SYNOPSIS AND LIST OF DATES

The present Curative Petition is being filed by the Union of India as *parens patriae* of the victims of the world's largest industrial disaster - the 'Bhopal Gas Tragedy' seeking enhancement of compensation which was determined by this Hon'ble Court vide its Orders dated 14th and 15th February, 1989 reported in **(1989) (1) SCC 674,** read with order dated 4th May, 1989 reported in **(1989) 3 SCC 38** and the judgment and order in the review petitions dated 3rd October, 1991 reported in **(1991) 4 SCC 584.**

The present Curative Petition is being filed by the Union of India invoking the principles enunciated by this Hon'ble Court in paras 30, 37 and 38 of the order dated 4th May, 1989 reported in **(1989) 3 SCC 38.** This Court in paragraph 30 observed that the settlement is based on certain 'assumptions of truth' and if the said assumptions are unrelated to 'realities'**,** then the 'element of justness' of the settlement would seriously be impaired.

> "These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, **the element of 'justness' of the determination and of 'truth' of its factual foundation would seriously be impaired**. **The 'justness' of the settlement is based on these assumptions of truth."**

Further, in paras 37 and 38, this Hon'ble Court categorically observed that it will not shut out any important material which would affect the justness of the settlement:

> **"37.** A few words in conclusion. A settlement has been recorded upon material and in circumstances which persuaded the court that it was a just settlement. **This is not to say that this Court will shut out any important material and**

compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this Court is human and fallible. What appears to the court to be just and reasonable in that particular context and setting, need not necessarily appear to others in the same way. Which view is right, in the ultimate analysis, is to be judged by what it does to relieve the undeserved suffering of thousands of innocent citizens of this country. As a learned author said:

"In this imperfect legal setting we expect judges to clear their endless dockets, uphold the Rule of Law, and yet not utterly disregard our need for the discretionary justice of Plato's philosopher king. Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present ...."

But the course of the decisions of courts cannot be reached or altered or determined by agitational pressures. If a decision is wrong, the process of correction must be in a manner recognised by law. Here, many persons and social action groups claim to speak for the victims, quite a few in different voices. The factual allegations on which they rest their approach are conflicting in some areas and it becomes difficult to distinguish truth from falsehood and half-truth, and to distinguish as to who speaks for whom.

38. However, all of those who invoke the corrective processes in accordance with law shall be heard and the court will do what the law and the course of justice requires. The matter concerns the interests of a large number of victims of a mass disaster. The court directed the settlement with the earnest hope that it would do them good and bring them immediate relief, for, tomorrow might be too late for many of them. But the case equally concerns the credibility of, and the public confidence in, the judicial process. **If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the court and that, as a result, serious miscarriage of justice, violating the constitutional and legal rights of the persons affected, has been occasioned, it will be the endeavour of this Court to undo any such injustice.** But that, we reiterate, must be by procedures recognised by law. Those who trust this Court will not have cause for despair."

Invoking the aforesaid principles and the liberty granted by this Hon'ble Court in the judgement and order dated 4th May, 1989 reported in **(1989) 3 SCC 38,** the Union of India is filing the present Curative Petition interalia for enhancement of compensation on account of factual inaccuracies in the impugned judgements and orders

It is further submitted that the Respondent tort feasors are also liable to reimburse and make good the loss suffered to the national ex-chequer due to the torturous actions of the Respondents which led to the Bhopal Gas Tragedy. It is submitted that a sum of ₹ 1627.03 Cr. was spent by the Government of India and the State of Madhya Pradesh towards various relief and rehabilitation measures. It is submitted that the Respondents are liable to pay this sum of ₹ 1627.03 Cr., which is the actual sum spent by the Government of India and the Government of Madhya Pradesh on various reliefs and rehabilitation measures.

The Petitioner is also claiming an amount of ₹ 315.7 Cr. towards remedial measures on account of environmental degradation caused by the Respondents.

For the purpose of convenience of this Hon'ble Court, the scheme of Synopsis, the various heads of the Claims and the basis thereof, is outlined hereunder for the sake of convenience of this Hon'ble Court.

A. BACKGROUND IN BRIEF [PAGES D - E]

B. THE BASIS OF PRESENT CURATIVE PETITION [PAGES E - H]

C. DOCTRINE OF CURATIVE PETITION [PAGE H]

D. PRESENT CURATIVE PETITION - AN ATTEMPT TO CURE GROSS MISCARRIAGE OF JUSTICE [PAGES –I - J]

E. THE CLAIMS [PAGES J- Y]

CLAIM I

I. CLAIM ON ACCOUNT OF INCORRECT AND WRONG ASSUMPTION OF FACTS AND DATA IN THE IMPUGNED JUDGMENTS AND ORDERS [PAGES J - S]

A. BACKGROUND IN BRIEF

Before adverting to the challenge in the present Curative Petition, it is necessary to note in brief, the background of the present Curative Petition.

A industrial catastrophe of untold magnitude in the history of mankind unfolded in Bhopal on the night intervening the 02.12.1984 and 03.12.1984 when a deadly and toxic gas *Methyl Isocynate* ("MIC") leaked from the Plant of the Respondents resulting in the death of

5,295 Indian citizens, injuries to almost 5,27,894 people, besides loss of livestock and loss of property of almost 788 persons and contamination of the soil. (“Bhopal Gas Tragedy”)

On 29.03.1985 the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was passed by Parliament authorizing the Government of India as *parens patriae* exclusively to represent the victims so that the interest of the victims of the disaster are fully protected and that the claims for compensation are pursued separately, effectively, and equitably.

Original Suit No. 1113/86 came to be filed in the District Court at Bhopal by the Union of India against the Union Carbide Company ("UCC") seeking compensation of US $ 3.3 billion.

On 13.12.1987, the District Court made an interim order directing payment of ₹ 350 Cr. as interim compensation.

UCC challenged the aforesaid order before the High Court of Madhya Pradesh. The High Court by its order dated 04.04.1988 reduced the quantum of interim compensation to ₹ 250 Cr.

Special Leave Petitions were filed by both the Union of India as well as the UCC being Civil Appeal No. 3187-88 of 1988 and SLP (C) No. 1380 of 1988.

The Respondents were directed to pay a sum of US $ 470 million as settlement compensation under orders of this Hon’ble Court dated 14th and 15th February, 1989 reported in **(1989) 1 SCC 674** and order dated 4th May, 1989 reported in **(1989) 3 SCC 38**. Review Petitions filed against the order dated 14th and 15th February, 1989 and the order dated 4th May, 1989 impugning the sufficiency of the compensation came to be dismissed by this Hon’ble Court on 3rd

October, 1991 vide judgment and order reported in **(1991) 4 SCC 584.**

B. THE BASIS OF PRESENT CURATIVE PETITION

The concept of a curative petition was evolved by this Hon’ble Court only in 2002 with the passing of the judgment in **Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388**.

The Trial Court at Bhopal pronounced its verdict in respect of the criminal case against the accused persons on 07.06.2010. The Trial Court recorded categorical findings about the culpability of the accused persons. However, a mild sentence under Section 304A of the Indian Penal Code (“IPC”) was imposed. There was widespread public outcry and concern throughout the country which led to a comprehensive reconsideration and review at the highest level by the Union of India of all issues pertaining to the Bhopal Gas Tragedy and its aftermath. As a result of such comprehensive reconsideration and review, various steps have been outlined and are being implemented.

In respect of the compensation issue, a thorough review of all issues was conducted. The previous affidavits and the stand taken by the Union of India in various foras including this Hon'ble Court have also been reviewed.

In the comprehensive review, it has emerged that basic underlying assumptions of fact and data in the impugned judgments and orders are incorrect thereby vitiating the very foundation on which the compensation was awarded. As a result, the stand hitherto taken and the various affidavits filed regarding the finality of the impugned judgments and orders of this Hon'ble Court cannot be said to be correct and legal.

The Petitioner submits that the Bhopal Gas Leak Tragedy is unparalleled in human history. As such, the relief and rehabilitation measures are of necessity undergoing constant review and change. As time goes by, more and different aspects of the tragedy unfold and therefore the need for alleviating the misery of the people has to be considered on a continuing basis. Hence, it is respectfully submitted that this Hon'ble Court be pleased to consider the matter on merits and not on a technical considerations such as delay, if any, in approaching this Court.

Further, this Hon'ble Court had granted liberty to approach the Court in paras 30, 37 and 38 of its judgment dated 4th May, 1989; if the assumptions made in the order were found to be factually incorrect.

> **"**This is not to say that this Court will shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this Court is human and fallible**."**

It is respectfully submitted that in the comprehensive review that was conducted by the Government in June, 2010, it has emerged that the figures that formed the basis of the compensation awarded by this Court are completely incorrect.

In these circumstances, the petitioner is approaching this Hon'ble Court for remedying the manifest injustice that has resulted from the incorrect assumptions of fact in the impugned orders pursuant to the liberty granted by this Hon'ble Court in paras 30, 37 and 38 of the judgment dated 4th May, 1989. This aspect is dealt with in detail in **CLAIM I** in the present Curative Petition**.**

It is submitted that the Government of India and the state of Madhya Pradesh have expended about ₹1627.03 Cr. towards the various reliefs and rehabilitation measures which the State had to undertake

due to the tortuous acts of the Respondents, Union Carbide India Ltd. and the Union Carbide Corporation. This claim is dealt with under **CLAIM II** in the present Curative Petition.

The Petitioner is also claiming compensation on remedial measures to be undertaken for environmental degradation caused by the Respondents. This claim is for ₹ 315.7 Cr. This claim is dealt with under **CLAIM III** in the present Curative Petition.

Thus the compensation which is being claimed in the present Curative Petition falls under three broad heads:

CLAIM I

I. CLAIM ON ACCOUNT OF INCORRECT AND WRONG ASSUMPTION OF FACTS AND DATA IN THE IMPUGNED JUDGMENTS AND ORDERS PASSED BY THIS HON'BLE COURT;

CLAIM II

II. CLAIM OF ₹ 1627.03 CR. ON ACCOUNT OF ACTUAL EXPENDITURE INCURRED BY THE STATE TOWARDS RELIEF AND REHABILITATION MEASURES;

CLAIM III

III. CLAIM OF ₹315.7 CR. ON ACCOUNT OF REMEDIAL MEASURES TO BE UNDERTAKEN FOR ENVIRONMENTAL DEGRADATION ON THE BASIS OF POLLUTER PAYS PRINCIPLE.

C. DOCTRINE OF A CURATIVE PETITION

In **Rupa Ashok Hurra V. Ashok Hurra (2002) 4 SCC 388,** a Constitution Bench [5 Hon’ble Judges] of this Hon’ble Court whilst elucidating the doctrine of a curative petition observed that:

> “the concern of this Court for rendering justice in a cause is not less important than the principle of the finality of its judgment”.

Outlining that the primary ethos of this Court was to do justice, this Court observed that:

> “Almighty alone is the dispenser of absolute justice –
> a concept which is not disputed but by a few. We are of the view that though judges of the highest court do their best, subject of course to human fallibility yet situation may arise in the rarest of

rare cases which require reconsideration or final judgment to set alright the miscarriage of justice complained of. In such case it would not only be proper but obligatory both legally and morally to rectify the error".

This Hon'ble Court thereafter observed:

"t**hat the duty to do justice in the rarest of rare cases shall have to prevail over the policy of the certainty of judgment… wherein declining to reconsider the** judgment would be oppressive to judicial conscious and would cause perpetuation of irremediable injustice."

D. PRESENT CURATIVE PETITION - AN ATTEMPT TO CURE GROSS MISCARRIAGE OF JUSTICE

The present Curative Petition is an attempt by the Union of India to cure gross miscarriage of justice and perpetration of irremediable injustice being suffered by the victims of the Bhopal Gas Tragedy. It is submitted that the settlement compensation amount determined by this Hon'ble Court was based on certain factual assumptions which have been found to be completely incorrect and far removed from reality. This has vitiated the very basis of the compensation.

This Hon'ble Court in its Order dated 4th May, 1989 had indicated the assumptions of fact on the basis of which it had arrived at the compensation, and in paras 30, 37 and 38 of the same order had specifically granted liberty to approach the Court in case the figures were found to be incorrect. The present Curative Petition respectfully invokes the liberty granted by this Hon'ble Court as aforesaid.

It is submitted that the Union of India has not only a statutory duty under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 to represent the interest of the victims, but also has a constitutional duty to ensure that adequate compensation is paid by the tort feasor for the damage caused to the citizens of this country.

It is submitted that the impugned judgments and orders also do not take into account the impact of the disaster on the environment and that the Respondents are liable to pay the costs on account of environmental degradation.

It is submitted that the present case is one of the "rarest of rare cases" where the curative jurisdiction of this Hon'ble Court ought to be exercised in public interest to address and remedy the error apparent on the face of the record in the judgment and order dated 14th and 15th February, 1989 reported in **(1989) 1 SCC 674** read with

order dated 4th May, 1989 reported in **(1989) 3 SCC 38***;* and judgment and order dated 3rd October, 1991 reported in **(1991) 4 SCC 584.**

E. CLAIMS

CLAIM I

I. CLAIM ON ACCOUNT OF INCORRECT AND WRONG ASSUMPTION OF FACTS AND DATA IN THE IMPUGNED JUDGMENTS AND ORDERS

i) BASIC ASSUMPTIONS OF FACT FORMING THE BASIS OF COMPENSATION INCORRECT

It is submitted that the settlement compensation figure of US $ 470 million was directed to be paid by this Hon'ble Court on the basis of certain basic assumptions of facts. These assumptions have been found to be factually incorrect. As a result, the foundational basis of the compensation is itself vitiated. The order of 14th and 15th February, 1989 read with the order dated 4th May, 1989 passed by this Hon'ble Court had proceeded on the basis that there were about 3,000 death cases. Similarly, the number of cases of minor injuries was assumed to be 50,000 and the number of cases of temporary disability was assumed to be 20,000. Taking these different categories of victims into account the figure of US $ 470 million was arrived at.

It is respectfully submitted that total number of death cases resulting from the tragedy is 5,295 whereas the impugned order proceeds on the basis that there were about only 3,000 deaths. Similarly, the number of cases of minor injuries is 5,27,894 whereas the impugned order proceeded on the basis that there were only 50,000 such cases of minor injury. Also the number of cases of temporary disability is 35,455 whereas the impugned order proceeded on the basis that there were only 20,000 such cases of temporary disability.

In these circumstances, the settlement compensation of US $ 470 million arrived at by this Hon'ble Court on erroneous assumptions of

facts seriously impairs the 'reasonableness' and 'justness' of the compensation amount. It is submitted that the basic assumptions underlying the compensation being incorrect and far removed from the actual realities, the compensation amount needs to be suitably enhanced to reflect the ground realities.

II) ORDER DATED 4TH MAY 1989 ITSELF RECOGNIZES THAT THE SETTLEMENT COMPENSATION IS NOT SACROSANCT

This Hon'ble Court in its order dated 4th May, 1989 recognized the fact that the settlement figure had been arrived at on the basis of certain factual assumptions and if these factual assumptions were itself found to be incorrect, the 'justness' of the settlement would be seriously impaired.

As this Hon'ble Court in its order dated 4th May, 1989 put it:

> "**the justness of the settlement is based on these assumptions of truth**."

The Court observed that if these 'assumptions of truth' are found to be incorrect, the settlement compensation cannot be said to be 'just'. This Court held that if the total number of death cases or injury cases are shown to be more than contemplated, then the element of 'justness' in the compensation amount would be seriously impaired. In this regard, the Court observed in paragraph 30 as follows:

> "These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness' of the determination and of 'truth' of its factual foundation would seriously be impaired. The 'justness' of the settlement is based on these assumptions of truth."

Further, in paras 37 and 38, this Hon'ble Court categorically observed that it will not shut out any important material which would affect the justness of the settlement:

“37. A few words in conclusion. A settlement has been recorded upon material and in circumstances which persuaded the court that it was a just settlement. **This is not to say that this Court will shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this Court is human and fallible.** What appears to the court to be just and reasonable in that particular context and setting, need not necessarily appear to others in the same way. Which view is right, in the ultimate analysis, is to be judged by what it does to relieve the undeserved suffering of thousands of innocent citizens of this country. As a learned author said4:

“In this imperfect legal setting we expect judges to clear their endless dockets, uphold the Rule of Law, and yet not utterly disregard our need for the discretionary justice of Plato’s philosopher king. Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present ....”

But the course of the decisions of courts cannot be reached or altered or determined by agitational pressures. If a decision is wrong, the process of correction must be in a manner recognised by law. Here, many persons and social action groups claim to speak for the victims, quite a few in different voices. The factual allegations on which they rest their approach are conflicting in some areas and it becomes difficult to distinguish truth from falsehood and half-truth, and to distinguish as to who speaks for whom.

38. However, all of those who invoke the corrective processes in accordance with law shall be heard and the court will do what the law and the course of justice requires. The matter concerns the interests of a large number of victims of a mass disaster. The court directed the settlement with the earnest hope that it would do them good and bring them immediate relief, for, tomorrow might be too late for many of them. But the case equally concerns the credibility of, and the public confidence in, the judicial process. **If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the court and that, as a result, serious miscarriage of justice, violating the constitutional and legal rights of the persons affected, has been occasioned, it will be the**

> **endeavour of this Court to undo any such injustice.** But that, we reiterate, must be by procedures recognised by law. Those who trust this Court will not have cause for despair."

It is respectfully submitted that the 'assumptions of truth' on the basis of which the settlement was arrived at are far removed from the truth, and therefore, it is imperative that the settlement figure has to be reworked keeping in mind the true ground realities i.e. the actual number of fatalities and injuries.

As stated hereinbefore, the figures assumed by this Hon'ble Court in respect of death and injury cases are factually incorrect. The total number of death cases resulting from the tragedy is 5,295 whereas the impugned order proceeds on the basis that there were about only 3,000 deaths. Similarly, the number of cases of minor injuries is 5,27,894 whereas the impugned order proceeded on the basis that there were only 50,000 such cases of minor injury. Also the number of cases of temporary disability is 35,455 whereas the impugned order proceeded on the basis that there were only 20,000 such cases of temporary disability.

III) 'JUSTNESS' AND 'REASONABLENESS' OF THE COMPENSATION AMOUNT IN SERIOUS JEOPARDY ON ACCOUNT OF FACTUAL INACCURACIES OF FIGURES

It is respectfully submitted that the 'justness' and the 'reasonableness' of the compensation amount of US $ 470 million is in serious jeopardy on account of factual inaccuracies. If death cases alone have been found to be almost double than what was assumed in the impugned order and minor injury cases have been found to be more than 10 times of the original assumed figure in the impugned order, the settlement compensation amount cannot be considered to be reasonable.

It is submitted that the Respondent tort feasors cannot escape liability to pay reasonable compensation to all the victims of the tragedy. It is submitted that the Respondents cannot shirk away from making good the additional compensation payable to the additional victims whose facts and figures were not reckoned by this Hon'ble Court when the settlement was recorded in 1989. It is submitted that the Respondents are also liable under the doctrine of strict liability in law to compensate these additional victims for the loss caused to them.

IV) THE ERRORS APPARENT ON FACE OF THE RECORD

This Hon'ble Court in its order dated 4th May, 1989 reported in **(1989) 3 SCC 38** stated the reasons which persuaded the Court to make the order for settlement. The Court formulated the following questions in this regard in Para 5.

> "(*a*) How did this Court arrive at sum of 470 million US dollars for an overall settlement?
>
> (*b*) Why did the court consider this sum of 470 million US dollars as 'just, equitable and reasonable?..."

In paragraph 12 of the said judgment, it is stated that the Court had examined the prima facie material for the purposes of quantification of the sum. From paragraph 15 to paragraph 28, the Court considered the reasonableness of compensation.

a.) *Error in computation of Death Cases*

In paragraph 22 of the judgment, the Court records that the estimated number of fatal cases was 3,000 and compensation in this category could range between ₹ 1 lakh to ₹ 3 lakhs. The relevant portion of paragraph 22 in this regard reads as follows:

> "In these circumstances, as a rough and ready estimate, this Court took into consideration the prima facie findings of the High Court and estimated the number of fatal cases at 3000 where compensation could range from Rs 1 lakh to Rs 3 lakhs. This would account for Rs 70 Crores, nearly

> 3 times higher than what would, otherwise, be awarded in comparable cases in motor vehicles accident claims."

It is respectfully submitted that the figure of fatalities as estimated by this Hon'ble Court are completely incorrect. The figures of death are 5,295 cases; an increase of almost 76.5% more than the original figures. An amount of ₹ 70 Cr. was the estimated compensation for these cases under the impugned order. The compensation was to range from ₹ 1 lakh to 3 lakhs. *[See Para 22 of the judgment and order dated 4th May 1989 reported in (1989) 3 SCC 38.]* The estimated average payment of compensation in respect of the death cases work out to ₹ 2.33 lakhs per person. If the additional cases of death numbering 2,295 are taken into account, a further amount of ₹ 53. 47 Cr. at the 1989 value of the rupee vis-à-vis the Dollar, is required. The following calculations will demonstrate the same:

Sr. No.	Particulars	Figures
1.	Death figures as per the Order dated 4.5.1989	3,000 persons
2.	Amount allocated under the Order dated 4.5.1989	₹ 70 Cr.
4.	Average compensation envisaged in death category as per the order dated 4.5.1989	₹ 2.33 lakhs
3.	Actual death figures	5,295 persons
5.	Addl. compensation required for 2,295 cases of death	₹ 53.47 Cr.

b.) *Error in computation of Temporary Injury Cases*

In respect of temporary disability cases, this Hon'ble Court allocated a sum of ₹ 100 Cr. and assumed that figure of temporary disability was 20,000 cases which were to be paid, on an average, a sum of ₹ 50,000 in each case. *[See Para 24 of the judgment and order dated 4th May, 1989 reported in (1989) 3 SCC 38].* However, the actual number of temporary disability cases is 35,455 and an additional amount of ₹ 77.27 Cr. is required to cover the additional 15,455 cases.

c) *Error in computation of Minor Injury Cases*

In respect of minor injuries, an allocation of ₹ 100 Cr. was made under the order dated 4th May, 1989 (assuming the number of minor injury cases to be 50,000). *[See Para 27 of the judgment and order dated 4th May, 1989 reported in (1989) 3 SCC 38]* However, the minor injury claims have risen to 5,27,894 persons. Thus, an additional amount of ₹ 955.79 Cr. is required over and above the ₹ 100 Cr. originally envisaged.

Other Cases

However, it is also to be brought to the notice of this Hon'ble Court that the actual number assumed by the court in respect of certain categories in the order dated 4th May, 1989 has been found to be on the higher side resulting in the extra provision of compensation in those categories. In respect of permanent disability, the court took into account the figure at 30,000. *[See Para 24 of the judgment and order dated 4th May, 1989 reported in (1989) 3 SCC 38],* whereas the actual number of cases of permanent disability is only 4,902. As a result, an extra sum of ₹ 208.31 Cr. was provided in respect of cases of permanent disability.

Similarly, in respect of utmost severe injuries this Court took the figure as 2,000 and assessed the liability as ₹ 80 Cr. *[See Para 24 of the judgment and order dated 4th May, 1989 reported in (1989) 3 SCC 38]* However, there are only 42 cases of utmost severity adjudicated and thus an extra sum of ₹ 78.32 Cr. was provided for this category in the settlement amount.

Likewise, for loss of property, 50,000 cases were assumed whereas only 555 cases have been adjudicated in the said category resulting in extra provision of ₹ 74.17 Cr. For loss of livestock, 50,000 cases were

assumed where as only 233 cases have been adjudicated in the said category resulting in extra provision of ₹ 49.77 Cr.

v) TABULAR CHART INDICATING THE ADDITIONAL AMOUNT REQUIRED DUE TO THE INCREASED FATALITIES AND INJURIES NOT TAKEN IN TO ACCOUNT IN THE IMPUGNED ORDERS

A net analysis of all the figures in respect of death and all other injuries after setting off any excess amounts as indicated in 'other cases' above, shows that an additional amount of ₹ 675.96 Cr. is due and payable on account of the increased fatalities and minor injuries. A Chart indicating the basis for arriving at this figure is presented hereunder for the sake of convenience:

S.No.	**Category**	**Supreme Court Order dated 4.5.1989**			**Actual number of cases**	**Difference in number of cases**	**Additional amount required to be paid (₹ in Cr.)**
		No. of cases assumed	**Amount provided (₹ in Cr.)**	**Average amount (in ₹)**			
		A	B	C	D	E=(A-D)	F=(E x C)
1.	Death	3000	70	2,33,000	5295	2,295	53.47
2.	Permanent Disability	30,000	250	83,000	4902	25,098	-208.31
3.	Temporary disability	20,000	100	50,000	35,455	15,455	77.27
4.	Utmost severe cases	2000	80	4,00,000	42	1,958	-78.32
5.	Minor injuries	50,000	100	20,000	5,27,894	4,77,894	955.79
6.	Loss of property	50,000	75	15,000	555	49,445	-74.17
7.	Loss of livestock	50,000	50	10,000	233	49,767	-49.77
TOTAL		2,05,000	725		5,74,376		675.96

vi) QUANTIFICATION OF THE CLAIM

It is respectfully submitted that the aforesaid figure of ₹ 675.96 Cr. had become due and payable in 1989. Since the said amount is being claimed in 2010, several aspects such as the devaluation of the rupee, interest and the inflation index have to be factored into the claim. In this background, the Petitioner is placing the following calculations which are being pleaded alternatively for the kind consideration of this Hon'ble Court.

a.) **OPTION I – ADDITIONAL COMPENSATION WITH INTEREST**

A sum of ₹ 675.96 Cr. payable in February, 1989, was equivalent to ₹ 675.96/15.27 = **US $442.67** million in February, 1989 (taking the exchange rate of ₹ 15.27 to 1 US$ at the relevant time). Had this amount of US $ 442.67 million been paid by UCC in 1989 and if it had remained invested in US dollars till date; then taking into account the monthly/half yearly/yearly LIBOR (London Inter-Bank Offered Rates) from February, 1989 till August 22, 2010, the same would have earned an interest of **US$ 686.52** million/ US$ 751.46 million/ US$ 798.71 million, respectively. After adding the principal amount of US $ 442.67 million, this amount would have become **US$ 1129.19 million**/ **US$ 1194.13 million**/ **US$ 1241.38 million** respectively. Converted into Indian Rupees, on the basis of the exchange rate of ₹ 46.61 per US$ as on August 22, 2010, the equivalent amount will be ₹ **5263.16 Cr**./₹ **5565.84 Cr.** /₹ **5786.07 Cr**. respectively.

RBI has reckoned that if an amount had been invested at monthly, half yearly or yearly LIBOR, then the investment at yearly LIBOR would yield the highest return. Accordingly, the amount of additional compensation to be claimed should be **US$ 1241.38 million** or ₹ **5786.07 Cr.**, at present value.

b.) **OPTION II – ADDITIONAL COMPENSATION WITH FACTORS OF INFLATION INDEX FOR INDUSTRIAL WORKERS**

Taking into consideration the increase in consumer price index for industrial workers from 1989 till date (4.88 times) and applying it to the additional amount of ₹ 675.96 Cr., gives a figure of ₹ **3298.69 Cr.** which, converted into US $ at the exchange rate of ₹ 46.61 per US$ as on August 22, 2010, will be equal to **US $ 707.72 million.**

c.) OPTION III – ADDITIONAL COMPENSATION WITH FACTORS OF ACTUAL DIFFERENCE BETWEEN 1989 VALUE AND PRESENT VALUE

The sum of US $420 million and ₹ 69 Cr. paid by UCC in 1989 has till today increased to ₹ 3085.71 Cr., due to exchange rate variation and / accumulation of interest. Hence, by the same proportion, the additional amount of ₹ 675.96 Cr., if provided in 1989 would have become ₹ **2936.36 Cr.** which converted into US $ at the exchange rate of ₹ 46.61 per US$ as on August 22, 2010, will be equal to **US $ 629.99 million**.

It is submitted that the Petitioner is placing all the computations/ options before this Hon'ble Court to enable this Hon'ble Court to decide on the most appropriate calculation of compensation in the facts and circumstances of the case.

CLAIM II

II. CLAIM OF ₹ 1627.03 CR. ON ACCOUNT OF ACTUAL EXPENDITURE INCURRED BY THE STATE TOWARDS RELIEF AND REHABILITATION MEASURES

(i) RELIEF AND REHABILITATION MEASURES UNDERTAKEN BY THE GOVERNMENT OF INDIA AND THE STATE OF MADHYA PRADESH

It is respectfully submitted that the Government of India and the State of Madhya Pradesh have had to spend ₹ 1627.03 Cr. from time to time out of the tax payers' money on account of various reliefs and rehabilitation measures which the State had to undertake due to the tortuous actions of then Union Carbide India Limited, Union Carbide Corporation and the Respondents herein. It is submitted that precious tax payers’ money has been used by the State to remedy the wrongs

done by the Respondents. It is submitted that the money of the tax payer cannot be used to meet liability of tort feasors. It is submitted that the actual sums which the State has expended towards relief and rehabilitation measures have to be reimbursed by the tort feasors concerned. The break up of ₹ 1627.03 Cr. is as under:

a.) Amount spent by the Government of India and the State of Madhya Pradesh from time to time

a.	Amount spent by GOI from 1985 to 1989	₹ 102 Cr.
b.	Amount spent by the GOI from 1990 to 1999 as per first Action Plan	₹ 258 Cr.
c.	Amount spent by GOMP from 1999 to March 2009	₹ 254 Cr.
d.	Amount sanctioned for new plan of action	₹ 272.75 Cr.
Total		**₹ 886.75 Cr.**

b.) Amount of ex-gratia of ₹ 740.28 Cr. based on the decision of the Government dated 24.06.2010.

(ii). THE DECISION OF THE GOVERNMENT DATED 24.06.2010

The Central Government on 24.06.2010 has taken a conscious and considered decision to provide further relief to the victims who were more severely affected by the tragedy. The Central Government has taken a considered decision to release a sum of ₹ 740.28 Cr. to the victims. This decision was taken keeping all the relevant facts into consideration including the fact that the average compensation awarded was far below the maximum compensation envisaged under the guidelines and the impugned order of this Hon'ble Court.

A perusal of the actual figures would show that in overwhelming majority of cases, the original compensation awarded in a death case has been far below the average amount of ₹ 2.33 lakhs that they should have received as per the guidelines of the court. Only in 59 cases, the original compensation awarded is ₹ 2 lakh or more. The following chart in respect of death cases brings out this anomaly:

Scale of Compensation (in ₹)	***No. of cases***
1 lakh	*3512*
1 to 2 lakh	*1724*
2 to 3 lakh	*47*
3 to 4 lakh	*8*
4 to 5 lakh	*4*

The Government was of the considered view that there is no rationale in prescribing different ranges of compensation within the category of death cases. It was felt that in all death cases, highest permissible amount i.e. ₹10 lakh (Rupees five lakh as original compensation and Rupees. five lakh as pro-rata compensation) should be the uniform basis for awarding of compensation and the shortfall if any, should be paid by way of ex-gratia. Accordingly to the following category of cases; the Government has decided to pay ex-gratia:-

S.No.	**Category**	**Compensation**
1.	Death	₹ 10 Lakh (less amount already received)
2.	Permanent Disability	₹ 5 Lakh (less amount already received)
3.	Cancer Cases	₹ 2 Lakh (less amount already received)
4.	Total Renal Failure	₹ 2 Lakh (less amount already received)
5.	Temporary Disability	₹ 1 Lakh (less amount already received)

The amount payable on account of ex-gratia sanctioned by the Central Government pursuant to the decision dated 24.06.2010 would work out to be ₹ 740.28 Cr.

It is respectfully submitted that the Respondents are thus liable to pay a sum of ₹ 1627.03 Cr. (₹ 886.75 Cr. + ₹ 740.28 Cr.) under this head of the Claims.

(ii) TAX PAYERS MONEY CANNOT BE UTILIZED TO PAY THE TORT FEASORS LIABILITY

It is respectfully submitted that the tax payers' money cannot be utilized for the purposes of meeting the liability of the Respondent tort feasors. It is respectfully submitted that the observations and the majority judgment in para 198 in the order dated 3rd October, 1991 are completely incorrect. This Hon'ble Court in the said para observed that the Union of India should make good the deficiencies if any in the settlement fund. It is submitted that the minority judgment in this regard rightly takes the view that it is impermissible in law to burden the Union of India with the tort feasors liability. Justice Ahmadi, in his dissenting opinion on this point, observed as follows:

> "**220… <u>I do not think that the Union of India can be saddled with the liability to make good the deficit, if any, particularly when it is not found to be a tort-feasor.</u>**"

It is respectfully submitted that the issue of whether the Central Government will be liable to make good the shortfall in the compensation amount, if any, was never in issue at the time of the passing of the orders dated 14th and 15th February, 1989, as well as the order dated 4th May, 1989, which clarified the basis of the settlement. Therefore, the liability to make good the shortfall ought not to have been imposed on the Union of India in 1991, when the review petitions were decided.

III. CLAIM ON ACCOUNT OF ENVIRONMENTAL DEGRADATION

It is respectfully submitted that the Respondents are also liable to pay on account of environmental degradation on the "polluter pays" principle. It is submitted that various type of extremely hazardous wastes were lying in and around the factory premises of the Respondents. The hazardous wastes lying in and around factory premises were of three types namely:-

A. Stored toxic waste: At the time of decommissioning of the Union Carbide Plant certain hazardous chemicals namely tarry residues (46.5 MT), semi processed pesticides (18.5 MT), contaminated soil (127 MT) were stored in the sheds/halls of the factory.

B. Contaminated Soil: When the factory was in operation there were a few disposal areas for chemical wastes namely there solar evaporation ponds, area near the incinerator and other dump sites within the factory premises which were contaminated by hazardous wastes.

C. Decommissioned MIC and SEVIN Plants: These decommissioned plants have corroded with the passage of time and are collapsing. These can cause environmental damage. Further some of the raw materials storage tanks may also need decontamination.

It is submitted that the cost for remediation of the environmental degradation and removal of waste is about ₹ 315.7 Cr. (in the first instance).

It is submitted that Union of India has made an application in this regard before the Hon’ble High Court of Madhya Pradesh, at Jabalpur in Writ Petition No. 2802/04 claiming the said amount from the Respondents herein. The said application is pending consideration before the Hon’ble High Court.

It is submitted that for the purposes of cohesive adjudication, it is imperative that this Hon’ble Court also adjudicate the claim on account of environmental degradation. The Petitioner is also taking immediate steps for transfer of proceedings from the Madhya Pradesh High Court to this Hon'ble Court.

It is submitted that out of this amount of ₹ 310 Cr. an amount of ₹110 Cr. is urgently needed for detoxification, decommissioning of UCIL

plant., ₹ 100 Cr. for disposal of contaminated soil and other wastes yet to be dug up in secured landfill, and ₹ 100 Cr. for incineration of the present stored tarry waste. The affidavit filed by Union of India on 30.07.2010 in the High Court categorically brings-out this aspect. Relevant portion of the affidavit is extracted hereunder for sake of convenience:-

> "28. NEERI has recommended creation of a secured landfill at UCIL premises for disposal of the contaminated soil and the waste other than incinerable waste. The cost of construction, operation, caping and post-closure monitoring of the secured landfill of size 400 m x 400m x 5m is estimated to be approx. Rs.100 crore.
>
> 29. Similarly, IICT for preparation of tender document for detoxification, decommissioning and dismantling of UCIL plant has estimated the total cost for the entire operation to be approximately Rs.110 Crore. Additionally, approximately a sum of Rs.100 Crore may be required for incineration of the incinerable waste which will be taken to the incinerator at Pithampur. Thus, a total of approximately Rs.310 Crore is needed in the first instance for the remediation. The Group of Ministers has recommended that the Government of India may bear the cost of remediation of approximately Rs.310 Crore in the first instance without prejudice to its right to claim restitution."

It is further submitted that apart from the ₹ 310 Cr. required for disposal of 350 MT of waste, an amount of ₹ 3.7 Cr. has already been spent by the Government of India towards the cost of studies conducted by NER, NGRI and IICT and an amount of ₹ 2.0 Cr. has been spent on disposal of 40 MT of waste lying at the Plant. The break up of the figure of the sum of ₹ 315.7 Cr. is depicted in the table hereunder:

	Cost of studies conducted by NEERI, NGRI, and IICT	₹ 3.7 Cr.
	Amount spent on disposal of 40 MT and other related activities	₹ 2.0 Cr.
	Amount earmarked for disposal of 350 MT and for environmental remediation as per the studies Conducted by the NEERI, NGRI, IICT	₹ 310 Cr.

Total	**₹315.7 Cr.**

In view of the aforesaid, it is respectfully submitted that Respondents are liable to pay ₹ 315.7 Cr. on account of remedial measures to be undertaken for the environmental degradation caused by the Respondents. It is submitted that this liability is squarely on Respondent under 'Polluters Pays' principle which has been upheld by this Hon’ble Court in several cases.

It is respectfully submitted that the Respondents are jointly and severally liable to pay the claims in the present Curative Petition. Respondent No.1 was the holding company of Union Carbide (India) Ltd at the time of the disaster. Respondent No.1 is currently a fully owned subsidiary of Respondent No.2. Respondent No.3 has purchased 50.9% of the shareholding in Respondent No.1 in Union Carbide (India) Ltd. in April 1994 and Respondent No.4 is Union Carbide (India) Ltd which is currently known as M/s Eveready Industries Ltd.

. It is respectfully submitted that all these Respondents are jointly and severally liable for payment of the Claims as detailed in this Curative Petition.

Hence, the present curative petition.

LIST OF DATES AND EVENTS

The brief factual matrix leading to the filing of the present Curative Petition is as under:

2.12.1984 to 3.12.1984	On the night intervening of 2.12.1984 and 3.12.1984, a highly dangerous and toxic gas called MIC escaped from tank No. E-610 from the Bhopal factory of the Respondents. The total number of death which occurred was 5,295 and almost 5,27,894 persons suffered permanent and temporary injuries.
29.3.1985	The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was passed authorizing the Government of India as *parens patriae* to represent the victims exclusively so that the interest of the victims of the disaster are fully protected and that the claims for compensation are pursued separately, effectively, and equitably.
8.4.1985	The Petitioner in exercise of the power conferred on it under the Act, instituted an action on behalf of the victims against the UCC in United States District Court, Southern District of New York, for award of compensation for the damage caused by the disaster.
12.5.1986	Judge Keenan allowed the defence of UCC on the ground of forum non conveniens and held that: "The Indian Judiciary must have the opportunity to stand tall before the world and to pass judgment on behalf of its own people."
1986	Original Suit No. 1113/86 was filed in the District Court at Bhopal by the Union of India against the UCC seeking compensation of US $ 3.3 billion.
13.12.1987	The District Court made an interim order directing payment of ₹ 350 Cr. as interim compensation.
4.4.1988	UCC challenged this award before the High Court of Madhya Pradesh. The High Court by its order dated 4.4.1988 reduced the quantum of interim compensation to ₹ 250 Cr.

1988	Special Leave Petitions were filed by both the Union of India as well as the UCC being Civil Appeal No. 3187-88 of 1988 and SLP (C) No. 1380 of 1988.
14.2.1989	This Hon'ble Court directed an overall settlement of the claims for US $ 470 million **(See 1989 1 SCC 674)** and also directed consequential termination of all civil and criminal proceedings.
15.2.1989	A further order was passed by this Hon'ble Court **(See 1989 1 SCC 674)** issuing certain directions inter alia, regarding the mode of payment of the said sum of US $ 470 million.
24.2.1989	The amount of US $ 470 million was received by way of two Cheques one bearing No. 382736 dated 24.2.1989 for ₹ 68,99, 509/- issued by State Bank of India at New Delhi and the other bearing Cheque No. 41688 dated 21.2.1989 for US $ 420 million.
14.3.1989	The Reserve Bank of India vide its letter dated 14.03.1989 indicated the procedure under which the two accounts would be operated. At this stage it is relevant to note that pursuant to a Government of India decision, it was decided that the loss on account of any exchange rate difference would be borne by the Union of India. Thus reserve bank converted US dollar into Rupees as and when required for disbursement at the rate of US $ 6.55 = ₹ 100 and the balance was debited to the account of the Union of India. Thus the victims were able to get the rupee equivalent of the dollar at the current rate. Due to this mechanism adopted by the Petitioner, and the devaluation of the rupee and the accumulation of interest, the actual disbursement came to about ₹ 3,000 Cr.
04.05.1989	This Hon'ble Court vide order dated 04.05.1989 sought to give reasons and the basis for arriving at the settlement figure of US $470 million. The figure of US $470 million was

<table>
<tr><td></td><td>arrived at taking into consideration certain assumptions of facts. This Hon’ble Court assumed that the death cases were about 3000 and an amount of ₹ 225 Cr. was thought to be sufficient for minor injuries, loss of property and loss of livestock etc. [See (1989) 3 SCC 38]</td></tr>
<tr><td>22.10.1989</td><td>This Hon’ble Court delivered its judgment in Charanlal Sahu Vs. Union of India upholding the constitutional validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985. (1990) 1 SCC 613.</td></tr>
<tr><td>03.10.1991</td><td>Review Petition filed against the orders dated 14th, 15th February, 1989 and 04.05.1989 came to be dismissed by this Hon’ble Court upholding the compensation amount of US $470 million. [See 1991 4 SCC 584]</td></tr>
<tr><td>13.4.1992</td><td>The Government of India laid down guidelines for determination of the compensation. The category and the range of compensation is as follows:
<table>
<tr><th>S.NO.</th><th>CATEGORY</th><th>RANGE/CEILING (₹)</th></tr>
<tr><td>1.</td><td>Death</td><td>1 – 3 Lakhs</td></tr>
<tr><td>2.</td><td>Permanent Total or Partial Disability</td><td>50,000 – 2 Lakhs</td></tr>
<tr><td>3.</td><td>Temporary total or Partial Disability</td><td>25,000 – 1 Lakh</td></tr>
<tr><td>4.</td><td>Injury of utmost severity</td><td>Upto 4 Lakh</td></tr>
<tr><td>5.</td><td>Claims for minor injuries</td><td>Upton 20,000</td></tr>
<tr><td>6.</td><td>Loss of belongings</td><td>Upto 15,000</td></tr>
<tr><td>7.</td><td>Loss of Livestock</td><td>Upto 10,000</td></tr>
</table></td></tr>
<tr><td>8.9.1992</td><td>The guidelines were amended and the ceiling in respect of death cases was raised from ₹ 1-3 lakhs to ₹ 1-5 lakhs.</td></tr>
<tr><td>October 1992 to 2004</td><td>As on 31.7.2004, a compensation amounting to approximately ₹ 1536.27 Cr. was awarded.</td></tr>
<tr><td>19.07.2004</td><td>This Hon’ble Court vide order dated 19.07.2004 directed that since funds were still available, a pro rata compensation can be made to the persons who have already been awarded</td></tr>
</table>

	compensation in the ration of 1:1. Accordingly an amount of ₹ 1,509 Cr. was paid to all the persons who were originally awarded compensation. **[See (2006) 13 SCC 321]**
07.06.2010	The Trial Court at Bhopal vide its judgment and order dated 07.06.2010 convicted the accused persons under Section 304A. The Trial Court recorded categorical findings about the culpability of the accused persons. However, a mild sentence was imposed in view of under Section 304A IPC.
24.06.2010	A comprehensive reconsideration and review was done by the Union of India at the highest level of all issues pertaining to the Bhopal gas tragedy and its aftermath. As a result of such comprehensive reconsideration and review, various steps have been outlined and are being implemented. In respect of compensation, the Government was of the considered view that there is no rationale in prescribing different ranges of compensation for certain category of cases like death. It was therefore decided that the highest factor has to be taken as the uniform basis for awarding of compensation in these cases. Accordingly the Government has proposed the additional compensation in the certain severe cases. The approximate pay out on account of this is ₹ 740.28 Cr.
11.2010	The present Curative Petition filed by the Union of India seeking enhanced compensation.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CURATIVE PETITION (C) NO. _____OF 2010

[AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED 14TH AND 15TH FEBRUARY 1989, 4th MAY 1989 AND THE JUDGMENT AND ORDER DATED 3RD OCTOBER 1991 PASSED BY THIS HON'BLE COURT]

BETWEEN:

UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF CHEMICALS & FERTILIZERS
DEPARTMENT OF CHEMICALS & PETROCHEMICALS
A WING, SHASTRI BHAVAN,
NEW DELHI-110 001. **... PETITIONERS**

VERSUS

1. **M/S UNION CARBIDE CORPORATION,**
   PRESENTLY A WHOLLY OWNED SUBSIDIARY OF
   DOW CHEMICALS COMPANY,
   HAVING ITS HEAD OFFICE AT
   400, WEST SAM HOUSTON
   PARKWAY SOUTH, HOUSTON,
   TEXAS 77042, USA

2. **THE DOW CHEMICALS COMPANY,**
   HAVING ITS HEAD OFFICE AT 2030,
   DOW CENTRE, MIDLAND,
   MICHIGAN, 48674,
   MICHIGAN (USA)

3. **M/S MCLEOD RUSSEL INDIA,**
   HAVING ITS REGISTERED OFFICE,
   AT FOUR MANGOE LANE,
   SURENDRA MOHAN GHOSH SARANI,
   KOLKATA-700 001

4. **M/S EVEREADY INDUSTRIES LIMITED,**

INDIA, HAVING ITS REGISTERED

OFFICE AT EVEREADY INDUSTRIES INDIA LTD.

JEEVAN DEEP BUILDING,

1, MIDDLETON STREET,

KOLKATA – 700 071

...RESPONDENTS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT

The humble petition of the Petitioner above-named

I. MOST RESPECTFULLY SHOWETH:

The Petitioner is the Union of India constituted as *parens patriae* under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

Respondent No. 1 is a multi-national company engaged in the manufacture of chemicals and plastics and agricultural products which are used as raw material to manufacture a diverse range of products. Respondent No. 1 was the holding company of the Union Carbide India Ltd., at the time of the disaster. Respondent No. 1 is currently the fully owned subsidiary of **Respondent No. 2**, since 2001.

Respondent No. 3 had purchased the 50.9 per cent share-holding of Respondent No. 1 in UCIL in April, 1994, pursuant to an order made by this Hon'ble Court in **Union Carbide Corpn. Ltd. v. Union of India, 1995 Supp (4) SCC 59**.

Respondent No. 4 is Union Carbide India Ltd., which is currently known as M/s Eveready Industries Ltd.

The present Curative Petition is being filed by the Union of India seeking enhancement of the compensation amount of $ 470 million which was directed to be paid in pursuance of the orders of this Hon'ble Court dated 14th and 15th February 1989 reported in (1989) 1

SCC 674 and (1989) 3 SCC 38 and judgment and order dated 3rd October 1991 reported in (1991) 4 SCC 584, for the victims of the Bhopal Gas Tragedy. The Review Petition filed against the order dated 14th and 15th February, 1989 came to be dismissed by this Hon'ble Court on 3rd October, 1991 upholding the settlement compensation as $ 470 million. The Union of India is seeking enhanced compensation by way of the present Curative Petition for the victims of the Bhopal Gas Tragedy.

II. FACTS

The brief facts leading to the filing of the present Curative Petition are as follows:

1. On the night intervening of 2.12.1984 and 3.12.1984, a highly dangerous and toxic gas called MIC escaped from Tank No. E-610 from the Bhopal Unit of Union Carbide India Ltd. The total number of deaths which occurred were 5,295 and 5,27,894 persons suffered permanent and temporary injuries.

2. Subsequently on 29.3.1985, The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was passed authorizing the Government of India as *parens patriae* exclusively to represent the victims so that the interest of the victim of the disaster are fully protected and that the claims for compensation are pursued separately, effectively, and equitably. Copy of the Act is annexed hereto and marked as **ANNEXURE-P.1**

3. On 8.4.1985 the Petitioner in exercise of the power conferred on it under the Act, instituted action on behalf of the victims against the UCC in United States District Court, Southern District of New York, for award of compensation for the damage caused by the disaster.

4. Judge Keenan vide its judgment dated 12.05.1986 allowed the defence of the UCC on the ground of forum non conveniens and held that:

> "The Indian Judiciary must have the opportunity to stand tall before the world and to pass judgment on behalf of its own people."

5. In 1986, Original Suit No. 1113/86 came to be filed in the District Court at Bhopal by the Union of India against the UCC seeking compensation of US $ 3.3 billion.

6. The District Court vide its judgment and order dated 13.12.1987 made an interim order directing payment of ₹ 350 Cr. as interim compensation. Copy of the order is annexed hereto and marked as **ANNEXURE-P.2.**

7. Thereafter, the UCC challenged the Ld. District Court's order before the High Court of Madhya Pradesh. The High Court by its order dated 04.04.1988 reduced the quantum of interim compensation to ₹ 250 Cr. Copy of the order date 04.04.1988 passed by the Hon'ble High Court is annexed hereto and marked as **ANNEXURE –P.3.**

8. In 1988, Special Leave Petitions came to be filed by both the Union of India as well as the UCC being Civil Appeal No. 3187-88 of 1988 and SLP (C) No. 1380 of 1988.

9. This Hon'ble Court vide its judgment and order dated 14.02.1989 reported in (1989) 1 SCC 674, directed an overall settlement claims for US $ 470 million and also directed consequential termination of all civil and criminal proceedings. Copy of the order dated 14.02.1989 passed by this Hon'ble Court is annexed hereto and marked as **ANNEXURE-P.4.**

10. A tabulated form of the settlement scheme as per the order dated 14.02.1989 of this Hon'ble Court is as follows:

Sr. No.	Particulars	Figures recorded in the order	Amount granted as per the order (In Cr.)
1.	Death figures	3,000	70
2.	Permanent injuries	30,000	250
3.	Temporary injuries	20,000	100
4.	Utmost severe	2,000	80

	cases		
5.	Minor Injuries	50,000	100
6.	Loss of livestock	50,000	50
7.	Loss of property	50,000	75
Total			₹ **725 Cr.**

11. A further order dated 15.02.1989 reported in (1989) 3 SCC 38, was passed by this Hon'ble Court issuing certain directions inter alia, regarding the mode of payment of the said sum of US $ 470 million. Copy of the order dated 15.02.1989 is annexed hereto and marked as **ANNEXURE-P.5.**

12. On 24.2.1989, the amount of US $ 470 million was received by way of two Cheques one bearing Cheque No. 382736 dated 24.2.1989 for ₹ 68,99, 509/- issued by State Bank of India at New Delhi and the other bearing Cheque No. 41688 dated 21.2.1989 for US $ 420 million.

13. The Reserve Bank of India vide its letter dated 14.03.1989 indicated the procedure under which the two accounts would be operated. At this stage it is relevant to note that pursuant to a Government of India decision, it was decided that the loss on account of any exchange rate difference would be borne by the Union of India. Thus reserve bank converted US dollar into Rupees as and when required for disbursement at the rate of US $ 6.55 = ₹ 100 and the balance was debited to the account of the Union of India. Thus the victims were able to get the rupee equivalent of the dollar at the current rate. Due to this mechanism adopted by the Petitioner, and the subsequent devaluation of the rupee and accumulation of interest, the actual disbursement was about ₹ 3,000 Cr. A Copy of the letter dated 14.03.1989 of the RBI is annexed hereto and marked as **ANNEXURE-P. 7.**

14. This Hon'ble Court vide its order dated 04.05.1989 gave reasons that persuaded the Court to make the order for settlement. [See (1989) 3 SCC 38] Paragraph 4 of the judgment reads as follows:

> "It appears to us that the reasons that persuaded this Court to make the order for settlement should be set out, so that those who have sought a review might be able effectively to assist the court in satisfactorily dealing with the prayer for a review. The statement of the reasons is not made with any sense of finality as to the infallibility of the decision; but with an open mind to be able to appreciate any tenable and compelling legal or factual infirmities that may be brought out, calling for remedy in review under Article 137 of the Constitution."

15. The figure of US $470 million was arrived at taking into consideration certain assumptions of fact. This Hon'ble Court assumed that the death cases were 3,000 and 50,000 for minor injuries. In Para 30 of the judgment, the Hon'ble Court has categorically observed that if the total number of cases of death or the number of cases of permanent and partial disability is shown to be so large that the basic assumptions underlying the settlement become unrelated to the reality, then it would impair the element of "justness" in the settlement. The relevant portion of the paragraph reads as follows:

> "These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness' of the determination and of 'truth' of its factual foundation would seriously be impaired. The 'justness' of the settlement is based on these assumptions of truth."

Copy of the order dated 04.05.1989 is annexed hereto and marked as **ANNEUXRE P-8.**

16. On 03.01.1991 Review Petitions filed against the orders dated 14th, 15th .02.1989 and 04.05.1989 came to be dismissed by this Hon'ble Court upholding the compensation amount of US $470 million. [See 1991 4 SCC 584].Copy of the order dated 03.01.1991 reported in (1991) 4 SCC 584 is annexed hereto and marked as **ANNEUXRE P-9.**

17. On 13.4.1992, the Government of India laid down guidelines for determination of the compensation. Copy of the letter dated

13.04.1992 sent by the Government of India to the Welfare Commissioner is annexed hereto and marked as **ANNEXURE-P.10.**

18. The category and the range of compensation as suggested by the Government is as follows:

S.NO.	CATEGORY	RANGE/CEILING (₹)
1.	Death	1 – 3 Lakhs
2.	Permanent Total or Partial Disability	50,000 – 2 Lakhs
3.	Temporary total or Partial Disability	25,000 – 1 Lakh
4.	Injury of utmost severity	Upto 4 Lakh
5.	Claims for minor injuries	Upton 20,000
6.	Loss of belongings	Upto 15,000
7.	Loss of Livestock	Upto 10,000

19. On 8.9.1992, the aforesaid guidelines were amended and it was decided to raise the ceiling in respect of death cases from 1-3 lakhs to 1-5 lakhs. Copy of the guidelines are annexed hereto and marked as **ANNEXURE-P.11.**

20. A detailed chart indicating the complete figure and the amount paid against each category is annexed hereto and marked as **ANNEXURE-P.12.**

21. From October 1992 to 2004, a compensation amounting to approximately ₹ 1536.27 Cr. was awarded to the victims of the Bhopal tragedy.

22. This Hon'ble Court vide its order dated 19.07.2004 directed that since funds were still available, a *pro rata* compensation can be made to the persons who have already been awarded compensation in the ratio of 1:1. Accordingly, an additional amount of ₹ 1509 Cr. was paid to all the persons who were originally awarded compensation. [See **(2006) 13 SCC 321**]. Copy of the said order is annexed hereto and marked as **ANNEXURE P-13.**

23. It is to be noted that the Convener, Bhopal Gas Peedith Mahila Udyog Sangathan & 7 Ors. have filed a Special Leave Petition being SLP (CC)

No. 5631/2010. Several claims have been made by the Petitioners thereto against the Claims Commissioner and the Union of India. This Hon'ble Court has issued notice on the Petition on 23.4.2010. A copy of the order of this Hon'ble Court dated 23.4.2010 is annexed hereto and marked as **ANNEXURE-P-14.**

24. The Trial Court at Bhopal pronounced its verdict in respect of the criminal case against accused persons on 07.06.2010. The Trial Court recorded categorical findings about the culpability of the accused persons. However, only a mild sentence under Section 304A IPC was imposed. There was widespread public outcry about the same which led to a comprehensive reconsideration and review at the highest level by the Union of India of all issues pertaining to the Bhopal gas tragedy and its aftermath. As a result of this comprehensive reconsideration and review, various steps have been outlined and are being implemented.

25. The Government of India and the State of Madhya Pradesh have had to spent about ₹ 1627.03 Cr. on account of various reliefs and rehabilitation measures which the State had to undertake due to the tortuous acts of the UCIL, UCC and the Respondents.

26. The break up of ₹ 1627.03 which the Government of India and the State of Madhya Pradesh have paid to the victims of the Bhopal Gas Tragedy is as follows:

c.) Amount spent by the Government of India and the State of Madhya Pradesh from time to time:

Amount spent by GOI from 1985 to 1989	₹ 102 Cr.
Amount spent by the GOI from 1990 to 1999 as per first Action Plan	₹ 258 Cr.
Amount spent by GOMP from 1999 to March 2009	₹ 254 Cr.
Amount sanctioned for new plan of action	₹ 272.75 Cr.

d.) Amount of ex-gratia of ₹ 740.28 Cr. based on the decision of the Government dated 24.06.2010.

27. In respect of compensation, on 24.06.2010, the Government of India has taken a conscious and considered decision that there can be no gradation in respect of certain cases and the highest limit in such cases has to be adopted as a uniform measure. The net outflow in this regard is Rs 740.28 crores.

28. The Union of India filed its affidavit in W.P No. 2802/2004 in the High Court of Madhya Pradesh on 13.07.2010 interalia claiming ₹ 315.7 Cr. in the first instance on account of environmental degradation. Copy of the said affidavit along with the concerned affidavits are annexed hereto and marked as **ANNEXURE P-15.**

It is submitted that out of the ₹ 315.7 Cr. an amount of ₹ 310 Cr. is required for disposal of 350 MT of waste, an amount of ₹ 3.7 Cr. has already been spent by the Government of India towards the cost of studies conducted by NER, NGRI and IICT and an amount of ₹ 2.0 Cr. has been spent on disposal of 40 MT of waste lying at the Plant.

It is submitted that for the purposes of cohesive adjudication, it is imperative that this Hon'ble Court also adjudicate the claim on account of environmental degradation. The Petitioner is also taking immediate steps for transfer of proceedings from the Madhya Pradesh High Court to this Hon'ble Court.

29. Present Curative Petition filed on _____ November, 2010.

III. GROUNDS

Re: CLAIM I

CLAIM ON ACCOUNT OF INCORRECT AND WRONG ASSUMPTION OF FACTS AND DATA IN THE IMPUGNED JUDGMENTS AND ORDERS

1. For that the settlement compensation figure of US $ 470 million was directed to be paid by this Hon'ble Court on the basis of certain basic

assumptions of facts. These assumptions have been found to be factually incorrect. As a result, the foundational basis of the compensation is itself vitiated.

2. For that the total number of death cases resulting from the tragedy is 5,295 whereas the impugned order proceeds on the basis that there were about only 3,000 deaths. Similarly, the total no. of cases of minor injury is 5,27,894 whereas the impugned order proceeds on the basis of only 50,000 such cases. Also the number of cases of temporary disability is 35,455 whereas the impugned order proceeded on the basis that there were only 20,000 such cases of temporary disability.

3. For the settlement compensation of US $ 470 million arrived at by this Hon'ble Court on erroneous assumption of facts seriously impairs the 'reasonableness' and 'justness' of the compensation amount. It is submitted that the basic assumptions underlying the compensation being incorrect and far removed from the actual realities, the compensation amount needs to be suitably enhanced to reflect the ground realities.

4. For that this Hon'ble Court in its order dated 4th May, 1989 recognized the fact that the settlement figure had been arrived at on the basis of certain factual assumptions and if these factual assumptions were itself found to be incorrect, the 'justness' of the settlement would be seriously impaired.

As this Hon'ble Court in its order dated 4th May, 1989 put it:

> "**the justness of the settlement is based on these assumptions of truth**."

The Court observed that if these 'assumptions of truth' are found to be incorrect, the settlement compensation cannot be said to be 'just'. This Court held that if the total number of death cases or injury cases are shown to be more than contemplated, then the element of 'justness' in

the compensation amount would be seriously impaired. In this regard, the Court observed in paragraph 30, 37 and 38 as follows:

> "These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. **If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness' of the determination and of 'truth' of its factual foundation would seriously be impaired. The 'justness' of the settlement is based on these assumptions of truth."**
>
> **"37.** A few words in conclusion. A settlement has been recorded upon material and in circumstances which persuaded the court that it was a just settlement. **This is not to say that this Court will shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this Court is human and fallible.** What appears to the court to be just and reasonable in that particular context and setting, need not necessarily appear to others in the same way. Which view is right, in the ultimate analysis, is to be judged by what it does to relieve the undeserved suffering of thousands of innocent citizens of this country. As a learned author said4:
>
> "In this imperfect legal setting we expect judges to clear their endless dockets, uphold the Rule of Law, and yet not utterly disregard our need for the discretionary justice of Plato's philosopher king. Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present ...."
>
> But the course of the decisions of courts cannot be reached or altered or determined by agitational pressures. If a decision is wrong, the process of correction must be in a manner recognised by law. Here, many persons and social action groups claim to speak for the victims, quite a few in different voices. The factual allegations on which they rest their approach are conflicting in some areas and it becomes difficult to distinguish truth from falsehood and half-truth, and to distinguish as to who speaks for whom.
>
> **38.** However, all of those who invoke the corrective processes in accordance with law shall be heard and the court will do what the law and the course of justice requires. The matter concerns the interests of a large number of victims of a mass disaster. The court directed the settlement with the earnest hope

> that it would do them good and bring them immediate relief, for, tomorrow might be too late for many of them. But the case equally concerns the credibility of, and the public confidence in, the judicial process. **If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the court and that, as a result, serious miscarriage of justice, violating the constitutional and legal rights of the persons affected, has been occasioned, it will be the endeavour of this Court to undo any such injustice.** But that, we reiterate, must be by procedures recognised by law. Those who trust this Court will not have cause for despair."

It is respectfully submitted that the 'assumptions of truth', on the basis of which the settlement was arrived at, being far removed from truth, it is imperative that the settlement figure has to be reworked keeping in mind the true ground realities i.e. the actual fatalities and injuries.

As stated hereinbefore, the figures assumed by this Hon'ble Court in respect of death and injury cases are factually incorrect. This Hon'ble Court in the impugned order assumed that the death cases were 3,000. However the total number of death cases is 5,295.

5. For that that the 'justness' and the 'reasonableness' of the compensation amount of US $ 470 million is in serious jeopardy on account of factual inaccuracies. If death cases alone have been found to be almost double than what was assumed in the impugned order and minor injury cases have been found to be much more than 10 times the original assumed figure in the impugned order; the settlement compensation cannot be set to be a reasonable compensation.

6. For that the impugned orders suffers from the following errors apparent on the face of the record.

(i) *Error in computation of Death Cases*

In paragraph 22 of the judgment, the Court records that the estimated number of fatal cases was 3,000 and compensation in this category

could range between ₹ 1 lakh to ₹ 3 lakhs. The relevant portion of paragraph 22 in this regard reads as follows:

> "In these circumstances, as a rough and ready estimate, this Court took into consideration the prima facie findings of the High Court and estimated the number of fatal cases at 3000 where compensation could range from Rs 1 lakh to Rs 3 lakhs. This would account for Rs 70 Crores, nearly 3 times higher than what would, otherwise, be awarded in comparable cases in motor vehicles accident claims."

It is respectfully submitted that the figure of fatalities as estimated by this Hon'ble Court are completely incorrect. The figures of death are 5,295 cases; an increase of almost 76.5% more than the original figures. An amount of ₹ 70 Cr. was the estimated compensation for these cases under the impugned order. The compensation was to range from ₹ 1 lakh to 3 lakhs. *[See para 22 of the judgment and order dated 4th May 1989 reported in (1989) 3 SCC 38.]* The average payment of compensation in respect of death cases has been taken as ₹ 2.33 lakhs per person. If the additional cases of death numbering 2,295 are taken into account, a further amount of ₹ 53.47 Cr. at the 1989 value of the rupee vis-à-vis the Dollar, is required. The following calculations will demonstrate the same:

Sr. No.	Particulars	Figures
1.	Death figures as per the Order dated 4.5.1989	3,000 persons
2.	Amount allocated under the Order dated 4.5.1989	₹ 70 Cr.
4.	Average compensation envisaged in death category as per the order dated 4.5.1989	₹ 2.33 lakhs
3.	Actual death figures	5,295 persons
5.	Addl. compensation required for 2295 cases of death	₹ 53.47 Cr.

(ii) *Error in computation of Temporary Injury Cases*

In respect of temporary disability cases, this Hon'ble Court allocated a sum of ₹ 100 Cr. and assumed that figure of temporary disability was 20,000 cases who were to be paid, on an average, a sum of ₹ 50,000 in each case. *[See Para 24 of the judgment and order dated 4th May, 1989 reported in (1989) 3 SCC 38].* However, the actual number of temporary

disability cases is 35,455 and an additional amount of ₹ 77.27 Cr. is required to cover the additional 15,455 cases.

iii) *Error in computation of Minor Injury Cases*

In respect of minor injuries, an allocation of ₹ 100 Cr. was made under the order dated 4th May, 1989 (assuming the number of minor injury cases to be 50,000). *[See Para 27 of the judgment and order dated 4th May, 1989 reported in (1989) 3 SCC 38]* However, the minor injury claims have risen to 5,27,894 persons. Thus, an additional amount of ₹ 675.96 Cr. is required over and above the ₹ 100 Cr. originally envisaged.

It is submitted that the net figure of ₹ 675.96 Cr. becomes payable after reckoning the additional amount required and subtracting the excess amount provided for in the net figure paid in 1989. The Chart showing the calculation is reproduced hereunder for the sake of convenience.

S.No.	**Category**	**Supreme Court Order dated 4.5.1989**			**Actual number of cases**	**Difference in number of cases**	**Additional amount required to be paid (₹ in Cr.)**
		No. of cases assumed	**Amount provided (₹ in Cr.)**	**Average amount (in ₹)**			
		A	B	C	D	E=(A-D)	F=(E x C)
1.	Death	3000	70	2,33,000	5295	2,295	53.47
2.	Permanent Disability	30,000	250	83,000	4902	25,098	-208.31
3.	Temporary disability	20,000	100	50,000	35,455	15,455	77.27
4.	Utmost severe cases	2000	80	4,00,000	42	1,958	-78.32
5.	Minor injuries	50,000	100	20,000	5,27,894	4,77,894	955.79
6.	Loss of property	50,000	75	15,000	555	49,445	-74.17
7.	Loss of livestock	50,000	50	10,000	233	49,767	-49.77
TOTAL		2,05,000	725		5,74,376		675.96

7. For that additional compensation of ₹ 675.96 Cr. is required under the various options given herein below. The figure of ₹ 675.96 Cr. had become due and payable in 1989. Since the said amount is being claimed in 2010, several aspects such as the devaluation of the rupee, interest rate, purchasing power parity and the inflation index have to be factored whilst computing the claim amount. In this background, the Petitioner is placing the following calculations which are being pleaded alternatively for the kind consideration of this Hon'ble Court.

OPTION I – ADDITIONAL COMPENSATION WITH INTEREST

A sum of ₹ 675.96 Cr. payable in February 1989, was equivalent to ₹ 675.96/15.27 = US $442.67 million in February 1989 (taking the exchange rate of ₹ 15.27 to one US$ at the relevant time). Had this amount of US $ 442.67 million been paid by UCC in 1989 and if it had remained invested in US dollars till date, then taking into account the one monthly/six monthly/yearly LIBOR (London Inter-Bank Offered Rates) from February 1989 till August 22, 2010, the same would have earned an interest of US$ 686.52 million/ US$ 751.46 million/ US$ 798.71 million, respectively. After adding the principal amount of US $ 442.67 million, this amount would have become US$1129.19 million/ US$1194.13 million/ US$1241.38 million respectively. Converted into Indian Rupees, on the basis of the exchange rate of ₹ 46.61 per US$ as on August 22, 2010, the equivalent amount will be ₹ 5263.16 Cr. /₹ 5565.84 Cr. /₹ 5786.07 Cr. respectively.

RBI has reckoned that if an amount had been invested at monthly, half yearly and yearly LIBOR, then the investment at yearly LIBOR would yield the highest return. Accordingly, amount of additional compensation to be claimed should be US $1241.38 million or ₹ 5786.07 Cr., at present value.

OPTION II – ADDITIONAL COMPENSATION WITH FACTORS OF INFLATION INDEX FOR INDUSTRIAL WORKERS

Taking into consideration the increase in consumer price index for industrial workers from 1989 till date (4.88 times) and applying it to the additional amount of ₹ 675.96 Cr., gives a figure of ₹ **3298.69 Cr.** which, converted into US $ at the exchange rate of ₹ 46.61 per US$ as on August 22, 2010, will be equal to US $ 707.72 million.

OPTION III – ADDITIONAL COMPENSATION WITH FACTORS OF ACTUAL DIFFERENCE BETWEEN 1989 VALUE AND PRESENT VALUE

The sum of US $420 million and ₹ 69 Cr. paid by UCC in 1989 has till today increased to ₹ 3085.71 Cr., due to exchange rate variation and /accumulation of interest. Hence, by the same proportion, the additional amount of ₹ 675.96 Cr., if provided in 1989 would have become ₹ **2936.36 Cr.** which converted into US $ at the exchange rate of ₹ 46.61 per US$ as on August 22, 2010, will be equal to US $ 629.99 million.

It is submitted that the Petitioner is placing all the computations/ options before this Hon'ble Court to assist this Hon'ble Court in deciding on the most appropriate calculation of compensation in the facts and circumstances of the case.

RE: CLAIM II

CLAIM OF ₹ 1627.03 CR. ON ACCOUNT OF ACTUAL EXPENDITURE INCURRED BY THE STATE TOWARDS RELIEF AND REHABILITATION MEASURES

8. For that the Government of India and the State of Madhya Pradesh have had to spent about ₹ 1627.03 Cr. on account of various reliefs and rehabilitation measures which the State had to undertake due to the tortuous act of the UCIL, UCC and the Respondents.

9. For that the out of this sum of ₹ 1627.03 Cr., ₹ 886.75 Cr. has been actually spent by the Government of India and the State of Madhya Pradesh towards various relief and rehabilitation measures. The balance ₹ 740.28 Cr. has been sanctioned as ex gratia to the victims pursuant to the decision of the Central Government dated 26.06.2010.

10. It is submitted that the money of the tax payer cannot be used to meet liability of tort feasors. The actual sum which the state has expended towards relief and rehabilitation measures has to be reimbursed by the tort feasors concerned.

11. The Central Government on 24.06.2010 has taken a conscious and considered decision to provide further relief to the victims who were more severely affected by the tragedy. This decision was taken keeping all the relevant facts into consideration including the fact that the average compensation awarded was far below the maximum compensation envisaged under the guidelines and the impugned order of this Hon'ble Court. A perusal of the actual figures would show that in overwhelming majority of cases, the original compensation awarded in a death case has been far below the average amount of ₹ 2.33 lakhs that they should have received as per the guidelines of the court. Only in 59 cases, the original compensation awarded is ₹ 2 lakh or more. The following chart in respect of death cases brings out this anomaly:

Scale of Compensation (in ₹)	***No. of cases***
1 lakh	*3512*
1 to 2 lakh	*1724*
2 to 3 lakh	*47*
3 to 4 lakh	*8*
4 to 5 lakh	*4*

The Government was of the considered view that there is no rationale in prescribing different ranges of compensation within the category of death cases. It was felt that in all death cases, highest permissible amount i.e. ₹10 lakh (Rupees five lakh as original compensation and Rupees five lakh as pro-rata compensation) should be the uniform basis for awarding of compensation and the shortfall if any, should be paid by way of ex-gratia. Accordingly to the following category of cases, the Government has decided to pay ex-gratia:-

S.No	**Category**	**Compensation**

.		
1.	Death	₹ 10 Lakh (less amount already received)
2.	Permanent Disability	₹ 5 Lakh (less amount already received)
3.	Cancer Cases	₹ 2 Lakh (less amount already received)
4.	Total Renal Failure	₹ 2 Lakh (less amount already received)
5.	Temporary Disability	₹ 1 Lakh (less amount already received)

The total amount payable on account of ex-gratia would work out to about ₹ 740.28 Cr. It is respectfully submitted that the Respondents are liable to pay the aforesaid sum to the victims.

12. For that the tax payers' money cannot be utilized for the purposes of meeting the liability of the Respondent tort feasors. It is respectfully submitted that the observations and the majority judgment in Para 198 in the order dated 3rd October, 1991 are completely incorrect. This Hon'ble Court in the said para observed that the Union of India should make good the deficiencies if any in the settlement fund. It is submitted that the minority judgment in this regard rightly takes the view that it is impermissible in law to burden the Union of India with the tort feasors liability.

13. For that the amount of ₹ 740.28 Cr. required to be paid by the Union of India due to the insufficiencies in the settlement amount has to be borne by the Respondent tort fesaors.

14. For that the assumptions underlying the settlement are far removed from the truth and hence the 'justness' of the settlement is required to be put in question and the settlement compensation enhanced.

15. For that the long term impact of the category of claims described as "toxic tort" are by their very nature incapable of being ascertained immediately after the exposure to the toxic substance in as much as the injuries caused are latent and long term and hence any compensation has to taken into account these factors.

16. For that the nature of the evidence put on record at this stage is such that it could not have been discovered by the Petitioner herein despite due diligence at the time of the settlement inasmuch as the exposure to MIC on a mass scale had occurred for the first time in world history during the said disaster and there existed no scientific data of the long term effects of exposure to MIC on that date nor was any such data shared by the Respondents with the Petitioner.

17. For that the nature of injuries suffered by the persons exposed to MIC gas was severe and long term. It is apparent that the full dimensions of the health implications of the disaster could not have been predicted as estimated with any degree of certainty despite due diligence at the time when the settlement was approved on 04.05.1989.

18. For that, in particular, no scientific data existed or was made available to the Petitioners by the Respondents on the toxicity of MIC or the long term effects of exposure to MIC at the time of passing of the impugned orders. Further, it was not known what permanent disability or multi-organ impairment could be expected by such exposure and what could be the impact on expectant mothers or their offspring.

19. For that the impugned order dated 04.05.1989 clearly stated that the settlement was purely tentative in nature and that the justness of this settlement would be destroyed if the assumptions were found to be seriously removed from reality.

20. For that this is one of the “rarest of rare cases” where enhanced compensation ought to be paid by the Respondents to cure the manifest injustice to the victims under the law laid down in **Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388**.

21. For that this Hon’ble Court erred in coming to a conclusion that the Union of India should make good the deficiencies if any in the

compensation amount which in effect would amount to imposing an unjust liability on the tax payers.

22. For that there would be manifest failure of justice if the enhanced compensation is not provided to the victims of the Bhopal Gas Tragedy.

23. For that the reasonableness and justness element of the compensation is in serious jeopardy due to the fatalities and minor injuries which were not factored into while arriving at the compensation amount of US $ 470 million.

24. For that there has been a gross miscarriage of justice and perpetration of irremediable injustice being suffered by the victims of the Bhopal Gas Tragedy as the settlement amount which was based on certain factual assumptions has now been found to be completely incorrect and far removed from reality. This has resulted in the compensation amount being highly unreasonable and liable to be enhanced.

25. For that it is a fit case where the Curative jurisdiction of this Hon'ble Court ought to be exercised in public interest to remedy the injustice being suffered by the lakhs of victims of the Bhopal Gas Tragedy.

26. For that the impugned orders dated 14th and 15th February 1989 reported in **(1989) 1 SCC 674;** order dated 4th May 1989 reported in **(1989) 3 SCC 38** and the order dated on 3rd October, 1991 reported in **(1991) 4 SCC 584** suffer from errors apparent on the face of record which ought to be corrected in exercise of the curative powers of this Hon'ble Court.

27. For that the Respondent No. 1 is the successor in interest of the Respondent No. 2 and is bound in law to discharge all liabilities of the Respondent No. 2 notwithstanding any private arrangements that might have been arrived at between the Respondent No. 1 and Respondent No. 2 in relation to the present claim. Any private arrangement cannot

be said to be binding on this Hon'ble Court and cannot limit the power of this Hon'ble Court to correct manifest injustice.

RE: CLAIM III

CLAIM ON ACCOUNT OF ENVIRONMENTAL DEGRADATION

28. For that the Respondents are also liable to pay on account of environmental degradation.

29. For that that the cost for remedying the environmental degradation caused due to the act of the Respondent is ₹ 315.7 Cr. which is required to be reimbursed in the first instance. It is submitted that the Union of India has made an application in this regard before the Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No.2802/04. The said application is pending for the consideration before the Hon'ble High Court.

30. For the purposes of cohesive adjudication of the dispute between the parties, it is imperative that this Hon'ble Court should consider the claim on account of environmental degradation whilst considering other claims of the Petitioner. In this regard the Petitioner is also taking immediate steps for transfer of proceedings before the Madhya Pradesh High Court to be adjudicated alongwith this curative petition. The affidavit filed by Union of India on 30.07.2010 categorically brings out the cost component in remediation which is extracted hereunder for sake of convenience:-

> "28. NEERI has recommended creation of a secured landfill at UCIL premises for disposal of the contaminated soil and the waste other than incinerable waste. The cost of constgruction, operation, caping and post-closure monitoring of the secured landfill of size 400 m x 400m x 5m is estimated to be approx. Rs.100 crore.
>
> *"29. Simil*arly, IICT for preparation of tender document for detoxification, decommissioning and dismantling of UCIL plant has estimated the total cost for the entire operation to be approximately Rs.110 Crore. Additionally, approximately a sum of Rs.100 Crore may be required for incineration of the incinerable waste which will be taken to the

> incinerator at Pithampur. Thus, a total of approximately Rs.310 Crore is needed in the first instance for the remediation. The Group of Ministers has recommended that the Government of India may bear the cost of remediation of approximately Rs.310 Crore in the first instance without prejudice to its right to claim restitution."

It is further submitted that apart from the ₹ 310 Cr. required for disposal of 350 MT of waste, an amount of ₹ 3.7 Cr. has already been spent by the Government of India towards the cost of studies conducted by NER, NGRI and IICT and an amount of ₹ 2.0 Cr. has been spent on disposal of 40 MT of waste lying at the Plant. The break up of the figure of the sum of ₹ 315.7 Cr. is depicted in the table hereunder:

	Cost of studies conducted by NEERI, NGRI, and IICT	₹ 3.7 Cr.
	Amount spent on disposal of 40 MT and other related activities	₹ 2.0 Cr.
	Amount earmarked for disposal of 350 MT and for environmental remediation as per the studies Conducted by the NEERI, NGRI, IICT	₹ 310 Cr.
Total		**₹315.7 Cr.**

In view of the aforesaid, it is respectfully submitted that Respondents are liable to pay ₹ 315.7 Cr. on account of environmental degradation caused by the leakage of MIC gas at their plant. It is submitted that this liability falls squarely on the Respondents by virtue of the "Polluter Pays" principle, which has been upheld by this Hon'ble Court in several.

31. For that the Respondents are liable to pay additional compensation on each of the following counts:

A. Claim on account of incorrect and wrong assumption of facts and data in the impugned judgments and orders passed by this Hon'ble Court;

B. Claim on account of actual expenditure incurred by the state towards relief and rehabilitation; and

C. Claim on account of Environmental Degradation.

32. It is respectfully submitted that the Respondents are jointly and severally liable to pay the claim in the present Curative Petition. Respondent No.1 was the holding company of Union Carbide (India) Ltd at the time of the disaster. Respondent No.1 is currently a fully owned subsidiary of Respondent No.2. Respondent No.3 has purchased 50.9% of the shareholding in Respondent No.1 in Union Carbide (India) Ltd. in April 1994 and Respondent No.4 is Union Carbide (India) Ltd. It is respectfully submitted that all these Respondents are jointly and severally liable for payment of the claims as detailed in this Curative Petition.

33. For that there is no other adequate remedy in law available to the Petitioners and hence the present Curative Petition is being filed.

IV. PRAYER

The Petitioners, therefore, most respectfully pray that this Hon'ble Court may graciously be pleased to:

(a) Direct the Respondents to pay additional compensation on account of the following:

CLAIM I:

Incorrect and wrong assumption of facts and data in the impugned judgments and orders passed by this Hon'ble Court on the basis of the following options which are taken in the alternative and without prejudice to each other:

OPTION I

i) US$ 1129.19 million / ₹ 5263.16 Cr. (Monthly LIBOR) or

ii) US$ 1194.13 million / ₹ 5565.84 Cr. (Half yearly LIBOR) or

iii) US$ 1241.38 million / ₹ 5786.07 Cr. (Yearly LIBOR)

OR

OPTION II

US$ 707.72 million /₹ 3298.69 Cr

OR

OPTION III

US$ 629.99 million/₹ 2936.36 Cr

AND

CLAIM II:

Claim of ₹ 1627.03 Cr. on account of actual expenditure incurred by the State towards relief and rehabilitation measures.

AND

CLAIM III:

Claim of ₹ 315.7 Cr. on account of remedial measures to be undertaken for Environmental Degradation.

(b) Pass such other order or orders as deemed necessary in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn By

Devadatt Kamat,

Advocate

Settled by

G.E.Vahanvati

Attorney General for India

Filed by

Advocate for Petitioner

New Delhi

November, 2010