Q-1 Discuss the Rule paid down in Rylands Vs fletcher With Reference to Latest Cases.

Ans:-Strict liability: The Rule in Ryland vs Fletcher:

There may be cases where the defendant may be held responsible for the harm caused to the plaintiff although the defendant neither intends the consequences nor is guilty of negligence. This is known as strict liability and the principle giving rise to uch form of a liability was first propounded in Rylands v. Fletcher.

The facts of this case are as follows:

The defendants, a millowner employed competent independent contractors to construct a reservoir on his land for providing water to his mill. While digging earth to the reservoir, the contractors came across with some old shafts and passages on the defendant's land. These shafts and passages communicated with the mines of the plaintiff, a neighbour of the defendant and lessee of coal mines. The contractors neither porw nor suspected this and so they filled them with earth. The contractors did not take Khe to block the said shafts and passages. When water was filled in the reservoir, r leaked through the old shafts and flooded the mines of the plaintiff. In this case the dependent contractors were negligent but the defendant was not negligent. The plaintiff d the defendant and the court held the defendant liable. Blackburn, J., of the Court of exchequer chamber expounded the principle in the following words

"We think that the true rule of 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 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.

His Lordship, however, added : "He can excuse himself by showing that the escape was the consequence of vis major or the act of God: but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

An appeal against the above judgment was preferred in the House of Lords but the same was dismissed. Affirming the unanimous judgment of Court of Exchequer Chamber, Lord Cairns, L.C. of the House of Lords observed : "The defendants, treating them as the owners or occupiers of the close on which the reservoir was constructed, might lawfully have used that close for any purpose for which it might in the ordinary course of enjoyment of land be used, and if, in what I may term the natural user of the land, there had been any accumulation of water, either on the surface or underground, and if, by the operation of the laws of nature, that accumulation of water had passed off into the close occupied by the plaintiff, the plaintiff could not have complained that result had a place. on the other hand, if the defendant not stopping at the natural use of those had desired to use it for any purpose which I may term a non-natural use for purpose of introducing into the close that which is its natural condition was not in or upon it, for the purpose of introducing water either above or below ground in quantities and in manner not the result of any work or operation on or under the land and if in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the plaintiff, then it appears to me that which the defendants were doing, they were doing at their own peril: and if in the course of their doing it, the evil arose to which I have referred the evil namely, of the escape of the water and its

passing away to the close of the plaintiff, then for the consequences of that,in my opinion, the defendants would be liable.

The term 'Absolute Liability, a misnomer.-In his judgment, Blackburn, .referred the liability as absolute But the liability in fact is strict and in no way absolute. The rule in Ryiands v. Fletcher is subject to so many exceptions that in fact very little of the rule is left. The recent trend is to limit the scope of the rule, and to bring it nearer to the modern theory that there will be no liability without any fault. In view of these reasons, the term absolute liability' is misnomer and the appropriate term is 'strict liability'. In india, however, the principle of Strict and Absolute Liability has been propounded in respect of hazardous or dangerous activity by an enterprise by the Supreme Court in M.C. Mehta v. Union of India.

Essential Conditions for Application of Rule in Rylands v. Fletcher.- For application of the title, following essential conditions must be present :

(i) Defendant must have brought on his land and kept there anything likely to do mischief. if it escapes.

(ii) the said thing must escape.

(iii) Non-natural use of the land.

(i) Anything likely to do mischief if it escapes.-- The first essential condition for the application of the rule is that the defendant must have brought on his land and kept there some dangerous things or anything likely to do mischief if it escapes. In Rylands v. Fletcher, the thing which escaped and caused mischief was water. The rule has also been applied to oil, gas noxious fumes, expulsions, electricity,' vibrations, poisonous vegetation, etc. It may be noted that in later cases a restrictive interpretation was given to the words "anything likely to do mischief if it escapes". The rule has been limited to bringing and

keeping on land dangerous thing which if escapes will do damage. That is to say, the rule has been limited to the things which are likely to escape and by escaping do damage or increase dangers to others.

(ii)Escape. —Yet another essential condition for the application of the rule is that the dangerous thing or anything likely to do mischief must escape. Mere bringing and keeping a dangerous thing on one's land is not an actionable wrong. Liability arises only when the dangerous thing escapes. If there is no escape, there will be no liability. For example, in Read v. Lyons & Co. Ltd. 12 the appellant sustained injuries by an explosion in respondent's munitions factory while she was performing her duities as inspector of munitions employed by the Ministry of Supply. The defendants were held not liable although if was admitted that his explosive shells were dangerous. The defendants were held not liable because although they had on their land things which were dangerous 1 or likely to cause mischief yet there was no escape of the thing that caused injury. Viscount Simon of the House of Lords observed the strict liability recognised by this House to exist in Rylands v. Fletcher is conditioned by two elements which I may call the condition of *'escape' from the land of something likely to do mischief if it escapes and the condition of non-natural* use of *the land*..... It is not necessary to analyse this second condition on the present occasion for in the case now before us the first essential 'Escape' for the purpose of applying the proposition in Rylands v. Fletcher means escape from a place where the defendant has occupation of, or control over land, to a place which is outside his occupation or control... the appellant fails for the reason that there was no escape from the respondent's factory."

(iii) Non-natural use of the land.-As noted earlier in Rylands v. Fletcher, Lord Cairns of the House of Lords made a distinction between natural user of the

land' and 'a non-natural use' and observed that liability arises out of non-natural use of the land. In Ryland v. Fletcher, storing of water was considered to be non-natural use of land. Electric wiring, erecting or pulling down house, planting of trees, etc. have been regarded as natural use of the land. The words of Lord Cairns "non-natural use" of land and of Blackburn, J. "special use bringing with it increased danger to others", are sometimes misunderstood. There is difficulty in distinguishing non-natural and natural user but perhaps the test to apply is stated by Lord Moulton in Rickards v. Lothian 3. Some special use bringing with it increase 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". They formed the basis of observations of Viscount Maugham in Sedleigh Denfield v. St. Joseph's Society for Foreign Mission. 14 As was pointed out by Holmes, 15 It may even be very much for the public good that dangerous accumulations should be made..."These observations were quoted with approval by Hidayatullah, J., in his judgment in State of Punjab v. M/s. Modern Cultivators 16 In this case his Lordship was considering the question whether water in canals was the natural user of the land. His Lordship observed : "Canal Systems are essential to the life of the nation and the land that is used as canals, is subjected to an ordinary use and not to an unnatural use on which the rule in (1868) 3 HL 330 rests." 17 To conclude in the words of an eminent author18 : 'Extraordinary', 'exceptional', 'abnormal' are words that are sometimes used in substitution for 'non-natural' and they suggest the true principle underlying the doctrine. It is a question of fact, subject to a ruling of the judge whether the particular object can be dangerous or the particular use can be non natural, and in deciding this question all the circumstances of the time and place and practice of mankind must be taken into consideration so that what might be regarded dangerous or non-natural may vary according to those circumstances."

In *Kamathan NagiReddy (died) and others v. Government of Andhra Pradesh and another*, the appeal arose out of a suit to recover Rs. 60,000 by K. Nagireddy for damage sustained by him as a result of percolation of water in Branch canal ten under Nagarjuna Sagar project. The landlord averred, his orchard was damaged due to faculty laying of the tenth canal cross his land by the State Government and his two hundred and eighty five fruit bearing trees withered. The State Government denied liability and contended the tenth canal was constructed as per specifications prescribed for irrigation canals and that there was no negligence in laying the canal. Any loss occasioned to the land holder, was not due to any defect in laying the canal. The subordinate Judge held that there was no expert evidence to show that caused the damage to 285 trees. The canal was not effectively laid. As of fact, the canal water did not percolate into the orchard. The Division Bench of the Andhra Pradesh High Court dismissed the appeal, Raghuvir, J. who delivered the judgment observed the following :

In India, the general rule in Fletcher v. Rylands22, is accepted, though in some old cases, the principle in the case was considered to be modified in application to the Indian conditions. The law, however, is not peculiar to reservoirs. In Eastern South African Telegraph Co. v. Cape Town Tramways Companies, 23 general rules of negligence restated by the House of Lords : "a man cannot, increase the liabilities of his neighbour by applying his own property to special uses whether for business or for pleasure". *The construction of projects or laying of canals for irrigation cannot be stated as a special user of land.*

In *Canadian Pacific Railway Co. v. Parke*, Lord Watson enunciated three principles, which it is not necessary to be enunciated. One of the principles formulated is found applied in *Sankarvadivelu Pillai v. Secretary of*

State, where it is observed, "the rights of Government in connection with the distribution of water, do not include a right to flood a man's land because in the opinion of the Government, the erection of a work which has this effect is desirable in connection with the general distribution of water for the public benefit.

In the instant case, it is not shown that the Government is required to cement the floor and it is also not proved, that there is any negligence on the part of the State Government in laying of the tenth canal under Nagarjuna-Sagar Project, the appeal therefore, fails and it is accordingly dismissed.

Extension of the Rule in Rylands v. Fletcher to personal Injuries.- The rule in Rylands v. Fletcher has been held to apply in cases of personal injuries also. In *Miles v. Forest Rock Granite Co. Ltd.*, the plaintiff was struck by a piece of granite while he was going along the highway to his place of employment. The piece of granite had fallen on the highway from some distance where blasting operations were being carried on by the defendants. The defendants were held liable. The Court held : "The duty of the defendants in bringing this foreign and dangerous material (i.e., granite) on the ground and exploding it there was to keep all the results of the explosion on their own lands, and it escaped from their own lands at their peril." In Read v. Lyons, 26 only Lord Porter was of the view that application of the rule in Rylands v. Fietcher to personal injuries amounted to an extension of the rule and "may some day require examination

In *Perry v. Kendricks Ltd, Parker*. L.J, observed that the Court cannot hold that the rule applies only to damage to adjoining land or to a proprietary interest in land and not to personal injury. The modern trend, therefore, supports the view that the rule in Fletcher extends to personal injuries also.

Liability for acts of an Independent Contractor.-As stated earlier, in Rylands v. Fletcher, the independent contractors were negligent but the Court held the defendant It is well settled that for the tortious act of an independent contractor, his employer would be responsible at least in three categories of cases :

(i) where the tortious act of the independent contractor is authorised or ratified by the employer;

(ii) where the independent contractor is employed to do an illegal act; and

(iii) where strict liability of the employer at Common Law arises on account of extra hazardous work undertaken by the independent contractor.

The above observations were made by the Division Bench of the Gujarat High Court in Patel Maganbhai Bapuji Bhai and others v. Patel Ishwarbhai Motibhai and others.

The facts in this case were as follows :-

At village Vadeli, in Borad Taluka of Kaira district is situated a Shiva Temple, styled Nityanand Mahadev temple. In the month of Shravan, Akhand Bhajan (continuous reciting of religious prayers) was being held under the auspices of Bhakta Mandal consisting of residents of village Vadeli. For facilitating chanting of Bhajans, electric connection for fixing mike and lights in temple was felt necessary. Electric connection was therefore taken from the nearby electric pump situated in the well of original defendants No. 2 and 3. The said electric connection is said to have been taken by defendant No. 4 at the instance of and as per the directions of defendant No. 1 who was the trustee of the temple as well as the Sarpanch of the said village. Defendants No. 5 and 6 are also alleged to have given suitable directions to defendant No. 4 to instal the said connection. In the process, electric connection was taken

by means of an iron wire measuring about 1200 feet which partly consisted of insulated wire and rest of the wire was open. The said wire passed various fields including that of the plaintiff. The said connection remained on spot for about 15 days without any untoward incident. But on 10th August, 1976 at about 10.30. a.m. while the plaintiff was working in his field, he got electric shock on account of the electricity escaping from the naked wire which was passing over his field. As a result, the plaintiff got electrocuted and suffered grievous injuries. He therefore filed special civil suit for recovering damages to the tune of Rs. 80,000/- from the concerned defendants 1 to 6. The learned trial Judge partly decreed the plaintiff's suit to the tune of Rs. 42,000/- with interest and cost against defendants No. 1 to 4 and dismissed the suit against defendants No. 5 & 6. On appeal, Gujarat High Court held that both the trustee and owner were liable.30 Majumdar J. who delivered the judgment observed:

In the present case, the very act of diverting electric power from the connection Strictly meant for agricultural purpose, as installed at Bamanwala well, was itself an illegal and impermissible act..

If defendant No. 4 was instructed by defendant No. 1 to carry out such an illegal act, then assuming that defendant No. 4 was an independent contractor, defendant No. I would remain liable if any tortious liability arose out of such an illegal act on the part of defendant No. 4. Further "Even apart from the aforesaid act of an independent contractor, viz defendant No. 4 who committed an illegal act at the behest of defendant No. 1 became liable to bear the burden of tortious liability along with defendant No. 4. Further aspect of the case that the act of an independent contractor would also make defendant No. 1 liable and answerable on the additional ground that the defendant No. 4 had carried out the work assigned to him in *a palpable hazardous and*

dangerous manner and hence the facts of the present case would also fall in the class of cases contemplated by category No. 3 as stated earlier."31 The Court also added the observations in the standard works on Tort and Negligence based as they are in various decided cases of English Courts, room for doubt that storing of electricity on one's premises amounts to storing of a dangerous object."

Grounds of Difference or Exceptions to the Rule in Ryland v. Fletcher -Some of the exceptions to the rule were recognised by Blackburn, J. himself by pointing out that He (i.e., defendant) can excuse himself by showing that the escape way owing to the plaintiff's defaults, or perhaps that the escape was the consequence of major or the act of God. ."Some other exceptions have also been recognised Following are some of the main exceptions

(i) Plaintiff's own defaults;

(ii) Act of God;

(iii) Natural user of the land;

(iv) Consent of the Plaintiff; lnu bis yid

(v) Act of a stranger;

(vi) Statutory Authority;

(vii) Bringing and keeping things which are not dangerous;

(viii) Common benefit.

(i) Plaintiff's Own Defaults.--One of the exceptions to the rule in Rylands v. Fletcher is that the plaintiff has no remedy, if the damage caused has been solely due to his own default. For example, in Ponting v. Nookes, 33 the

plaintiff's horse died as a result of eating some poisonous tree growing on the land of the defendant. Yet the defendant was held not liable because there had been no escape of the poisonous vegetation from his land and that the horse had reached over the defendant's boundary to eat the poisonous tree. Thus it was duo to the default of the plaintiff himself that the horse died. He could not, therefore, recover the damage from the defendant. This exception is based upon the principle stated by Cockburn, C.J. in the following words: "No action at law can be maintained for an injury which has been brought about by the wilful and the intentional act of the party complaining, as its proximate and immediate cause, such act having been done by him with open eyes, in other words, with the knowledge that the injury would be probable consequence of the act so done by him."

If, however, the plaintiff has simply contributed to the damage caused the damages shall be apportioned as provided under the Law Reform (Contributory Negligence) Ach 1945.

(ii) Act of God.-(N.B.: This has been discussed earlier under Chapter 2 entitled "General Defences or Exceptions to Liability in Tort." Please, therefore, see Chapter 2 for the discussion of this exception).

(iii) Natural User of the Land.-Yet another exception to the rule in Rylands v. Fletcher is the natural user of the land. It has been noted that in Rylands v. Fletcher, Lord Cairns, L.C. made a distinction between the natural user of the land' and 'non-natural use of the land and made it clear that the liability arises when there is non-natural use of the land. That is to say, no liability arises if the defendant makes natural use of the land. The distinction between natural and non-natural use of the land has been clarified earlier while discussing the essential conditions for the application of the rule in Rylands v. Fletcher. It may, however, be noted here that even if an occupier makes a natural use of

the land he will sitll be liable if he deliberately caused the escape of things naturally on his land. 35 Moreover, an occupier may be held liable even for natural use of his land if his act constitutes a nuisance, 36

(iv) Consent of the plaintiff -The rule in Rylands v. Fletcher does not apply in cases of escape of things which have been brought and kept by the defendant on his land with the consent of the plaintiff. This exception is more popularly known with the help of the maxim Volenti non fit injuria which has already been discussed in detail in Chapter 2. Please, therefore, see Chapter 2 for a detailed discussion of this maxim which holds good for this exception to rule in Rylands v. Fletcher.

(v) Act of a Stranger.-A well recognised exception to the rule in Rylands v. Fletcher is that the defendant will not be liable if the escape is caused by such act of the stranger which is unforeseeably by the defendant. For example, in Box v. Jubb, 37 the reservoir of the defendants overflowed and caused damage to the plaintiff. The defendants were held not liable because the overflow of the water from the defendant's water was partly due to the fact that a stranger or third person had emptied his reservoir into the stream which fed the reservoir of the defendant. The plaintiff's action failed because the escape was "caused by the stranger over whom and at a spot where they (i.e., the defendants) had no control. Similarly, in Reckards v. Lothian38, the defendant was held not liable for flooding the plaintiff's premises as the same was caused by deliberate blocking up the water-pipe of a lavatory basin in the defendant's premises by a third person. The Judicial Committee of the Privy Council referred the observation of Baron Bramwell in Nicholas v. Marsland, 39 and emphasised that there would be no liability if the "act is that of an agent he (i e., the defendant) cannot control." As regards the instant case, their Lordships observed that "no better example could be given of an agent

whom the defendant cannot control than that of a third party surreptitiously and by a malicious act causing the overflow." Further, Lord Moulton of the Judicial Committee of the Privy Council finally held: "In such matters as the domestic supply of water or gas it is essential that the mode of supply should be such as to permit ready access for the purpose of use, and hence it is impossible to guard against wilful mischief. Tapes may be turned in ball-cocks fastened open, supply pipes cut, and waste pipes blocked. Against such acts no precaution can prevail. It would be wholly unreasonable to hold an occupier responsible for the consequences of such acts which he is powerless to prevent, when the provision of the supply is not only a reasonable act on his part but probably a duty.. There is ...no support either in reason or authority for any such view of the liability of a landlord or occupier. In having on his premises such means of supply he is only using those premises in an ordinary and proper manner, and although he is bound to exercise all reasonable care, he is not responsible for damage not due to his own fault whether the damage be caused in inevitable accident or the wrongful act of third persons."

The above decision was followed and applied in *Perry v. Kendricks Transport Ltd.* In this case a child threw a match into an empty petrol tank of a disused motor coach parked in vehicle part bordered by waste land. There was an explosion which injured the plaintiff. The defendants were held not liable because the explosion was caused by an act of a stranger or third person over which they had no control. In such cases, it may be noted, it is for the defendants to show that the escape was caused by an unforeseeable act of stranger and that there was no negligence on their part. The position would, however, be different where the plaintiff is able to establish that the act of strain could have been reasonable foreseen and its consequences prevented by the defendant such a situation the defendant would be liable for the consequences of the escape. This is actually what happened in Northwestern

Utilities Ltd. v. London Guarantee and Accident Co. Ltd.41 In this case, an escape of gas from a fractured welded joint in an intermediate pressure main owned by the defendants caused fire in a hotel belonging to and insured by the plaintiffs. The fracture in the main was caused by a third party while constructing a storm-sewer under the defendants' mains. As a result of the fire the plaintiffs' hotel was destroyed. While conceding that the defendants' liability could be avoided by showing that the damage was caused due to the act of a stranger of third party, the Privy Council held that the defendants would still be liable if there was any negligence on their part. In the instant case, the defendants were held liable since they knew of the construction of storm sewer, they should have foreseen the possibility of damage to their mains and taken necessary precautions to prevent the damage. The Court was also inotivated by the consideration that the operations regarding supply of gas, etc. involved great risk and as such a high degree of care was expected to be taken by the defendants. This is in keeping with the modern trend that for liability to arise some kind of fault must be ascribed to the defendants.

It has been held by the Supreme Court that exception of "Act of stranger" with strict liability rule is not applicable to electricity board in cases of electrocution. This was held by the Supreme Court in M.P. Electricity Poard v. Shail Kumar 42. In this case one, Joginder Singh, a workman in a factory, aged 37, riding on a bicycle on the night of 23 8-1997 while returning from the factory was electrocuted by a live electric wire lying on the road inundated by rain water. He fell down and died within minutes. When the action was brought by the widow and minor son, the appellant Board contended that one Hari Gaekwad (third respondent) had taken a wire from the main supply line in order to siphon the energy for his own use and the said act of pilferage was done clandestinely without even the notice of the Board and that the line got unfastened from the hook and it fell or the road over

which the cycle ridden by the deceased slided resulting in the instantaneous electrocution.

The Modern position of the Rule in *Rylands v. Fletcher*.-It is clear from the above discussion that the rule in Rylands v. Fletcher is subject to a number of exceptions. Because of the number of exceptions to the rule, a very little of the rule is left. Two significant things may be noted here. On the one hand the area or scope of the rule has been enlarged. It now extends to personal injuries also. It protects now not only the interests of an occupier of land but also of a non-occupier such as a user of the highway. On the other hand, utility of the rule has diminished in the course of time in view of the number of exceptions to the rule which have been recognised. In view of the limitations and exception to the rule, it has been remarked, and rightly too, that today the rule seldom forms the basis of a successful claim in the courts. One of the reasons for the diminution of the utility of the rule is that while applying the rule it is also considered whether the particular activity in question is "needed for the general benefit of the community."52 Besides this in view of the exceptions of act of God, act of a stranger and statutory authority, Courts must investigate not only whether the accumulation of things likely to do mischief if it escapes) was reasonable or not but also whether the responsibility for the actual escape could really be attributed to the defendant. This is in keeping with the modern trend that the defendant should not be held liable in the absence of fault on his part. It may, therefore, be concluded that in view of the number of exceptions and limitations to the rule which have been recognised and the reluctance of the Courts to apply the rule unless some fault can be attributed to the defendant, the usefulness or the rule has greatly diminished in the modern time and now it is seldom that the Rule in *Rylands v. Fletcher* "forms the basis of a successful claim in the courts". It has been rightly pointed out, "In a rapidly changing age, in which insurance against all

types of liability can be obtained and its cost passed on the the public, this attitude (i.e., narrow conception of strict liability) is becoming questionable. On the other hand, a shift towards strict liability, however desirable would mark such a break with the recent past that it needs to be thought out very carefully. One thing is beyond doubt: if there were a move towards strict liability, it would not be in the form of the property oriented approach of *Rylands v. Fletcher*, but would centre on activity causing the harm. This would pose different but no less difficult problem.

Q-2 What are Essntial elementy of Negligence hone for contributory Negligance can be pleaded As defence?

Ans: Meaning and Definition.-Two meanings are ascribed to the word 'Negligence in the Law of Torts-(1) an independent tort; and (2) a mode of committing certain torts—e.g. trespass and nuisance. Thus negligence may mean a mental element in the tortious liability or it may mean an independent tort.? Negligence as a mental element in tort has already been discussed in Chapter 1. The above two meanings ascribed to the word 'Negligence' have given rise to two competing theories--(i) the subjective theory based upon mental element in the tortious liability, and (ii) the objective theory based upon the view that 'Negligence' is an independent tort. It is in the second sense, i.e. Negligence an independent tort, with which we are concerned in the Chapter. In this sense, negligence has been defined as "the breach of a legal duty to take care which results in damage, undersired by the defendant to the plaintiff".4 The concept of negligence as a tort is expressed in the well known definition of Alderson, B. in *Blyth v. Birmingham Waterworks Co*, as under:-

"Negligence is the omission to do something which a reasonable man guided upon these considerations which ordinarily regulate human affairs, would do, or doing something which a prudent or reasonable man would not do."

"Liability in negligence is technically described as damage caused by the breach of duty to take care..policy considerations are at the root of all legal development, and nowhere in the law of torts are they more influential than in negligence policy in negligence represents the confluence of many streams, old and new, not only the age old shifts in emphasis between the plaintiffs and defendants' point of view, but also ...more recent, concerns with police safety and with insurance."

In *Lochgelly Iron and Coal Co. v. M. Mullan, Lord* Wright also observed: "In strict legal analysis, negligence means more than needless or careless conduct, whether in omission or commission; it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing."

For example, Raj sitting on the verandah of his house, saw a blind man, Shyam, passing along the road. Raj found that there was a ditch in the road a few yards ahead but he kept quiet. Shyam asked for help but Raj did not speak. Shyam walked forward, fell into the ditch and sustained a fracture. "Shyam cannot recover damages from Raj because Raj is not guilty of negligence. He was under no legal duty to take care and as such the question of breach of duty does not at all arise. The answer will not be different even if

there was previous enmity between Raj and Shyam. In *Donoghue v. Stevenson*, Lord McMillan aptly observed: "The law takes no recognizance of carelessness in the abstract. V concerns only where there is duty to take care and where failure in that duty has caused damage..... The cardinal principle of liability is that the party complained of should owe party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty."

The above definition by Alderson, B. assumes as duty to take care; it also assumes that the degree of care is to be measured by the standard of a reasonable man. So negligence is a breach of duty to take care resulting in damage to one, whether in person property. The said duty to take care may be imposed by statute or it may arise due to relation in which one may stand to another, i.e., when the person or property of one is in Teh proximity to the person or property of another that if due care is not taken, damage ny be caused by one to the other. When negligence is a breach of duty to take care

used by law, it may be called statutory negligence and, when it is breach of duty to take care arising out of circumstances of a particular case, it may be termed as actionable negligence. Like human errancy, actionable negligence may be manifold. It may be of various types, including contributory or composite negligence.

Essentials of Negligence.-In an action for negligence, the plaintiff has to prove the following essentials:

(1) That the defendant owed a duty of care.

(2) That the defendant owed a duty of care towards the plaintiff.

(3) That the defendant either committed a breach of that duty or failed to perform that duty.

(4) That there was consequential damage to the plaintiff.

(1) Duty to take care."-One of the essential conditions of liability for negligence is that the defendant owed a legal duty to take care towards the plaintiff. The rule is well established to permit any doubt that the duty to take care may flow from common law. Negligence is nothing but the breach of a duty to take care. That duty arises by reason of relationship in which one person stands to another person or authority. Such relationship may arise in a variety of circumstances. The simplest instance where it arises is when a person exercises his common law rights to use the highway. By doing so he places himself in relationship to other users of the highway which imposes upon the local authority controlling and managing of the highway, a duty to take care. The basic duty of care or precaution is always implied where a danger has been created by a person or authority, irrespective of the fact as to whether the Legislature has authorised or not the creation of such danger. These observations were made by a Division Bench of the Allahabad High

Court in Dr. C.B. Singh v. The Cantonment Board, Agra. The facts of this case are as follows:

Dr. C.B. Singh, at that time a Professor & Head of the Department of Surgery in the Medical College, Agra, and a renowned surgeon and Dr. R.V. Singh, at the time a Professor of Clinical Surgery at the Lucknow Medical College (later on became Vice-Chancellor, Lucknow University) instituted suits Nos. 222 and 224, respectively in 1955 against the Cantonment Board, Agra. The allegations in the two suits were almost identical. At about 10 P.M. on 10.4.1955, Dr. C.B. Singh alongwith Dr. C.S. Patel and Dr. R.V. Singh and Miss Patel, niece of Dr. C.S. Patel, were going to see the Taj in the car owned and driven by Dr. C.B. Singh. Dr.1 C.B. Singh was driving the car with his usual care and at a very moderate speed of about 15 miles per hour. The car suddenly collided with a traffic island at the crossing of the Mall & Metcaff Road (now known as General Cariappa Road). The said traffic island was wrongly and negligently built by the defendant Board at a very inconvenient spot in or about the middle of the Mall Road. There were no overhead lights so as to make it noticeable for vehicles using the road at night. The defendant Board was charged with the duties of lighting the streets and other public places, maintaining streets and roads and removing for purposes of public safety undesirable obstructions in streets and road and keeping them safe for vehicular traffic. As a result of the collision the occupants of the car including the three plaintiffs, suffered injuries. It was held that the defendants were liable to pay damages. M.N. Shukla, J., observed that there is abundant authority for the proposition that if a danger is created or suffered to be created by a local authority, it would be liable to damages for negligence under the common law. Further, "..the defendant was both under statutory and

common law duty of preventing the traffic island from becoming a trap or source of danger to the users of the road. If its failure to exercise reasonable care in this regard is proved, it would be a plainly negligent act on the part of the Cantonment Board..... The evidence in the case fully establishes that the lighting arrangements made by the cantonment Board were far from satisfactory."

Similarly, Municipal Corporation excavates for drainage purposes and later on fills it. A motorist while driving gets his car stuck due to bad filling. Municipal Corporation will be liable for loss suffered by A.* Where A is firing cracker during Diwali and one cracker strikes B who loses his eye, A will be liable to B for losses suffered by him due to A's negligence. **

In order to succeed in an action for negligence, the plaintiff must prove two things (i) that the circumstances in which damage was caused were capable of giving rise to a duty of care, and (ii) that the defendant actually owed him a duty on the particular facts of the case. The first requirement is a question of law and may be referred as 'notional duty whereas the second requirement raises question of mixed law and fact. 14 As regards the first requirement, the point arose directly in *Rikhai Lal v. Banarsi Singh*, wherein a Division Bench of the Allahabad High Court ruled that a finding of negligence or a finding that there was or was not default was not necessarily in all cases a finding of fact, if that finding had not been approached from the proper legal standpoint. Similar view was expressed by the Madras High Court in *Srinivacharlu v. Munirathana Naidu.* In this case it was held that whether particular facts found constituted gross negligence was a question of law. Thus, what is the legal principle to be drawn from the facts and whether the negligence or want of care has been made out is a question of law. This

was cbserved by the Allahabad High Court in Safdar Husain v. The Union of India. The facts of this case are as follows:

The plaintiff appellant was posted at Bareilly Railway Station of the Northern Railway as Head Stock Clerk entrusted with the duty of keeping the stocks oi railway tickets. In 1967, he was further entrusted with the functions of the Chief Booking Clerk. In his capacity as Chief Booking Clerk he was expected to maintain accounts of cash entrusted to him by various Booking Clerks on sale of tickets or otherwise. The plaintiff had at his disposal only the iron safe in his own office room. On 26.2.1968, the plaintiff Safdar Husain had a sum of Rs. 10,510.21 paise as cash in hand which as usual he kept in the iron safe. Thereafter, he placed the key of the iron safe inside the wooden almirah and locked the almirah with his own lock. The back door was bolted from inside by a porter who was at the disposal of Safdar Husain for attending to his various requirements in discharge of his official duties. Safdar Husain locked the outer door of his office and went home. On next day he returned on duty, opened the main door, went inside the office and found that the latch and the lock of wooden almirah had been broken open. The key of the safe was, however, in the almirah. The chain latch of the back door was also found open. When Safdar Husain opened the safe he found the entire cash missing. On the basis of an enquiry against the appellant, the Division Superintendent ordered for his removal from service and recovery of Rs. 10,510.21 paise. The sole point for determination in the present appeal was whether the act of keeping the key of the iron safe in the wooden almirah in his own office room by the appellant rather than in his personal custody or in the iron almirah kept in the office room of the Assistant Station Master constituted gross negligence on the part of the plaintiff resulting in the loss of earnings of the railway administration. The crux of the case. therefore, was as to whether in the circumstances of the case amounted to gross negligence on the part of the

plaintiff which resulted in loss of earnings to the railway administration. It was held that the action of the appellant did not amount to negligence. The High Court observed: "The plaintiff exercised all the care which is expected of a prudent and reasonable man in the circumstances. He kept the key in a hidden place in the wooden almirah which he locked and thereafter locked the office also before leaving."19 Further, "……..the plaintiff cannot be said to have acted without due care and caution in leaving the key of the iron safe in the wooden almirah of his own office. The circumstances are not sufficient to constitute negligence and hence the contrary finding of the court below that the plaintiff was negligent cannot be affirmed "

Just and Reasonable.-In Peabody Donation Fund v. Parkinson37 Lord Keith pointed out that in determining whether a duty of care existed it was material to take into account whether it would be "just and reasonable" to impose it. It has been rightly pointed out, "so far this potentially wide-ranging concept has been used mainly to deny liability in circumstances in which another defendant or the plaintiff himself is regarded as the more appropriate bearer of the relevant loss or where alternative remedies exist with which a negligence action could undersirably be in conflict. The underlying idea is also reflected in the proposition unanimously and emphatically upheld by the House of Lords recently, that no duty exists in a situation in which precedents of good authority, supported by convincing reasons, have consistently denied the existence of one."

Doctor and Patient.-When a surgeon or medical man advances a plea that the patient did not give his consent for the surgery or the course of treatment advised by him, the burden is on him to prove that the non-performance of the surgery or the non administration of the treatment was on account of the refusal of the patient to give consent thereto. This is especially

so in the case where the patient is not alive to give evidence. Consent is implicit in the case of a patient who submits to the Doctor and the absence of consent must be made out by the person alleging it. A surgeon who failed to perform an emergency operation must prove with satisfactory evidence that the patient refused to undergo the operation, not only at the initial stage but even after the patient was informed about the dangerous consequences of not undergoing the operation.

Duty of care must be owed to the plaintiff.—It is not sufficient to show that the defendant owed a duty to take care. It must also be established that the defendant owed a duty of care towards the plaintiff. An illustrative case on the point is Palsgraf v. Long Island Railroad Co.,83 an American case. The facts of this case may be summarised as follows:

The two servants of the defendants were trying to help a passenger to board a train. The passenger had a parcel with him. Due to the negligence of the servants of the defendants, the parcel fell. The contents of the parcel, presumably fireworks, exploded and its shock knocked over some scales about 25 feet away striking and injuring the plaintiff. It was held that she could not recover damages. Cardozo C.J., observed: "The conduct of the defendant's guard, if a wrong in its relation to the holder of the package, was not a wrong in its relation to the plaintiff standing far away. Relative to her it was not negligence at all. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed." His Lordship further added that "the law of causation, remote or proximate, is thus foreign to the case before us.

Breach of Duty to take care.-Yet another essential condition for the liability in negligence is that the plaintiff must prove that the defendant committed a breach of duty to take care or he failed to perform that duty. For

example, it is the duty of the Banker while accepting any cheque for encashment to make sure that the signatures are genuine. If the Banker fails to perform this duty before allowing encashment of a cheque, it will be liable for negligence. If the signatures on the cheque or atleast that of one of the joint signatories to the cheque are not or is not genuine, there is no mandate on the Bank to pay and the question of any negligence on the part of the customer such as leaving the cheque book, carelessly so that a third party could easily get hold of it would afford no defence to the Bank. These observations were made by Supreme Court of India in Bihata Co-operative Development & Cane Marketing Union Ltd. and Another v. Bank of Bihar and others.95 In this case the finding was that one of the signatures was forged so that there never was any mandate by the customer at all to the banker and the question of negligence of the customer in between the signature and the presentation of the cheque never arose. Not only was there negligence on the part of the banker is not ascertaining whether the signatures on the cheque were genuine, the circumstances attending the encashment of the cheque showed conclusively that the banker was negligent and some of its officers fraudulent right from the beginning.

Consequent Damage to the Plaintiff.—The last essential requisite for the tort of negligence is that the damage caused to the plaintiff was the result of the breach of the duty and must not be too remote a consequence of it. The burden rests on the plaintiff or appellant to prove on a balance of probabilities, a casual connection between his injury and the defendant's (respondent's) negligence. It is not necessary, however, to prove that the respondent's negligence was the only cause of injury. In Bonnington Castings Ltd. v. Wardlow, the pursuer's disease was caused by an accumulation of noxious dust in his lungs. The dust which he had inhaled over a period came from two sources. The defendants were not responsible for one source but they could

and ought to have prevented the other. The dust from the latter source was not in itself sufficient to cause the disease but the pursuer succeeded because it made a material contribution to his injury. The House of Lords held: "..It was practicable for the respondents to have reduced the risk..... It follows that owing to the default of the respondents, the deceased was exposed to a greater degree of risk than he should have been, and though it is impossible even approximately to quantify the particles which he must in any event have inhaled and those which he inhaled but need not have, I cannot regard the excess as something, so negligible." In McGhee v. National Coal Boar Lord Reid observed: "It has always been the law that a pursuer succeeds if he can show that fault of the defender caused or materially contributed to his injury. There may have been two separate causes but it is enough if one of the causes arose from fault of the defender. The pursuer does not have to prove that this cause would itself have been enough to cause him injury." The facts in McGhee v. National Coal Board! 16 as stated by Lord Reid were as follows.

Q-3 Discuss The Rule of absolute liability evolved im m.c. Mehta vs union of India. Hour for the rule of abosolut e liability differs form the rule of strict liability?

Ans : Position in India-The Rule of Strict and Absolute Liability : The Rule in

M.C. Mehta v. Union of India and Bhopal Gas Leak Disaster Cases. -In India also the rule of strict liability has been applied by Courts. In State of Punjab v. M/s Modern Cultivators, 54 the Supreme Court expressly referred the rule in Rylands v. Fletcher and applied it. In Kamathan Nagireddi (deceased) and others v. Government of Andhra Pradesh, 55 Raghuvir, J. observed : "In India the general rule in Fletcher v. Rylands (1866) LR 1 Exch. 265 is accepted, though in some old cases, the principle in the case was considered to be modified in application to the Indian conditions. ..."

In M/s Mukesh Textile Mills (P) Ltd., v. A. R. Subramanya Sastry and others, 56 the fact of which have been mentioned in chapter on "Negligence" Venkatchaliah, J. delivering the judgment of the Division Bench of the Karnataka High Court observed : “

> .. .Appellant by storing a huge quantity of molasses on the land had put the land to a non-natural user and if a person collects on his premises things which are intrinsically dangerous or might become dangerous, if they escape, he has a liability, if things so stored escape and cause damage. This is the rule in Ryland v. Fletcher (1868) LR 3 HL 330, in which Blackburn, J. enunciated the Rule thus.....

On either of the two principles, a duty situation emerges and the appellant must be held liable for the consequence of the escape of the fluid from its tank"

As regards the liability of the owner of the vehicle, the Supreme Court earlier held in Minu B. Mehta v. Balkrishna, 58 that the liability depended upon negligence on the part of the owner or driver. But the position in this respect changed after an amendment in the Motor Vehicles Act, 1939 in 1982. Section 92-A of the Amended Act recognized "liability without fault by fixing a sum of Rs. 15000/- in case of death of the victim and a sum of Rs. 75000/- in case of permanent disability without pleading or establishing fault or negligence on the part of owner or driver of the vehicle. The Motor Vehicles Act 1988 (Act No. 59 of 1988) enhanced the quantum of compensation of Rs. 25000 in case of death and Rs. 12000 in respect of the permanent disablernent.59 The Act of 1988 has a separate chapter, i.e., Chapter X entitled "Liability without Fault in certain case comprising five sections, i.e., Sections 140 to Section 144. The Act provides that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Further, a claim for compensation shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of share of such person in the responsibility for such death or permanent disablement. Thus not only the defence of negligence but also the defence of contributory negligence has been done away with. Last but not the least, the Act makes it clear that the

provision of Chapter X shall have effect notwithstanding anything contained in other provisions of the Act or any other law for the time being in force.

A perusal of the above provisions of Motor Vehicles Act, 1988 makes it clear that by application of liability without Fault" in respect of death or permanent disablement the rule in Rylands v. Fletcher has been applied.

The Rule of Strict and Absolute Liability" : The rule in M.C. Mehta v. Union of India.-Prior to the leakage of oleum gas on 4 December 1985, the Bhopal Gas Leak Disaster had already taken place. The arguments made on behalf of the Union of India in the Court of Judge Keenan of the Newyork District Court in respect of the Bhopal Gas Leak Disaster had raised doubts about the capability of Indian Judiciary in handling a case like the Bhopal Gas Leak Disaster. But the large scale devastation caused in Bhopal in 1984 and subsequent events brought about a remarkable change in judicial thinking in the country. It appeared that the Courts in India, especially the Supreme Court, would rise equal to the occasion and would successfully meet the change as it has done in the past in other complex situations. This was amply demonstrated by Oleum Gas Leak case or M.C. Mehta and another v. Union of India and Shriram Food & Fertilizer Industries and another v. Union of India and others. 64 This writ petition was brought by way of public interest litigation and raised some seminal questions conceming the true scope and ambit of Articles 21 and 32 of the Constitution, principles and norms of determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability should be qualified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function, what measures must be taken for the purpose of reducing to a minimum the hazard to the workmen and the community living in the

neighbourhood. Until the Bhopal tragedy no one, neither the management of Shriram Foods and Fertilizer Industries (hereinafter referred to as Shriram) nor the Government seemed to have bothered at all about the hazardous character of Caustic Chlorine plant of Shriram. But as pointed out by the Supreme Court, the Bhopal disaster shook the lethargy of everyone and triggered off a new wave of consciousness and every Government became alerted to the necessity of examining whether industries employing hazardous technology and producing dangerous commodities were equipped with proper and adequate safety and pollution control devices and whether they posed any danger to the workmen and the community living around them.

The facts of this case are as follows:

Delhi Cloth Mills is a public limited Company having its registered office in Delhi.It runs an enterprise called Shriram Foods and Fertilizer Industries and this enterprise has several units engaged in the manufacture of caustic soda, chlorine, hydrochloric acid, stable bleaching powder, superphosphate. Vanaspati, soap, sulphuric acid, aluminium anyhrons, sodium sulphate, high test hydrochloride and active carth. These units are all set up in a single complex situated in approximately 76 acres and they are surrounded by thickly populated colonies such as Punjabi Bagh, West Patel Nagar, Karanpura, Ashok Vihar, Tri Nagar and Shastri Nagar and within a radius of 3 km. from this complex there is a population of approximately 2.00,000. On December 4, 1985 a major leakage of oleum gas took place from one of the Units of Shriram and this leakage affected a large number of persons, both amongst workmen and the public, and according to the petitioner an advocate practising in Tis Hazari Court died on account or inhalation of oleum gas. The leakage resulted from the bursting of the tank containing oleum gas as a result

of the collapse of the structure on which it was mounted and created a scare amongst the people residing in that area. Hardly had the people got out of the shock of this disaster when, within two days, another leakage, though this time a minor one, took place as a result of escape of Oleum Gas from the joints of a pipe.

One of the questions, inter alia, for consideration before the Supreme Court was whether the plant can be allowed to recommence the operation in its present site, state and condition. The Supreme Court decided that pending consideration of the issue whether caustic chlorine plant should be directed to be shifted and relocated at some other place, the caustic chlorine plant should be allowed to be restarted by the management of Shriram, subject to stringent conditions.

The Supreme Court added:

"We would therefore like to impress upon the Government of India to evolve a national policy for location of Chemical and Hazardous Industries in areas where there is little hazard or risk to the community, and when hazardous industries are located in such areas every care must be taken to see that large human habitation does not grow around them. They should preferably be given belt of 1 to 5 km. width around such hazardous industries."

The Supreme Court has so far given two decisions in 'Shriram' or Oleum Gas Leak case. The first decision has been referred above. The second decision, i.e., M.C. Mehta v Union of India and others 69 is of greater significance for the purpose of present discussion because in this decision the Full Bench of the Supreme Court consisting of PN. Bhagwati, C.J., Rangnath Mishra, G.L. Oza, M.M. Dutta and K.N. Singh, J. considered the question of

liability of Industry engaged in inherently hazardous activity, The Supreme Court enunciated and applied a new principle of strict and absolute liability.

in respect of hazardous or inherently dangerous industry. The Supreme Court showed great Judicial valour' which was praiseworthy and deserved to be emulated in cases such as Bhopal Gas Leak Disaster. Delivering the judgment on behalf of the Full Bench, P.N. Bhagwati, C.J., observed :

"We cannot allow our judicial thinking to be conscripted by reference to the law as it prevails in England or for that matter in any other foreign country.

We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever sources it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous activity or the rule as laid down in Rylands v. Fletcher as is developed in England recognizes certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. "

His Lordship further observed :

"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 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 in the highest standard 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 case and that the harm occurred without any negligence on its part. Since the persons 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 of substance or any other related element that cause the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity.

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 resulting for example in escape of toxic gas the enterprise is strictly and absolutely liable to compensare 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 tortious principle of strict liability under the rule in Rylands v. Fletcher .

After having thus enunciated the new principle of strict and absolute liability, the Supreme Court went up a step ahead and also enunc quantum of damages in such cases. The principle as enunciated by P.N. Bhagwati. CJ. (as he then was) is as follows : ted a new principle of the award of .....the measure of compensation in the kind of cases referred to in the preceding paragraph must be corelated 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 the carrying on the hazardous or inherently dangerous activity of the enterprise.

Bhopal Gas Leak Disaster and the Supreme Court cases relating to it.-The Bhopal Gas Leak case presented an opportunity to the Supreme Court to further develop the rule of absolute liability enunciated in M.C. Metha v. Union of India and to establish the principle of liability of multinational corporation in respect of escape of hazardous and inherently dangerous industries causing injuries and death to a large number of people but it lost that opportunity. It also lost the opportunity of developing human rights jurisprudence from the third world point of view. In order to understand and appreciate the full implication of the matter it is necessary to note briefly the Bhopal Gas Leak Disaster.

Bhopal Gas Leak Disaster.-On 2nd and 3rd December, 1984, the leakage of Methyl Isocynate (MIC) from Union Carbide Co. Ltd. of India at Bhopal caused large scale devastation including death of more than 3000 people, side effects of MIC and other gases on about 2,00,000. Union Carbide India Ltd. is a subsidiary and holding Company of Union Carbide Corporation, a multinational Corporation of New York (America). In order to obtain compensation from Union Carbide Corporation (U.C.C) and to establish its liability for the escape of hazardous and inherently toxic gas, 3500 civil and criminal cases were filed in Bhopal. Besides this, nearly 100 cases were filed in New York on behalf of the victims of Bhopal Gas Leack Disaster.

Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.-With a view to secure that claims arising out of or connected with the Bhopal Gas Leak Disaster are dealt with speedily, effectively, equitably and to the best advantage of the claimants and matters incidental thereto the Parliament

enacted Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. This Act conferred on the Central Government exclusive rights to represent and act in place of (whether within or outside India) every person who has made, or is entitled to make a claim for all purposes connected with such claim in the same manner and to the same effect as such person.73 The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 came into force on March 29, 1985. Thus this Act consolidated all claims relating to Bhopal Gas Leak Disaster and conferred on the Central Government exclusive right to institute suit or other proceedings in or before any Court or other authority or enter into compromise.

Suit for Compensation in New York (America).-On April 8, 1985, the Union of India instituted a suit against the U.C.C. in New York (America) in South District Court of Judge John F. Keenan. The Union of India requested the Court to fix the liability of the defendant (U.C.C) on the counts of multinational enterprise and absolute liability. As regards multinational enterprise liability it was argued :

"A multinational Corporation has a primary absolute and non-delegable duty to the persons and country in which it has in any manner caused to be undertaken any ultra-hazardous or inherently dangerous activity."

As regards the principle of absolute liability, the plaintiff said, "Defendant Union Carbide is absolutely liable for any and all damages caused or contributed to by the escape of the lethal MIC from Bhopal plant." In reply the UCC took the plea of forum non Convenience, i.e., the proper forum for filing the case was India India, however, argued that from the point of view of convenience as well as justice, America would be the proper forum for filing and adjudication of the claim.

Decision of Judge John Keenan.-After hearing the arguments of the plaintiff and the defendant and taking into consideration the facts and circumstances of the case. Judge John Keenan of the New York District Court held on May 12, 1986 that the proper forum for filing the suit is India. Thus the Court gave its verdict in favour of the U.C Judge Keenan, 'however, made it clear that this decision was subject to three conditions. In the first place, U.C.C. would consent to the jurisdiction of the Indian Courts. Secondly, the U.C.C. would consent to satisfy the judgment rendered by the Indian Courts. Thirdly the Union of India would be entitled to pre-trial discovery in respect of witnesses, documents etc.

Appeal to American Federal Court.-As regards the third condition, the U.C.C. filed an appeal in the American Federal Court. The Union of India on the other hand opposed the appeal. The Court of Appeal decided in favour of the U.C.C. and held that in these matters U.C.C. would not be subject to American laws. Thus the third condition imposed by Judge Keenan was removed.

Case in Bhopal Court.-On September 5, 1986, the Union of India filed the suit against the U.C.C. in the Bhopal Court for an award of Rs. 3900 crores (nearly 3 billion dollars) as compensation and damages for the victims of the Bhopal Gas Leak Disaster. On December 17, 1987, Judge M.M. Deo of Bhopal District Court passed an interim order directing the U.C.C. to deposit Rs. 350 crores within two months in the Court on account of compensation and welfare of the victims.

Appeal in the High Court.-U.C.C filed an appeal in the High Court of Madhya Pradesh. The High Court in its turn reduced the quantum of interim compensation to Rs. 250 crores thus modifying the interim orde District Court of Bhopal.

Appeal in the Supreme Court.-The U.C.C. filed an appeal in the Supreme Court against the order of the Madhya Pradesh High Court. Thus the case reached the Supreme Court as appeal against an interim order. The case was still being considered and the arguments had not been concluded. Meanwhile, the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 had been challenged in the Supreme Court through a writ petition. Without first deciding the question of the validity of the Act, the court put an end of the case abruptly ignoring the grave issues involved and leaving unsettled complex questions of law raised in the issue.

Order of the Supreme Court dated Feb. 14, 1989.-Though the talks for compromise between the U.C.C. and the Union of India were going on for a considerable period of time, the way, manner and the use of the officers of the highest tribunal of the land for pulling an abrupt end to the Bhopal case was most unfortunate and shocking. The order of the Supreme Court delivered on February 14, 1989 has been described as a total sell out, 'shocking", Judicial let down', 'bowing' before the might of multi-national corporation or betrayal of the interest of victims. As remarked by former Chief Justice of India, Mr. P.N. Bhagwati, "the Bhopal gas has come to a disturbing end in an abrupt and unprecedented manner. The multinational has won and the people of India have lost.

What has happened is unfortunate and distressing. The Supreme Court has lost the opportunity of advancing human rights jurisprudence from the third World point of view and failed to meet the expectations of the people of India, the constituency of ie court.

The operative part of the open Court order of the Supreme Court in the Bhopal Gas tragedy case is as follows :-

"Having considered all the facts and circumstances placed before us, including submission by parties for some weeks in these proceedings, including pleading parties, the mass of data put before us, the materials relating to proceedings in the United States Courts and offers and counter offers made between the parties during the various proceedings as well as the complex issues of law and fact involved before us and in particular the enormity of human suffering occasioned by the Bhopal Gas Disaster and the pressing urgency to provide substantial and immediate relief of the victims, we consider the case preeminently fit for overall settlement covering all litigations of claims, rights and liabilities arising out of the disaster and accordingly hold it just, equitable and reasonable to order as we do under:

(1) Union Carbide pay a sum of U.S. 470 million dollars in full settlement of all claims, rights and liabilities arising out of the Bhopal Gas Disaster.

(2) The aforesaid sum be paid to the Union of India before March 31, 1989

(3) To enable an effectuation of the order we direct that all civil and criminal proceedings shall stand transferred to this Court and be concluded in terms of the settlement. All criminal proceedings related to the disaster shall stand quashed wherever pending."

The Bhopal Gas Leak Disaster which has been described as "Industrial Hiroshima 76 resulted in the "Waterloo of Indian Judiciary."77 In American Court it was argued on behalf of the Union of India that Indian Courts lack procedural and practical capability to deal with the present case. The judgment of the Apex Court seems to have conceded the above criticisms against it. After assuming the role of the trustee of Bhopal Gas Leak case victims by enacting the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, the Union of India bowed before the multinational Corporation and by agreeing to accept 470 million dollars as compensation it has betrayed the interest of the

victims. The judgment of the Supreme Court has been severely criticized in Western countries, especially in England and America. According to the Washington Post, "Life is cheap in India. That, at last, was the foundation of Union Carbide legal Strategy." Keeping in view the number of claimants (ie., about 5,36,000) each victim could get not more than Rs. 4000/-. AS compared to this, American Courts have awarded Rs. 5.4 lakhs per person in Asbestos Injury case against Manville Corpn.), Rs. 8.25 lakh for person in Contraceptive Injury case (against A.H. Robinson Corpn.) and Rs, 10 lakh, per person in Kanishka Crash, More than 50 members of Parliament from different opposition parties demanded that the verdict be reviewed. Being "shocked and distressed by the terms of the settlement, they said, "the failure to establish any deterrent to Industrial malpractice in detrimental both to the interests of the people of the country and to our judicial system". Due to these reasons, inter alia, later on the Government moved for the review of the verdict of the Supreme Court

It may be noted here that subsequently the *Supreme Court in Charan Lal Sahu v. Union of India*, 78 upheld the constitutional validity of Bhopal Gas Disaster (Processing of Claims) Act, 1985. The Judgment of the Court seems to have been influenced by orders of 14-15 February, 1989,79 and it did not put to an end the doubts and controversies in respect of the settlement order in the Bhopal Gas Leak case. This is evident from the following observation of Ranganathan, J. (and A.M. Ahmedi, J. agreeing with him):

"A correct view as to whether the amount of compensation for which the claims have been settled is meagre, adequate or excessive will emerge only at that stage when claims have been processed and their aggregate is determined. In these circumstances we feel that no useful purpose will be

served by a post decisional hearing on the quantum of compensation to be considered adequate for settlement.

For these reasons, it would seem more correct and proper not to disturb the orders of 14-15 February. 1989 on the ground that rules of justice have not been complied with particularly in view of the pendency of the review petition.

Thus the prestige of the highest tribunal of the land has sagged very low due to its over-all attitude towards Bhopal Gas Leak Disaster. What was more shocking and distressing that this was despite the enunciation of the principle of strict and absolute liability in *M.C. Mehta v. Union of India.*

As regards revision of the settlement orde. of 14th February, 1989, the Supreme Court gave its decision in the case of Union Carbide Corporation v. Union of India 81 Among other questions, inter alia, one of the main questions before the Apex Court was not hearing an appeal; it was considering an interim order. But the Supreme Court held that to give final decision Bhopal Gas Leak Case came under the powers conferred on the court by Article 136 of the Constitution. As regards the rule laid down in M.C. Mehta's case, the Apex Court decided that settlement order, the said rule could not the enforced. The court also rejected other arguments. But as regards the question of quashing and termination of criminal proceedings, the Supreme Court held: "...We hold that the quashing and termination of criminal proceedings brought about by the order dated 14th and 15 February, 1989, require to be and are, surely reviewed and set aside."

It is hard to believe that quashing and termination of criminal proceeding might not have been a reason or ground for fixing compensation. Therefore the whole settlement order could and should have been set aside.

The Public Liability Act, 1991 (No. 6 of 1991).-Oleum Gas Leak and Bhopal Gas Leak Disaster had shown the inadequacy of Indian Law to give compensation to the victims of accidents ensuing from dangerous and hazardous enterprise. Hence the Indian Parliament, on 22nd January, 1991 enacted the Public Liability Act, 1991. The Act provides :

(1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage.

(2) In any claim for relief under sub-section (I) the claimant shall not be required to plead and establish that the death, injury or damage in respect of which claim has been made was due to any wrongful act, neglect or default of any person. 85

In other words, the liability is strict and is based on 'no fault' principle. The Act has also fixed the quantum of compensation which is as follows 86. - (i) Reimbursement of medical expenses incurred to a maximum of Rs. 12,500/- in each case.

(ii) For fatal accidents the relief will be Rs. 25,000/- per person in addition to reimbursement of medical expenses, if any, incurred on the victim uptod maximum of Rs. 12,500/-

(iii) For permanent total or permanent partial disability or other injury or sickness the relief will be (a) reimbursement of medical expenses incurred if any, upto a maximum of Rs. 12,500 in each case and (b) cash relief on the basis ofpercentage of disablement as certified by an authorised physician. The relief of total permanent disability will be Rs. 25,000/

(iv) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months provided the victim has been hospitalised for a period exceeding 3 days and is above 16 years of age.

(v) Upto Rs. 6,000/- depending on the actual damage, for any damage to private property.

It need not be overemphasized that the quantum of compensation fixed by the Act is inadequate and unsatisfactory. This in fact justifies the criticism of Western countries that life in India is very cheap. As compared to this quantum of compensation in American court five lakh forty thousand per person were awarded in Asbestos Injury case. Similarly, *in A.H., Robertson Corporation case and Kanishk Crash* case sight lakhs twenty five thousand dollars and ten lakh dollars per person were awarded.