

Honourable Prime Minister,
Government of India,
North Block, Raisina Hill,
New Delhi 110 011

26 February 2018

Sub: An Urgent Call for Decisive Action to Prevent Union Carbide Corporation from Escaping Criminal Liability for Crimes Related to the December 1984 Bhopal Gas Disaster.

Dear Sir,

On behalf of the survivors of the 1984 Union Carbide disaster in Bhopal, we urge you to undertake immediate action to ensure that Union Carbide Corporation, USA remains available to India's criminal justice system until such time as justice is served. As you must know Union Carbide, USA has been criminally charged for causing the deaths of thousands of people and illness among over half million residents of Bhopal under Sections 304, 326, 324, 429, r/w section 35 of the Indian Penal Code. The US Corporation was declared an absconder in 1992 by the Bhopal District Court and continues to evade prosecution. Through this letter we wish to apprise you with the full facts regarding the impending trifurcation of the absconding Corporation through which it can escape criminal liability for the Bhopal Gas Disaster.

Sir, we must emphasise to you that Union Carbide Corporations, USA's availability to Indian prosecutors is under the most imminent threat.

Union Carbide's 100% owner Dow Chemical—which since November 2014 has ignored at least five directions from the Bhopal District Court to appear in the criminal case on the disaster and explain the continued non-appearance of its subsidiary—last year completed a merger of equals with DuPont Nemours, USA to form DowDuPont Incorporated. This company intends to complete a three-way split of its merged businesses by June 1st 2019. According to regulatory Form 10 K filings in the U.S.A, Union Carbide will itself be divided between the resulting companies:

'... it is expected that a portion of UCC's business will move to the specialty products

business as part of the intended spin-off transactions’

DowDuPont managers announced this month that the first of the spin-off transactions – for the Materials Science company – will be completed in Spring 2019. As a portion of its business will be split into this new company, Union Carbide will be a fundamentally changed entity by March 2019 at the very latest.

Sir, it is a matter of fundamental legal principle that criminal liability cannot be transferred from one entity to another, not even to a succeeding one. Therefore once Union Carbide ceases to exist in its current form, India’s courts will have been stripped of their power to pursue and enforce the grave criminal charges still pending against it.

Sir, as you must know, the CBI carried out the investigations on the disaster and in December 1987 pressed grave criminal charges against Union Carbide Corporation, USA, its Asian subsidiary Union Carbide Eastern, Hong Kong, its Indian subsidiary Union Carbide India Limited and 9 officials of the corporation. including Chairman Warren Anderson. In 1992, each of the three foreign accused – Union Carbide Corporation, USA, Union Carbide Eastern and the Chairman of the company Warren Anderson were declared absconders after failing to answer multiple lawful summonses to appear in court.

In the case of Union Carbide Eastern, Hong Kong, it was already too late: the company was wound-up in 1991, and though it immediately reformed as Union Carbide Asia Pacific, Singapore– employing the exact same business contracts and directors– the CBI failed to rise to the challenge of formulating a way in which to secure the prosecution of the company, instead professing itself powerless to proceed against the accused.

Sir, in a 1991 review of the 1989 civil settlement with Union Carbide, a constitutional bench of Supreme Court judges opined:

‘It is a matter of importance that offences alleged in the context of a disaster of such gravity and magnitude should not remain uninvestigated. The shifting stand of the Union of India on the point should not by itself lead to any miscarriage of justice.’

Sir, as India's elected leader you do not need to be reminded that you bear a solemn constitutional duty to uphold its sovereign laws. You have rightly been scathing of those who have failed in this non-derogable duty in the past. Union Carbide Eastern and Warren Anderson can never now be tried for the thousands of preventable deaths and ruined lives in India. In the final reckoning, spineless disdain for the sworn duties of office allowed both to place themselves beyond reach of India's laws.

Sir, it is already the case that of the 26 years Union Carbide has been a fugitive from India's courts, 10 have slipped by under the watch of National Democratic Alliance governments. If, like Warren Anderson, Union Carbide is also allowed to evade the reach of Indian justice, in perpetuity, the responsibility will this time fall squarely upon the NDA government.

Sir, decades after Warren Anderson was unlawfully flown out of 'Old India', will 'New India' also be stained with an equivalent infamy, thanks to a comparable scorn for national duty? Will 'New India' also sit on its hands and allow Union Carbide Corporation to escape for all time from the very same charges Warren Anderson himself evaded?

If your answer is in the negative, Sir, we respectfully suggest that this government urgently initiate a three-point strategy:

1. Safeguard the criminal justice process

- The Central Bureau of Investigation must obtain a prohibitive writ to prevent the break-up of Union Carbide and dissipation of its assets. Since the 2001 merger with Dow Chemical, Union Carbide's asset value has already fallen by around 40% while Dow's has risen by over 150%.

2. Empower prosecuting agencies

- Create and finance a special cell of the CBI dedicated to prosecuting the case against Union Carbide Corporation, USA, and The Dow Chemical Company, USA
- Expedite proceedings in the Chief Judicial Magistrate's Court, Bhopal, with weekly

hearings. Mandate a dedicated Magistrate assigned to the hearings.

3. Ensure compliance with the rule of law

- Use bilateral obligations under the Mutual Legal Assistance Treaty on Criminal Matters (2001) – which fall under the rubric of international law – to enlist the support of U.S. agencies in ensuring that Union Carbide and Dow Chemical abide by lawful orders within India’s courts (such as judicial summonses and injunctive relief).
- Direct the CBI to pursue *ex parte* proceedings against Union Carbide and Dow Chemical, both of whom have continually disregarded directions from India’s courts to attend trial.
- Direct the CBI to make an urgent application for asset attachment orders against Dow Chemical, which conducts substantial business in India through more than half a dozen subsidiaries and which for over 17 years has been harbouring an absconder from Indian justice.

Sir, in conclusion we wish to emphasise that if the CBI, which works under your directions, fails to take urgent steps to ensure Union Carbide Corporation, USA’s availability for prosecution, the survivors of the Bhopal disaster and the citizens of this country will never forget or forgive this anti-national crime of omission.

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