THE CONTROVERSY OF THE BHOPAL GAS TRAGEDY AND ITS CIVIL LIABILITY

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ABSTRACT

The Bhopal Gas Tragedy can be called as one of the major disasters that have happened in India. The way judiciary dealt with it was ground breaking yet criticised all over the country. People held allegations against the judiciary on how it was not fair and truthful while giving the judgement and how the verdict was inclined towards the Union Carbide India Limited. This research paper is supposed to talk about the civil liability of the Bhopal Gas Tragedy and talk about the way the judiciary worked in this case and how there was not much of an action against Warren Anderson who was the CEO of UCC at the time of this disaster. With this research, I want to analyse the whole situation and thus actually find the reason of the criticism. Not only that, this research also talks about this disaster in the terms of the absolute liability principle. It also aims at finding the loophole in this judgement and thus comment on what could have been done. It also talks about the way criminal cases of all sorts were put away against UCIL when there is no statute to support this.

Keywords: Bhopal Gas; Union Carbide India Limited;
INTRODUCTION

The Bhopal Gas Tragedy is a case of absolute liability as per the principle laid down by Justice Bhagwati stating that “An enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of people working in the factory or residing in the surrounding areas owes an absolute and non-delegated duty to the community to ensure that no harm results to anyone in account of hazardous or inherently dangerously activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous and inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity of the enterprise, it must be absolutely liable to compensation for such harm and it should be no answer to enterprise to say that it has taken all reasonable care and that the harm caused is without any negligence on its part."

The point here is that the Bhopal gas tragedy wasn’t just about negligence on the part of UCIL, but the Madhya Pradesh state government can also be held liable for being lenient in the way of doing surveys before giving licenses to the company and covering up for them whenever it went wrong. By wrong, it is the instance of the death of a maintenance department worker, Ashraf Khan on the December 26th, 1981 due to inhaling of liquid phosgene while working on a pipeline. Instead of finding out the reason of liquid phosgene leaking into the pipelines, UCIL plant was closed for maintenance and the government reports covered the incident by blaming the worker for being negligent in his actions. The thing which needs to see light here is that the workers thought differently. They blamed the production department liable for the death as he disregarded the basic safety procedure and didn’t certify the pipeline on being emptied of liquid phosgene. The point to bring out here is that the government in power was always backing the corporation as it did it’s dirty doing which can be held the reason we moan on what happened on the 2nd and 3rd of December, 1984. This leniency on the part of government while providing licenses top the corporation can be called the reason for the negligence and breach of duty of care towards it’s workers and people residing around. The point is also backed by the different instances of leak on the years 1981 and 1982 where there was no action taken against the company and hence it had that dominance and was careless about the whole thing.

All these incidents lead us to believe that what happened in Bhopal was a scam and the dirty politics that lead to the event that affected the life of 500,000 people who had nothing to do with it. This brings up the point where the Supreme Court dropped all criminal and civil charges against UCIL and UCC in a

2. Radhika Ramaseshan, Government Responsibility for Bhopal Gas Tragedy, Economic & Political Weekly, p.g. 2 (Dec. 15, 1984)
controversial judgement of Union Carbide Corporation v. Union of India, etc. for a compensation of $470 million.\(^3\) The point to see here is that, are all those losses worth the monetary compensation. The question is that if monetary compensation is justice. Settling for a sum of money doesn’t really cover the dirty deeds of the corporation and the justice doesn’t seem rightly served. When compensation was given, victims were paid an amount of 25000 rupees and death victims were given 1,00,000 each. This doesn’t cover the losses people suffered that night. The mental agony and the loss of the victims can’t be covered in anyway by the monetary compensation. It was a dark day in the Judicial services of India when UCC and UCIL where settled with and the cases were taken down. Punishment should have been awarded to everyone who was responsible so that they could feel a very small part of pain and feel the loss these victims felt that night. This is the reason Union Carbide Corporation v. Union of India, etc. is still criticised and looked down at.

There was clear evidence of there being gross negligence in the part of UCIL and UCIL management when there was a DSF investigation.\(^4\) The point here is that the guilty were left free by our judiciary. This isn’t only against the basis of our laws but also against the morality and ethics of justice being served. The “SERIOUS” criminal charges aren’t compoundable in Indian Criminal code\(^5\) And here the crime in question cost damage to the lives of 500,000 people who were innocent. Hence, there will always be this speed bump in the history of the Indian judiciary as justice wasn’t served in the way it should have. A criminal wrong is a wrong against the whole society and it gives a very wrong notion. All criminals should be left if this is the way the judiciary wants to work. Article 14 of the Constitution of India promises right to equality before the law. This judgement can be called ultra-wires the Constitution itself and thus is one of the lesser liked judgments.

The next question to be talked about is the arrest of the CEO of UCC, Mr. Warren Anderson when he came to Bhopal and was given bail and left the country there after, never returning to face trial. The bail that was awarded is the main question. Political pressure is the reason that was given and how the Congress government then helped him run away back to the United States. This is one of the major loopholes in the judgement, letting that imposter go away. This raises a big question on the accountability of the government then and also on the credibility of what we respect and abide by; the laws.

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\(^3\) Union Carbide Corporation vs Union of India etc., 1990 AIR 273, 1989 SCC (2) 540
This escape is the dark part of the politics that lead to this scandal. Warren Anderson should have been held guilty for opening a plant in India which used outdated and obsolete technology and hardware. This escape really makes us question the fact that human life is important over anything else. That night 500,000 people were victimised, dreams were shattered, families were destroyed and we can thank Mr. Anderson for this sorrow. He was declared absconder and died in Florida, unpunished. This is no way can be determined by the word ‘Justice’ because there wasn’t really an explanation for all the actions of the government in backing UCC at that time.

The government both at state and central level allocated monetary help for the victims to help bring peace but people weren’t happy. There have been repeated protests on the decision of the court and how the government acted during the time of the incident. The people of Bhopal who live near the UCIL plant premise still face the aftermath of the tragedy that happened more than 40 years ago. The environment and natural resources of this area also got contaminated and hence are useless. The groundwater still holds the contamination and thus is useless. Resources that are live saving in normal conditions are the ones that are live threatening to the people who live here. The question is who is to be blame for the mental harassment and nuisance which these people deal with, where is the compensation for these people.

The Bhopal Gas Tragedy is called the world’s worst industrial disaster. There was mistake on the part of UCIL and they weren’t punished. The Indian legal system went out of their jurisdiction to give them the ticket out. This makes the whole situation a whole lot worse. Torts are supposed to be compensated with unliquidated damages and here there is a case of negligence and yes the principle of absolute liability can be applied. But monetary compensation ends here, what about the people who died, what about the people who suffered grievous injuries. UCIL should have been booked under IPC and people responsible should have been sent to jail. When this case started, the judiciary was really on the front foot and referred to Natural law to obligate the government to fight the case for the victims but them the court settled for monetary compensation. There is where the loophole of this judgement lies. If the court held the government obligated to fight the case, it should be obligated itself to give the toughest punishment to these people who victimized so many innocents. It is the duty of the judicial system and the government to do this. This is what has made this a judgement which is not the best given by the Indian judiciary. The judgement is actually ultra-vires the existing law which makes it even more controversial.

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5. Union Carbide Corporation vs Union of India etc., 1990 AIR 273, 1989 SCC (2) 540
CONCLUSION

The Indian Judiciary stands proud of its ideals and principles but this case has led many writers and social workers to question this integrity. Along the years the victims have settled but people who think its duty to do things right have taken over. They are trying to make the situation better for the people suffering from the aftermath of this disaster.

This judgement and the actions that followed actually brings out the darkest secrets of the administration back then. It really raises the question on the government’s backing to the UCC and how they didn’t actually face punishment for their actions. This is one of those classic judgements which shows what power can do. Power can supersede the responsibility of an institution which makes it unreliable and unfair in its working. This case still taints the image of the Indian judicial and administration system and proves the above mentioned point.

This judgement doesn’t give justice to the sorrow and misery of the victims. The pain and problems these people went through haven’t been properly replenished. These people haven’t been given what they rightfully should. This is against the law of torts. Though it is on the court to decide the damages but here the court has been incompetent in declaring the damages.

This case also shows how the mistake of someone can lead to a major damage to the innocent people. People who had nothing to do with it in the first place. It also shows how our administrative and judicial systems need to be reformed because they seem to be outdated themselves. We need to step up and help in the reformation and thus not let such a judgement happen in the future.

Therefore, the judgment of the case Union Carbide Corporation v. Union of India, etc. was not fair and legally incorrect. UCIL was guilty and should have been punished. There shouldn’t have been the leniency in the application of statutes while the judgement was being done. The case also showed the presence of hypocrisy in the judicial system and corruption in the working of the government. The judgment is heavily criticised and a mass population doesn’t really appreciate the conclusion that the court came to. The Bhopal Gas Tragedy was a very dark day in the history of India and our legal system failed to deal with it in the best way there was.