Chapter VI

THE BHOPAL INDUSTRIAL DISASTER: A CASE STUDY

(A) Introduction

The Bhopal disaster which took place in the early morning hours of 4 December 1984 is undoubtedly the worst industrial accident in history.1 A highly toxic chemical namely methyl isocynate2 escaped from the Union Carbide India Limited plant3 in Bhopal.4 Thousands died a terrible death.5 Many were crippled for life. The survivors of this disaster are still struggling for their lives, dignity, compensatory relief and rehabilitation.6 There is also

---


2 MIC, usually written as CH₃CNO is extremely toxic, volatile and flammable, 1/15 RMP, has no definite antidote. See ICMR working Manual on the Health Problems of Bhopal Gas Victims (April, 1989); It was also tested as possible warfare agent by the U.S. Defence Department in 1944 see Raj Kumar, Keswani "A Warfare Experiment" Week, Dec. 4, 1994, p. 16. See also Deva Kumar, C. and Mukherjee, S.K., "Methyl Isocynate : Profile of a Killer Gas" Science Today Journal, Jan. 1985, 10-11, 16.

3 Union Carbide India Ltd. plant is a fifty one percent owned subsidiary of the Union Carbide corporation which is based in the united states. See Dianna Baker Shew, "United States Based Multinational Corporations Should be Tried in the United states for Extra-territorial Toxic Torts" Vanderbilt Journal of Transnational Law, vol.19 Number 13, summer (1986).

4 "Bhopal; City of Death" India Today, 31, December 1986 at 6 col.2.

5 Approximately 16,177 death claims were filed and till 27 November, 1994, in 7000 death cases compensation were awarded. See, "Compensation for Gas Victims Taking Time" Times of India (New Delhi) 28 November, 1994. More than 4000 people lost their lives. See, Anil Sharma "Tragedy without End" Times of India (New Delhi) 5 Dec. 1993; At least 10 to 15 persons are dying every day due to gas effect, See "No End to Bhopal Gas Victims Woes" Times of India (New Delhi), 1 December 1993.

6 See "Compensation for Gas Victims Taking Time" n.5; Rakesh Bhatnagar "Centre Getting Richer at the Expense of Bhopal Gas Victims" Times of India (continued...)
uncertainty about the long-term effects of the gas exposure on the victims. Besides total or partial human disablement there was loss of cattle, vegetation, work hours. The disaster led to general impoverishment and community disruption. The over-all impact of this disaster on the general environment is yet to be assessed.

This tragic accident has raised several issues of immense significance: whether the present laws are inadequate to control future Bhopals? what should be the safety arrangements in industries producing toxic substances?

6(...continued)


More than 200,000 people were injured by the toxic gas. See Ward More house and M.Arun Subramanian, "The Bhopal Victims: A Report for Citizens Commission on Bhopal (1986 Council on International and Public Affairs); 6.4 lakh people were injured, Nitya Jacob "Red Tape and Corruption Delay Compensation" Down to Earth, December 15, 1992. Kum Kum Chaddha in "Congestion, Clots and Coma" The Hindustan Times (New Delhi February 18, 1990) had summarised the effect of the gas on the survivors. According to the ICMR report, in addition to eye and respiratory problems, they suffered from multiorgan involvement, coma, gastro intestinal disturbances, lesions in the central nervous system, psychological trauma, and retarded intra-uterine growth of babies born to gas exposed mothers. Industrial Toxicological Research Centre has detected evidence of damaged immune systems in survivors making them vulnerable to infections. Dr. Krisha Murthy, chairman, Scientific Commission on Bhopal opined in 1987 that babies of gas victims may suffer from genetic defects. According to Medico Friend Circle gas exposer caused more abortions. Infants were most affected victims with death rate of 33 per thousand. Gas affected patients also suffered compensatory elevation of the haemoglobin level. There were neurological manifestations like hearing loss, tremors and vertigo. Large number of people suffered from mental disorders like neurotic depression. There were more instances of spontaneous abortions, still birth rate and new born with congenital malformations. See also Praful Bidwai "Bhopal: Nine Years of Agony" Tribune (Chandigarh) 29 November 1993; D. Banerjee, "Epidemiological and Sociological Study of the Bhopal Tragedy" Medico Friend Circle Bulletin, January 1, 1985.


What should be the standards of safety? Whether it should be as required by the national law or the laws at the place of in-corporation or best industry. (continued...)
whether international law has developed sufficient legal mechanism to control Bhopal type mass environmental disasters? The Bhopal disaster has also raised serious questions respecting unregulated industrialisation in developing countries, inadequate licensing policies, faulty industrial planning, the complicity of government officials, the absence of strict corporate accountability, weaknesses of national statutes and the lack of relevant and appropriate information. It has also raised issues like the transfer of hazardous technologies, responsibilities of a multinational corporation for its hazardous activities, responsibilities of a parent company for the acts of its subsidiary, conflict of laws jurisdiction and principles of liability as well as compensation.

(i) Inadequate Safety Laws

The Bhopal disaster has exposed the safety system in India. In the Bhopal case, the safety aspect was ignored even at the time of granting of licence for location of the plant at Bhopal in 1969. Dangers to the


Meera Nanda "The Case for an Informal Public" Indian Express, April 7, 1985. Curious enough the annual reports of the ICMR on survivors health have remained official secrets. Many members of the voluntary organisations have been charged with violation of official secrets Act. See "Bhopal More Evasion" Economic and Political Weekly, December 3, 1994, p. 3057.


Even in 1969 the site was located not far from many slum colonies, the Institute of Education and other residential areas. Licensing authorities failed

(continued...)
inhabitants of the area was perceived very early and even shifting of the plant was suggested which was ignored. The accident probably began as the result of a runaway reaction of the MIC with water. One of the reasons attributed to this happening was that it was being handled by an untrained worker. Several employees of the UCIL stated before the Permanent People's Tribunal on Industrial and Environmental Hazards and Human Rights that factors like design inadequacies, operation practices, poor quality of training of workers, lack of information and illegal plant modifications were responsible factors for the disaster.

(ii) Double Standard

Union Carbide Corporation maintained double standards regarding

13(...)continued

to take cognizance of Union Carbide's past record. At the time of granting of licence in India, Government of Canada had already rejected and cancelled the licence of a sister plant of Carbide on environmental grounds. See Vijay Shankar Varma "Bhopal : Unfolding of a Tragedy", Alternatives, (XI) 140 (1986).

14 In 1975 the administrator of Bhopal Municipal corporation ordered the shifting to the plant. He was transferred and the successor rescinded the order. (Nai Duniya, Dec. 8, 1984). In December 1981, Phosgene gas leak caused death of a plant operator, another leak affected several people. There was a pipeline burst in October 1982 followed by a further gas leak in 1983. See "M.P. Government had been warned" Indian Express, December 1984; Raj Kumar Keswani, "Bhopal Tragedy", Indian Express, December 6, 1 and 8, 1985.

15 The leak started when a supervisor ordered an unqualified worker to wash out a pipe that had not been properly sealed. The water from this process perhaps contaminated the MIC. Even after detection of the leak by the supervisor, immediate measures were not taken. See. Diamond "The Bhopal Disaster : How it happened" New York Times Jan 28, 1985.

16 The Permanent People's Tribunal (PPT) is a forum for presentation and adjudication of violation of rights of people. It was founded in 1977 as the permanent successor to the Bertrand Russel Tribunal on Crimes Against Humanity in Vietnam and Chile.

17 "UCC Accused of Maintaining Double Standards" The Pioneer, Oct. 21, 1992. The Permanent People's Tribunal in its judgement on the 10th anniversary of Bhopal's gas Tragedy had deplored the unequal power relations between often poor or even bankrupt debtor governments and transnational corporations. The tribunal has also stated that of the 100 largest economies of the World, 47 were corporations, not countries. See L.K. Sharma "Tribunal Seeks Action Against Union Carbide" Times of India (New Delhi), 4 December, 1994.
safety measures at the Bhopal Plant. Safety measures such as computerised pressure, temperature sensing system and other effective alternatives were non-existent in the Bhopal plant.\(^\text{18}\) A West Virginia sister plant was provided with a computerised early warning system which was not made available in the Indian plant. In the American plant MIC could be stored for a maximum period of fifteen days, while in India it was kept for months. Many safety systems were manual in India, while in West Virginia they were computerised.

(iii) **Safety Measures and Financial Hardships**

Safety mechanisms and preventive maintenance were the first to be curtailed when the Union Carbide Plant suffered financial losses.\(^\text{19}\) It is really ironic that the factors most important were ignored for the sake of profit-making.

(iv) **State Negligence**

The Government of India and the Government of Madhya Pradesh also failed to take effective preventive steps while granting the licence for the manufacture of the highly toxic pesticide.\(^\text{20}\) This accident has raised several...
questions concerning the failure of the Indian State to prevent the toxic leak. It is difficult to say whether any scientific opinion was taken before the granting of a licence to manufacture such a dangerous substance or whether it even asked for the composition of the deadly gas. The government did not possess adequate information regarding the toxic nature of MIC and its medical antidotes in the event of an accident. Some writers have also suggested that the Government of India knew of the safety lapses at the plant prior to the accident. There is a duty to act preventively where there is evidence of risk. In the manufacture and storage of MIC, risk was apparent, but neither the Government of Madhya Pradesh nor the Government of India, took any preventive step.

20(...continued)

Observer, Dec. 16, 1984; Radhika Rama Seshan, "Government Responsibility for Bhopal Tragedy", Economic and Political Weekly, Dec. 15, 1984, pp. 2109-10. Ironically enough People's health clinics run by survivors organisations had been raided by the police. There had been instances of police attack and arrest of activists who had been demanding medical care, rehabilitation and punishment of the culprits. See Bhopal More Evasion.; n.11.

21 See Reinhold, "Disaster in Bhopal : Where does the Blame Lie?" New York Times, January 31 1985 at 1, Col. 1; see also "City of Death" India Today, December 31, 1984 at 4,19. See also Dinesh, Mohan "Accident or Criminal Neglect", Indian Express, Dec. 10, 1984.

22 Though as a rule clearance is required from several agencies such as Ministry of Chemicals and Fertilisers, Director General of Technological Development, Ministry of Agriculture and Central Pesticides Board and several departments of the State Government before granting of licence, but it is difficult to say that any of these agencies discharged its responsibilities. See Alfred de Grazia, A Cloud Over Bhopal, 58(1958).

23 See Shiva Vishwanathan, "Bhopal : The Imagination of a Disaster", XI Alternatives 151(1986). The hazards of exposure to MIC are yet unknown. See Kalpana Sharma "Bhopal : The Unanswered Questions", The Hindu (Madras), 19 October 1989. Dr. Jeffrey Kaplan of the US Centre for Disaster Control had been quoted saying that what was known about MIC could be written up in two-three pages.


Legal Aftermath

The most immediate legal issue after the disaster was the right to recover the claims\textsuperscript{26} for the victims. Since this accident involved Indian citizens and a subsidiary unit of an USA based multinational giant, it was not easy for the affected people to file claim suits. On 20 February 1985, the President of India promulgated the Bhopal Gas Leak Disaster (Processing of Claims) Ordinance, in order to give the government exclusive rights to represent the gas victims. This Ordinance was replaced by the Bhopal Gas Leak Disaster (Processing of Claims) Act, on 29 March 1985.

(B) Parens Patriae and Bhopal Act

The Bhopal Gas Leak disaster affected a large number of people. Since complex technical and legal issues were involved, it was not easy for every victim to file a separate claim. Thus the Central Government was to take the role of \textit{parens patriae}.\textsuperscript{27} This was done through the instrumentality of the Bhopal Act. The Bhopal Act aimed to ensure that claims arising out of or connected with the Bhopal Gas Leak Disaster were dealt with speedily, effectively, equitably and to the best advantage of the claimants and for

---

\textsuperscript{26} The Bhopal Gas leak Disaster (processing of claims) Act 1985 defines "claim" as (i) a claim arising out of or connected with, the disaster, for compensation or damages for any loss of life or personal injury which has been, or is likely to be, suffered; (ii) a claim arising out of or connected with, the disaster, for any damage to property which has been or likely to be, sustained; (iii) a claim for expenses incurred or required to be incurred for containing the disaster or mitigating or otherwise coping with the effects of the disaster; (iv) any other claim including any claim by way of loss of business or employment, arising out of or connected with the disaster.

\textsuperscript{27} (a) \textit{parens patriae} is the important power and authority of a legislature to provide protection to the person and property of persons \textit{non sui juris}, such as minor, insane and incompetent persons. "words and phrases" permanent edition vol. 33 at p.99 as reported in Charanlal Sahu Vs Union of India AIR 1990 S.C.1480. In the above mentioned case supreme Court defined the \textit{parens patriae} theory as the obligation of the state to protect and take into custody the rights and the privileges of its citizens for discharging its obligations. The Court said that the Indian Constitution makes it imperative for the state to secure to all its citizens the rights guaranteed by the Constitution.
matters incidental thereto.28 The Act confers the Central Government the
exclusive right to, represent, and act in place of (whether within and outside
India) every person who has made, or is entitled to make, a claim for all
purposes connected with such claim.29 This general power included institution
or withdrawal of any suit or entering into a compromise.30 The Act
substituted the Central Government as the statutory agent of the claimants.31
But section 4 of the Act puts some limitation, by giving claimants the right to
be represented by a legal practitioner.32 The Central Government's power to
represent and act for the claimant is not unlimited. While taking any action
government will have to act to the best advantage of the claimant.33 If the
government compromises, contrary to the best advantage of the claimant, this
will be against the mandates of the Act.34 If it is proved that the government
has paid due regard to the relevant considerations and acted in good faith
towards securing the best advantages of the claimants, the requirements of the
Act would be satisfied.35

(i) The Judicial Verdict

The Bhopal Act virtually divested the victims of all standing to sue and

28 See Preamble to the Bhopal Act.
29 See Sec.3(1) of the Bhopal Act.
30 Ibid; Sec. 3(2).
31 See V.S.Deshpande, "The Bhopal Gas Leak Disaster (Processing of Claims) Act,
32 Section 4 of the Bhopal Act states that in representing and acting in place of
any person or in relation to any claim, the Central Government shall have due
regard to any matter which such person may require to be with respect to his
claim and shall, if such a person so desires, permit at the expense of such
person, a legal practitioner of his choice to be associated in the conduct of any
suit or other proceeding relating to his claim.
33 See Deshpande n.31.
34 Ibid.
35 Ibid.
its constitutionality was challenged before the Supreme Court in **Charanlal Sahu Vs Union of India**.\(^{36}\) The Supreme Court while declaring the Act as constitutionally valid, gave its opinion on different issues involved. It declared that the taking over the claims of victims by the Government was not illegal.\(^{37}\) It also said that the victims have been divested of their standing because the victims were disabled.\(^{38}\) According to the court, the Bhopal victims could not be considered to be any match to the multinational companies or in a position by themselves to look after their own interest effectively.\(^{39}\) It further added\(^{40}\), that in the prevailing situations they needed the state's protection to assert, establish and maintain their rights against the wrong-doers in this mass disaster.\(^{41}\)

(ii) **Government as a Shareholder**

It was contended that since the Central Government was a shareholder through the Unit Trust of India and Life Insurance Corporation it could not represent the victims. The Supreme Court was of the opinion that factually the Central Government did not own any share in Union Carbide India Limited because these two organisations were statutorily independent.\(^{42}\)

(iii) **Test of Article 14**

The Supreme Court opined that the Bhopal Act had satisfied the test of

---

36 AIR 1990 Supreme Court 148.

37 Ibid; see para 17.

38 see para 100.

39 Ibid.

40 Ibid.

41 Prof. Upendra Baxi is of the opinion that the Supreme Court of India in its 239 page, five judge bench, decision on the validity of the Bhopal Act, enters the caveat to the Roman law maxim "Let justice be done even if the heavens fall" see Upendra Baxi "Bhopal Verdict: Great Wrong and Little Right" *Times of India* (New Delhi), 25 December 1989.

42 *Charan Lal Sahu Vs Union of India*, n. 36 para 102.
Article 14 of the Constitution of India.43 According to the Court, the claimants and victims could legitimately be described as a class by themselves, different and distinct, sufficiently separate and identifiable to be entitled to special treatment, for effective, speedy, equitable and best advantageous settlement of their claims.44 The Court was of the view that the disaster was unique in its character and this provided grounds for differentiation.45

(iv) **Right to Representation**

The Court was of the opinion that Section 4 of the Bhopal Act entitled the victims to notice and an opportunity to be heard on any proposed settlement.46 It was of the view that a fair procedure should be followed in a representative mass tort action.47 According to the court, the Central Government, as the representative of the victims, must have the view of the victims and place such views before the court in such manner, it considered necessary before a settlement was entered into.48 The court further added that if the victims wanted to advert to certain aspects of the matter during the proceedings, under the Act, opportunities must be given to them.49 Though, the Bhopal Act, was enacted to secure the claims arising out of or connected with Bhopal gas leak disaster, it will definitely lead to the growth of laws relating to the representative role of the Government in relation to industrial mass disasters.

---

43 Ibid; para 98.
44 Ibid.
45 Ibid.
46 Ibid; para 114.
47 Ibid.
48 Ibid; para 117.
49 Ibid.
(C) Jurisdiction and Conflicts of Law

Under the authorization given by the Bhopal Gas Disaster (Processing of Claims) Act, 1985, the Union of India, filed a complaint before the US District Court for three billion US dollars as compensation for victims. The Government of India, preferred the US forum because it considered the federal judicial system in the United States the most appropriate forum, for a just, speedy and equitable resolution of all claims. Union Carbide Corporation opposed the petition by arguing that the suit should be dismissed from the federal courts for trial in India under the doctrine of forum non conveniens.

---

50 Filed on April 8, 1985. The Union of India against Union Carbide Corporation, in the United States District Court (Southern District of New York).

51 Complaint petition of the Union of India in the case of The Union of India against Union Carbide, 8 April, 1985. Source Upendra Baxi and Thomas Paul, "Mass Disaster and Multinational Liability: The Bhopal Case" (Tripathi, Bombay, 1986).

52 The doctrine of forum non conveniens allows a court to "resist imposition on its jurisdiction even when jurisdiction is authorized by the letter of a general statute. Gulf Oil Corp. Vs Gilbert, 330 U.S 501 (1947)

The American Supreme Court in Gulf Oil Corp. Vs Gilbert, 330 U.S. 501 (1947) divided the relevant considerations for application of this doctrine in two categories (a) the private interests of the litigant and public interests. The private interests include: "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view should be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." There may also be question as to the enforceability of a judgment if one is obtained. The court will weigh the relative advantages and obstacles to a fair trial. The court also narrated public interest considerations in the following words " Factors of public interest also have a place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centres instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having the localised controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with state law that must govern the case", 330 U.S. at 508 - 09. Court was also of the opinion that the plaintiff's choice of forum should rarely be disturbed. 330 U.S. at 508.

(continued...)
Grounds for the invoking of this doctrine were "(i) the catastrophe occurred in Bhopal, nearly eight thousand miles from the American forum; (ii) the plant, personnel, victims, witnesses, documentary and related evidences are all located in Bhopal; (iii) the pretrial and trial proceedings in an American forum would entail huge costs involved in the production of hundreds of witnesses, translation of testimony and documents written in many Indian languages, expert evidence on the nature of the catastrophe, causes of it and the aftermath; an American forum would be slow to undertake such Herculean labour; (iv) the litigation would be 'a massive imposition on the time, energies and resources' of the American forum; (v) it would thus aggravate congestion and burdens of American citizens for Jury duty; (vi) the litigation would require of American courts, a total understanding of foreign law; (vii) the litigation would also necessitate a realistic understanding of how impoverished Indian live and a real assessment of the value of the Indian life in the Indian conditions and under the Indian law and of the costs involved in treatment and rehabilitation of victims."

UCC had also pleaded that the case be heard in India because it was an adequate forum and the only convenient forum for the prosecution and trial of these actions. It pleaded that the factors pertaining to the parties private interest namely access to proof, availability of compulsory process, cost of obtaining witnesses, view of the premises, expeditious and inexpensive conduct of the action favour trial in India. It was pleaded that the public interest

52(...)continued

In Piper Air Craft Co. Vs Reyno, 454 U.S. 235 (1981), the American supreme court has opined that it is neither necessary nor desirable nor yet possible to lay down a set of 'rigid' rules providing for denial of remedies. It also added that the doctrine is a flexible tool which loses its utility and value were it to be dominated by "rigid rules to govern discretion".

53 Baxi and Paul, n.51, page (vi).

54 See "Memorandum of Law in support of Union Carbide Corporation's Motion to dismiss these actions on the grounds of forum non conveniens."(Point I).
factors\textsuperscript{55} were (i) Indian law will apply and an Indian court is more suited to apply Indian law, (ii) opportunity for the Indian public to view the trial, (iii) India having the greatest interest in the resolution of these claims, favour trials in India. One major argument of the UCC was that the trial in USA would cause injury to American citizens.\textsuperscript{56}

The Union of India submitted several points in opposition to Union Carbide Corporation's motion to dismiss the suit on the ground of \textit{forum non conveniens}. It argued that the courts of India are not an adequate alternative forum in which this litigation may be resolved.\textsuperscript{57} It submitted several grounds like inherent delays in the Indian court system,\textsuperscript{58} lack of procedural and practical capability to handle this litigation,\textsuperscript{59} uncertainty regarding enforcement of the judgment of an Indian court.\textsuperscript{60} It further added that Union Carbide's \textit{Forum Non Conveniens} motion is nothing more than forum shopping.\textsuperscript{61} Union of India also submitted that the US based Union Carbide Corporation had all-pervasive decision-making power in "matters relating to

\begin{itemize}
\item \textsuperscript{55} Ibid.
\item \textsuperscript{56} American citizens should not be taxed to pay protracted, complex and expensive litigation involving tens of thousands of Indians for events and damages that occurred in India. See Memorandum of law n.54 p. 36. "However, in the interest of the integrity of the court there can be no necessary connection between paying taxes and using the courts. Moreover, the payment of taxes as a basis for access to courts would be inequitable, for a resident alien may pay considerable American taxes while a company incorporated in the United States but conducting all of its business elsewhere may pay little or none." See Christina Neslund, "Forum Non Conveniens, Limiting Access to Federal Courts for Transnational Disputes" \textit{Denver Journal of International Law & Policy}, vol. 10, number 2 winter 1981.
\item \textsuperscript{57} See Memorandum of law in opposition to Union Carbide Corporation's motion to dismiss these actions on the grounds of Forum Non Conveniens. December, 1985.
\item \textsuperscript{58} Ibid.
\item \textsuperscript{59} Ibid.
\item \textsuperscript{60} Ibid.
\item \textsuperscript{61} See Baker Shew n.3.
\end{itemize}
the location of the plant; the designing of the plant; the production and storage of ultra hazardous substances, toxic chemicals and gases; the designing of safety systems and the monitoring of accident review of the operational safety systems". The Union of India's counter arguments relating to private and public interest could be summarised as follows:

(i) the most "relevant qualitative evidence" concerning the catastrophe is available in the United States; and evidence of damages and liability could be easily made available by the Union of India since it is in "large measure" under its control (p. 93); (ii) all the "material evidentiary facts necessary to prove all counts in the complaint are substantially located in the United States" (p. 94); (iii) the present and former UCC executives and engineers identified in the limited forum discovery will be "critical fact witnesses" and are all readily available in the United States; the same is the case in regard to massive documentary evidence which is located in the UCC headquarters (pp. 94-95); (iv) the contention that UCC intents to litigate "2,00,000 separate cases" is "puerile antics" (p.96); (v) UCC has endeavoured to inflate the number of witnesses who will be required; and in the process has invented a "large number of mythical witnesses who are merely a product of runaway imagination" (p. 101); (vi) similar flights of fancy have been involved in the UCC's allegation that the catastrophe was an act of sabotage (p.101) or the result of third party contractors (p.103) and which therefore, mandate an Indian forum."

The United States district court relying on the test developed in Gulf Oil Corp. Vs Gilbert dismissed the suit filed by Union of India on grounds of forum non conveniens. The court said that India was an adequate
alternative forum. It added that Indian courts have proven capacity to mete out fair and equal justice. According to the court, India and its people can and must vindicate their claims before their independent and legitimate judiciary. It opined that private and public interest factors favoured hearing of the case in India. The dismissal of the case was subject to three conditions. They are: (1) Union Carbide had to consent to subject to the jurisdiction of the courts of India, and had to continue to waive defenses based upon the statute of limitations; (2) Union Carbide had to agree to satisfy any judgment rendered by an Indian court, and if appealable upheld by appellate court in that country, where such judgment satisfy the minimum requirements of due process, and (3) Union Carbide was to be subject to discovery under the model of the United States Federal rules of civil procedure after appropriate demand by plaintiff. Though the District court assigned several reasons for dismissal, one major cause of dismissal can be inferred from the judgment itself. "...continuation of this litigation in this forum (New York) would take the time and resources of citizens directly.... Tax payers of this state should not be compelled to assume the heavy financial burden attributable to the costs of administration the litigation contemplated when their interest in the suit and in its subject matter...is...ephemeral." 

It is ironic to say that American people could not be burdened even if disaster was caused by an American corporation. Such a stand will without any doubt encourage multinational corporations engaged in ultra-hazardous activities, to infringe upon the right to life and liberty of innocent people. It also can't be said that the American court was in favour of conclusion of the

---

65 The Second Circuit Court of Appeals in *re Union Carbide Corporation Gas Plant Disaster*, 809 F. 2d 195 at 205 (2nd Cir. 1987) had determined the scope of Justice Keenan's 'due process' requirement. It has opined that court could not impose domestic 'due process' requirements upon the Indian courts. It further added that Keenan erred in imposing the minimal due process condition.

66 See In *re Union Carbide Corporation* n.51.
claim suit in India. By introducing fulfilment of the 'due process' requirement, the American court retained the right of appeal over the decision of the Indian Supreme Court. It virtually relegated the status of the Indian Supreme Court to that of a trial court by saying that any denial by the Indian Courts of due process could be raised by UCC as a defence to the plaintiff's later attempt to enforce a resulting judgement against UCC in the USA.

(D) Interim Compensation

The Bhopal Gas Disaster Case in India started with the interim compensation award by judge Deo of the Bhopal District court. The District court ordered the defendant UCC to deposit a sum of rupees 350 crores towards payment of "substantial interim compensation and welfare measures" for the gas victims. The court granted interim award under section 94(e) coupled with section 151 of the Code of Civil Procedure of India. The court

67 "The doctrine has recently been introduced into multinational corporate litigation as a successful weapon in the hands of MNCs to insulate them from high damage awards. The doctrine as it has evolved, has no constructive role to play in multinational corporate litigation.... It encourages MNCs to escape their obligation by simply setting up subsidiaries in the developing countries. The doctrine originally evolved to prevent extreme abuses of forum shopping. It has since developed from an almost hopeless motion to dismiss an action, to a frequently successful technique for delay," see Ratna Kapur, "From Human Tragedy to Human Rights: Multinational Corporate Accountability for Human Rights Violations." Boston College Third World Law Journal, vol. X, number 1, Winter 1990.

68 See in re union carbide corporation, n. 51.

69 Interim compensation is the amount given to the victims to mitigate the hardships which might be occasion using interval between commencement of the action and ultimate trial of the case.

70 See Union of India Vs Union Carbide Corporation, Gas claim case, Case No. 1113 of 1986 in the court of the District judge Bhopal.

71 Ibid.

72 Sec. 94(e) of the C.P.C. recognises and grants powers to the court to make an interlocutory order of the nature as that of the main claim in the suit. Sec. 151 of the C.P.C. states that nothing in the code shall be deemed to limit or otherwise affect the inherent powers of the court to make orders necessary for the ends of justice.
was of the opinion that it is not correct to say that jurisdiction can flow only from a statutory right.\textsuperscript{73} It said that the law must also grow to meet the problems raised by new changes including the hazards of industrialisation.\textsuperscript{74} It further added that "in the field of tort, the theme of the interim relief has also to be developed as non-statutory relief because law of tort is essentially non-statutory".\textsuperscript{75} It also acknowledged that there is a substantive right of the gas victims to interim compensation.\textsuperscript{76} The Court also relied on \textbf{M.C. Mehta Vs Union of India},\textsuperscript{77} which ruled that in an action for tortious liability, the grant of interim compensation is permissible. The order of the district court granting interim compensation was challenged by UCC in a revision petition in the Madhya Pradesh High Court. Though upholding the decision of the district court that interim awards could be made in negligence cases, the High Court reduced the amount from Rs. 350 crore to Rs. 250 crore.\textsuperscript{78} The Madhya Pradesh High Court disagreed with the district court’s reasoning that interim compensation could be granted under section 151 of the Code of Civil Procedure of India\textsuperscript{79}. Instead, it observed, that under the substantive law of torts it was permissible for a court to grant relief of interim payment.\textsuperscript{80} The court was of

\begin{itemize}
\item \textsuperscript{73} (a) The district court substantiated its statement by agreeing with the argument of the Attorney General that even before the codification, under the Hindu Law interim maintenance could be granted. (b) The district court also observed "... that inherent powers are born with the creation of the court, like the pulsating life coming with the child born into this world.

\item \textsuperscript{74} See \textit{Union of India Vs Union Carbide Corporation}, n.70.

\item \textsuperscript{75} Ibid.

\item \textsuperscript{76} Ibid.

\item \textsuperscript{77} AIR 1987, SC 965.

\item \textsuperscript{78} \textit{Union Carbide Corporation Vs Union of India}, Madhya Pradesh High Court, Jabalpur Civil Revision No. 26 of 1988, April 4, 1988.

\item \textsuperscript{79} Ibid.

\item \textsuperscript{80} Ibid.
\end{itemize}
the opinion that before the grant of interim payment two conditions had to be satisfied i.e. (1) the defendant against whom the order is sought has admitted liability for the plaintiff's damages or that the plaintiff has obtained judgement against the defendant for damages to be assessed; or that if the action proceeded to trial the plaintiff would obtain judgement for substantial damages against the defendant and (2) the defendant must be a person falling with one of the following categories namely (a) a person who is insured in respect of the plaintiff's claim; (b) a public authority; or (c) a person whose name and resources are such as to enable him to make the interim payment. Dwelling on the present suit, the court said that it was possible to lift the corporate will in order to determine that UCC had real and substantial control over Carbide India Limited. It was of the opinion that the court would fail in its duty if it did not lift the corporate veil in a case of the nature of the Bhopal suit. It further added that since Union Carbide Corporation had real control over the enterprise which was engaged in carrying on the particular hazardous and inherently dangerous industry at Bhopal, it was absolutely liable to pay compensation to the victims. The court awarded interim payment by concluding that the above conditions were satisfied. An obligation to pay interim compensation to the gas victims had also been acknowledged by the Supreme Court of India in Charanlal Sahu Vs Union of India. The Supreme Court observed that the continuance of the

---

81 Ibid.
82 Ibid.
83 Ibid.
84 Ibid.
85 Ibid.
86 AIR 1990, Supreme Court 1480.
87 Ibid; para 101.
payment of the interim maintenance for the continued sustenance of the victims is an obligation arising out of the state's assumption of the power and temporary deprivation of the rights of the victims to fight for their own right. 88

Categorisation and Amount

The Madhya Pradesh High Court was of the opinion that the quantum of interim payment could be determined on the basis of four categories 89 namely (a) death; (b) total disablement causing permanent disability; (c) permanent partial disablement; an (d) temporary partial disablement. The court also determined amounts of interim payment 90 i.e. (a) Rs. 1 lakh in each case of death; (b) Rs. 1 lakh in each case of total permanent disablement (c) Rs. fifty thousand in each case of permanent partial disablement; and (d) Rs. twenty five thousand in each case of temporary partial disablement. This award of interim compensation by the Madhya Pradesh High Court had been criticised 91 as well as applauded. 92 But the criticism was uncalled for. To provide subsistence relief to the disaster victims was a dire need. Victims could not be expected to wait till the issues of legal technicalities were resolved and the trial was concluded.

---

88 Prof. Upendra Baxi has stated that from December 1984 till the Supreme Court pronounced the final verdict in all Bhopal petitions, the Union of India is under a duty to provide for the "sustenance and maintenance of the victims". See Upendra Baxi "Bhopal Verdict: Great Wrong and Little Right", n.41.

89 See Union Carbide Corporation, n.70.

90 Ibid.

91 Diwan and Rosencranz had predicted that the judgement would complicate the litigation and delay relief. They had opined that the judgement was without reference to the merit and it could not be enforced as a decree. They had predicted that American courts will dismiss the "decree" as a denial of due process. See Diwan and Rosencranz "Bhopal Victims: Twisting Slowly in the Wind" 18 Environment Policy and Law, 221 (1988).

92 Prof. Baxi had described it as a humane and fair judgement besides a model of conscientious craftsmanship. See Upendra Baxi, "Union Carbide must honour verdict" Indian Express (New Delhi), April 21, 1988.
Liability Question

The legal aftermath of the Bhopal disaster has demonstrated how difficult it is to establish liability in a toxic mass disaster especially when a multinational corporation is involved. The Government of India in its complaint had argued several grounds for the liability of the Union Carbide Corporation. The grounds were: (a) multinational enterprise\textsuperscript{93} liability; (b) absolute liability\textsuperscript{94}; (c) strict liability\textsuperscript{95}; (d) negligence\textsuperscript{96}; (e) breach of warranty\textsuperscript{97}; and (f) misrepresentation\textsuperscript{98}. It had argued that 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. The multinational corporation has a duty to provide that all ultra-hazardous or inherently dangerous activities be conducted with the highest standard of safety and to provide all necessary information and warnings regarding the activity involved. The Government of India had alleged that Union Carbide failed to provide that its Bhopal plant met the highest standards of safety and it also failed to inform the Union of India and its people of the dangers therein. Besides, it created and maintained unreasonably dangerous and defective conditions. The Government of India had also alleged that Union Carbide had falsely represented that its Bhopal plant was designed with the best available information and skill. The Union Carbide Corporation, initially took the position that disaster was the result of internal

\begin{itemize}
  \item \textsuperscript{93} See Complaint petition in United States District Court, \textit{The Union of India Vs Union Carbide}, April, 1985.
  \item \textsuperscript{94} Ibid.
  \item \textsuperscript{95} Ibid.
  \item \textsuperscript{96} Ibid.
  \item \textsuperscript{97} Ibid.
  \item \textsuperscript{98} Ibid.
\end{itemize}
sabotage but subsequently it accepted that the gas leak was accidental.99 Some scholars are of the opinion that the Government of India and the Government of Madhya Pradesh were also liable because: (a) they allowed a human cluster to develop in the vicinity of the plant, (b) they failed to regulate the safety conditions in the plant and (c) they failed to hire professionally competent persons to monitor the activities of the plant.100 But the overwhelming evidence suggested that the root cause lay in the flawed design of the safety system, bad manufacturing and storage practices, recklessness and lack of concern for public safety.101 It has been suggested that a short-sighted design modification made in the pipe line connections was responsible for the entry of the water into the tank. The original design of the storage area did not provide for the neutralisation of the toxic gas at a very high temperature and pressure before its escape to the atmosphere.102

(E) The Settlement and Its Legality

The Union of India filed a special leave petition in the Supreme Court of India because the Madhya Pradesh High Court had reduced interim relief from Rs. 350 crore to Rs. 250 crore. The Supreme Court also allowed Union Carbide Corporation's special leave petition.103 The Supreme Court mediated

---


101 "Punish Corporate Sins" Times of India (New Delhi) 10, April, 1993.

102 See Nanda "For whom the Bell Tolls in the Aftermath of the Bhopal Tragedy", n.18.

103 This grant of Special Leave Petition of the Union Carbide Corporation was against established legal norm "Those who seek equity must do equity". The Union Carbide Corporation had neither obtained a stay against the Madhya Pradesh High Court's order for interim payment nor complied with it.
a Rs. 717 crore (470 million US dollars) settlements.\(^{104}\) As a part of this settlement all claims for punitive damages were abandoned.\(^{105}\) All claims, past, present and future including those appealed and yet to be appealed were settled.\(^{106}\) All suits, whether in India or outside were concluded.\(^{107}\) After this settlement, no action could ever be instituted in the future against Union Carbide Corporation or against Union Carbide India Limited or against their representatives or employees for any past, present or future damages inside or outside India.\(^{108}\) If any such claim were filed against Union Carbide Corporation and Union Carbide India Limited, it became the duty of Government of India to ensure that such suit was dismissed.\(^{109}\) The settlement also quashed, all criminal proceedings arising out of the disaster.\(^{110}\) Why did the Supreme Court mediate the settlement? The court stated that it was particularly "the enormity of human suffering occasioned by the Bhopal gas disaster and the pressing urgency to provide immediate and substantial relief to victims of the disaster" which persuaded the court to make the order for settlement.\(^{111}\) However, the Supreme Court erred in saying that the settlement was necessary for immediate and substantial relief. Immediate relief was also possible by the grant of interim relief. While acting in haste the

---

\(^{104}\) See *Union Carbide Corporation Vs Union of India*, AIR 1990 SC 273. The settlement has been elaborated in four documents namely Principal order of 14th February 1989, Supplemental order of the 15th February 1989, Memorandum of the terms of settlement and 4th May Order explaining reasoning behind the settlement.

\(^{105}\) Ibid.

\(^{106}\) Ibid.

\(^{107}\) Ibid.

\(^{108}\) Ibid.

\(^{109}\) Ibid.

\(^{110}\) Ibid.

\(^{111}\) Ibid.
court failed to examine in depth the actual damage and problems of relief and rehabilitation.\textsuperscript{112} It could not be said that the court possessed sufficient data regarding the money required for rehabilitation of the victims.\textsuperscript{113} People were kept in dark regarding offers and counter offers.\textsuperscript{114} The settlement was unexpected because the case came before the court as an appeal against the interim order of the Madhya Pradesh High Court.\textsuperscript{115} The settlement "award" has been described as calamitous as the Bhopal gas leak itself.\textsuperscript{116} The purpose of a compensatory amount is not only to provide relief for the victims but also to provide a deterrent mode of conduct of industrial disasters. It is not possible to hold that such a small settlement amount will have a deterrent effect on the multinational corporation.\textsuperscript{117} The Government of India tried to

\begin{itemize}
\item [112] Dhawan, "On Carbide Terms" Indian Post, Bombay, May 12, 1989.
\item [114] Ibid.
\item [115] Ibid.
\item [116] Sahay "The verdict is shocking" The Hindustan Times (New Delhi), February 20, 1989. See also Upendra Baxi, "Revictimizing the Bhopal Victims" Mainstream p.5 (March 5, 1989); Upendra Baxi, "The Second Bhopal Catastrophe" Indian Express, December 19, 1989, p. 1.
\item [117] Justice P.N. Bhagwati stated "The court order places the value of Indian life a ridiculously low figure. In the US $ 2.5 billions was paid by John Manville Corporation to 60,000 claimants for asbestos related injuries and $ 520 million by All Robins Company to settle 9,450 injury claims by users of Dalkon Shield Contraceptives. In comparison, Bhopal victims have got "peanuts". See P.N. Bhagwati "Travesty of Justice", India Today, March 15, 1989, p. 45.
\end{itemize}

Indira Jaising has also made a scathing criticism of the award : "The figure is woefully inadequate to meet the projected health and rehabilitation needs of the victims. The International Coalition for Justice in Bhopal, estimates that a sum of $ 4,600 million would be required for health care alone, based on an expenditure of $ 4,1000 per person, for 200,000 persons allowing for an average life expectancy of 30 years. The coalition points out that even by Indian standards, this is a low amount, as the nature of equipment required will have to meet International standards and costs. Those exposed to the gas leak face new kind of risks, never before dealt with in India, perhaps never before in the world. Expert's advice, equipment and drugs will have to be mobilised internationally" See Indira Jaising : "Bhopal : Settlement or Sell Out?" The Lawyers, March 1989, p.4.
justify the amount\textsuperscript{118} but its justification lacked tenable grounds. It has failed to justify the settlement by setting out the number, nature and extent of incapacitation of victims as well as basis of liability.

(i) **Right to Be Heard Ignored**

Though section 4 of the Bhopal Act provided victims the right to be heard, on the proposed settlement, they were denied this opportunity\textsuperscript{119} by the court. It was wrong to conclude that victims might not have said anything relevant. Rather victims were in a better position to describe accurately the causes and the effects of the disasters.\textsuperscript{120}

(ii) **Withdrawal of Criminal Cases**

Though the Government itself claimed that it was acting as "guardian" or "trustee" of the victims in a "representative character", it ignored the basic

\textsuperscript{117}(...continued)

117 It has also been said that the settlement amount reflects an inequitable world. "Allegation that the $ 470 million settlement with Union Carbide was a sell-out, gains credibility in light of the fact that Exxon paid as much as US $ 1.125 billion for an oil spill off the coast of Alaska that killed several thousand birds and fish there. Obviously, human beings in the Third World come cheaper than birds in the First World.

Settlement reached in some other industrial accidents:

- 1990 - PPG industries paid US $ 83.4 million for Chromium Contamination in Jersey city, New Jersey;
- 1989 - National Lead paid US $ 78 million to 14000 Ohio residents for damages to their environment;
- 1988 - Amoco was ordered to pay US $ 85.2 million for an oil spill in 1978 off the French Coast;
- 1987 - Raytech Corporation paid US $ 75 million to the three former Du Pont employees for asbestos exposure", See Nitya Jacob, n.7.


119 The Right to be heard is a part of the principles of natural justice and also guaranteed under Article 21 of the Constitution of India.

120 The other reason given by the Supreme Court was that since the judgement was subject to review and the victims could be heard at that stage. This reason is also contrary to several decisions of the Supreme Court, in which the court has ruled that notice and hearing must be given at the initial stage itself and denial could not be cured at later stage.
rule of representative suits. Order 1 Rule 8(4) of the Code of Civil Procedure in India provides that no part of a claim in a representative suit could be abandoned and no arguments or compromise could be recorded unless the court had given notice to all persons interested in the subject matter of the suit. Order 23 Rule 3B(1) of the Code of Civil Procedure states that no agreement or compromise in a representative suit can be entered into without leave of the court while Order 23 Rule 3B(2) provides that the court shall give notice to all interested persons before granting such leave. By giving up claims for punitive damages without notice being given to the victims, the court acted in contravention of the law.

The court said that the settlement was negotiated in order to provide immediate relief for the victims. It is difficult to hold that there was a nexus between immediate relief and the quashing of the criminal proceedings. It was also a proper opportunity for the Supreme Court of India to decide various questions, relating to principles of liability and quantum of compensation, in such cases of industrial mass disasters. The court failed to establish relevant principles to regulate monolithic, economically entrenched multi-national companies using inherently dangerous technologies. The court also failed to develop human rights jurisprudence from the Third World perspective.

(F) Quashing of Criminal Proceedings Set Aside

In a subsequent review petition filed by the Government of India, the Supreme Court set aside the quashing of criminal proceedings and it also set aside the prohibition barring the filing of all future criminal cases. The court said that the power to withdraw and quash the criminal proceeding

121 The Bhopal Act does not exclude application of rules under the Civil Procedure Code; the definition of "claim" as provided in this Act does not include "criminal liability"; an offence which is non compoundable can not be compounded by a private settlement. Hence the settlement orders were in violation of the rule of law and the constitutional norms developed in India.

existed but in the present instance, there was no justification for the exercise of this power. The court also cited its own judgement in M.N. Sankarayanana Nair Vs P.V. Balakrishnan & Ors.\textsuperscript{123} providing guiding principles. In that case the court stated: "...Nevertheless it is the duty of the court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the state go unpunished merely because the government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the laws, directs the public prosecutor to withdraw from the prosecution and the public prosecutor merely does so at the behest".

In compliance with the above discussed judgement, criminal proceedings against nine persons were initiated in the Bhopal District and sessions court.\textsuperscript{124} These accused\textsuperscript{125} were charged under section \textsuperscript{304}\textsuperscript{126}, section \textsuperscript{324}\textsuperscript{127}, section \textsuperscript{326}\textsuperscript{128} and section \textsuperscript{429}\textsuperscript{129} of the Indian Penal Code. Out of nine, four\textsuperscript{130} accused were charged under these sections read with

\textsuperscript{123} (1972) 2 SCR 599.

\textsuperscript{124} See "Nine Charged in Bhopal Gas Case", \textit{Times of India} (New Delhi), April 9, 1993.

\textsuperscript{125} Accused are the former Union Carbide India Ltd. Chairman Keshub Mahindra, the former Managing Director Vijay Gokhale, the former Vice-President in charge Kishore Kamdar, Union Carbide India Ltd., the former works manager J. Mukund, the former assistant works manager R.B. Roy Chaudhary, former production manager S.P. Qureshi and plant superintendent K.V. Shetty.

\textsuperscript{126} Sec 304(2) provides punishment for culpable homicide not amounting to murder.

\textsuperscript{127} Sec. 324 makes voluntary causing hurt by dangerous weapons or means punishable.

\textsuperscript{128} Sec. 326 declares voluntary causing grievous hurt by dangerous weapons or means as an offence.

\textsuperscript{129} Sec. 429 relates to mischief by killing or maiming cattle etc. of any value or any animal of the value of fifty rupees.

\textsuperscript{130} See "Nine Charged in Bhopal Gas Case", n.124. See also "Bhopal Gas Leak Case: Accused Told to Appear", \textit{The Hindustan Times} (New Delhi), 23 June, 1992.
section 35\textsuperscript{131} of the Indian Penal Code because they were not present in the plants at the time of the disaster but they shared the knowledge of the causes that led to its happening. They were charged with offences relating to culpable homicide not amounting to murder, voluntarily causing grievous hurt, voluntarily causing hurt and mischief by killing and poisoning of animals. On the issue of the framing of charges against Union Carbide India Limited, the presiding judge was of the opinion that he did not see any impropriety in the prosecution of Union Carbide India Limited, even though it is an artificial person. He further added that only section 304 and section 326 of IPC, provided both imprisonment and fine for the offence, while the other relevant sections provided for imprisonment or fine or both. The Sessions court also declared that the Chairman of the Union Carbide Corporation and the Union Carbide (Eastern), Hongkong, and the three other accused in the case were absconders. It has also ordered the extradition of Mr. Warren Anderson.\textsuperscript{132}

A relevant question is whether the session’s court will ever complete the trial of the accused.\textsuperscript{133} According to the doctrine of \textit{de die-in-diem} a sessions case can not be tried piecemeal. Once a trial has commenced the judge must proceed until it is over. Section 231 of the Criminal Procedure Code also affirms this position. The question also arises whether the Indian accused could be treat separately from the foreign ones? What will happen if the foreign accused

\textsuperscript{131} Sec. 35 of the Indian Penal Code states that whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with the knowledge or intention.

\textsuperscript{132} See Anil Sharma, "Tragedy Without End", \textit{Times of India} (New Delhi) 5 December, 1993.

\textsuperscript{133} See "UCC Clout Hampers Anderson's Prosecution", \textit{News Time} (Hyderabad), 20 April, 1992. The Union Law Minister reportedly admitted in September 1994 that there were little chances of Anderson being brought to India, see Bhopal : More Evasion" \textit{Economic and Political Weekly}, December 3, 1994, Vol. XXIV, No. 49, p. 3057. Interestingly 50.4 per cent shares owned by UCC has been sold away to Mcleod Ruggel of the Khaitan Group. See "Bhopal: Ten Years After" \textit{Economic and Political Weekly}, November 26, 1994, p. 3003.
appear after the trial is over? Will fresh evidence be recorded or evidence already recorded in the absence of a proclaimed offender will be used for his conviction or acquittal?

(G) Medical Consequences and Benefits of Doubt

The medical consequences of the Bhopal disaster are yet to be fully known and the benefit of doubt should have gone to the victims. Ironically most of the claimants were being denied compensation because of their inability to prove beyond doubt that death or injury was attributable to gas exposure.134 For the ascertainment of death claims post mortem reports were heavily relied upon. Authorities had ignored the fact that in a large number of death cases a post mortem was not performed. The government has itself admitted that more than 4000 people died due to gas exposure, while records at the Institute of Legal and Forensic medicine in Bhopal showed that only 960 post mortems were conducted.135

(H) Medical Surveillance Ignored

Lamentably, the Supreme Court while negotiating the settlement ignored the significance of a fuller study of the long term effects of the MIC gas.136 The government must learn a lesson in public health. Besides providing care to the injured, it should also give priority to a scientific surveillance system.137

134 Salinath Sarange "It Seems that We Not Union Carbide are the Culprits", Times of India (New Delhi) 30 March, 1993. According to one report by the International Medical Commission on Bhopal, proper medical records were rarely kept, victims leaving after critical treatment were not readmitted as disaster victims. See Sandhya Srinivasan "Bhopal: The Cover-Up Continuing" The Sunday Times (New Delhi) 4 December, 1994.

135 Ibid.

136 Union Carbide Corporation Vs Union of India, n.122.

137 See Seema Sirohi "Six Years After Bhopal: The Lack of a Disciplined Response", Telegraph (Calcutta), 8 December 1990. According to the doctors attaining Bhopal victims, few of them have made full recoveries and the health problem were passing into the next generation. See Christopher Thomas, "Court Opens Way for Negligence Charges" Times (London), 4 October, 1991.
This case study of the Bhopal industrial disaster establishes that the present safety laws are inadequate to control future Bhopals. The study also highlights that the international law has not developed sufficient legal mechanism to control industrial mass disasters.

The next and the last chapter points out the gaps in the existing law governing industrial disasters in the light of the above study and suggests certain recommendations to overcome these problems.