CHAPTER ONE

INTRODUCTORY

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1.1 Scope

The Public Liability Insurance Act, 1991 (Central Act 6 of 1991), is the most important legislative measure enacted in India on the subject of hazardous substances and is likely to be a regulatory measure of the greatest significance for business and industry in the coming decades.

Although the Act, in its short title, emphasises the aspect of "insurance", the scope of the Act extends much beyond merely making a provision for insurance. The very first substantive section of the Act (Section 3) incorporates the principle of liability without fault and imposes on the "owner" liability to give relief in respect of death or injury to any person or damage to any property, resulting from an accident occurring while handling any hazardous substance. The duty of the owner to take out insurance policies to cover such liability, as imposed by Section 4(1) is, really speaking, connected with the main liability without fault, imposed on the owner by Section 3. The liability flowing from Section 3 is thus the primary liability, in consequence of which the duty to take insurance under Section 4 arises.

The imposition of no fault liability for the accident in question is an important feature of the Act, though it is not brought out either in the long title or in the short title of the Act. The long title and the short title emphasise the element of "insurance" against liability, but underplay the very important element of the liability itself.

1.2 Object of the Act

The official object of the Act as enunciated in the long title is as under:-

> "An Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto."

However, as already pointed out[1], this is not a complete statement of the legal consequences arising from the Act, because it does not take adequate notice of the provisions of Section 3 of the Act.

1.3 Liability insurance

The pivotal section in the Act is Section 3, which imposes no fault liability in respect of accidents occurring while "handling" any hazardous substance as defined in the Act. Under Section 3, the liability is imposed on the "owner" and, as per the definition in Section 2(g), "owner" means a person who owns or has control over handling any hazardous substance. The no fault liability thus attaches to the "owner" of any enterprise, whether public or

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1. Paragraph 1.1, *supra*

private. Against this liability, insurance must be taken unless an exemption is given under Section 4(3).

The concept of "public liability insurance" will be better understood if one bears in mind the fact that it is a species of liability insurance. We have a good description of liability insurance in a well known book[1] in the following words:-

"**Liability Insurance**

Here, the specified event imposes upon the assured a liability towards third persons. This class comprises the following:

(i) Public liability insurance, e.g. insurance in respect of liabilities connected with particular buildings, motor vehicles, or machinery.

(ii) Employers' liability insurance."

It is pointed out in the same book[2], that where the assured insures against liability to third parties arising otherwise than from contract, the liability insured against, is the real subject-matter of insurance. The assured has no direct interest in the safety of third persons or in the preservation of their property from harm. The loss against which he seeks protection, is not the injury or damage caused by the accident. It is the consequence of the fact that he happens to be responsible for the accident in the circumstances in which it takes place.

1.4 Public liability insurance

The matter can be analysed from a different angle, namely, classification of policies. Ivamy classifies policies as under[3]:-

"I. Policies in which the definition of the subject-matter is so precise as to confine the insurance to specific object. Eg. policies of insurance against personal accident, and policies of insurance against the loss of particular property, or loss by the defalcations of a particular employee, or by the insolvency of a particular debtor.

II. Policies in which the definition of the subject-matter is expressed in general terms so that the insurance is capable of applying to any object falling within the definition. Eg. policies of insurance on property generally, and policies of insurance against public liability."

Substantially similar picture is presented in the treatment of this topic by Halsbury, from which the relevant passage is quoted below, after omitting the footnotes[4]:-

> *"Forms of liability insurance"* Liability insurance may be in the form of personal liability policy covering all types of liability apart from certain specified exceptions, or conversely it may be limited to liabilities of a

1. Ivamy, General Principles of Insurance Law (1975), page 7.
2. Ivamy, General Principles of Insurance Law (1975), pages 11, 12.
3. Ivamy, General Principles of Public Liability (1975), page 193.
4. Halsbury (4th Ed.), Vol. 25 (Insurance), page 350, paragraph 688.

particular kind. For example, polices of motor insurance and aircraft insurance are specially designed to cover liabilities arising out of the use of motor vehicles and aircraft respectively. Similarly, more or less standard forms of policy have been designed to cover the risk of an employer being held liable at common law, or under some statutory provision or regulation, to his employees, of a professional man being held to have been negligent in carrying on his practice as solicitor, accountant, valuer, or the like, of a carrier or other bailee being held liable to the owner of goods in his custody which are lost, damaged or destroyed, or of a building, engineering or public works contractor being held liable to members of the public by reason of his operations. Again, an owner and "occupier of buildings, whether domestic or commercial, may incur liability to people using an adjoining highway, or liability to visitors, either generally in connection with the buildings, or more particularly in connection with lifts or other machinery or plant installed there".

Referring to the standard form of policy designed to cover the risk of a building contractor, engineering contractor or public works contractor being held liable to members of the public by reason of his operations, Halsbury (in a footnote) adds the statement that such policies are generally called "public liability policies".[1]

In the United States, it appears, the term "public liability" insurance is literally broader than insurance against liability in connection with the ownership or use of premises and has been stated to include-

(i) contractors' liability insurance;

(ii) products liability insurance; and

(iii) insurance against liability from business operations.[2]

But a very common form of liability insurance, generally referred to by the more comprehensive term of public liability insurance, is that which insures the owner, occupier or operator of the real property against liability incidental to his ownership or use of the premises. The extent of coverage under this type of policy depends entirely upon the specific provisions of the policy and the circumstances surrounding the accident or injury. Under such a policy containing a provision excluding coverage as to property in the care, custody or control of the insured, the view has been taken that the exclusion does not apply unless the property is in the actual care, custody or control of the insured at the very moment the damage occurs.[3] The facts were as follows.

The insured moved another's automobile from a drive to a parking lot on his fishing premises, and after he had parked it and had gone some 40 feet, the car rolled into the lake, and it was held that the exclusionary clause in his liability policy as to property in his care, custody, or control did not apply because the car was not actually in his care, custody, or control when it rolled into the lake.

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1. Halsbury (4th Ed.), Vol. 25 (Insurance), page 351, footnote 8.
2. Vol. 44, American Jurisprudence 2d, pages 290-291, paragraph 1430 and footnote 8.
3. *Hardware Mutual Casualty Co.v. Crafton*, 233 Ark 1020, 352 S.W. 2d 506.

1.5 Nature of the liability under Rylands v. Fletcher

The liability created by the Public Liability Insurance Act cannot be fully understood unless one keeps in view the background rules of the law of torts against which the Act operates. In the law of torts- to state the position in very broad terms -liability to pay compensation for death, injury or damage to property, to begin with, depends on intention or negligence of the wrong-doer. But, in certain cases, usually governed by what has come to be known as the rule in *Rylands* v. *Fletcher*, liability for certain substances may arise without proof of intention or negligence. Mr. Justice Blackburn enunciated the rule thus in *Rylands* v. *Fletcher*[1]:-

"We think that the true rule of the law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it as his peril, and if he does not do so, is prima facie answerable for all the damaged which is the natural consequence of its escape."

To the above formulation by Mr. Justice Blackburn, certain refinements were added by the House of Lords while upholding the judgment. In the House of Lords, Lord Cairns, Lord Chancellor, rested his decision on the ground that the defendant had made a "non-natural use" of his land, though he stated that he entirely concurred in the judgment of Mr. Justice Blackburn which he regraded as reaching the same result. Some debate has arisen as to the complexity that has resulted from the words used by Lord Cairns making a distinction between "natural" and "non-natural" use of land.[2] But the requirement of "non-natural use" is accepted.

1.6 Strict and absolute liability

It is now recognised that liability under *Rylands* v. *Fletcher*, though it is strict, is not absolute. Though stated as a rule of absolute liability ("absolute duty to keep it in at his peril") in the judgment of Mr. Justice Blackburn, it is settled that there are several exceptions to the rule. The exceptions commonly stated in this behalf are the following:-

(1) Consent of the plaintiff.

(2) Common benefit.

(3) Act of stranger.

(4) Statutory authority.

(5) Act of God.

(6) Default of the plaintiff.[3]

In general, the position as stated in the above analysis of the rule in *Rylands* v. *Fletcher* was followed in India. Though on the facts, the rule might not have been applied because some ingredient was not present, yet the

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1. *Rylands* v. *Fletcher*, (1866) L.R. 1 Ex. 265, 279, 280.
2. *Hargrave* v. *Goldman*, (1963-1964) 37 A.L.J.R. 277, 283, per Windeyer, J.
3. Winfield & Jolowicz on Tort (1990), pages 432 to 440.

applicability of the rule has been accepted in several decisions of High Courts.[1] Similarly, on the basis that the rule applies in India, the Supreme Court enunciated a new principle of liability in *M.C. Mehta's* case.

1.7 Liability under M.C. Mehta's case

In M.C. Mehta's case,[2] the Supreme Court enunciated a new principle of liability for enterprises engaged in hazardous or inherently dangerous activities. After discussing at some length the rule in *Rylands* v. *Fletcher*, the conditions for its applicability and the exceptions to that rule, the Court expressed itself as under:-

> "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. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged 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 and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation or substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. 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 hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warnings against potential hazards. 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

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1. See, for example,–
   (i) *Ramanuja Chariar* v. *Krishnaswami Mudali*, (1907) I.L.R. 31 Mad. 169.
   (ii) *Dhanusae* v. *Sitabai*, I.L.R. 1948 Nag. 698.
   (iii) *M. Madappa* v. *K. Karappa*, A.I.R. 1964 Mys. 80.
   (iv) *Mukesh Textile Mills Pvt.Ltd.* v. *H.R. Subramanya Sastry*, A.I.R. 1987 Karn. 887.
2. *M.C. Mehta* v. *Union of India*, A.I.R. 1987 S.C. 1086.

an accident in the operation of such hazardous and 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 such liability is not subject to any of the exceptions which operate vis-a-vis the fortutious principle of strict liability under the rule in *Rylands* v. *Fletcher*."

The question came up before the Supreme Court when it upheld[1] the validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985 in its judgment of 1990. The judgment, besides discussing the doctrine of *parens partria* and taking note of the fact that the legislation in question related to the subject of "actionable wrongs" under the Seventh Schedule, Concurrent list, entry 8, also contains a suggestion (in para 129) to lay down certain norms and standards in regard to the industries dealing with materials which are of dangerous potentialities. In the judgment of Mr. Justice Ranganathan, there is a suggestion, that either the Fatal Accidents Act should be amended or fresh legislation should be enacted, to deal with the victims of mass disaster. *Inter alia*, the suggested legislation should deal with the following matters:

(i) Fixed minimum compensation on *no fault basis*, pending final adjudication of the case.

(ii) Creation of special forum with specific power to grant interim relief in appropriate cases.

(iii) Evaluation of a procedure to be followed by such (special) forum, which will be conducive to the determination of the claims and avoid high degree of formalism in proceedings.

(iv) A provision requiring industries and concerns engaged in *hazardous activities to take out compulsory insurance against third party risk*[2]

1.8 Liability for chattels: Donoghue v. Stevenson

The Public Liability Insurance Act covers, *inter alia*, manufacturers and distributors also. At the same time, it is confined to accidents occurring while handling an hazardous substance. Hence there may not be any need to compare liability under the Act and liability in the law of torts under the rule in *Donoghue* v. *Stevenson* in respect of latent defects in chattels. Nevertheless, it may be convenient to state the gist of that rule. Lord Atkin expressed the rule as follows:-

"A manufacturer of products which he sells in such a form that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the product will result in injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."[3]

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1. *Charan Lal Sahu* v. *Union of India*, A.I.R. 1990 S.C. 1480.
2. Emphasis added.
3. *Donoghue* v. *Stevenson*, (1932) A.C. 562.

1.9 Public Liability Insurance Act

So much as regards the common law background. The principle of no fault liability has been adopted in the Public Liability Insurance Act. The marginal note to Section 3 of the Act is- "Liability to give relief in certain cases on principle of no fault". The substantive provision in Section 3(2) provides that the claimant for relief for death or personal injury or damage to property caused by accident while handling an hazardous substance shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made " was due to any wrongful act, neglect or default of any person". The extent, if any to which this provision of the Act takes away the defences recognised in the law in respect of the rule in *Rylands* v. *Fletcher* could be a matter of discussion. But it is clear that at least the condition of non- natural use of land (required by the rule in *Rylands* v. *Fletcher*[1]) is not required for the statutory liability under Section 3(2).

1.10 Scheme of the Act

The Public Liability Insurance Act, 1991 consists of 23 sections and a Schedule. Short title and commencement are dealt with in Section 1, while Section 2 contains several definitions. The substantive provisions are mainly contained in Sections 3 and 4. Section 3 incorporates the principle of liability without fault for death or injury to any person (other than a workman) or damage to any property resulting from an accident– "accident" having been defined in Section 2(a) as meaning, *inter alia*, an accident occurring while handling any hazardous substance. It is against this liability that Section 4 makes it mandatory for the owner (that is to say, the person who owns or has control over handling any hazardous substance), to take out one or more insurance policies whereby such owner is insured against the liability imposed by Section 3(1). Section 4(2 A) and succeeding sub-sections make certain detailed provisions as to the policies. By section 4(3), the Central Government is empowered to grant exemption from the duty to take out an insurance policy; but this is conditional on the establishment and maintenance, by the owner, of a fund for meeting the liability imposed by Section 3(1).

Sections 5 to 7 of the Act deal with the preliminary formalities and procedure for applications for claims for relief under the Act. Section 5 requires the Collector to verify the occurrence of an accident, if it comes to his notice, and to cause publicity to be given to it for inviting applications for claims for relief. Section 6 deals with the manner of making such applications and also prescribes a time limit of five years for making such applications. The inquiry into the application by the Collector, and the award of relief by him, are matters dealt with in Section 7, which also provides that the amount awarded shall be recoverable as arrears of land revenue or of public demands. Section 7A (inserted in 1992) provides for the creation of Environment Relief Fund.

Section 8 saves any other right to claim compensation in respect of death, injury to person or damage to property under any other law for the time being in force. Certain powers necessary for the working of the Act are dealt with

1. Para 1.5. supra.

in Sections 9, 10 and 11, relating to calling for information, entry and inspection and search and seizure. A very important provision, contained in Section 12, is to the effect that the Central Government may issue written directions "for the purposes of the Act" to any owner or any other person and it is made clear that this direction may include a direction prohibiting or regulating the handling of any hazardous substance or a direction stopping or regulating the supply of "electricity, water or any other service". By Section 13, the Central Government or an authorised person is also given power to apply to the court for an order restraining the owner handling any hazardous substance in contravention of the Act.

Sections 14 to 18 deal with offences, penalties and procedural provisions connected therewith. By Section 19, the Central Government is empowered to delegate its powers under the Act, excepting the rule-making power. Section 20 protects action taken in good faith under the Act. Section 21 provides for an advisory committee on matters relating to insurance policies under the Act, while Section 22 gives to this Act an overriding effect. Power to make rules is given to the Central Government by Section 23.

The Schedule to the Act gives a tariff of compensation to be awarded as a result of the liability provided in Section 3(1).