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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

# **CASE ANALYSIS M.C. MEHTA AND ANOTHER** **Versus UNION OF INDIA AND OTHERS,** **(1987)1 SCC 395**

AUTHORED BY: KUMARI TANU

## **1. CASE AND CORAM OF JUDGES**

*“An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to health and safety of the persons in the surrounding area owes an **absolute and non-delegable duty** to the community.”*

The abovementioned statement has been extracted from the case of M.C. Mehta and Another V. UOI and Others and the case was tabled before Hon'ble P.N. Bhagwati, C.J. And Ranganath Misra, G.L. Oza, M.M. Dutt And K.N. Singh, JJ.

## **2. STATUS OF JUDGEMENT**

Decided on **December 20, 1986**. The Judgement is a landmark as stricter than strict liability was devised in the judgement by the Hon'ble Supreme Court of India, the judgement is used while deciding several cases to hold an enterprise that is engaged in hazardous or inherently dangerous activities **absolutely liable**.

## **3. FACTS OF THE CASE**

1. In the year 1985, M.C. Mehta a public interest attorney filed a writ petition in the Supreme court of India for the closure and relocation of Shriram Foods and Fertiliser Industries as it was located in Kirti Nagar, Delhi where around 2,00,000 people were residing. As the industry was located in densely populated areas and as it was using poisonous gases for manufacturing hard technical oil and glycerine soaps so people's health and security were getting affected.
2. The Supreme court during the pendency of the petition allowed the Shriram Industry to restart its operation. On 4 and 6 December, 1985 oleum gas leaked from the plant and caused



substantial harm to people residing nearby as well as a practising advocate died as he inhaled the poisonous oleum gas. Delhi Aid and Advice Board and Delhi Bar Association filed claims for compensation on the behalf of people who suffered due to the leakage of oleum gas.

3. On 6 December 1985, the Delhi magistrate in accordance with the section 133(1) of the Criminal Procedure Code, 1973 directed the industry to remove all the harmful chemicals from its manufacturing unit and to show cause as to why this order should not be enforced on 17 December 1985.
4. The case was initially presented before a 3-judge bench of the Hon'ble Supreme Court, whereby the court dealt with the question of whether Shriram should be allowed to restart its plant and if so, subject to what conditions.
5. The case then was referred by the 3-judge bench to the 5-judge of the Hon'ble Supreme Court as during the course of arguments when the writ petition was originally heard certain questions of seminal importance and high constitution significance were raised.

#### **4. QUESTION OF LAW**

1. Whether it is indispensable that for the application of absolute liability and claim of compensation, the concerned hazardous industry must be a State instrumentality within Article 12 of the Indian Constitution and what are the implications of applying strict liability?
2. What are the progressive measures that the court has developed in the interests of justice through this case?
3. Whether the relocation of hazardous industries alone is sufficient to meet the purpose of compensation?
4. Whether the Supreme Court is empowered to lay down a new kind of tort in the form of absolute liability?

#### **5. RELEVANT STATUTE/ACT**

- In this present case Constitution of India and the uncodified tort law were relevant.
- Article 21 is Protection of Life and Personal Liberty; Article 32 is Right to Constitutional Remedies and Article 12 defines the term State, these provisions from the Constitution of India were relevant in the present case law.



- Strict Liability rule was referred to in the present case and the Absolute Liability rule was devised in this case by the Hon'ble Supreme Court.

## 6. REFERRED CASES

Below mentioned cases were referred to in the present case:

CASE	GROUNDS
S.P. Gupta vs. UOI <sup>1</sup> And Bandhua Mukti Morcha vs. UOI <sup>2</sup>	It was held in both the cases that procedure being merely a handmaiden of justice it should not stand in the way of justice.
Rudul shah vs. State of Bihar <sup>3</sup>	In this case, the court awarded compensation under Article 32 as the violation of Fundamental Right was patent and incontrovertible
R.D. Shetty vs. International Airports Authority <sup>4</sup>	In this case, the court gave certain criteria on the basis of which it can be decided whether a corporation is acting as an agency of government.
Kasturi Lal Reddy vs. State of J & K <sup>5</sup>	It was stated that the state as an economic agent, economic entrepreneur and allocator of economic benefits are subject to limitations of Fundamental Rights, so the hazardous industries which are agencies of the state should also be subject to the same limitations.
Ryland vs. Fletcher <sup>6</sup>	The rule of strict liability was evolved in this case.

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<sup>1</sup> 1981 Supp SCC 87

<sup>2</sup> (1982) 3 SCC 235

<sup>3</sup> (1983) 4 SCC 141

<sup>4</sup> (1979) 3 SCC 489

<sup>5</sup> (1980) 4 SCC 1

<sup>6</sup> (1868) LR 3 HL 330

## 7. JUDGEMENT

It was argued by the counsel of Respondent that Shriram Food and Fertilizer is not a State under Article 12 of the Constitution Fundamental Rights cannot be enforced against it. Whereas the counsel of the petitioner with the help of several decided cases of the Supreme court and the American Doctrine of State Action under which it was held that wherever private activity was aided, facilitated or supported by the state in a significant measure, such activity took the colour of state action and was subject to the Constitutional limitations. It was decided by the Supreme Court that the court is not bound by American exposition of constitutional law and the doctrine of state action can only be applied to a limited extent to which it can be Indianized and harmoniously blended. The court finally on this issue said that the court will not finally decide whether a private corporation like Shriram would fall within the ambit of Article 12 due to insufficient time to reflect upon this matter.

The counsel for the respondent argued that the court should not grant the compensational relief to the victims as there was no claim for compensation originally and for the claim of compensation no amendment to the writ petition was made by the petitioner. The court said that it cannot adopt a hyper-technical approach which would defeat the ends of justice. It was stated by the court that the court has a constitutional obligation to protect fundamental and for that purpose, it has all incidental and ancillary powers including the power to forge new remedies. The court also devised Epistolary jurisdiction. It was stated by the court that the power of the court is not only injunctive in nature but it is also remedial in scope and provides relief against a breach already committed. If the infringement of fundamental right was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the court then they can provide for compensation as well under Article 32.

The court also decided upon the issue that what is the measure of liability of an enterprise that is engaged in a hazardous or inherently dangerous industry, does the rule of Ryland vs. Fletcher applies here. It was decided by the court that the rule in the abovementioned case was devised in the 19 century but it is not feasible to apply the same rule in modern industrial society with highly developed scientific knowledge where hazardous or inherently dangerous industries are necessary to carry as part of development, the law has to grow in order to satisfy the needs of the fast-changing society. The court decided that hazardous and inherently dangerous industries owe an absolute and non-

delegable duty to the community to ensure that no harm results to anyone on account of the hazardous or inherently dangerous nature of the activity which the industry has undertaken.

The court also indicated the deep-pocketed theory which is based on the polluter pays principle stating the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

The court finally said that Delhi Legal Aid and Advice board to take up all claims of victims and file actions on their behalf in the appropriate court for claiming compensation against Sriram. Delhi Administration was directed to provide the necessary funds for filing and prosecuting such actions.

## 8. CRITICAL ANALYSIS

**ISSUE 1.** Whether it is indispensable that for the application of absolute liability and claim of compensation, the concerned hazardous industry must be a State instrumentality within Article 12 of the Indian Constitution and what are the implications of applying strict liability?

It is very essential to prove that a hazardous industry is state instrumentality in order to apply the absolute liability and to claim compensation from the industry. To enforce the Fundamental Rights, it is necessary to prove that an entity is state instrumentality within Article 12 of the Indian Constitution. It was not decided by the court due to paucity of time whether Sriram will come within the scope of Article 12 or not, but as Sriram was owned by Delhi cloth, mills limited, a public company limited by shares and which is engaged in an industry vital to the public interest and with potential to affect the life and health of people.

In the case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Others*<sup>7</sup> and affirmed in the case of *Zee Telefilms Ltd. v. Union of India*<sup>8</sup>. In the Zee Films case, it was upheld by the majority of judges that for a body to be considered as a part of the State must be, (1) Financially, Functionally and Administratively under the control of the Government, (2) Such control must be pervasive, and (3) Mere regulatory control by the body would not constitute it as a State instrumentality. It becomes apposite to dismantle the three-prong test and understand each specific

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<sup>7</sup> (2002) 5 SCC 111

<sup>8</sup> (2005) 4 SCC 649

element by contextualizing it with the working of BCCI. With respect to financial and administrative independence, the BCCI procures its revenue on its own by building the team, scheduling the matches and broadcasting the same to the audience. Being a society, BCCI has a Memorandum of Association and Rules and Regulations through which it exercises control over such persons related to cricket. As a substantial amount of loans and financial assistance were provided by the government to the industry so *Sriram* is a state instrumentality.

In the present case, the Supreme Court faced a situation of large-scale loss to human life and property due to the leakage of oleum gas from the factory. The Supreme court faced the problem, that is the remedy could not be provided under the doctrine of fault-based liability due to the absence of two essential elements, firstly an act/omission coupled with malice in law and secondly reasonable foresight.

In the present case, the defendant had been able to prove the presence of one exception given for strict liability, that is the act of a stranger or third party thus, they could not be held liable even under the doctrine of strict liability.

As guided by the emerging constitutional trends and perspectives, Supreme Court clearly held that in case of violation of the fundamental right, new method of compensation and relief could be created as when there is choice between no remedy and evolving the new concept of remedy. However, the Supreme court also held that such absolute liability wherein none of the exceptions to strict liability will apply has to be made applicable only in cases where there is gross and patent violation of fundamental rights, as well as the suffering, is massive, incontrovertible ex facie glaring and irreversible. Such infringement of rights should be on large scale. A petition under Article 32 should not be used as a substitute for the enforcement of the right to claim compensation for infringement of the fundamental right through the ordinary process of civil court. It is only in exceptional cases that the compensation may be awarded under Article 32.

**ISSUE 2.** What are the progressive measures that the court has developed in the interests of justice through this case?

The court had evolved two important measures in this case, whereby, one is the "Deep Pocket Theory"



and the other is the idea of "Epistolary Jurisdiction". The former relates to the measure of compensation which must be correlated to the magnitude and the capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

The idea of epistolary jurisdiction gives room to approach the doors of the Supreme Court to the vulnerable groups by writing their grievance through letters which will be accepted as PILs after being scrutinized by the PIL cell and then later placing it before the Chief Justice of India which will thereby be referred to a bench.

**ISSUE 3.** Whether the relocation of hazardous industries alone is sufficient to meet the purpose of compensation?

No, Compensation in such cases had to have been provided to such persons who were directly affected by the gas leakage disaster. However, there are certain such persons who will get indirectly affected due to the relocation or closure of hazardous industries and this is the class of workmen employed in such industries. On a close perusal of the above situation of relocation or closure of industries, it can be well found that firstly, if the industry decides to shut down instead of relocating itself, a serious question of sustenance of the workmen who were engaged in such industry would arise and secondly, if an industry has decided to relocate, then such relocation must be in compliance with the existing environmental laws.

In the case of *M.C. Mehta v. Union of India* (1985), a balancing of interests was done as to industrialization, environment and the workmen. The Apex Court through an order directed that if such industries decide to relocate, then they have to take the required clearances from the pollution control board or committee and have to take fresh electricity and water connection, and so far the workmen are concerned, if the industries are shutting down the business, then an additional compensation of six years have to be provided to the workmen but if the workmen are not willing to relocate themselves with the relocating industries, then the above compensation shall be of one year only. Also, if an industry is relocating, then it shall allow the workmen to continue with the earlier accommodation until a newer one is provided at the relocated site, and if such industry decides to

give compensation in lieu of accommodation, then such compensation shall be of Rs 20,000. This is how the court applied the theory of Social Engineering by balancing and harmonizing the conflicting interests of industrial development on one side and environmental protection as well as workmen compensation on the other.

**ISSUE4.** Whether the Supreme Court is empowered to lay down a new kind of tort in the form of absolute liability?

Yes, the essence of the law of tort lies in the inherent dynamism of the law that it derives from the maxim "Ubi Jus Ibi Remedium". The very equitable and just basis of the law of tort is the absence of any other civil remedy in the case of a violation of a right in rem. Rights are dynamic in nature as the societal necessities and conditions are dynamic and accordingly the remedy ought to be dynamic; this is the essence of the law of tort. It is always in the process of evolution since it is a law developed by the judiciary.

The judiciary can create a particular tortious remedy only when a particular matter comes before it. Thus, it cannot be declared at a particular point of time that the law of tort has reached the peak of its development and that no new tort could be created. The manifestation of the aforesaid can be found in the present case, and also in the nature of Constitutional compensation in the matters of custodial torture and custodial death as well as other cases of police action bypassing the doctrine of sovereign immunity.

In the light of the above examples, Salmond's "pigeon hole theory", suggests that whenever a wrong is committed, it has to be examined whether such wrong fits into a specific tort or not and if not, then no new tort can be created, stands discarded partly. On the other hand, Winfield says that injuries are tort. By injury, he means the violation of the legal rights by an act that is not justified by law. Winfield's theory provides for openness and dynamism in the law of tort which harmonizes with its essence.

In practice, it can be observed that we are following both the theories, that is, whenever a wrong is committed, it is first examined whether a particular wrong fits into an already established tort or not. To this extent, Salmond's theory is followed. Thereafter, the court generally is reluctant to evolve a

new tort unless equity and justice in the backdrop of socio-economic conditions warrant such a development. This is where Winfield's theory applies. Not only the concept of absolute liability, the Supreme Court in the case of *Arjun Gopal v. Union of India*<sup>9</sup> has evolved the concept of Toxic tort, whereby, the Supreme Court in furtherance of the right to clean environment as a facet of Article 21 had imposed restrictions on the bursting of crackers. This shows the evolutionary process of law of tort.

## 9. CONCLUSION

Absolute liability was devised by the court in the present case, it was held by the court that industries conducting hazardous and inherently dangerous activities owe an absolute and non-delegable duty to the community and the industry is liable to pay the compensation as well. Absolute liability is stricter than strict liability as in the case of absolute liability there is no exception meaning thereby in the case of absolute liability one cannot claim an act of God, the act of a stranger, the default of a person injured or in case of statutory authority as in case of strict liability. It is pronounced by the court that it can provide for compensation under article 32 as it has the power to issue whatever direction including incidental and ancillary power to ensure enforcement of the fundamental right. The court due to paucity of time was unable to decide whether Sriram would fall under the ambit and scope of Article 12 or not, but the court said that it strives to broaden the horizon of Article 12 so that if fundamental rights are violated then an appropriate remedy can be provided by including the private enterprise under the definition of the state.

Due to lack of time the court was unable to decide whether Sriram comes under the scope and ambit of Article 12, due to which Delhi Legal Aid and Advice Board had to file separate claims for compensation. This question was very essential as compensation for victims was based upon this, as it cannot be decided so the victims were made to wait for a longer period of time to get compensation. The court in this case devised epistolary jurisdiction i.e., a court that is addressed to a justice of the court can be entertained as public interest litigation by the court. The court came up with a deep-pocketed theory to create a deterrent effect on the industries which are hazardous and inherently dangerous in nature.

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<sup>9</sup> (2017) 16 SCC 310

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