



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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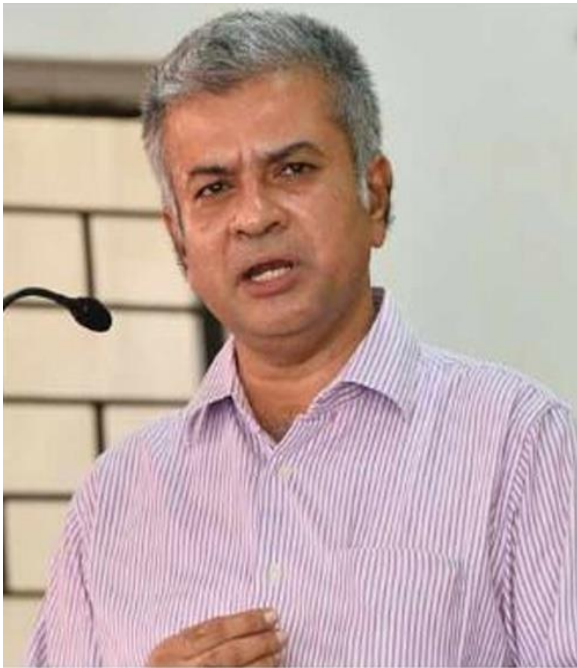
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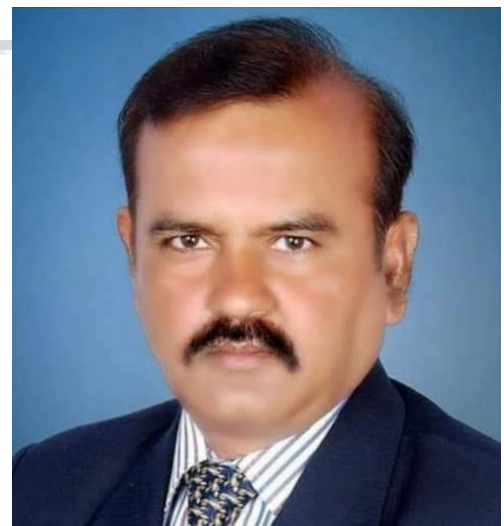
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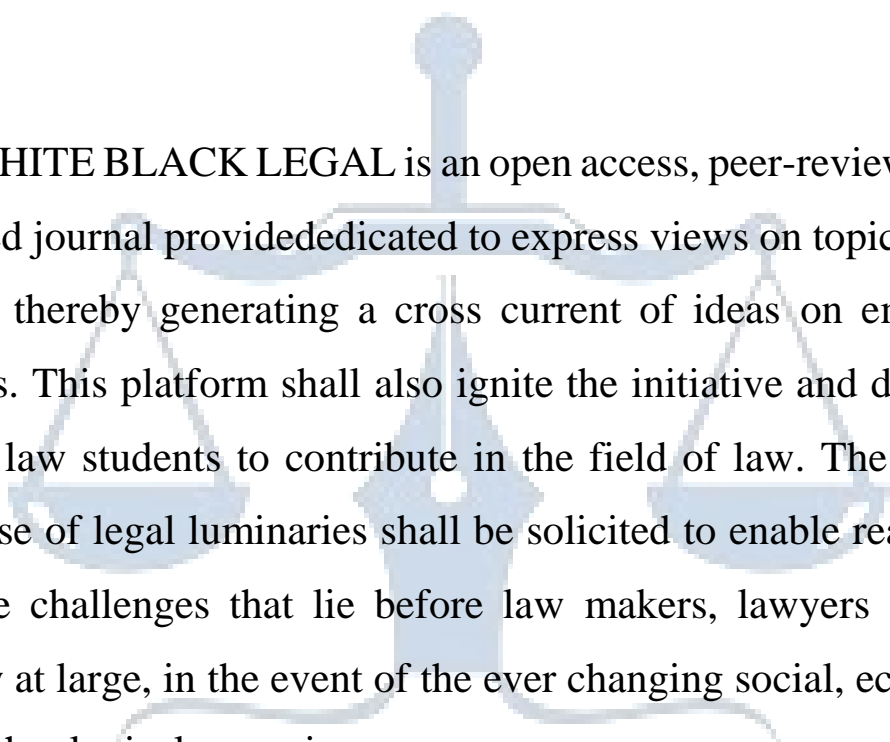


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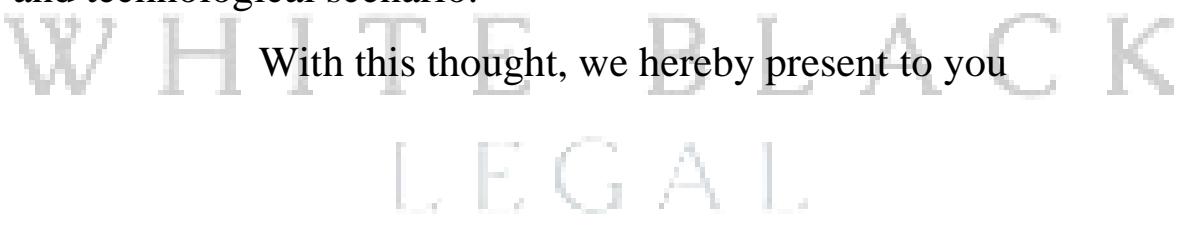
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



# **THE VIZAG GAS LEAK CASE: AN ANALYSIS WITH REFERENCE TO PRINCIPLE OF ABSOLUTE LIABILITY AND THE CRIMINAL LIABILITY OF CORPORATIONS**

AUTHORED BY - VAIBHAV VIKASH

## **Abstract:**

Industrial disasters, like gas leakages, are not a novel incident for our society, as the Bhopal gas tragedy and the Oleum gas leakage are some of the serious incidents that reminded us of their catastrophic consequences. The gas leakage of 2020 in Vizag confirms the recurring instance of these disasters as a result of the toxic blend of managerial greed and carelessness. A tough fact is that some economic activities, aimed at reaching the ultimate profit, do not hesitate to forgo the required safety precautions, ignoring the considerable risk to both human lives and the environment. This insensitivity for safety, driven by the greediness, inevitably leads to dreadful consequences by which it becomes quite evident that these firms management lacks social responsibility.

Such occasions emphasize the significance of active governmental control and strict adherence to safety regulations. In response to these catastrophes, the Supreme Court put forward the absolute liability principle that victims get compensation as soon as possible and without exception. This legal framework highlights the fact that companies like LG Polymers are liable to pay for the victims, and are also responsible for environmental degradation, irrespective of their potential defense on grounds of exceptions. It demonstrates a fundamental shift in legal principles that rather than those industries escaping accountability by avoiding strict liability as an obstacle, strict liability is now a norm.

Vizag Gas Leak is a clear example of this need when we talk about strong corporate governance and compliance requirements. Through the prism of absolute and corporate criminal liability principles, we are able to understand subtleties of the incident, including both specific failures and broad legal and regulatory shortcomings.

## **Introduction:**

The May 7, 2020 Vizag gas leakage incident at the LG Polymers chemical factory in Visakhapatnam, India is one of catastrophe direct action that brings disastrous outcome to human life and environment. The 11 deaths and injuries of over 100 people were directly attributed to the impact of the gas leak as well as the surrounding villages to the environmental havoc of it. This mishap has put a focus on industrial safety protocols, environmental laws, and corporate responsibility at India. The LG Polymers India Pvt. Limited chemical factory leak of hazardous styrene wasting one of the recent major environmental and public health problems and is now the center of investigations and legal actions.

## **Background:**

### **The Vizag Gas Leak Incident:**

In serene outskirts of Vishakhapatnam in Andhra Pradesh, India, an event took a catastrophic turn at LG Polymers Pvt Ltd factory in RR Venkatapuram village nearby Gopalapuram. On the first Morning of May 7, 2020, a fatal event occurred, resulting in the kill of 13 people at the same time and also brought thousand of others into being sick and insensitive. These events, the results of the leak of styrene monomer gas from the chemical plant storage tank owned by LG Chemicals, a South Korean conglomerate, were the ones that really hit the nation and showed all types of negligence both in safety and management areas that could have prevented the tragedy.

LG Polymers was shut down for 40 days as it went through the period of lockdown due to the Covid 19 pandemic. The stasis led to the temperature inconsistency in the tanks and styrene monomer, whose heavy weight and permeability properties left the area surrounding the tanks a vacuum of at least 0.9 km in diameter, is taken to escape through the atmosphere. Luckily, the emissions of styrene monomer gas were within a relatively limited distance and not enough to blow up thus the disaster did not escalate even further.

A quick and well-coordinated reaction came from the law enforcement and emergency service people when they jumped in to respond to the crisis. The preventive measures involving the evacuation of about 2,500 citizens began around a week, concluded with free medical care provided to the needy. Hospitals in the neighboring district immediately placed on alert, while the injured received immediate medical services, illustrating the community and governmental



reaction to the crisis.

Vizag Gas Leak is a perfect embodiment to convey that chemical manufacturing when due care and safety measures are not suitably complied pose an inherent threat. The residents woke up several hours before the event yet, they struggled with light headness, nausea, shortness of breath, and overpowering horrible smell which was a frightening experience that should bring about stringent safety regulations in industrial operations.

Studies after the incident uncovered that it was as a result of operational failures and the absence of adequate labour attributable to the Covid pandemic imposed restrictions. Apart from that, it was also found that the LG Polymers plant did not possess proper environment clearance from the MoEFCC. In a period between 2006 and 2018, which was 12 years, the company had substantially increased its business activities by fivefold without acquiring the right permits. As per the amended EIA Notification of November 2006 issued under the Environment Protection Act 1986, companies such as LG Chemicals are required to get the approval from the MoEFCC before any expansion or modification in their manufacturing processes since they all lie under petrochemical category.

In the aftermath of the Vizag Gas Leak, the state government of Andhra Pradesh took immediate measures to provide financial compensation for the survivors and their families, having a total of Rs.30 Crores as allocation. As a palliative measure, it is also a symbol of the seriousness of environmental management and compliance with the industry's regulations which can prevent such crimes from recurrence. The case of the LG Polymers plant has not only brought into the open the human dimension of industrial misconduct but also shows the need of oversight and compliance with safety and environment regulation to avert the recurrence of similar happenings.

### **Where was the leakage happening?**

The plant was permitted to operate the next day after the nationwide lockdown on May 7, 2020. There were 2000 metric tons of styrene stored in factory's tanks, which were unused and unseen by plant's staff. It is also considered that the chilling system of the styrene monomer had failed due to a computer glitch, and between 2:10 pm and a 3:00 am, the denaturalisation of styrene covers a distance of 1.5 km and reach people living nearby.

## **Legal Action**

### i. Cases & Arrests

The revision officer of the local Village revenue office on 7th May reported a formal complaint to the police against the management of LG Polymers and the police be fair with penal action against the company. Also, they were liable to offenses, which were defined in sections 278, 284, and 285 of the Indian Penal Code. Furthermore, on June 1st, the police arrested 12 executives top officials of LG Polymers which were the CEO and 11 other top officials. Consequently, the state government yesterday constituted a HPC and accepted their recommendations following the receipt of which.<sup>1</sup>

### ii. National Green Tribunal (NGT)

The approach of NGT (National Green Tribunal), which was judged by the Honorable High Court Judge of Andhra Pradesh. There was a set committee that was scheduled to attend the place and later confirm what the cause of the accident was, the dead figure, the health and environmental situation and the method of compensation for the affected. Furthermore, the company got instructions to pay Rs. 50 crore alongside the DC, no wonder LG Polymers is the large one and the damage won't be less just because it's a big company. A.P government was ordered to inquire into the chief officers responsible for the illegal running of LG Polymers plant and take strict possessions against them. The Andhra Pradesh government has been given an order by the National Green Tribunal to investigate the relevant officials who gave permission to the LG Polymers plant to operate without proper licensing and regulatory permissions. The officials are required to submit a filed report by the given deadline. In addition, the order required the Central government to form a team of competent persons to produce its report on the prevention of similar incidents.<sup>2</sup>

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<sup>1</sup> KMP Patnaik, LG Polymers CEO arrested in Vizag gas leak case, <https://www.deccanchronicle.com/nation/inother-news/080720/lg-polymers-ceo-arrested-in-vizag-gas-leak-case.html>

<sup>2</sup> Vakasha Sachdev, Vizag Gas Leak: LG Polymers Has 'Absolute Liability' Under Law, <https://www.thequint.com/news/law/vizag-gas-leak-legal-responsibility-lg-polymers-absolute-liability-supremecourt-oleum-bhopal-gas-cases>

iii. Human Rights Commission

There was a recommendation by the commission too for the establishment of a high level committee by the Central Government to present a report aimed at the incidence reduction. The National Human Rights Commission (NHRC) has sent notices to the union government as well as the government of Andhra Pradesh under the suo moto jurisdiction by taking cognizance of media reports which deemed serious human rights violations, including the right to life allegedly being violated.

### **Legal Analysis:**

In India, there are two no fault liabilities, namely:

- Strict Liability
- Absolute Liability

However the concept of strict liability, which is created by omission is adopted in India as well. It identifies a particular category of businesses that are frequently involved in risky or unsafe activities. If so any of the harmful materials from these firms would peep through and cause harm to the environment or population, the entities will be obliged to fully reimburse the damage done, provided that the amounts are based on that firm's market value. The fundamental rule of absolute liability was embodied in the landmark case of M.C. Mehta v. Union of India (1987) through which the courts have placed on the industries engaged in the operations of hazard activities a responsibility to avoid irretrievable environmental and human losses, even if the industry's action is subject to intervening forces.

### **Strict Liability vs. Absolute Liability**

To application of the Indian legal framework, strict liability has been subtly refined from its clear cut inception in the Rylands v. Fletcher rule. The Supreme Court has gone as far as to insist that vicarious liability principle is holding even in the absence of negligence during the event as the country has a strong position and standards in line with its duty to protect its citizens as a result of industrial accidents. As an instance, the LG Polymers is responsible to store the hazardous chemical and have to pay the compensation to all who are indirectly affected by the gas leakage without the proof of offense. In the place of the former, the strict liability regime places the entire burden of proof on the negligent industry, shielding it from typical criminal or civil defenses. To this effect the court ruling in the MC Mehta case underscored the concept that a large-scale industry carries absolute liability while a small scale

industry may only be held liable to the standard of strict liability provided that they lack the financial resources required. This special treatment thus actually reveals how the judiciary prefers to see the giant companies being held to a higher level of accountability for societal health and environmental welfare.

### **Corporate Criminal Liability:**

A role of criminal liability for corporate entities in case of environmental catastrophes exists in criminal law. So, ensuring the legal principle whereby the corporation is responsible for criminal prosecution concerning the environmental laws infractions. In the said the Standard Chartered Bank case where it was decided that the legal entity consists of a corporation can be held criminally liable under the law.

#### **Compensation**

##### **i. Government**

The Andhra Pradesh government is giving ex gratia of Rs 1 crore to the families of those who lost their lives in the accident. It also announced for those who are under treatment for 2-3 weeks or are on ventilator for months, the fund would be Rs. 25,000 for those who received priority treatment<sup>3</sup>

##### **ii. Company**

Generally, the central and state governments will undertake the airing of the claims by the victims through them. On behalf of the company, a payment order will be issued after the court case is over.

##### **iii. Public Liability insurance**

Besides the compensation by the Taluka office/commissioner, the victims/patients can also claim wealth up to a certain limit on a per-look basis under the Public Liability Insurance Act, 1991 by filing a claim with the district collector within 5 years of the accident. This is a simpler process for you to get compensated than going to the court to defend your rights. The court still remains an option to the victims to get a higher compensation if they are not pleased.

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<sup>3</sup> Moonmoon Ghosh, 11 Dead, Over 1,000 Sick after Gas Leak at Vizag Plant; CM Announces Rs 1 Crore Exgratia for Kin of Deceased, <https://www.news18.com/news/india/visakhapatnam-gas-leak-live-updates-1gpolymers-vizag-andhra-pradesh-2608889.html>

## **Case Impact and Legal Implications:**

### **K Nagireddi v. Union of India (1982) <sup>4</sup>:**

It was the first time that this case where Indian courts subtly suggested adapting the strict liability rule to suit Indian conditions.

### **Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors (2014)<sup>5</sup>:**

This case broadened the interpretation of Section 17(3) of the NGT Act, extending its applicability even to cases that did not involve hazardous industries.

### **Indian Council for Enviro-Legal Action v. Union of India (1996)<sup>6</sup>:**

In this regard, the Supreme Court once again supported the polluter pays principle and the concept of the absolute liability from the polluters. The rules demand pollution fees for sulfuric acid and other hazardous waste processes that do not follow the safety standards for waste disposal and the resulting contamination.

LG Polymers (India) Private Limited v. State Of Andhra Pradesh And Others (Supreme Court Of India, 2020): This judgment stands a reminder to the consequences after the Vizag Gas Leak so as to point out the importance of measures and compliance with rules in the hazardous industries.

UNION OF INDIA VS. MS. UNION CARBIDE CORPORATION (Supreme Court Of India, 2023): It underscores the role of settlements in major industrial catastrophes and sets forth the standards of compensating injured persons and restoring the environment.

DR. PENTAPATI PULLARAO v. UNION OF INDIA (National Green Tribunal, 2021): It is this complex ruling which also explains why companies are bound to take steps to safeguard the interests of the community from hazardous incidents.

M.C. Mehta v. Union of India (1987): This incident is actually known by the name Oleum Gas Disaster and it is one of the significant developments of the Indian environmental laws, establishing the concept of strict liability for the hazardous industries. This was also brought up the creation of the National Green Tribunal which speedily settles the environmental cases.

Indian Council for Enviro-Legal Action v. Union of India (2011): These cases scrutinize the duties of business sectors toward environmental degradation and the application of the strict

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<sup>4</sup> K. Nagireddi v. Union Of India AIR 1982 AP 119

<sup>5</sup> Alaknanda Hydro Power Co. Ltd vs. Anuj Joshi & Ors 1 SCC 769

<sup>6</sup> Indian Council for Enviro-Legal vs Union Of India And Ors 1996 AIR 1446, 1996 SCC (3) 212

liability principles realistically.

### **Vizag tragedy is a reflector of Bhopal tragedy**

The NGT has disallowed giving the benefit of the doubt, and has made Strict Liability applicable. NGT announced fifty crore on the initial penalty. It has furthermore constituted an expert committee which is tasked with the carrying out of an overall appraisal and submission of the report. But in the same way, the losses could increase and in the legal field this old states cause anxiety. The problem claims that, if this incident proved to meet Absolute Liability, what was the need to hold the old law for which NGT are responsible.

The other major negligence pitfall is the issue of compensation where the issue has not yet been conclusively dealt with. Although Strict Liability clearly requires the payment of compensatory damages, the mandate of Absolute Liability is that exemplary damages are payable which means that a sum of money much more than the damage done is repayable. Thus, strict liability acts as a deterrent.

The Supreme Court gave the UCIL the order to pay USD 470 million (Rs. 750 crores) among the victims, the biggest payment for a single compensation in India. With regard to the Klaus Mittelbachert V E I H Hotels Ltd (German co-pilot who was amputated and died while swimming near a poorly maintained swimming pool at a Delhi hotel was exulted damages by the court. The rule has been implemented by M.P High Court. In the same vain, this is what happened in Jagdish v. Naresh where the court followed the example of M.C. Mehta and ordered exemplary damages for the negligence.

### **Conclusion:**

The Vizag Gas Leak episode of Vishakhapatnam is a solid proof of the significant need of a stringent regulatory control, high-profile corporate accountability and adherence to safety protocols by all hazardous industries. Through in depth analysis of related cases, one can get a good sense of the principles of absolute liability and corporate criminal liability. This analysis, in tune with the wider legal framework governing industrial disasters, extends to the corporations' accountability for society and the environment.

The Central Government may appoint a group of advocates as its official representatives in the

case of the LG Polymers gas victims like was the case of the Bhopal gas tragedy. This approach is suitable in the case of foreign owned firms like Union Carbide, where the logistics of pursuing compensation and prosecution are much more complex. The principle of absolute liability combined with public liability insurance requires quite a large pay out to victims. LG Polymers a defaulter as per the Environmental Protection Act 1986 and the Manufacture, Import, Storage of Hazardous Chemical Rules, 1989, may have to pay an exemplary amount well beyond the costs incurred.

The LG Polymers controversy is not a new issue. A reactor explosion in 2000 caused hysteria among the neighboring villages, although there were no deaths reported. Measures such as the Cartagena Protocol seek to prosecute the operators for potential and immediate dangers which are created by new technologies. In spite of representatives of the villagers raising their concerns to the administration of Andhra Pradesh Pollution Control Board that eventually resulted in an inspection that finally exonerated LG Polymers, the incident calls for more democracy, public participation, and worker security to avoid corporate negligence in the first place.

Bhopal tragedy could have been considered a reason for an international revamp that would put an end to corporate negligence globally, and the Vizag accident comes only to confirm that we still haven't learned our lessons. If the lessons from Bhopal's on going suffering are ignored, it highlights a profound collective guilt and a dire need for reform in corporate and environmental governance.

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