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469A Bukit Timah Road
#07-01, Tower Block, Singapore 259770
Tel: 6516 6179 / 6516 4239
Fax: 6776 7505 / 6314 5447
Email: isassec@nus.edu.sg
Website: www.isas.nus.edu.sg



The Bhopal Tragedy Verdict: Can India Handle Industrial Disasters?

Amitendu Palit¹

Abstract

The recent verdict on the Bhopal Gas Tragedy of 1984 has drawn attention to India's legal safeguards for handling industrial catastrophes. This paper discusses the existing shortcomings for fixing liabilities in industrial accidents in India. Arguing that the Bhopal case highlights the failure to apply the principle of 'polluter pays', the paper concludes that industrialisation without safeguards can have disastrous consequences.

The world's worst industrial catastrophe occurred in India twenty-five years ago. On the cold winter night of 2-3 December 1984, around 40 tonnes of methyl isocyanate (MIC) gas leaked out of the Union Carbide of India Limited (UCIL) pesticide manufacturing plant at Bhopal in the state of Madhya Pradesh in India. The deadly gas unleashed a ruthless spell of death in the city as the rest of the country slept peacefully. Thirty-six municipal wards in Bhopal with an estimated population of 559,835 people were exposed to the MIC.² More than 3,000 people died on the night itself. The death toll is estimated to have risen to 20,000³ over the years as more and more people gradually succumbed to the ill-effects of the poisonous gas.

¹ Dr Amitendu Palit is Head (Development & Programmes) and Visiting Senior Research Fellow at the Institute of South Asian Studies, an autonomous research institute at the National University of Singapore. He can be contacted at isasap@nus.edu.sg. The views reflected in this paper are those of the author and not the institute.

² Bhopal Gas Tragedy Relief and Rehabilitation Department, Bhopal, Government of Madhya Pradesh, India, www.mp.gov.in/bgtrrdmp/facts.htm. Accessed on 21 June 2010.

³ 'Bhopal GoM to submit final report today'; *The Times of India*; <http://timesofindia.indiatimes.com/articleshow/6073510.cms?prtpage=1>. Accessed on 21 June 2010.

Memories of the disaster have revived following the recent verdict delivered by a Bhopal court on the gas tragedy. The court on 7 June 2010 convicted the then-UCIL Chairman and seven others of causing death by negligence and awarded them a maximum imprisonment of two years. The convicted were also asked to pay Rs 100,000 (US\$2,125)⁴ each. All the convicted immediately applied for bail and obtained release, setting off a public furore over the judgement.

The verdict has drawn attention to an issue being debated in India for several years: Does the country have a strong legal framework for handling industrial disasters? The issue assumes critical importance in the context of a country that has embarked on a path of rapid and aggressive industrialisation in pursuit of high economic growth.

The ineffectiveness of existing laws for punishing polluters and errant industries is evident from the difficulties faced in fixing liabilities. There are two aspects to the latter. The first is compensation received by victims of industrial accidents. The scale of the Bhopal disaster was not limited to deaths of people only. Injurious effects of the MIC gas have prevailed over years leading to serious impairments and disabilities among people of Bhopal. Children exposed to the gas have grown up with chronic illnesses. The adverse consequences of the calamity have spread across generations. But have the victims and their kin been adequately compensated for their sufferings?

The UCIL paid US\$470 million as complete settlement of all its liabilities (civil and criminal).⁵ Assessment of economic rehabilitation that followed thereafter indicates that most victims of personal injuries received compensations of Rs 25,000 (US\$830), while for death claims the average compensation was Rs 62,000 (US\$2,200).⁶ Several people were left uncompensated since they could not conclusively establish that their injuries were directly related to the exposure to MIC. Thus, it was not only a matter of compensations being small but also inefficient procedures often denying even these small reliefs.

The only law in India that entitles victims of industrial disasters affected by handling hazardous substances to award of compensation is the Public Liability Insurance Act of 1991. Section 3(1) of the Act stipulates a maximum compensation of Rs 25,000 for fatal accidents

⁴ 'Bhopal Gas Tragedy: Accused awarded only 2 years in jail, get bail'; <http://news.rediff.com/slide-show/2010/jun/07/slide-show-1-bhopal-gas-tragedy-verdict.htm>. Accessed on 21 June 2010 and 'Bhopal Trial: Eight convicted over India gas disaster'; BBC, http://news.bbc.co.uk/2/hi/south_asia/8725140.stm. Accessed on 21 June 2010.

⁵ Eckerman, Ingrid (2005), *The Bhopal Saga – Causes and Consequences of the World's Largest Industrial Disaster*, (India: Universities Press).

⁶ Ibid.

and permanent disability.⁷ The compensation is minimal given the extensive damages that can be inflicted by industrial accidents.

The second aspect critical to fixation of liability pertains to responsibilities for post-disaster management. The aftermath of the Bhopal catastrophe witnessed deposition of almost 400 tonnes of toxic chemicals at the site of the disaster. These chemicals have not been cleaned up till today. They remain major health hazards for the residents of the city. Several scientific studies carried out on the basis of testing samples of soil, groundwater, water from tube wells, and vegetables from areas surrounding the UCIL plant have shown contamination due to high incidence of several toxic heavy metals and chemical compounds (e.g. naphthol, mercury, copper, nickel, carbon tetrachloride, chloroform and benzene hexachloride).⁸

Why has not the toxic waste been cleared till this date? The plant was operated by UCIL, the Indian subsidiary of the Union Carbide. The latter sold off its Indian arm in 1994 with the approval of the Supreme Court of India. The arm was renamed and currently exists as Eveready Industries India Ltd. The Madhya Pradesh government revoked the lease of the land on which the plant stood in 1998. Union Carbide itself was acquired by the United States (US)-based Dow Chemical Company in 2001. Several environment activists and civil society groups have been arguing that the toxic waste removal is Dow's responsibility. Dow, however, has steadfastly maintained that it acquired the assets of Union Carbide only after the latter fully settled its liabilities in the Bhopal case. It therefore does not inherit any obligation to fulfil any liabilities arising from the incident including cleaning-up of the site.⁹ The decision on fixing the responsibility to clean up the site has been pending with the Jabalpur High Court in Madhya Pradesh since 2004.

The disappointment over the verdict on Bhopal prompted the Government of India to look into the matter afresh. A Group of Ministers (GoM) headed by the Minister of Home Affairs Mr P. Chidambaram reviewed several aspects of the tragedy that were back in spotlight following the verdict. These included compensations awarded to victims and expeditious action on cleaning the toxic waste. In its recommendations submitted to the Cabinet of Ministers on 21 June 2010, the GoM proposed a financial package of Rs 13.2 billion (about US\$300 million) for the rehabilitation of accident victims, environmental clean-up and upgrade of seven hospitals in Bhopal for extending better treatment to affected people.¹⁰

⁷ The Public Liability Insurance Act, 1991; (no.6 of 1991); Ministry of Law and Justice (Legislative Department), Government of India; For fatal accidents, the law provides for medical reimbursement up to a maximum of Rs 12,500 (US\$415), [www.cpcb.nic.in/upload/NewItems/\(38\)%20THE%20PUBLIC%20LIABILITY%20INSURANCE%20ACT,%201991.doc](http://www.cpcb.nic.in/upload/NewItems/(38)%20THE%20PUBLIC%20LIABILITY%20INSURANCE%20ACT,%201991.doc). Accessed on 21 June 2010.

⁸ These various studies have been carried out by local municipal authorities, Greenpeace, BBC and the Centre for Science and Environment (CSE), India.

⁹ 'Dow to NDTV on no Bhopal Liability', <http://ndtv.com/news/india/dow-to-ndtv-on-no-bhopal-liability-31362.php?u=1029>. Accessed on 22 June 2010.

¹⁰ 'GoM for hike in payouts, review of verdicts', *The Times of India*;

The GoM's proposals, despite being steps in the right direction, will probably be construed by many as efforts aimed at offering ad-hoc solutions to what continue to remain larger and unaddressed issues. As far as compensation is concerned, the Public Liability Insurance Act is clearly insufficient for addressing fallout of large-scale industrial disasters. With several chemical hubs coming up in India, concerns over impacts of potential future accidents continue to loom large. These concerns are expected to figure prominently in the ongoing public debate on the civil nuclear liability bill as well.

The delay in removing the toxic wastes is a pertinent example of the failure to apply the 'polluter pays' principle in industrial pollution accidents. The fact that these wastes have been lying unattended for several years reflects the inability to fix liabilities. Even now, it is not clear as to who should eventually clear the wastes. Should it be the Dow Chemical Company who now owns the assets of the Union Carbide? Should it be the Eveready Industries? Or should it be the Madhya Pradesh government that has owned the site land for more than a decade now?

The GoM has proposed setting aside a sum of Rs 3 billion for enabling the initial clean-up. It has also recommended inviting global bids for exhaustive waste removal and decontamination. A joint task force comprising representatives from the Government of India and the Government of Madhya Pradesh is proposed to oversee the clean-up exercise in close coordination with the Central Pollution Control Board (CPCB). The key question that remains unanswered is, with the decision of the Jabalpur High Court on the clean-up still pending, will there be interests expressed by global agencies in taking up the cleaning?

More than twenty-five years after it occurred, the latest developments over the Bhopal tragedy highlight the inadequacies in India's legal framework in tackling fatal outcomes of industrial disasters. Rapid industrial and manufacturing developments are essential for India's high growth and economic prosperity. But, industrialisation without safeguards can have disastrous consequences. The verdict on Bhopal is a stark reminder of the legal limitations and urgent imperatives for devising appropriate safeguards for avoiding future Bhopals.

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