VOLUME 21 ISSN 2456-9704

# THE AFTERMATH OF A CATASTROPHE: VIZAG GAS LEAK

*By Jay Gajbhiye and Saransh Saxena*
*From National Law University, Odisha*

## ABSTRACT

Over the last couple of decades, there have been quite a few cases involving gas leaks from such potentially hazardous industries which posed a grave threat to the lives of people as well as on the damages occurring on both properties and the environment. A similar case of gas leakage had occurred a few months ago in the LG Polymers Facility at Vishakhapatnam. This case had occurred on the 7th of May, 2020 during the imposed lockdown amidst the COVID pandemic. Despite the damages that occurred to both life and property through this leakage, the suo-moto cognizance by NGT recognizes this accident's liability as 'Strict Liability' and not 'Absolute Liability'. Hence, through this paper, the authors have not only made an effort to analyze each aspect of this incident but have also sought to enlighten the true application of liability on the part of LG Polymers in this context.

## INTRODUCTION

In the treatment of industrial incidents, India suffers from institutional apathy. It has to concentrate on its inadequate tackling of the "Bhopal gas tragedy" to respond effectively and tactfully to the recent Visakhapatnam gas leak.

In the aftermath of the gas escape in the LG Polymers facility in Vizag in the early hours of 7 May 2020, the neoteric occurrence and the significant number of people dead and hospitalized have rekindled the emergence of the Bhopal Gas Tragedy. Andhra Pradesh's government has guaranteed the sum of one crore each for the families of those who died in the tragedy.

Since, the post images from social networking sites from Visakhapatnam are a sign of the all-too-regular series of the 1984 incident, which not only lost valued lives and sustained casualties but continued to have an impact even today. In this particular section, we would look at the "Vizag gas leak, along with the other Indian industrial disasters", that has taken the country's failure and inadequacy to react efficiently and tactfully in these situations to the forefront.

## THE GAS LEAK ACCIDENT

"The Vizag Gas Leak" was a manufacturing accident that occurred at an independent plastic producing styrene unit managed by "LG Polymers Pvt. Ltd", a division of the "South Korean" giant LG Corp. in "R. R. Venkatapuram village near Gopalapatnam, on the outskirts of Visakhapatnam, Andhra Pradesh, in the early morning of 7 May 2020". The emanated fumes dispersed within about three kilometers of distance, striking nearby zones and villages. The incident led to the deaths of 12, thousands of people panting, and other problems in early morning trouble that developed worries of a vital disaster.[1]
The plant was shut down for a long time and efforts to resume the project have been made.

[1] "VIZAG GAS LEAK: HOW EVENTS UNFOLDED & WHY IT HAPPENED | ALL YOU NEED TO KNOW - INDIA NEWS, https://www.indiatoday.in/india/story/vizag-gas-leak-tragedy-visakhapatnam-lg-polymers-all-you-need-to-know-1675509-2020-05-07 (last visited Jun 23, 2020)".

There was some chemical reaction that began in the container and a significant quantity of Styrene gas was spilled in the area.

Firetrucks, police, and ambulances handled the situation. The NDRF's professional "Chemical, Biological, Radiological and Nuclear (CBRN) security unit", enthusiastically relocated 1,200 families to secured areas and also admitted about 400 individuals to the hospital.

On May 7, the "Andhra Pradesh High Court" recognized the accident and directed the State to adopt all the necessary steps to mitigate losses sustained by the accident.

Regarding the escape of toxic fumes, the "Indian National Human Rights Commission" released a notification to the Government of Andhra Pradesh and the Union.

## DID THE NEGLIGENCE OF WORKERS CAUSED THE LEAK?

The "APFSL officers" under the leadership of "RK Sarin" and "T Suresh" then inspected the area and gathered proof of the gas tragedy. The precursory report of the APFSL noted that the failure to attach an inhibitor of "auto polymerization to the styrene storage tank" and not keeping the "temperature below 20 degrees during the lockdown" led to an accident which took 12 lives.[2]

To circumvent self-polymerization, specialists have considered that the synthesis of Styrene and tertiary butyl catechol (TBC) should be carried out. The TBC was not added and everything current during the time was inactive.

Self-polymerization occurred which led to a chemical reaction, that then induced a huge heat of 150 ° C followed by the escape of the gas.

DGP Gautam Sawang claimed that they examined the inability of employees to hold the "coolant" and apply inhibitors to the sample. He added, "It is a tough call to conclude at this point. Even if it is an accident, there's a human element of negligence".

## INTERVENTION OF THE NATIONAL GREEN TRIBUNAL

"The National Green Tribunal (NGT)" was notified of the "gas leak" accident and an autonomous investigation was initiated. By a notification issued on May 8, 2020, the NGT found that LG Polymers "prima facie" neglected "Manufacture, Storage and Import of Hazardous Chemical (Amendment) Rules, 1989" and asserted that in the present situation the principle of "strict liability" was to implement to evaluate its obligation for the disaster.

In light of the economic condition, the NGT instructed LG Polymers to indemnify the "District Magistrate, Visakhapatnam" a transaction of Rs "50 crores". The company confronted the amount to the SC, but no solution was sought. The NGT constituted a

[2] "VIZAG GAS TRAGEDY: HUMAN ERROR CAUSED VIZAG GAS LEAK; REPORT | VISAKHAPATNAM NEWS - TIMES OF INDIA, https://timesofindia.indiatimes.com/city/visakhapatnam/human-error-led-to-lg-styrene-leak-fsl/articleshow/75665680.cms (last visited Jun 23, 2020)".

panel to examine the case and refer its recommendation to the Tribunal.

**DID THE PLANT HAVE A VALID ENVIRONMENTAL CLEARANCE?**

The LG Polymers plant in Vizag had no proper certificate of environmental conformity for a substantial duration between 1997 and 2019. The Company stated that according to a memorandum proposed to the "Andhra Pradesh Environment Assessment Authority (SEIAA)", the corporation has no "valid environmental clearance that supports the sum of continuous operations funded by the competent authority" as of 10 May 2019.[3] Environmental clearance is a mechanism for gaining policy authorization for the development and alteration of such forms of infrastructure. This method is necessary for projects with a massive push for environmental deterioration. The 2006 Notice of "Environmental Impact Assessment (EIA) Plan" mentions such companies. E.g. are the coal mining sector, river valley schemes, thermal power plants, etc.

The "EIA Notification", 2006 point out two groups of programs, Categories- A and B. All divisions concentrate on the spatial complexity of possible damages, future public health effects, and man-made land. The "Ministry of Environment, Forest and Climate Change" shall approve Category A programs, and clearances of "SEIAA" shall be received from the Programs of Category B.

"The LG polymer plant was type-A and had to be approved by the Ministry for EC but it also registered for approval by SEIAA. The SEIAA, Andhra Pradesh subsequently forwarded the appeal to the Central Government".

While the reasons for the gas spill remains slightly clear, there could be incompetence to the incident attributable to LG polymer's perspective to the correct plan and the surmised absence of proper approval to run the factory. "This negligence, if proven, only furthers the need to apply the rule of an absolute liability instead of strict liability to ensure adequate reparations to those affected and the delivery of justice".

**THE RULE OF STRICT LIABILITY DIRECTED BY THE NGT**

The "suo moto" reaction of the NGT was a pragmatic stride forward and a reasonable paradigm for upcoming action to be taken in similar circumstances by the Judiciary. Because styrene, however, was contemplated to have escaped, that's to suggest, as a "dangerous chemical, defined in the 1989 Manufacture, Storage and Import of Hazardous Chemical (Amendment) Rules," the NGT observed the leak of this perilous gas would call for a "strict liability rule" to LG Polymers.

While the NGT's proactivity was praiseworthy, it was of concern to enforce the "strict liability rule" although LG Polymers might or might not have taken appropriate measures, it would be liable for reimbursing any those impacted, under the "rule of absolute liability".

[3] "VIZAG GAS LEAK: LG POLYMERS OPERATED WITHOUT APPROPRIATE ENVIRONMENT CLEARANCE, https://thewire.in/government/vizag-styrene-gas-leak-lg-polymers-environmental-clearance (last visited Jun 24, 2020)".

To assess the applicability of the claim, it is first necessary to understand the basic essence of the responsibility, which can be expressed in this horrible gas leak accident. Under the so-called "Tort Law", two forms of liability may be regarded to determine the faults of LG Polymers, and thereby be responsible for reimbursement for losses suffered to both life and properties. Strict Liability and Absolute Liability contain these obligations. By definition, "Doctrine of Strict Liability"[4] may be applied, if certain conditions are fulfilled, which are a non-natural use of the land, escape of a hazardous object from the land which must have caused harm to other parties.

The events of the Bhopal Gas Tragedy and the Oleum gas leak have proven to be a landmark in the development of the applicability of the "Rule of Absolute liability"[5], strengthening its distinctness from the previous concept of strict liability. The court decided in the Oleum Gas Leak case, "If an enterprise or an organization is carrying out a hazardous and inherently dangerous activity within its land, with the sole aim of profit earning, and damage occurs due to its operational activities, the Strict Liability rule shall be waived off and the rule of absolute liability shall apply, providing an obligation on the part of the defendant to compensate for the damages occurred to life and property due to the operational use of the dangerous thing."

In the present situation, the obligation of LG Polymers for the catastrophic release of Styrene gas from the facilities is calculated to be Absolute liability rather than strict liability. The NGT, as taken up by suo moto cognizance, was found to be unjust and unfair in the context both for the damage to life and property and for the punitive damage imposed on LG Polymers. Thus, by applying the rule of absolute liability, the room created by strict liability for defenses to be taken by the defendant was closed down and other shortcomings were justified.

## CASE STUDY

### BHOPAL GAS TRAGEDY[6]

The Bhopal gas incident is considered to be something of a massacre occurring "on the night of 2-3 December 1984 at Union Carbide India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh". It was estimated that this gas leak of Methyl Isocyanate (MIC) would affect about 6 lakhs across the city with a death toll of about 8000 within a week of the leak. The cause of this disastrous spread of MIC was ascertained to have been due to human error combined with non-working of faulty equipment. At that time, since only the rule of Strict Liability was in existence, UCIL escaped the liability by pleading for defenses and thus were relieved by paying $470 million to escape the litigation[7].

[4] Jones W, Strict Liability for Hazardous Enterprise, *Columbia Law Review,* [*92*(7), 1705-1779. doi:10.2307/1123044 (1992)]

[5] Absolute Liability for Dangerous Things. (1948). *Harvard Law Review, 61*(3), 515-523. doi:10.2307/1335529

[6] *Union Carbide Corporation* v *Union of India Etc* [1990] AIR 273.

[7] Mathur, C., & Morehouse, W. (2002). Twice Poisoned Bhopal: Notes on the Continuing Aftermath of the World's Worst Industrial Disaster. *International Labor and Working-Class History,* (62), 69-75. Retrieved June 25, 2020, from www.jstor.org/stable/27672806

Hence, unfortunately, although the UCIL escaped the liability by paying minimal damages, still many indemnities could not have been ascertained that was caused due to leak including damage to property, damage to the environment that further led to many environmental implications such as global warming, ozone layer degradation, groundwater contamination, etc.

**OLEUM GAS LEAK CASE[8]**

This case of the gas leak has its significance as it laid the foundation stone for the applicability of the Absolute Liability theory in India. Before that, all industrial accidents, including the Bhopal Gas disaster, were handled under the strict liability that had built a variety of loopholes overnight, thereby proving helpful to the wrongdoing defendants. Hence, a need was required to introduce such a rule which, regardless of any type of defenses, held the owners of such enterprises, liable.

In this disastrous occurrence, oleum gas had spread from a fertilizer plant in 1985. The spread was resultant from human error, combined with faulty protective equipment. The petition called for the disclosure of this plant of Shriram industries, and also a proper inspection to be carried out on all such potentially hazardous industries. Mr. M.C. Mehta filed the writ petition in the Supreme Court.

The key point of the petition was the applicability of the absolute liability statute, rather than the strict liability. This factor had been more prominent to be discussed after the occurrence of two similar types of incidents within 1 year. Both incidents, the Bhopal gas leak, and the Oleum gas leak had similar nature, and due to the absence of the rule of Absolute Liability a year back then, the defendants of the Bhopal gas disaster came out clean-handed despite their over-looking and negligent actions over the incident.

**CONCLUSION**

Although all the gas leak incidents that took place were supported by some element of negligence and human error, still all the defendants in their respective defenses have thrown light on the idea of either mistake or Act of God. These defenses were easy to be taken till the Bhopal gas leak incident, until the plea by M.C. Mehta came into existence, which then laid the foundation stone of the rule of Absolute Liability, which proved to be extremely beneficial to ascertain liability on the part of the defendants, and also to adjudge the amount of compensation payable to the aggrieved people, properties as well as to the environment.

Regarding the Vizag gas leak, the cause of the incident was ascertained to be a technical error in addition to the negligence of employee staff. It was also investigated that the plant had been in operation without adequate safety measures and also without satisfactory permit certification. The industry neither had paid due precaution to the happenings, nor it had any countermeasures for any type of occurrence of the accident. These ill-measured points towards serious questions of whether operational use of such industries, where no safety precaution is available, is allowed and also in event of occurrence of any damage, whether the compensatory damages to be paid are sufficient enough to ascertain the loss occurred to lives, property as well as to the environment.

[8] *M C Mehta* v *Union of India* [1987] SCR 1 819.

As a satisfactory answer to all these questions, the rule of Absolute Liability shall be applied, which shall in itself offer no possible defense to the owners. This rule shall hold LG Polymers liable for the damage that occurred, including the compensation for death to the families of 12 people, the damages to the suffered due to exposure to this toxic gas, in addition to the damages to the property, as well as to the environment. Furthermore, in respect to non-compliance of the industrial guidelines and the non-provision of basic safety and precautionary measures, LG Polymers must be ordered to shut down its operations of the Vishakhapatnam site, and to necessarily ensure proper safety and precautionary measures in all its other site branches to avoid the occurrence of any such disastrous incident in future. In its dedication to advance with its wealthy neighbors, India should not repeat the same errors. This is a case of upgrading some of the obsolete and rigid "labor laws" with unpredictable effects.

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