
THE BHOPAL GAS LEAK CASE: IMPLICATIONS OF ABSOLUTE LIABILITY AND CORPORATE ACCOUNTABILITY

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ABSTRACT

This paper examines the Union Carbide Corporation v. Union of India, also known as the Bhopal Gas Leak Case, which reaffirmed the principles of strict liability and absolute liability in India. The case involved a massive gas leak from the Bhopal plant, resulting in significant harm to the people and environment. The paper analyzes the application of absolute liability by the courts and argues that it was the appropriate legal doctrine given the hazardous nature of the activity and the extent of the damage caused. However, the paper highlights the shortcomings of the compensation awarded and the flaws in the calculation process. It also raises questions about the use of taxpayer money to cover private entity damages. The paper concludes by emphasizing the need for stronger legal requirements to protect human rights and prevent industries from neglecting public health in their pursuit of profit. The Bhopal Gas Leak Case serves as a reminder of the weaknesses in Indian laws and the importance of holding corporations accountable for their actions.

Introduction

Union Carbide Corporation (UCC) v. Union of India, also popularly known as the “Bhopal Gas Leak Case”¹, reaffirmed the crucial principles of strict liability and absolute liability in India. In this case, the Bhopal plant was established with the incorporation of Union Carbide (with 51% stakes) and the Union of India. In 1984, methyl isocyanate², a highly toxic gas, leaked from the company’s premises and affected a large number of people and animals. The Indian government brought the matter before foreign courts, but those courts ultimately rejected it owing to a jurisdictional conflict. The Bhopal District Court then ordered 350 million from Union Carbide as interim compensation for the damages caused by the gas release. The UCC³ reached the High Court, which decreased the compensation amount to 250 million. Finally, they filed an appeal with the Supreme Court. In 1989, the Supreme Court dismissed all criminal charges and ordered the business to pay the government \$470 million.⁴ However, the people were not satisfied as they received less amount of money than they were promised. Thus several petitions were again filled in the Supreme court.

There were several issues involved in this case, but tortious liability is the focus of this paper. The question of the law was whether liability arises on the part of UCC for the gas leak and the damage that people faced. The courts applied the rule of absolute liability, which was first introduced by justice P Bhagwati in *M.C. Mehta and Ors. vs Union of India*, 1986⁵. The Hon’ble Apex Court, in 1987, maximised the limit of the rule of *Ryland v. Fletcher*⁶, stating that “*where an enterprise is engaged in a hazardous or inherently dangerous industry 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 and nondelegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.*”⁷

Justice Pathak, in his judgement of 1989, made Union Carbide Corporation absolutely liable for the all the damage arising out of the leak and directed them to pay a total of \$470 million

¹ P Cullinan, S D Acquilla & V R Dhara, *Long term morbidity in survivors of the 1984 Bhopal gas leak*, 9 THE NATIONAL MEDICAL JOURNAL OF INDIA 5–10 (1996).

² Methyl isocyanate is extremely toxic. There is no known antidote. MIC is toxic by inhalation, ingestion and contact in quantities as low as 0.4 ppm.

³ Union Carbide Corporation

⁴ *Union Carbide Corporation and others v Union of India and ors.*, (1989) 1 SCC 674 (India).

⁵ *M.C. Mehta v Shri Ram Foods and Fertilizer Industries*, (1987) AIR SC 965 (India).

⁶ UKHL 1, (1868) LR 3 HL 330

⁷ AIR 1987 SC 965

in compensation for any and all losses it may have sustained as a result of the Bhopal gas tragedy.⁸ Although it was contended that strict liability or negligence should be applied instead of applying the doctrine of absolute liability in retrospective effect, as the principle was introduced after three years of the leak incident. But, I concur that the court had rightly applied absolute liability in place of strict liability in this case, as the leak incident satisfied all the requirements of absolute liability as held in *M.C. Mehta v. Shri Ram Foods and Fertilizer Industries* (1987)⁹. UCC was engaged in an inherently dangerous activity by using methyl isocyanate, a highly toxic gas in a densely populated area which was only for light industrial and commercial utility resulting in catastrophic damage. The damage done by the leak was extremely high, causing the death of more than 20,000 and irrevocable injuries to around 60,000 people.¹⁰ It would not be justifiable to the people who suffered damages if the company could escape their liability to pay the compensation for the damage by using any defence in the absence of absolute liability. It was apt to expand the scope of *Rylands v. Fletcher* so that not only common victims but the workers inside the factory could be provided with appropriate compensation.¹¹ The application of absolute liability deprived them of all defences and made them liable to pay the compensation at any cost. Also, the judgement rightly follows the OECD's¹² Polluter Pays Principle making UCC, as the company's majority shareholder, liable for the expense of the public health hazard and the cost of restoring the environment.¹³

This case exposed the weakness of Indian laws and the organisations that are supposed to defend citizens' rights and keep them secure.¹⁴ The reimbursement of \$470 million was not adequate to any extent compared to the damage suffered by society. The calculation of the reimbursement was based on flawed reasoning as it considered the number of persons treated at the hospital as the essential indicator, but the damage caused was multi-generational, and the calculation completely disregarded the factor of violation of human rights which must be vital in deciding on the amount of compensation. As recognised by UN Human Rights Commission,

⁸ 1989 1 SCC 674

⁹ AIR 1987 SC 965

¹⁰ Vidya Venkat, *30 years after the Bhopal Gas Tragedy*, THE HINDU (2021), <https://www.thehindu.com/sunday-anchor/30-years-after-the-Bhopal-gas-tragedy/article60340939.ece> (last visited Apr 3, 2023).

¹¹ See the statement of Blackburn J in *Rylands v. Fletcher*, mentioning escape as the necessary condition for applying strict liability upon the defendant. Hence, if the doctrine of strict liability would have been applied in this case, the workers working inside the factory could not be provided with compensation as no escape would be happening.

¹² Organization for Economic Cooperation and Development

¹³ *Indian Enviro Legal Council v Union of India*, (1996) AIR 1446 (India).

¹⁴ Pooja GN, *Union Carbide Corporation vs Union of India*, SSRN ELECTRONIC JOURNAL (2021).

the water and soil contamination caused by the pesticide factory has deprived multiple generations of people in Bhopal of fundamental human rights, including the right to live in peace and prosperity.¹⁵ The compensation of \$470 million, equating to around 25-30 thousand rupees for each person, does not qualify as a justifiable recourse. Moreover, it was determined in 1991 that state and federal authorities would address any shortfall in compensation, but this also raises questions as to why the taxpayer's money is being used to cover up the damages done by a private entity.¹⁶ The order issued by the court, thus missed an opportunity to set an example. It failed to establish a precedent for the destiny of firms that put public health at risk in their pursuit of riches.¹⁷ Case after case has shown that the human rights to life and the best possible health have been disrespected by the chemical industry¹⁸ by not following the UN Guiding Principles on Business and Human Rights¹⁹ in their policies and practices. The chemical industry shows how weak voluntary human rights standards are and how important it is to have vital requirements with legal force.

In conclusion, the *Union Carbide Corporation v. Union of India*, commonly known as the Bhopal Gas Leak Case, highlighted the importance of absolute liability principle in India. The Supreme Court's application of absolute liability, holding Union Carbide Corporation liable for all damages, was the correct decision considering the hazardous nature of the activity and the extent of the damage caused. The compensation awarded, although inadequate, was a step towards holding the company accountable for its actions. However, the case also exposed the weaknesses in Indian laws and the failure to adequately protect citizens' rights and well-being. The flawed reasoning behind the compensation calculation and the reliance on taxpayer money to cover the damages caused by a private entity raised further concerns. This case emphasizes the need for robust legal requirements to protect human rights and prevent the chemical industry, and other industries alike, from disregarding the well-being of communities in their pursuit of profit.

¹⁵Bhopal: Chemical Industry Must Respect Human Rights, OHCHR (2019), <https://www.ohchr.org/en/statements/2019/11/bhopal-chemical-industry-must-respect-human-rights> (last visited Apr 3, 2023).

¹⁶ Lexpeeeps, *Union Carbide Corporation* LEXPEEPS (2020), <https://lexpeeeps.in/union-carbide-corporation-v-union-of-india> (last visited Apr 3, 2023).

¹⁷ *Ibid*

¹⁸ *Supra* (n 13).

¹⁹ The United Nations Guiding Principles on Business and Human Rights (UNGPs) is an instrument consisting of 31 principles implementing the United Nations' (UN) "Protect, Respect and Remedy" framework on the issue of human rights and transnational corporations and other business enterprises.