

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 non-delegable duty to the community.

[Case Brief] M.C. MEHTA AND ANR. V/s UNION OF INDIA & ORS.

Case name	M.C. MEHTA AND ANR. V/s UNION OF INDIA & ORS.
Case number	Criminal Appeal No. 12739 of 1985
Court	The Hon'ble Supreme Court of India
Bench	BHAGWATI, P.N. (CJ) MISRA RANGNATH OZA, G.L. (J) DUTT, M.M. (J) SINGH, K.N. (J)
Decided on	20/12/1986
Relevant Act/Sections	Articles 12,21 and 32 of the Constitution of India, Law of Torts.

➤ **Brief Facts and Procedural History:**

1. The petitioners, in this writ petition under Art. 32, sought a direction for closure of the various units of Shriram Foods & Fertilizers Industries on the ground that they were hazardous to the community. During the pendency of the petition, there was escape of oleum gas from one of the units of Shriram. The Delhi Legal Aid and Advice Board and the Delhi Bar Association filed applications for award of compensation to the persons who had suffered harm on account of escape of oleum gas.
2. A Bench of three Hon'ble Judges while permitting Shriram to restart its power plant as also other plants subject to certain conditions, referred the applications for compensation to a larger Bench of five Judges because issues of great constitutional importance were involved.

➤ **Issue before the Court:**

1. What is the scope and ambit of the jurisdiction of the Supreme Court under Art. 32 ?

2. Whether Art. 21 is available against Shriram which is owned by Delhi Cloth Mills Limited engaged in an industry vital to public interest and with potential to affect the life and health of the people ?
3. What is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured ?

➤ **Ratio of the Court:**

1. Mr. Diwan, learned counsel appearing on behalf of Shriram raised a preliminary objection that the Court should not proceed to decide these constitutional issues since there was no claim for compensation originally made in the writ petition and these issues could not be said to arise on the writ petition.
2. The Court stated on the first issue that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing regular writ petition under Art. 226 in the High Court and under Art. 32 in this Court, but also by addressing a letter to the Court.
3. **Bandhua Mukti Morcha v. Union of India & Ors., [1984] 2 SCR 67; S.P. Gupta v. Union of India, [1981] (Suppl) SCC 87 and Union for Democratic Rights & Ors. v. Union of India, [1983] 1 SCR 456**, was relied upon while stating Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. But more importantly, *the power of the Court is not only injunctive in ambit, that is, preventing the infringement of fundamental right but it is also remedial in scope and provides relief against a breach of the fundamental right already committed.*
4. Ordinarily a petition under Art. 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of

Civil Court. It is only in exceptional cases that compensation may be awarded in a petition under Art. 32.

5. The applications for compensation in the instant writ petition are for enforcement of the fundamental right to life enshrined in Art. 21 of the Constitution and while dealing with such applications the Court cannot adopt a hyper-technical approach which would defeat the ends of justice. The Court must look at the substance and not the form. Therefore, the instant applications for compensation are maintainable under Art. 32.
6. The rule in **Rylands v. Fletcher**, 1866 Law Report 1 Exchequer 265, laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry on as part of developmental programme, the Court need not feel inhibited by this rule merely because the new law does not recognise the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity.
7. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country.
8. Counsel for Shriram cautioned against expanding Article 12 so as to bring within its ambit private corporations. He contended that control or regulation of a private corporations functions by the State under general statutory law such as the Industries Development and Regulation Act, 1951 is only in exercise of police power of regulation by the State. Such regulation does not convert the activity of the private corporation into that of the State. The activity remains that of the private corporation, the State in its police power only regulates the manner in which it is to be carried on.
9. This Court has throughout the last few years expanded the horizon of Art. 12 primarily to inject respect for human-rights and social conscience in corporate structure. The purpose of expansion has not been to destroy the raison d'eter of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well-founded when he says that our including within the

10. ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. It is through creative interpretation and bold innovation that the human-rights has been developed in India to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. In **Rajasthan Electricity Board v. Mohan Lal**, [1967] 3 SCR 377 this Court pointed out that the expression 'other authorities' in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law.
11. *Thus, 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 non-delegable duty to the community to ensure that if any harm results to anyone, the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm irrespective of the fact that the enterprise had taken all reasonable care and that the harm occurred without any negligence on its part so, the enterprise is strictly and absolutely liability.*
12. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads. The enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. The measure of compensation in such kind of cases must be co-related 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 for the harm caused on account of an accident in carrying on of the hazardous or inherently dangerous activity by the enterprise.
13. However, in the present matter, along with this extensive functional control, we find that Shriram also receives sizable assistance in the shape of loans and overdrafts running into several crores of rupees from the Government through various agencies. Moreover, Shriram is engaged in the manufacture of caustic soda, chlorine etc. Its various units are set up in a single complex

surrounded by thickly populated colonies. Chlorine gas is admittedly dangerous to life and health. If the gas escapes either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and wellbeing of the people living in the vicinity can be seriously affected. Thus Shriram is engaged in an activity which has the potential to invade the right to life of large sections of people. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth.

➤ **Decision Held:**

1. Since we are not deciding the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21, we do not think it would be justified in setting up a special machinery for investigation of the claims for compensation made by those who allege that they have been the victims of oleum gas escape.
2. But we would direct that Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from today and the Delhi Administration is directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more Judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of.