, the degradation of the environment, plants and animals. There could be several grounds of claim

²²Meera Emmanuel, 'Vizag Gas Leak: Andhra Pradesh High Court directs seizure of LG Polymers company premises, Directors barred from leaving India without Court leave' (*Bar and Bench*, 24 May 2020) accessed 24 May 2020.

²³Shruti Mahajan, 'Vizag Gas Leak: NGT takes suo moto cognizance, directs LG Polymers to pay Rs 50 Crore for now' (*Bar and Bench*, 8 May 2020) <<https://www.barandbench.com/news/litigation/vizag-gas-leak-ngt-takes-suo-moto-cognizance-directs-lg-polymers-to-pay-rs-50-crore-for-now>> accessed 24 May 2020.

²⁴News 18, 'Vizag Gas Tragedy: SC Asks LG Polymers to Move NGT to Raise Issue of Multiple Committees, Jurisdiction' (*News 18*, 19 May 2020) <<https://www.news18.com/news/india/vizag-gas-tragedy-sc-asks-lg-polymers-to-move-ngt-to-raise-issue-of-multiple-committees-jurisdiction-2627421.html>> accessed 25 May 2020.

²⁵*Ibid.*

²⁶Manish Kumar, 'Years of neglect lead to vizag gas tragedy' (*Mongabay*, 20 May 2020) <<https://india.mongabay.com/2020/05/years-of-neglect-led-to-vizag-gas-tragedy/>> accessed 25 May 2020.

²⁷Debayan Roy, 'Vizag Gas Leak: Supreme Court asks LG Polymers to approach tribunal over a multitude of committees conducting probe' (*Bar and Bench*, 19 May 2020) <<https://www.barandbench.com/news/litigation/vizag-gas-leak-supreme-court-asks-lg-polymers-to-approach-ngt-over-appropriate-committee-to-conduct-probe>> accessed 25 May 2020.

²⁸AppajiReddem, 'Vizag gas leak: LG Polymers moves Supreme Court against Andhra Pradesh Pollution Control Board' (*The Hindu*, 19 May 2020) <www.hindu.com> accessed 25 May 2020.

²⁹*Ibid.*

against the company, beginning from violations of the quality right to life of the villagers who had to evacuate their homes one fine morning to the negligence of functioning as a going concern without valid clearances. At the end of the day, the poor suffers. We have failed to understand that money does not buy lives. The pain suffered by the people who lost their family members is unfathomable. Though the courts may arrive at a conclusion as to the compensation that should be paid, the state government may have paid crores of rupees to the kin of the people who died, but is money always the answer to all the problems? The company should have been 10 times more careful about the situation prevalent and the storage of the gas. This case very clearly portrays the issues of bureaucracy in this country.

IV. CRIMINAL LITIGATION

The recent styrene leakage came unannounced and the authorities were all put into action. LG Polymers a unit of South Korea's biggest petrochemical maker, LG Chemical Ltd, was preparing to restart operations after the nationwide lockdown to curb the spread of novel coronavirus when the leakage occurred. Mr. M.V. Subba Rao, village Revenue Officer, filed FIR against the management of LG Polymers Company owing to the death of 12 people, 5 on spot and other after being admitted to the hospital.³⁰ The FIR clearly alleges the authorities of criminal negligence and culpable homicide not amounting to murder under multiple sections.³¹ The charges under Section 278 IPC (making the atmosphere noxious to health), Section 284 (negligent conduct with respect to poisonous substance), Section 285 (negligent conduct with respect to fire and combustible matter), Section 304 (culpable homicide not amounting to murder) and Sections 337 and 338 relating to causing hurt and grievous hurt to human life and atmosphere.³²

The very basis of criminal jurisprudence mentions the presence of four elements purpose, knowledge, recklessness and negligence to establish the presence of *mens rea*.³³ However, in the case in hand, the concept of corporate criminal liability may be attracted as mentioned in *Sunil Bharti Mittal v. CBI*³⁴ by the Apex Court.³⁵ It mentioned, “No doubt, a corporate entity is an artificial

³⁰Times Now Digital, ‘FIR filed against LG Polymers as death toll rises in Vizag gas leak case’ (*Times Now News*, 07 May 2020) <<https://www.timesnownews.com/india/article/fir-filed-against-lg-polymers-as-death-toll-rises-in-vizag-gas-leak-case-details/588452>> accessed 25 May 2020.

³¹*Ibid.*

³²Kaushik Vaidya, ‘Civil and Criminal Process That Ought to Follow the Vizag Gas Leak’ (*Bloomberg, Quint*, 12 May 2020) <<https://www.bloombergquint.com/business/civil-and-criminal-process-that-ought-to-follow-the-vizag-gas-leak>> accessed 25 May 2020.

³³Nidhi Raman and Ritesh Kumar, ‘Crime Without Punishment Conundrum Of Vicarious Liability In Criminal Law’ (*Live Law.in*, 9 May 2020) <<https://www.livelaw.in/columns/crime-without-punishment-conundrum-of-vicarious-liability-in-criminal-law-156491>> accessed 24 May 2020.

³⁴(2015) 4 SCC 609.

³⁵Nidhi Raman and Ritesh Kumar, ‘Crime Without Punishment Conundrum Of Vicarious Liability In Criminal Law’ (*Live Law.in*, 9 May 2020) <<https://www.livelaw.in/columns/crime-without-punishment-conundrum-of-vicarious-liability-in-criminal-law-156491>> accessed 24 May 2020.

person which acts through its officers, directors etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of the individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy.” The case also mentions that, such liability can only be attracted if the statute expressly mentions of the same. Again, very recently in the case of *Shiv Kumar Jatia v. State*³⁶, the Apex Court stated that, an individual either a director or a chairperson or any concerned authority of a company can be made an accused, along with the company only if there is sufficient material to prove, his active role coupled with the criminal intent. This intent alleged must bear a direct nexus with the accused.³⁷ Moreover, in the case of *Keshub v. State of M.P.*³⁸, which arose out of the Bhopal Gas Tragedy, mentions that mere running a plant as per permission granted by the authorities does not amount to criminal intent. Even assuming it had defects or there remains some short coming in the procedural requirements, doesn't suffice the intent required to be criminally liable.³⁹

In the present case, the courts are yet to proceed with the litigation and the stands are yet to be taken. Clearly, these concepts of vicarious liability or corporate criminal liability are not recognised under criminal jurisprudence in India. The country shall see an evolution of criminal law in India in case the courts and the legislatures seek to make LG Polymers criminally liable.

REVISITING THE HISTORY

The NGT, in the given case of Vizag Gas Leak has applied the rule of strict liability. The 19th century rule of strict liability was introduced by the House of Lords in case of *Rylands v. Fletcher*⁴⁰.⁴¹ In this case, House of Lords held that any person who allows a dangerous substance on their land that escapes and harms a neighbour should be held liable under the rule of strict liability. It is also important to prove non-natural use of land in order to apply the rule of strict liability.⁴² However, the rule of strict liability was subject to various exceptions like plaintiff's own

³⁶ AIR 2019 SC 4463.

³⁷ Nidhi Raman and Ritesh Kumar, 'Crime Without Punishment Conundrum Of Vicarious Liability In Criminal Law' (*Live Law.in*, 9 May 2020) <<https://www.livelaw.in/columns/crime-without-punishment-conundrum-of-vicarious-liability-in-criminal-law-156491>> accessed 24 May 2020.

³⁸ (1996) 6 SCC 129.

³⁹ Debayan Roy, 'Vizag Gas Leak: Supreme Court asks LG Polymers to approach tribunal over a multitude of committees conducting probe' (*Bar and Bench*, 19 May 2020) <<https://www.barandbench.com/news/litigation/vizag-gas-leak-supreme-court-asks-lg-polymers-to-approach-ngt-over-appropriate-committee-to-conduct-probe>> accessed 25 May 2020.

⁴⁰ (1868) L.R. 3 H.L. 330.

⁴¹ <http://docs.manupatra.in/newline/articles/Upload/2D83321D-590A-4646-83F6-9D8E84F5AA3C.pdf>.

⁴² Sakshi Raje, 'Rules of Strict and Absolute Liability' (*Law Times Journal*, 20 September 2018) <<http://lawtimesjournal.in/rules-of-strict-and-absolute-liability/>> accessed 24 May 2020.

fault, act of God, act of third party and consent of the plaintiff. Therefore, in reality very little of the rule was actually left to be applied.

In the case of *M.C. Mehta v. Union of India*⁴³ and in the *Bhopal Gas Leak*⁴⁴ case the Honourable Supreme Court of India observed that the rule of “strict” liability was not strict enough with the offenders. The rule of absolute liability was applied for the first time in case of *M.C. Mehta v. Union of India*⁴⁵. In this case, Justice Bhagwati analysed that the rule of strict liability was developed in the 19th century when the industrial revolution had just begun and hence, could not be applied in the modern world without any modification.

The rule was again applied in the Bhopal Gas Leak⁴⁶ case when UCC tried to escape from the liability using the exception of ‘act of third party’ under the strict liability rule. It argued that there wasn’t any negligence on its part and that the accident was caused by an act of third party. The court did not accept this argument and made the company liable under the rule of absolute liability.

The essentials of absolute liability are as follows: -⁴⁷

- i. Involvement of hazardous chemical or inherently dangerous activity
- ii. Harm caused by escape of such chemical or carrying out of such activity

The Supreme Court in case of *M.C. Mehta v. Union*⁴⁸ of India also laid down the differences between strict liability and absolute liability in the said case. The differences are as follows: -⁴⁹

- i. Under the rule of absolute liability only the industries that are involved in hazardous chemicals or inherently dangerous activities can be made liable. This implies that the industries not involved in hazardous chemicals or inherently dangerous activities shall be made liable under the rule of strict liability.
- ii. Escape of dangerous thing from one’s own land is not necessary which means this rule shall be applicable to those injured within the premise as well as to those outside the premise.
- iii. Rule of absolute liability is not subject to any exceptions. Whereas, the rule of strict liability has certain exceptions to it.
- iv. The rule of strict liability applies only in cases of non-natural use of land. On the other hand, the rule of absolute liability applies otherwise also.

⁴³1987 SCR (1) 819.

⁴⁴(1989) (1) SCC 674: AIR 1992 SC 248.

⁴⁵1987 SCR (1) 819.

⁴⁶(1989)(1)SCC 674: AIR 1992 SC 248.

⁴⁷<http://docs.manupatra.in/newslines/articles/Upload/2D83321D-590A-4646-83F6-9D8E84F5AA3C.pdf>.

⁴⁸1987 SCR (1) 819.

⁴⁹*ibid.*

The principle of strict liability was overturned by the Indian Judiciary to remedy the “undeserved suffering of the innocent citizens”. Doctrine of absolute liability is a much stronger tool when compared with the older tool of doctrine of strict liability. Industrial development plays a very important part of a country’s growth. However, sustainable development should not be thrown out of perspective. The present case satisfies the essentials of the doctrine of absolute liability as the precedents set by the Honourable Supreme Court clearly establish that in cases where a company is involved in use of a hazardous chemical and any harm is caused by leak of such chemical, the company should be made liable absolutely. Styrene gas is a hazardous substance under Rule 2(e) read with Entry 583 of Schedule I to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989⁵⁰ and its escape from the plant of LG Polymers caused damage to the environment and to public health. At least 12 people lost their lives and over thousand were hospitalised as a result of the accident.⁵¹ Surprisingly, the NGT still decided to apply the lesser effective doctrine of strict liability.

⁵⁰ Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, r 2(e).

⁵¹ Amit Kumar, ‘Vizag Gas Leak: Why the NGT Should Have Applied Absolute, Not Strict Liability?’ (*The Wire*, 13 May 2020) <<https://thewire.in/rights/vizag-gas-leak-ngt-strict-absolute-liability>> accessed 24 May 2020.

CONCLUSION

At this point, litigations have been initiated at various levels. Though the NGT has probed the matter under charges of strict liability, the case is apt as a case of absolute liability. The victims can claim compensations fewer than two ways, firstly, special damages are attracted under the concepts of absolute liability through suits filed in the civil courts. In the case of *M.C. Mehta vs. Union of India*⁵², the Apex Court had held that the measure of compensation in such cases must be correlated to the magnitude and capacity of the enterprise to have a deterrent effect. The large and more prosperous the enterprise, greater must be the amount of compensation for the harm caused due to its carelessness in functioning with the inherently dangerous and hazardous substances. This principle was also approved in the case of *Charan Lal Sabu vs. Union of India*⁵³. Secondly, there could be claims under Public Liability Insurance Act, 1991⁵⁴. It envisages mandatory insurance for the purpose of providing immediate relief to the victims of accident arising out of hazardous process and operations. The Act mainly protects the members of the weaker sections of the society who by the reason of their limited resources cannot afford to fight the lengthy litigations in the Indian courts. To achieve the above it mandatorily mentions of a public insurance based on the principle of no fault liability.⁵⁵ Section 3 of the afore-mentioned Act, lays down that even when there is no fault on the part of the owners, they shall be responsible to make good the damages in case death or injury or damages to property has resulted from an accident. The truth of agony and despair of the poor and less privileged society is not a new topic of discussion, however, what irks the mind is that the most civilized, educated and well to do society has been the causing such damages and the poor has been bearing losses of the same from time immemorial. Nothing has really changed from 1986 to 2020.

⁵²AIR 1987 SC 1086.

⁵³AIR 1990 SC 1480.

⁵⁴Section 3, Public Liability Insurance Act, 1991.

⁵⁵ Md. Z.M. Nomani, "Law Relating to Environmental Liability and Dispute Redressal: Emergence and Dimension", (XXIII(1&2)*Indian Bar Review*, 1996) accessed 24 May 2020.