

10 October 2022

**The Union of India**

**Attn: Dr Mansukh Mandaviya**

Minister of Health and Family Welfare; and

Minister of Chemicals and Fertilizers

Room No. 348; 'A' Wing, Nirman Bhavan,

New Delhi - 110 011

Subject: Representation on behalf of the victims of the Bhopal Gas Disaster re: conduct of proceedings by the Central Government in the matter of *Union of India & Ors. v. Union Carbide Corporation & Ors. Curative Petition (C) No. 345-347 of 2010* pending before the Supreme Court of India

Dear Sir/Ma'am,

“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 tortfeasor for the damage caused, to the citizens of this country.”  
-Curative Petition 345-347 of 2010 on behalf of Union of India, pg. J.

1. We write to you on behalf of the victims of the Bhopal Gas Disaster of 1984, who have been suffering the effects of exposure to MIC for about 40 years. We are also the co-petitioners in Curative Petition (Civil) No. 345-347 of 2010 filed by the Union of India (“**Curative Petition**”) wherein the Central Government has sought increased compensation from the principal tortfeasors - Union Carbide Corporation (UCC) and its affiliates, who have repeatedly evaded liability, and defrauded the Indian Courts. Not all victims were compensated, and those who received compensation, were given a meagre amount. This demonstrates the gross injustice and plight of thousands of victims of gas exposure.
2. We were arrayed as Petitioners in this matter after our their impleadment application (I.A. No. 7-9 of 2011) was allowed by the Supreme Court on 13.04.2011. Notice was issued on maintainability & merits of the matter. (enclosed herewith).
3. When the curative petition was filed in 2010, the Central Government took a strong stand for the victims. It recognized the colossal scale of damage suffered by the victims, the gross inadequacy of the settlement amount, and the resultant miscarriage of justice. It acknowledged that “irremediable injustice” was being suffered by the victims, and that the facts on which the settlement amount was arrived at was “completely incorrect and far removed from reality”. (p. ‘J’, Curative Petition; Also at p. 156, Curative Petition)
4. Despite this, to this day, the curative proceedings remain stagnant, and victims continue to suffer. On the last hearing on 20.09.22, the Central Government sought time to obtain instructions on the “*stand of the Government insofar as the curative petition is concerned*” (ref: order dated 20.09.22) Possible withdrawal of the curative petition was mentioned. In this regard, the effect of such withdrawal on the status of our organizations as co-petitioners in the matter also fell from the Hon’ble Bench.
5. While we believe that our standing as petitioners in the matter, and our consequent ability to make submissions on merits will remain unaffected by any possible withdrawal, through this representation we seek to bring to the Central government’s notice that it is the government’s **statutory duty** per the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (“**Bhopal Act**”), and indeed its constitutional obligation, to pursue this matter until it reaches finality.

Any withdrawal of the curative petition, without due regard to the victims' stand on the issue, will be in contravention of the Central Government's statutory & constitutional duty.

6. The Central Government by enacting the Bhopal Act, in the immediate aftermath of the disaster, appointed itself the parens patriae of the victims. The Bhopal Act expressly sets out this duty in its objects that it is the responsibility of the – “Central Government to fight litigation to take up the responsibility of fighting litigation on behalf of these victims. Further, in *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613, a constitution bench upholding the vires of the Bhopal Act held that the object of the Act will be frustrated if the Central Government does not preserve and protect the rights of the victims as long as their rights are prosecuted. It further held that “continuance of the payments of the interim maintenance for the continued sustenance of the victims is an obligation arising out of State's assumption of the power and temporary deprivation of the rights of the victims and divestiture of the rights of the victims to fight for their own rights.” (para 101)
7. Per Section 3 of the Bhopal Act, the Central Government “shall have the exclusive right to, represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person.” Per section 4, “in representing, and acting in place of, any person in relation to any claim, the Central Government shall have due regard to any matters which such person may require to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim.”
8. These provisions make it clear that there is a statutory duty and indeed a mandate on the Central Government to protect the rights of the victims vigorously and unequivocally, in the “same manner and to the same effect” as such person, and with due regard to matters which they'd like to place before the court. We respectfully submit that “due regard” herein has to also be given to the victims' opinions on the effect that withdrawal of the matter will have on them and their rights.
9. In *Charan Lal Sahu*, the court interpreted “due regard” in Section 4 of the Bhopal Act light of principles of natural justice and held that “in order to make that opportunity contemplated by section 4 of the Act, meaningful and effective, it should be so read that the victims have to be given an opportunity of making their representation before the court comes to any conclusion in respect of any settlement. How that opportunity should be given, would depend upon the particular situation. Fair procedure should be followed in a representative mass tort action....” (Para 114). It was also held that “... the constitutional requirements, the language of the Section, the purpose of the Act and the principles of natural justice led us to this interpretation of Section 4 of the Act that in case of a proposed or contemplated settlement, notice should be given to the victims who are affected or whose rights are to be affected to ascertain their views. Section 4 is significant. It enjoins the Central Govt. only to have "due regard to any matters which such person may require to be urged". So, the obligation is on the Central Govt. in the situation contemplated by Section 4 to have due regard to the views of the victims and that obligation cannot be discharged by the Central Govt. unless the victims are told that a settlement is proposed, intended or contemplated. It is not necessary that such views would require consent of all the victims..... If the victims want to advert to certain aspect of the matter during the proceedings under the Act and settlement indeed is an important stage in the proceedings, opportunities must be given to the victims. Individual notices may not be necessary. The Court can, and in our opinion, should in such situation formulate modalities of giving notice and public notice can also be given inviting views of the victims by the help of mass media....” (para 117) the Central Government cannot

abdicate the right it usurped contrary to the conditions of its usurpations under the Bhopal Act.

10. Further, the five-judge bench of the Hon'ble Supreme Court in the review judgement (*Union of India v. Union Carbide* (1991) 4 SCC 584 reiterated and upheld the holding of the five-judge bench in *Charan Lal Sahu* (*supra*) that, "*the affected parties may avail themselves an opportunity of being heard in the court of the review petitioners*" Indeed, this was the basis on which the bench in *Charan Lal Sahu* found that non-compliance with the notice requirement by the Central Government under their obligation to have due regard under Section 4 of the Bhopal Gas Claims Act did not vitiate the settlement. (para 166) The Court held that "*Either they should have been heard before a settlement was approved in accordance with the law declared by this Court or it, at least, must become demonstrable in a process in which they have a reasonable sense of participation that the settlement has been to their evident advantage or at least, the adverse consequences are effectively neutralised.*" (Para 171) It was the obligation of the Central Government to ensure notice to the victims prior to the settlement. It is their duty under the Bhopal Act to ensure preservation of the rights of the victims. The right of representation in proceedings arising from the review was upheld by two constitution benches in order to preserve the natural justice rights of the victims which were violated by the Central Government. These rights cannot be diluted at the present stage.
11. Further, it is trite that the present Petitioners are before the court under curative jurisdiction and not under a statute. The Supreme Court has recognised the broader allowance for locus standi of parties under Article 142 in order to do complete justice; such as when the National Commission on Women filed a curative petition on behalf of a woman Petitioner and the curative petition was allowed (*National Commission of Women v. Bhaskar Lal Sharma* (2014) 4 SCC 252)
12. We believe that a withdrawal of the matter will result in an effective waiver of the victims' fundamental rights. They will lose the opportunity to receive enhanced compensation, and many will indeed lose the opportunity to receive any compensation at all. Fundamental rights can never be waived (per *Basheshar Nath v. Commissioner of Income Tax, Delhi-Rajasthan & Anr.* 1959 Supp (1) SCR 528), and as such, a withdrawal will be contra the victims' fundamental rights, and indeed unconstitutional.
13. In *Charan Lal Sahu* (*supra*) the Supreme Court also observed that acting as parent and guardian of the gas victims was the Central government's constitutional obligation (ref: para 102(e)) An explicit admission in this regard has been made by the Central Government (@ p. 'J', curative petition), where it says "*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 tortfeasor for the damage caused, to the citizens of this country.*"
14. A withdrawal by the government will be in violation of its constitutional and statutory duties, and will be open to challenge in writ jurisdiction.
15. A serious fraud has been played by UCC and its affiliates upon the Indian courts, and indeed upon the people of Bhopal, by which has perhaps been aided, wittingly or unwittingly, by previous governments.
16. This fraud is reflected not only in the fact that (1) UCC in its negotiation of the settlement agreement, proposed various categories of injuries, including temporary injuries, despite knowing that exposure to MIC results in serious, permanent damage, is indicative of *mala fide*; (2) the settlement amount of USD 470 million was paid by the tortfeasors was

inadequate by more than a factor of ten, since the number of deaths and injuries were underestimated by a factor of ten. We estimate, on the basis of reliable evidence collected, that the actual compensation amount which ought to be paid to the victims is in fact upwards of USD 8.1 billion.

17. The mechanism for disbursal of compensation - in particular the categorization of 'injuries' suffered as a result of exposure to MIC was, and indeed continues to be faulty. This categorization of illness & disability was based on a scheme proposed in a "top secret" document of 1985 that recorded a settlement offer by the Vice President of Respondent No.1 (also accused in the criminal case arising from the gas disaster), Mr. VP Gokhale and Mr. Rolf H. Towe, Vice President and Treasurer, Union Carbide Corporation, U.S.A. (begins @ p.273, Vol II, of I.A. No. 10-12 of 2011 Application for Directions) The top secret document was obtained by Petitioners No. 2-6 through RTI only in December 2010. Soon after, we filed the impleadment application in this matter.
18. This faulty categorisation resulted in meagre compensation amounts being disbursed, disproportionate to the actual injury & loss suffered. For instance, as per the medical categorization format issued by Directorate of Claims, Bhopal (@ p. 298, Vol II of I.A. No. 10-12 of 2011 Application for Directions) a person was said to suffer from "temporary partial disablement", "permanent partial disablement" or "total disablement" if their capacity to "earn livelihood" had been reduced. Resultantly, those without jobs i.e. the most vulnerable victims were given the lowest compensation possible; 74% of the most vulnerable applicants like elderly people, students, housewives, otherwise unemployed people and children, got the lowest compensation in the default category of "minor injuries". The victims were never consulted on how best to categorise their illnesses: that job was done by the UCC and largely accepted by the government in power at the time.
19. UCC and its associated entities have continually committed fraud on the Indian Courts. Despite being declared proclaimed offenders and attachment orders being issued against their assets (per CJM, Bhopal's orders dated 01.02.1992 & 30.04.1992), these companies have continued to sell their goods and services in India, routing & re-routing their business dealings through various shell corporations that were UCC's subsidiaries. This fact has also been recorded by the United States District Court of Connecticut in MM Global Services Inc and Ors Vs The Dow Chemical Company (Civil No. 3:02CV1107(AVC)) (@ p. 356, Vol II, of I.A. No. 10-12 of 2011 Application for Directions).
20. The egregiousness of UCC's refusal to appear before the CJM, Bhopal also lies in the fact that it was UCC that sought a transfer to India, as being the more convenient jurisdiction for adjudication of the matter.
21. The Madhya Pradesh High Court has in various judgments has granted enhanced compensation to gas victims. In many of these cases, meagre sums granted by the Welfare Commissioner were enhanced many fold by the High Court. This demonstrates that (1) the classification of injuries, the standard of proof to demonstrate nexus between exposure to MIC and the injury/ death, was subjective to an extent that most claims were rejected, and claims often rejected/ partially allowed by the Welfare Commissioner have often been enhanced by the High Court; and (2) the settlement amount that was agreed upon was inadequate insofar as it failed to adequately compensate the gas victims.
22. We filed our application seeking impleadment I.A. No. 7-9 of 2011 in the present matter after fresh data re: the number of deaths, injuries and illnesses, and indeed the top secret document, came to light. Some of these sources, particularly the State Govt's own data, have been mentioned below:
  - a. Per the "Memorandum on Plan of Actions for the Relief and Rehabilitation of Gas Tragedy Victims" issued in 2008 by the Govt. of M.P.'s Bhopal Gas Tragedy Relief & Rehabilitation Department, Bhopal (excerpts @ p. 377, Vol II, of I.A. No. 10-12 of

2011 Application for Directions), it has been admitted that about 16,000 deaths occurred as a result of MIC exposure. Of these, it was estimated that 5,000 were widows. As such, per the State Govt., the number of deceased married men alone was 5,000, and the total deaths as on that day, were 16,000.

- b. Per the State Govt.'s application for intervention filed before the Supreme Court in Curative Petition (Criminal) No. 39-42 of 2010, a survey by the Dept. of Relief & Rehabilitation showed that there were 15,248 deaths and "thousands of people are temporality or permanently disabled as a result of gas leak by October, 2003." (Ref: p. 7 of excerpts of the MP Govt.'s Intervention Application in the criminal curative )
  - c. Further, Chief Minister Shivraj Singh Chouhan addressed a letter to Dr. Manmohan Singh dated 08.01.2012, in continuation of an earlier letter dated 24.06.2010, stating that, there were about 10,047 deceased persons whose families had not received compensation, only because they had either been incorrectly classified as being under the permanent injury/ temporary injury category, or that the causal link between death and exposure to MIC had not been established. In this letter, the CM also stated that a total of 15,342 people had died as a result of gas exposure.
  - d. It is important note that these death figures are until the year 1997 only. In 1997 the Office of the Welfare Commissioner, Bhopal Gas Victims in Bhopal stopped registration of claims for compensation for disaster related deaths without providing any justification. (Source: Hindustan Times article; we also mentioned this fact in our representation dated 22.01.2020 to the Principle Secretary, Bhopal Gas Tragedy Relief & Rehabilitation.
  - e. Since deaths attributable to toxic exposure in 1984 continued to occur well past 1997, the death figures on which the settlement was based, and the figures reflected by the UOI in their petition, are incorrect.
  - f. In 2010, Dept of Bhopal Gas Tragedy Relief & rehabilitation sought a corpus fund of Rs 500 crores from the Government of India to strengthen and augment its medical facilities for gas victims. As per this proposal (ref: p. 14) the number of survivors with exposure induced chronic respiratory disorder alone is 1,00,000. As per the same document, in 20 to 25% of the survivors, neurological deficiencies & psychiatric disorders is a concomitant comorbidity. Further the same document mentions that 23 years after the disaster incidence of Lung, Eye, GIT and general morbidities was 4 to 5 times high than a matched unexposed population.
23. It took us years of protests and actions to have the State Govt. recognize and acknowledge that the actual number of Bhopal victims continue to increase. Given that under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, the Central Govt. was, and continues to be, the dominus litis, it was pressure and persuasion that gave the Government in power at the time, the impetus to file the Civil Curative petition in 2010.
24. We are advised that there are strong legal grounds which render the settlement *void ab initio*. This adoption of the top-secret document is contrary to the ratio of Charan Lal Sahu as per which we (the victims) were to be informed and/or given sufficient notice of any settlement being arrived at. This is de-hors the fact that the settlement is clearly vitiated by fraud, as it was entered into with active concealment of the knowledge that the proposed compensation would be inadequate to address the scale of injury and loss suffered by the victims.
25. Being based on incorrect estimates, the settlement, as it stands today, is contrary to public policy. The objective of the settlement being to alleviate and compensate the victims for continuing effects of a mass tragedy necessarily involves questions of the larger public good. Concepts of 'public good' necessarily falls within the contours of 'public policy'. Further,

- considering the continuing mass effects of this unique case, elements of public policy are necessarily involved. Contractually, any settlement violative of public policy is void ab initio.
26. Further, the Bhopal Gas Act, 1985 contemplates that the Central Government shall act as an agent of the victims/principal while raising claims on their behalf, thereby creating an 'agency' by operation of law - the Government has the exclusive right to represent and, act in place of, the victims while raising claims for compensation. Being an agent, and considering the beneficial nature of this legislation, the Government is bound to protect the interest of the victims with the expected/reasonable skill and diligence.
  27. The Supreme Court in its 1989 judgment in the matter captioned In fact, while passing its judgment in *Union Carbide Corporation v. Union of India*, [(1989) 3 SCC 38], the Supreme Court unequivocally stated regarding the settlement that (1) if it could be shown 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 (para 30 of 1989 judgment) (2) The Supreme Court will not shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review (Para 37, 38 of 1989 judgment). Thus, the Supreme Court openly contemplated that the settlement could be 'unravelling' in the future, if its underlying assumptions are impaired by subsequent information.

In light of the facts hereinabove, without intervention of the Supreme Court under curative jurisdiction there will be gross miscarriage of justice. This case squarely falls into the "rare" case envisaged by *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388 where the court must act *ex debito justitiae* i.e. on the obligation of justice. There is no tragedy as rare, and little injustice that can be on par as what the Bhopal Gas Victims have faced. The Supreme Court has stepped in its curative jurisdiction to cure injustice contrary to law (*Navneet Kaur v. State of NCT Delhi* (2014) 7 SCC 264 and *Anwar Ul-Haque v. State Nct Of Delhi Curative Petition (Crl.) No. 33 of 2021*), natural justice (*State of Madhya Pradesh v. Sughar Singh* (2010) 3 SCC 719) and even where, no statutory right exists. (*National Commission of Women v. Bhaskar Lal Sharma* (2014) 4 SCC 252).

Three constitution benches have looked at the case, and at every juncture the Supreme court has reiterated that their observations are only based on the material before them. The Supreme Court has also restated the responsibility of the Courts and the Central Government to the innocent victims of the most tragic industrial accident in India; the effects of which continue to disable and destitute the citizens of Bhopal.

We are the victims of the Bhopal Gas Tragedy whose right to prosecute our claims was taken from us without our consent and a settlement was agreed upon on our claims without our notice. In our very last opportunity before the Supreme Court to ensure that the compensation that is given to us by Union Carbide is fair, equitable and just, the Central Government cannot abdicate its duty.

In light of the above, we urge the Union of India to respond to this representation at the earliest, reassuring us that –

- (1) It intends to discharge its statutory and constitutional duty towards the victims of the Bhopal Gas Tragedy by continuing to prosecute the Curative Petition to the best of its ability and resources.

(2) If the Curative Petition is withdrawn (despite our opposition to the same), such withdrawal shall be without prejudice to the Co-Petitioner's case, and the Union of India shall make an express stipulation while withdrawing the Curative Petition that the withdrawal shall not adversely impact the independent case of the Co-Petitioners.

We look forward to hearing from you.

Yours Sincerely,

<b>Rashida Bi</b> Bhopal Gas Peedit Mahila Stationery Karmchari Sangh 8827218215	<b>Nasreen Bee &amp; Shezadi Bee</b> Bhopal Gas Peedit Mahila Pursh Sangarsh Morcha 8717945791	<b>Balkrishna Namdev</b> Bhopal Gas Peedit Nirashrit Pensionbhogi Sangarsh Morcha	<b>Rachna Dhingra</b> Bhopal Group for Information & Action 9826167369	<b>Nousheen Khan</b> Children Against Dow- Carbide
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