

Compensation to Bhopal gas victims: will justice ever be done?

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On January 13 this year, the Group of Ministers on Bhopal (GoMB) decided that the Government of India (GoI) should not revise the figures of deaths and injury caused by the December 1984 Union Carbide disaster (1). The critical document in which this revision was considered is the curative petition filed by the Union of India in the Supreme Court for additional compensation to the victims of the disaster in Bhopal from Union Carbide and its current owner, Dow Chemical Company, USA.

Curative petition for additional compensation

In the curative petition filed on the 26th anniversary of the disaster, December 3, 2010, the Government of India had sought a sum of between \$629 million and \$1.2 billion as additional compensation from the American companies for 2,295 deaths and 4,66,293 injured persons who had not been included in the settlement of 1989 (2).

The decision to file a curative petition (a judicial means to rectify a final judgment that was flawed because of violation of established procedures or presentation of insufficient facts at the time of adjudication) was taken by the GoMB in June 2010 (3) following media and public outrage at the meagre punishment accorded (two years' imprisonment and Rs one lakh fine) to the officials of Union Carbide India Ltd awarded by the Bhopal district court in a criminal case that had dragged on for 25 years. At a hastily called meeting*, the GoMB acknowledged that the compensation paid to the Bhopal victims, under the settlement of 1989, was inadequate.

Indian tax payers pay for Union Carbide's crimes

The GoMB also announced that ex-gratia amounts would be paid to relatives of 5295 dead and about 50 thousand injured persons (3). The latter number is less than 10 percent of the total number of persons acknowledged to have been injured due to the disaster.(2) While the logic of ex-gratia payment remains to be explained (Why should Indian tax payers pay for crimes committed by Union Carbide?), the exclusion of over 90% of the victims, on grounds that they were only temporarily injured, remains completely unsupported by scientific data and official records.

Despite the paucity of scientific information on the long-term consequences of the disaster, the findings of the Indian government's own scientific agencies strongly indicate that the figures of deaths and extent of injuries as presented in the curative petition are a fraction of the actual damage caused by

the disaster. Further, figures from official records corroborate the finding that the figures presented in the curative petition are several times lower than officially acknowledged.

Downplaying damages

In 2010, the GoI sanctioned an amount of Rs 30 crore to provide for monthly pension to 5,000 women who had been widowed as a consequence of the gas disaster (3). Quite obviously, this does not match the figure of disaster-related deaths (5,295) being presented in the curative petition. The death figure in the curative petition is also at odds with that in the Madhya Pradesh government's Action Plan of 2008, which says it is almost 16,000 (4).

The downplaying of disaster-related death figures is more glaring in the context of the decade-long epidemiological study carried out by the Indian Council of Medical Research – the apex research institution of the Government of India. According to the findings of this study, published in 2004, 12,167 deaths attributable to the 1984 disaster had occurred till 1993. This is not counting the 3,500 excess abortions between 1984 and 1989 that the ICMR has estimated occurred as a result of the disaster (5). According to the findings of the state government-run Centre for Rehabilitation Studies (that monitored exposure-related mortalities and morbidities, after all ICMR research was terminated in 1994) at least one death attributable to exposure occurred every day in the year 2000 (6). Estimates of disaster-related deaths, based on these scientific findings, are close to 25,000, which is nearly five times the figure being currently presented in the curative petition (7).

Discrepancies in official figures

Interestingly, the Madhya Pradesh state government presented a figure of 15,342 disaster-related deaths in another curative petition before the Supreme Court last year based on claims registered till 1997 (8). However, the state's minister for Bhopal gas tragedy relief and rehabilitation, a permanent invitee to the GoMB, chose to go with the decision of the GoMB and not revise the death figures in the union government's petition.

Similar to the death figures, official figures of the extent of injuries caused by the disaster are sharply different from those presented in the curative petition. While records from the hospitals run by the Department of Bhopal Gas Tragedy Relief and Rehabilitation show that there were 5,02,686 persons (88% of the total population acknowledged to be injured, 569081) with chronic illnesses 18 years after the disaster (9), only

seven per cent of the persons acknowledged to have suffered exposure-induced injuries have been categorised as having suffered permanent injury (2).

Medical categorisation: designed to downplay

The categorisation of the injuries of over 90% of those exposed to the toxic gases of Union Carbide as “temporary injuries” is a consequence of applying a severely flawed system of medical categorisation based on disinformation provided by the corporation itself. A Union Carbide document of 1974 titled “MIC Safety Considerations Report” (10) mentions that methyl isocyanate (MIC), the gas that leaked from the factory, causes residual injuries despite prompt medical treatment. Nevertheless, Union Carbide’s secret overtures to the Government of India within three months of the disaster included an offer to pay for “injuries of temporary nature that required hospitalisation for a day”.(11)

The scheme for medical categorisation, that incorporated Union Carbide’s disinformation regarding the nature of injuries caused by MIC exposure, is also flawed by virtue of being based on the scheme for compensation for occupational injuries. While ICMR’s epidemiological study found that 74% of the gas affected population was not gainfully employed (5), loss in income was a necessary criterion for being assigned any kind of disaster-related disability in the scheme of medical categorisation followed by the government.

Not only was the scheme of medical categorisation designed to downplay the health damage caused by Carbide, its implementation was done in a manner so inept that it could well have been deliberate. The three main tests – the pulmonary function test, the exercise tolerance test and the urinary thiocyanate test (to indicate levels of toxic metabolites) – were carried out on less than eight per cent of the claimants who were medically examined (12). The overwhelming majority of gas victims were categorised, not on the basis of any clinical examination (not a single claimant was examined by a psychiatrist), but on the medical records they could furnish to support their claims, records that most had not been given.

The single point assessment of injuries also went against the findings of ICMR’s epidemiological study that reported a three-fold increase in the symptomatic population seven years after the disaster (5)

Wrongful denial of compensation

The grotesque injustice inherent in the government’s medical categorisation is possibly nowhere so evident as in the area of Jaiprakash Nagar where, according to a house-to-house survey carried out by the Sambhavna Trust, a local NGO, 91% of the residents were categorised as “temporarily injured” and paid the minimum compensation of Rs 25,000 (13). This, in a community located right opposite the Carbide factory that bore the full brunt of the disaster, with entire families being wiped out; in a community where, today, at least one member in each family is unable to work or play due to exposure-related chronic illnesses.

Survivors’ and supporters’ organisations in Bhopal, who are intervening in the matter of the curative petition pending before the Supreme Court, have presented estimates of deaths and injuries related to the disaster based on findings of scientific research. According to the survivors’ petition, the Gol should be claiming at least \$8.1 billion which is about seven times the amount it is currently claiming (7).

Colluding with the corporation

Interestingly, the settlement of 1989, that the Government of India’s curative petition seeks to “cure”, was fixed at one seventh of the sum originally claimed by the Gol in 1985 – \$3.3 billion. The settlement, cobbled together in secret, is widely seen as a betrayal of the Bhopalis and for many it is symbolic of the Indian government’s collusive relationship with the American corporation, prior to, and in the aftermath of, the disaster.

Bhopali survivors’ organisations apprehend a second sell-out in the matter of the soon to be heard curative petition. They cite letters, obtained under the RTI Act, written to the prime minister by two members of the GoMB urging measures that would indemnify Dow Chemical against Union Carbide’s legal liabilities (14, 15).

In the letters, a member of the current GoMB advocates an Enron-like solution for Dow Chemical. The letter from the minister who chairs the GoMB (coincidentally a former legal counsel for Enron) pushes for a trust fund-sponsored clean-up of the contaminated Bhopal factory site that would obviate Dow Chemical’s fulfilling its legal liability.

State government vs central government

Making matters more difficult for the Gol, the MP government has conceded the demands of the Bhopal survivors and is not only working on revising its curative petition but also strongly and publicly urging the prime minister to ensure that the union government does likewise (16).

Most recently, Bhopali survivors’ organisations have demanded removal of the ministers known to be sympathisers of Dow Chemical from the GoMB (17). They are preparing for protest actions in New Delhi to pressurise the union government into demanding adequate compensation from Union Carbide and Dow Chemical as their self appointed *parens patriae*.

In its minutest details, the unfolding story of the yet to be heard curative petition in the Supreme Court of India follows the script of the larger story of the December ’84 disaster over the last 27 years. It is the story of the state and central governments’ complicity in the worst corporate crime in history. The failure of the official scientific agencies to assess the injuries resulting from this crime, and that of the judiciary to provide any semblance of justice, in terms of restitution of damages suffered by the victims or deterrent punishment for the corporate crime, are but part of this systemic failure by design. In their attempt to secure adequate compensation, the survivors’ organisations in Bhopal have a tough battle ahead in the coming months.

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Note

* The following ministers were present: Ghulam Nabi Azad, minister of health and family welfare, M Veerappa Moily, minister of law and justice, S Jaipal Reddy, minister of urban development, Kamal Nath, minister of road transport and highways, Kumari Selja, minister of housing and urban poverty alleviation and minister of tourism, M K Alagiri, minister of chemicals and fertilizers, Prithviraj Chavan, minister of state (independent charge) of the ministry of science and technology, minister of state (independent charge) of the ministry of earth sciences, minister of state in the prime minister's office, minister of state in the ministry of personnel, public grievances and pensions and minister of state in the ministry of parliamentary affairs, Jairam Ramesh, minister of state (independent charge) of the ministry of environment and forests and Babu Lal Gaur, minister-in-charge of the department of Bhopal gas tragedy, relief and rehabilitation, government of Madhya Pradesh.