

## AN ECONOMIC ANALYSIS ON THE BHOPAL GAS TRAGEDY AND OLEUM GAS LEAK CASE

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### **CASE 1: UNION CARBIDE CORPORATION VS UNION OF INDIA (BHOPAL GAS TRAGEDY)**

#### **INTRODUCTION AND BACKGROUND**

The American industrial giant Union Carbide along with the Union of India decided to start Union Carbide India Limited (UCIL) in India, in the densely populated area of Bhopal, for the manufacture of batteries, pesticides, chemicals etc. This industry continued the processing and manufacture of toxic materials despite the repetitive complaints by the agronomic engineer of the plant about the safety measures of the pesticides plant. The night of December 2-3 proved to be tragic to the world when the inhabitants of Bhopal died or were injured due to inhaling toxic gases from the factory in their sleep. The Methyl Isocyanate gas, a raw material, released into the atmosphere travelled far and fast across Bhopal due to high wind pressure. The death tolls rose each subsequent day and many were left injured. Apart from humans who still face the after-effects of this disaster, even the animal population and vegetation were affected.

#### **FACTS OF THE CASE**

On the night of 2-3 December, MIC gas mixed with water and created an exothermic reaction which leaked into the city and spread wide and far due to high wind pressures. The soundly sleeping Bhopal population inhaled this toxic gas which led to the immediate death of approx. 2600 people. The death toll later rose to up to 20000 with almost 600000 injured and many displaced. This not only affected the people but also the flora, fauna, and babies in the womb. There were no adequate healthcare facilities to accommodate the huge population and the government faced heat from the people for its failure to protect the people.

#### **ARGUMENTS**

The petitioners claimed adequate compensation from the respondents and pleaded that the criminal charges against the company should not be dropped as it was unlawful. The

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respondents claimed that the Union of India, if liable, should be made liable only partially as the Union Carbide held 51% of the share in UCIL and UOI held only the rest.

## **ISSUES**

In September 1986, the Bhopal District Court ordered UCC to pay a \$350 million interim indemnity. The UCC filed an appeal at the High Court, and the Court reduced the indemnity to \$250 million. Following that, the UCC and Union of India filed a special-leaves appeal before the Supreme Court against the High Court ruling. The issue of the case is the validity of the decision of the Madhya Pradesh High Court.

## **JUDGEMENT**

The court here held that the Union Carbide Corporation should pay the Union of India \$470 million inclusive of all rights, claims and liabilities related to the Bhopal Gas incident on or before 31<sup>st</sup> March 1989. Along with these all criminal and civil proceedings related to this were quashed. Later on, several petitions were filed to revive the criminal charges as the state in this case had permitted the escape of liability.

## **CASE 2: M.C MEHTA VS UNION OF INDIA (OLEUM GAS LEAK)**

### **INTRODUCTION AND BACKGROUND**

The oleum gas leak case was a landmark judgement of the Indian Judiciary post the case of the Bhopal Gas Tragedy, that dealt with various issues related to fundamental rights and the introduction of the concept of absolute liability. This case too, like the Bhopal Gas leak case, had drawn people's attention to the damages caused to the environment by negligent man-made disasters. In this case, the Rylands v. Fletcher rule was not applied as the court said that this rule was developed in a time when the industrial and scientific fields were not very developed. With the advancements in the industrial economy, the Court went ahead to make a liability standard of absolute liability which prevailed in this case.

### **FACTS OF THE CASE**

The case was a result of a writ petition filed by a social activist lawyer, M C Mehta, before the Supreme Court against Shriram Food and Fertilisers which was located in a densely populated area and employed over 2 lakh people in the production of toxic materials like oleum, caustic

soda, chlorine etc. While the petition sought to close and relocate the factory to a less densely populated area, the SC permitted it to continue functioning. While the petition was still pending, on December 4<sup>th</sup>, the structure on which the tank for oleum gas was stored collapsed and the explosion led to the leakage of the gas, injuring many and killing a lawyer. No sooner had the inhabitants recovered from this that there was another minor leak on 6<sup>th</sup> December from the same pipeline of the factory. Post this incident the Delhi Legal Aid & Advice Board and the Delhi Bar Association filed compensation claims for the people who had suffered damage as a result of Oleum Gas escape. In response to this, on 6<sup>th</sup> December, the Delhi administration passed an order under Section 133(1) of the CrPC that ordered Shriram to terminate the production of materials that require the processing of lethal chemicals and gases like chlorine, Oleum, Super Chlorine, phosphate, etc. and remove such gases within 7 days and prove why such an order should not be enforced against them. Since the arguments addressed contained significant legal concerns concerning the interpretation of Articles 21 and 32 of the Constitution, the SC referred to a larger bench for better interpretation.<sup>1</sup>

## ARGUMENTS

While the petitioners argued for the complete shut down or relocation of the industry and adequate remedy to the injured parties, the respondents contended that the court should not proceed with the claims for compensation and other constitutional violations of the case. They claimed that the leak occurred after the petition was filed and there was no amendment made to claim compensation and include violations of constitutional provisions, because of which, it cannot be claimed or considered now.

## ISSUES

With an economic outlook, we can say that the following were the major issues of the case,

1. Can industries of similar nature be allowed to operate in densely populated areas and if they are permitted to do so, should there be regulatory measures?
2. How will the liability, strict or absolute, and compensation be determined?

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<sup>1</sup> Aditya Singh, Oleum Gas Leak Case- A Case Study, IPLEADERS (July 25, 2022, 10:39 PM), [https://blog.ipleaders.in/oleum-gas-leak-case-case-study/#Reforms\\_brought\\_aftermath](https://blog.ipleaders.in/oleum-gas-leak-case-case-study/#Reforms_brought_aftermath).

In these issues we see that the industry undertook manufacturing activities that are of potential risk to the society and must be regulated with immense care. The state too has the responsibility under the DPSP to maintain public health and welfare. The industry must be made liable for any injury to the society and must compensate for any damage caused.

Apart from this, among various constitutional issues, arises the following major questions,

1. Does the Shriram Industries come under the definition of State as per Article 12 of the Indian Constitution?
2. What is the scope of Article 32 in cases of this nature?

### **JUDGEMENT**

The court ruled that any industry that engages in hazardous operations that can be a possible threat to the safety and health of its employees as well as its neighbors is expected to guarantee that no one is harmed. The industry is also obligated to conduct its operations in accordance with the highest safety standards, and they are fully liable for any harm caused by their actions. The Supreme Court held that a total ban on it will obstruct developmental activities and allowed its temporary functioning subject to a newly formulated national regulatory criteria managed by 2 committees, the Manmohan Singh Committee and the Nilay Choudhary Committee, for location and relocation of hazardous industries for the communities' safety.

The court also held that Article 32's authority extends not just to preventative actions when basic rights are endangered, but also to corrective measures where the rights have already been infringed, allowing the injured to claim compensation.

### **ECONOMIC ANALYSIS OF THE CASES**

In both cases, we see that the court's finding was not entirely on a legal view but was also considered on scientific and economic grounds. The Bhopal gas incident was an industrial mishap that stalled the economic growth of the region causing long lasting issues like poverty and other illnesses over vast areas. The poorer communities of the region sought employment in the factory and the damages paid to them after the incident eventually found its way back into the economy. Even years after the accidents, the aftereffects of the leak still linger in many places. The places where the groundwater, soil, air etc. is contaminated, pose a great threat not only to the people but also to the foetuses, new borns, animals, and plants. The gas leak has left

the population suffering from various health ailments which prevent them from working long hours. This too has led to poverty and people live in the most basic conditions. In the Oleum gas leak case, the factory employed a large population who lived in the vicinity of the factory. Hence, the judgement was given based on the understanding that the complete shutting down of the industry would be a hindrance to the developmental activities and can lead to issues like unemployment and poverty. It was also understood that the judgement was in accordance with the fact that industrialization was part of development and some accidents are bound to happen. Such industrial disasters have had its influence on the transportation, income, productivity etc. The people affected are left with severe injuries, some of which may be worse cases resulting in death. With less people to work, the economy has suffered, pushing more people into unemployment and poverty. The State has made the Supreme Court as the ultimate guardian for the protection of the citizens' rights as well as the protection of the environment. This duty extends to all bodies that come within the legal definition of what a state is according to Article 12 of the Indian Constitution. Hence, in these cases, it was necessary to determine if the industries qualified as a state to claim adequate compensation as well.

## CONCLUSION

Learning from the Bhopal Gas tragedy and the Oleum gas leak case, with implementation of various economic reforms, the industrial growth with regulatory guidelines have grown. Despite this, there has been significant environmental damage and health risks to people and animals, which ought to happen with rapid industrialization. The State too has a role to play in protecting the environment and the people from such risks. The state too has to keep considering various aspects like unemployment, poverty, etc. when it comes up with regulations on production and manufacturing industries made with an intent to protect the environment and the inhabitants of the area.