

# **VIZAG GAS LEAK: STRICT VIS A VIS ABSOLUTE LIABILITY**

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## **Abstract**

Industrial disasters like gas leakages are not new to us, as we have been facing numerous incidents from Bhopal disaster and Oleum gas leakage in the past to Vizag gas leakage in the present. The primary reason for these types of incidents is the greed of the industry managements to cut the costs and maximize their profits. They are of the opinion that skipping the mandatory procedures may result in saving some money, but they are not realizing the cost of their greed, resulting in the creation of huge losses to the lives of people surrounding the industries and damage to the environment around. We can assume that there is no social responsibility present in the managements of these industries. Instead of taking care to prevent industrial disasters, they try to escape from the punishment. This can be avoided by imposing strict restrictions by the government in punishing them along with the government officials who are negligent in their duty to make sure that these industries follow the safety norms and regulations. To be sure that the victims get their compensation as early as possible, the Supreme Court long ago formulated the principle of ‘absolute liability, without any exceptions’, to compensate the victims. In all similar cases, strict liability is not considered, as the managements of industries try to escape from the eyes of law using the exceptions as defences. Hence, LG Polymers is bound to compensate the victims and also the damage caused to the environment under absolute liability, without any exceptions.

## **1. Introduction**

In the early hours of morning on 7<sup>th</sup> May, 2020, a major leak of Styrene Gas happened in the polymer plant at Visakhapatnam District, Andhra Pradesh

owned by LG Polymers India Private Limited Company, which ended the lives of 12 people including a child and affected thousands in the vicinity.<sup>1</sup>

## **2. Summary of Facts**

### **i. Issue**

Prima facie, it was found out that the gas leak was the result of failure by the LG Polymers to fulfill the statutory procedures of Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and the company failed to follow the procedures that are required to be complied with, in case of emergencies.<sup>1</sup>

### **ii. Chemical Plant**

The accident prone chemical plant was first established by the Shriram Group in 1961, under the name Hindustan Polymers, to convert alcohol from molasses in order to produce styrene, which is commonly used in the production of polystyrene, for manufacturing parts of home appliances, electronics, automobiles and food packaging. In 1971-72, the management expanded its operations and began manufacturing polystyrene.

In 1978, the plant was taken over by the UB Group, which began to manufacture expanded polystyrene. Finally, LG polymers purchased the same plant in 1997, which has been storing imported styrene in that.<sup>2</sup>

### **iii. Negligence & Violations**

The reasons for the accident were improper storage design, irregular maintenance of the old storage tank and not following the standard operating procedures and safety norms. The temperature inside the tank from which the gas was leaked was abnormally hot and there were no measures available in the plant to cool it.<sup>2</sup>

The committee constituted by the government found out 19 violations of rules and acts, and held LG Polymers liable under seven Central and state laws, such as Petroleum Act, 1934, Factories Act, 1948, the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996,

<sup>1</sup>Digant Raj Sehgal, Strict Liability v. Absolute Liability vis-a-vis Vishakhapatnam Gas Leak Tragedy, <https://blog.theadvocatesleague.in/strict-liability-v-absolute-liability-vis-a-vis-vishakhapatnam-gas-leak-tragedy/>

Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Andhra Pradesh Fire Service Act, 1999.<sup>3</sup>

**iv. Lack of Environmental Clearance**

LG Polymers has been operating without the mandatory environment clearances. In an affidavit filed by it to the State Environment Impact Assessment Authority on May 10, 2019, the company admitted that it had been operating the plant from 1997 to 2019 without having the necessary environment clearances.<sup>4</sup>

**v. Effects**

Apart from affecting the health, the gas leakage also affected the livelihood of the local people around the area, as agriculture is the main source of income for many families around. After the gas leakage, the officers from the Agriculture Department instructed farmers to destroy the crops in cultivation and asked them not to grow crops until further orders. Many people also lost their livestock.

The residents were also instructed not to use groundwater or the water from the neighboring water resources until the government declares it safe for consumption.<sup>2</sup>

**vi. Removal of Styrene**

On 11<sup>th</sup> May 2020, the Andhra Pradesh government directed the company to remove 13,000 metric tonnes of Styrene gas out of the country, as the experts from the National Disaster Management Authority (NDMA) recommended the government to immediately remove it from the plant in the anticipation of risk of leaking again.<sup>5</sup>

**vii. Relief and rescue**

NDRF helped in the evacuation of 1,200 families to safe locations, and admitting about 400 people to hospital, as a part of the rescue operations

along with Fire Services, and Police and Revenue personnel in this issue.<sup>6</sup>

**viii. Remedies used**

The antioxidant 4-tert-butylcatechol (PTBC) was used at the plant for the neutralization of the gas. The specialists of National Disaster Response Force (NDRF) called CBRN (chemical, biological, radiological, and nuclear) team participated in clearing the gas effect.

The LG polymers also supported by using ACTify 2680, a green retarder, and ACTify 2673, a polymerisation inhibitor, to eliminate the risk factors in the plant.<sup>7</sup>

**3. Legal Action**

**i. Cases & Arrests**

Based on the complaint by village revenue officer of Venkatapuram, the local police on May 7 filed a case against LG Polymers management as per sections 278, 284, 285 of the Indian Penal Code.

A day after the submission of High Power Committee (HPC) report to the Chief Minister of Andhra Pradesh on the incident, 12 officials of the LG Polymers including its CEO were arrested by the police.<sup>8</sup>

<sup>2</sup>Sumit Bhattacharjee, Visakhapatnam gas leak | How negligence and violations led to a deadly disaster, <https://www.thehindu.com/news/cities/Visakhapatnam/visakhapatnam-gas-leak-how-negligence-and-violations-led-to-a-deadly-disaster/article31761949.ece#:~:text=A%20gas%20leak%20from%20the,led%20to%20the%20deadly%20disaster>

<sup>3</sup>Sreenivas Janyala, Vizag gas leak: Govt-appointed committee holds LG Polymers liable under seven Central and state laws, <https://indianexpress.com/article/cities/hyderabad/vizag-gas-leak-govt-appointed-committee-holds-lg-polymers-liable-under-seven-central-and-state-laws-6498927/>

<sup>4</sup>LG polymers did not have environmental clearance, alleges HRF, <https://www.thehindu.com/news/cities/Visakhapatnam/lg-polymers-did-not-have-environmental-clearance-alleges-hrf/article31561365.ece>

<sup>5</sup>Experts detect more gas leak risks at LG Polymer factory in Vizag, <https://www.deccanchronicle.com/nation/in-other-news/120520/experts-detect-more-gas-leak-risks-at-lg-polymer-factory-in-vizag.html>

<sup>6</sup>Rajulapudi Srinivas, Visakhapatnam gas leak: NDRF's chemical team swings into action, [https://www.thehindu.com/news/national/andhra-pradesh/gas-leak-ndrfs-chemical-team-swings-into-action/article31529231.ece#:~:text=National%20Disaster%20Response%20Force%20\(NDRF,evacuated%201%20C200%20families%20to%20safe](https://www.thehindu.com/news/national/andhra-pradesh/gas-leak-ndrfs-chemical-team-swings-into-action/article31529231.ece#:~:text=National%20Disaster%20Response%20Force%20(NDRF,evacuated%201%20C200%20families%20to%20safe)

<sup>7</sup>Visakhapatnam gas leak, [https://en.wikipedia.org/wiki/Visakhapatnam\\_gas\\_leak#:~:text=The%20resulting%20vapour%20cloud%20spread,being%20exposed%20to%20the%20gas.](https://en.wikipedia.org/wiki/Visakhapatnam_gas_leak#:~:text=The%20resulting%20vapour%20cloud%20spread,being%20exposed%20to%20the%20gas.)

**ii. National Green Tribunal (NGT)**

The National Green Tribunal took suo motu cognizance of the issue and formed a committee headed by a retired judge of the Andhra Pradesh high court. The committee is supposed to inspect the site and report the cause of the incident, the damage caused to life, its effect on environment and health, and the procedure to compensate the victims. It also ordered LG Polymers to deposit Rs 50 crore with the district collector, considering the company's financial worth and the extent of damage caused.<sup>10</sup>

The government of Andhra Pradesh was directed by the NGT to find out the government officials responsible for their negligence and take stringent action against them for allowing the LG Polymers plant to operate without statutory permissions, and submit a report. It also directed the Central government to set up an expert committee to give a report for the prevention of similar incidents.<sup>11</sup>

**iii. Human Rights Commission**

The National Human Rights Commission (NHRC) has issued notice to both the governments of Centre and the state of Andhra Pradesh about the incident, taking cognizance of the violation of human rights including right to life.<sup>11</sup>

<sup>8</sup>KMP Patnaik, LG Polymers CEO arrested in Vizag gas leak case, <https://www.deccanchronicle.com/nation/in-other-news/080720/lg-polymers-ceo-arrested-in-vizag-gas-leak-case.html>

<sup>9</sup>Amit Kumar, Vizag Gas Leak: Why the NGT Should Have Applied Absolute, Not Strict, Liability, <https://thewire.in/rights/vizag-gas-leak-ngt-strict-absolute-liability>

<sup>10</sup>Vizag gas leak: NGT says LG Polymers has 'absolute liability', refuses to review penalty order, <https://scroll.in/latest/963689/vizag-gas-leak-ngt-says-lg-polymers-has-absolute-liability-refuses-to-review-penalty-order>

<sup>11</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-supreme-court-oleum-bhopal-gas-cases>

#### **4. Liability**

##### **i. Polluter Pays Principle (PPP)**

The Polluter Pays Principle is a well-known environmental law principle, which says that the person who damages the environment should bear the cost of fixing that damage. This principle played an important role in the moderation of environmental degradation.

It not only does cover pollution prevention and control measures, but also covers liabilities such as costs for the compensation of damage to the environment.

The Supreme Court in one of its judgments held that, “the redemption of the damaged environment is a part of the process of sustainable development, and as such, the polluter is liable to pay the cost of the individual sufferers as well as the cost for reversing the damaged ecology.”<sup>15</sup>

##### **ii. Doctrine of Strict Liability**

The doctrine of strict liability was formulated in the landmark case of Ryland v Fletcher<sup>12</sup>. In this case, Blackburn, J. held that “any person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief, if it escapes must keep it at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape”.

Strict liability was allowed by exceptions such as; the Plaintiff was at fault by Vis Major or Act of God, Fault of third party and Consent of plaintiff. It is in a way similar to absolute liability, but with some exceptions.<sup>13</sup>

##### **iii. Doctrine of Absolute Liability**

In 1986, a gas leakage incident alike the Bhopal gas disaster<sup>14</sup> happened in Delhi. In this Oleum Gas Leak Case<sup>15</sup>, the Supreme Court rejected to apply Strict Liability in circumstances involving lethal industries. Justice PN Bhagwati quoted that “where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an

accident in the operation of such hazardous or inherently dangerous activity resulting in escape of the toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis a vis the tortious principle of Strict Liability under the rule of Rylands v. Fletcher”. This rule became the ratio decidendi and was being applied in all similar cases that followed.<sup>13</sup>

**iv. Strict Liability vs. Absolute Liability**

As far as Indian jurisprudence is concerned, the principle of strict liability as given in Rylands v. Fletcher<sup>12</sup> has evolved over the period. The rule of absolute liability is given by the Supreme Court and the principle of no-fault is applied even in the cases of accidents without negligence, compensation is to be paid without any exceptions.

Our country follows the utmost standards of liability when incidents like gas leaks take place or any harm is caused to people by hazardous substances by the industries. So, it is evident that the LG Polymers Company is liable to compensate each and every one who suffered damage or loss due to the gas leak incident, as the company itself is responsible for storing the dangerous chemicals in its premises. To hold them responsible for the incident, no need of proving their negligence in the court is required, the very loss suffered is sufficient enough.

In this case, no expenses or defences maybe allowed as per ‘strict liability’, which is followed in other countries, as there is a legal standard of applying ‘stare decisis’ as per the MC Mehta case<sup>15</sup>. Here, the LG polymers is supposed to pay not only compensation for the deaths, but also for the illness suffered by the people, their hospitalization expenses, loss of cattle and crops along with the damage caused to the environment.<sup>12</sup>

The Indian judiciary has decided in issues like these through many precedents, stating that there is no need to impose ‘strict liability’ on big

industrial corporations, as they are bigger entities and they are bound to be held under ‘absolute liability’. Only smaller firms can be allowed to have ‘strict liability’ in these cases, due to the financial constraints.<sup>17</sup>

## **5. Compensation**

### **i. Government**

The government of Andhra Pradesh announced a compensation of Rs.1 crore for the family members of the persons died in this incident. It also announced RS. 1 lakh rupees for the people who has to undergo treatments for longer period or who are under ventilator support and Rs.25,000 for those who received primary treatment.<sup>18</sup>

### **ii. Company**

Claims against the LG polymers by the victims are likely to be taken care by the central and state governments on behalf of them and compensation will be issued on behalf of the company after the order is issued by the court.<sup>11</sup>

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

Apart from the compensation given by the government, the victims can claim compensation as per the Public Liability Insurance Act 1991, by filing a claim with the district collector within 5 years of the incident. This is the easier process of getting compensation than getting it from the company through the court. The victims can still approach the court for a higher compensation if they are not satisfied.<sup>11</sup>

## **6. Cases**

### **i. K Nagireddi v. Union of India (1982)<sup>19</sup>**

This was the very first case where the Indian courts had hinted towards modifying the strict liability rule according to the Indian conditions.

### **ii. M. C. Mehta v. Union of India (1987)<sup>15</sup>**

It is popularly known as the Oleum Gas Tragedy and was a landmark case in



the evolution of environmental laws in India, as in this case the Supreme Court took steps towards the development of efficient remedies for solving these types of cases including formation of National Green Tribunal for speedier disposal of environmental law cases. Hon'ble Justice P N Bhagwati expanded the scope of the no fault liability principle with his precedent.

**iii. Union Carbide Corporation v. Union of India (Bhopal Gas Tragedy Case) (1990)<sup>14</sup>**

The Supreme Court gave importance to monetary relief over the legal principles and procedures, as there is an unbearable delay for the victims to receive the compensation. The court terminated the legal proceedings after concluding the settlement of claims for 470 million US dollars.

**iv. Indian Council for Enviro-Legal Action v. Union of India (1996)<sup>20</sup>**

The concept of polluter pays principle and absolute liability was upheld by the Supreme Court again in this case. The court ordered the industries which manufacture Sulphuric Acid and other toxins to compensate the victims for not following the safety procedures during the toxic waste disposal and pollution caused by them.

**v. Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors (2014)<sup>21</sup>**

In this case, Section 17(3) of the NGT Act was again given a broader interpretation to extend it to the cases which do not involve hazardous industries and made it applicable to them.

<sup>18</sup>Moonmoon Ghosh, 11 Dead, Over 1,000 Sick after Gas Leak at Vizag Plant; CM Announces Rs 1 Crore Ex-gratia for Kin of Deceased, <https://www.news18.com/news/india/visakhapatnam-gas-leak-live-updates-lg-polymers-vizag-andhra-pradesh-2608889.html>

<sup>19</sup>*K. Nagireddi v. Union Of India AIR 1982 AP 119*

<sup>20</sup>*Indian Council for Enviro-Legal vs Union Of India And Ors 1996 AIR 1446, 1996 SCC (3) 212*

<sup>21</sup>*Alaknanda Hydro Power Co. Ltd vs. Anuj Joshi & Ors 1 SCC 769*

## **7. Conclusion**

Since 1986, the role of Multinational companies and giant industries has not changed even after these many years. Their non-compliance with the rules and regulations is costing lives wherever hazardous incidents happen, taking lives of many people, making many more sick and destroying the environment surrounding them. As these happenings are due to the sheer negligence of the managements of industries, these cannot be termed as an Act of God. They are not accidents, but only incidents. Majority of the companies have a motto of profit maximization as the utmost priority even if it costing the lives of people, without social responsibility.

Even the government officials in these situations are also not reliable, as this case of LG polymers proved that a company dealing with hazardous chemicals which can take off lives of people easily, is operating without environmental clearances for over 22 years. There may be several reasons for the officials to turn a blind eye towards these types of violations like being negligent towards their duty or being corrupted. These results in the escape of erring managements of the companies escape from their liabilities easily. To prevent all these issues resulting in delaying and denying of justice to the victims in every case, the courts are following the concept of ‘absolute liability’ rather than ‘strict liability’ in these kinds of cases. Thus, in this case also, no exceptions are allowed and the victims are compensated without any excuse by the LG polymers company along with the compensation to be paid for the repair of damage caused to the ecological system.

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