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## Revisiting the Concept of Absolute Liability: A Case Comment On LG Polymers (India) (P) Ltd. v A.P. Pollution Control Board

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### INTRODUCTION

In the early morning of May 7, 2020, a chemical plant leaked a considerable number of toxic gases at Venkatapuram village on the outskirts of Visakhapatnam, Andhra Pradesh. This was the LG Polymers chemical plant, owned by the South Korean company LG Chemicals which engaged in the production of styrene. This led to 12 deaths and more than 1,000 people injured as well as the destruction of the ecological flora and fauna of the surrounding environment.<sup>1</sup>

To understand why the leak led to so many deaths and injuries, it is important to know what styrene exactly is. Styrene is an organic substance and a benzene derivative. It is a clear, oily liquid; however, it can become yellow with age. It has a very high propensity to evaporate. Styrene may be organically present in coal tar as well as several plants, including cinnamon, coffee beans, peanuts, and balsam trees, in tiny amounts. Rubber, plastic, insulation, fiberglass,

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<sup>1</sup> Srinivasa Rao, 'Vizag Gas Leak: A year on, villagers near the plant continue to live in fear' (*Hindustan Times*, 08 May 2021) <<https://www.hindustantimes.com/india-news/vizag-gas-leak-a-year-on-villagers-near-the-plant-continue-to-live-in-fear-101620414482377.html>> accessed 01 April 2023

pipes, components for cars and boats, and food containers all utilize styrene thus making it a very important substance for industries. Direct exposure may cause some respiratory troubles, eye irritation, mucous tissue irritation, and other stomach disorders. It is included as a 'dangerous substance' under the provisions of the Environmental Protection Act, 1956 as per the Rules known as Chemical Accident (Emergency Planning, Preparedness, and Response) Rules 1996, Part-II in the List of hazardous toxic substances.<sup>2</sup>

According to media reports, the temperature fluctuation and stagnation inside the holding tank of the chemical plant, caused the styrene to auto-polymerize and evaporate, which led to the leaking of the toxic gas, styrene. It is believed that a computer glitch failed to cool down the styrene monomer causing styrene to vaporize between 2:30 AM and 3:00 AM and it spread to an area of nearly 1.5 KM around the plant. The lockdown also had a role to play here, as the plant was shut for days and was not maintained in a standardized manner. This incident happened when the lockdown was imposed and only some maintenance work was happening inside the plant. Based on reports by officials, styrene was not being kept at the proper temperature, which resulted in a build-up of pressure in the storage chamber that led to the valve breaking, and nearly 3 tonnes of toxic fumes were let out in the air. The styrene gas storage container was old and inadequately maintained.

## **FACTS OF THE CASE**

Initially, the National Green Tribunal, India's top court for environmental issues, took *suo moto* cognizance of the case based on media reports and formed a committee under the leadership of Justice B. Reddy, a retired judge of the Andhra Pradesh High Court to examine the cause of the incident, damage occurred to life and environment, as well as possible remedial measures for compensation. It derives the authority to do this from Sections 14 and 15 of the National Green Tribunal Act, 2010 which talks about the jurisdiction of the tribunal as well as the measures it can take to provide compensation to victims in such cases.<sup>5</sup>

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<sup>2</sup> Environmental Protection Act 1956

The investigation attributed the event to severe human failure and a lack of fundamental safety standards because industrial personnel and the organization as a whole lacked experience in keeping tanks of such hazardous chemicals. The operation of LG Polymers without the required environmental approvals was also discovered. The corporation acknowledged running the facility without the required environmental approvals from 1997 to 2019 in answer to a question from the State Environment Impact Assessment Authority.<sup>3</sup>

Following the committee's investigation into the tragedy, the NGT ordered LG Polymers India (hereinafter referred to as 'Appellant') to deposit Rs. 50 crores with the District Collector of Visakhapatnam. According to the Deep Pocket Theory used by Indian courts, the compensation sum is calculated using the plant's true worth. Usually, it is in direct proportion to the company's current pricing worth. For each family of a deceased person, the Andhra Pradesh government promised an *ex-gratia* payment of Rs. 1 crore, along with cash for those who were injured in the incident. The State Government allocated a budget of Rs. 30 crores for the payment of the victims.<sup>7</sup>

What led to the controversy is the application of Strict Liability by the NGT to this incident, rather than Absolute Liability even though the former was made redundant by the Supreme Court in India in 1986. Social activists and lawyers also spoke out against tax-payer money being used for compensation of the victims. This led to the Andhra Pradesh High Court directing the State Government to set up a committee to look into the incident. The High Court also took *suo moto* cognizance and passed an order to shut down the chemical plant.

The Appellant had appealed to the Supreme Court, challenging the jurisdiction of the NGT to take up the case *suo moto* and direct the company to pay the compensation, especially when the case was sub judice in the Andhra Pradesh High Court. The case was judged by a bench of Uday U. Lalit, M. Shantanagoudar, and Vineet Saran JJ. The Appellant was allowed by the Supreme Court to file its contentions to the reports of the committee formed by the Tribunal. The Supreme

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<sup>3</sup> Sumit Bhattacharjee, 'Visakhapatnam Gas Leak | How negligence and violations led to a deadly disaster' (*The Hindu*, 06 June 2020) <<https://www.thehindu.com/news/cities/Visakhapatnam/visakhapatnam-gas-leak-how-negligence-andviolations-led-to-a-deadly-disaster/article61675181.ece>> accessed 01 April 2023

Court also indefinitely deferred the proceedings of the NGT. It also stayed the order of the Tribunal to pay an *ex-gratia* amount of Rs. 50 crores.<sup>4</sup> The High Court's decision to close the Visakhapatnam factory and its surroundings was also contested by the Appellant and it claimed the sealing violated the constitution. However, the plant still stands closed as of this day.

The case is still pending before the High Court and the Tribunal, although the South Korean company sent nearly 13,000 tonnes of Styrene back to Seoul in the April of 2022, with special permission from the Ministry of Shipping.<sup>9</sup> The corporation received approval from the High Court recently to relocate and sell unused raw materials, finished goods, and packaging from the facility because they posed a risk to the public's health if left untreated.

### ANALYSIS OF THE CASE

The concepts of Strict Liability and Absolute Liability were heavily debated during the proceedings of this case. To analyze these concepts further, we will first be looking at what they mean. In the Law of Torts, liability is categorized into two: Strict Liability and Absolute Liability. The rule of Strict Liability was laid down in *Rylands v Fletcher*<sup>5</sup> in the year 1866. Blackburn J set down the pre-requisites for this Liability which are:

- The person should have brought something dangerous to his land.
- The dangerous thing should escape the premises.
- It must be a non-natural use of the land.

However, Acts of God, *Voluntis Non Fit Injuria*, and Wrongful Acts of a Third Party are exceptions to the rule of Strict Liability which makes it easier for corporations to find loopholes and free themselves from liability. Absolute Liability is said to be stricter than Strict Liability. This makes the individual/corporation entirely liable for the dangerous thing escaping the premises and allows no exceptions. This concept slowly started taking root after the Bhopal Gas Tragedy of 1984 and was finally made concrete in *M.C. Mehta v Union of India*.<sup>6</sup> Bhagwati J stated that the

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<sup>4</sup> *LG Polymers India Private Limited v Andhra Pradesh Pollution Control* (2020) 6 SCC 619

<sup>5</sup> *Rylands v Fletcher* [1866] LR 1 Exch 265

<sup>6</sup> *M C Mehta and Anr v Union of India & Ors* (1986) AIR 1086

ratio decidendi of *Rylands v Fletcher*<sup>12</sup> was of the 19<sup>th</sup> century and cannot be followed in the present times. Thus, the idea of absolute liability was formed, which states that anytime a firm is involved in a project that poses a risk to its employees' lives or that of the community at large, it has an unalienable obligation to ensure that no damage would come to the locals. Even if harm is done, the business will make up for it, and it is not permitted to claim any of the exceptions specified in the strict liability clause. The business cannot argue that its employees were being negligent or that it had taken all necessary precautions. This was further reaffirmed in *Charan Lal Sahu Etc. v Union of India and Ors.*<sup>7</sup> The National Green Tribunal's decision to invoke Strict Liability was flawed. Styrene, the toxic gas which was leaked, is described as a hazardous chemical under Rule 2(e) of Schedule I of the Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989.<sup>8</sup> The Vizag Gas Leak Case is eerily similar to the Bhopal Gas Tragedy and also follows all of the pre-requisites of Absolute Liability:

- There was a dangerous thing (Styrene) on the land.
- It escaped. (The Gas leaked).
- The use of the land was non-natural (A chemical plant in a residential area).

The Tribunal should have invoked Absolute Liability in this case. The High Courts and Supreme Court have applied Absolute Liability in preceding cases similar to this one:

- *Assn. of Victims of Uphaar Tragedy v Union of India (UOI) and Ors.*<sup>9</sup>
- *K. Ramulu and Ors. v Shaik Khaja And Ors.*<sup>10</sup>
- *Smt. Kaushnuma Begum and Ors v The New India Assurance Co. Ltd.*<sup>11</sup>

The key distinctions between Strict and Absolute Liability can be identified now that the underlying concepts have been grasped. In the former, compensation is due by the type and extent of the harm, but the damages are only nominal and are based on the defendant's capacity.

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<sup>7</sup> *Charan Lal Sahu Etc v Union of India and Ors* (1990) AIR 1480

<sup>8</sup> Manufacture, Storage and Import of Hazardous Chemical Rules 1989

<sup>9</sup> *Assn of Victims of Uphaar Tragedy v Union of India (UOI) & Ors* (2003) ACJ 1631

<sup>10</sup> *K Ramulu and Ors v Shaik Khaja and Ors* (1990) ACJ 359

<sup>11</sup> *Smt Kaushnuma Begum and Ors v The New India Assurance Co Ltd* (2001) (2) SCC 9

Furthermore, the latter concept does not need the escape, which means that even if a dangerous material does not seep from the business but hurts the employees within, the firm might still be held entirely responsible.

This case also includes the concept of Negligence. Winfield and Jolowicz define Negligence as “The defendant's breach of a legal duty of care that causes the plaintiff to suffer unintended harm.” In India, it is included in the Indian Penal Code, 1860 under Section 304A which talks about causing death by negligence not amounting to culpable homicide.<sup>12</sup> An FIR has been lodged against the company under this very section. According to the findings of the committee formed by the NGT, the Appellant had acted negligently in several ways:

- Styrene has to have constant circulation to maintain a stable temperature. However, because of the countrywide lockdown, factory activities came to a complete halt, and the styrene supply remained unchanged. Thus, self-polymerization occurred.
- There was no apparatus in the plant to record the change in temperature in the upper part of the tank because of which styrene reached its boiling point and leaked.
- The company did not have enough tertiary butyl catechol (TBC), which could have avoided the heating of styrene.
- The cylinder from which the gas spilled was a very old one.

Since 1997, the company had been operating without the necessary environmental approvals by the Environment Ministry but was instead allowed to do so by the Andhra Pradesh Pollution Control Board.<sup>13</sup> Based on the facts so far, it is evident that the company is liable for negligence as well as Absolute Liability and not Strict Liability as per the NGT proceedings. It was a wise decision by the Supreme Court to halt any further proceedings by the Tribunal which would have led to the company finding loopholes and avoiding any sort of liability.

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<sup>12</sup> Indian Penal Code 1860

<sup>13</sup> *M C Mehta and Anr v Union of India & Ors* (1986) AIR 1086

## CONCLUSION

According to medical experts, styrene contains a plethora of carcinogenic chemicals. The gas leak in Vizag not only had a macabre effect on the people living around the plant but also on the biodiversity in the area. Experts opined that the styrene leak also resulted in significant water and soil pollution and extreme loss in profits to the agrarian community living around the plant. The lessons learned from the Bhopal Gas Tragedy seem to have had no effect on how Multi-National Corporations operate in the country and the level of care that they take towards the lives of the people. The Indian Judiciary needs to do more than just offer financial compensation to victims of such disasters. There have been many gas leaks since the one at Vizag in 2020, with the most recent one being a chlorine leak in Bhopal in October 2022.<sup>14</sup> The government and the judiciary have the responsibility to curtail the tendency of chemical plants being built in residential areas or offer rehabilitation to the people already living near such plants.

The judgment of the NGT was worrying and would have set a wrong precedent for such future cases, allowing corporations to escape liability and the consequences of their negligent actions. While the decision of the Supreme Court was prudent, it also needs to do more than just offer monetary compensation to the victims and instead look into long-term measures that would help mitigate the effects of the tragedy on the people. The Supreme Court also needs to pass specific and clear instructions regarding the jurisdiction of Tribunals and if High Courts can take *suo moto* cognizance of cases that are already being handled by a Tribunal. This can set a benchmark for future judgements and would prevent corporations from filing petitions which only seem to delay justice.

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<sup>14</sup> Ravish Singh, 'Chlorine gas leak at Bhopal water treatment plant triggers panic, probe ordered' (*India Today*, 27 October 2022) <<https://www.indiatoday.in/india/story/breathing-issues-hospitalised-chlorine-gas-leak-mp-bhopal-watertreatment-plant-2289877-2022-10-27>> accessed 05 April 2023