



## ENVIRONMENTAL LIABILITY INSURANCE IN INDIA

### KEYWORDS

Environmental Hazards, Insurance, Absolute Liability, Compensation and Sustainable Development.

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**ABSTRACT** *Environmental Liability Insurance (ELI) has its roots in the international proclamations of the United Nations. This new concept, also known as Sustainable Insurance in the field of medico-legal jurisprudence, is a realization that one who pollutes the environment should also bear the burden for cleaning up the environment. Because the purpose of development is not to develop things but to develop man and environment. ELI is based on the principles of Absolute Liability and Sustainable Development. With a view to incorporate both anthropocentric and ecocentric considerations in the context of environmental protection, the Parliament of India enacted the Public Liability Insurance Act, 1991. This legislation, for the first time, acknowledged the principle of no-fault liability. It is an act to protect the innocent members of the general public through providing mandatory public insurance against any environmental accidents, such as, pollution of air, water, soil and biodiversity damage.*

Environmental Liability Insurance (ELI) – a concept called Green Insurance has its origin in the international proclamations of the United Nations from Stockholm<sup>1</sup> to Rio<sup>2</sup> to Johannesburg<sup>3</sup> wherein it is declared that “man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and wellbeing.....” and that “human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

As proclaimed in Johannesburg, every such declaration of the United Nations is with a view to give a special focus on beating poverty. The fact that poverty is both a cause and a consequence of environmental degradation is a core principle of the United Nation's Environmental Justice Movement<sup>4</sup>.

Mahatma Gandhi more stressed on “intragenerational equity”. It aims to wipe out the gap between poor and rich. Poverty is not only enemy of man but also of the environment<sup>5</sup>. Justice Krishna Iyer observed – “challenges of poverty and of environmental degradation are not two different challenges, but two facets of the same challenge.”<sup>6</sup>

Environmental Liability Insurance establishes a framework for environmental liability based on the doctrine of “polluter pays principle”<sup>7</sup> with a view to preventing and remedying environmental damage. In other words, Environmental Liability Insurance covers the cost of restoring damage caused by environmental accidents, such as, pollution of land, water, air and biodiversity damage.

Under the Indian Legal System, ELI, as understood by the common people and as interpreted by the judiciary<sup>8</sup>, covers the cost of repairing environmental damage arising from both common law claims i.e., damages and claims arising from the Public Liability Insurance Act, 1991.

In simple words for a layman to understand the concept of ELI it is that it is a realization that one who pollutes the environment should also bear the burden for cleaning up the environment. It also lays down that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also to the cost of restoring the damaged environment. Because remediation or regeneration of the damaged environment is the part of the process of sustainable development.

Facts remain that in the year 1983, the United Nations General Assembly constituted a commission called the World Commission on Environmental and Development (WCED)<sup>9</sup> with Mrs.

G.H. Brundtland as its chairperson – the then Prime Minister of Norway, to study the world environment and development beyond 2000.

The commission submitted its report in 1987 under the caption “Our Common Future” wherein the commission defined sustainable development as “the development that meets the need of the present without compromising the ability of the future generations to meet their own needs.”<sup>10</sup>

Environmental Liability Insurance is a bold step in India to meet the challenges of a highly industrialized economy and also to supplement the processes of sustainable development in this sub-continent.

Significantly, after the Bhopal Gas Leak Tragedy<sup>11</sup> of December, 1984 the world's biggest industrial disaster caused by a subsidiary of an American Pesticide Factory and Oleum Gas Leak accident<sup>12</sup> of December, 1985, the Parliament of India passed a legislation called the Public Liability Insurance Act, 1991, thereby, implementing the mandates of sustainable development and the judicial pronouncements of the Supreme Court of India in the famous “Oleum Gas Leak Case”<sup>12</sup>. It needs to be stated here that this legislation, for the first time, acknowledged the principle of no-fault Liability.<sup>13</sup>

The Public Liability Insurance Act, 1991 provides for mandatory insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling hazardous substances.<sup>14</sup>

It is a legislation to protect the innocent members of the general public through providing mandatory public insurance.

Before addressing the salient features of this legislation, let us recall the Bhopal tragedy and the Oleum Gas Leak Accident in New Delhi in order to have a better understanding on the aims and objectives of this Act.

It was the 3rd December, 1984, just after the midnight about 40 tones of highly toxic Methyl Iso-Cyanate (MIC) which had been manufactured and stored in the Union Carbide Corporation Chemical Plant in Bhopal, a subsidiary of the Union Carbide Corporation, USA allegedly escaped into the atmosphere killing nearly 4000 people and inflicting injuries on more than 2 lakhs others (initial estimate).<sup>15</sup>

According to the Non-Governmental Organisations (NGOs), due to the leakage of MIC, as many as ten thousand people killed and five lakhs others got injured. The MIC genetically affected

the future generation, as well.<sup>16</sup>

The Government of India immediately reacted after the incident and passed the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, thereby, conferring 'exclusive right' on the Central Government to represent the gas victims for claiming compensation.<sup>17</sup>

In exercise of the powers conferred by this legislation, the Central Government filed a suit in the District Court, New York, USA.<sup>18</sup>

The US Court dismissed the suit applying the common law doctrine – "Forum Non-Convenience". The court declined its jurisdiction on the ground that the Indian Courts are more convenient and proper forum for such an action.<sup>19</sup>

Thereafter, the Government of India filed a suit in the Bhopal District Court which had ordered the UCC to pay an interim relief amounting to Rs. 350/- crores<sup>20</sup> to the gas victims.

On a civil revision petition filed by the Union Carbide Corporation, the Madhya Pradesh High Court reduced the amount of 'Interim Relief' payable to Rs. 250 crores.<sup>21</sup>

The UGC knocked at the Supreme Court claiming that the judgement was unsustainable because it amounted to a verdict without trial. The Union of India also appealed before the Supreme Court because the Madhya Pradesh High Court had reduced the amount of Interim Relief.

The Supreme Court secured a compromise between the UCC and the Govt. of India. Under the settlement, the UCC agreed to pay US \$ 470 million in full<sup>22</sup> as compensation. With a view to facilitate the settlement, the Supreme Court exercised extraordinary jurisdiction and terminated all the civil, criminal and contempt of court proceedings.

The leading American Tort Lawyer Melvin M. Belli rightly characterized the settlement as "the most unethical, unconscionable thing I have heard in tort law in my 52 years of practice".<sup>23</sup>

Prof. Upendra Baxi had criticised the assumptions which led to the Supreme Court settlement. He said "not only was the compensation inadequate but the victim's pleas were not heard by the Court that was party to the award...."<sup>24</sup>

Prof. Upendra Baxi criticised the Supreme Court settlement as denial of human rights of MIC gas victims of Bhopal against a multinational.

Within a period of one year after the Bhopal Tragedy on the 2<sup>nd</sup> and 4<sup>th</sup> December, 1985, there was another incident of leakage of Oleum Gas from one of the units of Shriram Food and Fertilisers Industries belonging to Delhi Cloth Mills Ltd. As a consequence of this leakage, it was alleged that one person had died and several others were injured by the same. Mahesh Chandra Mehta an environmental activist and an Advocate on Record of the Supreme Court of India moved the Apex Court through a writ petition under Article 32(1) of the Constitution by way of Public Interest Litigation.<sup>25</sup>

The Constitutional Bench of the Supreme Court of India took a bold decision holding that we are not bound to follow the rule of strict liability – laid down by the House of Lords in Ryland –Vs–Fletcher<sup>26</sup> in England over a century ago. We have to evolve a new environmental jurisprudence in India. The Apex Court, thereby, introduced the Rule of Absolute Liability – as part of Indian law.

The Apex Court further made it clear that this new rule is not subject to any exceptions<sup>27</sup> as earlier recognised in Ryland –Vs–Fletcher<sup>28</sup> in England.

Bhagwati, C.J. said :

"We have to evolve principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence."<sup>29</sup>

Significantly, thereafter, the Parliament of India, passed a legislation called the Public Liability Insurance Act, 1991 to implement the rule of absolute liability on the part of the "owner" and the "insurer" as well, to pay relief to the victims of environmental accidents.

Under Section 3 of the Public Liability Insurance Act, 1991, the owner shall be liable to give the following relief :

1. Reimbursement of medical expenses incurred upto a maximum of Rs.12,500.00 in each case.

2. For fatal accidents the relief will be Rs. 25,000.00 per person in addition to reimbursement of medical expenses, if any, incurred on the victim upto a maximum of Rs. 12,500.00.

3. For permanent total or permanent partial disability or other injury or sickness, the relief will be: (i) Reimbursement of medical expenses incurred if any, upto a maximum of Rs. 12,500.00 in each case, and

(ii) Cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief of total permanent disability will be Rs.25,000.00.

As defined u/s 2(e) of this Act, the term "insurance" means insurance against liability of the owner to give relief to the victims of pollution.

It needs to be stated here that this liability is the absolute liability for the Industries engaged with hazardous activities. And it is not subject to any exceptions as earlier recognised in England in Ryland –Vs– Fletcher<sup>30</sup>.

As defined u/s 2 (ha), "Relief Fund" means the Environmental Relief Fund established u/s 7A of this Act.

The most crucial part of the Public Liability Insurance Act, 1991 is its section 3. It imposes an absolute liability on the part of the owner to give relief to the victims of environmental accidents.

The duty of the owner to take out insurance policies is mandated u/s 4 of this Act.

The persons entitled to make an application for claim for relief is categorically mentioned u/s 6 of this Act.

Award of relief to the victims is to be given by the Collector or District Magistrate in accordance with the procedures as provided u/s 7 of the Public Liability Insurance Act, 1991. Within the meaning of this legislation – the Collector shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses etc.

The Central Government has made the Environment Relief Fund Scheme, 2008 which came into force w.e.f. 04.11.2008.

The United Indian Insurance Company Ltd. is the Fund Manager. For administering the relief fund a separate account may be maintained in any nationalized bank in the name and style of "United India Insurance Company Ltd. Environment Relief Fund A/C".

Environmental Liability Insurance is based on the principles of sustainability to reflect the concept of Green Insurance.

Insurance Industry, now-a-days, is playing a pivotal role in sustainable development by adopting it as an objective. Now the new concept that is emerging in the current scenario is Sustainable Insurance, which is a strategic approach towards sustainability with an objective to reduce risk, develop innovative solutions, improve business performances and giving contribution to environmental, social and economic sustainability.

The Brundtland Report, 1987 made several business and management scholars consider as to how and why corporations should incorporate environmental concerns into their own strategies. Today, companies have accepted their responsibility to do no harm to the environment. Corporate Social Responsibility is defined as the duty to cover the environmental implications of the company's operations, products and facilities; eliminate waste and emissions; maximise the efficiency and productivity of its resources; and minimise practices that might adversely affect enjoyment of the country's resources by future generations.

#### REFERENCES:

1. United Nations Conference on the Human Environment, 1972 held at Stockholm, Sweden in 1972.
2. United Nations Conference on Environment and Development held at Rio de Janeiro, Brazil in 1992.
3. United Nations Summit on Sustainable Development, 2002, held at Johannesburg, South Africa.
4. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.
5. Justice Ashok A. Desai, *Environmental Jurisprudence* (2002), p. 437.
6. *Ibid.*
7. A Universal Principle adopted by the United Nations in its international proclamations.
8. *M.C. Mehta -Vs- Union of India*, AIR 1987 SC 1086.
9. WCED is also called Brundtland Commission after the name of its chairperson Mrs. G.H. Brundtland.
10. Brundtland Report, 1987 noted that human future was at a risk if we continue the current modes of unsustainable development. The Commission defined the concept of sustainable development acknowledging the equal importance of the interests of the future generations.
11. *Union Carbide Corporation, USA -Vs- Union of India*, AIR 1990 SC 273.
12. *M.C. Mehta -Vs- Union of India*, AIR 1987 SC 1086.
13. The Principles of Strict Liability as well as Absolute Liability.
14. Preamble to the Public Liability Insurance Act, 1991.
15. R.K. Bangia, *Law of Torts* (1991), p. 345.
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*
21. *Ibid.*
22. *Ibid.*
23. Professor Upendra Baxi "A New Initiative", published in the *Illustrated Weekly of India*, January 28-February 3 (1990), p. 30.
24. *Ibid.*
25. R.K. Bangia, *Law of Torts* (1991), p. 345.
26. (1868) UK HL 1.
27. (i) *Voluntarily non fit injuria* (consent of the plaintiff),  
(ii) Plaintiff own default,  
(iii) Act of God,  
(iv) Act of Third Party (Sabotage),  
(v) Statutory Authority.
28. (1868) UK HL 1.
29. *M.C. Mehta -Vs- Union of India* (1987) 1 SCC 395 at p. 420.
30. (1868) UK HL 1.