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CASE ANALYSIS OF BHOPAL GAS TRAGEDY **WITH REFERENCE TO ABSOLUTE LIABILITY** **AND POLLUTER PAYS PRINCIPLE.**

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DATE OF SUBMISSION: 12-12-2022

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Acknowledgement

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With Regards

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Abstract

Since the dreadful night of December 3, 1984, when a gas leak caused thousands to perish and left survivors permanently crippled, more than thirty years have passed. Those who survived the Bhopal gas tragedy and took on their ancestors' continued agony do not forget it easily. 3,787 people died as a direct result of the gas leak, while thousands more were harmed in the years that followed. Many people believe that the \$470 million in compensation the government received from Union Carbide Corporation on behalf of the victims is insufficient considering the severity of the harm. The government passed a number of laws in response to the incident, including the Public Liability Insurance Act of 1991 and the EPA of 1986. Judicial actions have closed legal gaps and established "absolute liability" and "polluter pays" as constitutional principles. Because it is our obligation to stop future environmental damage, it is the responsibility of citizens to become familiar with environmental legislation. Some industrial catastrophes are still having effects today. Even though tougher laws have been put in place, it is still difficult to police them even if the situation has improved since the accident. Even while economic growth is obvious, unregulated enterprises continue to endanger public security and ecological balance.

Research Objective

This research paper talks about the topic analysis of Bhopal gas leak disaster case in reference to absolute liability and polluter pays principles. This research paper also deals with what is absolute liability and polluter pays principles with reference to Indian perspective.

Research Problem

The research problem of this research paper talks about whether the judgement given was satisfactory or not. What is the role of absolute liability and polluter pays principle in the problem.

Research Questions

1. What is Bhopal gas disaster?
2. What are the liabilities of a firm running such a business?
3. What is principle of absolute liability?
4. What is polluter pays principle?
5. How principle of absolute liability and polluter pays principle make firm running such business liable?

Research Hypothesis

Was the judgment satisfactory, were the victims and other critical legal representatives satisfied. The Union Carbide Corporation had an absolute liability towards the victims, which has not been brought into the light due to defective legal proceedings. In India, the polluter pays principle was first applied and was defined in the Indian Council of Enviro-Legal Action v. Union of India case in 1996. It was engaged in a hazardous activity and thus, was strictly liable for any direct harms being caused by that activity and to pay compensation accordingly.

Scope Of The Study

This research paper tells us about the Bhopal gas leak disaster. This research paper also tells us about principle of absolute liability and polluter pays principle. This research paper also tells how organisation running the factory was made liable and what were the judgement given.

Research Methodology

Descriptive and analytical methodology has been followed by the researcher throughout the research paper. Secondary sources like books, articles and websites have been referred by the researcher for the accomplishment of the research paper.

Bhopal Gas Disaster

There were thousands of fatalities as a result of the Bhopal gas tragedy in Bhopal, India. Most people agree that it was one of the most horrifying and fatal industrial accidents in history.

Methyl isocyanate (MIC) gas leaked at a Union Carbide factory during a cold night in 1984, resulting in unprecedented destruction. In the 1970s, the Indian government promoted foreign investment in the regional economy, which prompted the Union Carbide Corporation (UCC) to build a factory in Bhopal to produce Sevin, an insecticide that is widely used in Asia. A subsidiary of UCC called Union Carbide India Limited (UCIL) was owned by the Indian government to the tune of 22%.

Because of its geographic location and transportation capabilities, Bhopal was selected as the site for the plant. However, light industrial rather than risky or heavy tasks were its intended use. Initially, the plant was only permitted to formulate pesticides, but as competition mounted, additional items were manufactured there using a riskier approach.

A tiny leak of MIC gas was found on December 2, 1984. A cloud of MIC gas expanded by the morning of December 3, 1984, killing a large number of people. 3,800 people were suddenly murdered, mostly residents of the slums next to the plant. Within the first few days, preliminary estimates projected that the death toll might reach 10,000; over the following 20 years, it was reported that 15,000–20,000 premature fatalities took place. In an effort to absolve itself of culpability for the catastrophe, UCC made the factory's construction and operation totally under the authority of UCIL, its Indian subsidiary, in the wake of the incident.

Judgment

A.I.R. 1989 SC 248

UNION CARBIDE CORPORATION (UCC)

VS.

UNION OF INDIA & OTHERS

(DT. 04.05.1989)

- The Supreme Court has ordered Union Carbide to pay \$470 million for all destruction caused by an MIC gas leak from an industrial site.
- In a reasonable order, Justice Pathak said it was the court's duty to provide immediate relief to MIC leak victims, and the court was not breaking new ground in doing so.
- Pathak J. Applying the polluter pays principle, the compensation amount he set at \$470 million. The court found counter offers ranging from He's \$426 million to He's \$500 million. Therefore, the average meter reading was calculated at USD 470 million.
- But his \$470 million settlement fell far short of what the government had promised, and various legal experts also felt it was an inadequate compensation. After analyzing the ratio, it appears that the amount delivered to each victim was less than INR 50,000.

Principle Of Absolute Liability

Absolute liability refers to instances involving potentially dangerous materials or things, when the parties concerned are already liable just by using those materials. It is not necessary for these hazards to escape or be released for it to take place. Whether a personal injury occurs on or off the defendant's property, this premise still holds true. In cases of absolute culpability, the defendant is entirely responsible for any harm done, without any exceptions or defences. Both natural and artificial uses of land are covered by this rule. Due to the defendant's responsibility for protecting both human life and the environment, victims in these cases are usually awarded compensation

that is exceptional and greater than average. Absolute liability laws were adopted in India as a result of an understanding of the limitations of strict liability, making it essentially a stricter version.

The British idea of strict responsibility, which was drawn from *Rylands v. Fletcher*, was established in an Indian context through the precedent-setting decision of *M.C. Mehta v. Union of India*. According to the Supreme Court, businesses that participate in dangerous activities have an absolute, unassignable responsibility to guarantee others' safety and must compensate victims of harm. Because Justice Bhagwati emphasised the necessity for India to create its own laws and principles to meet dangerous or unusual situations that have already occurred or may do so in the future, the Court did not give the strict liability exception from English case law.

He asserts that the fact that such a responsibility concept did not exist in Britain should not be used as justification for delaying the development of such a liability principle for enterprises supporting an industrial economy. Due to the Supreme Court's establishment of effective regulations within the Indian context to manage industrial growth without ignoring the required legal changes, this decision is extremely significant.

India passed the Environmental Protection Act in 1986 to control and protect the environment. The central government is given the authority to take any measures it deems necessary or appropriate for the protection and improvement of environmental quality, as well as the prevention, control, and reduction of pollution, under the terms defined in this statute. The central government has the power to issue written orders, including those that shut down, forbid, or regulate certain businesses, professions, or procedures, as well as those that halt or control the provision of necessities like water and electricity. The Stockholm Declaration of 1972's commitments are in conformity with this law.

Essentials of Principle of absolute liability

Absolute liability and strict liability are comparable in that they both call for the presence of risks, their avoidance, and the ensuing damage. As a result, the following constitute the fundamental components of absolute liability:

1. Hazardous Items or Substances
2. These Items or Substances' Escape
3. Materials that are dangerous or necessarily dangerous

The presence of hazardous or inherently dangerous substances on the premises makes a significant difference in the basis for absolute liability. This implies that a defendant is totally liable if such substances escape from their property if they are in possession of them, regardless of their intended use. Liability is centred on the fundamental characteristics of things rather than how they are used.

The definition of dangerous goods in Section 2 of the Public Liability Insurance Act of 1991 is "any specified quantity defined as a hazardous substance under the Environment (Protection) Act 1986 (29th of 1986) and notified by the Government, any substance or preparation exceeding the limits set by the Central government." The use of absolute liability is legitimately justified by this important distinction.

Polluter Pays Principle

The "polluter pays" theory essentially states that individuals who pollute are liable for the environmental harm that results. They must help restore the impacted environment in addition to compensating the victims of pollution. The OECD Recommendations from 1972 and 1974 state that authorities must decide what steps must be taken to reduce pollution and maintain a livable post-industrial environment. By upholding the polluter pays concept, those who endanger public health are made responsible for paying for environmental repair. This implies that the costs incurred should take into account the expenses related to the production and use of goods and services that cause pollution. Subsidies should not be used to finance these policies as they have the potential to stifle international trade and investment. One of the many guiding concepts for sustainable development around the world, the Polluter Pays Principle is also included in Indian environmental law.

Polluter Pays Principle In The Context Of India

The 1996 case of Indian Environmental Legislative Council v. Union of India led to the implementation of the polluter pays principle in India. In this case, Justice Dalveer Bhandari emphasised the significance of redressing ecological imbalances brought on by industrial activity. Therefore, rather than the government, the industry in charge of causing pollution is in charge of managing and avoiding it. Because several requests for warnings, corrections, and relief were denied by the court, Justice Bhandari declared that those in positions of power and responsibility ought to find it simpler to follow or disregard court orders.

In the cases of Vellore Citizen Welfare Forum v. Union of India and Ors. and Research Foundation For Science Technology National Recourse Policy, the justices came to the following conclusions: the Polluter Pays Principle and the Precautionary Principle are the fundamental tenets of Indian environmental law. The judge believed that as the polluter pays principle is already recognised by international environmental law, it should also be included in Indian environmental legislation.

The judge enlarged the applicability of these ideas in A.P. Pollution Control Commission v. Professor M.V. Nayudu (retd.) and his Ors. This decision made it possible for tribunals, courts, and other environmental bodies to apply these guidelines when filing complaints with them.

Landmark Judgements

1. PETITIONER:

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION ETC.

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.ETC.

DATE OF JUDGMENT: 13/02/1996

There was a chemical manufacturing-focused industrial park in the village of Bichhri. The lives of the villagers have been severely interrupted by the discharge of concentrated sulfuric acid and aluminium sulphate from one of the enterprises, Hindustan Agro Chemical Limited. These substances contaminated the groundwater and underground aquifers by permeating the soil in significant quantities. As a result, it was decided to hold individuals responsible for actions involving the use of intrinsically dangerous substances accountable and make them pay for the harms done to both people and the environment. The polluter pays principle assures that those who pollute will be held financially liable for restoring the environment to its pre-pollution state.

2. PETITIONER:

VELLORE CITIZENS WELFARE FORUM

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 28/08/1996

The untreated sewage discharged into the river by tanneries and other enterprises in Tamil Nadu

caused alarm among the locals. Each litre of water used by the tanneries alone to produce each kilogramme of leather included 176 dangerous acids and resulted in the production of about 200 tonnes of leather every day. The drinking water supply has been contaminated as a result of the hazardous effluent. Moreover, the river overflowed over the adjoining lands, which were primarily used for agriculture and farming, as a result of excessive rain and floods in the local towns. The sewage has thus poisoned the farmland. As a result, it is crucial for the industrialist to respond appropriately in this situation to repair the ecosystem.

3. PETITIONER:

M.C. MEHTA

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 30/12/1996

The Supreme Court reiterated its support for the 'polluter pays' doctrine in the case of MC Mehta v. Indian Union and Ors and emphasised the significance of its implementation. The foundry, chemical industry, and oil refineries located in Mathura were deemed to be the main causes of pollution impacting the Taj Mahal, according to the 1990 National Environmental Engineering Reporting Society report and the 1995 Varadarajan Commission report. As a result, the court ordered these industries to transfer their operations or switch from utilising gasoline to petrol. It was accepted that the workers in these industries would suffer as a result of the closure or relocation. It is important to note that subsequent court decisions have continually emphasised the need of defending workers' rights and making sure that their commitments are upheld.

Suggestions

- Incorporating the idea of absolute liability into environmental law entails not only taking action to reduce environmental risks, but also adopting a number of compliance procedures to guarantee that these risks are under control and that the responsible party is held accountable.
- The employment of insurance services is a way to satisfy this legal requirement. Since environmental legislation includes absolute liability, every party is required to address environmental risks by assessing them.
- Environmental management is used to put into practise the idea of absolute obligation by

assigning duties, guaranteeing compliance, and controlling finances in order to foresee diverse environmental problems.

- The polluter pays approach has reduced some environmental harm, but it is still insufficient because it is still difficult to establish who is the true polluter.
- Long-term benefits would result from creating a more precise and effective mechanism for applying the polluter pays principle.

Conclusion

By adopting the notion of absolute liability, which is given greater prominence, the Indian legal system has made strides in the right direction. The Bhopal gas tragedy emphasises the need for industries near residential areas to take all required safeguards to preserve human life. This incident continues to have an influence on new-born babies with anomalies. It is essential to give these industries the go-ahead to act right away.

Even when the polluter is not required by law to pay, it is more difficult to familiarise people with these concepts than to impose them. In the twenty-first century, the old idea of ecologically balanced development is out of date. But destroying nature for the sake of development is no longer acceptable. Our perspective on nature has changed significantly during the last twenty years. The 'polluter pays' principle, 'precautionary principle,' and 'sustainable development' principles should ideally be embedded in our practises. In order to promote sustainable growth, many institutions and universities have started planting trees on holidays like Independence Day and Environment Day. We must achieve a balanced development if we want to live in harmony with nature.

It's interesting to note that the worldwide quarantines imposed during the coronavirus outbreak have given nature a chance to recover. During the lockdown, it's common to see wild creatures prowling the streets, which is similar to the condition of captive people and guests from other animals. In the past, we have behaved inhumanely towards nature. Our interaction with nature has been revaluated in the last twenty years. It is time to give protecting Mother Nature top priority.

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