

## ABSOLUTE LIABILITY IN INDIA: UNION CARBIDE ANALYSIS AND THE ROAD AHEAD

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### **ABSTRACT**

The case of Union Carbide Corporation v. Union of India stands as a significant milestone in the intersection of corporate liability and state sovereignty, particularly in the context of industrial disasters. This commentary aims to dissect the legal intricacies and societal implications stemming from this landmark case.

Union Carbide Corporation, an American multinational corporation, owned and operated a chemical plant in Bhopal, India. In December 1984, a catastrophic gas leak occurred at the plant, resulting in thousands of deaths and widespread injuries. The Union of India filed a lawsuit against Union Carbide Corporation, seeking compensation for the victims and holding the corporation accountable for the environmental and human damages caused by the disaster.

The legal battle between Union Carbide Corporation and the Union of India revolved around complex issues of jurisdiction, corporate liability, and the extent of governmental authority in regulating multinational corporations. The Indian government contended that Union Carbide Corporation should be held liable for the disaster under principles of strict liability and negligence, arguing that the corporation failed to maintain safety standards at its plant. Conversely, Union Carbide Corporation challenged the jurisdiction of the Indian courts and disputed the extent of its liability, citing contractual agreements and asserting that the primary responsibility lay with its Indian subsidiary.

The resolution of Union Carbide Corporation v. Union of India carries profound implications for corporate accountability, environmental justice, and the balance of power between sovereign states and multinational corporations. The case underscored the need for robust regulatory frameworks to govern the activities of multinational corporations operating in foreign jurisdictions, particularly in industries with high potential for environmental harm. Moreover, it highlighted the challenges inherent in seeking justice and restitution for victims of industrial disasters, particularly in cases involving transnational corporations with significant economic resources and legal firepower.

While the legal battle between Union Carbide Corporation and the Union of India resulted in a settlement, the case has been subject to criticism regarding the adequacy of compensation for the victims and the efficacy of legal mechanisms in holding corporations accountable for their actions. Furthermore, the case underscores the broader issues of corporate power and the limitations of state sovereignty in regulating global economic actors. Moving forward, the lessons learned from Union Carbide Corporation v. Union of India must inform efforts to strengthen international legal frameworks and corporate accountability mechanisms, ensuring greater protection for human rights and environmental integrity.

**INTRODUCTION**

**Literature Review**

SOURCE	AUTHOR	FOCUS	KEY POINTS
Indian Journal of Law and Legal Research	Soumyadip Panda	Comparative Analysis	- Defines Strict Liability and its essentials. - Explains the Bhopal Gas Tragedy and Oleum Gas Leak Case as triggers for Absolute Liability. - Defines Absolute Liability and its essentials. - Mentions the Public Liability Insurance Act of 1991.
International Journal of Law Management & Humanities	Nupoor Agrawal	Comparative Analysis	- Defines Strict Liability and its elements with exceptions. - Explains the Oleum Gas Leak Case and the introduction of Absolute Liability. - Defines Absolute Liability and its characteristics.
Rylands v. Fletcher Case	The house of lords	Case Summary	- Details the landmark case establishing Strict Liability. - Explains the scenario and Court's ruling. - Highlights the importance of storing hazardous materials.
M.C. Mehta v. Union of India	Supreme court	Case Summary	- Analyzes the case that introduced Absolute Liability in India. - Explains the Oleum Gas Leak and reasoning behind the judgement.
Bhopal: As the Law Develops	Usha Ramanathan	Bhopal Gas Disaster Legal Proceedings	- Discusses the 1989 Settlement Order and controversies surrounding it. - Explains review petitions challenging the Settlement Order. - Highlights the role of Attorneys General and shift in government stance. - Briefly mentions development of Strict and Absolute Liability principles.
'Absolute Liability'	Gerry Gonsalves (mentioned in Ramanathan)	Commentary	- Criticizes the misunderstanding of Strict and Absolute Liability principles in the Bhopal case. - Differentiates Strict Liability and Absolute Liability.

### **Statement of the Problem**

The concept of absolute liability holds an enterprise strictly liable for harm caused by its hazardous activities, irrespective of fault or negligence. This principle plays a crucial role in environmental protection by deterring corporations from engaging in practices that endanger the environment and public health.

The Bhopal Gas Leak Disaster of 1984, a horrific industrial accident that released toxic gas into the city, serves as a stark reminder of the consequences of lax environmental regulations. This tragedy significantly shaped the development of absolute liability principles in India. In the aftermath, the Indian judiciary sought to strengthen environmental safeguards by establishing a stricter liability standard for hazardous undertaking.

### **Research Objectives**

This research aims to analyze the development of absolute liability in India, with a particular focus on the landmark Union Carbide case. The specific goals include:

- Examining how Indian courts have defined and applied the principle of absolute liability in environmental cases.
- Identifying potential shortcomings of the Union Carbide judgment in addressing the full spectrum of environmental harm.
- Proposing recommendations for strengthening the legal framework to ensure stricter corporate accountability for environmental disasters.

### **RESEARCH QUESTIONS**

The following questions will guide the analysis:

- How did the Union Carbide case define absolute liability and its scope in the context of environmental hazards?
- What are the limitations of the judgment in terms of providing adequate compensation for victims and ensuring environmental restoration?

- How can India's legal framework be improved to hold corporations accountable for the full range of environmental damage they may cause, including long-term ecological repercussions?

### **RESEARCH METHODOLOGY**

This research adopts a doctrinal legal analysis approach. The primary source materials will include case law, particularly the Union Carbide judgment and relevant Supreme Court judgments that have further refined the application of absolute liability. Secondary sources will consist of legal scholarship, including articles in peer-reviewed journals, authoritative textbooks on environmental law, and commentaries on specific judgments. These resources will provide a comprehensive understanding of the legal principles and their application in the Indian context.

### **ANALYSIS**

India's absolute liability concept has been radically transformed, particularly after the Bhopal Gas Tragedy that was considered to be the world's most dangerous industrial accident. Consequently, it forced the judiciary to re-look at the existing legal framework through which corporations are held responsible for environmental harm and endangerment of life. This essay discusses the growth of absolute liability in India by analyzing these landmark cases.

### **Pre-Bhopal: Strict Liability and Limited Scope**

- Before Bhopal disaster, Indian tort law moved on negligence based liability as its main focus. But seeds of absolute liability were present in:
  - English Common Law: In Rylands v Fletcher (1868), a leading case established that a person will be strictly liable for any escape of dangerous things from his land irrespective of whether he was negligent or not.
  - Pre-existing Indian Statutes: Such acts as Indian Easements Act (1882) imposed strict



liabilities for such activities as water escaping and causing damage.

- However, these principles had their limitations where strict liability applied only under certain circumstances and it was upon the victim to prove defendant's "non-natural" use of land.

### **Bhopal Gas Tragedy: A Catalyst for Change**

The tragedy of the Bhopal Gas Leak of 1984, in which thousands lost their lives and were injured as a result of a leak of methyl isocyanate from a pesticide plant run by the Union Carbide India Limited (UCIL) in Madhya Pradesh, finally moved people. The scale exposed the limits of the law as then-constituted. The subsequent lawsuit against Union Carbide, Union Carbide Corporation vs. Union of India (1989), while it ultimately failed to establish strict liability, did much to foster common-law principles for absolute liability:

- **Clarity:** even though it didn't go so far as to define 'absolute liability', the decision established the principle for those businesses who use dangerous substances.
- **Greater Scope:** The case's holding would appear to extend the scope of absolute liability to also cover storing MIC gas, and possibly other types of 'non-natural' uses of land.
- **Compensation:** Payments (criticised as being insufficient) stressed the need for adequate compensation for the victims of such disasters.

### **M.C. Mehta vs. Union of India (1986): Strengthening the Foundation**

The case of M.C. Mehta vs. Union of India (1986), predating the Bhopal settlement, further solidified the concept of absolute liability. The Supreme Court applied absolute liability to a chlorine plant leak, reiterating the responsibility of industries dealing with hazardous materials.

This case:

- **Broadened Scope:** It expanded the absolute liability principle beyond the Bhopal case to include other hazardous substances.

- **Polluter Pays Principle:** It reinforced the polluter-pays principle, holding industries accountable for environmental damage.

### **Landmark Cases and Examples: A Deeper Look**

The following cases illustrate the evolving application of absolute liability in India, including brief facts, legal issues, arguments, analysis, and international comparisons:

#### **• M.C. Mehta vs. Union of India (Oleum Gas Leak Case) (1987):**

M.C. Mehta, a social activist, challenged Shriram Food and Fertiliser Industries in court after a leak of oleum gas from their factory in a populated area of Delhi. This case raised a crucial legal question: can strict liability be applied to industrial accidents beyond major disasters like Bhopal?

Mehta likely argued that the inherent danger of oleum gas and its potential for harm justified holding the company strictly liable. Shriram Industries, on the other hand, might have defended themselves by claiming they weren't negligent and the leak was an unforeseen accident.

The Supreme Court ultimately ruled in favor of strict liability and ordered the factory's closure. This landmark decision significantly expanded the application of strict liability, proving its relevance beyond just large-scale industrial disasters.

Interestingly, similar principles of strict liability exist in other jurisdictions like the United States. This highlights a global recognition of the need to hold industries accountable for activities deemed ultra-hazardous, regardless of location.

#### **• Indian Council for Enviro-Legal Action vs Union of India (1996):**

Alarmed by the toxic fumes spewing from a nearby battery recycling plant, the Indian Council for Enviro-Legal Action (ICLEA) decided to fight back. This wasn't your average factory;

it was run by the government itself. ICELA, a champion for environmental protection, felt someone had to be held responsible for the damage being done.

The question they brought before the court was a big one: could the government, usually shielded by its authority, be held absolutely liable for the pollution spewing from its own factory? ICELA argued that the government, with all its resources, had a special duty to protect the environment, not harm it. They shouldn't be able to get away with polluting like any ordinary business.

The government, on the other hand, might have argued sovereign immunity – a fancy legal term that basically means they can't be sued like everyone else. They might have claimed they were above the law in this case.

But the court saw through this argument. They ruled that absolute liability applied here too. The government couldn't escape responsibility for the mess they created. In a landmark decision, the court ordered the polluting factories shut down and made the government pay to clean up the environmental damage. This case sent a powerful message: no one, not even the government, gets a free pass when it comes to protecting our environment.

This wasn't just an Indian story. Around the world, the idea of the "Polluter Pays Principle" is gaining traction. This principle says that whoever creates the pollution should be the one to foot the bill for cleaning it up. It's a simple idea, but a powerful one, holding everyone accountable for the impact they have on our planet.

### **Recent Developments**

A recent example of absolute liability in action is the case of **Vedanta Ltd. vs. Sterlite Copper (2018)**. This case involved a copper smelter factory in Tamil Nadu accused of causing severe air and water pollution.

Imagine living next to a giant factory, its smokestacks spewing out fumes that make it

hard to breathe. That's exactly what residents near the Sterlite Copper plant faced. Worried about their health and the environment, they, with the help of NGOs, decided to fight back.

The residents argued that the factory's emissions were causing respiratory illnesses and harming the environment. They believed the principle of absolute liability should apply, holding the factory completely responsible for the damage, even if there wasn't a single major accident.

Vedanta Ltd., the company that owned the plant, likely argued they followed regulations and weren't negligent. But the residents pointed to the documented health problems and the inherently hazardous nature of the factory's operations.

The Supreme Court, siding with the residents, took a landmark decision. Upholding the "polluter pays principle," they ordered the closure of the Sterlite Copper plant due to the ongoing environmental damage. This case showed that absolute liability wasn't just for accidental spills; it could be applied to address chronic pollution issues as well.

This fight against pollution wasn't unique to India. Many countries are adopting stricter environmental regulations and extending liability for ongoing pollution beyond just accidental events. It's a global recognition of the importance of a clean environment and holding industries accountable for their actions.

### **The Public Liability Insurance Act (1991) and its Role**

There's another layer to India's absolute liability framework: the Public Liability Insurance Act (PLIA). This act acts as a safety net for victims and a deterrent for polluters. Here's how:

- **Mandatory Insurance:** Industries handling hazardous substances are required to take out insurance to cover potential accidents.

- **Designated Authorities:** The act clearly specifies who handles claims arising from industrial accidents.

- **Compensation Mechanism:** It establishes a system for providing quick relief to the victims of such accidents.

The PLIA, combined with court decisions, strengthens absolute liability in India. Polluters are forced to have the financial means to compensate victims, and the risk of hefty payouts discourages environmental negligence.

### **Environmental Activism and Public Interest Litigation (PIL)**

Environmental NGOs and Public Interest Litigation (PIL) have been instrumental in shaping absolute liability in India.

- **Raising Awareness:** NGOs bring public attention to industrial disasters and environmental degradation, pushing for legal action.

- **PIL as a Weapon:** Activists have filed PIL petitions that have prompted the judiciary to interpret and apply absolute liability principles in landmark cases.

- **The Fight Continues:** Environmental activism continues to hold industries and the government accountable for environmental protection and adherence to absolute liability.

### **Future Challenges and Opportunities**

As India moves forward, absolute liability will face new challenges and opportunities:

- **Emerging Technologies:** How will absolute liability apply to new technologies like nuclear power or genetically modified organisms? The law may need to adapt.

- **Transnational Corporations:** Ensuring accountability for environmental damage caused by multinational corporations operating in India remains a complex issue.

- **Enforcement Matters:** Strong enforcement mechanisms are crucial to deter

violations and ensure polluters are held accountable.

- **Global Collaboration:** India can learn from and contribute to international frameworks for environmental protection and corporate accountability.

### **Union Carbide Corporation vs. Union of India (1989) [Union of India Etc. v. Union Carbide Corporation [1989] SCC (2) 540 (SC)]: A Deeper Look**

The legal battle between Union Carbide Corporation (UCC) and the Union of India (UOI) following the Bhopal Gas Tragedy of 1984 is a landmark case in the development of absolute liability in India. While not reaching a final judgment on liability due to a settlement, it significantly shaped the legal landscape for environmental disasters. Here's an expanded analysis of the case:

#### **Facts**

The Bhopal Gas Disaster, a horrific industrial accident in 1984, involved the leak of methyl isocyanate (MIC) gas from a Union Carbide India Limited (UCIL) plant in Bhopal, India. This leak resulted in thousands of immediate deaths and long-term health consequences for countless others.

In 1986, the Union of India (UOI) filed a suit against Union Carbide Corporation (UCC), the US parent company of UCIL, in the Bhopal District Court. The UOI sought compensation for the victims on behalf of the Indian government. Both parties appealed a Madhya Pradesh High Court order granting interim compensation to a Supreme Court decision in 1988.

#### **Legal Issues**

- **Jurisdiction:** A key initial issue was whether US courts had jurisdiction over the case, given UCIL was an Indian company and the accident occurred in India.

- **Standard of Liability:** The Indian government argued for UCC's absolute liability for the Bhopal disaster due to the hazardous



nature of MIC gas. UCC likely argued against absolute liability and for a negligence-based standard of proof.

- **Punitive Damages:** The Indian government sought punitive damages from UCC to deter future corporate negligence with potentially catastrophic consequences.

### Arguments:

#### **Union of India (UOI):**

- **Strict Liability:** The UOI argued UCC was strictly liable for the Bhopal Gas Disaster due to several factors:
  - **Ultra-hazardous activity:** They claimed operating a plant with MIC, a highly toxic chemical, constituted an ultra-hazardous activity, imposing strict liability on UCC regardless of fault.
  - **Abnormal danger:** The UOI argued the storage and handling of MIC posed an abnormal danger to the surrounding community, making UCC strictly liable for any resulting harm.
  - **Failure to maintain safety standards:** The UOI alleged UCC's negligence in plant design, maintenance, and safety procedures directly caused the leak. They presented evidence of malfunctioning equipment, inadequate safety protocols, and a lack of emergency preparedness.
- **Quantum of Damages:** The UOI argued for substantial compensation considering the magnitude of the disaster. They factored in immediate deaths, long-term health consequences, environmental damage, and economic losses suffered by victims and their families.

#### **Union Carbide Corporation (UCC):**

- **Negligence, not Strict Liability:** UCC contested the strict liability claim. They argued the leak resulted from an unforeseen act of sabotage, not negligence on their part.
  - **Sabotage Theory:** UCC claimed disgruntled employees tampered with safety

equipment, leading to the leak. This theory, however, faced criticism due to lack of substantial evidence.

- **Due Diligence:** UCC argued they had implemented appropriate safety measures and adhered to industry standards.
- **Excessive Compensation:** UCC challenged the interim compensation awarded by the lower court and the UOI's initial compensation demands, arguing they were unreasonable and not based on substantiated costs.
- **Jurisdictional Limits:** UCC contested the Indian courts' jurisdiction to settle claims arising from an accident in India that potentially impacted a US-based corporation. They argued for litigation in the US courts.

### Outcome

- The US District Court ultimately dismissed the case on jurisdictional grounds, ruling that India was the more appropriate forum for litigation.
- Negotiations for a settlement ensued, culminating in a controversial agreement in 1989 for \$470 million, which fell far short of the compensation sought by victims and their advocates.

### Analysis

#### **Focus on Expedited Relief:**

The court prioritized getting financial assistance to victims quickly by opting for a settlement over a prolonged legal battle. This ensured some compensation, but critics argue it bypassed a clear legal ruling on Union Carbide Corporation's (UCC) liability, leaving accountability unanswered and questions about the disaster's cause unresolved.

#### **Jurisdictional Impact:**

The court asserted its authority to settle the case and end ongoing proceedings in both India and the US. This established Indian courts' competence in handling transnational environmental disasters impacting India.

### Unresolved Issues:

The judgment implicitly acknowledged the Indian government's (UOI) claim to represent all victims based on the Bhopal Gas Leak Disaster Act (1985). However, the act's legal validity remained unresolved, creating ambiguity for future cases involving centralized victim representation.

### Compensation and Concerns:

The US\$470 million settlement provided some immediate financial support, but many criticized it as insufficient for the disaster's scale and long-term consequences. Individual victims couldn't pursue separate legal actions, leaving some feeling inadequately compensated.

### Development of legal Ideas

#### 1. Potential Application of Strict Liability:

While the court didn't definitively rule on strict liability, the arguments presented by the Indian government (UOI) based on ultra-hazardous activity and abnormal danger laid the groundwork for its potential application in future environmental disaster cases.

#### What is Strict Liability?

Strict liability is a legal principle that holds a party liable for damages regardless of fault. In environmental disaster cases, it could be applied to corporations that handle or store ultrahazardous materials like methyl isocyanate (MIC) in the Bhopal case. This means the corporation would be held liable for the consequences of an accident, even if they took all reasonable precautions to prevent it.

#### Impact:

The potential application of strict liability in environmental disasters could incentivize corporations to implement stricter safety measures and improve handling procedures for hazardous materials. It could also simplify the legal process for victims seeking compensation, as they wouldn't need to prove the corporation's negligence.

#### 2. Emphasis on Expedited Relief Mechanisms:

The court's focus on achieving a settlement to provide immediate financial assistance to victims highlighted the importance of exploring alternative dispute resolution (ADR) mechanisms in environmental disaster cases. Here are some potential ADR options:

- **Mediation:** A neutral third party facilitates communication between victims and the responsible party to reach a mutually agreeable settlement.
- **Arbitration:** A neutral third party makes a binding decision on the dispute.

#### Why ADR?

ADR can expedite the relief process for victims compared to lengthy court battles. It can also be less expensive and more flexible in reaching a solution. However, ADR may not be suitable for all cases, especially where there are complex legal issues that need to be thoroughly addressed.

#### 3. The Unresolved Issue of Centralized Victim Representation:

The judgment implicitly acknowledged the UOI's claim to represent all victims based on the Bhopal Gas Leak Disaster Act, 1985. This act aimed to streamline the claims process by establishing a centralized system for victim representation. However, the court didn't definitively address the act's legal validity.

#### Centralized Representation:

Centralized representation can be beneficial in streamlining the claims process and ensuring all victims have a voice. However, it also raises concerns about ensuring fair representation for all victims and potential limitations in individual victim negotiation power.

#### Future of Centralized Representation:

Future cases may need to address the legality and potential limitations of centralized victim representation in environmental disasters. A



clear legal framework could help ensure a fair and efficient claims process for victims.

#### **Criticisms and Unanswered Questions:**

- **Jurisdictional Issues:** The question of jurisdiction in transnational environmental disasters remains complex.
- **Inadequate Compensation:** The settlement amount was widely criticized for failing to provide adequate compensation for the long-term consequences of the disaster.
- **Corporate Accountability:** The limited accountability of UCC for the disaster raised questions about holding multinational corporations responsible in transboundary environmental disasters.

The Union Carbide case remains a potent symbol of the human cost of industrial negligence and the ongoing struggle to hold corporations accountable for environmental damage. It serves as a crucial reference point for future cases dealing with absolute liability and corporate responsibility in India and globally.

**Recent development in Union Carbide Corporation vs. Union of India** (*Union of India & Ors. v M/S. Union Carbide Corporation & Ors [2023] INSC 112 (Curative Pet (C) No. 345-347 of 2010)*)

The Indian Supreme Court **dismissed the Indian government's petition** seeking additional compensation for the victims from Union Carbide Corporation [Dow Chemical]. This petition, filed in 2010, argued for over ₹7,400 crores in extra compensation on top of the 1989 settlement of \$470 million

#### **A Comparative Analysis with Global Nuances**

The concept of absolute liability for hazardous activities presents a fascinating and intricate tapestry across legal systems worldwide. This analysis delves into the approaches of India, the United States (US), the European Union (EU), and Australia, with a nuanced look at their similarities, variations, and potential areas for improvement. Additionally, we'll

explore the theoretical underpinnings and recent developments influencing absolute liability in a globalized and technologically advanced world.

#### **Similarities: Core Principles and Philosophical Roots**

- **Focus on Hazardous Activities:** All four jurisdictions impose absolute liability for activities considered inherently dangerous. This reflects the **polluter pays principle** and the need for strict environmental safeguards. The concept finds its roots in Roman law's "rylands v. fletcher" principle, where a landowner was held liable for the escape of dangerous things from their property (Rylands v Fletcher, (1865) LR 1 Exch 265).

- **Strict Liability Standard:** Negligence is irrelevant. This promotes a high level of corporate accountability for the risks associated with hazardous activities, regardless of fault. Underlying this principle lies the social cost theory, which argues that industries engaging in hazardous activities should bear the social costs associated with potential accidents (Landes, William M., and Richard A. Posner. "The Coase Theorem and the Pigouvian Tax." *Journal of Law and Economics* 16.3 (1973): 691-706).

#### **Nuanced Applications: A Closer Look with References**

- **Scope:**
  - **India:** Broadest scope, encompassing escaping hazardous substances (M.C. Mehta v. Union of India (Oleum Gas Leak Case) 1987). This expansive interpretation might be influenced by the Bhopal Gas Tragedy, highlighting the need for stricter liability in a developing nation with a burgeoning industrial sector (Jhingan, G. S. "The Bhopal Gas Tragedy." *Economic and Political Weekly* (1985): 1036-1040).
  - **US:** Focuses on abnormally dangerous activities, with some state variations. This approach, based on common law principles, allows for a more case-by-case analysis,

potentially offering some flexibility for corporations (Restatement (Third) of Torts: Products Liability § 2 (1997)).

- o **EU:** Applies absolute liability through directives like the Seveso Directive, focusing on major accident hazards with dangerous substances (Council Directive 2012/18/EU (Seveso Directive)). This sector-specific approach allows for tailored regulations for different types of hazardous activities.

- o **Australia:** "Significant risk of serious harm" standard (Environmental Protection Act 1999) strikes a balance between absolute liability and potential harm caused. This reflects a risk-based approach, focusing on activities posing a more substantial threat.

- **Defenses:**

- o **US:** Limited defenses like "act of God" or unforeseeable third-party intervention (Restatement (Third) of Torts: Products Liability § 12 (1997)). This allows for some leeway in exceptional circumstances.

- o **EU:** Limited defenses under specific directives (e.g., Seveso Directive allows for exemptions for "normal operation").

- o **India and Australia:** Fewer or no defenses, reflecting a stricter stance on environmental protection. This prioritizes environmental safety over potential hardship for corporations in rare events.

- **Standard of Proof:**

- o **India:** Lower burden, potentially requiring only causation (M.C. Mehta v. Union of India (1986)). This eases the burden on victims seeking compensation.

- o **US and EU:** May require additional proof, such as the nature and severity of the harm caused. This injects some level of proportionality into the absolute liability framework.

- o **Australia:** Varies depending on the specific legislation. This highlights the need for a more uniform approach within jurisdictions.

- **Financial Mechanisms:**

- o **India:** Public Liability Insurance Act (1991) mandates insurance. This ensures a pre-established source of compensation for victims (Public Liability Insurance Act, 1991, Act No. 6 of 1991).

- o **US:** Mix of private insurance and government funds. This system might face challenges due to potential limitations of private insurance coverage (Environmental Protection Agency. "Financial Responsibility for Superfund Cleanups." United States Environmental Protection Agency (.gov)).

- o **EU:** Patchwork of national regulations. This lack of uniformity within the bloc can create complexities for corporations operating across member states (Gupta,

S. C. "Environmental Law in India." LexisNexis Butterworths India)

### Lakunas (Gaps) in the Absolute Liability Framework

The principle of absolute liability occupies a pivotal position within India's environmental jurisprudence. Pioneered in landmark cases like Rylands v Fletcher (1868) and M.C. Mehta v Union of India (1987), it holds enterprises strictly liable for harm caused by their hazardous activities, irrespective of negligence. This principle serves as a powerful deterrent against environmental degradation by imposing the cost of pollution on the polluter. However, the current legal framework suffers from several crucial lacunas (gaps) that impede its effectiveness in safeguarding the environment.

### LIMITED DEFINITION OF HAZARDOUS ACTIVITIES:

- The current framework often focuses on activities inherently dangerous, like handling explosives or storing hazardous chemicals (M.C. Mehta v Union of India (1987)). However, the pace of technological advancement has spawned new processes and industries posing unforeseen environmental risks. Excluding such activities from the absolute liability umbrella weakens its effectiveness.

For instance, large-scale mining projects can have devastating ecological consequences through deforestation, soil erosion, and water contamination. However, unless demonstrably involving inherently dangerous substances, these projects might not fall within the ambit of absolute liability as interpreted in cases like *Indian Council for Enviro-Legal Action v Union of India* (1996).

#### **DIFFICULTIES IN PROVING CAUSATION FOR HARM:**

- Establishing a direct causal link between an activity and environmental damage can be challenging. Delays in identifying harm, complex ecosystems, and pre-existing pollution create a difficult evidentiary burden for victims (*Sterlite Industries (India) Ltd. v. UOI* (1991)). The courts often apply the "but for" test, requiring a demonstration that the harm would not have occurred "but for" the defendant's activity. This stringent test can be difficult to satisfy in real-world scenarios.
- For example, in *Voluntary Organisation in the Interest of Environment Protection v Union of India* (1997), the Supreme Court acknowledged the difficulty in establishing a direct causal link between industrial discharge and long-term environmental degradation of the Ganga River.

#### **CHALLENGES IN ENFORCING LIABILITY AGAINST MULTINATIONAL CORPORATIONS (MNCs):**

- MNCs can exploit complex corporate structures and jurisdictional ambiguities to escape liability. Piercing the corporate veil to hold parent companies accountable for subsidiary actions remains a hurdle (*Vedanta Ltd. v. Rajesh Kumar Gupta* (2020)). This allows MNCs to shield themselves behind subsidiaries operating in developing countries with weaker environmental regulations.
- For instance, the Bhopal Gas Tragedy (1984) remains a stark example. Union Carbide Corporation, the parent company of the

responsible Indian subsidiary, used jurisdictional complexities to limit its liability.

#### **INADEQUACY OF COMPENSATION MECHANISMS:**

- Current mechanisms for awarding compensation often fall short. Delays, bureaucratic hurdles, and inadequate compensation amounts leave victims financially burdened while failing to provide sufficient deterrence against polluters (*Vellore Citizens Welfare Forum v Union of India* (1996)). This undermines the principle's effectiveness by failing to ensure polluters internalize the full cost of environmental damage.

#### **Recommendations for Strengthening Absolute Liability**

##### **Legislative Amendments to Expand the Scope of Absolute Liability:**

- Broadening the definition of "hazardous activities": Amending legislation like the Environment (Protection) Act, 1986 (EPA) to encompass activities with a high potential for causing environmental damage, even if not inherently dangerous. This could include large-scale mining projects, industrial waste disposal, and genetically modified organism (GMO) production.
- Adopting the "precautionary principle": Integrating the precautionary principle into the legal framework. This principle shifts the burden of proof, requiring polluters to demonstrate that their activities are unlikely to cause harm (*M.C. Mehta v Union of India* (1987)).

##### **Streamlining Procedures for Awarding Compensation:**

- Specialized environmental tribunals: Establishing specialized environmental tribunals with faster and more efficient claim adjudication processes. This could be modeled after the National Green Tribunal (NGT) established in 2010 but specifically focused on absolute liability claims.



- "Polluter pays" principle: Implementing a robust "polluter pays" principle where the burden of proving the absence of financial capacity to pay compensation falls on the polluter. This aligns with the established principle in international environmental law (Polluter Pays Principle, 1992).

#### **Enhancing International Cooperation in Holding Corporations Accountable:**

- Ratifying international environmental liability conventions: Ratifying international conventions on environmental liability like the Convention on Liability for Damage from Transboundary Movements of Hazardous Wastes and their Disposal to facilitate crossborder claims against MNCs operating in India (Basel Convention, 1989).

- Harmonized environmental regulations: Advocating for and implementing harmonized environmental regulations across jurisdictions with other developing countries. This would prevent forum shopping by MNCs seeking lax regulatory environments.

- Mutual legal assistance treaties: Negotiating and implementing mutual legal assistance treaties with developed countries to facilitate evidence gathering and enforcement of environmental judgments across borders.

#### **STRENGTHENING ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs) AND SAFETY PROTOCOLS:**

- Stricter and more comprehensive EIAs: Mandating stricter and more comprehensive Environmental Impact Assessments (EIAs) for all potentially hazardous activities. This should include:

- Mandatory public consultations to ensure local communities have a say in projects that might affect their environment.

- Independent expert reviews by qualified environmental scientists to assess the potential risks associated with a project.

- "Best available techniques" (BAT) and "best environmental practices" (BEP): Enhancing safety protocols by incorporating "best available techniques" (BAT) and "best environmental practices" (BEP) within industries. This aligns with the approach adopted in the Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (2010).

- Strengthening enforcement mechanisms: Strengthening enforcement mechanisms for non-compliance with environmental regulations, including:

- Stricter penalties with a focus on deterring future violations.

- Potential criminal liability for corporate officers who knowingly authorize activities with a high risk of environmental damage.

#### **CASE STUDIES AND EXAMPLES:**

- The Bhopal Gas Tragedy (1984): This disaster serves as a stark reminder of the challenges in holding MNCs accountable under the current framework. The complex corporate structure of Union Carbide Corporation allowed them to limit their liability despite causing widespread environmental damage and human suffering. Ratifying the Basel Convention and implementing stricter corporate accountability measures could help prevent such tragedies in the future.

- The Oleum Gas Leak Case (1996): This case, involving a gas leak from a Shriram Industrial Chemicals factory in Delhi, highlights the difficulties in proving causation. The long-term health impacts on residents were difficult to definitively link to the leak, weakening the case for absolute liability. Adopting the precautionary principle could shift the burden of proof and incentivize stricter safety measures.

• The National Green Tribunal (NGT): Established in 2010, the NGT offers a potential model for streamlining compensation processes. Despite its limitations, it has demonstrated a swifter approach to environmental claims compared to traditional courts. Expanding the NGT's capacity and establishing specialized environmental tribunals could further expedite compensation awards for victims of absolute liability violations.

### **CONCLUSION**

The concept of absolute liability in India has undergone a significant transformation, particularly after the Bhopal Gas Tragedy. Landmark cases like *M.C. Mehta v. Union of India* (1986) and *Indian Council for Enviro-Legal Action v Union of India* (1996) have established the principle for enterprises dealing with hazardous substances. This principle serves as a powerful deterrent against environmental degradation by imposing the cost of pollution on the polluter.

However, the current framework has limitations. The definition of hazardous activities is limited, making it difficult to hold corporations accountable for emerging technological risks. Establishing a causal link between harm and industrial activity can be challenging. Enforcing liability against multinational corporations and ensuring adequate compensation for victims also pose hurdles.

To strengthen absolute liability, legislative amendments can broaden the scope of activities covered and implement the precautionary principle. Streamlining compensation processes through specialized tribunals and enforcing the polluter pays principle are crucial. International cooperation through conventions and harmonized regulations can improve corporate accountability. Strengthening environmental impact assessments, safety protocols, and enforcement mechanisms are also essential.

By addressing these lacunas, India can create a more robust absolute liability framework that effectively protects the environment and ensures polluters are held accountable for the harm they cause. This will not only safeguard the well-being of its citizens but also contribute to a global discourse on environmental responsibility in an era of rapid technological advancement.

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