CHAPTER - 4
TORTIOUS LIABILITY OF MULTINATIONAL CORPORATIONS FOR ENVIRONMENTAL POLLUTION IN INDIA

"It is important to note that in leadership—its not always simply about control or power, but responsibility. Both spouses have the responsibility to own the relationship and the environment they create for themselves and their family."

—Jordan Blake Michiels

1- Liability under the Law of Tort

Environment disaster means an event or occurrence that has the potential for causing injury to life or damage to property or the environment. The magnitude of the phenomenon, the probability of its occurrence and the extent and severity of the impact can vary. In many cases, these effects can be anticipated and estimated.

A set of prevailing or consequential conditions composed of physical, socio-economic and political factors which increase a community's susceptibility to calamity or which adversely affect its ability to respond to events. The community and its members may or may not be willing participants in contributing to or tolerating the conditions. Taken together, they create a dynamic mix of variables, each of which results from a continuous process. Vulnerabilities can be physical, social or attitudinal and can be primary or secondary in nature. Disaster may be come by earthquake, landslide, tsunami, volcanic eruption, tropical cyclone (typhoon, hurricane), flood, draught, environmental
degradation pollution, desertification, etc), bushfire (wildfire),
civil conflict, population displacement, epidemic, biological,
and technological hazard (industrial accident). These are the
following causes by which any environmental disaster may be
come and on the other hand we have to take all safety-
measures to protect the public at large in our country and
also around the globe.

Actions brought under tort law are among the oldest of
the legal remedies to abate pollution. Most pollution cases in
tort law fall under the categories of nuisance, negligence and
strict liability. To these traditional categories, the Supreme
Court has added a new class based on the principle of
"absolute liability. This norm was developed by the court in
the post-Bhopal period in response to the spread of hazardous
industries and was later adapted by the legislature.¹

The rules of tort law were introduced into India under
British rule. Initially, disputes arising within the presidency
towns of Calcutta, Madras and Bombay were subjected to
common law rules.² Later, Indian courts outside the
Presidency towns were required by the Acts of British
Parliament and Indian laws to reconcile disputes according to
justice, equity and good conscience where there was no
applicable statute.³ Consequently, in suits for damages for
torts (civil wrongs), courts followed the English Common Law
in so far as it was consonant with these principles. By the 18th
century, Indian Courts had evolved a blend of tort law adapted

¹ Both the Public Liability Insurance Act of 1991 and the National Environment Tribunal Act
of 1995 adopt this Norm.

² 'Common Law' refers to the customary law of England derived from judicial decisions, in
contrast with legislative enactments.

to Indian Conditions.\textsuperscript{4} Common law based tort rules continue to operate under Article 372 of the Indian Constitution which ensured the continuance of existing laws.

\textbf{The origins of Tort}, The law of tort, or torts, is part of the English common law which has developed incrementally since Norman times. Academic writers are not agreed whether there is a law of tort of a law of torts. A law of tort implies some general common rules relevant to all parts of the law. A law of torts, recognises that there are various separate and distinct aspects but also implies that the separate parts have something in common. The writers of this book incline to the idea that there is a law of torts, each tort being governed by similar underlying principles, It is nice subject for a debate but of little practical importance. Although some modern torts have been created by status, the law is still generally to be found in common law principles. The origins of torts can be traced back to the fourteenth century when the word ‘trespass’ was given a much wider legal meaning than it has today. It originally referred to ‘any direct and forcible injury to the person, land or property (chattels)’ Trespass was one of two medieval forms of action, the second being ‘trespass on the case’ or simply ‘case’ Case covered ‘injury which was consequential to a wrong but the wrong was neither forcible nor direct.’ The distinction can still be seen in the law of torts today-torts which are actionable per se, i.e. without proof of damage, such as trespass to land and trespass to the person, generally originate from the old form of trespass, while those torts which require proof of damage, for example negligence and nuisance, generally come from case. In the past, the

\begin{itemize}
\end{itemize}
distinction was of crucial importance as using the wrong form of action could result in the claimant being left without any remedy. Today, although there may be cost penalties, the Rules of Court allow for the amendment of pleadings subject to the provisions of the Limitation Act 1980. The legal historian will be able to find traces of the old rules in modern law but for practical purposes the distinction is of little relevance.

The origins and Character of Tortious Liability, Both Lord Atkin and Lord Denning MR have made this clear. In his judgment in United Australia Ltd. Vs. Barclays Bank\(^5\) Lord Atkin said, The Court of Appeal held that the old rules no longer apply. International injury will give a claim based in trespass, but unintentional injury gives a claim based in negligence. The claimant was unsuccessful. In the course of his judgment Lord Denning said before leaving this introduction, mention should be made of the tort of defamation. Slander has its roots in the old ecclesiastical law. Libel stems from the old prerogative law which regarded certain written statements as prejudicial to the state. Both libel and slander eventually found a home in the common law courts. The tort of defamation continues to have its own unique characteristics.

**General principles of liability**, The character of torts, Anyone who teaches law is certain to be asked 'What does torts mean?' If only there was an easy answer! It seems to be generally accepted that the word itself is a surviving relic of Norman French, 'When these ghosts of the post stand in the

\(^5\) (1941) AC 1.
path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred.

**Letang Vs. Cooper**\(^6\), The claimant decided to sunbathe on a grass area which was also used as a car park. The legs. The problem for the claimant was caused by the date on which she tried to commence her actions. She was out of time to bring an action for negligence (a descendant of case) where the time limit is three years. If she was able to use trespass, then the action could stand as the time limit was six years. It was argued that the old rules should apply, her injury was direct and forcible.

The origins and character of tortuous liability and means simply 'wrong'. This does not tell us very much. Winfield defines the meaning as follows:— 'Tortious liability arises from the breach of a duty primarily fixed by law; the duty is towards persons generally and its breach is redressible by an action for unliquidated damages.'\(^7\). The definition is helpful in that it shows that there are three elements;

A duty fixed by law—as we shall see this does not necessarily, nor indeed usually, mean fixed by statute but a duty which the courts have recognised.

The duty must be owned generally—as we shall see individual torts have been developed so that a general duty is owned to any person in a position to bring an action based on that tort.

The breach of duty must entitle the claimant to general damages. The nature of the duty varies from tort to tort. For

---

\(^6\) (1965) 1 QB 232  
\(^7\) W.V. H. Rogers, Winfield & Jolowicz on Tort (16th edn, Sweet and Maxwell, 2002).
example where negligence is alleged, the duty is to take reasonable care; in the case of trespass to the person the duty is to refrain from infringing a person’s bodily integrity. The class of persons to whom a duty is owed may be limited. For example in negligence, a duty is owed only to those who ought reasonably have been foreseen as likely to be affected by failure to take. Reasonable care; in trespass to the person the duty is owed only to those directly affected by the action. The injury sustained must be of a type recognised by the law. In negligence for example it took many years for the courts to recognise that psychiatric harm was as much an injury as physical damage. In trespass to the person and other torts which are actionable per se it is unnecessary to prove damage, the infringement of the right being regarded as injury enough.

**The interests protected by the law of torts**, Common law develops incrementally by virtue of the doctrine of precedent but it is possible to classify, in broad terms, the general nature of interests which the law of torts protects, personal security, property, reputation, economic interests, Reference should be made to the various chapters for more detail. The Following paragraphs simply draw the reader’s attention to the specific torts which may be relevant to the particular interests. Personal security is most obviously protected by the torts of trespass to the person and trespass to land. When negligence it studied it is clear that this tort also to play in ensuring that an individual does not suffer hare by the unreasonable acts or omissions of others. Nuisance helps to protect an occupier of land from activities on neighbouring land which are detrimental to health or comfort. Statutory torts created by the Protection from
Harassment Act 1977 and the Consumer Protection Act 1987 also play an important role. Property is protected by the torts of trespass to land and interference with goods. Nuisance and Ryland Vs. Fletcher also help by providing a remedy for wrongful interference with the use of land or damage caused to land, in both cases caused by some activity or omission on the wrongdoer's land. Negligence also has a role to play where property is damaged as a result of failure to take reasonable care. A person's reputation is protected by the tort of defamation. The equitable remedies available for breach of confidentiality, although not strictly part of tort law, and the growing influence of the European Convention of Human Rights cannot be ignored in this context. These may help to protect privacy by preventing publication of true but detrimental information. Economic loss is an oddity. Damages are calculated to take account of financial loss sustained by the victim of a tort. There are restrictions on the availability of a claim in negligence for what is described as 'pure economic loss.' The 'economic' torts of deceit, malicious falsehood, passing off and interference with trade may ensure that a business is protected from unfair competition. Economic loss will also be compensated where the law of contract can be used.

**Damages and Injunction:**

A plaintiff in a tort action may sue for damages or an injunction, or both.

**Damages** - Damages are the pecuniary compensation payable for the commission of a tort. Damages may be either

---

8 (1868) LR 1 E. 265
'substantial' or 'exemplary'. Substantial damages are awarded to compensate the plaintiff for the wrong suffered. The purpose of such damages is restitution, i.e. to restore the plaintiff to the position he or she would have been in if the tort had not been committed. Such damages, therefore, correspond to a fair and reasonable compensation for the injury.

Exemplary damages are intended to punish the defendant for the outrageous nature of his or her conduct, as for instance, when he or she persists in causing a nuisance after being convicted and being find for it. The object of the court in such cases is to deter the wrongdoer. The deterrence objective has recently prompted the Supreme Court to add a fresh category to the type of cases where exemplary damages may be awarded, viz, when harm results from an enterprise's hazardous or inherently dangerous activity. In the Shriram Gas Leak Case, oleum gas escaped from a unit of the Shriram Foods and Fertilizers Industries and injured few New Delhi citizens. The Court observed that in such cases, compensation "must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it."

Damages awarded in tort actions in India are notoriously low, and pose no deterrent to the polluter. Lengthy delays in the adjudication of cases combined with chronic inflation

11. Ibid at 1099.
dilute the value of any damages that a successful plaintiff may receive. Consequently, although in theory damages are the principal relief in a tort action, in practice injunctive reliefs are more effective in abating pollution. Accordingly, litigation strategies must shift away from the conventional common law emphasis on damages. Lawyers in India intent on abating pollution may seek a temporary injunction against the pollute followed by a perpetual injunction on decree. Damages should be viewed as a bonus.

**Injunction:**

An injunction is a judicial process where a person who has infringed, or is about to infringe the rights of another, is restrained from pursuing such acts. An injunction may take either a negative or a positive form. It may require a party to refrain from doing a particular thing or to do a particular thing. Injunctions are granted at the discretion of the Court.

Injunctions are of two kinds, temporary and perpetual. The purpose of a temporary injunction is to maintain the state of things at a given date until trial on the merits. It is regulated by Sections 94 and 95 as well as order 39 of the Code of Civil procedure of 1908. It may be granted on an interlocutory application at any stage of a suit. In remains in force until the disposal of the suit or unit further orders of the Court.

Rule 1 of Order 39 provides that temporary injunctions may be granted where it is proved:

12. An application made between the commencement and end of a suit.
(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution, of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors; or

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit... :

Manohar Lal Chopra Vs. Rai Baja Seth Hiralal

The Supreme Court has held that Courts also have an inherent power to issue a temporary injunction in circumstances that are not covered by the provisions of order 39 when the Court is satisfied that the interest of justice so require.

The grant or refusal of a temporary injunction is governed by three well-established principles:

(1) the existence of a prima facie case (a showing on the facts that the plaintiff is very likely to succeed in the suit);

(2) the likelihood of irreparable injury (an injury that cannot be adequately compensated for in damages) if the injunction is refused, and

(3) that the balance of convenience requires the issue of the injunction (a showing that the inconvenience to the plaintiff if the temporary injunction is withheld exceeds

the inconvenience to the defendant if he or she is restrained).

Perpetual injunctions are regulated by Sec.37 to 42 of the Specific Relief Act of 1963. A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at a Court’s discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely (so that he or she need not resort to successive actions in respect of every infringement), assuming that the circumstances of the case remain essentially unchanged.

A Court may permanently restrain the defendant where damages do not provide adequate relief or where the injunction would prevent a multiplicity of proceedings. Thus, where hazardous dust from a brick-grinding machine polluted the air of a neighbouring medical practitioner’s consulting room, the polluter was permanently restrained from operating the machine.14 A court may grant an injunction even though the anticipated damage may not be very serious, as long as the damage is continuous or frequent. The balance of convenience test also applies to the award of permanent injunction: The court must be satisfied that the damage that the defendant would suffer by the grant of the injunction is outweighed by the damage the plaintiff would suffer, if the injunction was refused. Finally, the court will consider the injunction’s impact on third parties, for example, when the granting of an injunction would throw a large number of people out of work.

2- Negligence

Negligence (Lat. negligentia, from neglegere, to neglect, literally "not to pick up something") is a failure to exercise the care that a reasonably prudent person would exercise in like circumstances.\textsuperscript{15} The area of tort law known as negligence involves harm caused by carelessness, not intentional harm. According to Jay M. Feinman of the Rutgers University School of Law, "The core idea of negligence is that people should exercise reasonable care when they act by taking account of the potential harm that they might foreseeably cause harm to other people." \textsuperscript{16} "those who go personally or bring property where they know that they or it may come into collision with the persons or property of others have by law a duty cast upon them to use reasonable care and skill to avoid such a collision." Fletcher v Rylands ([1866] LR 1 Ex 265)

Through civil litigation, if an injured person proves that another person acted negligently to cause his injury, he can recover damages to compensate for his harm. Proving a case for negligence can potentially entitle the injured plaintiff to compensation for harm to their body, property, mental well-being, financial status, or intimate relationships. However, because negligence cases are very fact-specific, this general definition does not fully explain the concept of when the law will require one person to compensate another for losses caused by accidental injury. Further, the law of negligence at common law is only one aspect of the law of liability. Although resulting damages must be proven in order to recover compensation in a negligence action, the nature and extent of those damages are not the primary focus of negligence cases.

\textsuperscript{16} Deakin, Tort Law, 218
A common law action for negligence may be brought to prevent environmental pollution. In an action for negligence, the plaintiff must show that: the defendant was under a duty to take reasonable care to avoid the damage complained of; there was a breach of this duty; and the breach of duty caused the damage. The degree of care required in a particular case depends on the surroundings circumstances and varies according to the risk involved and the magnitude of the prospective injury.

An act of negligence may also constitute nuisance if it unlawfully interferes with the enjoyment of another’s right in land. Similarly, it may also amount to a breach of the rule of strict liability in Rylands v/s Fletcher if the negligent act allows the escape of anything dangerous which the defendant has brought on the land. The casual connection between the negligent act and the plaintiff’s injury is often the most problematic link in pollution cases, where the pollutant is highly toxic and its effect is immediate, as with the methyl isocyanate (MIC) that leaked from the union carbide plant in Bhopal, the connection is relatively straightforward. The casual link is more tenuous when the effect of the injury remains latent over long periods of time and can eventually be attributed to factors other than the pollutant, or to polluters other than the defendant.

Mukesh Textiles Mills (P) Ltd. V/s H.R. Subramanya Sastry, is one of the few reported pollution cases in which a judgement was rendered for damages. Note (a) the defences raised by the mill; (b) the witnesses examined by the parties to establish their respective

17. (1868) L.R. 3 HL 330.
18. In numerous American suits brought against asbestos manufacturers by asbestos workers suffering from lung cancer, several courts reduced the damage award on the theory that a plaintiff’s habit of smoking cigarettes had contributed, or could have contributed, to his condition. Some courts dismissed the suit entirely when the plaintiff had been a cigarette smoker.
19. AIR 1987 Kant. 87.
contentions; (c) the discussion on the mitigation of damages; (d) the manner in which the court quantified damages.

In the result, this appeal is allowed in part, only in relation to the quantum of damages. In modification of the judgment and decree under appeal, the suit is decreed in a sum of Rs.12,200/- on which respondent plaintiff shall be entitled to interest at 6% from the date of suit till the date of realization. The respondents shall be entitled to their costs in the suit proportionate to their success. The appellant shall, however, bear and pay its own costs in the court below. Both the parties are left to bear and pay their own costs in the appeal.

Elements of negligence claims, Negligence suits have historically been analyzed in stages, called elements, similar to the analysis of crimes (see Element (criminal law)). An important concept related to elements is that if a plaintiff fails to prove any one element of his claim, he loses on the entire tort claim. For example, assume that a particular tort has five elements. Each element must be proven. If the plaintiff proves only four of the five elements, the plaintiff has not succeeded in making out his claim. Common law jurisdictions may differ slightly in the exact classification of the elements of negligence, but the elements that must be established in every negligence case are: duty, breach, causation, and damages. Each is defined and explained in greater detail in the paragraphs below. Negligence can be conceived of as having just three elements - conduct, causation and damages. More often, it is said to have four (duty, breach, causation and pecuniary damages) or five (duty, breach, actual cause, proximate cause, and damages). Each would be correct, depending on how much specificity someone is seeking. "The broad agreement on the conceptual model", writes Professor Robertson of the University of Texas, "entails recognition that the five elements are best defined with care and kept separate. But in practice", he goes on to
warn, "several varieties of confusion or conceptual mistakes have sometimes occurred."

**Duty of care**, A decomposed snail in Scotland was the humble beginning of the modern English law of negligence. The case of *Donoghue v. Stevenson*[^20] (1932) illustrates the law of negligence, laying the foundations of the fault principle around the Commonwealth. The Pursuer, Donoghue, drank ginger beer given to her by a friend, who bought it from a shop. The beer was supplied by a manufacturer, a certain Stevenson in Scotland. While drinking the drink, Donoghue discovered the remains of an allegedly decomposed slug. She then sued Stevenson, though there was no relationship of contract, as the friend had made the payment. As there was no contract the doctrine of privity prevented a direct action against the manufacturer, Andrew Smith. In his ruling, justice Lord MacMillan defined a new category of delict (the Scots law nearest equivalent of tort), (which is really not based on negligence but on what is now known as the "implied warranty of fitness of a product" in a completely different category of tort--"products liability") because it was analogous to previous cases about people hurting each other. Lord Atkin interpreted the biblical passages to 'love thy neighbour;' as the legal requirement to 'not harm thy neighbour.' He then went on to define neighbour as "persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions that are called in question." Reasonably foreseeable harm must be compensated. This is the first principle of negligence. In England the more recent case of *Caparo v. Dickman* (1990) introduced a 'threefold test' for a duty of care. Harm must be (1) reasonably foreseeable (2) there must be a relationship of proximity between the

[^20]: *Donoghue v. Stevenson* (1932) AC 532

247
plaintiff and defendant and (3) it must be 'fair, just and reasonable' to impose liability. However, these act as guidelines for the courts in establishing a duty of care; much of the principle is still at the discretion of judges.

**Breach of duty.** In *Bolton v. Stone* the English court was sympathetic to cricket players Once it is established that the defendant owed a duty to the plaintiff/claimant, the matter of whether or not that duty was breached must be settled. The test is both subjective and objective. The defendant who knowingly (subjective) exposes the plaintiff/claimant to a substantial risk of loss, breaches that duty. The defendant who fails to realize the substantial risk of loss to the plaintiff/claimant, which any reasonable person (objective) in the same situation would clearly have realized, also breaches that duty. Breach of duty is not limited to professionals or persons under written or oral contract; all members of society have a duty to exercise reasonable care toward others and their property. A person who engages in activities that pose an unreasonable risk toward others and their property that actually results in harm, breaches their duty of reasonable care. An example is shown in the facts of *Bolton v. Stone, 21* a 1951 legal case decided by the House of Lords which established that a defendant is not negligent if the damage to the plaintiff was not a reasonably foreseeable consequence of his conduct. In the case, a Miss Stone was struck on the head by a cricket ball while standing outside her house. Cricket balls were not normally hit a far enough distance to pose a danger to people standing as far away as was Miss Stone. Although she was injured, the court held that she did not have a legitimate claim because the danger was not sufficiently foreseeable. As stated in the opinion, 'Reasonable risk' cannot be judged with the benefit of hindsight. As Lord Denning said in *Roe v.*

---

Minister of Health, the past should not be viewed through rose coloured spectacles. Therefore, there was no negligence on the part of the medical professionals in a case faulting them for using contaminated medical jars because the scientific standards of the time indicated a low possibility of medical jar contamination. Even if some were harmed, the professionals took reasonable care for risk to their patients.

United States v. Carroll Towing Co. 159 F.2d 169 (2d. Cir. 1947)

**Factual causation (Direct Cause)**

For a defendant to be held liable, it must be shown that the particular acts or omissions were the cause of the loss or damage sustained. Although the notion sounds simple, the causation between one's breach of duty and the harm that results to another can at times be very complicated. The basic test is to ask whether the injury would have occurred but for, or without, the accused party's breach of the duty owed to the injured party. Even more precisely, if a breaching party materially increases the risk of harm to another, then the breaching party can be sued to the value of harm that he caused. Asbestos litigations which have been ongoing for decades revolve around the issue of causation. Interwoven with the simple idea of a party causing harm to another are issues oninsurance bills and compensations, which sometimes drove compensating companies out of business.

**Legal causation or remoteness**

Negligence can lead to this sort of collision - a train wreck at Gare Montparnasse in 1895. Sometimes factual causation is distinguished from 'legal causation' to avert the danger of defendants being exposed to, in the words of Cardozo, J., "liability in an indeterminate amount for an indeterminate time to an indeterminate class." It is said a new question

---

22 Roe v Minister of Health (1954) 2 AER 131
23 Ultramares Corp. v. Touche(1931) 255 N.Y. 170, 174 N.E. 441

249
arises of how remote a consequence a person's harm is from another's negligence. We say that one's negligence is 'too remote' (in England) or not a 'proximate cause' (in the U.S.) of another's harm if one would 'never' reasonably foresee it happening. Note that a 'proximate cause' in U.S. terminology (to do with the chain of events between the action and the injury) should not be confused with the 'proximity test' under the English duty of care (to do with closeness of relationship). The idea of legal causation is that if no one can foresee something bad happening, and therefore take care to avoid it, how could anyone be responsible? For instance, in Palsgraf v. Long Island Rail Road Co. the judge decided that the defendant, a railway, was not liable for an injury suffered by a distant bystander. The plaintiff, Palsgraf, was hit by scales that fell on her as she waited on a train platform. The scales fell because of a far-away commotion. A train conductor had run to help a man into a departing train. The man was carrying a package as he jogged to jump in the train door. The package had fireworks in it. The conductor mishandled the passenger or his package, causing the package to fall. The fireworks slipped and exploded on the ground causing shockwaves to travel through the platform. As a consequence, the scales fell. Because Palsgraf was hurt by the falling scales, she sued the train company who employed the conductor for negligence. There is a movement toward negligence as an acceptable risk due to the fact more and more cases are troubling the judiciary courts with this fine line. As people realize its humans who are being dealt with who's actions are subjective, businesses are pushing for negligence to be in some cases an acceptable risk. This would dismiss the defendant from liability in some negligence cases.

24 Palsgraf v. Long Island Rail Road Co. (1928) 162 N.E. 99
25 Interestingly, the plaintiff's physical injuries were minor and more likely caused by a stampede of travelers on the platform rather than the concussion of the exploding fireworks. These details have not, however, stopped the case from becoming the source of extensive debate in American tort law.
26 She could have sued the man or the conductor himself, but they did not have as much money as the company. Often, in litigation, where two defendants are equally liable but one is more able to satisfy a judgment, he will be the preferred defendant and is referred to as the "deep pocket."
The defendant train company argued it should not be liable as a matter of law, because despite the fact that they employed the employee, who was negligent, his negligence was too remote from the plaintiff’s injury. On appeal, the majority of the court agreed, with four judges adopting the reasons, written by Judge Cardozo, that the defendant owed no duty of care to the plaintiff, because a duty was owed only to foreseeable plaintiffs. Three judges dissented, arguing, as written by Judge Andrews, that the defendant owed a duty to the plaintiff, regardless of foreseeability, because all men owe one another a duty not to act negligently. Such disparity of views on the element of remoteness continues to trouble the judiciary. Courts that follow Cardozo’s view have greater control in negligence cases. If the court can find that, as a matter of law, the defendant owed no duty of care to the plaintiff, the plaintiff will lose his case for negligence before having a chance to present to the jury. Cardozo’s view is the majority view. However, some courts follow the position put forth by Judge Andrews. In jurisdictions following the minority rule, defendants must phrase their remoteness arguments in terms of proximate cause if they wish the court to take the case away from the jury. Remoteness takes another form, seen in *The Wagon Mound (No. 1).*\(^{27}\) The Wagon Mound was a ship in Sydney harbour. The ship leaked oil creating a slick in part of the harbour. The wharf owner asked the ship owner about the danger and was told he could continue his work because the slick would not burn. The wharf owner allowed work to continue on the wharf, which sent sparks onto a rag in the water which ignited and created a fire which burnt down the wharf. The UK House of Lords determined that the wharf owner ‘intervened’ in the causal chain, creating a responsibility for the fire which canceled out the liability of the ship owner. In Australia, the concept of remoteness, or proximity, was

---

\(^{27}\) *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty* (1966) 2 All E.R. 709
tested with the case of Jaensch v. Coffey. The wife of a policeman, Mrs.
Coffey suffered a nervous shock injury from the aftermath of a motor
vehicle collision although she was not actually at the scene at the time of
the collision. The court upheld in addition to it being reasonably
foreseeable that his wife might suffer such an injury, it also required that
there be sufficient proximity between the plaintiff and the defendant who
causd the collision. Here there was sufficient causal proximity.

Harm, Even though there is breach of duty, and the cause of some
injury to the defendant, a plaintiff may not recover unless he can prove
that the defendant's breach caused a pecuniary injury. This should not
be mistaken with the requirements that a plaintiff prove harm to recover.
As a general rule, a plaintiff can only rely on a legal remedy to the point
that he proves that he suffered a loss. It means something more than
pecuniary loss is a necessary element of the plaintiff's case in negligence.
When damages are not a necessary element, a plaintiff can win his case
without showing that he suffered any loss; he would be entitled
to nominal damages and any other damages according to proof.
Negligence is different in that the plaintiff must prove his loss, and a
particular kind of loss, to recover. In some cases, a defendant may not
dispute the loss, but the requirement is significant in cases where a
defendant cannot deny his negligence, but the plaintiff suffered no loss
as a result. If the plaintiff can prove pecuniary loss, then he can also
obtain damages for non-pecuniary injuries, such as emotional distress.
The requirement of pecuniary loss can be shown in a number of ways. A
plaintiff who is physically injured by allegedly negligent conduct may
show that he had to pay a medical bill. If his property is damaged, he
could show the income lost because he could not use it, the cost to
repair it, although he could only recover for one of these things. The
damage may be physical, purely economic, both physical and economic
(loss of earnings following a personal injury), or reputational (in a defamation case).

In English law, the right to claim for purely economic loss is limited to a number of 'special' and clearly defined circumstances, often related to the nature of the duty to the plaintiff as between clients and lawyers, financial advisers, and other professions where money is central to the consultative services. Emotional distress has been recognized as an actionable tort. Generally, emotional distress damages had to be parasitic. That is, the plaintiff could recover for emotional distress caused by injury, but only if it accompanied a physical or pecuniary injury. A claimant who suffered only emotional distress and no pecuniary loss would not recover for negligence. However, courts have recently allowed recovery for a plaintiff to recover for purely emotional distress under certain circumstances. The state courts of California allowed recovery for emotional distress alone – even in the absence of any physical injury, when the defendant physically injures a relative of the plaintiff, and the plaintiff witnesses it.29

**Damages,** Damages place a monetary value on the harm done, following the principle of *restitutio in integrum* (Latin for "restoration to the original condition"). Thus, for most purposes connected with the quantification of damages, the degree of culpability in the breach of the duty of care is irrelevant. Once the breach of the duty is established, the only requirement is to compensate the victim. One of the main tests that is posed when deliberating whether a claimant is entitled to compensation for a tort, is the "reasonable person". The test is self-explanatory: would a reasonable person (as determined by a judge or jury) be damaged by the breach of duty. Simple as the "reasonable person" test sounds, it is very complicated. It is a risky test because it

---

involves the opinion of either the judge or the jury that can be based on limited facts. However, as vague as the "reasonable person" test seems, it is extremely important in deciding whether or not a plaintiff is entitled to compensation for a negligence tort. Damages are compensatory in nature. Compensatory damages addresses a plaintiff/claimant's losses (in cases involving physical or mental injury the amount awarded also compensates for pain and suffering). The award should make the plaintiff whole, sufficient to put the plaintiff back in the position he or she was before Defendant's negligent act. Anything more would unlawfully permit a plaintiff to profit from the tort.

**Types of damage**

Special damages - quantifiable dollar losses suffered from the date of defendant's negligent act (the tort) up to a specified time (proven at trial). Special damage examples include lost wages, medical bills, and damage to property such as one's car.

General damages - these are damages that are not quantified in monetary terms (e.g., there's no invoice or receipt as there would be to prove special damages). A general damage example is an amount for the pain and suffering one experiences from a car collision. Lastly, where the plaintiff proves only minimal loss or damage, or the court or jury is unable to quantify the losses, the court or jury may award nominal damages.

Punitive damages - Punitive damages are to punish a defendant, rather than to compensate plaintiffs, in negligence cases. In most jurisdictions punitive damages are recoverable in a negligence action, but only if the plaintiff shows that the defendant's conduct was more than ordinary negligence (i.e., wanton and willful or reckless).
3- **Rule of Strict Liability**

It has been noted above that in Rylands Vs. Fletcher,\(^{30}\) in 1868, the House of Lords laid down the rule recognising 'No fault' liability. The liability recognized was 'Strict Liability' i.e., even if the defendant was not negligent or rather, even if the defendant did not intentionally cause the harm or he was careful, he could still be made liable under the rule.

(A) **Rationale of Strict Liability**

There are many activities which are so hazardous that they constitute constant danger to person and property of others. The law may deal with them in there ways. It may prohibit them altogether. It may allow them to be carried on for the sake of their social utility but only in accordance with statutory provisions laying down safety measures and providing for sanctions for non-compliance. It may allow them to be tolerated on condition that they pay their was regardless of any faulty. The last is the doctrine of "Strict Liability". The undertakers of the activities have to compensate for the damage caused irrespective of any carelessness on their part. The basis of the liability is the foreseeable risk inherent in the very nature of the activities.

In this aspect, the principle of strict liability resembles negligence, which is also based on foreseeable harm. But the difference lies in that the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions and so if the defendant did all that which could be done for avoiding the harm, he cannot be held liable except possibly in those cases where he should have closed down the undertaking. Such a consideration is not

---

\(^{30}\) (1868) L.R. 3 H.L. 330.
relevant in cases of the strict liability where the defendant is held liable inspective of whether he could have avoided the particular harm by taking precautions. The rationale behind strict liability is that the activities coming within its fold are those entailing extraordinary risk to others, either in the seriousness or the frequency of the harm threatened. "Permission to conduct such an activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overhead."31

(B) Rule in Rylands v/s Fletcher

Strict liability has its origin in the case of Rylands v/s Fletcher, (1868) LR 3 HL 330, where the facts were that the defendants who had a mill near Ainsworth in Lancashire wanted to improve its water-supply. They constructed a reservoir by employing reputed engineers to do it. When the reservoir was filled, water flowed down the plaintiff's neighbouring coal mine causing damage. The engineers were independent contractors. There was some negligence on their part in not properly sealing disused mine shafts which they had come across during the construction of the reservoir and it was through those shafts that the water flooded the plaintiff's mine. The defendants were in no way negligent having employed competent engineers to do the job and as the engineers were independent contractors, the defendants could not be made vicariously liable for their negligence. The Court of Exchequer dismissed the claim as showing no cause of action. But the Court of Exchequer Chamber allowed the appeal.

The judgment of BLACKBURN, J. of the Court which laid down a new basis of liability was approved by the House of Lords. The basis of liability was laid down by BLACKBURN, J., in these words: "The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in 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.\textsuperscript{32} BLACKBURN, J., further said: "The general rule as above stated seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the fifth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali work is damned if without any fault of his own; and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to other so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bring it there no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences."\textsuperscript{33}

\textsuperscript{32} Fletcher v/s Rylands, (1866) LR 1 Ex. 265, 279.

\textsuperscript{33} Per BLACKBURN, J. in Fletcher v/s Rylands, (1866) LR1 Ex. 265, 280: 4H & C 263, 271 which firmed in LR 3HL 330; Mahendra Nath v/s Mathradas, (1945). 49 CWN 827: 80 CLJ 90.
In the House of Lords, Lord Cairns while approving the judgment of BLACKBURN, J., laid down that the rule applied when there was non-natural user of land. This qualification was emphasised by the Privy Council in Rickards v/s Lathian.\textsuperscript{34} In the words of LORD MOULTON in this case: "It is not every use to which land is put that brings into play this principle. It must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community."\textsuperscript{35} Another qualification of the rule is that the non-natural use by the defendant should result in "escape" of the thing from his land which causes damage and so in the absence of "escape", the rule has no application. This qualification came in the forefront before the House of Lords in Read v/s J. Lyons & Co.\textsuperscript{36} In this case, the defendants undertook the management and control of an ordnance factory where they made high explosive shells for the Government. There was an explosion in the factory in which the plaintiff and some others employed within the factory were injured. In the plaintiff's claim for damages, negligence was not alleged nor was it proved during the trial. The case rested on the allegation that the defendants were manufacturing high explosive shells which they knew to be dangerous things and that the plaintiff suffered danger when one of the shells exploded. The House of Lords upheld the decision of the Court of Appeal that in the absence of any proof of negligence no

\textsuperscript{34} (1913) AC 263 (PC).
\textsuperscript{35} Rickards v/s Lothian, (1913) AC 263, 280; Eastern and South African Telegraph Co. v/s Cape Town Tram Co. (1902) AC 381, 393; Western Engraving Co. v/s Film Lab. Ltd., (1936) 1 All ER 106; Collingswood v/s Home & colonial Stores, (1936) 1 All ER 74, State of Punjab v/s Modern Cultivators, AIR 1965 S.C. 17 p.22.
\textsuperscript{36} (1947) AC 156 (HL).
cause of action was made out. It was ruled that the Rule of Rylands v/s Fletcher was conditioned by two elements, viz. the non-natural use of the land by the defendant and the escape from his land of something which causes damage and that at least the second element was absent in the case. It was urged before the House of Lords that it would be strange result to hold the defendants liable if the injured person was just outside their premises but not liable if he was just within them and that escape in the contact of the rule meant escape from control and it was irrelevant where damage took place. These arguments were rejected through it was observed that they had considerable force on the reasoning that the rule itself wan an extension of the general rule and it was undesirable or there was no logical necessity to extend it further. The case also cast some doubt on the question whether a person could recover damages for personal injuries on the basis of the rule of Rylands v/s Fletcher, but this doubt has not been shared in subsequent authorities and damages for personal injuries have been allowed on the basis of the rule.  

The Rule in Rylands v/s Fletcher was recently considered by the House of Lords in Cambridge Water Co. Ltd. v/s Eastern Countries Leather Plc. The plaintiff in this case was a company licensed to supply water in the Cambridge area. The water for supply was taken by borehole extraction from underground strata. The defendant was another company engaged in manufacture of fine leather. The tanning works of

38. (1994) 1 All ER (HL) 53.
the defendant were at a distance of 1.3 miles from the plaintiff's borehole. The defendant used a volatile solvent known as perchlorethene (PCE) for degreasing pelts at its tanning works. PCE seeped into the ground beneath the defendant's works and thence having been conveyed in percolating water in the direction of the borehole contaminated the water available from the borehole. The time taken for PCE to seep from the tannery to the boreholes was 9 months. The defendant started using PCE from 1950. PCE was introduced into a tank at the base of dry cleaning machines. Spillage of PCE in small quantities took place during tapped up process up to 1976. It could not then be foreseen that small quantities of PCE spilled on the concrete floor of the defendant's works will enter the underground strata beneath the works and will be carried by percolating water to the defendant's borehole 1.3 miles away. Any spillage would have been expected to evaporate rapidly in the air. The water so contaminated was never held to be dangerous to health. In 1980 EEC issued directives to the members states relating to the quality of water intended for human consumption. This directive was implemented in U.K. by legislation in 1985. After 1985 the water from the borehole ceased to be wholesome and could not be lawfully supplied because of presence of PCE. The borehole was therefore taken out of commission and the plaintiff claimed damages. The plaintiff’s claim for damages was essentially based on nuisance and strict liability rule in Rylands v/s Fletcher. The claim was negative on the ground that damage of the nature suffered by the plaintiff was not foreseeable.
The House of Lords affirmed the rule laid down by the Privy Council in Wagon Mound No. (2) that foreseeability of damage is essential to establish a claim for damages in nuisance. 39 Further the House of Lords held that irrespective of whether the rule in Rylands v/s Fletcher was treated as an aspect of nuisance or as a special rule of strict liability, it was appropriate to take the view that foreseeability of damage of the relevant type should be regarded as a prerequisite of liability in damages under the rule. 40 It appears that PCE that was spilled till 1976 was still in existence in the substrata below the defendant's works when the claim was filed and was being tried and the escape of PCE was continuing to the borehole. It was, therefore, argued that since the escape of PCE was continuing even after it has become known, the defendant could be made liable either in nuisance or under the strict liability rule in Rylands v/s Fletcher. This argument was not accepted on the reasoning that the PCE was irretrievably lost in the ground below beyond the defendant's control long before the enforcement of relevant legislation making it unlawful to supply water contaminated with PCE from the borehole and long before it became known that PCE was being carried from the defendant's works to the borehole by underground percolating water. This was held to be a case of historical pollution for which the defendant could not be made liable. 41

The House of Lords, however, held that storage of substantial quantities of chemicals on industrial premises should be regarded as a classic case of non-natural use and

40. Ibid, p.76.
41. Ibid, p.77.
there could be no objection in imposing strict liability for foreseeable damage caused in the event of their escape.\textsuperscript{42}

**State of Punjab v/s Modern Cultivators\textsuperscript{43}**

Where damage was caused by overflow of water from a breach in a canal the S.C. held that use of land for construction of a canal system is an ordinary use and not a non-natural use. The case was decided in favour of the plaintiff on the finding of negligence. This case does not modify the rule of Rylands v/s Fletcher.

**Jay Laxmi Salt Works (P) Ltd. v/s State of Gujrat\textsuperscript{44}**

It was so held in this case which was a case of damage caused by overflow of water from reclamation bundh constructed by the State of Gujrat for reclamation of vast area of land from saltish water of sea. This case too was decided not on the reasoning that this was non-natural use of land but on the basis of violation of public duty and negligence which lay in defective planning and construction of the bundh. The Rule of Rylands v/s Fletcher was again referred to in **Indian Council for Enviro Legal Action v/s Union of India**,\textsuperscript{45} but the case was decided on the Mehta principle of strict liability which was held to have laid down an appropriate principle suited to our country, apart from being of binding authority.

The above discussion of authorities leads to the conclusion\textsuperscript{46} that if the defendant makes ‘non-natural use’ of

\textsuperscript{42} Ibid, p.79.
\textsuperscript{43} AIR 1965 S.C.17.
\textsuperscript{44} (1994) 4 SCC1: JT 1994 (3) SC 492.
\textsuperscript{45} AIR 1996 SC 1446: 1996 (2) SCALE 44p.69. See p.449.
\textsuperscript{46} For statement of the rule see also M.C. Mehta v/s Union of India (1987) 1SCC 395, p.419: AIR 1987 SC 965.
land in his occupation in the course of which there is escape of something which causes foreseeable damage to person or property outside the defendant's premises, the defendant is liable irrespective of any question of negligence on the basis of the rule of strict liability propounded in Rylands v/s Fletcher.

The strict liability rule in Rylands v/s Fletcher has, however, been extended recently by the S.C. in Kusuma Bagon (Smt) v/s The New India Assurance Co. Ltd., 47 by relying on some general obiter observation in Gujrat S.R.T.C. v/s Ramanbhai Prabhatbhai, (1987) 3 S.CC 234, to apply to accidents arising out of use of motor vehicles on the road, in addition to no fault liability statutorily provided in the Motor Vehicles Act, without the necessity of establishing any negligence on the part of the driver of the motor vehicle causing the accident. The accident in this case arose on capsizing of a jeep due to tyre burst when the Motor Vehicles Act, 1939 was in force and the dependants of the victim could have been allowed only Rs.15,000 as compensation on no fault basis under section 92 A of the Act unless they proved negligence. The case was, however, decided when the Motor Vehicles Act, 1988 had come into force. The tribunal negatived negligence but allowed Rs.50,000 as compensation on no fault basis under the corresponding provision viz. section 140 of the new Act.

For the application of the rule, therefore, the following three essentials should be there:

(i) Some dangerous thing must have been brought by a person on his land.

---

(ii) The thing thus brought on kept by a person on his land must escape.

(iii) It must be non-natural use of land.

(i) **Dangerous Thing**

According to this rule, the liability for the escape of a thing from one's land arises provided the thing collected was a dangerous thing, i.e. a thing likely to do mischief if it escapes. In Rylands v/s Fletcher, the thing so collected was a large body of water. The rule has been applied to gas, electricity, Vibrations, yew trees, sewage, flagpole, explosives, noxious fumes and rusty wire.

(ii) **Escape:**

For the rule in Rylands v/s Fletcher to apply, it is also essential that the thing causing the damage must escape to the area outside the occupation and control of the defendant. Thus, if there is projection of the branches of a poisonous tree on the neighbour's land this amounts to an escape and if the cattle lawfully there on the neighbour's land are poisoned by eating the leaves of the same, the defendant will be liable under the rule. But, if the plaintiff's horse intrudes over the boundary and dies by nibbling the leaves of a poisonous tree there, the defendant cannot be liable because there is no escape of the vegetation in this case.

(iii) **Non-natural use of land**

Water collected in the reservoir in such a huge quantity in Rylands v/s Fletcher was held to be non-natural use of land. Keeping water of ordinary domestic purposes is 'natural use'. For the use to be non-natural it "must be some special use bringing with it increased danger to others and must not
merely by the ordinary use of land or such a use as is proper for the general benefit of community."

In Sochacki v/s Sas, (1947) 1 ALL E.R. 344, it has been held that the fire in a house in a grate is an ordinary, natural, proper everyday use of the fire place in a room. If this fire spreads to the adjoining premises, the liability under the rule in Rylands v/s Fletcher cannot arise.

(c) Exceptions to the rule in Rylands v/s Fletcher

The judgment of BLACKBURN, J., approved by the House of Lords in Rylands v/s Fletcher itself recognised that the liability is not absolute being subject to certain exceptions. BLACKBURN, J., made it a part of the rule that "he (the defendant) can excuse himself by showing that the escape was owing to the plaintiff’s default; or perhaps that the escape was the consequence of vis major, or the act of God." 48 In the light of that passage, a person is not liable if the damage is owing to the following causes:

- **Plaintiff’s Own Default**, Damage caused by escape due to the plaintiff’s own default was considered to be a good defence in Rylands v/s Fletcher itself. If the plaintiff suffers damage by his own intrusion into the defendant’s property, he cannot complain for the damage so caused. In Ponting v/s Noakes, 49 the plaintiff’s horse intruded into the defendant’s land and died after having nibbled the leaves of a poisonous tree there. The defendant was held not liable because damage would not have occurred but for the horse’s own intrusion to the defendant’s land.

49. (1849) 2 QB 281; Also see Grow Hurst v/s Amersham Burial Board, (1878) 4 Ex. D.5; 39 L.T. 355.

265
The rule in Rylands v/s Fletcher did not apply to the case for another reason also, i.e., that there was no escape. When the damage to the plaintiff’s property is caused not so much by the “escape” of the things collected by the defendant as by the unusual sensitiveness of the plaintiff’s property itself, the plaintiff cannot recover anything. In *Eastern and South African Telegraph Co. Ltd. v/s Capetown Tramways Co.* the plaintiff’s submarine cable transmissions were distributed by escape of electric current from the defendant’s tramways. It was found that the damage was due to the unusual sensitiveness of the plaintiff’s apparatus and such damage won’t occur to a person carrying on ordinary business, the defendant was held not liable for the escape. It was observed that “a man cannot increase the liabilities of his neighbour by applying his own property to special uses, whether for business or pleasure.”

- **Act of God**, Act of God or vis major was also considered to be a defence to an action under the rule in Rylands v/s Fletcher by BLACKBURN, J., himself. Act of God has been defined as: “circumstances which no human foresight can provide against, and of which human prudence is not bound to recognise the possibility.” If the escape has been unforeseen and because of supernatural forces without any human intervention, the defence of act of God can be pleaded. The case of Nichols

---

50. (1902) A.C. 381. Also see Hoare & Co. v/s Mo Alpine, (1823) 1 Ch. 167.
51. (1902) AC 381, at 393.
52. Tennent v/s Earl of Glasgow, (1864) 2 M (H.L.) 22, 26-27.
v/s Marsland, serves as a good illustration where the defence was successfully pleaded. In that case, the defendant created artificial lakes on his land by damming up a natural stream. The year there was an extraordinary rainfall, heaviest in the human memory, by which the stream and the lakes swelled so much that the embankments constructed for the artificial lakes, which were sufficiently strong for an ordinary rainfall, gave way and the rush of water down the stream washed away the plaintiff's four bridges. The plaintiff brought an action to recover damages to the same. There was found to be no negligence on the part of the defendants. It was held that the defendants were not liable under the rule in Rylands v/s Fletcher because the accident in this had been caused by an act of God.

- **Consent of the plaintiff.** In case of Volenti non fit injuria, i.e., where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule Rylands v/s Fletcher does not arise. Such a consent is implied where the source of danger is for the 'common benefit' of both the plaintiff and the defendant. For example, when two persons are living on the different floors of the same building, each of them is deemed to have consented to the installation of things of common benefit, such as the water system, gas pipes or electric wiring. When water has been collected for the common benefit of the plaintiff

---

53. (1876) 2 Ex. D.I: Also see Greenoch Corporation v/s Caledonian Ry., (1917) A.C. 566; Attorney General v/s Cary Bros., (1919) 35 T.L.R. 570; Slater v/s Worthington Cash Stores; (1941) 1 K.B. 388; (1914) 3 All E.R.28.
and the defendant will not be liable for the escape of such water unless there is negligence on his part.

In Carstair v/s Taylor\textsuperscript{54}, the plaintiff hired ground floor of a building from the defendant. The upper floor of the building was occupied by the defendant himself. Water stored on the upper floor leaked without any negligence on the part of the defendant and injured the plaintiff’s goods on the ground floor. As the water had been stored for the benefit of both the plaintiff and the defendant, the defendant was held not liable.\textsuperscript{55} There is no such ‘common benefit’ between a gas or other public utility under taking and its consumers\textsuperscript{55} as is there between persons living in adjoining tenements. Similarly, when a festival is organised, where there is display of fireworks, it is not deemed to be “conducted for the benefit of every one who comes there to witness the fireworks in the same sense as water or gas is stored for the common use of the tenants and the landlord living in adjoining tenements and flats,”\textsuperscript{56} and if some expensive escapes into the crowd and causes damage, the organisers will be liable for the same.\textsuperscript{57}

\textbf{Act of Third Party}, If the harm has been caused due to the act of a stranger who is neither defendant’s servant nor the defendant has any control over him, the defendant will not be liable under this rule. If, however, the act of the stranger is or can be foreseen by the

\textsuperscript{54.} (1871) L.R. 6 Ex. 217; Peter v/s Prince of Wales Theater Ltd., (1943) K.B. 73: (1942) 2 All E.R. 533; Thomas v/s Lewis (1937) 1 All. E.R. 137.
\textsuperscript{55.} North Western Utilities v/s London Guarantee, etc. Co. Ltd., (1936) A.C. 108.
\textsuperscript{56.} T.C. Balakrishnan Menon v/s T.R. Subramanian, AIR 1968 Kerala 151, 153.
\textsuperscript{57.} Ibid.
defendant and the damage can be prevented, the defendant must, by due care, prevent the damage. Failure of his part to avoid such damage will make him liable.

In a decision of the S.C. in **M.P. Electricity Board v/s Shail Kumar**, the rule of strict liability was applied and the defect of the dangerous being an “act of the stranger” was not allowed because the same could have been foreseen. The Rule of Strict Liability was applied and it was held that the Board had statutory duty to supply electricity in the area. If the energy so transmitted causes injury or death of human being, who gets unknowingly trapped into it, the electric supplier shall be liable for the same. If the electric wire was snapped the current should have been automatically cut off. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such misshapes. The defence that the snapping of wire was due to the act of the stranger who might have tried to pilfer the electricity was rejected. Such act should have been foreseen by the Electricity Board and at any rate, the consequences of the stranger’s act should have been prevented by the appellant board.

- **Statutory Authority**, An act done under the authority of a statute is a defence to an action for tort. The defence is also available when the action is under the rule in Rylands v/s Fletcher. Statutory authority, however, cannot be pleaded as a defence when there is negligence. In **Green v/s Chelsea Waterworks Co.**, the defendant company had a statutory duty to maintain continuous

---

59. (1894) 70 L.T. 547.
supply of water. A main belonging to the company burst without any negligence on its part, as a consequence of which the plaintiff’s premises were flooded with water. It was held that company was not liable as the company was engaged in performing a statutory duty.

4. Principle of Absolute Liability

With the expansion of chemical-based industries in India, increasing number of enterprise store and use hazardous substances. These activities are not banned because they have great social utility (e.g., the manufacture of fertilisers and pesticides). Traditionally, the doctrine of strict liability was considered adequate to regulate such hazardous enterprises. The doctrine allows for the growth of hazardous enterprises or industries while ensuring that such enterprises will bear the burden of the damage they cause, when a hazardous substance escape. Shortly after the Bhopal Gas Leak tragedy of 1984, the traditional doctrine was replaced by the rule of ‘absolute liability’ a standard stricter than strict liability. Absolute liability was first articulated by the Supreme Court and has since been adopted by Parliament.

The genesis of absolute liability was the Shriram Gas Leak Case60 which was decided by the S.C. in Dec. 1986. The case originated in a writ petition field in the S.C. by the environmentalist and lawyer, M.C. Mehta as a public interest litigation. The petition sought to close and relocate Shriram’s caustic chlorine and sulphuric, acid plants which are located in a thickly populated part of Delhi. Shortly after Mehta filed this petition, on 4th Dec. 1985 oleum leaked from Shriram’s

---

sulphuric acid plant causing widespread panic in the surrounding community.

Chief Justice Bhagwati, who presided over the S.C. bench, was concerned for the safety of Delhi’s citizens. Moreover, the Chief Justice saw in the oculum leak a way of influencing the pending and for more important Bhopal Gas Leak Case. In the first reported order in Shriram, the Chief Justice observed that the principles and norms for determining the liability of large enterprises engaged in the manufacture and sale of hazardous products were ‘questions of the greatest importance particularly since, following upon the leakage of MIC gas from the Union Carbide plant in Bhopal, lawyers, judges and jurists are considerably exercised as to what controls, whether by way of relocation or by way of installation of adequate safety devices, need to be imposed upon [hazardous industries], what is the extent of liability of such corporations and what remedies can be devised for enforcing such liability with a view to securing payment of damages to the person affected by such leakage of liquid or gas.’

Union Carbide hinted at a ‘Sabotage Theory’ to shield itself from the claims of the Bhopal victims. It was suggested that a disgruntled employee working in the pesticide factory owned by Carbide’s Indian subsidiary may have triggered the escape of the gas. Such a theory afforded a defence under the rule of strict liability laid down in Rylands v/s Fletcher. But any faith Union Carbide may have reposed in the sabotage theory was soon shaken by Chief Justice Bhagwati’s rejection of the Rylands’ rule in situations

involving hazardous industries. In his last judgment before retirement, Chief Justice Bhagwati spoke for the Court:

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken ... We would therefore hold 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 and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in the escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and 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/s Fletcher."

The absolute liability theory laid down by the S.C. in Shriram's case was first applied by the M.P. High Court to support its award of interim compensation to the Bhopal victims. In the light of Shriram's case, Justice Seth of the High Court described the liability of the enterprise to be 'unquestionable'.

---

62. Union Carbide Corporation v/s Union of India Civil revision No.26 of 1988, 4 April 1988. This judgment was never implemented in view of the final settlement between the parties.
However, soon thereafter the wisdom of the theory was questioned by Chief Justice Misra who presided over the proceedings before the S.C. for a review of the Bhopal Gas Case settlement.\footnote{63 Union Carbide Corporation v/s Union of India (Bhopal Review), AIR 1992 SC 248.} Chief Justice Misra in his concurring judgment observed that the issue before the Shriram’s case court was whether the delinquent company came within the ambit of ‘The State’ under Article 12 of the constitution so as to be subject to the discipline of Article 21 and to proceedings under Article 32 of the Constitution. Thus, according to the Chief Justice, what was said about the departure from the Rylands v/s Fletcher rule ‘was essentially obiter.’\footnote{64 Ibid at 261, Obiter dictums are words of a judgment unnecessary for the decision of the case.}

In recognizing Carbide’s right to raise and urge defences the Court stepped back from the ‘without exception’ absolute liability principles declared in Shriram’s case.

Meanwhile in January, 1991 Parliament enacted the Public Liability Insurance Act, giving statutory recognition to ‘no-fault’ liability in small measure. The victims of a hazardous industrial were now entitled to compensation at prescribed levels, without proof of negligence. The maximum compensation under the Act on a ‘no-fault’ basis however, is limited to Rs.25,000; although the right of a victim to claim larger damages is expressly reserved. To safeguard the interest of victims, the law requires all hazardous enterprises to obtain sufficient insurance cover. The application of absolute liability was extended without limitation by the National Environment Tribunal Act of 1995 to all cases where death or injury to a person other than a workman, or damage to any property or
the environment result from an accident involving a hazardous substance. The ‘owner’, who is defined to mean a person who owns or has control over the handling of any hazardous substance at the time of the accident, is liable to compensate the victims on a ‘no-fault’ basis. Applications for compensation may be made to the tribunal established under the Act. The heads under which compensation may be claimed are set-out in the schedule to the Act and in addition to the omnibus entry any other claim arising out of or connected with any activity, of handling hazardous substances, they include death; injury; medical expenses; damage to private property; expenses incurred by government authorities in providing relief and rehabilitation, loss or harm to animals, crops, trees, and orchards; and loss of business or of employment.

Since the activities of hazardous industry are dangerous and pose potential threat to the health and safety of the persons residing in its surroundings, therefore, such establishment owes absolute and non-delegable duty towards the community. Thus, if any harm results on account of such activities, the enterprise would absolutely be held responsible to compensate for such harm and in no way would it be allowed to say that it had taken all reasonable care and the harm occurred without any negligence on its part.

The Rule in M.C. Mehta Vs. Union of India, 65 the Supreme Court was dealing with claims arising from the leakage of oleum gas on 4th and 6th December, 1985 from one

---

65. AIR 1987 S.C. 1086: 1987 ACJ 386: This case was decided by a Bench Consisting of 7 Judges on a reference made by a bench of three judges. That Bench had earlier decided whether the working of the Shriram Food and Fertilizers Industries should be restarted, and if so with what conditions. See AIR 1987 S.C. 965 and 982.
of the units of Shri Ram, Foods and Fertilizers Industries, in the city of Delhi, belonging to Delhi Cloth Mills Ltd. As a consequence of this leakage, it was alleged that one advocate practicing in the Tis Hazari Court had died and several others were affected by the same. The action was brought through a writ petition under Article 32 of the constitution by way of P.I.L. The Court had in mind that within a period of one year this was a second case of large scale leakage of deadly gas in India, as a year earlier due to the leakage of MIC gas from the Union Carbide Plant in Bhopal, more than 3000 persons had died, lacs of others were subjected to serious diseases of various kinds. If the rule of strict liability laid down in Rylands Vs. Fletcher was applied to such like situations, then those who had established, 'hazardous and inherently dangerous industries in and around thickly populated areas could escape the liability for the havoc caused thereby by pleading some exception to the rule in Rylands Vs. Fletcher. For instance, when the escape of the substance causing damage was due to the act of a stranger, say due to sabotage, there was no liability under that rule.

The Supreme Court took a bold decision holding that it was not bound to follow the 19th century rule of English Law, and it could evolve a rule suitable to the social and economic conditions prevailing in India at present day. It evolved the rule of 'Absolute Liability' as part of Indian Law in preference to the rule of Strict Liability laid down in Rylands Vs. Fletcher. It expressly declared that the new rule was not subject to any of the exceptions under the rule in Rylands Vs. Fletcher.
The Supreme Court thus evolved a new rule creating absolute liability for the harm caused by dangerous substances as was hither not there. The following statement of Bhagwati, C.J. 66 which laid down the new principle may be noted:

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had to taken all reasonable care and that the harm occurred without and negligence on its part."

The Court also laid down that the measure of compensation payable should be correlated to the magnitude and capacity of the enterprise, so that the same can have the deterrent effect. The position was thus stated: 67

"We would also like to point out that the measure of compensation in the kind of cases referred to .... Must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused

66. Ibid, at 1099.
on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

5- **Effectivity of Tortious Liability in India**

It is incorrect to state that the Law of Torts is insufficiently developed in India. This statement is apparently based solely on the paucity of reported cases. This allegation is misleading as is apparent from the following observations:

"According to Ayer, all types of torts are in plentiful occurrence in India; but these cases are rarely reported; first they are settled out of court and secondly many cases are decided in lower courts and for want of records of these decisions we infer that there is scarcity of torts litigation in India. Many of these cases are finally determined in lower courts and do not reach High Court level. Among the limited number which go to the High Court, only some are actually reported. On this analysis, lack of tort litigation is only so in appearance and not in reality."

Law of Torts by S.V. Thanvi in The Indian Legal System published by the Indian Law Institute. The Law of torts in India shares its heritage with the law of torts in the U.K.

In certain aspects, the Indian law of torts is more advanced than other countries and has, in fact, been codified. For instance, remedies for road accidents are available not in general law of tort, but under S. 110B of the Motor Vehicles Act. Similarly, an injured workman may claim compensation from his employer under the provisions of S. 3 and S. 4 of the Workmens Compensation Act, 1933. The liability of an employer for wrongs to employees has also been codified and enacted under the Employers' Liability Act, 1938. The relief for Railway Accidents can be claimed under the Railways Act. Losses caused or injuries incurred
during travel by Air or by sea are governed by the provisions of Carriage
by Air Act and Carriage by Sea Act.

Under most of these Acts, Special Tribunals have been set up to
determine compensation and award damages. In this manner, the claims
of parties are, in most case, expeditiously disposed of by Tribunals
constituted under the relevant Acts. These Acts shown how the law of
torts has not only developed but has been codified in India to provide for
expeditious disposal or tort cases which are most common.

It is further incorrect to analyse the number of cases in tort by
going through the All India Reporter and thereby come to a conclusion
that there is insufficient tort law. As stated above, a large number of tort
cases are settled outside the Court of original jurisdiction and are,
therefore, not reported. Furthermore, it is not appropriate to use the All
India Reporter to judge the number of torts cases. All India Reporter only
reports cases which are representatives of the type of cases decided.
Many High Court Judgments (i.e. opinions) are not reported in All India
Reporter and are available in the Journals of the respective High Courts.
Furthermore, reports on torts which are administered by special statute
are found in specialized reports dealing with such subjects. For instance,
cases or injuries by motor vehicles in road accidents are reported more
extensively in such journals as the Accident Claim Journal (ACJ) and
Transport and Accident Claims Journal (TAC). Besides, as stated above,
many tort cases do not come to High Courts or are not reported. An
analysis based only on the number of cases reported in All India Reporter
is, therefore, incorrect and misleading and does not represent the correct
and workmen would be more extensively reported in Labour Law
Journals (LLJ) or Labour & Industrial Cases (L & IC).

In any event, the number of torts cases reported in All India
Reporter is substantial and demonstrates that torts law is being
developed by the Supreme Court and the High Courts.
a. Problem of Delay

Undoubtedly, the sophistication of Indian System causes some delay in administration of justice. However, the delay can be and has been overcome by Courts in matters involving substantial questions which are of great public importance. The present litigation could be handled with expediency in Indian Courts, as is apparent from the manner in which the recent oleum gas leak in New Delhi was handled by the Supreme Court of India on a Writ Petition filed by a public minded lawyer. In its December 7 order, issued by Chief Justice Bhagwati and Justice Madon, the Supreme Court stated:

“This direction is being given by us with a view to expediting adjudication of claims for compensation on behalf of persons affected by leakage of gas. We would like to dispel an impression in the public mind that claims for compensation cannot be speedily adjudicated upon in Indian Courts.”

Furthermore, an attempt is being made by all concerned to reduce delay in administration of justice. This endeavour is apparent from the statement of the Union Minster of Law and Justice in the two day conference of the Chief Judicies and Chief Ministers and Law Ministers of all States held in New Delhi on 31st August and 1st September 1985. Briefing the Press at the end of the conference Mr. Ashok Sen, Union Law Minesiter said:

“An attempt would be made to eliminate all arrears in the Court in the next 5 years.”

There are numerous ways in which litigation can be expeditiously disposed of in Indian Courts. The District Judge in an Indian Court may himself appoint a Special Judge to try the case on a day-to-day basis without assigning any other work to such a Judge. Provision for such appointment and allocation of work exists in all States of India.
Alternatively, the Supreme Court or the High Court can give directions to proceed expeditiously on a day-to-day basis. There are numerous instances of directions by the Supreme Court to subordinate courts to expeditiously dispose of the litigation pending before them. One such instance is contained in the case of M.C. Mehta Vs. Union mentioned above (Annexure-A). Another instance of such expeditious hearing was in the case of Sikkim Tobacco Private Limited Vs. The State of Sikkim in which by an order dated January 20, 1982, the Supreme Court directed the High Court to hear the matter on a day-to-day basis and deliver judgment before the end of March, 1982.

Delay can further be overcome by appointing new Tribunals to try special cases. It is not unprecedented for the Government (which is a party to the present litigation) to constitute Special Tribunals do deal with the expeditious disposal of litigation of a particular nature.

Delay is a problem only in routine cases and not in the present type of litigation. The importance of and interest in the present litigation is apparent from the fact that the Parliament has put the Government in place of the citizens by enacting, The Bhopal Gas Disaster (Processing of Claims) Act, 1985. This shows that the Government itself regards the present litigation as a matter of major public interest. It has, pursuant to the Bhopal Act, acted for all claimants in the U.S. and it could do so in India as well. As the sovereign, the Government has the power to remedy all of the supposed problems mentioned in the Galanter affidavit, such as the facilities and staff made available to judges to help them in their work. The case law reported in the All India Reporter given the information as to the year when a petition/case/appeal was filed before the concerned court had also the date on which the court handed down the judgment/order. The following information is based on the above reporting.
Coming to the Supreme Court cases, the court took on an average four years to dispose of an environmental litigation. In thirty per cent cases, the court delivered the judgments/orders in the same year or within one year after filling the suit/petition. However, there were thirteen per cent cases where the court took ten to fifteen years. The High Courts took lesser time as compared to the Supreme Court and handed down judgments/orders within an average of two and half years. In nearly four per cent cases, the high courts took more than ten years and in forty two per cent litigations the time taken was either the same year or one year. The credit of lowest frequency goes in favour of the high courts like, Calcutta, Madhya Pradesh and Patna; whereas, the high courts of Bombay, Delhi, Kerala, Madras and Rajasthan took much more longer period in the disposal of environmental cases. Cases were pending in Delhi, Gujarat, Karnataka and Rajasthan high Court for more than a decade. The highest graph was of the Madras high court on whose account was the average time period of six years. On the other hand, one year’s average period was to the credit of the high courts of Andhra Pradesh, Calcutta, Patna, and Punjab and Haryana. It is interesting to note that during the period of 1997-2001, there were large number of cases decided by the Supreme Court and high courts. In certain Supreme Court68 and the high courts69 cases the period even ranged from 12-15 years and 8-11 years respectively. Thus in these cases there was undue delay in setting the environmental litigations by the apex court and some of the high courts. In this connection, the Mohan Meakins cases70 deserves a special mention. It took 17 years for the Supreme Court to deliver judgment and the matter was settled at the high court level within 15 years. Can environmental dispute wait for

such a long period for its settlements? But the end of total 32 years even if the court decided the case on the side of environment, it will not administer judicial enviro justice. The reason is that by then many more facets of problems, issues and environmental pollutions would not only emerge but also reach deep into the undesirable areas.

The shorter duration in the above cases can be attributed to the reasons which included: the court issued interim order; it was moved in appeal where in the application court had already necessary relevant informations; where the court was satisfied that the matter was such that it needed speedy disposal to administer environmental justice; last but not the least, the matter was referred back to the court/concerned authority for its disposal. On the other hand, the factors responsible for the undue delay were, for example in the important cases; larger inputs before the courts large number of lawyers; constitution of committee after committee to help the courts; laying down large number of directions non-cooperation of the polluters and environment protection agencies/authorities; adjournments in the case; and last but not the least pending large number of cases before the courts.

The above date shows that in majority of the cases the court had taken more than two years to administer environmental justice. It may be pointed out that any undue delay in deciding the envirolitigation allows cancerous growth of pollution to further degrade the environment, causing more injury to the human beings, plants, animals and what not. Speedy justice has gained the status of fundamental right.71 The judiciary, therefore, must ensure that this fundamental right to speedy justice is allowed to operate in the enforcement of the fundamental right to live in a clean environment.

It will not be irrelevant to mention that Parliament by law provided for an alternative forum, the environmental tribunals, though for a limited sphere, for reasons, inter alia, speed delivery of justice. It is unfortunate that the tribunal has yet to be made operationalised, a stepmotherly treatment with the environmental obligation to protect and improve the environment as envisaged under a article 48A of the Constitution of India? Is not the rakshk of environment have become bhakshak? It is time that the government must operationalise this forum so that its working experiences may be a lesson for and against extending of its functioning to the entire area of envirolitigations.

b- Uphar Cinema Case

The Uphar Cinema fire, one of the worst fire tragedies in recent Indian history\textsuperscript{72}, occurred on Friday, June 13, 1997 at Uphar Cinema, Green Park, Delhi, during the premiere screening of the movie, \textit{Border}. Trapped inside, 59 people died, mostly due to suffocation, and 103 were seriously injured in the resulting stampede.

The victims of the tragedy and the families of the deceased later formed 'The Association of Victims of Uphar Fire Tragedy' (AVUT), which filed the landmark Civil compensation case. It won Rs 25 crore (Rs 250 million) compensation for the relatives and families of the victims\textsuperscript{73} in the case, now considered a breakthrough in civil compensation law in India.\textsuperscript{74,75} However the Supreme Court on 13/10/2011, nearly halved the sum of compensation awarded to them by the Delhi high court and slashed punitive damages to be paid by cinema owners Ansal brothers from Rs 2.5 crore to Rs 25 lakh.\textsuperscript{76}

\textsuperscript{72} Cinema fire one of the worst in Indian history \textsc{Rediff.com}, June 14, 1997.
\textsuperscript{74} Uphar Cinema Verdict - A Breakthrough In Compensation Law \textit{Legal View, Laws in India}
\textsuperscript{75} Activism - Implications of Uphar Cinema Judgement May 14, 2003.
\textsuperscript{76} SC reduces compensation to kin of victims \textit{Times of India}, Thursday, October 13, 2011.
Today they meet at every anniversary at 'Smriti Upavan' memorial, outside the hall, where a prayer meeting is held.\textsuperscript{77,78}

The fire incident, the fire broke out at 5:10 pm. According to reports, it was caused when a 1000 kVA electricity transformer, maintained by the Delhi Vidyut Board (electricity Board) (DVB), and housed in the theatre's overcrowded basement car park, burst, and engulfed some 20 cars, where some 36 cars were parked instead of the admissible 18. The fire\textsuperscript{79,80,81} eventually spread to the five-storey building which housed the cinema hall and several offices. Most of the victims were trapped on the balcony and died due to suffocation as they tried to reach dimly marked exits to escape the smoke and fire and found the doors locked.\textsuperscript{82}

An off-duty Capt. Manjinder Singh Bhinder of the 61st Cavalry of the Indian army and a talented horse-rider, out celebrating his success at a recent national games with his family and a junior officer at the movie hall, gave his and his family's lives up saving over a 150 people, on his personal initiative. Rushing out along with his family at first, realising the gravity of the unfolding tragedy, he and his people went back inside, and tried to set order and guide people out to safety.\textsuperscript{83}

Fire services were delayed due to the heavy evening traffic and the location of the cinema hall, situated in one of the busiest areas of South Delhi.\textsuperscript{84} At least 48 fire tenders were pressed into service at 5.20 p.m. and it took them over an hour to put out the fire.\textsuperscript{85} Later the dead and

\textsuperscript{77} Upaar verdict: Very uplifting Business Line, May 8, 2003
\textsuperscript{78} Upaar cinema blaze: Four years later Rediff.com, June 13, 2001
\textsuperscript{79} Inqunry report indicts Upaar management, city authorities Rediff.com, July 3, 1997.
\textsuperscript{80} Case Study - Upaar Cinema
\textsuperscript{81} Delhi court finds 12 guilty in Upaar cinema fire Reuters, Tue, November 20, 2007 1:09pm
\textsuperscript{82} Friday's fire raises fears that many Delhi movie halls ignore safety norms Rediff.com, June 14, 1997
\textsuperscript{84} 60 feared killed in Delhi fire Rediff.com, July 13, 1997
\textsuperscript{85} Delhi cinema fire tragedy claims 59 Indian Express, Saturday, June 14, 1997.
the injured were rushed to the nearby All India Institute of Medical Sciences (AIIMS) and Safdarjung Hospital, where scenes of chaos and pandemonium followed, as relatives and family members of the victims scurried around to look for known faces. A small fire had earlier broken out in the morning hours in the electrical transformer, which was soon put out and repairs carried out by DVB officials. Hours later oil spilled from the transformer and caught fire.

**Precursor to the incident**, After the transformer caused a fire at 'Gopal Towers', a high-rise in Rajendra Place, New Delhi in 1983, the licences of 12 cinemas, including that of Upshar, were cancelled. The Deputy Commissioner of Police (Licensing) who inspected Upshar, had listed ten serious violations, and all remained uncorrected until the fire 14 years later.

The investigation and trial, In the beginning a magisterial probe took place which submitted its report on July 3, 1997, wherein it held cinema management, Delhi Vidyut Board, city fire service, the Delhi police's licensing branch and municipal corporation responsible for the incident saying "it contributed to the mishap through their acts of omission and commission", it also blamed the cinema management for losing precious time in alerting the fire services, and also for not maintaining proper distance between the transformer room and the car park. It also said that, "when the fire broke out at 1645 hours, the movie was not stopped nor any announcement made to evacuate the audience. Exit signs were not battery-operated and once the lights went out, panic-struck people had to grope in the dark for exits, many of which were blocked by seats". Subsequently the courts issued non-bailable warrants against Sushil Ansal, his brother Gopal, a Delhi Vidyut Board inspector and two fire service officials. After evading arrest for

---

86 Nightmare and suffering of a birthday girl *Indian Express*, Saturday, June 14, 1997
87 Transformer had caught fire in the morning too *Rediff.com*, June 14, 1997
88 Upshar cinema indicted in fire tragedy *Indian Express*, Friday, July 4, 1997
many days, Sushil and his son Pranav Ansal, the owners of Ansals Theatres and Club Hotels Limited, which owned the Uphaar cinema were finally arrested in Mumbai on July 27, 1997, and sent to judicial custody, though were later released on bail. Also amongst those arrested was the company's director V K Aggarwal.\textsuperscript{89}

Following the inquiry, Union Home ministry transferred the probe to the Central Bureau of Investigation (CBI) amidst charges of cover-up by victims families, which on November 15, 1997, filed chargesheet against 16 accused, including theatre owners Sushil and Gopal Ansal, for causing death by negligence, endangering life and relevant provisions of the Cinematograph Act, 1952. By 2000, the prosecution has completed the recording of evidence with the testimony of its 115 witnesses. The court case ran for over a decade, and the court had over 344 hearings during the first seven years. Four of the accused died,\textsuperscript{90} and eight witnesses, mostly relatives of Ansals turned hostile witness,\textsuperscript{91} despite High court responding to AVUT's plea and asking trial court in 2002, to expedite the case Meanwhile as the criminal trial dragged on, in 2003, a presiding judge commented upon the repeated requests (for adjournment) as being intended to delay the case.\textsuperscript{92}

Almost nine years after the tragedy, a trial court judge visited the Uphaar cinema hall in August, 2006, accompanied by CBI officials who investigated the case to get a first hand look at the seating and fire safety arrangements, which have been blamed for the tragedy. The site had been preserved as “material evidence” since the tragedy. The visit followed a High Court order in which the trial court was asked to examine all available evidence in the matter, and as the courts proceeding were coming to an end. In its report the court observed that

\textsuperscript{89} CBI probe ordered into Uphaar cinema fire \textit{Rediff.com}, July 23, 1997
\textsuperscript{90} Ten years after Uphaar tragedy, Ansals held guilty \textit{The Hindu}, November 21, 2007
\textsuperscript{91} Uphaar \textit{The Times of India}, July 2007, 2000
\textsuperscript{92} Smokescreen after the fire \textit{Indian Express}, September 5, 2004

286
on the second floor balcony of the theatre, where victims were asphyxiated, “the space provided for exhaust fans on the walls was found blocked with the help of a cardboard”.

**Civil compensation case.** In a connected civil court case, 'The Association of Victims of Uphaar Fire Tragedy' (AVUT) sought civil compensation from Ansal Theatre and Clubotels Ltd., which owned the theatre, and the Delhi government alleged 'negligence' on their part led to the fire in the cinema hall. The verdict of this case came on April 24, 2003, and the Delhi High Court found owners of the Uphaar cinema, Municipal Corporation of Delhi (MCD), Delhi Vidyut Board (electricity Board) (DVB) and the licensing authority 'guilty of negligence', and awarded Rs 25 crore (Rs 250 million) civil compensation to the relatives of victims,[21] which included Rs 15 lakh each to the relatives of the victims, less than 20 years at the time of the tragedy and a sum of Rs 18 lakh each to those, above 20 years. The compensation included Rs.2.5 crore for development of a trauma centre near New Delhi's Safdarjung Hospital, situated close to the cinema hall.[19] The court directed the cinema owners to pay 55 per cent of the compensation since they were the maximum beneficiaries of the profit earned from the cinema, the remaining 45 per cent was to be borne equally by MCD, DVB and licensing authorities, each contributing 15 per cent of the amount.95

The Supreme Court on October 13 2011 reduced the amount of compensation to be paid to the victims of 1997 Uphaar Cinema fire tragedy. The compensation to family of deceased above 20 yrs cut from Rs 18 lakh to Rs 10 lakh each; for those below 20 yrs, from Rs 15 lakh to Rs 7.5 lakh.

---

93 9 years later, Judge inspects Uphaar cinema *Indian Express*, August 20, 2006  
94 Judge finds several lacunae in Uphaar cinema *The Tribune*, September 3, 2006  
Evidence tampering case, In 2003, the public prosecutor in the case reported that several important documents filed along with the charge sheet were missing from the court record of the case or had been tampered with or mutilated. The court ordered an inquiry and dismissed the court clerk. In 2006, the Economic Offences Wing (EOW) of the Delhi Police registered the case on a Delhi High Court direction on a petition by 'Association of the Victims of Upahaar Tragedy' (AVUT) convener Neelam Krishnamurthy.

In February 2008, on the basis of the charge-sheet filed by the Economic Offences Wing of the Delhi police for allegedly removing, tampering and mutilating important documents of the Upahaar fire tragedy case in conspiracy with a clerk in a trial court there in 2003, a Delhi court summoned Upahaar cinema hall owners Sushil Ansal and Gopal Ansal and four others in the evidence tampering case, under Sections 120-B (criminal conspiracy), 201 (causing disappearance of evidence or giving false information to screen offenders) and 409 (criminal breach of trust) of the Indian Penal Code.\(^6\)

The verdict, the final verdict came four years later on November 20, 2007, and the quantum of sentences were given out on November 23, 2007, in which 12 people, including the two Ansal brothers, were found guilty, and later convicted for of various charges including, causing death by negligent act,\(^10\) and were given the maximum punishment of two years' rigorous imprisonment. They were also fined Rs.1,000 each for violating Section 14 of the Cinematography Act. The court also directed the CBI to investigate the role of other officials who had been giving temporary licences to the Upahaar cinema hall for 17 years.\(^7\)

The other seven accused, three former Upahaar cinema managers, cinema's gatekeeper and three DVB officials, were all given seven years'
rigorous imprisonment, under Section 304-A (culpable homicide not amounting to murder) of the Indian Penal Code (IPC), and housed at the Tihar Jail.[19][27] The court also fined all the 12 accused with Rs.5,000 each, and also sentenced all of them to two years' rigorous imprisonment, as they were found guilty of endangering personal safety of others, both the sentences however were to run concurrently.98

Post verdict, One year after the verdict, one of the managers, who had allegedly fled from the hall soon after fire broke out and the fire safety measures were not followed, died at a Delhi hospital on 6 December 2008.99 In December 2008, the High Court, while upholding the trial court order convicting the Ansal brothers, had reduced their sentences of imprisonment from two years to one year.100 On January 30, 2009, an Apex bench of the Supreme Court granted bail to Sushil Ansal and Gopal Ansal.

Aftermath, the fire exposed the poor safety standards at public places in the country's capital. The court ruled that the lack of a trauma center at the nearby AIIMS hospital had contributed to the high death toll in the incident.

---

98 Not satisfied, we'll go to HC: Uphaar victims' kin Indian Express, November 20, 2007
99 Uphaar cinema manager lodged in Tihar dies Hindustan Times, December 7, 2008
100 Apex court grants bail to Ansals The Hindu, January 31, 2009