

DOCUMENTARY REVIEW & RESEARCH ON ABSOLUTE LIABILITY

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Summary

One Night in Bhopal, one of the best drama - documentary film in the world was released in the year December 2004. This documentary was Directed as well as Produced by STEVE CONDIE, which shows about the world's most devastating industrial disaster, which claimed the lives of thousands of people and exposed thousands more to the poisonous gas Methyl Isocyanate (MIC), 'BHOPAL GAS TRAGEDY'. The Executive Producer and was Writer of 'One Night in Bhopal' was PAUL WOOLWICH and AVIE LUTHRA, whereas the film is a somber and dramatic re-enactment of that fateful night. It traces the lives of several survivors and it tells the story of the world's worst industrial disaster through the eyes of those who lived through it. The five main characters of the film were; Shahid, a much-loved eight-year-old boy, lost both his parents to the silent killer that descended on the sleeping city. Kum Kum, a young medical graduate, joined Union Carbide in the belief that it represented his country's future, only to quit when he realised that the company were courting disaster. Suman, a technician in the plant, struggled valiantly to control the runaway reaction that was turning liquid chemicals into poisonous gases. Swaraj, Bhopal's youthful chief of Police, organised the shocked city's response to the disaster despite the fact that he had suffered extensive exposure to the gas himself. D K Satpathy, the city's pathologist, had the unenviable task of examining the dead and dying – it was he who discovered that the inhabitants of Bhopal had been subjected to some of the most toxic substances known to man.

It was broadcasted by BBC WORLDWIDE and Distributed by Films Media Group to mark the twentieth anniversary of the disaster. The 60 minutes, VHS colour film, evokes a heartfelt terror of what can happen if industry does not take precautions to protect its workers and its neighbours. According to available data, about 500,000 people downwind were exposed to the gas cloud. Thousands of people died in the immediate aftermath, although the precise number

is unknown. A commonly accepted number is 2,000 (D'Silva 2006), but it may be as high as 8,000 (Amnesty International 2004). Tens of thousands were severely injured, thousands of whom died prematurely from their injuries in the months and years following the release. If the same movie was produced by an Indian, it would have been more interesting as the Indians would have definitely been in a better position to explain about the incidents as they were actually aware about the actual consequences of the Gas Leak.

Legal developments

In February 1985, the Indian Government filed a case in the U.S Court for a claim of \$3.3 billions against the Union Carbide Corporation. But by 1986 all of these litigations in the U.S District were transferred to India on the grounds of forum non conveniens. It means that the case should be transferred to a more convenient forum so that the trial proceeds smoothly. In March 1985, the Bhopal Gas Leak Disaster (Processing of Claims) Act was passed which empowered the Central Government to become the sole representative of all the victims in all kinds of litigations so that interests of the victims of the disaster are fully protected and the claims for compensation are pursued speedily. In the year 1987, cases were filed in the Bhopal District Court which ordered the Union Carbide Corporation to pay 350 Cr as interim compensation. But the interim order could not be decreed and therefore the UCC refused to pay the amount. Later on, at the High Court, this interim compensation amount was reduced to 250 Cr. Both the Union of India and the UCC preferred appeals by special leave against this High Court's order. In February 1989, a major twist to these legal proceedings came through the settlement order which was stroked out between the Indian Government and the Union Carbide in an out of Court settlement. Through this deal the liability of the Union Carbide was fixed at \$470 million in full and final settlement of all claims, rights, and liabilities arising out of the disaster. The terms of the settlement were such that it limited liability under all future claims as well, whether they were civil or criminal. In 1999, a group of victims of the Bhopal disaster filed suit against Union Carbide in US federal court seeking compensation for the 1984 incident as well as for the alleged ongoing environmental contamination at and around the Bhopal plant site. After a number of appeals, the plaintiffs US claims for compensation for injuries directly related to the 1984 incident were dismissed because the court found that these claims were barred by the 1989 Union Carbide settlement in India. In June 2010, a court in India handed down a verdict in the criminal lawsuit against Union Carbide and Warren Anderson, its former CEO, has been ongoing in the Indian legal system since 1989. In this case

Union Carbide India Ltd. and seven executives of the company were held guilty of criminal negligence. The company was required to pay a fine of ₹500,000 and the individuals were each sentenced to two years in prison and fined ₹100,000. On 2 August 2010, the Indian Central Bureau of Investigation filed a petition with the Supreme Court seeking a harsher punishment for the accused in this case. This petition sought to reinstate charges of culpable homicide against the accused; a September 1996 order had reduced the charges from culpable homicide to criminal negligence. In May 2011, the Supreme Court rejected this petition and declined to re-open the case to reinstate the harsher charges. In June 2012, the district court dismissed the case against Union Carbide. The plaintiffs appealed, and the appeals court upheld the lower court's ruling in June 2013. On 30 July 2014, the US District Court of the Southern District of New York ruled that Union carbide could not be sued for the on-going contamination from the plant, despite the plaintiffs' lawyers providing evidence that a Union Carbide employee managed its construction. On 24 May 2016, a US court ruled that a lawsuit against Union Carbide filed by local communities may not proceed despite strong evidence the company's chemical plant continues to cause water pollution in Bhopal, India. In July 2016, the victims asked the court to reconsider its 24 May decision.

Evolution of Absolute Liability principle

The rule in *Rylands v. Fletcher* - Strict Liability evolved in the 19th Century at a time when all these developments of science and technology had not taken place. So therefore, it could not afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. This rule was however, evolved for a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country and never the less the Law of Tort is dynamic in nature. We could not have allowed our judicial thinking to be constricted by reference to the law, as it prevailed in England, about few hundred years back. In the case of *M.C. Mehta v. Union of India*, where the Supreme Court was dealing with claims, arising from the leakage of Oleum gas on 4th and 6th December, 1985 from one of the units of Shriram Foods and Fertilizers Industries, in the city of Delhi, the Supreme Court stated that the principle established in the *Ryland v Fletcher* could not be used in the modern world as the principle itself was established in 19th century when the industrial revolution had just begun and thus his two century old principles of tortious liability could not be applied as India is a highly developing country and thus the old rule of strict liability hinders

industrialisation. And so to deal with the shortcomings of strict liability, the Supreme Court of India came with the principle of Absolute Liability for dealing with harms caused by dangerous substance.

Explanation of Absolute liability principle

“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, for example, in escape of 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-à-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher*”.

The rule was absolute and non-delegable duty towards the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. It should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part resulting into no fault liability. The base of the new rule as indicated by the Supreme Court are two:

1. If an enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads.
2. The enterprise alone has the resource to discover and guard against hazards and to provide warning against potential hazards.

Difference Between Absolute And Strict Liability

ABSOLUTE LIABILITY is liability without fault, yet no excuse for it. Conviction is secured simply on proof of ACTUS REUS alone and MENS REA is not required. Therefore negligence is irrelevant and a mistake of fact is not a defence. If there should be a defence, the standard the accused/defendant must reach is on balance of probabilities (lower than the criminal beyond reasonable doubt). E.g. consensual sex with an underage person.

STRICT LIABILITY is also liability without fault. Conviction is secured the same as for AL. The difference for SL is that the law allows a defence mistake of fact. The evidential burden is on the accused/defendant to show MF and must reach the standard of on balance of probabilities. SL doesn't infringe on presumption of innocence. E.g. selling alcohol to underage persons, currency offences, road traffic offences, pollution control, drugs and weapons possession.

Indian Cases of Absolute Liability

1. Indian Council for Enviro-Legal Action v Union of India [1996 AIR 1446, 1996 SCC (3) 212]: in this case it was held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm to any one on account of an accident, the enterprise is strictly and absolutely liable to compensate all those who are effected by the accident and such liability is not subject to any of the exceptions as laid down in tortious principles of strict liability under the rule laid down in Rylands Vs. Fletcher.
2. Charan Lal Sahu Etc. vs. Union of India and Ors on 22 December, [1989 SCR Supl (2)597], wherein the Court had pointed out the rule of Absolute Liability to be 'absolute and non-delegable and that the enterprise cannot escape liability by showing that it has taken reasonable care and there was no negligence on its parts.