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UNION CARBIDE

THE BHOPAL CATASTROPHE - Consequences of a liquified gas discharge

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Abstract This report deals with the course of events and discusses the reasons for the discharge of methyl isocyanate in the city of Bhopal, India. On the basis of known data, dispersion model calculations have been made. A review of the chemistry and toxicology of isocyanates is presented. A survey over isocyanates presently in use in large amounts in Sweden and a suggestion for decontamination of isocyanates are made. The dispersion models and the actual accident in Bhopal are compared.		
Key words Methyl isocyanate, MIC, liquified gas, Bhopal, dispersion model, toxicology, decontamination.		

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Huvudinnehåll Rapporten behandlar händelseförloppet och diskuterar orsakerna till utsläppet av metylisocyanat i den indiska staden Bhopal. Med utgångspunkt från kända data göres beräkningar av spridningsmodeller. En översikt göres av isocyanaters kemi och toxikologi. En uppräkninng göres av isocyanater som för närvarande förekommer i större mängd i Sverige. Förslag till åtgärder vid bekämpning av isocyanatutsläpp tages upp. Med utgångspunkt från befintliga data göres en jämförelse mellan spridningsmodellerna och den aktuella händelsen i Bhopal.		
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Preface

This report is the result of a journey to India in connection with the disastrous release of methylisocyanate (MIC) in the town of Bhopal, Madhya Pradesh. The aim of the report is to give a short account of what happened in the Bhopal disaster and to discuss the causes for the release. In connection with our work on risk analysis of formation and dispersion of explosive and poisonous gasclouds it is important for us to compare our models with the toxicological consequences of a real event. For reasons of preparedness it is also of value to discuss the present situation in Sweden in this field as well as methods of decontamination.

The data for the model calculations are however at this stage of a preliminary nature and more definite calculations based on more exact data will be reported later.

We are very grateful to Dr Ramachandran and Dr Raja of the DRDE (Defence Research and Development Establishment) at Gwalior, for their assistance when collecting the material concerning the chain of events in the Bhopal disaster from official sources and daily news reports.

Introduction

During the night of 2 December 1984 a gasleak occurred in the Union Carbide factory at Bhopal, Madhya Pradesh, India. The carbamate insecticide Carbaryl (also known as Sevin, the Union Carbide Corporation trade name) was synthesized at the factory. The escaping toxic gas was methylisocyanate (MIC). This gas discharge was responsible for the largest industrial disaster ever, with an official death toll of 2 250 people including 541 children and 318 women. There were 50 000 people incapacitated by the accident and about 100 000 people treated in hospital.¹ In addition about 1 800 livestock were killed.

Why did it happen and what caused the discharge?

According to official statements the accident was caused by a small amount of water that in some way got into the underground MIC storage tank.

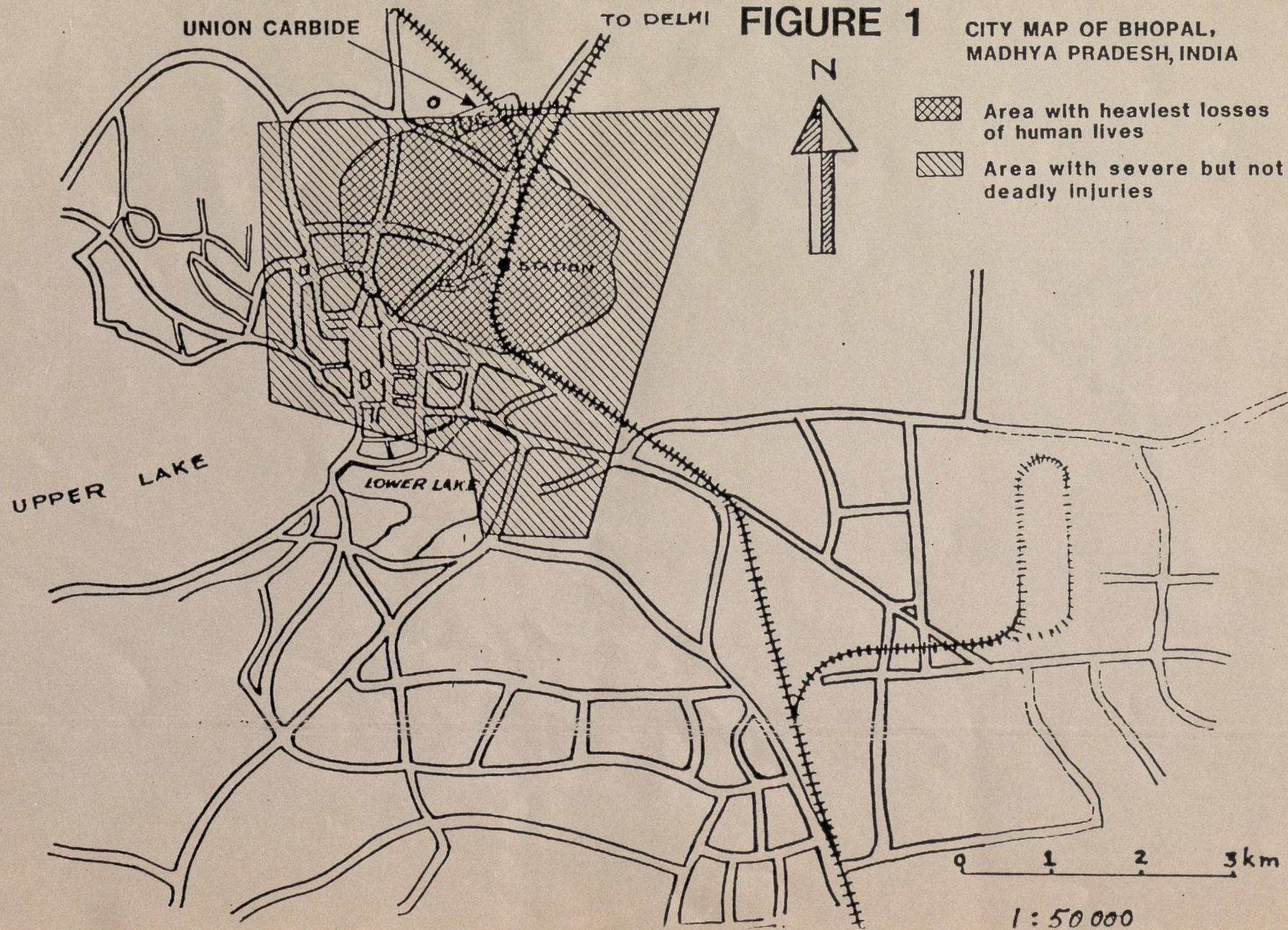
A reaction of water with MIC generated carbon dioxide and methyl amine. Because this chemical reaction is exothermic the temperature and pressure of the enclosed MIC increased. The evolution of heat or the presence of a catalyst may have started a polymerization that resulted in the generation of even more heat.

The accelerating pressure increase ran out of control and the storage tank's safety valve ruptured. The question of whether or not the caustic soda scrubber was functioning is of no importance as it was not designed for such a large-scale violent release. A measure of the violence of the process is that the concrete shield of the tank cracked. Under normal conditions, small releases of MIC from the processing system were supposed to be consumed by a flame-chimney. Reports on the temperature and pressure of the MIC tank are contradictory. Some sources stating the temperature to have been as high as 100 °C and the pressure about 100 psi*. Of the 45 tons of MIC in the underground tank, 30 tons were discharged in 1 h and 15 tons were left in the tank as polymer products.

The meteorological conditions at the time were very unfavourable, aggravating the consequences of the release. There was a soft wind from the north of 1-2 m/s, in the direction of the settlement in the vicinity of the plant. The temperature was 7-10 °C and the air relatively dry. An inversion reduced dilution of the gas cloud.

The terrain in the affected area is essentially level with a small declination towards the railway station and downtown area. The terrain consists of grassland bushes, shrubs and isolated trees. Damage to trees (Ficus religiosa) was visible as far away as the railway station, 1.5 km from the factory. The area with the largest number of casualties was 6-7 square kilometers south of the factory. The region with severe, but not deadly, injuries was about 25 square kilometers. The railway station is situated roughly in the middle of the affected area (figure 1).

* 100 psi = 689 kPa = 6.8 atm



The physics of the release. Calculations.

The source strength

As no detailed information is available it has been assumed that the gas was released at a rate of 8 kg/s for a period of 60 minutes. It is probable that the real source strength exceeded 8 kg/s in the initial phase of the discharge and that it was lower than this value at the end of the release.

Initial thermodynamic state of the gas

As buoyancy (negative or positive) could affect the gas cloud shape and concentration considerably it was concluded that the molecular weight of the gas as well as the cloud enthalpy were important factors.

As the gas is known the molecular weight is no problem. The enthalpy of the cloud can be determined by the temperature and liquid phase content of the gas at atmospheric pressure before it mixed with the air.

As no firm data for tank pressure and temperature exist, calculations have been performed for three different effective temperatures of the gas before it mixed with air at atmospheric pressure.

Case A : -10 °C

Case B : +10 °C

Case C : +38 °C

It might seem peculiar that temperatures below the atmospheric boiling point (39 °C) are stated above, but it must be remembered that it is very probable that part of the gas was in the liquid phase (a fog) after its adiabatic expansion to a lower pressure. This lowers the enthalpy of the gas. The simplest way (from the point of view of performing calculations) of achieving this lower enthalpy is to assume that the fluid was completely gaseous (no fog), but that it had a temperature below the boiling point.

Atmospheric conditions and terrain

It has been assumed that the following data are reasonable:

Wind speed : 1.0 m/s

Air temperature : 10 °C

Air humidity : 40 % RH

Stability : Pasquill E (stable)

Terrain: Corresponds to a surface roughness parameter = 0.50 m
(obstacle height = about 5 m)

Shape of the gas plume. Concentrations

The cloud width, height and centre-line gas concentration were calculated using the Cox-Carpenter model for heavy gases.² In figures 2 and 3 we show these data for the three enthalpy cases A, B and C. Cases A and B have been lumped together into one figure because of the similarity of the results.

Important comments

In figures 2 and 3 the plume has been drawn as if the centre-line is a straight line. In reality the plume is more or less curved due to fluctuations in the wind direction. Moreover this curved plume is always moving and changing its curvature.

This meandering behaviour will cause the affected area to become wider than shown in the figures.

This widening could become rather marked over an hour (the release time), especially if the wind speed is low (as in this case).

Modelling of this phenomenon is difficult because of its statistical nature, even though there have been field tests ideally suited to illustrating how meandering could affect such a release.

Figure 4 shows results from a freon release where concentrations were measured for one hour.³ The isopleths show the average concentrations (in relative units and powers-of-ten) during the sampling hour. The weather conditions in this experiment were very similar to those stated for the Bhopal accident. The important feature to be noticed in this figure is not the exact shape of the isopleths (which vary from time to time), but the considerable width and irregularity of the one-hour-average plume as compared to the instantaneous plumes shown in figures 2 and 3.

FIG 2 Dispersion calculations, "instantaneous plume"
CASE A, B

Place in figure	Concentration (ppm)	Cloud Height (m)	Distance down-wind (m)
a	10	140	5500
b	30	70	3000
c	100	33	1600
d	300	15	900
e	1000	6	530
f	3000	3	290

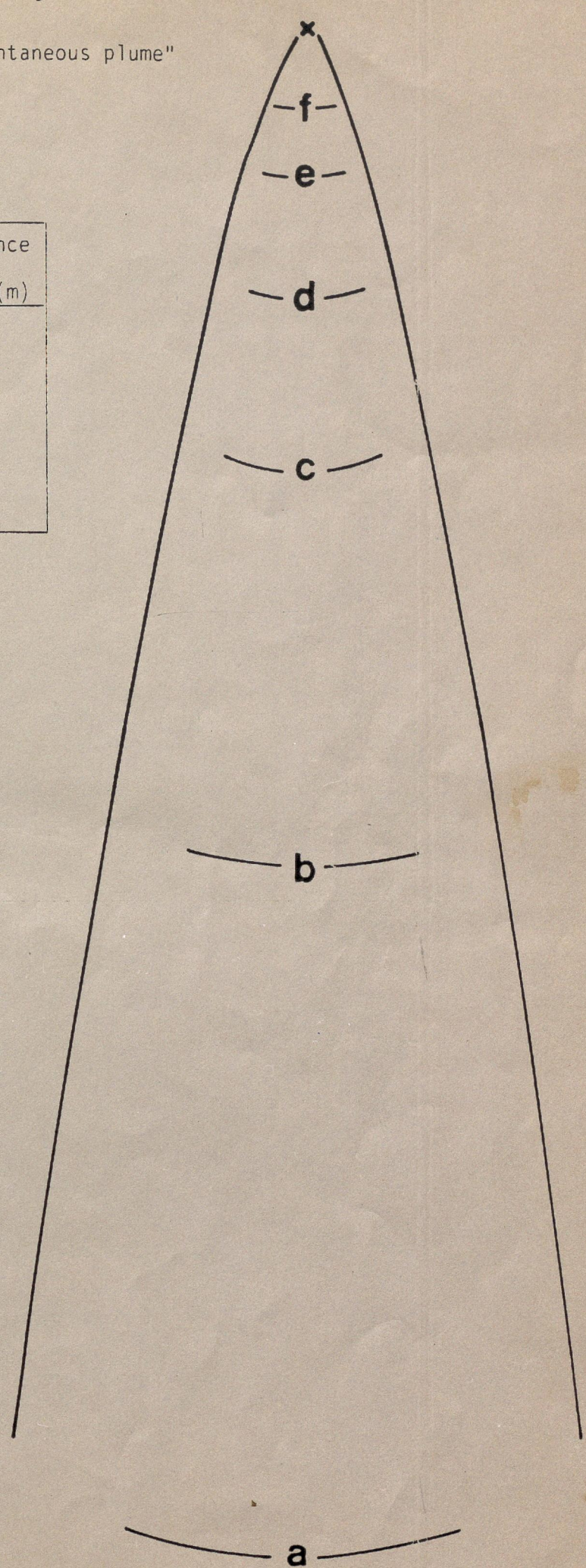
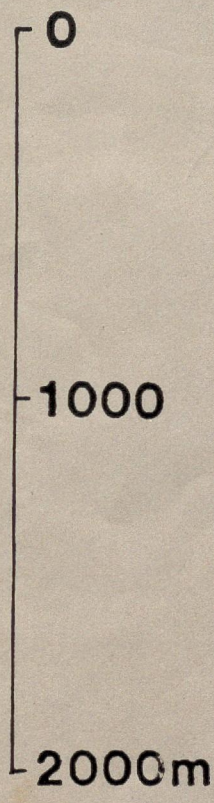
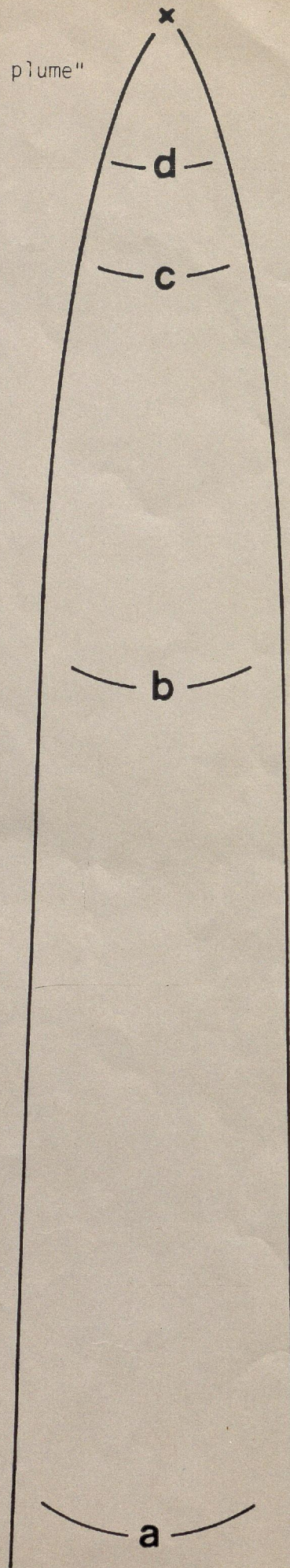
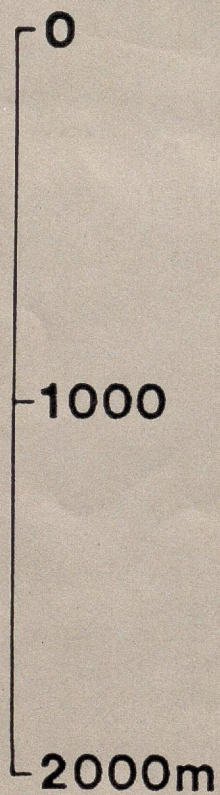


FIG 3 Dispersion calculations, "instantaneous plume"

CASE C

Place in figure	Concentration (ppm)	Cloud Height (m)	Distance downwind (m)
	40	65	9000
a	65	53	5200
b	100	43	2300
c	300	16	900
d	1000	7	530
	3000	4	270



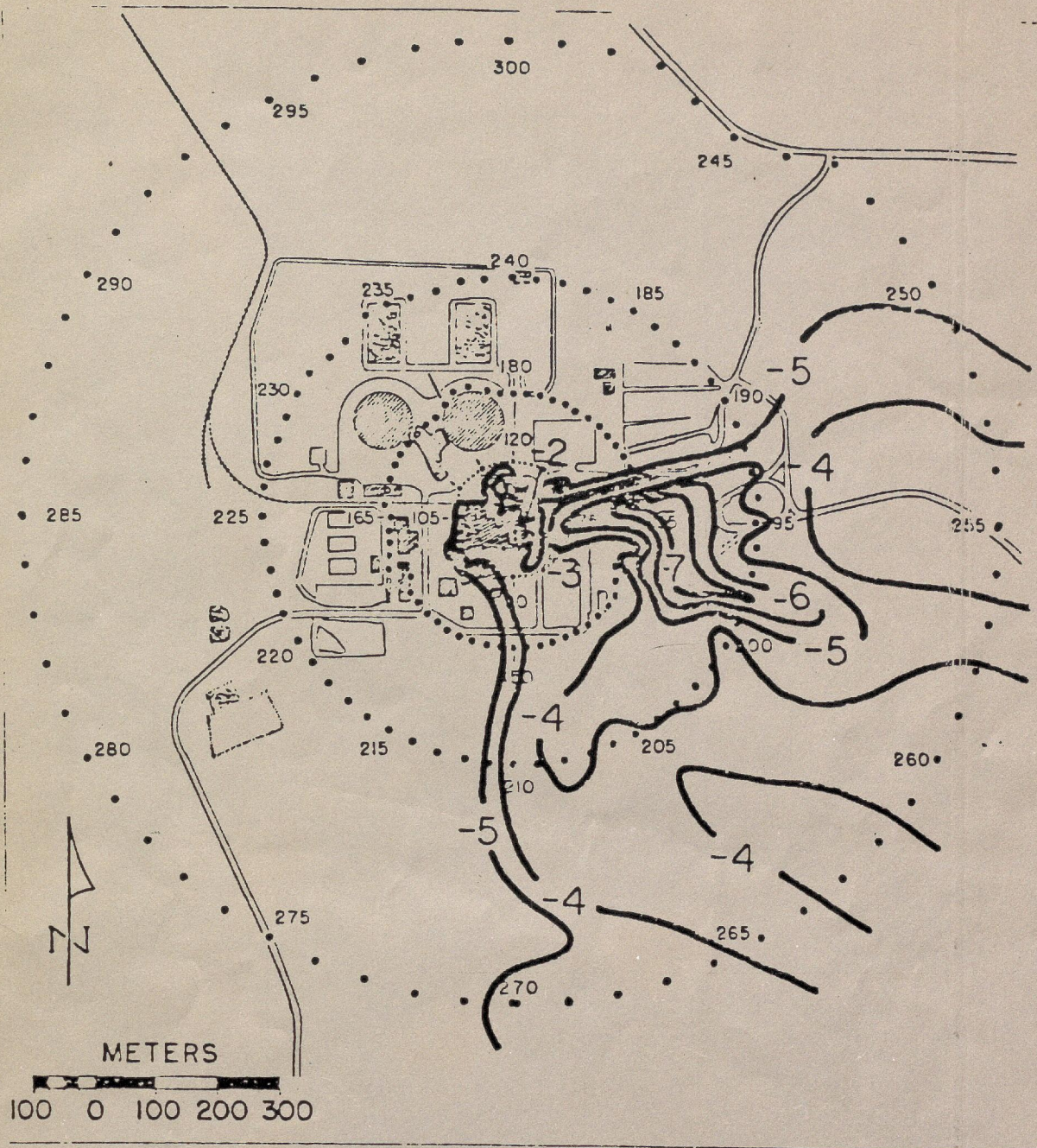


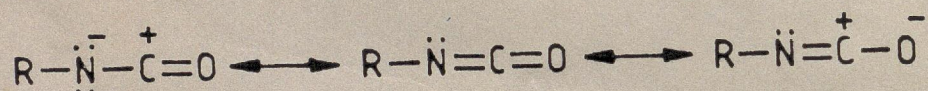
Figure 4.

Dispersion plume in a field experiment (Start et al. 1977³) with low wind speed and a sampling time of one hour. The isopleths are normalized concentration ($\chi \cdot u/a$) in negative powers of ten.

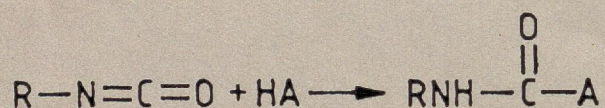
The chemistry of isocyanates

Organic isocyanates are compounds in which the isocyanate group (-N=C=O) is attached to an organic group. Isocyanates can also be considered esters of isocyanic acid. Depending on the number of isocyanate groups per molecule they are designated as mono-, di-, tri- and polyisocyanates. A number of review articles concerning the actual type of compounds, dealing with technical as well as chemical aspects, have been published.⁴⁻⁸ The first organic isocyanate was prepared by Wurtz in 1849, but no commercial interest arose until after the Second World War. The polyfunctional isocyanates were shown to be useful for the buildup of polymer molecules. Aliphatic and aromatic mono-isocyanates are starting materials for production of different types of urea and carbamate derivatives useful as herbicides and insecticides.

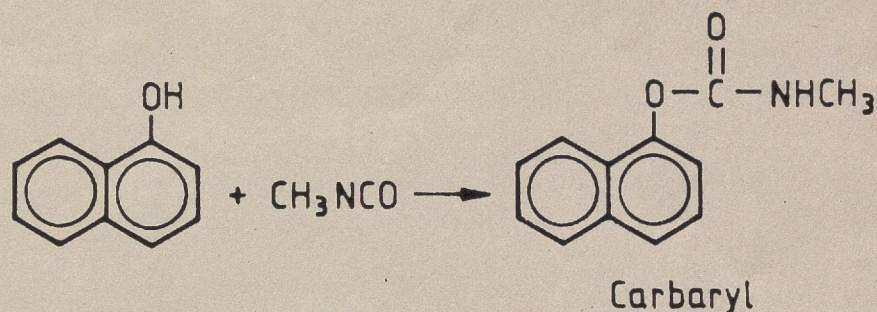
The isocyanates react readily with a great variety of organic compounds and may also react with themselves. The isocyanate molecule is best described as a resonance hybrid of three contributing structures:



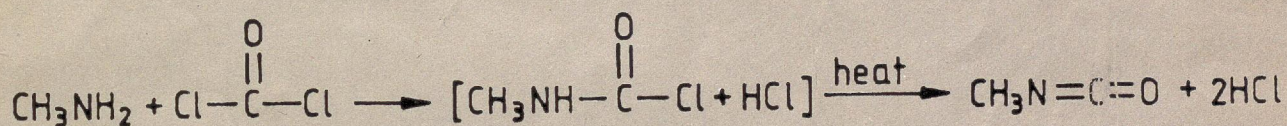
The normal isocyanate reaction constitutes an addition to the carbon nitrogen double bond, the reaction partner being a compound containing an active hydrogen.



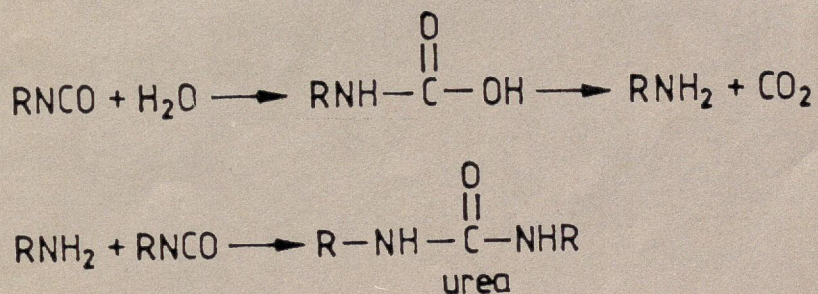
The most important reaction of isocyanates is that with alcohols. This reaction was the main method for production of the carbamate insecticide Carbaryl or Sevin at the Union Carbide factory at Bhopal. The starting materials for synthesis of carbaryl are α -naphthol and methylisocyanate (MIC).



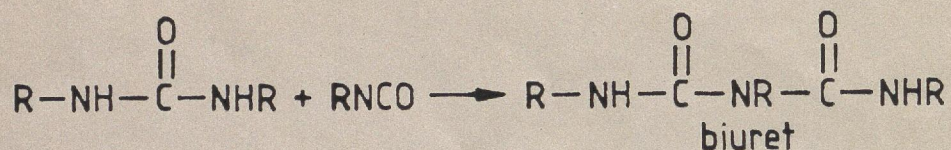
There are, however, two alternate methods for preparing of N-methylcarbamates, but as they both use phosgene as the starting material they are equally dangerous when estimating the potential risks of the process. Phosgene was also used at Bhopal for preparing MIC. The phosgene is allowed to react with methylamin to give carbamic acid chloride, which, upon heating, eliminates hydrogen chloride to give MIC.



Isocyanates are hydrolyzed rapidly by water to give an unstable carbamic acid which decomposes to a free amine and carbon dioxide. The amine further reacts with another molecule of isocyanate to give a disubstituted urea.

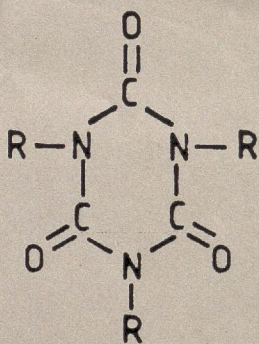


The urea molecule so formed may react with another molecule of isocyanate to give biuret.



As mentioned earlier the most probable cause for the catastrophe at Bhopal was a reaction between water and MIC. The heat released during the hydrolysis may have been sufficient to cause the spontaneous polymerization that took place. The ease of polymerization is dependant on the quality of the MIC, i.e. highly pure MIC is more apt to polymerize. The presence of some kind of catalyst may also have triggered the polymerization.

Isocyanates are capable of reacting with themselves to form dimers, trimers and polymers. In general, aliphatic isocyanates do not form dimers. Aliphatic and aromatic isocyanates readily form trimers, which have the form of an isocyanurate ring.



The trimerization of aliphatic isocyanates is catalyzed by heat and by trialkyl phosphines. Carboxylic acid salts and many metal compounds catalyze trimerization of both aliphatic and aromatic isocyanates. The polymerizations of isocyanates are exothermic reactions, that would raise the temperature as well as the pressure within a closed container.

Isocyanates in Sweden

MIC is not a problem in Sweden as it is used here in small quantities only as a laboratory chemical. No other low molecular weight aliphatic isocyanate is used in large amounts. The use of aromatic and high molecular weight aliphatic and alicyclic isocyanates is frequent, however (table 1).

High molecular weight isocyanates do not pose the same problems as MIC, although they mainly undergo the same reactions as MIC. The reason for this is, in the first place, that the high molecular isocyanates are high-boiling compounds in comparison to MIC and, in the second place, that besides carbon dioxide the amine formed in a reaction with water is either a solid or a high-boiling liquid.

When the different TDI-mixtures react with water a carcinogenic amine 2,4-diaminotoluene is formed, that presents an occupational hazard.

How to decontaminate escaping isocyanates?

There are no straight forward ways to decontaminate escaping isocyanates. If the escaping compound, however, is a high-boiling isocyanate, the best way to restrict the discharge ought to be by diking and adsorption. Volatile isocyanates like MIC, that may form drifting gasclouds, are more difficult to decontaminate. Tentatively the gas cloud is best neutralized by soaking with copious amounts of water, while liquid isocyanate on the ground is rendered harmless by adsorption. An addition of sodium bisulfite to the water used to fight the escaping gascloud may be advantageous because sodium bisulfite reacts with the isocyanate to give a stable water-soluble derivative.

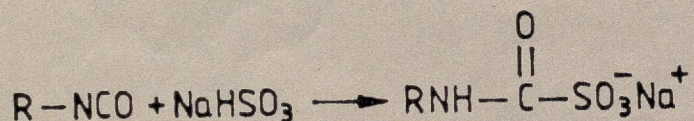
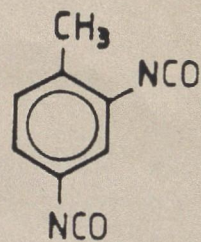
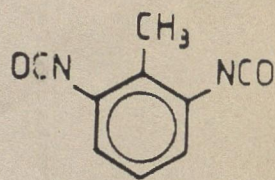


Table 1 Isocyanates presently in use in Sweden

TDI (2,4-toluene diisocyanate)



2,4 isomer

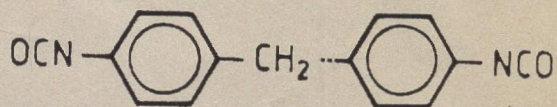


2,6 isomer

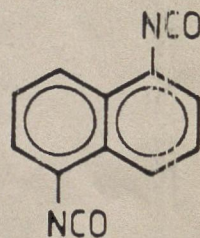
TDI 80 (2,4-isomer/2,6-isomer = 80/20)

TDI 65 (2,4-isomer/2,6-isomer = 65/35)

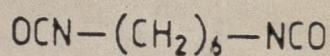
MDI 4,4'-diphenylmethane diisocyanate



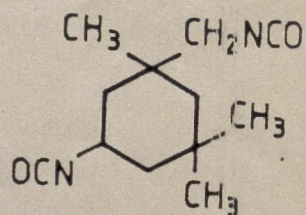
NDI 1,5-naphthalene diisocyanate



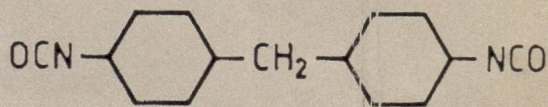
HDI hexamethylene diisocyanate



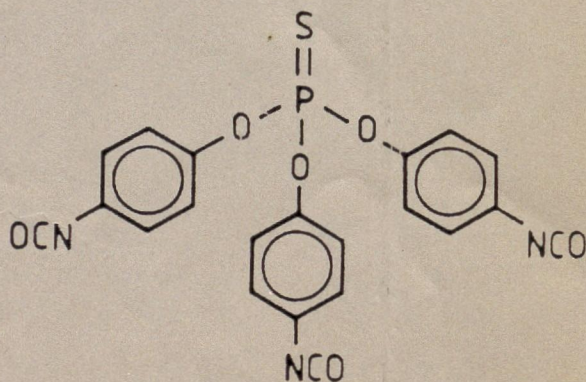
IPDI isophorone diisocyanate



4,4'-dicyclohexylmethane diisocyanate



Tri(p-isocyanatophenyl) thiophosphate



Methyl isocyanate. Chemical and physical properties⁹⁻¹¹

Methyl isocyanate (MIC) (Eng), Isocyan säuremethylester (Ger), Isocyanate de Methyle (Fr).

Formula: $\text{CH}_3\text{-N=C=O}$

Molecular weight: 57.05

Bp: 39 °C

Mp: less than -80 °C

Specific gravity (D_{20}^{20}): 0.96 g/cm³

Vapor density (air = 1 at boiling point of MIC): 2.0

Vapor pressure at 20 °C: 348 mm Hg

Chemical characteristic: Reacts violently with water and compounds with an active hydrogen with evolution of heat.

Flash point: - 6 °C

Fire extinguishant: Carbon dioxide, dry chemical, foam. No water.

Decontamination of small amounts of liquid and gaseous MIC: Soaking with large amounts of water (gaseous products are formed with evolution of heat).

NMR-, IR- and MS-spectra are shown in Appendix 1.

The toxicology of isocyanates

Methyl isocyanate is known as an extremely irritating compound with a high degree of inhalation toxicity. However, only a few studies of the toxicology of this compound have been published.

The toxicological properties of isocyanates are attributed to the -N=C=O group, which reacts readily with -OH , -NH , -NH_2 and -SH groups in biological tissues.¹² This means that the toxic response from different isocyanates is principally the same. The degree of toxicity, however, seems to be inversely related to the molecular weight. A common property of isocyanates is their irritant action on the respiratory system. This effect is especially pronounced

for volatile, low molecular weight derivatives. The irritant action is nonspecific and resembles that of other irritant gases such as chlorine, ammonia, sulfur dioxide, etc. Common symptoms of exposure to vapors of isocyanates are cough, increased mucus discharge, salivation and lachrymation, cramping of the eyelids, etc. At higher concentrations a feeling of suffocation occurs, i.e. a feeling of pressure on the chest and pain when inhaling. Oedema of the lungs, after inhaling very high concentrations of irritant substances, does not take place until some hours (up to 24 hours) have elapsed since exposure. Between exposure and acute sickness, caused by potentially lethal oedema a few or many hours may pass with only relatively mild symptoms. This is highly deceptive and can mean that the poisoning is not taken seriously.

The isocyanates are potential pulmonary sensitizers. This means that repeated exposure to low concentrations causes reactions that differ from those described above. Usually dyspnea and cough occur 2-5 hours after exposure. These symptoms decline within a couple of hours or remain until the next day. In some individuals dyspnea occurs immediately upon exposure and this reaction can be initiated by very low concentrations. The symptoms are inseparable from asthma bronchiale. Cross sensitization between different isocyanates has been described.

Skin irritation and skin sensitization from exposure to isocyanates have been reported but these symptoms are relatively rare, probably because of the protective measures taken by industry. Other symptoms of exposure to isocyanates are nausea, vomiting, pain in the stomach and gastritis. In addition, sweating, malaise, fever and chills have been reported.

A summary of the acute toxicity of some isocyanates is presented in Table 2.

Table 2. The acute toxicity of some isocyanates.

Compound	Animal species	LD ₅₀ (mg/kg)		LC ₅₀ (mg/m ³) inhalation
		oral	dermal	
Butyl isocyanate	Rat	600		3000
	Mouse	150		680
	Guinea pig	250		
Phenyl isocyanate	Rat	940		
	Rabbit		7130	
Hexamethylene diisocyanate	Rat	710		
	Rabbit		570	
2,4-Toluene diisocyanate	Rat	5800		4320 (6 h)
	Mouse			72 (4 h)
	Guinea pig			94 "
	Rabbit			11 (3 h)

Data obtained from Registry of Toxic Effects of Chemical Substances.¹³

The acute toxicity of methyl isocyanate is high, as compared to that of other isocyanates. The toxicity of this compound was studied by Kimmerle and Eben¹⁴ in human volunteers and experimental animals. In addition, acute toxicity data have been published by Smyth, Jr. *et al.*¹⁵ and Vernot *et al.*¹⁶ The results from their studies are summarized below.

Animal studies

Rats and mice exposed to very high concentrations of methyl isocyanate (MIC) (10 g/m^3) generated by evaporation from petri dishes showed immediate restlessness, cramp of the eyelids, sneezing, and difficulty breathing.¹⁴ All animals died during or shortly after the exposure period (1.5 h). The cause of death was acute pulmonary oedema.

Mice, rats, guinea pigs and rabbits exposed to high concentrations of MIC for one hour (1 g/m^3) showed a similar course of poisoning. All animals died from pulmonary oedema within 24 h. The number of deaths was the same with one-tenth of the concentration, (0.1 g/m^3), but death occurred more slowly (1-19 days).

Mice, rats, guinea pigs and rabbits exposed to relatively low concentrations of MIC (68 mg/m^3) for one hour exhibited eye irritation, difficult breathing, restlessness and pulmonary oedema. Death rates were as follows: mice 2/10, rats 2/5, guinea pigs 2/2 and rabbits 1/1. Death occurred within 16 days. With a reduction of the concentration to 37 mg/m^3 the death rates were the following: mice 3/10, rats 1/5, guinea pigs 1/2 and rabbits 0/1. The signs of poisoning were the same as above, but less pronounced. Death occurred 10-18 days after exposure.

No deaths or signs of poisoning were seen when animals were exposed to 7 mg/m^3 for 4 h, 5.2 mg/m^3 for 2 h or 2.7 mg/m^3 for 2 h/day during 5 consecutive days.

The acute, single-exposure LC_{50} was 12 mg/m^3 for an exposure period of 4 h and 50 mg/m^3 for an exposure period of 2 h (4 week observation period).

The skin irritancy of MIC was studied in rabbits. A piece of cotton wool soaked with the liquid and applied to a rabbit's ear for 30 minutes caused erythema, oedema, necrosis and perforation of the ear. A few drops of the compound on the rabbit ear caused destruction of the skin.

In a range-finding toxicity study Smyth, Jr. et al.¹⁵ found that exposure of six rats to 74 mg/m³ of MIC for 4 h caused no deaths, while twice that concentration killed all rats. The same authors found that the single oral LD₅₀ in rats was 71 mg/kg and that the dermal LD₅₀ in rabbits was 210 mg/kg. Application of undiluted MIC to an uncovered rabbit belly for 24 h resulted in necrosis. When introduced into a rabbit's eye 0.5 ml of a 1 % solution of MIC in propylene glycol caused severe burns. Vernot et al.¹⁶ found, in a similar study, that the single oral LD₅₀ was 140 mg/kg in male rats and 120 mg/kg in mice. The dermal LD₅₀ in rabbits was 1800 mg/kg. Acute toxicity data of MIC in animals are summarized in Table 3.

Table 3. Acute toxicity of methyl isocyanate in experimental animals.

Animal species	Parameter		LC ₅₀ (mg/m ³)
	LD ₅₀ (mg/kg) oral	dermal	
Rat	71		12 (4 h)
	140		50 (2 h)
Mouse	120		
Rabbit		210	
		1800	

Human studies

Human volunteers have been acutely exposed to low concentrations of methyl isocyanate. The results are summarized in Table 4.

Table 4. Effect of methyl isocyanate on four human subjects.

Concentration mg/m ³	ppm	Effect
0.9	0.4	No smell or irritation of the eyes, nose or throat.
4.7	2	Weak but distinct irritation of the eyes (lachrymation), nose and throat. No smell.
9.4	4	Irritation stronger.
49.5	21	Intolerable irritation shortly after beginning of exposure.

Attempt to compare estimated toxic effects with the effects observed in Bhopal

Figures 2 and 3 show the calculated concentrations in the meandering gas plume. For a comparison between these model predictions and the actual consequences in Bhopal of the MIC release, toxicological data for short exposure times are necessary. Based on the data in Tables 3 and 4 and in the text, the following rough estimates are suggested (Table 5).

Table 5. Suggested toxic effects of MIC at short exposure times in man.

Concentration of MIC		Effect in humans
mg/m ³	ppm	
23	10	Irritation
68	30	Risk for severe injuries
225	100	Severe injuries and risk for fatalities
675	300	High proportion of fatal injuries

Thus, it is estimated that risk for severe injuries exists when the concentration of MIC reaches 70 mg/m³ (30 ppm) and risk for fatal injuries at concentrations of 225 mg/m³ (100 ppm). According to Fig. 1 severe injuries occurred up to about 5 km and fatal injuries up to 2200-2500 m from the factory. In case A, B (Fig. 2) the calculated maximum distance for severe injuries would be around 3000 m and for fatal injuries 1600 m. In case C (Fig. 3) the corresponding distances would be 10 km and 2300 m, respectively. This indicates that the theoretical predictions made in cases A, B and C, respectively, roughly corresponds to the effects observed in the Bhopal accident. However, due to lack of detailed information it cannot be decided which of cases A, B or C best reflect the actual release in Bhopal.

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APPENDIX 1.

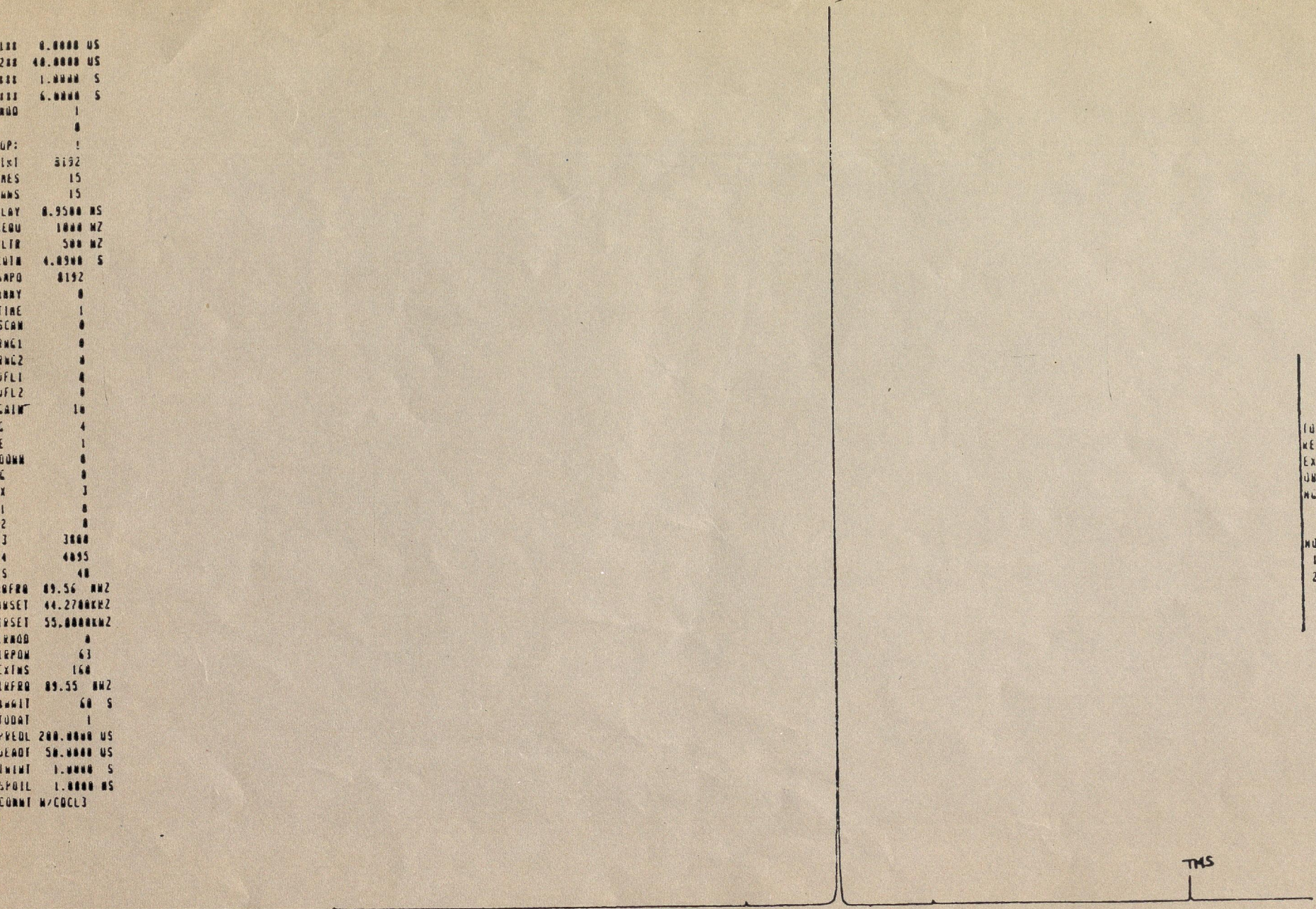
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 PW200 40.0000 US
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 P0100 6.0000 S
 P0000 1
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 TIMES 15
 SCANS 15
 DELAY 0.9500 MS
 FREQU 1000 MZ
 FILTR 500 MZ
 WCONT 4.0300 S
 SWAPO 8192
 GUNNY 0
 FTIME 1
 FSCAN 0
 TRNG1 0
 TRNG2 0
 WUFL1 0
 WUFL2 0
 WCONT 10
 YC 4
 XE 1
 WDOWN 0
 DE 0
 EX 3
 T1 0
 T2 0
 T3 3000
 T4 4095
 RS 40
 WRFRO 89.56 MZ
 WUSET 44.2700 MZ
 TRSET 55.0000 MZ
 WNOB 0
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 CONNT W/COCL3

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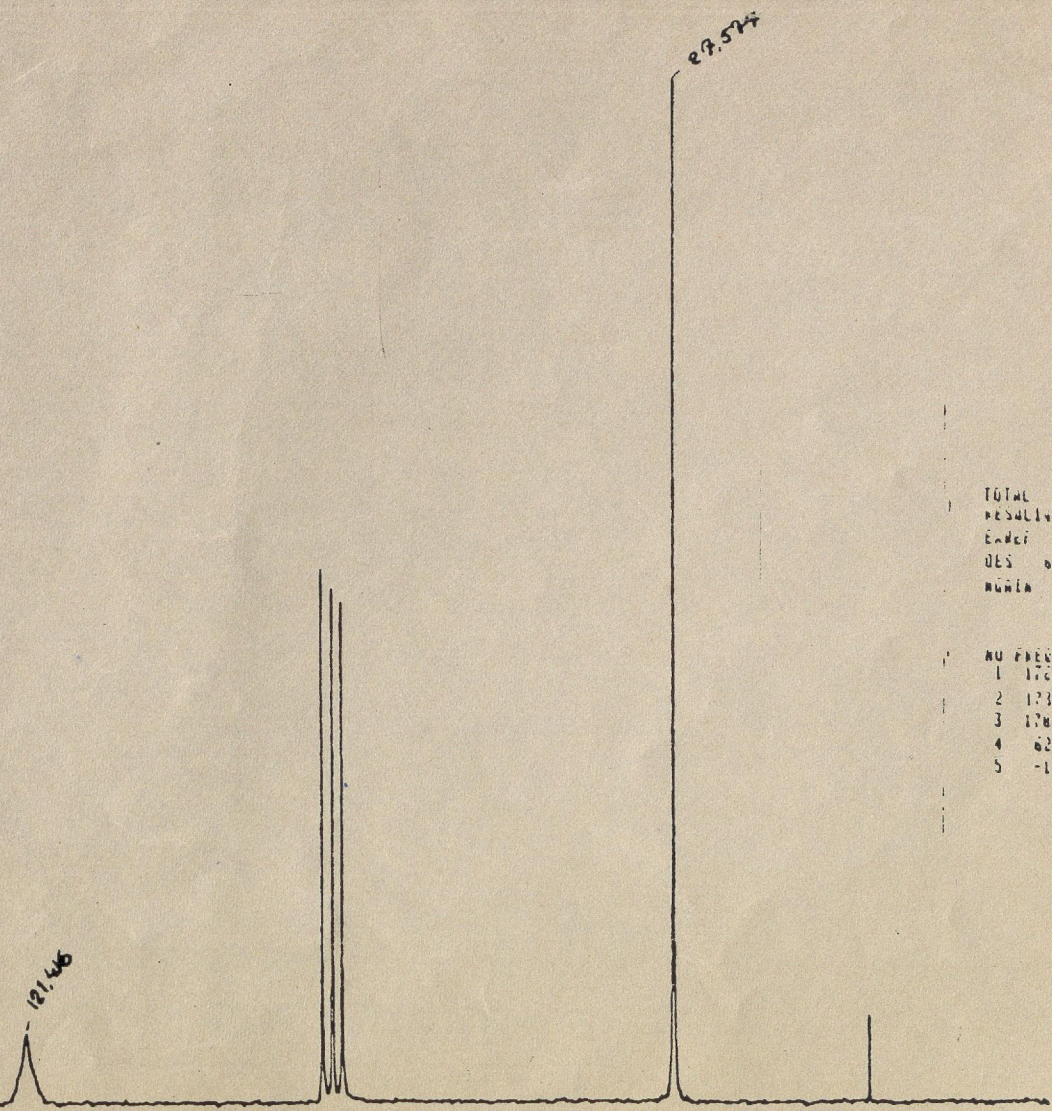
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TMS



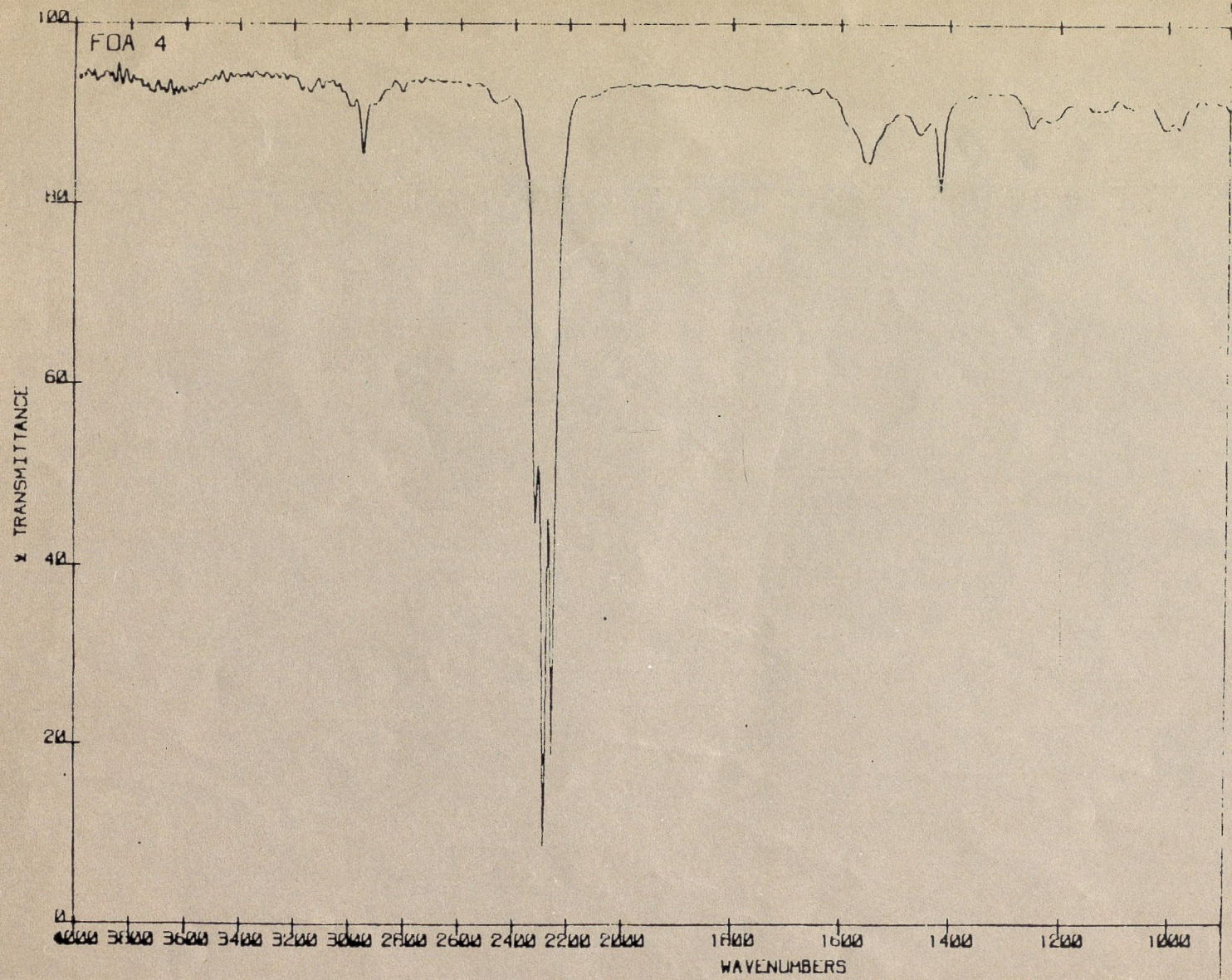
859.16
 Addition of a small amount of
 chrom(III)-acetylacetonat

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 P0000 0.5000 S
 PUN00 1
 MS 0
 LOOP: 1
 POINT 8192
 LINES 1200000
 SCANS 52791
 DELAY 92.0000 US
 FREQ0 6002 MZ
 FILTR 3500 MZ
 ACQTR 0.6020 S
 SWNPD 8192
 DUNNY 0
 FTIME 1
 FSCAN 0
 TRNG1 0
 TRNG2 0
 OVFL1 0
 OVFL2 0
 NGAIN 14
 YE 3
 XE 1
 ADOWN 6
 DC 0
 EX 10
 T1 0
 T2 0
 T3 3000
 T4 4095
 RS 40
 DMF0 22.50 MHz
 DBSE1 33.3100KHZ
 LBSE1 54.2300KHZ
 TRND 1
 TRPDM 63
 EXIMS 100
 TRFM 89.56 MHz
 TRWT 00 S
 TOUT 1
 PREQL 200.0000 US
 DEWGT 50.0000 US
 LWGT 1.0000 S
 SPULL 1.0000 MS
 CURRT C/CACT3



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 DBS 000.0000 MZ
 NGAIN 14

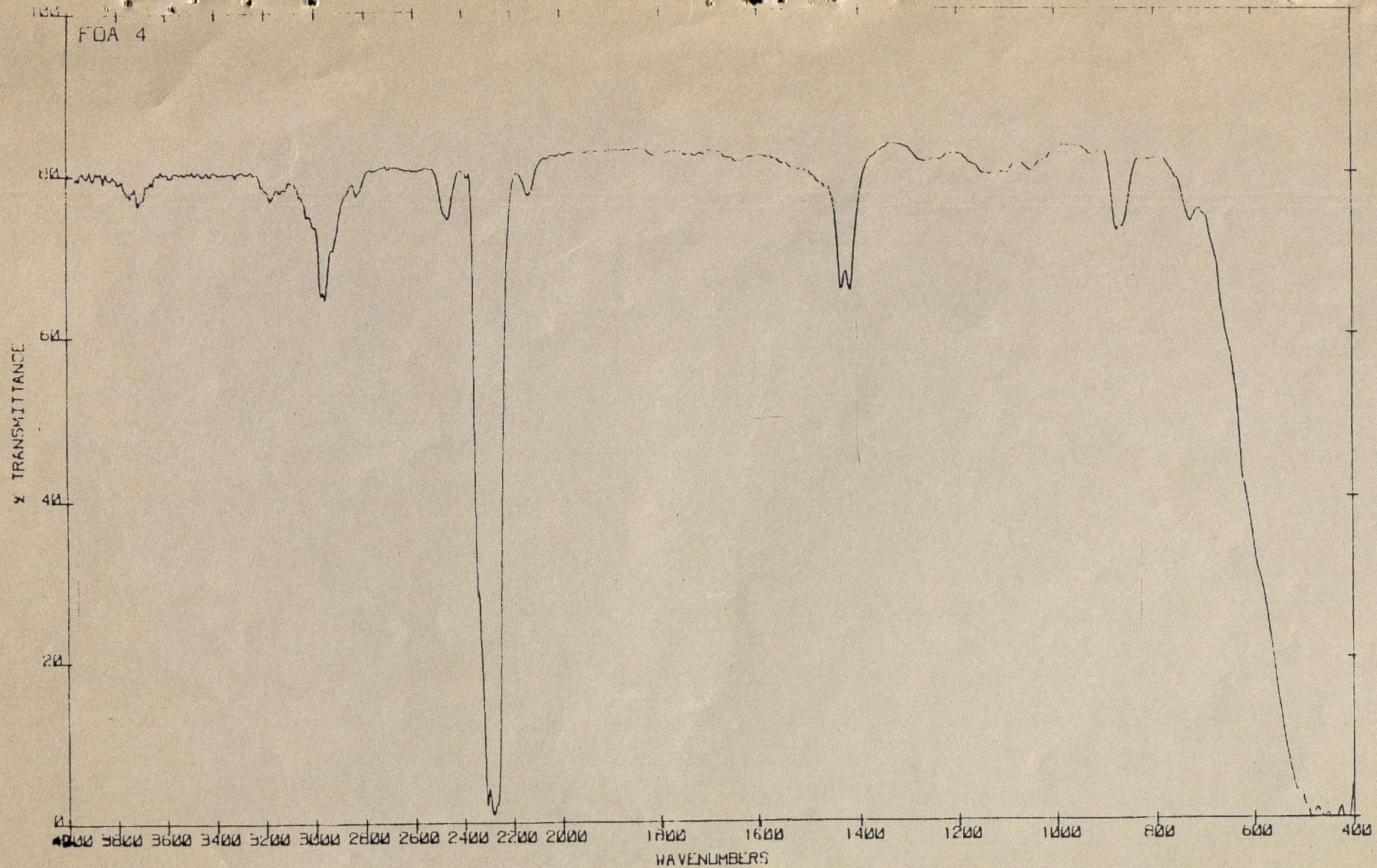
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4	621.42	27.577	5132
5	-15.90	-0.709	421



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SFL=PROV
NSCANS=100
PLM=T

RES=B DP



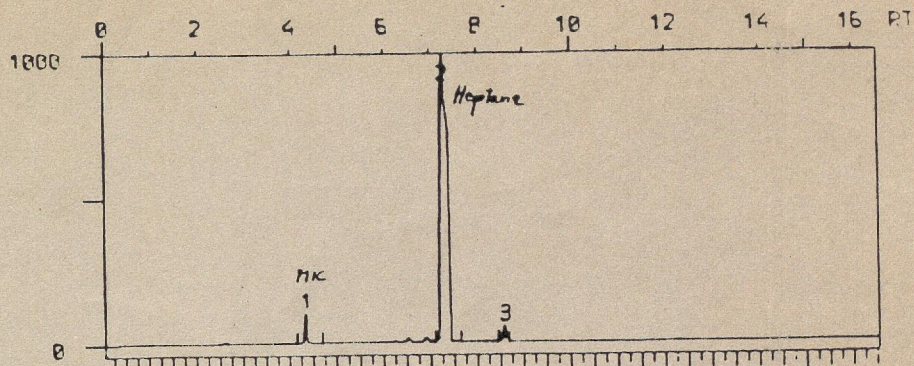
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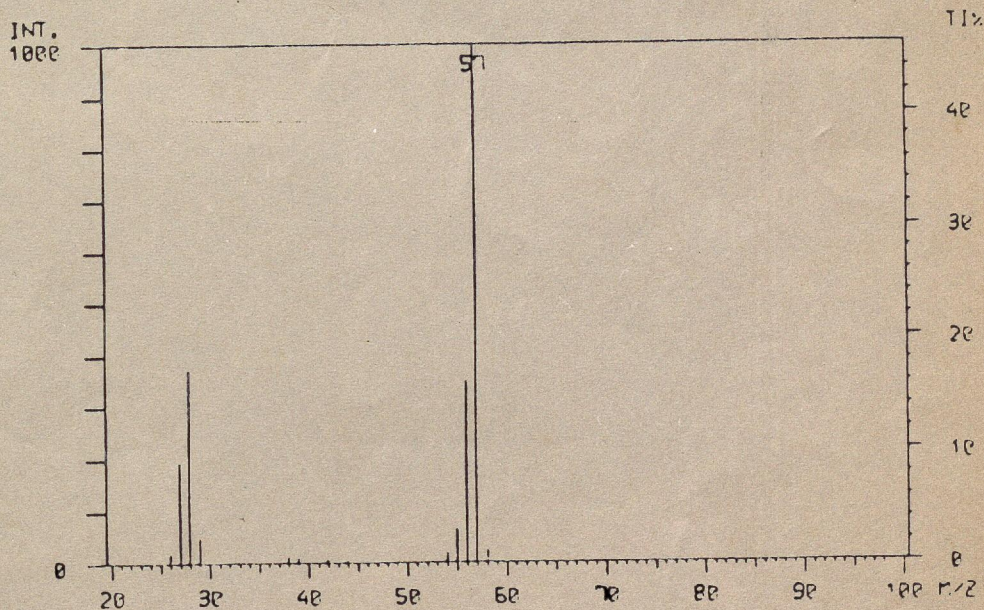
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 SRC. FILE: REN -HEPK (13).....TABLE=3



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2	7.18*/146	997	146-146	1.00	142-142,153-153	
3	8.36*/172	54	172-172	1.00	169-169,174-174	

MASS SPECTRUM
 SAMPLE : MID,850200
 FILE : REN -HEPK (13).....
 (1)4.21*/87 101 87 (1.00) 83,94:TX 30,8F 57-437.9
 PEAKS 14(0), RANGE 20 TO 600(20 TO 100), LEVEL 20(0)



COMPENSATION DISBURSEMENT

PROBLEMS AND POSSIBILITIES

A REPORT OF
A SURVEY CONDUCTED
IN THREE
GAS AFFECTED BASTIS
OF BHOPAL

BHOPAL GROUP FOR INFORMATION AND ACTION

JANUARY 1992

BHOPAL GROUP FOR INFORMATION AND ACTION

Started in June 1986, the Bhopal Group for Information and Action (BGIA) is a small group active on the issue related to the December 1984 Bhopal Gas Disaster and its aftermath. The group has, since its inception, been involved in activities in support of the struggle of the gas victims. It does not claim to represent the gas victims but lends support to organizations of gas victims that continue to struggle for justice and accountability. The group holds that national and international solidarity on the issue of Bhopal is of crucial significance and continues with its attempts to mobilize and strengthen such support. The group does not have a formal structure and no salaries are paid to the members. Activities of BGIA are financed through individual contributions.

This is a report of a survey conducted by BGIA in New Gandhi Nagar, Shakti Nagar and Taj Mahal - three gas affected 'bastis' in Bhopal between 3rd November '91 to 15th November '91, by a team of 10 volunteers.

Copies available from :

The Bhopal Group for Information and Action (BGIA),
C/o E-1/208 Arera Colony, Bhopal, 462 016

and

The Centre for Education and Communication (CEC),
F-20 Jungpura Extension, New Delhi 110 014

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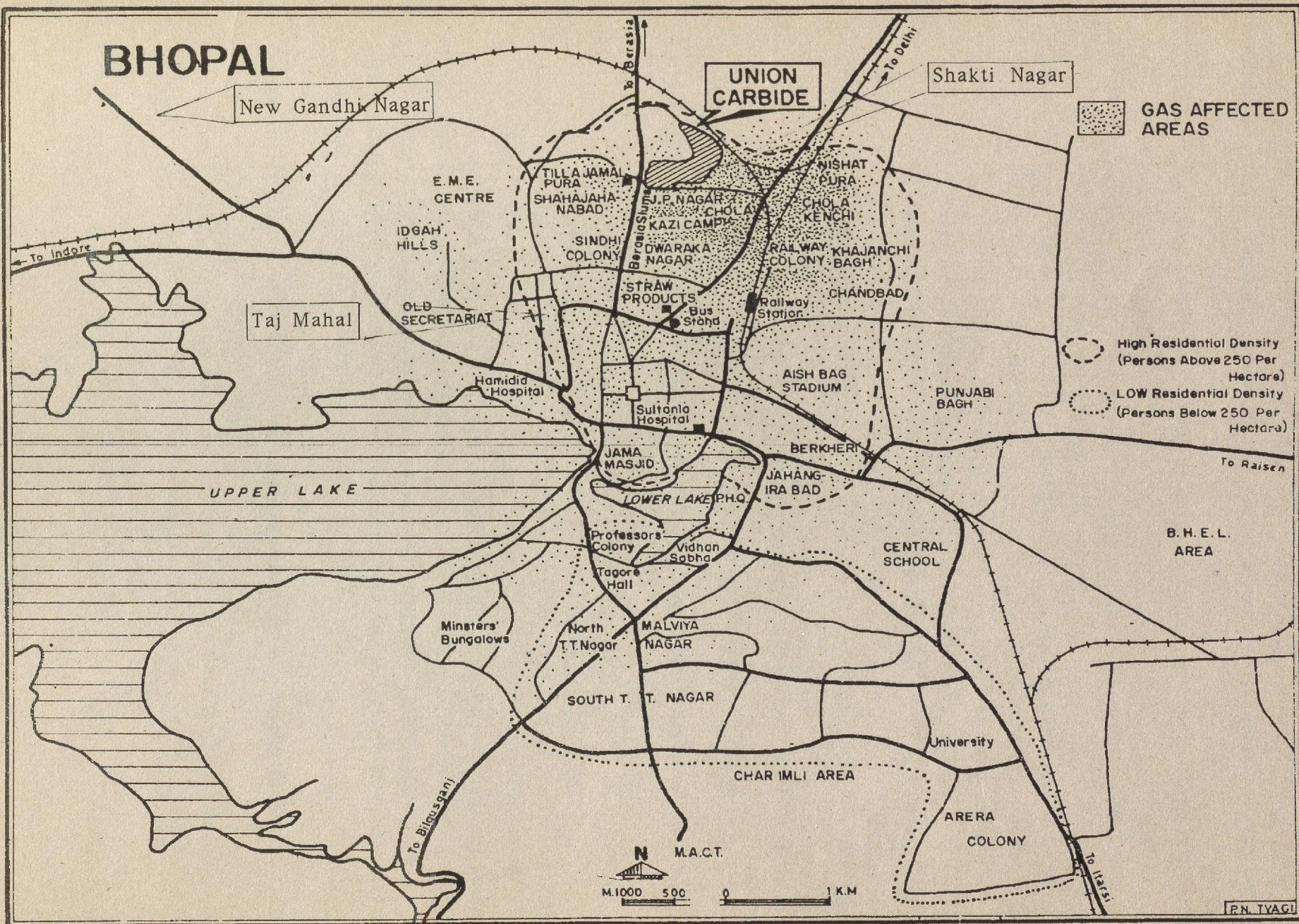
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BHOPAL



INTRODUCTION AND BACKGROUND

On 3rd October 1991, the Supreme Court of India finally settled the damage suit bought against Union Carbide Corporation by the Union of India regarding the 2/3rd December 1984, Bhopal Gas Disaster. The Court has ordered the Government to make arrangements for disbursement of compensation to the over 500,000 gas affected people. This is a gigantic task and given the complexity of the Bhopal situation one can foresee many problems at the level of policy-making and that of implementation with regard to compensation distribution. The present survey was conducted to test the validity of apprehensions regarding the competence of the Government in carrying out this major task. The data generated through the survey has also given shape to certain recommendations that have been listed at the end.

The Bhopal Gas Disaster is an Unprecedented Event

The Bhopal Gas Disaster is unprecedented in many senses. In sheer magnitude, the leakage of over 40 tons of lethal Methyl-Isocyanate (MIC) from Union Carbide Corporation's pesticide factory and the devastation caused by it has made it the greatest industrial disaster of the century. Never before in history have so many people died at one go due to exposure to industrial chemicals - except in Hitler's gas chambers. Never before in history have so many people been maimed by a man-made disaster except in Hiroshima and Nagasaki. Apart from its magnitude, the Bhopal disaster is without precedent in several other ways. Because of the unknown (read known to Union Carbide Corporation only) nature of the offending chemicals, the problems of medical treatment of the gas victims were of a kind not tackled before. Nor has the judiciary in the United States or India ever dealt with a tort case with over 600,000 claimants claiming a total sum of \$10 billion*. Never before have so many victimized people struggled for so many years in the face of repression and propaganda for justice, accountability and the right to a dignified disease free life. For the multinational, the "management" of the disaster was fraught with unprecedented problems and given that it has cost the Corporation just about 50 cents per share, it has done exceedingly well.

The disaster presented tasks of unprecedented magnitude and nature before the State and Central governments. The disposal of thousands of bodies of dead cattle and human beings, provision of medical care to hundreds of thousands of agonized people, arrangement of transport for the masses of victims fleeing Bhopal in panic, were some of the tasks thrust on the government in the immediate aftermath of the disaster. In the days, months, and years that followed, the medical care of all the victims, the monitoring of their health conditions, economic rehabilitation of the population rendered incapacitated, monetary relief to supplement their fallen incomes and provision of hygienic living conditions were the needs felt and expressed by the gas victims and occasionally taken cognizance by the government. Furthermore, successive Central and State governments have not exactly covered themselves with glory in fulfilling these needs and providing the required infrastructural and administrative facilities. In fact, in the years following the disaster, the allocation of resources by the government to deal with relief and rehabilitation requirements have been woefully inadequate and the administration of these resources has been singularly abysmal.

Government's Response to the Bhopal Disaster has been fraught with Apathy and Lack of Innovation

The fact that even after the passage of seven long years the line of medical treatment of the gas victims remains the same as it was on the day after the disaster, bears testimony to the governments' neglect on this crucial issue. Doctors, experts and researchers in the government hospitals and research institutes have till today only symptomatic-supportive drugs to offer to the gas victims providing them with just temporary relief, if at all. The victims demand of setting up a Medical Commission on Bhopal with the involvement of non-government professionals and victim representatives has never been seriously considered by the successive governments and

* \$ 10 billion is the amount claimed by the claimants themselves. The Indian Government claimed \$3.3 billion "on behalf" of them. The Indian Government finally settled with Carbide \$ 470 million, and thus the civil case on Bhopal has ended in an unprecedented sell-out.

the search for a cure to the victims' ailments has been abandoned before it has even begun. Even after the demonstration of the inadequacies of the hospital-based, drug-centered medical treatment there has been no governmental initiative towards a community based approach in medicare and the promotion of more rational and appropriate therapies.

The initiatives of the government in the area of economic rehabilitation has also been marked with complete lack of innovation. While there are over 50,000 gas victims in need of gainful employment in accordance with their health conditions, the state government has provided jobs to just 2,500 women. The jobs of sewing school uniforms is in itself strenuous and ill-paid and only gives a maximum of Rs320 per month. Governmental loans provided to about 25,000 individuals for creation of self-employment have come to nought due to the lack of innovation in providing employment opportunities.

The disbursement of monetary relief by the government has, without exception, been accompanied by inefficiency and systemic widespread corruption. A large majority of victims have had to pay bribes to government officials and their non-government go-betweens to obtain their rightful share of monetary relief. In March 1990, the Supreme Court in response to a petition moved by a victims' organisation ordered the government to provide interim monetary relief to all residents of the 36 municipal wards of Bhopal declared to be gas affected. The disbursement of interim relief which was started by the State government in May 1990 is far from complete with close to 100,000 gas victims yet to receive their first installment. While newspapers have highlighted many cases of fraudulent beneficiaries, there are countless instances of corruption and wrongful denial of monetary relief that largely goes unreported. There are several procedural steps in the identification of beneficiaries and their entitlement to relief and much of the corruption can be ascribed to the tortuous process of relief disbursement.

On the crucial matter of information generation, governmental efforts so far have been unscientific and incomplete. The information generated through various surveys (most of which remains classified to date) has not yielded a complete registry of gas victims and there are close to 100,000 gas affected people whose claims have not been registered yet. The scheme of medical categorization has resulted in gross underassessment of damages suffered by the victims. Victims organisations have conceded that the magnitude of damages wrought by Union Carbide has been tailored down to suit the low settlement amount. Under the scheme of categorization, over 92% of the claimants have been categorized as having suffered only temporary injuries or no injuries at all. Such figures are sharply contradicted by the studies carried out by the Indian Council for Medical Research (I.C.M.R.) as well as those by non-governmental bodies. A study sponsored by the Jawaharlal Nehru University, New Delhi in October 1989 has highlighted the unscientific nature of the medical categorization and has investigated into the irresponsible manner in which it has been carried out (Appendix 1). Till date medical categorization is only half done and 44% of the claimants still remain to be medically examined.

Apart from inadequacy, the other principal feature of government relief and rehabilitation efforts has been harrassment that the gas victims have been subjected to through the introduction of gas relief programmes. The toxic gases from Carbide turned an entire population into a mass of dole seekers, giving an unprecedented amount of power over their lives to government



Durga Bai (35) Shakti Nagar, her health condition has deteriorated since 1985. She continues to be treated with anti tubercular drugs at the government hospital with no relief. And no cure in sight.

officials down to the lowest level functionaries. The frequent abuse of this power coupled with tortuous procedures for entitlement to benefits has caused unending harassment to the beneficiaries - the gas victims. Each new relief programme has meant for the victims submitting applications, photocopying documents, standing in long queues for long hours and making endless trips to the various government offices. In the latest programme, the disbursement of interim relief, an examination of the scheme of disbursement and its applications will clearly show that the convenience of the beneficiaries has been given the least consideration (see 1.iii).

Government officials of late have begun to concern themselves with the task of disbursing final compensation to the victims. The record of governmental response to the Bhopal disaster so far provides little hope that the task will be carried out efficiently and satisfactorily.

The Disbursement of Compensation is a Task of Unprecedented Magnitude

On October 3rd, the Supreme Court validated the \$470 million settlement between Union Carbide and Government of India and ordered the government to make good any likely shortfall in the compensation amount. The government has also been ordered to make arrangements for the disbursement of the compensation amount by appointing Claims Commissioners and setting up Claims Courts by February 1992. The disbursement of compensation is a major task and under the prevailing conditions, extremely complicated. The first major problem is the absence of a registry of gas victims, particularly when there has been no governmental effort to monitor the migrations that have taken place in and out of the gas affected areas. The second major problem is the lack of any scientifically valid criteria for the evaluation of personal damages, the criteria of medical categorization being patently flawed and demonstrably inadequate. Along with the problems of identification of gas victims and the allocation of compensation amounts commensurate with the damages suffered by individual victims, the third major logistical problem is that of corruption. While a high powered committee has been set up by the government to make decisions on the crucial issue of compensation disbursement, there are no reports until date of how the problems mentioned above are to be dealt with, in carrying out the task. In fact, there is little to suggest that the government has a clear understanding of the issues that need to be resolved before any compensation disbursement can begin. It is quite clear, however, that unless the lessons of previous experiences are kept in mind and sufficient thought is given to the matter by government officials, gross injustice will be done to the large majority of gas victims.

The present survey has been undertaken to arrive at some understanding of the nature and magnitude of problems that need to be addressed before compensation sums are allocated to individual gas victims. Information has been collected from residents of three gas affected 'bastis' and the data from these clusters have been situated in the wider context to arrive at specific conclusions and recommendations. While most of the information generated deals with matters of compensation disbursement, inquiries have also been made into some aspects of medical treatment.

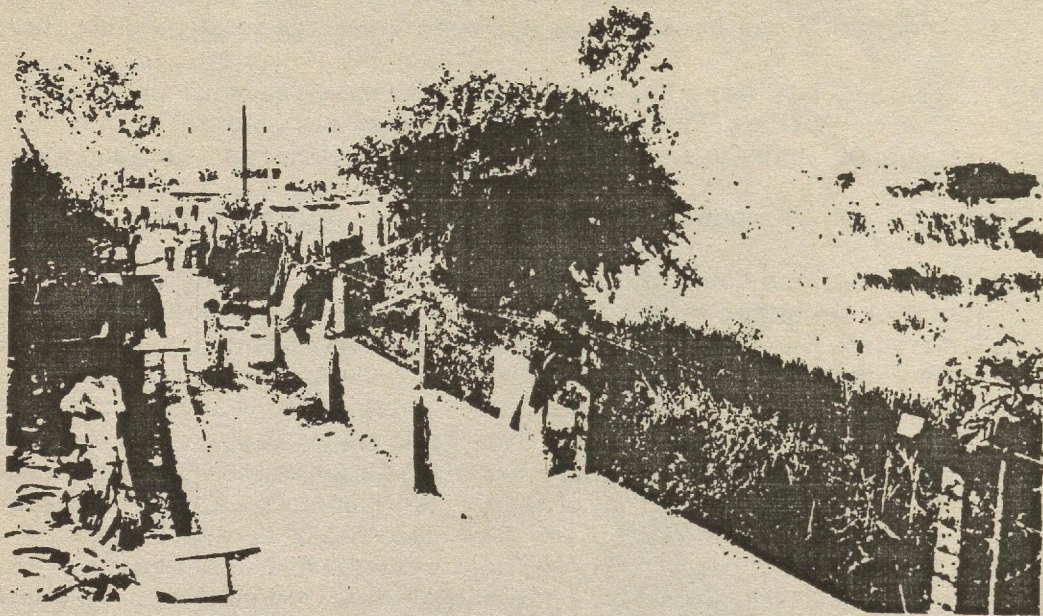
OBJECTIVES OF THE STUDY

The following objectives were defined for the study:

1. To generate information on the qualitative and quantitative aspects of problems envisaged in the disbursement of compensation.
2. To arrive at specific recommendations towards ensuring that the victims right to adequate compensation is not undermined due to administrative inadequacies.
3. To generate information on the use pattern of the government system of medical care as opposed to private doctors and clinics.

DATA COLLECTION

The data for the present study was collected over a period of ten days between 3rd and 14th November 1991, by a team of ten volunteers, some of whom are members of the Bhopal Group for Information and Action.



Shakti Nagar : Settlement next to the walls
of Union Carbide's factory



New Gandhi Nagar : Dwellings of a relocated people

STUDY POPULATION

The study population consists of over 2,600 residents of three gas affected bastis one each from the severely, moderately and mildly affected municipal wards as delineated by the Indian Council for Medical Research (I.C.M.R.). Size was the prime consideration for the selection of the bastis as it was necessary that the population of the selected basti was not inordinately large and complete coverage of the settlements was possible within the constraints of human and other resources. The three settlements that were surveyed are Shakti Nagar, Taj Mahal and New Gandhi Nagar in the severely, moderately and mildly affected wards respectively.

Shakti Nagar is situated right next to Union Carbide's notorious pesticide factory and consists primarily of mud and wood 'kutcha' houses. Majority of the residents here are daily wage workers or petty traders with very low incomes.

Taj Mahal is actually the name of a spacious building complex built by the Begums of Bhopal and is over 100 years old. The ruins of the building have been occupied mainly by the people who were forced to leave their homelands during the Partition of 1947. Socially and economically, the residents of this settlement are better off compared to people in the other two bastis.

New Gandhi Nagar is composed entirely of gas affected people who have been evicted from their settlements in June 1991 by the government. Their homes in Shakir Nagar, Sazda Nagar and Fatehgarh have been bulldozed as a part of the city beautification drive and since most of them are wage workers and petty traders, their incomes have been severely affected due to their forced relocation 14kms away from the city. (Appendix II).

Essential demographic details of each basti have been presented in Table 1.

METHODOLOGY

A questionnaire in hindi with a set of 26 questions (Appendix III) was prepared and was finalized after discussions with competent professionals engaged in socio-medical research. Information was collected through interviews with different members of a household and examination of relevant documents in their possession. Prior to the administration of the questionnaire, a draft describing the objectives and scope of the survey was distributed and read out to the interviewees. Repeated visits were made to each basti so as to have near total coverage and over 95% of households in each basti were thus surveyed. The replies given by the respondents were worded so as to enable processing of data.

A trial run made prior to the actual conduction of the survey revealed that it was not possible to elicit honest responses to the questions regarding bribery since people were apprehensive they might earn the wrath of those who benefit from corruption. Hence, these questions were dropped out from the questionnaire. Also it was found at the end of the survey that the perception of literacy was not uniform among the different members of the survey team, rendering the data collected on literacy unusable.

FINDINGS OF THE SURVEY AND DISCUSSION

1. Problems in Identification of Gas Victims:

i) Children born after the disaster

The number of residents in the three bastis under age 7 is presented in Table 1. There is thus an average 20.6% rise in the population of the three bastis since the disaster. This is quite comparable with the government

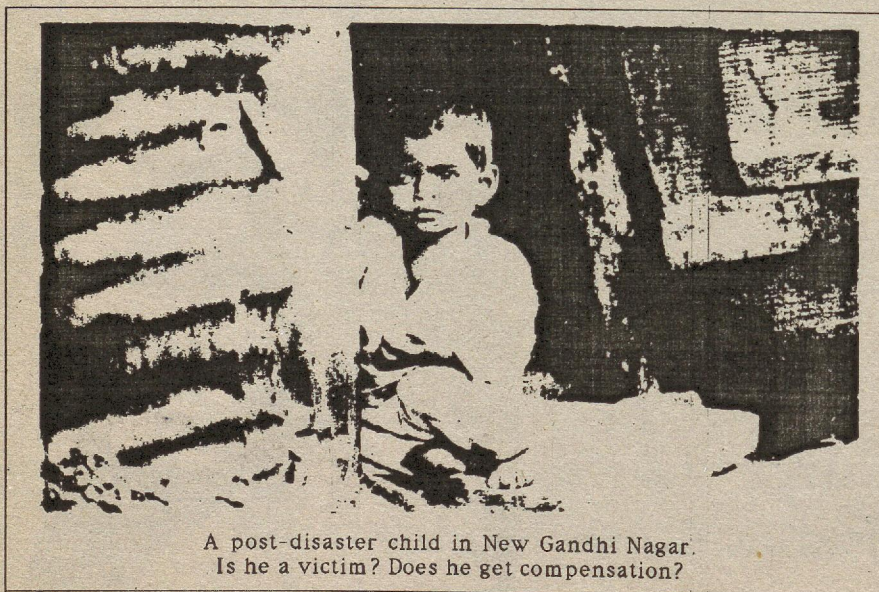


Naryani Bai, 36 years, Shakti Nagar
She had to pay Rs.2,000/- as bribe to get Rs. 3,000- interim relief to which she was legally entitled.

figures which show a 25.4% rise in the population of the 36 gas affected wards between 1984 and 1989. The low figures of population figures in Taj Mahal (16.07%) can be ascribed to lower fecund population in this basti and to superior economic status of the residents. It was observed that the children born after the disaster have not been covered in the surveys conducted by the Tata Institute of Social Sciences, Bombay (T.I.S.S.) and the Indian Council for Medical Research (I.C.M.R.). These children have also not been included in the list of claimants and their names are absent in the family ration cards. This is a significant matter that demands immediate attention.

Studies conducted by the I.C.M.R have clearly indicated gas related health damages among children born after the disaster to gas exposed women¹. It has been found that the physical and mental growth of such children is significantly affected and there is significantly longer delay in gross motor (control of voluntary body movements) and language sector development. (Appendix IV). A 1990 study by the I.C.M.R. also shows the presence of chromosomal aberrations in the gas affected population indicating the possibility of congenital malformations. Autopsy reports of deceased post-disaster children also indicate the presence of gas related organ damages similar to other gas victims. Apart from such medical reasons, there are also legal grounds for the inclusion of post-disaster children in the list of persons affected by the toxic gases from Carbide. The October 3rd 1991 judgement of the Supreme Court has made provisions for 'later born children who might manifest congenital or prenatal MIC related afflictions.' It stands to logic that if children born after 1991 are to be considered at par with gas victims, the exclusion of children born between 1984 and 1991 from the list of gas affected persons would amount to wrongful denial.

ii) Incomplete coverage by surveys, claim registration and issuance of ration cards:



A post-disaster child in New Gandhi Nagar.
Is he a victim? Does he get compensation?



Shabana, daughter born to Qayum one year after the disaster is mentally retarded. Her mother was gas exposed.

The number of gas affected people who have been left out by the socio-economic survey carried out with the help of T.I.S.S. and the epidemiological survey conducted by the I.C.M.R. have been given in Table 2. Table 2 also contains the number of gas affected people whose claims have not been registered and the number of residents who have not been issued a ration card by the government.

The epidemiological survey by the I.C.M.R. was not intended to cover the entire exposed population. According to I.C.M.R. reports, out of an estimated exposed population of 521,262 in 1984, a population of

80,021 (20.3%) was covered by the I.C.M.R. study. The I.C.M.R. survey, however, has included children born after the disaster since they too were subjects of I.C.M.R. studies. This explains the data presented on coverage by I.C.M.R. in the three bastis that have been surveyed. It can be seen that in the two bastis Shakti Nagar and New Gandhi Nagar, the I.C.M.R. coverage is the

least incomplete while in the case of Taj Mahal, it is apparent that the I.C.M.R. has left out a substantial portion of the settlement completely.

In terms of coverage, the T.I.S.S. survey is also incomplete. As can be seen in Table 2 in Shakti Nagar, where the survey was conducted in early 1985, 21.9% of residents have not been included. While it is possible that children born after the disaster have been completely left out of the T.I.S.S. survey (21.51%), a small percentage of adults have also been excluded. The incompleteness with respect to the T.I.S.S. survey in the other two bastis can also be ascribed primarily to non-inclusion of post-disaster children.

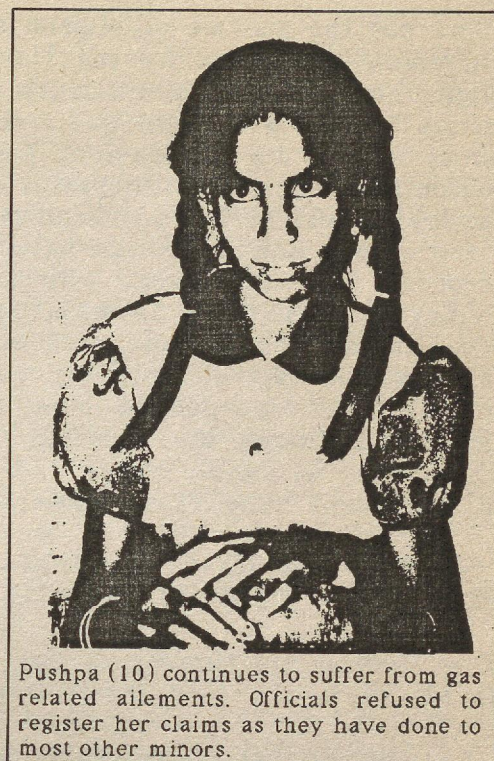
In the matter of claim registration, the incompleteness is alarmingly marked (Table 2). On an average, the claims of 42.2% of the residents in the three bastis have not been registered. Even, if we leave the post-disaster children out of our considerations, an average 21.1% of residents who were directly exposed to the toxic gases have been excluded from the list of claimants prepared by the Directorate of Claims, Madhya Pradesh government. In Shakti Nagar, the most severely hit basti, one sixth of the population which has survived direct exposure to Carbide's gases has not been able to register claims with the government. Such a situation has been brought about primarily due to the arbitrary decision of the government officials in charge of claim registration to disallow children under 18 to register their claims. This illegal practice was carried out under the erroneous notion that since minors cannot be owners of property, they cannot be entitled to compensation amounts. Figures obtained from the Directorate of Claims indicate that the number of claimants in the 36 wards is 16.1% less than the official resident population in 1984 and 33.1% less than the population of the 36 wards in 1989. These figures also outline the incompleteness of claim registration.

Ration cards have been considered as one of the proofs of residence (and hence victimage) by government officials. But it can be seen from Table 2 that a substantial number of residents (20.4%) do not have ration cards in their names. A further reason for concern is that in New Gandhi Nagar, the residents have been issued fresh ration cards during their relocation. In these ration cards, it is specifically mentioned that they are not to be used for obtaining relief and are thus not valid proofs of residence or victimage in the gas affected area. The ration cards held by them in their earlier settlements have been taken off by government officials leaving them short of one valid document.

iii) Substantial number of residents are not receiving interim relief

It was found in the survey that a substantially large number of residents in the three bastis are not receiving interim relief of Rs.200/- per month (Table 3). Given that the order directing payment of interim relief was passed by the Supreme Court more than one and a half years ago and that the state government assured complete disbursement by the end of 1990, the fact that an average 33.9% of the residents in the three bastis continue to be denied relief is an indication of governmental inefficiency. Even more disturbing is the fact that in Shakti Nagar, where the residents are most severely affected by the toxic gases nearly half (43.02%) of the people are not getting interim relief. Leaving aside the population under seven, the average percentage of non-recipients of interim relief in the three bastis works out to be 43.2%. In Shakti Nagar where the people are most in need of relief, more than half of the population above seven has been denied interim relief. Such a situation calls for immediate remedial action.

During the course of the survey, the non-recipients of interim relief in the three bastis were asked whether they had drawn the attention of the government in this regard. The response to this inquiry shows that on an average only 26.3% of those not receiving interim relief have sought redressal. Most were not even aware that a means for redressal existed.



Pushpa (10) continues to suffer from gas related ailments. Officials refused to register her claims as they have done to most other minors.

As per the scheme of interim relief disbursement drawn up by the State government, the process of identification of beneficiaries begins with individuals receiving a notice sent by the government. The primary reason for incomplete disbursement is due to the incompleteness of a registry of gas victims. Since names and addresses have not been recorded by government officials, notices cannot be sent to them. As outlined by victims organisations the procedure of sending notices without actual visits by government officials for the purpose of identifying beneficiaries has been the principal reason for corruption, wrongful denial and incidence of fraudulent beneficiaries (Appendix V).

2. PROBLEM IN AFFIXATION OF COMPENSATION AMOUNTS

i) Medical Examination of Gas Victims is Incomplete

The number of residents in the three bastis who have not been medically examined has been presented in Table 4. The same table also lists the number of people whose claims have been registered but who have not been medically examined.

It can be seen that on an average, 52.9% of the residents have not been medically examined. It is obvious from the above figure that medical examination is an inadequate criteria in as much as it has failed to include more than half of the gas affected people.

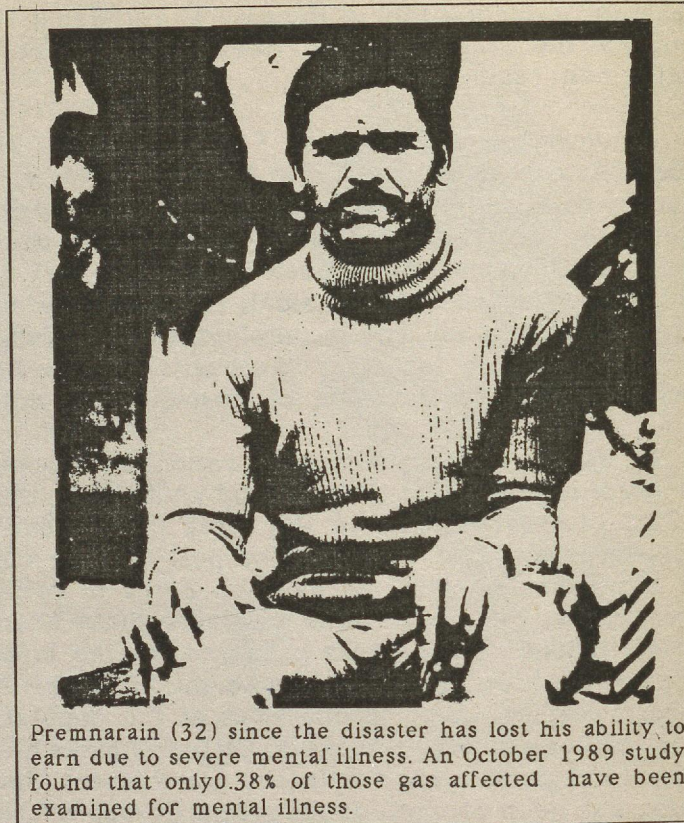
Table 4 shows that even among the gas-exposed people whose claims have been registered, medical examination has not been administered on an average 18.3%. According to figures given by the Directorate of Claims, 44% of the claimants have not been medically examined. Government officials have held the claimants themselves responsible for such a situation and have stated that notices had been sent to the claimants but they have not reported at the medical examination centres as mentioned in the notice. Officials have also said the claimants left out of medical examination are those who have made frivolous claims.

The information gathered from the three bastis, however, gives a very different picture. In the course of the present survey, it was found that an overwhelming majority of the claimants who have been left out of medical examination are those who have not received notices at all. Once again, there is enough to suggest that the government does not have the proper names and addresses of all the claimants. Given the dismal record of this procedure, the continued insistence of officials on sending out notices for every government initiative from interim relief to medical examination is indicative of their refusal to learn from experience.

ii) Essential Tests Have Not Been Carried Out on a Large Majority of the Medically Examined Population:

In the course of the survey, the medical examination papers of the residents of the three bastis were examined to record the extent to which different tests had been administered during medical examination. The data presented in Table 5 shows the gross neglect in the administration of essential tests. Pulmonary Function Tests (PFT) to measure the damage caused to the lungs has

*While it can rightly be contended that the payment of compensation can/should not be equated with the administration of the justice, the medical care and rehabilitation needs and the moral claim of the victims to restitutionary sums of money cannot be ignored.



Premnarain (32) since the disaster has lost his ability to earn due to severe mental illness. An October 1989 study found that only 0.38% of those gas affected have been examined for mental illness.

been administered on only 10.3% of the medically examined population in Shakti Nagar where almost everyone has suffered lung injuries. Similarly, only 17.9% of the medically examined population in Shakti Nagar has been tested for eye damage while almost the entire population has suffered from eye problems ranging from acuity of vision to lacrymation. It has been widely reported that the toxic gases from Carbide have caused extensive lung and eye damage in the entire gas exposed population. However, the present survey indicates that the attempts made to assess such injuries through medical examination has been grossly inadequate. Similarly, willful neglect has been shown in the assessment of injuries suffered by women. According to the 1990 report of the I.C.M.R., the abortion rate in the gas affected areas was found to be 7.63% as compared to an abortion rate of 3% in the control area six years after the disaster. An October 1989 study found significantly high incidence of menstrual problems with 64.7% of women (age 9-44 years) in the seriously affected area and 47.6% in the mildly affected area reporting at least one symptom related to gynaecological problems². An earlier study done through voluntary efforts³ has also documented the 'epidemic of gynaecological disorders' among the gas exposed women. Yet we find (Table 5) that from the number of female gas victims who have been medically examined, only 7.6% have been examined for gynaecological problems. The small number of children who have been examined by a paediatrician illustrates that the governmental neglect is not only related to gender but also to age. The present survey also brings to light the small percentage (12.8%) of those medically examined who have been seen by a medical specialist.

On the other hand, the data in Table 5, reveals a preponderance of invasive and inadequate tests. As can be seen, on an average 64.06% of the medically examined population has been administered X-ray examinations (and subsequently has been exposed to harmful radiation). The administration of this invasive test has been about three times more than PFT and four times more than apthalmic tests, both of which are non-invasive. Further, the lack of experience of doctors in identifying and assessing chemical induced lung damage through X-ray pictures impose severe limitations on the efficiency of this procedure. Urine tests for the measurement of thiocyanate levels have also been conducted on a large number of people who have been medically examined (average 64.1%). Though this is a non-invasive test, its efficiency in measuring gas related damage is not completely established. Further, the proper administration of this test calls for precautionary measures on the day previous to the test. It is unlikely that such influencing factors have been kept in mind during the conduction of urine tests.

iii) A large majority of the medically examined population has not been informed about the categories allotted to them

Table 6 shows that an overwhelmingly large number (average 85.3%) of claimants who have been medically examined have not received notification about their categorization. As per procedure adopted by the Directorate of Claims except for the claimants who have been found to have suffered no injury by the toxic gases (category A), all others who have been medically examined were to be sent notices regarding their categories. Figures given by the Directorate show that 47.9% of the medically examined claimants have been put into category A. The corresponding figure obtained in the present survey (85.3%) is much larger. The difference between these two figures can be ascribed primarily to the absence of proper names and addresses of all the claimants and non-delivery of notifications by governmental functionaries. A secondary reason can be that the respondents in the present survey have not realized the significance of the categorization notice sufficiently enough to report its receipt to the survey team. In any event, this data undermines the usefulness of the scheme of medical categorization.



Mohammad Shakir (30) in Shakti Nagar is one among many who went for medical examination but no tests were carried out.

iv) Medical categorization of claimants indicates gross underestimation of injuries:

Data collected during the survey on the categories assigned to medically examined claimants in the three bastis has been presented in Table 7. These figures do not match with the categorization figures given by the Directorate of Claims (Appendix VI). This mismatch is due to reasons stated in 2(iii). What is clear from both data obtained from the survey and that presented by the Directorate of Claims is that an incredibly low number of gas affected people have been considered to be permanently injured by the toxic gases. The severity of such underassessment is marked in the case of Shakti Nagar as well as in the municipal ward in which this basti is situated. According to the 1990 I.C.M.R. report, the death rate in severely affected wards was more than twice that in an unexposed population even six years after the disaster. This data alone militates against the assignment of permanent injury category to such a small percentage of the medically examined population (Appendix VII). In fact, all studies done by the I.C.M.R. as well as those carried out by non-governmental efforts have stated that the injuries caused by the toxic gases are permanent in nature and indicate the possibility of progressive deterioration of the condition of the victims. Further, the results of the medical categorization are completely at odds with the findings of the epidemiological study carried out by the I.C.M.R.

3. USE PATTERN OF GOVERNMENT MEDICARE

Table 8 presents the data on the number of the gas affected people in the three bastis who visit government hospitals and/or private clinics for medical treatment. The same table also shows the reasons offered by the gas victims for choosing to visit government hospitals.

The large number of people who continue to visit government hospitals or private clinics speak of the poor health status of the gas affected people. The data also shows that a section of the gas victims visit both government hospitals and private clinics. In the case of Shakti Nagar, which is the most severely affected, we find that 85.9% of the population has to visit private clinics seven years after the disaster. It can be readily seen from the table that a far larger number of people prefer to visit private clinics (average 77.9%) over government hospitals (average 49.8%). Analysis of the reasons offered by the respondents shows that while the availability of free treatment at the government hospitals is the prime reason for their use by gas victims (average 95.6%), the primary reason for choosing private clinics according to the gas affected people is that they provide better treatment (average 92.7%). It has been earlier reported that eight out of every ten private doctors in the gas affected area has had no formal training in medicine and most have just taken correspondence courses from ubiquitous institutions with dubious reputations⁴. It has also been reported that prescription of irrational drugs (drugs unnecessary or hazardous) is alarmingly high among private doctors.

Conditions at the government hospitals are also deplorable. A June 1990 report¹ shows that the incidence of irrational treatment in government hospitals is significantly high (36.7%). One would like to believe that the professional medical education of the doctors in the government hospitals would give them an edge over the private doctors. But, the response received from the people show that private doctors are much more popular and in comparison to government doctors provide higher quality treatment. Private doctors who have made a fortune out of the Bhopal disaster admit that their continued presence in 'business' is primarily due to the inadequacies of the government's system of medicare. The present survey has shown that gas-affected people visit government hospitals only when they cannot pay the costs of private treatment. Such a situation warrants attention of the decision-makers before investments are made from the public exchequer on yet another hospital.

CONCLUSIONS AND RECOMMENDATIONS

The findings of the present survey outline the problems that lie in the proper administration of the compensation amount among the gas affected population. As has been shown, corresponding government figures also illustrate that the two most crucial questions, viz. Who is a gas victim? and What is the amount s/he is entitled to? - cannot be adequately answered within the given schema of things. Given such a situation one obvious conclusion is that a great majority of gas affected people would be denied their compensation or would be paid inadequate sums, leading to a greater injustice to the gas victims*. Preparation of a complete registry of gas affected people, monitoring of migrations of gas victims, registration of claims of all affected persons, complete and appropriate medical examination, are some of the crucial steps that need to be taken to prevent such a situation. As has been discussed in this report, the government has failed miserably in taking these steps.

According to the Bhopal Gas Disaster Processing of Claims Scheme 1985, Deputy Claims Commissioners (D.C.C.) appointed by the government would now pronounce judgement on whether an individual claimant has indeed been affected by the gas and decide on the amounts payable to the individual as compensation if s/he is found to have suffered damages. Optimistically, it can be said it would be possible that the government appointed D.C.Cs would be persons of competence and integrity. However, under the circumstances, it should be impossible for these officials to do complete justice to the gas victims in the matter of adjudication of claims.

Having concluded that complete justice will not be done in the matter of disbursement of compensation to the victims of the Bhopal gas disaster, this report presents certain recommendations. These recommendations follow from the understanding that since complete justice cannot be done, the guiding principle for disbursement for compensation should be minimization of injustice. Following is the list of recommendations:

1. Organisations of gas victims have proposed an alternative scheme for disbursement of compensation. The proposed scheme with the objectives of minimizing wrongful denial, delay, harassment and corruption calls for a broad definition of a gas affected person. It recommends payment of a final sum to all residents of the 36 wards (declared to be gas affected) after conduction of an effective screening exercise. The proposed scheme obviates the necessity of



Krishna Bai (25) has been immobilised since the disaster. Countless visits to government hospitals and private clinics has provided no relief.

each of the over 500,000 victims to present themselves before the Claims Courts and suggests specific roles of the Deputy Claims Commissioners (Appendix V). This recommendation demands serious consideration by concerned government officials.

2. A Watch Dog Committee needs to be immediately set up to monitor the disbursement of compensation. The committee comprising of officials from the Central and State governments, representatives of victims' organisations and non-governmental professionals with expertise and commitment would identify inadequacies and system failures in disbursal and compensation. The committee will draw the attention of the public and concerned government officials to such problems and propose remedies.

3. A Medical commission should be set up to supervise and monitor the health care of the Bhopal gas victims. The Commission should be composed of professionals as well as non-professionals who have expertise and who are committed to the cause of alleviating the suffering of the gas affected people. The primary task of this commission should be to evolve guidelines for proper medical treatment and to ensure that such guidelines are effectively implemented. The Commission needs to be given appropriate authority, infrastructural support and resources to carry on this vital task over the next few years. The treatment given to the gas victims at the government hospitals must be periodically reviewed and a system of feed back must be incorporated in the health care system to record the responses of the gas victims.

It can be argued that the recommendations given above do not draw support from any precedent. What needs to be remembered, however, is that the question of precedence legal or otherwise, has no relevance, for the Bhopal gas disaster itself is without precedent calling for imagination, innovation, and above all an unprecedented amount of governmental will.

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CRITIQUE OF MEDICAL CATEGORIZATION

The Process of Injury Assessment Followed by the M.P Government is Faulty

1. Three of the categories in the Personal Injury Evaluation (PIE) concern injury and three concern disability. Injury is the physical and medical illness while disability* is the the effect of the illness on the day to day activities of a person such as personal carrying, ability to work, fulfillment of social roles etc., Part B of the medical record which alone forms the basis for categorization does not contain any information about the claimant's ability to carry on day to day activities, including occupation. Thus, the assessment of the injuries into disability, on the information in Part B of the medical record is arbitrary and subjective.

2. The process of PIE depends upon an arbitrary scoring which converts symptoms and signs, treatment and investigation findings into numbers. No attempt is made to diagnose the disease from which the claimant is suffering. This incidentally renders the medical record useless for the purpose of prognosis and medical rehabilitation. According to the 'Guidelines', only if the score today is more than the immediate post-exposure period, would the person be categorized as 'permanent injury'. This means that unless one's health is now worse than the period after 3rd December 1984, s/he will be labelled as 'temporary injury'. Since the medical examination for PIE is being carried out five years after the gas disaster, any person with any gas related illness today must be considered 'permanently injured'.

3. According to the PIE, a claimant is considered to be gas exposed only if s/he produced medical documents for the post exposure period. This is in spite of the fact that almost all the people exposed to the gases developed symptoms and that the hospitals and emergency camps were flooded in the initial period where there was no time for the 'niceties' of giving medical documents to the victims. A large number of the victims are thus being categorized as 'no injury' even though they are ill and can produce proof of residence in the exposed area, all because they cannot produce medical documents for the post exposure period.

4. The PIE is based on very few investigations which partially measure only one system's functioning i.e. respiratory. Even these (X-ray, Pulmonary Function Test (PFT), and Exercise Tolerance Test (ETT)) are done for very few people. Since according to the Government, "it is just not practicable to subject every claimant to these time consuming investigations in mass operations like this", which are carried out on very few victims, it is unjust to categorize victims into 'no injury' and 'temporary injury' category. According to a recent study, 60% of the claimants in the surveyed population required PFT and ETT whereas the Claims Directorate has ordered it for only 15% and 2% respectively.

5. The same is true for referral to specialists opinion also. For instance, in the recent study, 54% of the individuals examined were diagnosed to have 'Post Traumatic Stress Disorder', a compensatable injury and only one of these has been referred to a psychiatrist by the Claims Directorate.

6. Apart from all the above considerations, the Directorate of Claims has assessed only 3.5 lakhs of the 6 lakh claimants for PIE. So about 40% of the claimants are totally excluded from the process of the PIE.

7. According to the recent study, approximately 20% of the gas exposed population are yet to file claims because of a change in rules followed by the Directorate of Claims.

It is obvious from the above that the PIE, as carried out by the M.P. Government at present, grossly underestimates personal injuries and therefore cannot form the basis for interim relief or final damages.

Is a Rational Assessment of Injury Possible?

Union Carbide Corporation (UCC) in its efforts to underplay the damage caused by the toxic gases including MIC has suppressed all toxicological data it has in its possession. Since today we do not have adequate information on the nature of gases and their possible damage to the body system, the process of the assessment of injuries can at best be only incomplete. On the basis of all the data collected since the disaster and on the basis of studies carried out in the laboratory and in the community it is possible to define at least a few of the gas related diseases. The only rational approach to injury assessment would be to clinically diagnose the presence of these diseases in the individual claimants. This must include not only clinical examination, but all the necessary investigations necessary to confirm the disease. This will range from measurement of blood gases, oxygen consumption on exercise, gastroscopy and bioscopy for gastro-intestinal diseases to a battery of investigations for assessing abnormality in the immune system. Before declaring a person as 'not injured', all these investigations must be carried out, for example, 'slit-lamp' examination will be required in all claimants irrespective of symptoms to rule out early cataract since this will progress and the person affected may become blind after a few years.

Even after all these investigations, the possibility of delayed and long term effects remain which will require regular and continuous monitoring for years to come. When the Government does not consider it practicable to carry out even simple investigations such as PFT, ETT in all those who require it, it is obvious that it does not have the resources or the political will to undertake this massive task and complete in a reasonably short time.

*Traditionally, disability is measured with reference to occupation and the emphasis is in the ability to continue the same occupation. In this case, however, a group of people were exposed to toxins at their residence and not at their workplace. Hence, disability cannot be occupation related alone.

Basis for Interim Relief

The process of PIE followed by the Directorate of Claims, M.P cannot form the basis for providing interim relief to the gas exposed population because it is designed to underestimate the nature and severity of injuries. The reassessment of all the 3.5 lakh claimants (already medically examined by the Government) by carrying out all the investigations is not possible because of the time, money and personnel required to do it.

Five years have passed without any substantial relief to the gas victims. The victims need interim relief today, to survive as they are unable to earn their livelihood and are unable to meet their growing medical needs. They are not in a position economically, physically or psychologically to wait till they receive 'final damages' from UCC. The recent judgement on the Bhopal Act has made it obligatory for the Government to provide interim relief as part of their role as *parens patriae*.

All persons exposed to the gas on the night of 2nd/3rd December 1984, especially those from the 36 wards directly gas affected must be paid interim relief. Besides this, there would be certain other categories of victims residing outside these 36 wards who would be justifiably deserved to be paid interim relief. The interim relief must be paid as a monthly allowance for the necessity of daily living and lump sum amounts must be paid to remove their debts. In the absence of a just and scientific method of assessing injuries, the distribution of interim relief on the basis of proof of residence in one of the gas affected localities alone can be considered just and fair.

Dr.Nishith Vohra
Dr.Sathyamala
26/12/1989

Appendix II

ENCROACHMENT ON CIVIL RIGHTS

Report of an Investigation into "Anti-encroachment Drive" by the People's Union for Civil Liberties, M.P. June 1991

Introduction

A large part of the population in cities lives in slums. In the eyes of the law, most slums are considered illegal settlements, but for the people who live in these slums there are no options. An estimated 40 million city dwellers live in slums which is 20% of the urban population. Almost half the population of Bhopal, like in many other cities, resides in slums. Majority of these slums happen to be affected by the world's worst industrial disaster - the toxic gas leak from the Union Carbide's factory in December 1984.

Since last one year the State administration has been carrying out an "anti-encroachment drive" as part of its city beautification programme. This drive has led to a situation of terror in the slums.

During this drive there has been large scale demolition of slums situated along the Upper Lake of the city. A large number of people have been evicted from their settlements. The People's Union for Civil Liberties has carried out an investigation on this matter. This is the report of the investigation team which included Mr Om Prakash Rawal (Eminent social-thinker), Mr Lajja Shankar Hardenia (Journalist, Economic Times), Dr Arun Kumar Singh (Geologist), Ms Tultul Biswas (Student, Barakatullah University) and Dr Rajiv Lochan Sharma (Doctor).

Background

The city of Bhopal, besides being the capital of Madhya Pradesh, is popularly known as the cultural capital of India. The city situated in the plateau of Malwa in Central India can be divided into three distinct areas. The Old city, which was established during the reign of the Newabs, is where most people are dependant on wage labour and petty trade for their livelihood. The New city, where government offices and staff quarters were built after Bhopal was made capital of the State, is to the South of the Old city. Most of the residents of this part of the city are government officers and other employees. The industrial township of the Bharat Heavy Electricals Limited (B.H.E.L) is the third distinct segment of the city of Bhopal.

The total population of Bhopal is about 10 lakhs out of which 6 lakh people reside in the Old city. About half the population of the Old city is settled in slums. According to the record of the government, close to 50,000 people in Bhopal live in 160 "illegal" slums of which most are in the Old city. The city has many large and small lakes, the Upper Lake and Lower being the two largest. Shakir Nagar, Fategargh, Sajda Nagar, Sidhi Ghat are some of the densely populated slums along the Upper Lake. About 15,000 people had been living in these slums in small dwellings made of wooden planks, stones or mud. The land along the lake is owned by different individuals and institutions. Some of the land belongs to the Madhya Pradesh Wakf Board, some owned by the individuals and the rest is mostly occupied by the people who hold entitlements, 'pattas', given to them by the government. Some of the residents do not have pattas.

Most of the men of these slums are either auto-rickshaw, tempo, minibus drivers, hand-cart pushers or daily

wage labourers. The women work as wage labourers, housemaids or beetle-nut cutters. People also roll beedis at home to make a living.

A survey conducted by the Indian Council for Medical Research (I.C.M.R) after the 1984 gas disaster indicated that 55% of the population in the Old city is hindu and 43% is muslim. Though the two communities are close in size, it is the muslim community that has suffered heavily due to the demolitions. Our investigation team found that among 800 families evicted, only four were hindu. Mr Babu Lal Gaur, the State Minister for local self government told the investigation team that 30% of the population in the demolished slums is hindu. However the Superintendent of Police informed the team that 99% of the affected people were muslim. Most of the residents of these slums were known to have traditionally voted for the Congress Party. According to Fazalludin, a retired army man and a resident of Sidhi Ghat during the recent elections, the majority of the names of the residents had disappeared from the voters list. According to a local english newspaper, the people in these slums who were muslims and were supporters of the Congress Party were shifted out from one assembly constituency to another so as to benefit the ruling party in the state known to have hindu fundamentalist inclinations - the Bharatiya Janata Party. Both the Minister for Local Self Government and the Superintendent of Police held that such charges were without any basis.

THE RE-VICTIMIZATION OF THE VICTIMS

The residents of these slums had all been affected by the 1984 gas disaster. The toxic gases that leaked from Union Carbide's factory caused more damage to people living in hutments. The doors and windows of the 'pucca' houses were closed that night and the gases could not enter them as easily as they did into the hutments through cracks in the walls and roofs. People in these slums were thus heavily exposed to toxic gases and continue to suffer from serious illnesses.

Due to the exposure to toxic gases, gas victims suffer multi-systemic illnesses. The impairment caused to the lungs and muscles of the affected people has led to a reduction of their capacity to do work. According to the I.C.M.R. the gases have caused lung damage in 97% of the people. All the ousted slum dwellers interviewed by the investigation team complained of weakness, breathlessness on walking, impairment of vision, all caused as a result of exposure to the gas. Despite this, most of them earned a living through hard physical labour. I.C.M.R. reports state that in the gas affected area 74% of the people do not go for any work and that 36% of the days in a year, people cannot go to work due to illness. Due to the inadequacies of the government's medical care system the people have to either sell their household goods or take loans at high interest rates to pay for their medical treatment.

As the ousted people have been relocated at a considerable distance from the city they will have to spend money on travelling to their workplace. While the government has not been able to provide jobs to the gas affected people it has rendered a large number of them jobless by moving them far away from the city.

Since March 1990 the Central government has been providing monetary relief of Rs.200/ per month per person among the gas victims. Most of this money is being spent on medical treatment or in paying back past debts. The investigation team had a view of the household belongings of the evicted people and these consisted of a few cooking vessels, a couple of cans, bed clothes and occasionally a cycle or a sewing machine.

The exposure to the toxic gases has resulted in reduced working capacity and a range of illnesses among the people. The eviction of the people has resulted in increased misery.

THE DEMOLITION OF HOUSES

As one goes across the slums along the Upper Lake, the first one is at Retghat and is called Lal Imli Wali Masjid ki Basti. The demolition of the houses started here on 26th May 1991. Early that morning the city authorities, accompanied by about 200 policemen, 10 with arms, descended on the settlement and demolished 75 houses in one day. Some of the houses that were demolished in this slum were more than a hundred years old, including Nazar Mahal which was a building of archaeological importance. Most of the residents here had ownership rights over their pieces of land. Aftab Ahmed, who lived in this slum reported that he had with him his land registration papers but his house was demolished after issuing three notifications to him in twenty days. He was not paid any compensation for his house. The Minister for Local Self Government, however, informed the investigation team that all people having ownership rights have been compensated for their houses and that they have been provided with plots of land to build their houses. According to Aftab Ahmed there are many like him who have not been given any compensation.

The demolition continued till 30th May 1991. Every morning the employees of the municipal corporation came with their bulldozers and a large posse of armed policemen and demolished 100 to 150 houses. The policemen and their guns were too intimidating for the people and they watched on silently as their houses were turned to rubble. A few who tried to oppose this destruction were assaulted by the police, abused and threatened. The investigation team was told by Liyakat, Mansoor, Shahbana and Munni Bai that the demolition of the houses was carried out in this manner till 30th May.

TERROR AND PROTEST

Meanwhile terrorised by the thought of their houses being demolished, two women - Musarrat (30) and Pan Bai (36) - from Ammu Khalifa ki Bagiya committed suicide by drinking kerosene oil. The other residents of the settlement protested against the destruction of their houses and threatened to commit mass self-immolation. They also submitted a list of demands to the authorities in which they asked for stoppage of demolition during the rains and payment of compensation for their houses. This slum was built on land belonging to the Wakf Board and there was an order from the High Court staying demolition of houses built on this land. The municipal administrator refused to accept the order and the demolition of the slum was stopped

only after people threatened to immolate themselves en masse.

The next slum to be demolished was Fatehgarh. On the morning of 31st May when the demolition squad reached Fatehgarh, about 50 women stopped them in the way holding kerosene cans threatening to immolate themselves. Ms Shahbana who was leading the group said that she had doused herself with kerosene and that had scared the officials from going ahead and they went back. After this hundreds of women sat on a dharna (sit-in) in the slum. The dharna continued for three days and the demolition of the houses was discontinued by the officials. According to the Superintendent of Police, most of the people participating in the dharna were outsiders but Ms Munni Bai, Nafeesa Bi and Rabia who were arrested while on dharna informed the investigation team that all women who sat on dharna belonged to that locality.

On 3rd June at five in the morning Fatehgarh was encircled by policemen, armed men from the Special Armed Force (S.A.F.) and the Central Reserve Police Force (C.R.P.F) and mounted police. All access to the slum were blocked. Three of the women sitting on the dharna, Ms Munni Bai, Nafeesa Bi and Rabia, said that their slum was surrounded by hundreds of policemen. After the encirclement a policeman came to the women on dharna and told them that some policewomen wanted to talk to them and asked them to come to the main street. All the women sitting on the dharna went off to the main street where they were arrested by the police and told that their houses will not be demolished and that no one would be harassed. Sixty women were arrested in this dramatic manner causing a major setback to the growing opposition to the demolition. It is possible that some of the local leaders connived with the police and the city administration and allowed such arrests to happen and were later rewarded with land plots in the city itself.

After the arrest when all opposition was silenced, demolition of the houses was carried out under heavy armed police presence. Masood, a resident of Shaki Nagar reported that there were two to three policemen at every house. The whole slum was surrounded by hundreds of policemen and no one was allowed to go across the police cordon. In this manner, 130 houses of Fatehgarh were destroyed on 3rd June and the demolition drive was restarted. Houses were demolished by bulldozers and in the presence of a massive police force. By 6th June the whole of Fatehgarh was razed to the ground and several houses were demolished in Sazda Nagar on 6th and 7th June.

WHY WERE THESE SLUMS CHOSEN FOR DEMOLITION?

Among the 160 'illegal settlements' in Bhopal why were the slums situated along the Upper Lake chosen for demolition? While these slums were demolished as illegal settlements no action was taken on other prominent illegal constructions like a hotel at a busy crossing near the railway station or that on illegally occupied land by a minister in the State government near Jawahar Chowk. The government and the city administration have given varying responses to this question. At first it was said that the demolition of these slums was necessary to construct a road along the lake. But government buildings in this area were not demolished and in fact a few government buildings are being constructed there.

Later the government stated that people along the lake had to be evicted as they were polluting the Upper Lake and thus posing a hazard to the city's drinking water source. Both the Minister for Local Self Government and the Superintendent of Police offered this as a reason to the investigation team. The investigation team during its visit to the demolished slums did not see any sewage pipes going to the lake from any of the slums. The team was informed by local residents that nightsoil from these slums used to be carried off in trolleys and was never discharged into the lake. The Public Health Engineering Department which is supposed to protect the lake water from pollution was part of the demolition drive. The executive engineer of this department refused to give any information when he was asked by the investigation team about the sources of pollution of the lake. The Minister for Local Self Government stated that all sources of pollution of the lake will be stopped within three years. Prominent sources of pollution of the lake are the Research Laboratory of Union Carbide, Bharat Bhavan, the Chief Minister's residence, the posh Kohe-Fiza colony and the Hamidia Hospital, all of which discharge sewage into the Upper Lake. If pollution control had indeed been the priority, certainly stoppage of these sources of pollution would have taken precedence over demolition of the slums. All the evicted people whom the investigation team met said that the anti-muslim sentiments of the ruling party was the sole reason behind the demolition drive.

LEGAL PROCEDURE NOT FOLLOWED

The investigation team was informed by the evicted people that none of the residents in the slums of Sidhi Ghat, Fatehgarh, Sazda Nagar and Shakir Nagar had been issued notification about the demolition. The Minister for Local Self Government said that they had discussed with all the slum people and the people had agreed to move away. The Minister told the team

"We believe in negotiation not in paper work. Paper work comes in the way of our work."

The investigation team did not come across any slum resident with whom the Minister had had any discussion. Rather the people informed the team that they were warned just one hour before the demolition and were told to remove their household goods. According to the Superintendent of Police, people were given notice several days prior to the demolition. The statements of the evicted slum dwellers and the different responses of the Minister and the Superintendent of Police on the matter of issuance of notice leads the team to believe that no notice was served before demolition.

The Minister stated that after the rains more 'illegal slums' will be removed and then it will not be possible for the government to give land or compensation to the people who will be evicted. The people evicted during the current demolition have been compensated by the Public Health Engineering Department from its funds meant for the upkeep of the Upper Lake. The Minister also informed the investigation team that in the next five

years the residents of all the 160 'illegal settlements' would be moved away from the city.

Given that several residents of the demolished slums held legal 'pattas', the government has clearly violated due process of law by evicting them without prior notification.

SUPREME COURT ORDER

While the demolitions were going on the Bhopal Gas Peedit Mahila Udyog Sangathan, an organisation active among the gas victims obtained an order from the Supreme Court staying all demolitions. The order was passed in the afternoon of 6th June. This was reported in some newspapers on 7th June. Despite the order, demolitions were carried out in the night of 6th June and from seven o'clock in the morning till eleven o'clock at night on 7th June. Chand Mian, Batul Bi and Kishwar, residents of Fatehgarh, informed the investigation team that their homes were demolished at 10 p.m. on 7th June when it was raining.

The Minister for Local Self Government who is also the State Law Minister said that the demolition work was stopped right after they received the order of the Supreme Court. He also pointed out that the slums mentioned in the Court order had already been demolished and hence the government could not be restrained from carrying out demolitions in other areas. An active member of the petitioner organisation reported to the team that the Supreme Court order had been received by the State government on the evening of 6th June and the demolitions were carried out on 7th June regardless.

REHABILITATION

The people evicted from the slums along the Upper Lake were settled in three areas. 28 families were settled in Bag Farhat Afza in the city, 228 families were moved to Badwai and 400 to New Gandhi Nagar; 11 and 13 kilometres away from the city respectively. Hundreds of families have not been rehabilitated and they now have taken shelter in rented rooms or with their relatives in the city. About 800 acres of land is available in the city and it would have been quite possible to relocate the evicted people within the city instead of driving them away.

The investigation team visited the areas where the evicted people have been relocated and found the people living in sub-human conditions. It had been raining for four days and they had no shelter. There was no place where people could sleep and no means to cook food. The most basic facilities had not been provided. In New Gandhi Nagar and Badwai only one handpump was provided for the entire community. There were no shops where people could buy provisions. A government ration shop functioned for two hours in a day but one could get only small quantities. After it rained for four days on the shelterless people, the government distributed 15 bamboos, 6 poles, 5 mats and a 10 metre polythene sheet to each family so that they could build some shelter. Rupees one thousand was also given to each family as relief.

The officials have issued 'kabzanamas' to each family thus giving them occupancy rights over 15'x20' plots. The 'kabzanamas', however bear no stamp or seal of the issuing authority and their legal validity is doubtful. A government doctor visited the area on two days. There were problems even with the meagre amount of relief provided. People complained that to build a hutment 9 poles were required while they have only been provided with 6. Also the poles were not straight and the polythene sheets provided were not large enough and were so thin that they got torn by the wind. People also said that the doctor visits the locality for a very short period and does not carry enough medicines.

Transport is one of the major problems faced by the people. They have to come early in the morning for their jobs in the city and there are almost no means of transport. The government run bus service just makes two trips in a day. People have to spend four to six rupees everyday on transport, which is a substantial expenditure for the majority of people who earn only twenty rupees in a day. In New Gandhi Nagar, Ms Sazda Bi said it was difficult to go to work leaving children at home. Her little son Javed had been bitten by a scorpion the previous day.

On the issue of rehabilitation the Superintendent of Police said that the plans for rehabilitation were alright but had people been settled after constructing roads and providing water taps, the work of relocation could have been done better and at half the cost. According to a government official engaged in rehabilitation, rupees one crore was spent in the resettlement exercise and an estimated 50 lakhs were wastefully expended.

CONCLUSIONS

Housing is an important part of life and every human being has a right to decent housing. In the slums of Bhopal, people are in a state of constant terror due to apprehensions of being evicted from their homesteads.

The demolition of the gas affected slums without prior notification is a clear violation of due process of the law. The eviction of people without making proper arrangements for their resettling and thus forcing them to be shelterless under the scorching sun and pouring rain is blatantly inhuman. Through inadequate medical facilities, denial of essential facilities and by not providing means of sustenance a great injustice has been inflicted on the gas affected people.

Schedule of Survey

गैस पीड़ितों के दावा संबंधी सर्वेक्षण

घर नं.	1	2	3	4				
व्यक्ति सं.	5	6	7	8				

नाम -

पति/पिता का नाम -

उम्र -

लिंग -

9	10	11			
---	----	----	--	--	--

पता -

घर नं.

गली नं.

मोहल्ला

वार्ड नं.

12

आई.सी.एम.आर. नं. -

13

हिन्दी साक्षर/निरक्षर -

हां/नहीं

14

अंग्रेजी साक्षर/निरक्षर -

हां/नहीं

15

1. परिवार का राशन कार्ड है या नहीं? है/नहीं है

16

2. क्या राशन कार्ड में आपका नाम है? है/नहीं है

17

3. दावा किया है या नहीं? है/नहीं है

18

क्लेम नं. -----

क्लेम भरने की तारीख -----

4. दावा फार्म हैं या नहीं?

हैं/नहीं हैं

19

5. परिवार का टाटा सर्वे हुआ है?

हुआ/नहीं हुआ

20

6. टाटा सर्वे में नाम है या नहीं?

है/नहीं है

21

7. टाटा सर्वे फार्म है या नहीं?

है/नहीं है

22

8. डॉक्टरी जांच हुई या नहीं?

हां हुई/नहीं हुई

23

तारीख -----

डॉक्टरी जांच नं. -----

9. कौन कौन सी डाक्टरी जांच पूर्ण हुई?

- | | | | |
|------------------------------------------------------------------|----------|----|--------------------------|
| 1. एक्स-रे | हां/नहीं | 24 | <input type="checkbox"/> |
| 2. पेशाब की जांच | हां/नहीं | 25 | <input type="checkbox"/> |
| 3. सांस की जांच | हां/नहीं | 26 | <input type="checkbox"/> |
| 4. मेडिकल विशेषज्ञ | हां/नहीं | 27 | <input type="checkbox"/> |
| 5. नेत्र विशेषज्ञ | हां/नहीं | 28 | <input type="checkbox"/> |
| 6. स्त्री-रोग विशेषज्ञ | हां/नहीं | 29 | <input type="checkbox"/> |
| 7. शिशु-रोग विशेषज्ञ | हां/नहीं | 30 | <input type="checkbox"/> |
| 10. अस्पताल में कभी भर्ती हुए या नहीं? | हां/नहीं | 31 | <input type="checkbox"/> |
| 11. सरकारी अस्पताल के एम.आई.सी. वार्ड में कभी भर्ती हुए या नहीं? | हां/नहीं | 32 | <input type="checkbox"/> |
| 12. कुल मिलाकर कितने दिन भर्ती रहे? | | | |
| - 0 से एक सप्ताह तक, | हां/नहीं | 33 | <input type="checkbox"/> |
| - एक से चार सप्ताह तक, | हां/नहीं | 34 | <input type="checkbox"/> |
| - चार से बारह सप्ताह तक, | हां/नहीं | 35 | <input type="checkbox"/> |
| - बारह सप्ताह से ज़्यादा समय | हां/नहीं | 36 | <input type="checkbox"/> |
| 13. क्या इलाज के लिए सरकारी अस्पताल में जाते हैं? | हां/नहीं | 37 | <input type="checkbox"/> |
| 14. सरकारी अस्पताल में जाने का कारण : | | | |
| - इलाज मुफ्त होता है इसलिए | हां/नहीं | 38 | <input type="checkbox"/> |
| - इलाज अच्छा होता है इसलिए | हां/नहीं | 39 | <input type="checkbox"/> |
| - अस्पताल पास में है इसलिए | हां/नहीं | 40 | <input type="checkbox"/> |
| 15. क्या इलाज के लिए प्रायवेट डाक्टर के पास जाते हैं? | हां/नहीं | 41 | <input type="checkbox"/> |
| 16. प्राइवेट डाक्टर के पास जाने के कारण | | | |
| - पास में है इसलिए | हां/नहीं | 42 | <input type="checkbox"/> |
| - इलाज अच्छा होता है | हां/नहीं | 43 | <input type="checkbox"/> |
| - इलाज सस्ता पड़ता है इसलिए | हां/नहीं | 44 | <input type="checkbox"/> |

17. वर्गीकरण की पर्ची आई या नहीं? हां/नहीं 45
18. कौन से वर्ग में आते हैं?
- | | | | | | | |
|--------|----------|-------|-----------------------------|-----------------------------|--------------------------|--------------------------|
| 1. A - | हां/नहीं | ----- | <input type="checkbox"/> 46 | <input type="checkbox"/> 47 | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. B - | हां/नहीं | ----- | | | | |
| 3. C - | हां/नहीं | ----- | | | | |
| 4. D - | हां/नहीं | ----- | | | | |
| 5. E - | हां/नहीं | ----- | | | | |
| 6. F - | हां/नहीं | ----- | | | | |
19. अपने वर्गीकरण से संतुष्ट है या नहीं? हां/नहीं 48
20. अगर असंतुष्ट है तो इस बारे में कुछ किया जा सकता है यह आपको मालूम है या नहीं? हां/नहीं 49
21. वर्गीकरण से असंतुष्ट होने की दरखास्त दावा संचालनालय को दी या नहीं? हां/नहीं 50
22. आपके पास अपना मेडिकल फोल्डर है या नहीं? हां/नहीं 51
23. अंतरिम राहत मिलती है या नहीं? हां/नहीं 52
- पास बुक नं. -----
24. अंतरिम राहत नहीं मिलती हो तो इस संबंध में आयुक्त गैस राहत को लिखा या नहीं? हां/नहीं 53
25. गैस कांड से संबंधित काम के लिए रिश्त देना पड़ी?
- | | | | | |
|--------------------------------------|----------|----|-----------------------------|--------------------------|
| - राशन कार्ड बनवाने के लिए | हां/नहीं | -- | <input type="checkbox"/> 54 | <input type="checkbox"/> |
| - दस हजार रुपए पाने के लिए | हां/नहीं | -- | <input type="checkbox"/> 55 | <input type="checkbox"/> |
| - पंद्रह सौ रुपए पाने के लिए | हां/नहीं | -- | <input type="checkbox"/> 56 | <input type="checkbox"/> |
| - एक हजार रुपए पाने के लिए | हां/नहीं | -- | <input type="checkbox"/> 57 | <input type="checkbox"/> |
| - तीन हजार रुपए पाने के लिए | हां/नहीं | -- | <input type="checkbox"/> 58 | <input type="checkbox"/> |
| - दो सौ रुपए अंतरिम राहत पाने के लिए | हां/नहीं | -- | <input type="checkbox"/> 59 | <input type="checkbox"/> |
| - लोन लेने के लिए | हां/नहीं | -- | <input type="checkbox"/> 60 | <input type="checkbox"/> |
| - अस्पताल में | हां/नहीं | -- | <input type="checkbox"/> 61 | <input type="checkbox"/> |

26. कुल आज तक कितनी रिश्वत देना पड़ी
रुपए -----

- 200 रुपए तक
- दो सौ से पांच सौ रुपए तक
- पांच सौ से एक हजार रुपए तक
- एक हजार से पांच हजार रुपए तक
- पांच हजार से ज़्यादा

हां/नहीं -- 62
हां/नहीं -- 63
हां/नहीं -- 64
हां/नहीं -- 65
हां/नहीं -- 66

अतिरिक्त जानकारीया

सर्वेक्षणकर्ता का नाम -
हस्ताक्षर -
सर्वेक्षण करने की तारीख -

Health Damage due to Bhopal Gas Disaster

Review of Medical Research

Rajiv Lochan

The findings of the various studies undertaken by the Indian Council of Medical Research in Bhopal are beginning to produce medical evidence of the enormity of the Bhopal Gas Disaster.

CONSIDERING the enormity of the health damage caused due to the Bhopal disaster the scientific information available on the health status of the victims of the disaster is far from adequate. Lack of scientific information has led to an underestimation of the damage caused by Union Carbide Corporation. It has also impeded the emergence of a proper line of medical treatment for the gas victims. Most of the large-scale attempts to generate information have been carried out through studies conducted by the Indian Council of Medical Research (ICMR). It is indeed unfortunate that even this information and the implications they carry have not been made available outside a limited circle. This note is primarily an attempt towards dissemination of the information generated by ICMR.

After the gas disaster the ICMR initiated studies on the effect of the gases that leaked on the night of December 2/3 1984 from the Union Carbide pesticide factory. In all, ICMR look up 27 projects that were directed mainly towards the study of the effects of the gases on the respiratory, reproductive, gastro-intestinal, ocular systems of the affected people. A few studies were carried out on the impact of the gases on children of various age groups. The sample populations for the studies were taken from among the gas-exposed people and for comparison a sample population from the non-gas exposed areas (control area) were made part of the study. The data for the studies were collected both from hospital and through visits to the community. The ICMR has established a special centre for carrying out the studies known as the Bhopal Gas Disaster Research Centre (BGDRC) which has carried out the only extensive medical studies in the aftermath of the Bhopal disaster. The findings of the ongoing studies are reported in the annual reports published by the centre which are the data sources for this article. In places findings of sample studies have been projected to cover the estimated gas-affected population so as to arrive at an overall assessment. Along with the estimation of health damage caused by the Bhopal disaster we

also consider the health care costs that would need to be borne to deal with the large-scale and serious damage. It is understood that such health care will have to be provided to the gas-affected population at least for the next 20 years. Given that the suit for damage pressed by the Indian government on behalf of the gas victims against Union Carbide is yet to be decided, all medical findings and analysis based thereon have legal implications.

Though a number of studies have been carried out only those studies are considered here in which the health effects in the study area are found to be significantly higher than those found in the control area. Health effects of the toxic gases and the costs of health care for individual health problems have been discussed with reference to these chosen studies.

According to the 'Long-Term Epidemiological Study on the Health Effects of Toxic Gas Exposure' (principal investigator, M P Dwivedi, director, Bhopal Gas Disaster Research Centre) the total estimated exposed population in 1984 was 5,21,262. Of this population 32,477 were in severely exposed area, 71,917 in moderately exposed area and 4,16,869 in mildly exposed area. A population of 80,021 (20.3 per cent) of the total was covered by the ICMR study. The division of the entire gas-affected area into mild, moderate and severe areas has been done on the basis of exposure-related mortality rates in the immediate aftermath of the disaster.

According to this study the abortion rate was 7.63 per cent in 1990 in the affected area while in control area the rate was 3 per cent. The abortion rate is decreasing in the gas-affected area gradually. It came down to 7.63 per cent in 1990 from 8.22 per cent in 1989. At this rate it will take about nine years to attain the control area rate. During these nine years 3,568 abortions would be due to gas exposure. An estimated Rs 1,000 is required for health care in the case of abortion which means Rs 3.56 million will be required for health care of the gas affected women who have undergone abortions.

The people who have gas exposure

symptoms at the end of six years are, obviously, 'permanently' rather than just 'temporarily' injured. The symptomatic population among all gas victims is 30.52 per cent and is increasing year after year as the injury has affected their body systems irreparably. In the control area the symptomatic population is only 18.94 per cent. This means that 60,632 additional people are suffering from gas exposure over and above the control area figures. For the care and cure of this general morbidity at least Rs 10 per person would be required. Although the number of people suffering from general morbidity is increasing in the gas hit areas, for the sake of simplicity if we take this number to be stationary then the money required only for the medicare of this morbid population would be for Rs 1.45 billion (Table 1).

LUNG INVOLVEMENT

Various studies have established the severity of effect on lungs due to exposure to toxic gases in Bhopal. According to this study (principal investigator N P Mishra) 98.4 per cent of the gas-exposed population was found to be having exertional dyspnoea and it was found to be progressive in some cases. Recurrent respiratory infections (73.4 per cent), chest pain (42 per cent), joint pains and easy fatigueability are the other common symptoms.

About 24 per cent of the gas-affected population have Reactive Airway Dysfunction Syndrome (RADS) in which the patient had paroxysmal attacks of breathlessness following toxic gas inhalation. In

TABLE 1: GENERAL MORBIDITY TREND (SYMPTOMATIC)

Time Period	Per Cent Morbid Population	
	Affected Area	Control Area
May 4 to Nov 3, 1987	15.26	4.24
Nov 4, 1987 to May 1988	15.69	8.05
May 4 to Nov 3, 1988	16.15	5.55
Nov 20, 1988 to May 29, 1989	23.01	17.26
May 30 to Nov 21, 1989	26.14	18.50
Nov 22, 89 to March 31, 1990	30.52	18.94

TABLE 2: MENTAL HEALTH STATUS (Per 1000 Population)

	Severely Affected Area	Mildly Affected Area	Control Area
	Anxiety state	36.2	20.91
Neurotic depression	15.10	17.25	7.99
Others	2.03	2.21	1.14
Total	48.13	7.77	14.84

TABLE 3: GROWTH FAILURE IN CHILDREN BORN TO GAS-EXPOSED WOMEN

Age of Children (Months)	Failure Rate in Affected Population (per cent)	Failure Rate in Control Population (per cent)
12	11.47	10.36
18	13.03	16.26
24	12.92	10.57
30	8.78	4.81
36	13.25	7.25
42	15.43	13.02

the control population such symptoms were presented by 2 per cent of the population. Research studies have shown that RADS could persist for several years after the injury. It is also likely that a number of persons with RADS will turn into cases of asthma and the disease would become incurable. Symptomatic treatment with regular use of bronchodilators is the only course of treatment for such patients. It is safe to assume that there are at least 1,14,677 persons whose symptoms can be related to inhalation of toxic gases. Considering that treatment of paroxysmal attacks will cost an estimated Rs 1000 per person per year for the next 20 years the total cost of health care of persons presenting RADS will be Rs 2.3 billion.

Detailed lung-function tests reveal that 11.4 per cent of the gas victims have Chronic Obstructive Airway Disease (COAD) as against only 4 per cent in the control population. The national average for this disease is only 1.7 to 2.2 per cent. A significantly high number of victims (even young non-smokers) have developed COAD as a result of toxic injury to the airways. That means 38,573 persons are suffering with COAD above the control area figures. COAD is a progressive and deteriorating disease. For its medical treatment at least Rs 1,000 will be required per year per person for the next 20 years on average. That means Rs 77.1 million will be required (Table 3).

The study of small airway function among the gas-affected population revealed that almost all the patients (97.5 per cent) had evidence of small airway obstruction. In the course of the study risk parameters were identified for positive identification of small airway obstruction and it was found that 60.7 per cent of the affected population showed the involvement of three or more parameters. In contrast, 74 per cent of the control cases had either no involvement or only one parameter involvement. Such findings have led the researchers to suggest that small airway obstruction be taken as a marker for the diagnosis of toxic gas-induced lung disease.

The costs of health care for the 5,08,230 (97.5 per cent) victims suffering from small airway obstruction for the next 20 years at the rate of Rs 1000 per year per person amounts to Rs 10 billion.

OTHER HEALTH PROBLEMS

In the house-to-house survey undertaken between September 1988 and August 1989 by the ICMR, it was found that anxiety neurosis and neurotic depression were the most common psychiatric problems among the gas-affected people (principal investigator B B Sethi). The study conducted in 1990 indicates that 48.13 in 1,000 persons in severely affected and 47.77 in 1,000 persons in mildly affected areas were suffering from these mental illnesses as compared to 14.84 per 1,000 persons in the control area. By taking into account figures from previous studies it is possible to conclude that while the incidence of psychiatric illness remains more or less stationary in the control area, 14-15 per thousand, it has been increasing in the gas-affected area. While this incidence was 40 per thousand in 1988 and 42 per thousand in 1989 it has gone up to 47 per thousand in 1990. Even without taking into account this rise, the number of persons whose mental health impairment can be attributable to toxic gas exposures is 1,72,590. Assuming treatment costs for psychiatric illness to be Rs 1,000 per person per year the total cost of mental health care for 20 years comes to Rs 3.45 billion (Table 2).

In one study (principal investigator N R Bhandari) the growth of children born to gas-exposed women was monitored considering different parameters. It has been found that the failure-to-grow rate is significant after the age of 18 months (8.78 at the age of 30 months). Children born to gas-exposed women also exhibit a significantly higher delay in gross motor (control of voluntary body movements) and language sector development.

At the age of 36 months 4.83 per cent children show delay in gross motor development and 6.59 per cent show deficient development in language sector. The circumference of the head of both male and female children was found to be significantly higher in the affected area than in the control area. It was also found that the chest circumference for female children was significantly lower compared to the control population.

The birth rate in the affected area is 29.43 per 1000 population. That is, in the next 20 years 3,06,800 children will be born. With the above maintained failure rates 12,180 more children will show delay in growth; 6,656 children will show delay

in gross motor sector; 11,720 children will show delay in language sector development in the next 20 years in the affected area over those in the control area. All these children will require special attention to aid growth. If Rs 1,000 per child were to be assumed to be required for the special care of these children, then Rs 30.55 million will be required (Table 3). It needs to be mentioned that the children covered by this study were born much after the gas-exposure to their mothers. Abnormalities found among such children, therefore, indicate systemic damage caused by the toxic gases.

The health status of children of age group 6 to 15 years was studied (principal investigator N R Bhandari) and was found to be similar to that of the adult population in terms of the nature of ailments. 55.96 per cent of the child population in the affected area had breathlessness while the corresponding data for the control area was only 1.6 per cent. Cough was reported by 61.23 per cent of the affected children as compared to only 2.34 per cent of children in control area. Chest pain was reported by 1 per cent children in the control area while 17.4 per cent complained of chest pain in the affected area. As many as 6.65 per cent of affected children were hospitalised between May 1989 and March

1990 compared to 0.23 per cent of children in the control area in the same period.

An estimated gas-affected population of 5,00,000 will require some kind of health care or other for the next 20 years. The total cost of such health care comes to \$ 1.14 billion. It needs to be mentioned that the total compensation claimed by the Indian government is \$ 3.3 billion and the compensation amount calculated by the Citizens Commission on Bhopal, a US-based coalition of 50 social and environmental organisations, was 4.1 billion dollars. The health care costs arrived at in the present note, therefore, are quite in accordance with the forementioned amounts of total compensation.

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Appendix V

A NOTE ON THE PAYMENT OF COMPENSATION TO THE BHOPAL GAS VICTIMS

The October 3rd judgement of the Supreme Court on the case concerning the Bhopal gas disaster has that the compensation amount be paid to the victims of the disaster. The Court has upheld the \$ 470 million settlement paid by Union Carbide but has called upon the Indian Government to make good any shortfall in the compensation amount. The Court has also directed the Government to appoint at least 40 Claims Commissioners within the next four months who will be entrusted with adjudication of individual claims of the victims.

Subsequent to the announcement of the judgement, officials of the State and Central Governments have begun to concern themselves with the task of disbursing compensation to the victims of Bhopal. This, however, is a major task, and unless the lessons of previous experiences are kept in mind and sufficient thought is given to the matter, it is certain that gross injustices will be done to the victims.

The full details of the scheme of compensation disbursement is yet to be announced, however there are foreseeable problems in whatever is known of the scheme so far.

FINAL DISBURSEMENT BASED ON THE PROPOSED SCHEME WILL LEAD TO MAJOR DELAYS

The suggested scheme of disbursement of compensation amounts involves sending notices to victims calling them to submit their papers before a Claims Commissioner for adjudication, who then determines the compensation amount to be awarded on the basis of evidence of injury presented by the individual.

If the individual victims, however, are to be allowed time and opportunity to substantiate their claims for compensation, it will take at least one hour for each individual case to be heard. If the procedure is to have any semblance of fairness, the total time taken for adjudication of the claims of over 500,000 people calculated on the basis of this minimum period of hearing turns out to be at least five years. Given that the settlement has been justified by the Indian Government and the Supreme Court on the ground that the victims will receive compensation sums without delay, it is blatantly unfair to make the victims wait for such a long period. This calculation still does not take into account inefficiencies and slackness of government machinery which is being exhibited in the disbursement of interim relief. More than 100,000 victim beneficiaries are yet to receive interim relief amounts ordered by the Supreme Court as far back as March 1990.

THE PROPOSED SCHEME WILL LEAD TO A DENIAL OF ADEQUATE COMPENSATION TO THE MAJORITY OF THE VICTIMS

The Supreme Court and the Government so far have not specified any guidelines for the identification of individual victims and the assessment of their personal injury. Though it remains to be clarified, it is likely that the compensation sums will be awarded to the victims on the basis of their medical categorization done by the Directorate of Claims of the Madhya Pradesh government.

According to the figures submitted in Court about 44% of the claimants are yet to be medically examined and over 92% have been categorized as having suffered only temporary injuries or no injuries at all. Such underassessments, which are contradicted by studies carried out by both the Indian Council for Medical Research and non-governmental bodies, raise serious doubts on the use of categorization as basis for assessment of individual compensations. Further due to the absence of proper maintenance of health records, inadequacy of medical examinations and lack of systemic monitoring, there exists no real basis on which compensation payable to individuals can be adjudged.

Decidedly any reliance on medical categorization in the adjudication of claims would lead to a denial of adequate compensation to a large majority of the victims.

THE SCHEME WILL GIVE RISE TO LARGE SCALE CORRUPTION

Ever since the gas disaster all disbursement of relief either in cash or in kind has been accompanied by organised corruption involving government officials and various other middlemen. There is enough material to suggest that circuitous procedures of disbursement have and will result in increased corruption and harassment of the intended beneficiaries of the scheme. To date victims have had to routinely pay bribes ranging from Rs.200/- to Rs.5000/- to obtain their relief amounts.

The subjective nature of the adjudication of claims and the number of procedural steps that the gas victims will have to go through in the scheme makes it vulnerable to corruption on a large scale.

THE SCHEME IS SUSCEPTIBLE TO ABUSE BY NON-VICTIM PERSONS

The proposed scheme of disbursement does not specify the number of people who can rightfully claim compensation amounts. Given the circumstances of the Bhopal disaster, although it is not possible to state the exact number of gas affected people, some guidelines are essential to ensure that the system is not abused by frivolous applicants. In this respect the March 1990 National Front Government's decision to provide interim relief to every resident of the 36 municipal wards declared to be gas affected is indeed commendable in that it used the most practical means of distributing equally to the areas of victimage. Given that the identification of areas affected by the toxic gases was on the basis of extensive studies done by the Indian Council for Medical Research this method of identification of beneficiaries ensured that the number of people wrongfully denied compensation was kept at a minimum.

The proposed scheme of disbursement of compensation does not include any criterion for the identification

of gas victims and contains no safeguard to protect the interests of genuine victims against abuse by unscrupulous individuals. Although it is clear that there can be no foolproof system of compensation disbursement, this makes it more important to aim towards a system in which discrepancies are minimized.

ALTERNATIVE SCHEME FOR DISBURSEMENT OF COMPENSATION

The foreseeable problems of the present scheme discussed, makes it imperative that an alternative scheme for disbursement of compensation is worked out. In this regard such a scheme formulated by victims organisations deserves consideration. The alternative scheme has been drafted with the following objectives in mind:

1. All victims of the gas exposure should be able to receive a fair level of compensation.
2. Compensation should reach the victims as soon as possible.
3. No scope should be left for disruptive practices.
4. The scheme should safeguard the interests of genuine victims.

OUTLINE OF ALTERNATE SCHEME

The alternate scheme envisages the allocation of a fixed sum of money to every person who can prove that they were resident on the night of 2nd/3rd December 1984 in any of the gas affected wards. The sum, drawn from the settlement fund, can then be transferred directly into the bank accounts of the victims. While the majority of bank accounts have already been opened for the disbursement of interim relief, it is crucial that those 100,000 who have, as yet, been denied this relief be accorded this facility also.

Admittedly the allocation of a fixed amount would be inadequate for those with more severe injuries who would be entitled to larger sums of compensation. The alternate scheme includes a provision for such cases that enables these gas victims to use the mechanism of the Claims Commissioner to receive additional sums after adjudication.

ADVANTAGES OF THE ALTERNATE SCHEME

THE SCHEME OUTLINED WILL PROVIDE FOR A FAIR LEVEL OF COMPENSATION AND CAUSE THE LEAST DISRUPTION TO THE LIFE OF THE COMMUNITY

A close look at the Bhopal situation makes it clear that community life in the gas affected slums has played a significant role in the survival of the individual victims. More than anything else, it is the mutual support and the co-operation among victims which has held them to face up to physical sufferings, material deprivations and emotional crises. It has been seen in the past that provision of relief amounts to a select few or allocation of differing amounts to differing individuals in the community has given rise to resentment against discrimination and inter-personal tension in the community.

Provision of a fixed sum, as envisaged by the alternate scheme, is in accordance with the people's natural urge for equality; and in a situation where no valid criterion for differential allocation exists, this is the only means by which discriminatory practices can be curbed.

THE ALTERNATE SCHEME WILL ENABLE COMPENSATION TO BE RECEIVED IMMEDIATELY

As has been outlined the alternative proposal does away with the requirement of every victim having to present themselves before the Claims Commissioner. On the matter of depositing compensation amounts a substantial majority of the 36 gas affected wards who are recipients of the Rs.200/ per month of interim relief already have accounts in designated banks. The identification of residents who are yet to receive interim relief and whose number is close to 100,000 should not take more than a few months if the task is carried out in true earnest. By a method of employing 100 official teams covering 12 households each per day - within three months a constructive screening of all the gas victims can take place. This will ensure all those eligible for relief will be identified and frivolous claims removed from the present list. Final disbursement of compensation would then entail transferring a fixed amount directly to every bank account.

THE ALTERNATE SCHEME CURTAILS THE INVOLVEMENT OF MIDDLEMEN

Realistically speaking, well entrenched as they are, it is near impossible to eliminate middlemen in the disbursement of compensation amount. However, in the alternate scheme, the number of procedural steps is limited. Therefore if the transference of money is done through bank accounts it should be possible to limit the role of middlemen to a great extent.

THE ALTERNATE SCHEME SAFEGUARDS THE INTERESTS OF THE GAS VICTIMS

As has been pointed out the scheme presented by the government does not specify the groups of people who are entitled to the benefit of compensation. Such a situation can easily be exploited by unscrupulous persons who can through corrupt means procure medical certificates and other documents and thus 'purchase' rights to the compensation fund without having suffered any injury.

In this regard the victims organisations apprehend that a scheme based on the present system would be abused by those who were nowhere near the 36 wards on the night of the disaster.

Our proposed alternative not only specifies the group of victims, but yet also provides for those included in the group such as genuine victims from outside the 36 gas affected wards.

*Bhopal Group for Information and Action
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Bhopal.
October 1991*

Appendix VI

WARD WISE CATEGORIZATION FIGURES PRESENTED BY THE DIRECTORATE OF CLAIMS M.P.GOVERNMENT - UPTO 30/12/89

A	B	C	D	CD	CE	CF	TOTAL	WARD
1657	2945	222	59	11	27	-	4921	1
3098	132	41	02	03	05	-	3281	2
2981	116	17	05	-	05	-	3124	3
3177	127	37	-	-	01	-	3342	4
2216	4788	465	73	18	128	02	7690	5
1285	3469	571	58	23	58	-	5464	6
2398	4965	756	120	35	57	-	8331	7
2213	3189	354	47	07	88	-	5898	8
2879	2966	885	81	27	100	01	6939	9
3116	4911	316	54	05	31	01	8434	10
3678	7242	738	214	24	71	-	11967	11
1981	4354	589	120	19	111	01	7175	12
2349	3569	467	266	39	79	01	6770	13
1705	4338	198	249	25	39	01	6555	14
2085	4101	589	72	49	88	02	6986	15
1322	6126	394	60	05	30	01	7938	16
1822	5038	405	116	06	38	-	7425	17
2344	4444	397	68	10	63	01	7327	18
3266	4393	336	95	23	64	02	8179	19
3179	4645	353	747	61	65	01	9051	20
1649	3120	441	105	18	62	-	5395	21
3725	3628	278	75	08	48	-	7762	22
1695	3617	296	60	09	52	-	5729	23
2171	3943	246	59	11	32	01	6463	24
1701	4726	710	63	16	50	01	7267	25
1929	3281	349	37	09	50	01	5656	26
4358	2632	475	28	15	21	-	7529	27
848	4382	227	178	14	56	02	5707	28
2047	3487	190	90	02	35	02	5853	29
5657	1135	114	25	03	13	-	6947	30
4801	1246	234	18	07	11	-	6317	31
2880	2096	479	15	06	11	-	5487	32
5160	2420	299	61	06	50	01	7997	33
2868	1238	62	45	-	16	-	4229	34
4474	1133	26	18	01	04	-	5656	35
1318	1366	63	25	05	14	-	2791	36
3889	792	95	20	01	10	01	4808	37
2302	1697	103	51	11	29	-	4193	38
1402	4792	219	100	12	49	03	6577	39
3203	5167	443	421	50	72	01	9360	40
1402	3136	572	178	42	63	-	5393	41
1006	3392	384	95	18	54	01	4950	42
1079	3544	272	212	11	38	-	5156	43
2063	4230	497	389	33	44	02	7258	44
1961	3586	394	317	53	63	-	6374	45
2573	3734	121	272	08	35	-	6743	46
3035	3893	200	224	13	29	01	7395	47
1674	2445	99	55	13	17	01	4305	48
2036	180	06	02	01	-	-	2225	49
4470	210	11	09	-	01	-	4701	50
4196	139	13	07	01	-	-	4356	51
1482	54	01	09	01	02	-	1549	52
4930	598	33	24	03	05	-	5593	53
5057	724	58	13	-	07	-	5859	54
3376	456	18	10	-	-	-	3860	55
2820	745	14	12	06	07	-	3604	56

Total categorization figures as
provided by the Directorate of
Claims on 31st Oct.1990

1. Total No. of claims filed	6,39,793
2. Medically examined	3,61,166
3. No. of folders categorized	3,58,712
4. Categories :	
A (no injury)	1,55,203
B (temporary injuries)	1,73,382
C (permanent injuries)	18,922
B+D (temporary disablement caused by a temporary injury)	7,172
C+D (temporary disablement caused by a permanent injury)	1,313
C+E (permanent partial disablement)	2,680
C+F (permanent total disablement)	40
DEATHS	3,828



THIRD WORLD NETWORK FEATURES

CASE EXAMPLES OF VICTIMS OF CATEGORIZATION

Satinath Sarangi of the Bhopal Group for Information and Action discovers that several genuine victims have been wrongly categorized and may get little or no relief or compensation the way things stand today.

Suleman Khan, a gas victim, lives in a shed at Ashoka garden, Bhopal. He worked as a booking clerk with the MP State Road Transport Corporation till July 1986 - he's been working for the company for 24 years - when his salary, not his job, was terminated, leaving him without subsistence. His wife Rashida is also a gas victim. She was admitted to the MIC ward for a month in 1987.

Both Suleman and his wife have been placed in the 'B' category.

Suleman's economic condition since the gas disaster has been a shambles; its become hopeless since his salary was stopped. He has already been forced to take a Rs.3,000 loan at an interest rate of Rs.5 per Rs.100 per month, mortgage Rs.20,000 worth of jewellery and borrow Rs.15,000 for his younger daughter's marriage four months back. He was unable to pay his house rent for three years, so his landlord drove him out in June this year. Two members of his family are getting Rs.200 per month relief.

Suleman has chronic obstructive pulmonary disease with asthma from the gas poisoning. His condition has been recorded by Dr KJBS Gaur, Professor of Medicine and Incharge, MIC ward and by objective tests at the Jawaharlal Nehru Hospital and the Hamidia Hospital. He's been in the MIC ward since 1987 (he was interviewed there in August 1990). He says in all about 900 bottles of IV have been pumped into him. He continues to get breathless. His vision has deteriorated. No-one, he says, including himself, had seen the inside of a hospital prior to the gas disaster. He was asked to report for the usual tests on 18th August 1987. Half the crucial tests were not carried out. He received a notice on 19th August 1989 that he had been placed in Category 'B'.

Suleman has never smoked a cigarette in his life. Now he has to take medicines every day and cannot function without inhalers.

At the time of the disaster and also during Operation Faith when buses were required, he was on duty to help evacuate people from Bhopal.

He has to date received Rs.15,000 as interim relief in 1986 and Rs.500 from the Chief Minister's Relief Fund in May 1989.

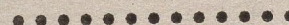
Desperate, he wrote to the Supreme Court that he 'was contemplating drastic action'. He says someone subsequently came to him and asked, "Why do you want to commit suicide?" He replied: 'What else can I do? I can't support my family and stay ill all the time.'

'Why have they put me in 'B' Category? Why have they done this to me?'



Shakila Bi, aged 30, lives in Jai Prakash Nagar and works in the rehabilitation centre for Rs.200 every month. Her husband, Shiekh Chandu Khan, aged 42, was a hand-cart puller. He has now burnt out and cannot work, and has repeatedly been admitted into the MIC and other wards of the Hamidia Hospital. They have two sons, both sick with gas disease. The family must spend Rs.100-200 per month on Shakila's treatment alone. Naturally, they have taken loans. Mehfoz, their youngest son (10 years), works as a mechanic's apprentice for Rs.5-10 a day.

Shakila has a medical record from the Hamidia and the Jawaharlal Nehru Hospital clearly recording her degraded medical condition since the gas disaster. Her medical tests were done on 27th May 1987, and she was informed that she had been placed in Category 'B'. Her husband has torn up most of their medical papers.



Premlata, aged 30, is the wife of Manohar Singh Rathore, a textile worker. They have small children. Premlata was admitted to Hamidia in June 1985 for hepatitis and again in June 1987 for bronchial asthma, which has been diagnosed as MIC-induced. She has been admitted to the Shakir Ali Khan Hospital and to the Jawaharlal Nehru Hospital for treatment of bronchitis and was admitted to the MIC ward twice this year for bronchitis and pain in the lower portion of her body, owing to which she cannot stand or sit. She delivered a premature baby on 4th February 1989. She was examined in August 1987, but not informed as yet of her category.



Bhojraj, aged 50, living in Mahamai Ka Bagh, had five dependants. His wife Parvati Bai has left for Gujarat after the landlord evicted them for rent arrears.

Bhojraj was treated at the Red Cross Hospital near the railway station where doctors certified he had chronic obstructive lung diseases as a result of MIC exposure. He was admitted to the MIC ward on 22nd December 1989 where he died on the morning of 20th February.

He was categorized by officials as 'C' on 3rd March 1990, and given a sum of Rs. 1,000 as interim relief. His wife could not collect the money since the beneficiary had died by then.



Chhotelal, aged 50, lives behind Lily Talkies. He used to work as a loader or porter for transport companies. He has been unable to do this kind of work since the gas exposure. He gets very breathless every time he walks 20-odd steps. He was the father of two sons and three daughters. One daughter was lost in the MIC ward on 3rd December 1984.

Exposure to MIC has generated bronchial asthma with severe obstructive airway disease. He coughs persistently with frequent thick expectoration. He has been admitted to the MIC ward on at least five occasions. Once he was there for nine months, another time for eight and a half. He was informed that he has been put in Category 'B' on 5th October 1989. He does not know what to do.



Narayani Bai, aged 45, is the wife of Kaluram. They live behind the Hamidia school. Narayani works as an 'anganwadi' assistant. Kaluram used to work as a coolie, but is no longer competent for that job due to MIC exposure. There are nine members in the family. One son works as a tailor and is the main source of income.

Narayani was diagnosed as having chronic obstructive airway disease with MIC exposure. She was first admitted to the MIC ward on 31st December 1985. After that, she's been admitted at least five times. She suffers from acute breathlessness.

She has been categorized as 'C'.



Aladin, aged 51, lives in Reniwali Galli. His wife, Akbari Begum, has been ill since the gas exposure. Aladin used to own a hotel. He had to sell it off for a paltry Rs.4,000. He is unable to do physical work any longer. He was admitted to the Padhar Christian Hospital where he was diagnosed as having lung damage and severe depression on 1st October 1985. He was admitted to the MIC ward where the diagnosis was confirmed and he underwent treatment for a month. He was back for another month in 1987 and for practically the whole of 1988. His symptoms had increased by 1989, when he had to be admitted once again for two months, complaining of insomnia, pain in the left colonic area, right hand tremors, severe anxiety and depression. An X-ray report of 1st February 1990 shows fibriotic bands, peri bronchial and peri cardiac fibrosis.

Aladin has spent close to Rs.100,000 on treatment for himself and his wife by private doctors in nursing homes. He has not been informed which category he is in.

(1990)

Table 1

NUMBER OF MALE AND FEMALE RESIDENTS IN THE THREE BASTIS
AND NUMBER OF CHILDREN BORN AFTER THE GAS DISASTER

B	1	2	3	4	5
NGN	974	486	484	247	25.35
SN	688	338	349	148	21.51
TM	989	491	498	159	16.07

B = Basti
NGN = New Gandhi Nagar
SN = Shakti Nagar
TM = Taj Mahal

1. Total No. of persons 2. No. of females 3. No. of males 4. No. of children born after gas disaster. 5. % of children born after gas disaster.

Table 2

NUMBER AND PERCENTAGE OF PEOPLE NOT COVERED BY ICMR
AND TISS SURVEYS, CLAIM REGISTRATION AND ISSUANCE OF RATION CARDS

B	1	2	3	4	5	6	7	8	9	10
NGN	126	12.9	225	23.1	451	46.3	204	28.1	137	14.1
SN	50	7.3	151	21.9	262	38.1	114	21.1	185	26.9
TM	869	87.9	189	19.1	417	42.2	258	31.1	198	20.02

1. No. of persons not covered by ICMR survey. 2. % not covered by ICMR survey. 3. No. of persons not covered by TISS survey. 4. % not covered by TISS survey. 5. No. of persons whose claims are not registered. 6. % of population whose claims have not been registered. 7. No. of persons above age 7 whose claims have not been registered. 8. % of population above age 7 whose claims are not registered. 9. No. of persons not issued ration cards. 10. % of population not issued ration cards.

Table 3

NUMBER AND PERCENTAGE OF PEOPLE NOT RECEIVING INTERIM RELIEF

B	1	2	3	4	5
NGN	324	33.3	44.6	69	21.3
SN	296	43.02	54.8	65	21.9
TM	250	25.3	30.1	89	35.6

1. No. of persons not receiving interim relief. 2. % of population not receiving interim relief. 3. % of population over age 7 not receiving interim

Table 4 NUMBER AND PERCENTAGE OF PEOPLE LEFT OUT OF MEDICAL EXAMINATION

B	1	2	3	4
NGN	560	57.5	107	20.5
SN	328	47.7	65	15.3
TM	528	53.4	110	19.2

1. No. of persons who have not been medically examined. 2. % of population which has not been medically examined. 3. No. of claimants who have not been medically examined. 4. % of claimant population not medically examined.

Table 5 NUMBER OF PERSONS AND PERCENTAGE OF MEDICALLY EXAMINED POPULATION ADMINISTERED SPECIFIC EXAMINATIONS

B	1	2	3	4	5	6	7	8	9	10	11	12	13
NGN	239	57.7	252	60.9	39	9.4	37	8.9	69	16.6	13	6.2	3
SN	251	68.2	237	64.4	38	10.3	34	9.2	66	17.9	20	10.9	20

1. No. of persons examined by X-ray. 2. % of population examined by X-ray. 3. No. of persons urine-tested. 4. % of population urine-tested. 5. No. of persons on which P.F.T. (Pulmonary Function Test) carried out. 6. % of population on which P.F.T. carried out. 7. No. of persons examined by medical specialist. 8. % of population examined by medical specialist. 9. No. of persons administered eye test. 10. % of population administered eye test. 11. No. of females gynaecologically examined. 12. As % of medically examined female population. 13. No. of persons examined by paediatrician.

Table 6 NUMBER AND PERCENTAGE OF PEOPLE WHO HAVE NOT RECEIVED NOTIFICATION ABOUT THEIR CATEGORIES

B	1	2	3
NGN	414	395	95.4
SN	368	293	79.6
TM	461	373	80.9

1. No. of persons who have been medically examined.
 2. No. of persons who have been medically examined but who have not received notification about categorization
 3. % of medically examined population not notified about categorization

Table 7

NUMBER OF PERSONS AND PERCENTAGE OF NOTIFIED
POPULATION ASSIGNED DIFFERENT CATEGORIES

B	1	2	3	4	5	6	7	8	9	10	11	12
NGN	6	31.6	12	63.2	0	-	1	5.3	-	-	0	-
SN	53	79.1	10	14.9	2	2.9	2	2.9	-	-	0	-
TM	77	87.5	8	9.1	0	-	2	2.3	-	-	1	1.1

1. No. of persons notified of category B (temporary injury). 2. % of notified population assigned category B (temporary injury). 3. No. of persons notified of category C (permanent injury). 4. % of notified population assigned category C (permanent injury). 5. No. of persons notified of category B+D (temporary disablement caused by a temporary injury). 6. % of notified population assigned category B+D (temporary disablement caused by a temporary injury). 7. No. of persons notified of category C+D (temporary disablement caused by a permanent injury). 8. % of notified population assigned category C+D (temporary disablement caused by a permanent injury). 9. No. of persons notified of category C+E (permanent partial disablement). 10. % of notified population assigned category C+E (permanent partial disablement). 11. No. of persons notified of category C+F (permanent total disablement). 12. % of notified population assigned category C+F (permanent total disablement).

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Table 8

NUMBER AND PERCENTAGE OF PEOPLE VISITING
GOVERNMENT HOSPITALS AND PRIVATE CLINICS

B	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
NGN	581	59.7	753	77.3	570	98.1	86	14.8	123	21.2	39	5.2	674	89.5	631	83.8
SN	265	38.5	591	85.9	242	91.3	65	24.5	142	53.6	45	7.6	568	96.1	279	47.2
TM	497	50.3	699	70.7	485	97.6	203	40.8	181	36.4	79	11.3	647	92.6	571	81.7

1. No. of persons visiting government hospitals. 2. % of population visiting government hospitals. 3. No. of persons visiting private clinics. 4. % of population visiting private clinics. 5. No. of persons visiting government hospitals because it is free. 6. % of population visiting government hospitals because it is free. 7. No. of persons visiting government hospitals because of better treatment. 8. % of population visiting government hospitals because of better treatment. 9. No. of persons visiting government hospitals because of proximity. 10. % of population visiting government hospitals because of proximity. 11. No. of person visiting private clinics because it is cheaper. 12. % of population visiting private clinics because it is cheaper. 13. No. of persons visiting private clinics because they get better treatment. 14. % of population visiting private clinics because they get better treatment. 15. No. of persons visiting private clinics because of proximity. 16. % of population visiting private clinics because of proximity.

Acknowledgements

Persons involved in the generation of information, processing of data and preparation of the report :

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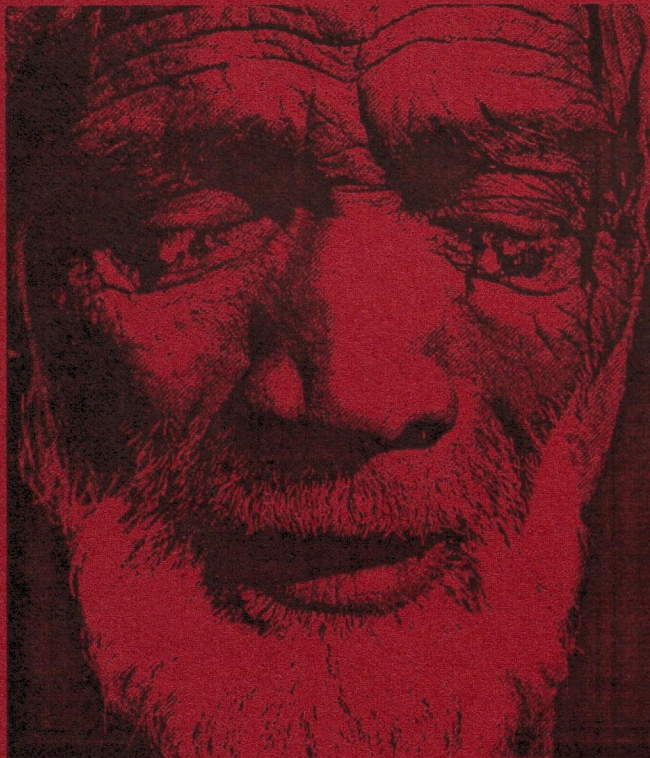
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Ravi Duggal
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ERRATA

PAGE	PARA	LINE	READ AS
1	1	1	"bought" brought
2	4	6	"conceded" contended
3	3	16	"underatanding" understanding
5	5	8	"worded" coded
9	2	5	"aphthalmic" ophthalmic
10	3	12	"obiquitous" ubiquitous
11	4	4	"final" fixed

footnote in page 8 to be inserted in page 11



Seeta Bai Babulal Prabhudayal Karam Singh
Abdulla Khan Panna Lal Fakaruddin Habib
Khan Dayala Das Banshilal Chhoti Bai Badri
Narayan Har Lal Munni Bee Yasin Khan
Babu Lal Ratan
Bai n Gregy
Madan kh Banne
Zahur Baks day Singh
Tulsi Ram han Singh
Govindan Ramrati
Bai So fish Roo
Sheikh Mur Muneer
Khan A Narayan
Julekha Bee B.K. Bajaj
Shambhu d Tuka
Ram m Chand
Manish Kana Bee
Mubaraq Ali Praveen Pratap Singh Mohd.
Taneek Ram Narayan Mohd. Yusuf Ramdas
Suresh Kumar Abdul Vaheed Shareefuddin
Sheikh Vajeed Sheikh Navaj Babu Lal Azeem

4000
DEAD.
AND STILL
COUNTING.

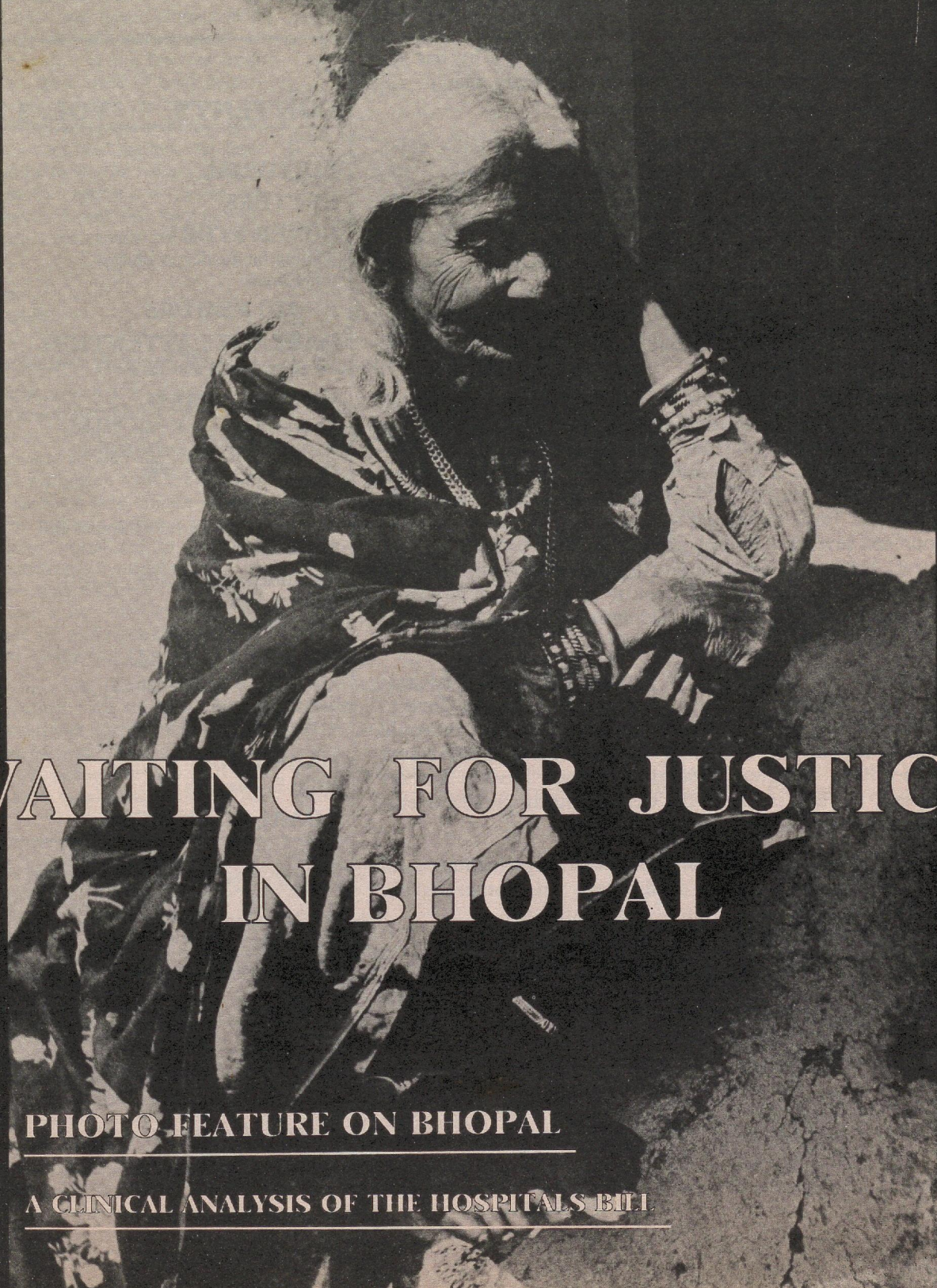
JUNE 1988

Rs. 6

FROM

THE LAWYERS

COLLECTIVE



WAITING FOR JUSTICE IN BHOPAL

PHOTO FEATURE ON BHOPAL

A CLINICAL ANALYSIS OF THE HOSPITALS BILL

A Still Born Act

The Legal Services Act, passed in 1987, was intended to create a statutory right to legal aid. Access to justice is effectively denied to large sections of our people who cannot afford lawyers fees. Legal aid therefore is their only hope of being able to reach the doorsteps of the courts. Why has the Act not been brought into force? It now appears that it was never intended to be taken seriously.

We now hear that the Act itself has been virtually sabotaged. It is reported that the Law Ministers of various states got together and opposed the new Legal Services Act. They have informed the Centre, that if the Act is brought into force, they will not co-operate with the Legal Services Authority. They claim that they all have satisfactory legal aid schemes, and will not make any financial contributions to the new Legal Services Authority. Hence, while Central and State Governments quibble over their respective rights, litigants literally go begging for legal aid.

The neglect of legal services for the poor is not accidental. It is generally acknowledged that Justice V. R. Krishna Iyer and Justice P. N. Bhagwati had worked to introduce the concept of legal aid as a statutory, indeed a fundamental right. For many years, Justice P. N. Bhagwati was Chairman of the Committee for Implementation of Legal Aid and in that capacity supported several voluntary groups working to develop public interest litigation, legal aid and legal literacy. And yet, the then Law Minister, A. K. Sen, took it upon himself to ensure that he was removed from the Committee on his retirement as Chief Justice.

Ordinarily, one would expect people with proven records to be put in charge of developing legal services. If the Government had any intention of taking legal aid seriously, it would have made use of the talents of Justice V. R. Krishna Iyer and Justice P. N. Bhagwati to set up the Legal Services Authority. Instead, by their inaction, the Centre and the State Governments have ensured that the Act is still born.

Unless litigants demand the immediate implementation of the Act, the new law will be a dead letter - yet another decorative addition to the sloganeering of our politicians!

Indira Jaising

FROM **THE LAWYERS** COLLECTIVE

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Editor: *Indira Jaising*
Cover picture by *R.C. Sahu*

LETTERS

Self Introspection

Your editorial in the Feb-March 1988 Issue, "To Strike or not to Strike" on the lawyers strike deserves sincere praise.

Like Mahatma Gandhi's stand in Chaurichaura, you have demonstrated the capacity of self introspection as a senior member of the lawyers community. In these days of total degeneration, responsible behaviour is expected from everyone including lawyers, the police and judges. At least your attempt to set the record straight would enable everyone to assess the performances. I pray this may not adversely affect the circulation of a good journal.

Y. R. Sane

Wadala, Bombay.

Discrimination Against Women

In response to a 1986 Public Service Commission notification, Rural Development Extension Officers (Gramasevaks) applied for the post of Industrial Extension Officers, among whom were some lady officers as well. There are no lady officers applying for or being appointed to the post. Several applicants including Lady Village Extension Officers were interviewed but a list consisting of only the names of male candidates, were published by the P.S.C.

Both male and female Village Extension Officers are recruited on the same educational qualifications, do the same type of work, draw the same salary and enjoy identical service conditions. There is absolutely no differ-

ence in the functions and duties of the lady officers and their male counterparts and there should be no discrimination against women. We fervently hope and trust that this Government bent upon protecting the weaker sections and women will not ignore this issue which is shameful to the whole nation.

We request (1) that appropriate orders be passed to provide equal opportunities to women officers for the posts (Industries Extension Officers, Co-operative Inspectors and so on) advertised by the PSC for Village Level Workers in the Rural Development Department. 2) A necessary review be ordered and 3) the list published by the PSC, be revised so as to incorporate women officers as well.

K. N. Ponnamma
S. Sreemathi
K. S. Sushama Devi

Let the Consumer Decide

This is in connection with the interview of Dr. S. S. Wagle in the April issue of *The Lawyers*. I am concerned about safety from radio-active hazards and would like to ensure that satisfactory arrangements are made for regular and periodic testing of such butter imported by independent agencies.

I would like to emphasise this point because the Supreme Court has not ruled out the possibility of radio-active contamination through the consumption of the butter affected by the Chernobyl nuclear fallout. There seems to be no threshold for damaging effects of ionising radiation, ingestion or respiration of radio-active

material. The consumption of such butter could seriously affect the physical health of all human beings, especially pregnant women and children, causing major genetic imbalances which result in birth defects and proneness to cancer. It would, therefore, be desirable and in public interest to leave the decision to consumers as to whether they should consume butter which has even a partial exposure to radio-activity.

I suggest that marketing of such butter be done in a container with a specific "warning caution sign on every packing. Indirect sales promotion by concealing information regarding radio-activity could only harm our fellow citizens and probably prove to be dangerous and fatal.

Parul Modi

Ahmedabad.

Litigants Association

The purport of this letter is to convey the deep sense of gratitude our Association feels towards you for your sympathy and understanding of the cause we stand for and of our activities to mitigate the suffering of poor litigants.

We are also immensely grateful for the wide publicity given by you to our Association's activities in your Magazine 'Lawyers Collective'. We are sure you will extend to us a helping hand whenever the necessity arises in the future.

A. K. Unny
General Secretary
Maharashtra Litigants Association

Update on Women Judges

Mrs. S. Duggal, District and Sessions Judge, Delhi, has been sworn in as a judge of the Delhi Court.

Mrs. Duggal, a former lecturer in a law college in Punjab, joined the judicial service in 1960. She was promoted as Additional District and Sessions Judge of Delhi in 1975.

Before becoming District and Sessions Judge for the Union Territory of Delhi last July, Mrs. Duggal had worked as Law Secretary to the Delhi Administration and had been a judicial member in the Central excise customs and gold control appellate tribunal for four years.

THE LAWYERS

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Overseas	\$50	\$100	

Waiting For Justice In Bhopal

*Every year, on 2 December, the Government of Madhya Pradesh and the Central Government shed crocodile tears for the victims of the worst man-made disaster in human history, and boast of the success of their relief efforts. But, in the dusty by-lanes of Bhopal, the gas-affected wait — for the medicines which never reach them, the rations now discontinued, the jobs which remained mere promises ... and above all, for justice! For, as UCC ruthlessly pursues its legal strategy of endlessly delaying the conclusion of the case, and as the government's credibility daily falls, more and more people question its exclusive right to represent the gas victims. **Indira Jaising** raises these and other fundamental questions in this critique of the litigation strategy pursued by the Government of India.*

Justice for the victims of Bhopal is yet a distant dream, perhaps never to be realised in their lifetimes. More than three years after the disaster they seem drawn into and caught up in legal gimmicks, thanks to the able support UCC receives for its strategy to delay and thus defeat the claims of the victims. It is almost as if UCC is waiting patiently for the victims to die — one per day, while it works out its patently unsustainable legal strategy.

When Judge Deo gave his order for payment of interim relief to the victims on 17 December 1987 (See *The Lawyers*, January 1988), granting three months time for the payment of \$ 350 million, UCC protracted litigation by filing an application in the High Court to review the Judgement. Justice S. K. Seth gave a well reasoned order on 4 April 1988, granting \$ 270 million as interim relief, directing Union Carbide Corporation to pay the amount within two months, i.e. by 3 June 1988. UCC filed an application for review. But that they had no intention to pay is clear from the fact that till 3 June 1988, they neither filed an appeal to the Supreme Court, nor obtained a stay of the order. On 3 June 1988, UCC issued a statement from Danbury stating that they will refuse to pay, because they considered the interim order 'unfair' and given on the basis of "retroactive" laws.

While UCC is thus clearly in contempt of court, the Government of India, claiming to represent the victims, has taken no action whatsoever against it to enforce the order, thus allowing the authority of the Indian



courts to be blatantly undermined. How and why have the interests of the victims met such a sorry end? Who is responsible?

History of Litigants

To begin with, hordes of American ambulance chasers descended on Bhopal. Even while the bodies of the Bhopal victims were still warm, thumb impressions were obtained and suits filed in the US, claiming compensation against UCC for death or personal injury. Through all this, the Government of India sat silent.

A full four months later, the Bhopal Gas Leak Disaster (Processing of Claims Act), 1985 was passed, under which the Government of India acquired the exclusive right to sue on behalf of the victims. While it is undeniable that the victims were in great need of legal assistance and service, the question is whether the Government of India is best suited to per-

form the role of Plaintiff in a suit against UCC.

A more suitable model for mass disaster litigation is to be found in the *Sri Ram gas leak* case. In a writ petition filed on behalf of the gas-exposed, Justice P. N. Bhagwati directed the Legal Aid Board to file claims on behalf of the victims in specifically designated District Courts. The victims themselves are Plaintiffs, retaining full control over the proceedings, but are fully assisted by the Legal Aid Board (if they so wish) which has appointed several hundred lawyers to file compensation claims on their behalf.

As subsequent events have shown, the Government of India has been unable to work out a viable legal strategy. Not anticipating the reaction of US Courts, it filed a suit in the USA, only to be told that the US Court was not the most convenient forum in which to sue. A full year was lost in deciding which was the most appropriate court in which to sue.

When the suit ultimately came to be filed in India, Union Carbide India Ltd. was conveniently not made a party defendant. It is commonly argued that since UCC is the majority shareholder in UCIL, and is primarily liable for plant defect, and inadequate supervision, control and training, it is not necessary to sue UCIL. But while piercing 'the corporate veil' of UCIL is permissible so as to hold UCC liable, UCIL is as much liable for the disaster as UCC and ought to have been sued as a defendant. The liabilities of UCC and UCIL are not mutually exclusive on any principle of li-

ability, whether it be on the theory of multi-national enterprise, strict product liability or negligence.

The only explanation for not suing UCIL in India, is that the Government of India, through its wholly owned agencies LIC and Unit Trust is a shareholder to the extent of 22% in UCIL. The disastrous consequences of not suing UCIL are now evident. UCC has refused to pay interim relief and there is no person or corporate body in India which can be subjected to the enforcement process in India. As UCIL is not a party, neither the assets of UCIL nor its person can be touched to enforce the interim order, leaving UCC free to defy the Indian judicial process.

As if the Government of India's shareholding in UCIL does not present serious conflict of interest issues for the victims, UCC in its one-upmanship has, in its written statement counter-claimed against the Government alleging contributory negligence in allowing the plant to come up with full knowledge of the toxic nature of MIC and in allowing human settlements to come up around the factory. These and other factors have spelt doom for the victims of Bhopal.

The conclusion is almost inescapable: that they would have been better off having independent representation. Victims of the disaster have been so completely isolated from participating in the trial, that secret moves were made to settle the case at ridiculously low levels. Only the concerted resistance of the victims frustrated such efforts to sell out to UCC. The belief is gaining ground that the Government of India lacks the will to pursue the litigation seriously. The crux of UCC litigation strategy has been to delay proceedings as much as possible. The Government of India as Plaintiff has been unable to cope with this shrewd strategy, almost fulfilling the prophecy that the Indian legal system is unable to cope with delays.

So far the only ray of hope in an otherwise grey horizon is the interim order handed down by Justice Deo and confirmed by Judge Seth. UCC alleges that it violates 'due process'. A glance at the order is sufficient to repel this contention. The order holds

The disastrous consequences of not suing UCIL are now evident. UCC has refused to pay interim relief and there is no person or corporate body in India which can be subjected to the enforcement process in India. As UCIL is not a party, neither the assets of UCIL nor its person can be touched to enforce the interim order, leaving UCC free to defy the Indian judicial process.

out promise not only for the victims of Bhopal, but is a trend setter for personal injury litigation generally.

Basis for Interim Relief

Proceeding on the basis of undisputed facts, the interim order records that the plant was designed and its personnel trained by UCC. Until the date of the disaster, UCC owned 50.9% of the share holding in UCIL. With these admitted facts, the High Court rightly raised the question as to which substantive law would apply to the claim for damages and the further question, namely whether it was permissible to grant interim relief under substantive law.

Recounting that the Suit will be governed by the substantive law of tort in India, the Judge points out that the law of tort has always been unwritten and judge made. Courts in India have always had jurisdiction to decide according to "justice and right". All local acts establishing civil courts required them to, in the absence of statutory law, decide according to "justice, equity and good conscience". With the enactment of the Civil Procedure Code, Section 9 became the true repository of the power to decide according to "justice, equity and good conscience" in all civil suits.

As the Judge put it, "every person having a grievance of a civil nature had, independently of any statute, a

right to institute a suit under the Section, unless its cognizance was expressly or impliedly barred." The effect of Article 372(1) of the Constitution of India was to continue the application of laws in force, thus continuing the application of the common law of torts. The High Court points out that "justice, equity and good conscience were and continue to be the driving force of the law of torts."

Substantive liability of UCC was to be determined in accordance with the law laid down in *M. C. Mehta v/s. Union of India* [AIR 1987 SC 1086], namely the principle of absolute liability without exception. Referring to the power of courts in England to grant interim relief, Justice Seth points out that the Rules of the Supreme Court, 1980, Order 29, Rules 9 to 18, provide for grant of 'interim payment' in personal injury cases. If the court is satisfied that if the action proceeded to trial, the Plaintiff would obtain judgement for substantial damages, it may direct the Defendant to make an interim payment. What this means is that if a *prima facie* case is made out, the court can direct interim payments to be made. Interim payments are adjustable against final payments and can be directed to be refunded, if found to be in excess of damages finally assessed.

Referring to the Rules of the Supreme Court, the Judge says that there is no reason why the principles of the rules formulated in England long before the Bhopal disaster, cannot be applied in India, as part of common law. He next proceeds to determine whether a *prima facie* case exists against UCC. Relying on *Life Insurance Corporation v/s. Escorts Ltd.* [AIR 1986 SC 1370], the Judge concludes that it is permissible to pierce the corporate veil to determine who has ultimate control of the enterprise.

UCC controlled more than half the voting power of UCIL, controlled the composition of the Board of Directors and controlled its management. It was a multinational whose object was to run similar industries the world over. The Defendant UCC had real and effective control over UCIL, it was engaged in the production of ultra hazardous products and was abso-

COVER STORY

lutely liable to pay damages. Bearing in mind the number of claimants and the magnitude of the claim, UCC was directed to pay Rs. 250 crores as interim payment (it had insurance cover for Rs. 262 crores).

What Next in Court?

UCC's strategy is quite clearly the classical one — to delay and tire out the victims. The latest in the bag of well planned tricks is an application filed by UCC lawyers in the Court of Justice Deo alleging that he is biased against UCC, that he has made up his mind that UCC is liable as is evident from the order granting interim relief and that he should therefore disqualify and 'rescue' himself from the proceedings. The application was seriously argued, causing Justice Deo to be visibly disturbed. It is an obvious attempt to obstruct the course of justice and intimidate the Judge. By this definition, any judge who grants interim relief will be biased against UCC, meaning thereby only a judge who supports UCC is 'independent'.

It is surprising that the Government of India as Plaintiff in the Suit, initiated no action for contempt of court against UCC and its lawyers. Perhaps such a move would upset its cultivated relationship with UCC. Yet another move to deny relief is the reported attempt by UCC to convince the world community that the disaster was the result of an act of sabotage by an unnamed "disgruntled worker", and that all the workers were involved in a cover-up operation by rigging the records.

Enforcing the Order

Attorney General Parasaran is reported to have gone to the USA for advice on the enforceability of the order. As UCC has neither personnel nor assets in India, the Government of India will be forced to once again sue UCC in the USA to enforce the interim order. If UCIL had been a party, its assets in India, though not sufficient to meet the demands could at least have been attached, and its officers held guilty for contempt and imprisoned. Such action would at least have the merit of forcing UCC to take the Indian proceedings seriously. Today, the Indian courts are being taken

for a ride with their order being dishonoured without any adverse consequences to UCC.

Under New York law, a judgement of a foreign country must be recognised and enforced, unless it was granted under a system that does not provide impartial tribunals or procedures compatible with the requirement of due process of law or if the foreign courts had no personal jurisdiction over the defendants. In this case, UCC consented to subject itself to the jurisdiction of courts in India. The only way out for them therefore, is to allege that the Court in India was not impartial. This is what explains the application to Justice Deo alleging bias.

Plight of Victims

While legal proceedings drag on, the only relief to the victims seems to come from their organised strength. It is now clear that the victims still carry the toxins to which they were exposed, which continue to cause morbidity. UCC with full knowledge of the toxic nature of MIC failed to disclose it to the Government even after the disaster, or to recommend a line of treatment. As a result, more than three years after the disaster, the gas exposed either continue to die or are totally debilitated and incapable of sustaining themselves. The demands of the victims made to the Government of India for suitable rehabilitative jobs remain unmet. Even the existing work centres would have closed down, were it not for the protest of the Gas Pidith Mahila Udyog Sangathan, whose slogan is "Not unemployment relief, but jobs is what we want!"

According to Jabar Khan who leads the Sangathan, the Rs. 210 crores which came to the Prime Minister's Relief Fund from various Governments for the victims was spent on road building, street lighting and purchase of trucks for the Corporation, rather than for the victims.

Generally, every one except the victims seem to have benefited from the disaster. UCC lawyer Vijay Gupta threw a lavish party to celebrate his election as President of the Bhopal Bar Association. He had many distinguished guests, among them, Chief Min-

ister Arun Singh, Rajendra Shukla, speaker of the Assembly, and surprisingly, M. W. Deo hearing the civil case against UCC and K. S. Sisocha, hearing the criminal case against UCC. Is that a coincidence, and can such judges be biased against UCC?

While lawyers and others have made their fortunes on the case against UCC, Bhopal today presents a picture of gloom for the debilitated victims. Yet the women of the Gas Pidith Mahila Udyog Sangathan are carrying on their long struggle for justice, against all odds. It is only their thirst for justice and their will to fight which is keeping the issue alive. Perhaps the time has come to deny to the Government the monopoly it assumed to represent the victims.

Independent Legal Proceedings Necessary

Given the conflict of interests between the Government of India and the victims, the Bhopal Gas Leak Disaster Act, 1985 is clearly unconstitutional. The vague hope that the victims have of getting some justice has prevented them from challenging it. Even the criminal case filed against UCC and UCIL was not pursued until after talks of settlement failed. Unless the Government pursues the criminal and civil cases with full confidence and speed, the time will soon arrive when the victims will have to distance themselves from both the Government and UCC, and pursue legal proceedings independently.

Jabar Khan of Gas Pidith Mahila Udyog Sangathan has already announced that 40,000 women plan to petition the Supreme Court for interim relief, when UCC filed their petition against the order. This will be a welcome act of self assertion on the part of the victims, which may perhaps force the pace of proceedings.

While UCC is primarily liable to pay compensatory and punitive damages, the Government of India cannot be absolved of its constitutional duty to protect life and liberty. Its record in Bhopal to date has been dismal, as is obvious from the fact that the victims of Bhopal are suffering a living death for want of adequate medical, nutritional and financial support.

PHOTO FEATURE

*Awaiting the Court's
Judgement.*



The People's Verdict.

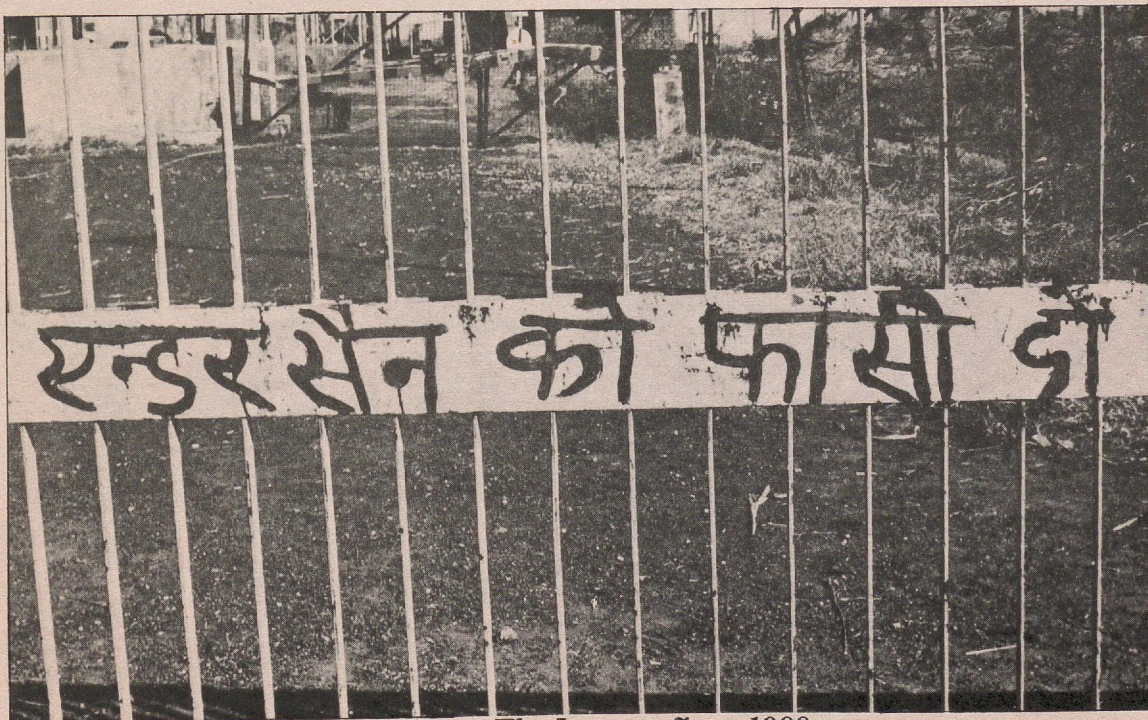


PHOTO FEATURE

*Public Opposition to the
Closure of a Work Centre
in Bhopal.*



डालर का चाल न
जहर धोला भोपाल में

PHOTO FEATURE

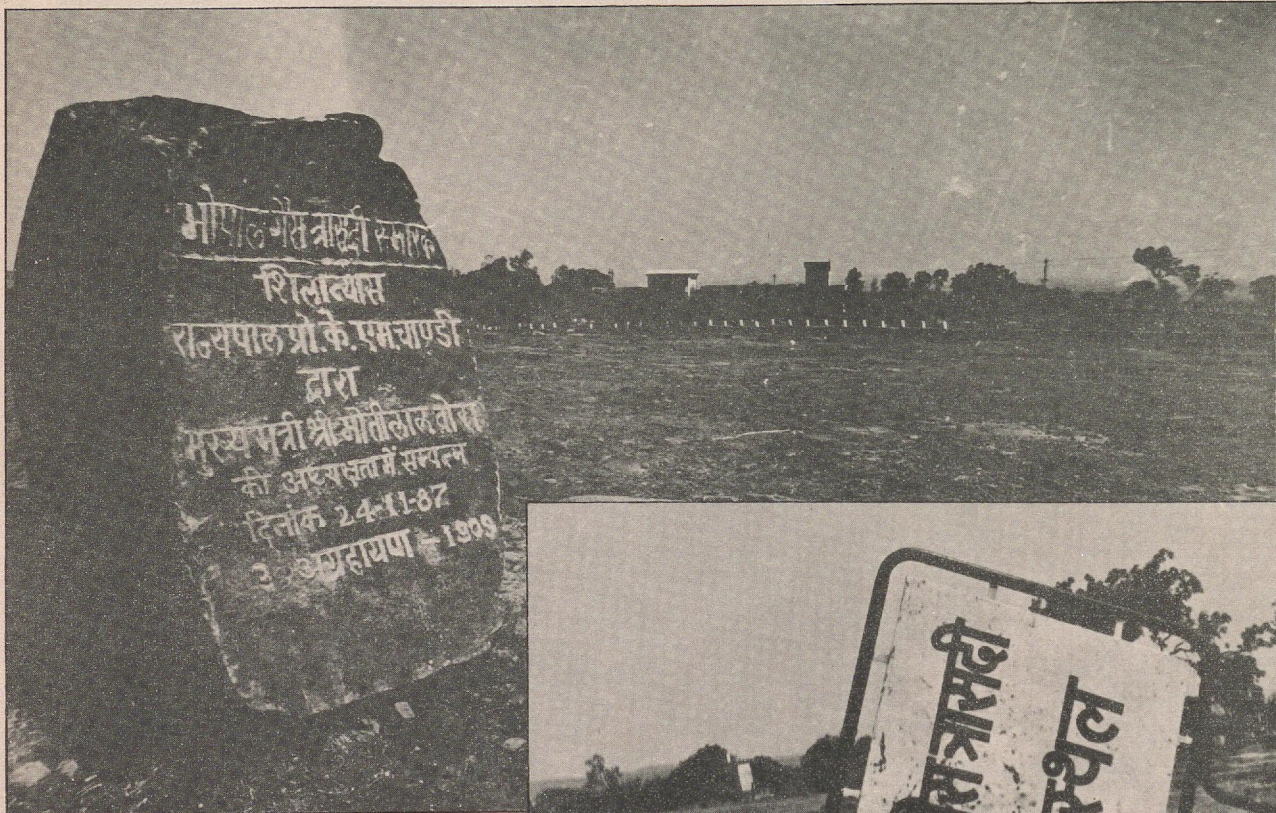


Women Protestors Raise Anti-Government Slogans.



*Over Zealous Police
Women Pick up
Protestors.*

PHOTO FEATURE



*The Only Visible Progress
on the Rs. 1.08 Crore
Memorial for the Victims.*



The Graveyard of Justice.

All Photographs by R. C. Sahu.

An Appeal by Vimochana

First in Karnataka, then in the Delhi High Court, and finally even the highest court of the land has resounded with slogans of lawyers fighting to secure their demands. But what happens when a lawyer kills his own wife? In any other profession, a man is suspended while prosecution for a serious offence is pending. Should not the Bar Council principle apply to lawyers? Vimochana, a Bangalore based women's organisation raises such fundamental questions of lawyer's ethics in this thought provoking report.

We have been curiously following the lawyers agitations both here in Bangalore over the death of Rasheed and one of the Delhi Bar over the handcuffing of one of its members. The two agitations and the issues over which the protests were raised, urges us to think aloud.

While we certainly support and share the concern of the Bar in bringing to book all those involved in the politically motivated murder of Rasheed, we cannot but conclude that the agitation too is politically motivated. What appears to be primary here is not the fact of his murder or of his soul crying for justice, but the fact that two opponent political parties are involved, namely, the Congress (I) and the Janata Party.

We were forced into this position because of the strangely contradictory position adopted by the legal community following the gruesome murder of Sumitra Devi. Sumitra was murdered by her own husband Abhinav, an advocate practising in Bangalore. An advocate whose profession it is to secure and defend justice, disposed off his wife for the sake of another woman, also a lawyer, in a well thought out manner, so as to leave no trace of evidence. The body was found ten days after the murder floating in a village tank. It was due to the sheer persistence and interest of a police officer that a prima facie case could be made out and he was chargesheeted and remanded to judicial custody.

We in Vimochana, were shaken by the criminal performance of the lawyer, and demonstrated in the court premises demanding that he be debarred and urging lawyers to boycott him. But alas the lawyers! United they

stand in death and in crime — Not one black coat with a conscience protested his resumption of practice — Out on bail and back was he defending justice with 'bloody' hands, and irony of ironies, in the family court.

Lawyers we ask this of you —

Rasheed was killed — you sought justice. We too seek justice. You pass a resolution not to defend the accused in the Rasheed case. When we asked the same of you in Sumitra's case you told us that you could not take a stand on Abhinav as the crime he committed was of a 'private' nature. Why, why do you keep quiet — Is it because there are no political gains to be derived? Is it because you rate crimes committed against men higher than those committed against women?

You told us that one is innocent until proven guilty. You told us to see Abhinav first as a human and then as a lawyer. You told us that Abhinav's brutal killing of his wife could not be seen as professional misconduct.

*Lawyers we ask this of you —
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no political gains to be
derived?*

We find such statements strangely contradictory. If you hold that until proven guilty one is innocent, then where does this position take us in your present stance in Rasheed's case? Why should the accused in that case not be defended?

If you told us to view Abhinav as a human first and then as a lawyer why did the legal community in the Supreme Court strike work, when a member of the Delhi Bar was handcuffed — was he not an ordinary human being first? Why is there no protest when in and out of court corridors we see even undertrials being handcuffed.

What disturbs us deeply in all these reactions is basically this: Can the professional code of conduct of the legal profession sanction any illegal and criminal act committed by any of its practitioners saying that it does not involve professional misconduct? Can the judicial system afford to make this finely honed difference between professional ethics and private morality — especially when basic human and legal norms are flouted — as in the murder of Sumitra Devi. It is by perpetuating such differences that we will be further sanctioning crimes and criminality.

Boycott Abhinav Anand in the courts. Otherwise words like ethics, values and principles will cease to have even the minimum meaning they possess in today's fast degenerating society. If your professional ethics and conduct are not adequate to meet the situation, amend your codes to provide that an advocate accused of a serious offence will be suspended from practice.

Our name has changed.
Our world has grown.
But our purpose
remains the same.

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Conflict of Religious Doctrine and Secular Law in the U.S.

In most other spheres India seems to be keen on aping the west especially the United States. But when it comes to implementing the principle of separation of religion from the state, the Indian government is bent on pursuing its own brand of "secularism" i.e. state support to all religions. In this article Kathleen Behan delves into the method adopted by the U.S. Supreme Court, in enforcing the doctrine of no state support to any religion, and in resolving conflicts that sometimes arise.

How should a state dedicated to the principle of religious liberty allocate the functions of law making when secular law and religious doctrine collide. The Supreme Court of the United States has resolved the church-state conflict through the development of the legal doctrines which attempt to maintain a "wall" of separation between church and state. The promotion of non-entanglement and neutrality among religions, the accommodation of free exercise of religion and the subordination of church doctrine to compelling secular state interests, are some such legal doctrines. The history of these doctrines in the U. S. has important implications for Indian Law.

Introduction

The religion clause of the First Amendment of the United States provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." These two clauses, referred to as the "establishment" clause and the "free exercise" clause, have two primary purposes: to prevent the state from sponsoring or en-

forcing a uniform religion, and to permit citizens to freely exercise their religious beliefs without fear of state intrusion or suppression.

The way in which a state defines the term "religion" will inevitably affect the way in which it regulates religious beliefs and institutions. The U.S. Supreme Court first defined religion as having "reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and characters, and obedience to his will." [*Davis v/s. Beason*, 133 U.S. 333 (1890)]. This view assumed that to be considered a religion, a set of beliefs must include the central belief of God as the Creator of the Universe. Much later, the Court abolished this theistic requirement. In *Torasco v/s. Watkins* [367 U.S. 488 (1961)], the Court struck down a Maryland Declaration of Rights provision requiring that public officials declare their belief in God. It held that the federal and state governments may not aid those religions based on a belief in the existence of God as against religions founded on different beliefs.

In *U.S. v/s. Seeger* [380 U.S. 163 (1965)], the Court extended its definition of religion by holding that if a person

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wishes to exempt himself from military service on the basis of his religious beliefs, as a conscientious objector, then the state should only inquire "whether the beliefs professed by the registrant are sincerely held and whether they are in his own scheme of things, religious." The Court later explained this subjective approach: The reference to the registrants own scheme of things was intended to indicate that the central consideration in determining whether the registrants beliefs are religious is whether these beliefs play the role of religion and function as a religion to the registrant's life. [*Welsh v/s. United States*, 398 U.S. 333,339, (1970)]

But while the Court advocates a subjective approach to determining what constitutes a religion or religious practice (whatever a person sincerely believes to constitute a religious practice), that inquiry has limits. Not every practice a person states to be founded upon religious belief, will be beyond scrutiny. The state obviously would not sanction human sacrifice regardless of whether a particular religion advocates it. For example, a lower Court found that 'MOVE', a revolutionary organisation "opposed to all that is wrong" was not a religion despite their firmly held belief system [*Africa v/s. Pennsylvania*, 662 F2d 1025 1024 (3d in 1981) cert. denied 456 US 908 (1982)]. The Court may have been influenced by MOVE's history of secular conflict with the city of Philadelphia, namely their creation of health and cleanliness hazards, and their stockpiling of arms which eventually led to the bombing of a MOVE residence. Thus, the conflict still remains, regardless of how the state defines religion, and how much deference it gives to an individual's belief in what constitutes religion. Certain religious practices will still violate the laws of the state, and certain state laws will violate religious doctrine. The Supreme Court has developed tests to resolve these conflicts.

Non-entanglement and Neutrality

In *Lemon v/s. Kurtzman* [403 U.S. 602 (1971)], the Supreme Court set down a three-pronged test to ensure that the state does not violate the establishment clause. Under this test, a government action or regulation must:

- (1) have a secular purpose,
- (2) have as its primary effect neither the advancement nor inhibition of religion,
- (3) not create "excessive government entanglement" with religion.

On applying the *Lemon* test, the Court had found that certain public religious gestures which have as their primary purpose the expression of patriotism or community spirit are allowed, while other gestures are struck down due to their underlying motive of establishing a state religion. Thus, in *Lynch v/s. Donnelly* [465 U.S. 668 (1984)], the Court upheld a city's practice of maintaining a nativity scene as part of its Christmas display, and in *L. Maish v/s. Chambers* [463 U.S. 783 (1983)], the Court sanctioned the practice of a state legislature opening its session with a prayer. Yet in *Engels v/s. Vitale* [370 U.S. 421 (1962)] and *Abingdon Township v/s. Schemepf* [374 U.S. 203 (1963)], the Court declared unconstitutional a state conducted recitation of prayers and devo-

tional Bible reading. In *Wallace v/s. Jaffree* [472 U.S. 38 (1985)], the Court held that a statute mandating a moment of silence for prayer was unconstitutional. What differentiates these cases often depends upon what the Court decides.

The state's purpose is in promoting a practice and the intrusiveness of a requirement. Thus, those statutes which mandate a teaching of a religious creed to or reciting of a prayer by young people may be more closely scrutinized because they indicate an intent to influence the students towards religion. A religious invocation or use of a "secularised" religious symbol has an essentially secular purpose, as J. O'Conner argues in *Lynch v/s. Donnelly* [465 U.S. 668, 693 (1984)]: "government acknowledgements of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society." The government's purpose then must be secular, neutral, i.e. not favouring religion over non-religion or one religion over another, and non-intrusive, i.e., not requiring an excessive entanglement of the government in matters of religion.

Accommodation of Free Exercise

In interpreting the free exercise clause of the First Amendment, the Supreme Court has developed a balancing test which weighs the burden of a regulation upon a religious adherent's free exercise rights, against the degree to which a states interest is compelling and the state has no less restrictive means to further that interest [*Sherbeil v/s. Verner*, 374 U.S. 398, 406-07 (1963)]. Once an individual has shown an impairment of free exercise rights, the burden shifts to the state to show that its interest is compelling. In *Sherbeil*, the Court allowed a Seventh-day Adventist to receive unemployment benefits after she had been fired for refusing to work on Saturdays, because requiring her to forfeit unemployment benefits or abandon her religious faith, imposed "the same kind of burden upon her free exercise of religion, as would a fine imposed against her Saturday worship." The Court reiterated its holding when it declared unconstitutional, the imposition of criminal penalties against Amish parents who refused to send their children to public high school up to the age of sixteen. The Court held that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." Finally, in *Thomas v/s. Review Board* [450 U.S. 707 (1981)], the Court allowed a Jehovah's Witness to receive unemployment compensation after he refused to work for religious reasons.

Shift in Policy

By allowing persons to be exempt from regulations which hinder their exercise of religious beliefs, the Court has adopted a policy of accommodation in order to preserve free exercise rights. This accommodation tends to safeguard the rights of those religions minorities whose religious practices are more likely to conflict with secular law, than the majority mainstream religions. But in recent years the Court has shifted

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away from the accommodation policy, recognising the need for the enforcement of state interests despite the hindrance on an individual's religious beliefs. In *U.S. v/s. Lee* [455 U.S. 252 (1982)], the Court found that the state had a compelling interest in collecting taxes and thus denied an Amish farmer's request to be exempt from social security taxes.

In *Goldman v/s. Weinberger* [106 S. C. 1310 (1986)], the Court found that an ordained rabbi could not be exempt from an Air Force regulation prohibiting the wearing of headgear.

The state's accommodation of free exercise must not go so far as to become an establishment of religion. Thus, in *Zorach v/s. Clauson* [343, U.S.306 (1952)], the state upheld a programme in which children were allowed to leave school at a undesignated time to receive religious instruction, but struck down a programme in which regular classes concluded an hour early to provide religious instruction in the public classrooms [*McCullum v/s. Board of Education*, 333 US 203 (1948)].

In *Lemon v/s. Kurtzman* [403 U.S. 602 (1971)], the Court held that while the state could provide religious schools with "secular, neutral or non-ideological services, facilities or materials," when it provides salary supplements for teachers, it is no longer providing a separate, secular service and thus risks excessive religious entanglement.

Secular State Interest

Thus, it is clear that in cases which analyse both the establishment and free exercise clause, the courts have found that the state has certain compelling secular interests which it must further through the enforcement of laws and regulations, regardless of whether an individual's free exercise rights are hindered, provided that the regulation does not amount to an establishment of religion, or require excessive entanglement in religious areas. The question here arises: What state interests are sufficiently compelling to warrant any obstacle on free exercise? As seen already, the collection of taxes and preservation of military rules are compelling state interests. Many other secular categories have also been recognised.

Initially, the Supreme Court distinguished cases not on the basis of whether the regulation involved secular or non-secular practices, but whether the regulation governed beliefs or practices. In *Reynold v/s. United States* [98 U.S. 145, 166 (1878)], the Supreme Court found that the free exercise clause absolutely protected beliefs, but left practices completely unprotected. Later in *Cantwell v/s. Connecticut* [310 U.S. 296 (1940)], the Supreme Court recognised the distinction between beliefs and acts, but noted that the clause did cover practices as well.

Though the Court has never comprehensively listed those secular areas in which the state's interest in regulation is compelling, it has in particular cases found additional secular categories. In *Prince v/s. Massachusetts* [321 U.S 158 (1943)], the Court found that "the right to practice religion freely does not include liberty to expose the community to commu-

nicable disease." Thus health is among the secular areas regulated by the state.

Finally, the courts have found in a series of cases that preventing discrimination of race or gender and regulating marriage and family life are compelling secular interests which the state may promote by enforcing regulations even when the free exercise rights of certain individual's or groups are affected.

In *Reynolds v/s. United States* [98 U.S. 145 (1878)], the Court for the first time elucidated the idea that prevention of discrimination and enforcement of secular marital standards are compelling state interests. In that case the Court affirmed a polygamy conviction against a member of the Mormon Sect. The Court found sufficient secular interests in preserving monogamous marriage and preventing the exploitation of women.

Recently, in *Bon Jones University v/s. United States* [461 U.S. 574 (1983)], the Supreme Court held that the denial of preferential tax status to racially discriminatory religious schools did not violate the school's right to freely exercise its beliefs. The prevention of discrimination was again found to be a compelling state interest. In this case, the University had argued that its discriminatory practices were based on a belief that the Bible forbids inter-racial mingling and dating. Nevertheless, the Court found the discriminatory practices in admission unacceptable.

Discrimination Against Women and Minorities

The lower federal courts have often decided that religious institutions may not discriminate against women or minorities in matters related to employment. In *McClane v/s. Salvation Army* and *Whitney Greath New York Co. v/s. Seventh Day Adventists*, the courts found that the discriminatory practices were not founded on sincerely held religious beliefs. As such, the practices were not protected by First Amendment provisions, and furthermore, the effect of those regulations on beliefs that were firmly held would be negligible.

But even in cases where the courts have found that a religious institution discriminated against women on the basis of a sincerely held religious belief, they have held that the Government's compelling state interest in "eliminating all forms of discrimination", outweighed the infringement on the religious expression of the group. For example, in *EEOC v/s. Pacific Press Publishing Association* [676 F 2d 1272 (9th Cir 1982)], the Court held that a Seventh Day Adventist Publishing House violated Title VII of the Civil Rights Act of 1964 (preventing discrimination in employment), by denying a female employee monetary allowances granted to similarly situated male employees, and by firing her when she filed a complaint with the Equal Employment Opportunity Commission. Even though there were church doctrines prohibiting members of the Seventh Day Adventist Church from suing the Church and the Plaintiff was fired because she violated a religious doctrine in filing a complaint, the suit was upheld because of the Government's interest in eliminating discrimination.

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In another important case [*Dayton Christian Schools v/s. Ohio Civil Rights Commission*, 578 F.Supp 1004 (S.D. Ohio 1984)], a religious school fired a pregnant teacher. The court found the action to be influenced by a sincere religious belief which disapproved of mothers working while children were young and which required all intra-faith conflicts to be resolved within the religious community. Nevertheless, the Court upheld the discrimination claim. More importantly, the Court found two compelling state secular interests, that of eradicating sex discrimination and of "protecting the freedom of personal choice in matters of family life."

When the case went up to the Supreme Court, the religious school challenged the Ohio Court Rights Commission's exercise of jurisdiction of the sex discrimination claim — in effect, challenged the power of the state to regulate this area.

The Supreme Court upheld the Civil Rights Commission's jurisdiction and authority, thus confirming the state's right to regulate discriminatory religious institutions even when full exercise rights are burdened [*Ohio Civil Rights Commission v/s. Dayton Christian Schools, Inc.*, 106 S.C. 2718 (1986)]. Countless cases have echoed this affirmation of the state's authority in discrimination claims. Eg. *EEOC v/s. Tremont Christian School* [781 F 2d 1367 (9th Cir. 1986)]; *EEOC v/s. Southwestern Baptist Theological Seminary* [651 F.2d 277, 283-85, (5th Cir 1981) cert. denied, 456 US. 905 (1982)]; *EEOC v/s. Mississippi College* [626 F.2d 477 (5th Cir 1980) cert. denied 453 U.S. 912 (1981)]; *Russell v/s. Balmont College* [554 F. Supp 667 (M.O. Tenn 1982)] and *Dolta v/s. Wahlert High School* [483 F.Supp. 266 (N D IOWA 1980)].

Thus, the free exercise right in the United States is not absolute, but may be eliminated when the state has a compelling secular interest in regulating a particular area of conduct. Two of those areas which the state may regulate include the prevention of discrimination and matters relating to marriage and family life.

Implications for Indian Law

The United States doctrine of separation of religion and the state has important implications for Indian law. In the U.S. Constitution, the right to freedom of exercise of one's religious beliefs is unlimited, except in prohibiting the state from establishing a religion. Nevertheless, the U.S. Supreme Court has carved out areas of state interest, where the Government can enforce regulations which may infringe upon that right.

In India, on the other hand, the right is limited within the Constitution itself. Article 25 provides that the right to freedom of religious expression is "subject to public order, morality, and health and to the other provisions of this Part", which includes the fundamental right to equality. Further, the Article provides that expression of the right shall not prevent the state from making any law — (a) regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice, (b) providing for social welfare and reform.

Thus, the Indian Constitution provides a much more limited right of religious expression than the U.S. Constitution, one which explicitly provides that secular activity and discriminatory practices may be regulated regardless of the effect on Article 25. The state's interest need not be compelling. Clearly then, if personal choice in marriage and gender equality are compelling state interests in the United States, where women are not yet guaranteed equal rights under the Constitution, they are likely to regulate state interests under the Indian Constitution. Thus, practices associated with religious discrimination against women, must be void under Articles 14 and 15 of the Indian Constitution. Since the state has the power to regulate the secular activities of marriage and divorce, and since discriminatory laws are unenforceable, the state must only allow enforcement of laws of marriage and divorce which promote equality between the sexes.

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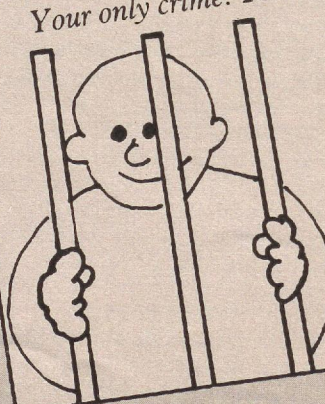
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The Arbitrator and His Norms of Conduct

As the volume of disputes referred to arbitrators steeply increases, questions regarding the behaviour of an arbitrator and the validity of an award shall acquire increasing importance. P. M. Bakshi discusses the legal principles that have evolved in this sphere.

An arbitrator is a private tribunal chosen by the parties for the settlement of disputes. But he has no power to act arbitrarily. He must act fairly to both the parties. He must conduct the hearing in accordance with natural justice. And he must not only be impartial, but must also demonstrate that he is impartial.

These simple propositions have given rise to a mass of case law relating to "misconduct" by the arbitrator. Misconduct of the arbitrator may render the award void. Thus where an arbitrator refused to allow the son of a party to attend the hearing when the son was the person versed in the accounts of the business, the award was set aside for breach of natural justice, which is misconduct [*Haigh v/s. Haigh* (1861) 31 L.J. Ch. 420].

An arbitrator cannot decide the dispute on knowledge which he has acquired in a different capacity [*Owen v/s. Nicholl*, (1948) 1 All E.R. 707 (CA)]. He cannot inspect the subject matter of the dispute in the absence of the plaintiff or refuse to hear the plaintiff's witnesses [*Phipps v/s. Ingram*, (1835) 3 Dowl. 669]. He cannot seek legal or technical advice in private, on points in dispute [*Louis Dreyfus & Co. v/s. Arunachala Ayya*, (1930) L. R. 58 Ind. App. 381].

Such irregularities committed by the arbitrator may prove fatal. Once committed, their consequences may be irrevocable. To quote Lord Denman, C. J., "The mischief was done at the time and cannot be removed" [*Dobson v/s. Groves*, (1844) 6 Q.B. 637]. Some of these aspects deserve elaboration.

Personal Participation

All arbitrators must participate in the proceedings. If there are more arbitrators than one, all must hear the case and participate in the decision. Non-participation by one of them will vitiate the award [*Patel Brothers v/s. Minakshi Mills*, A.I.R. 1942 Bom. 239; *Minakshi Mills v/s. Patel Brothers*, A.I.R. 1944 Bom. 469; *Fazal Ali v/s. Khemji*, A.I.R. 1934 Bom. 476; *Kuppuswami v/s. Anath Ramniar*, A.I.R. 1948 Mad. 83].

No Delegation

In general, an arbitrator cannot delegate transfer or abdicate his duty in favour of a third person [*Sheo Karan v/s. Kanhya*, A.I.R. 1935 Lah. 113]. The reason is that the office of an arbitrator is an office of trust or confidence, reposed in him by the parties, and the parties have no knowledge of the ability or integrity of strangers.

The rigidity of the rule mentioned above can of course be relaxed, if the parties have consented that the arbitrator may seek the opinion of a third person. Besides this, routine acts which are known in legal language as "ministerial acts" can be delegated. Thus, it seems that an arbitrator can delegate or take the help of a third person for checking technical details e.g. through an engineer [*Mamindra v/s. Mahananda*, 15 Cal.L.J. 360]. He can ascertain the cost incurred, by taking the help of a third person [*Buta v/s. Municipal Committee*, (1902) I.L.R. 29 Cal. 854 (P.C.)]. For examining accounts, he can take the assistance of an accountant [*Holdsworth v/s. Wilson*, (1863) 4B & S 1].

Confidential Information

Arbitrators are essentially adjudicators. A judge must perform judicial acts in the presence of the parties and not behind their back. It follows, that if the arbitrator listens to information given by one party in confidence and without the knowledge of the other party, he is guilty of grave misconduct [*Sanyasi Rao v/s. Ankala Rao*, A.I.R. 1923 Mad. 301; *Bhaiya Rai Kishore v/s. Jogeshwar Dayal*, A.I.R. 1931 All. 276; *Mehar Chand v/s. Morgan*, A.I.R. 1952 Punj. 364].

If an arbitrator acts on a document not disclosed to the other party, it would be misconduct [*Jagat Hari v/s. Moran & Co.*, A.I.R. 1915 Cal. 713]. Of course, there will be no misconduct if the result of the information gained privately by an arbitrator is conveyed to the co-arbitrators in the presence of the parties, who are given an opportunity of checking and contradicting the information [*Mohiuddin v/s. Ramaswami*, A.I.R. 1921 Mad. 71].

Contacts With Parties

An arbitrator who is indebted to one of the parties must disclose that fact, otherwise the award would be vitiated by legal misconduct [*Venkata v/s. Surya Narain*, A.I.R. 1941 Mad. 129]. An arbitrator cannot accept hospitality from one of the parties, if the hospitality is offered with the intention of influencing him [In Re: *Hopper*, (1867) L.R. 2 Q.B. 367]. If there is no such intention, it is mere indiscretion.

Fees

Questions have sometimes arisen as to the fees to be charged by arbitrators. An arbitrator is entitled to insist that his fees may be paid before he enters on the arbitration (unless the rules provide to the contrary). But an arbitrator

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should not accept money from only one side (even as fees). [*Amar v/s. Ishar*, A.I.R.1921 Lah. 239; *Akshoy v/s. S.C. Dass*, A.I.R. 1935 Cal. 359]. He can, of course, accept them from both the parties, so long as there is no bias [*Jeewan Industries*, A.I.R. 1975 Del. 215]. An arbitrator demanding excessive and extravagant fees may be guilty of misconduct.

Disregard of the Law

An arbitrator has to give his award in accordance with the law and not on the principles of morality. Intentional disregard of the law by the arbitrator may nullify the award. Thus, the arbitrator cannot alter the mode of devolution of property in a manner at variance with the ordinary law [*Jafri Begum v/s. Syed Ali*, I.L.R. 23 All. 383 I.P.C.].

Procedural Defects

Some cases have arisen as to the procedure to be followed in recording evidence. In general, the court is not concerned with the merits of the decision given by the arbitrator [*Tikaram v/s. Hansraj*, A.I.R. 1954 Nag. 241]. The reason is that the parties have selected their judge by their own choice, and they have to show a great deal more than mere error on the part of the arbitrator in the conclusion reached by the arbitrator before the court can interfere with the award.

Similarly, subject to the provisions of the Arbitration Act, the arbitrator is not bound by any particular procedure, so long as he observes the rules of natural justice. For example, he is not bound to make formal notes of the evidence given by witnesses before him [*Amir Begum v/s. Badruddin*, A.I.R. 1914. P.C. 105; *Ram Bahadur v/s. Srikanth*, A.I.R. 1943 Pat. 284]. An arbitrator cannot arbitrarily refuse to allow a party to produce evidence which is relevant to the controversy [*William v/s. Wallace*, (1914) 2 K.B. 478; *Aboobakar v/s. Congress Reception Committee*, A.I.R. 1937 Bom. 410].

Consultation with Experts

In the course of their work, arbitrators often find it necessary to consult experts. Their desire and inclination to do so arise not from any laziness on their part, but from their anxiety that complicated matters requiring specialised skill, knowledge, expertise and experience should receive the best possible attention. The conscientious arbitrator is keen that the parties be given a judgement of the highest quality, and it is in order to maintain this high standard that the arbitrator may like to consult an expert. But there is one precaution that he must observe. Bearing in mind the basic proposition that the arbitrator should observe natural justice [*Abdul v/s. Ismail*, A.I.R. 1925 Pat. 465], he should not seek such consultation without the knowledge or consent of the parties. As a rule, when the arbitrator wishes to seek legal opinion from a third person, it would be prudent and discreet to ask the parties to be present [*Rolland v/s. Cassidy*, (1888) 13 App. Cas. 770].

The position can be conveniently stated in the form of the following propositions:-

(i) An arbitrator may, for his own guidance, consult persons of expert knowledge or skill touching any question arising

in the course of the reference, but he should do so only with the knowledge and consent of the parties.

(ii) Even after the arbitrator has resorted to consultation with the parties' knowledge and consent, the ultimate decision should be of the arbitrator himself, and not of the expert whom he has consulted. The arbitrator cannot surrender his judgement in favour of these persons. He must form his own opinion [*Ellison v/s. Bray*, (1864) 9 LT 730].

At the same time, it should be noted that courts do not easily give credence to an allegation that the arbitrator consulted an expert on a matter of law and based his award on such consultation. Courts require strict proof [*Louis Dreyfus v/s. Arunachala*, A.I.R. 1931 P.C. 289].

London Court Article

The question of consultation with experts has been sought to be solved in the rules of some of the international commercial legal or arbitral bodies by specific provisions. For example, the London Court of International Arbitration, while revising its rules as of January 1985, has included the following article as to experts:-

"Article 12 - Experts appointed by the Tribunal

12.1. Unless otherwise agreed by the parties, the Tribunal-

(a) may appoint one or more experts to report to the Tribunal on specific issues;

(b) may require a party to give any such expert any relevant information or to produce, or to provide access to any relevant documents, goods or property for inspection by the expert.

12.2 Unless otherwise argued by the parties, if a party so requests or if the Tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing at which the parties shall have the opportunity to question him, and to present expert witnesses in order to testify on the points at issue." [Yearbook of Commercial Arbitration (1985) Vol. 10 page 162].

International Bar Association Rule

Similarly, the International Bar Association, in its Supplemental Rules on Evidence in International Commercial Arbitration (Adopted on 28 May 1983) has provided that the arbitrator shall have certain powers in addition to those available under the applicable procedural law and under the general rules under which the arbitration is conducted. Article 7 of the I.B.A. Rules includes the following powers of the arbitrator:-

"(c) to call witnesses to testify orally or in writing, whether the parties agree thereto or not;

(e) to rely on his own expert knowledge;

(f) to appoint experts to assist him or to give expert evidence or reports in the arbitration;

(g) to regulate the right of the parties to call expert witnesses and to make provisions with regard to their activities and the presentation of their evidence."

MONTHLY UPDATE

CRIMINAL

Police Investigation Partisan

On 22 August 1986, two sub-inspectors accompanied by 2 constables visited the house of Sudesh Kumar and started beating him, whereupon his uncle Gopi Ram intervened. The two were arrested and taken to the Patel Nagar Police Station where both were seriously beaten up with iron rods and rulers. Allegedly, Gopi Ram succumbed to his injuries, after which a post-mortem was conducted and the dead body was cremated without handing it over to his wife Kashmeri Devi. The nephew Sudesh Kumar made a police complaint on 23 August against the 2 sub-inspectors and constables, holding them responsible for Gopi Ram's death. On the basis of this, a case was registered under Section 302 read with Section 342 of the IPC against the police officers, but no action was taken. After some time, the case was converted to Section 304 IPC for the purpose of investigation. Gopi Ram's wife, Kashmeri Devi, filed a writ petition in the High Court praying for the transfer of the investigation from the Crime Branch of the Delhi Police to the Central Bureau of Investigation. The petition was dismissed by a division bench of the High Court, whereupon a Special Leave Petition was filed in the Supreme Court.

In spite of the Supreme Court twice granting time to the police to file counter affidavits, they failed to do so. Ultimately on 11 April 1988, Kanwaljit Deol, Deputy Commissioner of Police Head Quarters filed an affidavit setting out a totally different story. The affidavit stated that Gopi Ram had died on account of alcohol and morphine and was brought in that state by Sudesh Kumar, to the Ram Manohar Lohia Hospital. Not a word was said about the allegation that Gopi Ram died due to injuries sustained in police custody.

The Supreme Court held that the police had acted in a partisan manner in the investigation, attempting to shield the real culprits. The Court agreed with the observation made by a Sessions Judge who while considering a bail application of one of the constables, held that it was a prima facie case of deliberate murder of an innocent poor citizen of Delhi in police custody. It was held necessary to get a fresh investigation made through an independent authority. The Supreme Court so directed.

Kashmeri Devi v/s. Delhi Administration & Anr. [JT 1988 (2) SC 293].

DETENTION

Special Procedure to be Followed

Usmanbhai Memon and some others belonging to a cooperative housing society were in possession of a 16,000 square yard plot which they had purchased from the owner, Babubhai Kansara. On the previous owner's death, his two sons refused to acknowledge the sale, and started obstructing the society's use of the land. The society filed a suit and obtained an injunction, whereupon some of them accompanied the bailiff to serve the injunction order on the opposite party. The police were informed about the order and help was sought to prevent any breach of peace. As apprehended,

the two sons put up armed resistance and in the scuffle that ensued, both sides sustained injuries. The police took no preventive action and instead apprehended the members of the society, charging them under Section 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (the Act). Their application for bail was rejected by the Designated Court, a special court established under the Act. They then moved the High Court for grant of bail under Sections 439 and 482 of the Criminal Procedure Code. The High Court rejected the bail application on the ground that it had no jurisdiction to grant bail because the Designated Court was not a subordinate court, and any appeal against a judgement or order of the Designated Court which was not interlocutory, could be entertained only by the Supreme Court under Section 19(1) of the Act. A Special Leave Petition was then filed in the Supreme Court.

The Court held that the Terrorist and Disruptive Activities (Prevention) Act 1987, was a Special Act and any special procedure laid down by it had to be followed, even if it was contrary to the one laid down in the Cr.P.C. However, a grant or refusal of a bail application, was an "interlocutory order", and hence Section 19(1) did not apply to it. The Designated Court had failed in its duty to carefully consider the facts and circumstances of the case while mechanically rejecting the bail application. The rejection order was set aside and the case was remitted for fresh consideration.

Usmanbhai Dawoodbhai Memon and Ors. v/s. State of Gujarat [(1988) 2 SCC 271].

FAMILY

Rights of Adopted Son in Joint Family Property

Shamrao, a Hindu died leaving behind two sons, Dharma and Miragu. Miragu died in 1928 leaving behind only a widow Champabai. The joint family property went to Dharma, and Champa only had a right to maintenance from the said property. In 1956, the Hindu Adoptions and Maintenance Act, 1956 came in force. Champa adopted a son, Pandurang, in 1968 and they both filed a suit for partition and possession of a one half share in the joint family property of Dharma and Miragu. The trial Court dismissed the suit. An appeal was filed in the District Court which gave a decree of partition and a one half share of the property to Champa and Pandurang. This was confirmed by the High Court. Dharma then moved the Supreme Court.

The question of law was whether Pandurang, adopted in 1968, could claim a share in the property of Dharma and Miragu which had devolved on the only surviving coparcener, Dharma. Dharma argued that under Section 12(c) of the Act, Pandurang, an adopted child, could not divest him of any estate vested in Dharma prior to the adoption in 1968.

The Supreme Court stated that joint family property continues to remain so even when it passes into the hands of a sole surviving coparcener. If a son is later born or adopted by the coparcener, or a new coparcener is inducted into the family, the property becomes joint family property in the hands of the sole coparcener and his son or sole coparcener and inducted coparcener. The Supreme Court distinguished between the manager of a joint family property who can transfer or alienate

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property only for legal necessity or for family benefit, and a sole coparcener who can sell gift or mortgage the coparcenary property as if it were his personal separate property. However, any property alienated by the coparcener prior to the adoption will stand, as the coparcener who is born or adopted after such alienation cannot object to alienations made before he was born or adopted.

Dharma S. Agalawe v/s. Pandurang Miragu Agalawe & Ors. [1988 (2) SCC 126]

See also 1) *Sitabai v/s. Ram Chandra* [(1969) 2 SCC 544 (1970) 2 SCR 1] 2) *Vasant v/s. Dattu* [(1987) 1 SCC 160: AIR 1987 SC 398]

LABOUR

Reference For Reconsideration Impermissible

The service of B. B. Rajwanshi, employee of M/s. Electra (India) Ltd., Meerut was terminated in 1977. The State Government referred the dispute to the Labour Court. An Award was passed in Rajwanshi's favour, but the State Government instead of officially publishing the award, passed an order dated 5 December 1984 under Section 6(4) of the U. P. Industrial Disputes Act, remitting the award to the Labour Court for reconsideration. Later the U. P. Government by an order dated 16 August 1985, transferred the case to the Industrial Court. Rajwanshi filed a writ petition in the High Court challenging the State Government's orders of 5 December 1984 and 16 August 1985. The High Court dismissed the petition in respect of the December 1984 order but, set aside the August 1985 order. A Special Leave Petition was then filed in the Supreme Court questioning amongst other things, the constitutionality of Section 6(4). It was contended that the Section conferred wide powers on the State Government, which were likely to be misused because no guidelines were laid down.

The Supreme Court held that Section 6(4) does not require the State Government to hear the parties before or give reasons for remitting an Award. It was open to the Labour Court or Industrial Tribunal to thereafter recall the award already passed by it and even pass a fresh award. The Section set down no guidelines as to the State Government's power to remit an Award. This was held inappropriate especially considering cases where the State Government is itself the owner of industries. Section 6(4) violated Article 14 of the Constitution of India as it conferred unguided and uncontrolled powers on the State Government. The Supreme Court struck down the Sub-section (4) and set aside the order passed in December 1984.

B. B. Rajwanshi v/s. State of U. P. [1988 (2) SCC 415]

See also *Dwarka Prasad Laxmi Narain v/s. State of U. P.* [1954 SCR 803: AIR 1954 SC 224]

SERVICE

Further Classification Impermissible

Paragraph 3 of the Punjab State Government circular issued in 1957, provided for the revision of pay scales of teachers on the basis of educational qualifications. Accordingly teachers were placed under 2 broad categories, A and B, decided on the same basis of educational qualifications. The government however refused to implement the provisions of the clause and teachers were denied higher pay scales even after acquiring high academic qualifications. In *State of Punjab v/s. Kirpal Singh Bhatia*, the Supreme Court directed that teachers holding BA, BT/BA, BEd qualifications would be entitled to higher pay scales. In *State of Punjab v/s. Labh Singh Garcha*, the Supreme Court held that JBT teachers falling in category B were entitled to an increase in pay and were covered by the earlier decision of the Court in *Kirpal Singh's* case. The State Government refused to comply with the Court's direction. The teachers went in appeal and the Supreme Court directed the State Government to implement the order within three months. Additionally the Court directed that teachers who had not approached the court, but who were in the same situation, need only make an application to seek the benefit of the State Government's circular. Accordingly 3600 JBT teachers who had acquired degrees in BA, BT/BA, BEd etc., were granted arrears, but 6000 teachers falling in category B Group II were denied that on the ground that they did not have the requisite professional training of JST/JAV and therefore were not entitled to the higher grade. The stand adopted by the government was that mere educational qualification alone did not entitle teachers to a higher grade. A petition was filed in the Supreme Court challenging this.

The Supreme Court decided that graduate teachers formed a class by themselves, and could not be subjected to the further requirement of having professional i.e. JST/JAV training. Such a classification was impermissible as it was an attempt to create a class within a class without any rational basis. The government was liable to pay the 6000 teachers the arrears due from the date of acquiring the qualification.

Punjab Higher Qualified Teachers' Union v/s. State of Punjab [1988 (2) SCC 407]

See also (i) *State of Punjab v/s. Kirpal Singh Bhatia* [(1975) 4 SCC 740: 1975 SCC (L&S) 438: (1976) 1 SCR 529]

The Lawyers welcomes articles, comments and letters to the editor. We however regret our inability to take responsibility for returning matter sent for publication, except where appropriate postage is provided.

NOTICE BOARD

Excerpts from the concluding part of The Kerala Public Men's Corruption (Investigations and Inquiries) Bill, 1987

7. Removal of member — (1) A member shall not be removed from his office except by an order of the Governor passed after an address by the State Legislative Assembly supported by a majority of the total membership thereof has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure of the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the member under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968 (Central Act 51 of 1968), in relation to the removal of a Judge and accordingly, the provisions of that Act shall, mutatis mutandis, apply in relation to the removal of a member as they apply in relation to the removal of a Judge.

9. Matters which may be investigated by the Commission — (1) Subject to the provisions of this Act, the Commission may investigate any complaint presented to it under section 11.

(2) Notwithstanding anything contained in sub-section (1), the Commission may investigate any allegation of corruption against a public man if it is referred to it by the State Government.

10. Matters not subject to investigation — Except as hereinafter provided, the Commission shall not investigate,—

(a) any matter in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Commission;

(b) any matter which has been referred for inquiry, under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952) with the prior concurrence of the Commission;

(c) any complaint made after the expiry of five years from the date on which the matter complained against is alleged to have taken place:

Provided that the Commission may entertain a complaint referred to in this clause, if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in this clause.

11. Complaint for initiating proceedings — (1) Any person other than a public servant or Service Association may present to the Commission a complaint with an additional copy for service on the opposite party requesting that such complaint may be investigated under this Act.

(2) Every complaint under sub-section (1) shall be accompanied by an affidavit in support of the allegation contained therein and a treasury receipt evidencing the deposit of a sum of five hundred rupees:

Provided that no such treasury receipt shall be necessary where the complaint is presented jointly by not less than ten Members of the Legislative Assembly.

(3) Every complaint under sub-section (1) as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the verification of pleadings.

(4) Notwithstanding anything contained in the foregoing sub-sections, any letter written to the Commission or, as the case may be, to the appropriate authority by a person in any jail or other place of custody may, if the Commission or, as the case may be, the appropriate authority is satisfied that it is necessary so to do, be treated as a complaint made in accordance with the provisions of this section.

(5) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or other place of custody to forward, without opening, any letter addressed to the Commission or the appropriate authority by a person imprisoned or detained in such jail or place of custody, to the Commission or the appropriate authority without delay.

Explanation. — "Appropriate authority" means any of the authorities which the Commission may, by general or special order, in writing, determine to the appropriate authorities for the purposes of this action.

15. Evidence — (1) Subject to the provisions of this section, for the purpose of any investigation (including preliminary investigation) under this Act, the Commission may require any public servant or any other person who in its opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purpose of any such investigation the Commission shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (Central Act 45 of 1860).

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document,—

(a) as might prejudice the affairs of the State of Kerala or the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation);

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(b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet; and for the purpose of this sub-section, a certificate issued by the Chief Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive.

(5) For the purpose of investigation under this Act no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court.

16. Prosecution for false evidence — For prosecution for an offence of giving or fabricating false evidence under section 193 of the Indian Penal Code, 1860 (Central Act 45 of 1860), when such offence is alleged to have been committed in, or in relation to, any proceeding before the Commission the provisions of section 195 and 340 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply to the Commission as they apply in relation to the same offence, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court subject to the modification that a complaint under section 340 shall be signed by any such member or such officer of the Commission as the Commission may appoint and for the purpose of the said sections 195 and 340 the Commission is declared to be a court

17. Reports of Commission — (1) If, after investigation of any complaint, the Commission is satisfied that all or any of the allegations made in the complaint have or has been substantiated either wholly or partly, it shall by report in writing communicate its findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Commission the action taken or proposed to be taken on the basis of the report.

(3) If the Commission is satisfied with the action taken or proposed to be taken on its recommendations or findings referred to in sub-sections (1), it shall close the case under information to the complainant, the public man and the competent authority concerned, but where it is not so satisfied and if it considers that the case so deserves, it may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant.

(4) The Commission shall present annually a consolidated report on the performance of its functions under this Act to the Governor.

(5) On receipt of the special report under sub-section (3), or the annual report under sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the State Legislature.

(6) The Commission may at its discretion make available, from time to time, the substance of cases closed or otherwise disposed of by it which may appear to it to be of general, public, academic or professional interest in such manner and to such persons as may be prescribed.

18. Public man to vacate office if directed by Commission — Where after an investigation under this Act, the Commission is satisfied that an allegation against a public man has been substantiated and that such public man should not continue to hold the post held by him, the Commission shall make a declaration to that effect in its report under sub-section (1) of section 17 and thereupon the competent authority shall accept the declaration and intimate immediately the fact of such acceptance to the public man by registered post and then notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public man shall with effect from the date of such information,—

(i) if he is the Chief Minister or a Minister or a Member of the Legislative Assembly of the State, resign his office;

(ii) if he is any other person, be deemed to have vacated his office:

Provided that the provision of this section shall not apply to a public man specified in sub-clause (vii) or sub-clause (viii) of clause (j) of section 2.

19. Initiation of prosecution — If after investigation into any complaint the Commission is satisfied that the public man has committed any criminal offence and that he should be prosecuted in a court of law for such offence, then, it may pass an order to that effect and initiate prosecution of the public man concerned, if there is no necessity for prior sanction, and if prior sanction of any authority is required for such prosecution, then notwithstanding anything contained in any law, such sanction shall be granted by the competent authority within thirty days of the request by the Commission; and if such sanction is not granted within the period aforesaid such sanction shall be deemed to have been granted by the competent authority.

20. Secrecy of information — (1) Any information obtained by the Commission or members of its staff or any investigating agency in the course of, or for the purpose of any investigation under this Act and any evidence recorded or collected in connection with such investigation shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act I of 1872), no court shall be entitled to compel the Commission or any member of its staff or any investigating agency to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars—

(a) for the purpose of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report; or

(b) for the purpose of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act 19 of 1923) or any offence of giving or fabricating false evidence under section 193 of the Indian Penal Code (Central Act 45 of 1860), or for purpose of trial of any offence under section 19 or for purpose of any proceedings under section 21; or

(c) for such other purposes as may be prescribed.

21. Power to punish for contempt — The Commission shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (Central Act 70 of 1971), shall have effect subject to the modification that the references therein to High Court shall be construed as including a reference to the Commission.

22. Protection of action taken under the Act — (1) No suit, prosecution or other legal proceeding shall lie against the Commission or a member or against any officer, employee, agency or person referred to in section 8 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceeding of the Commission shall be held invalid for want of form and, except on the ground of jurisdiction no proceeding or decision of the Commission shall be liable to be challenged, reviewed or called in question in any court.

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25. Public man to submit property statements — (1) Every public man specified in sub-clause (i), sub-clause (ii), sub-clause (iii), sub-clause (iv) and sub-clause (vi) of clause (j) of section 2 shall, within three months after the commencement of this Act and thereafter before the 30th day of June of every year, submit to the competent authority in the prescribed form a statement of his assets and liabilities and those of the members of his family.

(2) If within three months after the date mentioned in sub-section (1) the public man concerned does not submit such statements, the competent authority shall intimate the fact to the Commission and thereupon the Commission may take such action with respect to the matter as may be prescribed.

26. Bar to inquiries — No formal or open inquiry into any allegation against any public man in respect of which a complaint has been presented under section 11 shall be made at the instance of the Government either under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952), or by any other order or resolution of the Government, but nothing herein contained shall be construed as affecting any right or power of any other person or authority under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), or under any other law for the time being in force, or as affecting the constitution of, or the continuance of the functioning of or exercise of powers by, any Commission or Commission of Inquiry appointed before the commencement of this Act.

27. Costs — (1) The Commission may, in case the allegation made in the complaint is found to be without substance or trivial in nature or is not substantiated, order the complainant, to pay such amount of costs as may be specified in the order to the public man against whom the allegation has been made or to any other person referred to in sub-section (7) of section 13.

(2) The Commission may order any part of the costs ordered to be paid under sub-section (1) to be paid out of any amount deposited under section 11 and issue a certificate of recovery in respect of the remainder, if any.

(3) The Commission may, if it is satisfied that all or any of the allegations made in the complaint against a public man have or has been substantiated either wholly or partly, order the public man to pay such amount of costs as may be specified in the order to the complainant and issue a certificate of recovery in respect of the amount so specified.

(4) Any person in whose favour a certificate is issued under sub-section (2) or sub-section (3) may apply to the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person against whom a certificate is issued has a place of residence or business for recovery of the amount specified in the certificate and such court shall thereupon execute the certificate, or cause the same to be executed, in the manner and by the same procedure as if it were a decree for the payment of money passed by itself in a suit.

29. Pendency of case not to bar proceedings under this Act. — The pendency of any civil or criminal case in the High Court or any court subordinate thereto in respect of any allegation shall not bar the scrutiny, investigation or inquiry of or into that allegation under this Act, and no such scrutiny, investigation or inquiry shall be deemed to amount to contempt of such court.

30. Bar of prosecution, on allegations not proved or not substantiated — Notwithstanding anything contained in any other law for the time being in force, where on an investigation in respect of a complaint against a public man the Commission has held that any allegations made in the complaint have not been proved or substantiated, no prosecution shall lie on any complaint, report, information or otherwise and no court shall take cognizance of any offence on the basis of the same or substantially the same allegations as in the complaint.

31. Commission to make suggestions — The Commission, if in the discharge of its function under this Act, notices a practice or procedure which in its opinion affords an opportunity for corruption, it may bring it to the notice of the Government and may suggest such improvement in the said practice or procedure as it may deem fit.

34. Repeal and Savings — (1) The Kerala Public Men (Prevention of Corruption) Act, 1983 (6 of 1984) (hereinafter referred to as the said Act), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Act shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act, and shall continue to be in force unless and until it is superseded under the provisions of this Act.

(3) All investigations, inquiries or other proceedings pending before the Commission constituted under the said Act and which have not been disposed of shall stand transferred to, and be continued by, the Commission constituted under this Act as if they were commenced before it under this Act.

Statement of Objects and Reasons

The Kerala Public Men (Prevention of Corruption) Act, 1983, provides for the constitution of a commission to investigate allegations of corruption against public men and for matters connected therewith. In terms of the Act, a Commission has been constituted and it has been in office for three years. The Commission has forwarded three annual reports. In those reports the Commission has drawn attention to certain infirmities and lacunae in the Act and recommended amendments and modifications to the Act. In the Governor's address before the Legislative Assembly on 28th March, 1987, in the first session of the Eighth Kerala Legislative Assembly, it has been stated that this Government will bring forth necessary amendments to the Act. Government also considers that the present Act is too inadequate to combat corruption among public men. Therefore, for effective investigation of complaints against public men, and matters, connected therewith and also keeping in view with the recommendations made by the Kerala Public Men (Prevention of Corruption) Commission in its annual reports, it has been decided to bring forth a comprehensive legislation.

2. The Bill is intended to achieve the above objects.

3. The Notes on clauses explain the various provisions in the Bill.

K.R.GOURI AMMA.

A Clinical Look at the Hospitals Bill

In recent years, a battery of legislation has deprived workers of several hard-earned rights. The Hospitals and Other Institutions Bill, which snatches away the right to strike, is a lethal addition to this battery. K. Chandru makes a critique of this draconian piece of legislation.

After two abortive attempts, for the third time, a Bill was introduced by the Hon'ble Minister of Labour in the Rajya Sabha and finally passed on 28 April 1988, which attempts to govern industrial relations in hospitals and other institutions such as educational institutions and khadi and village industries.

All opposition members barring those belonging to the Janata Party (as expected) walked out of the Upper House protesting against the undemocratic act of the Government.

The Janata Party members did not participate in the walk-out, since it was under their regime, in 1978, that a similar enactment was concocted and introduced in Parliament. On the resistance of the working class, the attempt was shelved.

Once again, in 1982, a similar Bill (Bill No. 12/82) was introduced by the present ruling party. The reason why it could not be passed, is given by the Hon'ble Minister of Labour in the Statement of Objects appended to the present Bill. According to the Minister, the Bill "elicited considerable opposition" and that made the then Minister, give an assurance in the Rajya Sabha that as the Bill had become controversial, he would discuss the matter further with trade unions, and would not do anything without taking them into confidence.

Any attempt to focus the Bill in its correct perspective, will not be complete if it is seen in isolation. The present Bill should be seen in the context of the political offensive that the present Government is mounting against the working class, and also similar attempts to amend the Industrial Disputes Act and the Trade Unions Act. Opposition to the Bill and mobilisation of the working class should be

done on a broad based platform to resist the mounting attack against workers of all kinds by the Government.

I. D. Act Provisions

Before going into the actual mechanism that the Bill has provided, we should analyse some aspects of the I. D. Act, so that the effect of the present legislation can be better understood. The aim of the I. D. Act is to investigate and settle industrial disputes.

For the purpose of investigation, the Act provides for Conciliation Officers (Section 4), Courts of Inquiry (Section 6) etc. The Act also provides for a Works Committee (Section 3) to promote measures to preserve amity and good relations. The I. D. Act also prohibits employers from unilaterally changing conditions of employment (Section 9A).

The Act also provides for compensation in cases of lay-off, retrenchment and closure, as well as lays down a procedure for lay-off, retrenchment and closure (Section 25C, 25F and 25FFF). Establishments employing more than 100 workers are specifically restricted from effecting lay-offs, closures and retrenchments without prior permission from the State Government (Sections 25M, 25N, and 25 O).

The Act also provides for machinery like Labour Courts, Industrial Tribunals and National Tribunals for adjudicating disputes (Sections 7, 7A & 7B). Appointments of presiding officers can be made from the cadre of District judges to High Court judges as the case may be. There is a local amendment in Tamil Nadu, which enables the Government to grant interim relief in an adjudication (Section 10B).

The recommendation of the International Labour Organisation (to

which India is a party) was that cases of dismissal of workmen should be decided by a third party arbitrator/adjudicator and such an authority will have power to not only go into the procedures adopted for dismissals, but also the power to interfere with the quantum of punishment. To give effect to the Resolution, Section 11A of the I. D. Act was introduced in the year 1971. Any employer who challenges the award of the adjudicating authority granting reinstatement, in the High Court or Supreme Court, has the right to receive full pay during the pendency of such proceedings (Section 17B). Before the adjudicating courts he has the right to have the assistance of a legal practitioner [36(3)].

Further, office bearers of trade unions are declared 'protected workmen' (Section 33(3)) and to avoid their being victimised, certain procedures have been provided (33 (4)). Unfair labour practices by both the employer and workman have been defined (V Schedule) and both sides are prohibited from indulging in such practices (25T).

Need for I. D. Act

The question whether hospitals and educational institutions are covered by the provisions of the Industrial Disputes Act, 1947, became a controversial question and the issue was litigated for over three decades, until the Supreme Court gave its judgment in 1978 in what is popularly known as the *Bangalore Water Supply Board's* case [AIR 1978 SC 548]. The seven judges bench of the Supreme Court categorically held that educational institutions, hospitals, professional bodies and charitable institutions are covered by the provisions of the I. D. Act. In fact it took pains to explain the necessity

COMMENT

for covering such institutions within the purview of the Act.

Segregation Scenario

Ironically, in order to "give effect" to the judgement, the I.D. Act was amended by Amending Act 48 of 1982. One such Amendment was to the definition of Section 2(j) which defines "industry". Though the main part of the definition more or less incorporates the essence of the judgement, by the latter portion of the definition, several categories of industries are taken out from the purview of the I. D. Act. They include hospitals, educational institutions, charitable institutions and social services, khadi and village industries, co-operative societies, clubs and professional bodies employing less than 10 workmen etc.

Though the Act was amended in 1982, the Government did not notify the amended Section since thousands of workmen would be taken out from the purview of any legislative control and they would have no remedy in law. The decision was deferred and an attempt was made by a special legislation to cover some exempted establishments and that was how the 1982 Bill was introduced. But it saw its natural death due to mounting pressures and criticism from all quarters.

Six years after its burial, the Government has not only resurrected the Bill, but also has watered down many of its aspects when compared to the 1982 Bill. The 1982 Bill provided for compulsory recognition of unions and also workers representation in the grievance redressal machinery. The present Bill has diluted those provisions which had at least a semblance of neutrality.

Anatomy of Hospitals Bill

The present Bill provides for resolving grievances of employees in the following ways. To handle individual grievances the Bill proposes the setting up of a Grievance Redressal Authority (GRA) and thereafter the Appellate Authority (AA) to be constituted by the employer. No qualifications are prescribed for these two authorities. Routing the individual grievances through these two authorities and waiting for the gestation period,

i.e. 45 days in case of G.R.A. and 90 days in case of the AA have been made mandatory.

In cases of collective grievances, the matter will have to be referred to the Management Council (MC) which has representation from among the employees. However the manner of se-

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lecting the employee's representatives in the MC is not specified. The subject matter of collective grievances is limited to five items, namely wages, compensatory and other allowances, hours of work, leave with wages and holidays, and retirement benefits. There is a significant departure from the provisions of the I.D. Act and many items which are found in the second and third schedules of the I. D. Act have been omitted. Some of the significant omissions include bonus, retrenchment of workmen, rationalisation, rules of discipline, application and interpretation of standing orders, and the withdrawal of customary concessions and privileges.

Aggrieved workmen who are not satisfied with the decision of these authorities have the right to take up the issue before the Board of Arbitrators in cases of collective grievances,

and if the parties do not agree on the choice of the arbitrator, the Government can compulsorily constitute an Arbitration Board. To handle individual grievances, a Tribunal presided over by one person is proposed to be constituted.

The only qualification that he or she should have is five years of service in a civil judicial post. Thus even a munsiff with five years will be qualified to hold the post. This is in contrast to the I. D. Act wherein only a District judge or a judge of the High Court can occupy the post of judge of the Labour Courts and Tribunals.

A limitation period has been prescribed for approaching the Tribunals. The strangest part of the procedure, is that the arbitrators will also hear third parties like financial institutions which have a stake in the institution before passing the award. No time limit for the life of the award has been prescribed under the Bill and this is a serious omission. Unlike under the I.D. Act, the workers will have to bear the cost of arbitration. Though Section 12 restrains employers from altering service conditions and resorting to dismissals during pendency of proceedings, no machinery to lodge a complaint in cases of deviation is provided for as found in the I. D. Act.

Laissez Faire Ahead

The provisions of the Industrial Employment (Standing Orders) Act, 1946 (IESO Act), have been completely excluded and the employer is proposed to be given the absolute right to frame bye-laws prescribing the conditions of service, conduct, discipline and other matters. The only qualification is that they should be made in consultation with the Management Council. What has been gained as a matter of right over the years, namely a tripartite machinery for framing service conditions with appellate remedies, as provided under the IESO Act, have been totally taken away. By excluding the provision of the IESO Act and reserving the exclusive right to the employer, the "sunny days of the market economy" have been brought back by the Government.

More Bitter Pill

Even in the constitution of the Grievance Redressal Authority (GRA) and the Appellate Authority (AA), the Government has moved backwards from its own 1982 Bill. The 1982 Bill provided for employees participation in the said machinery. The present Bill takes away that right. Except for stating that there shall be a Grievance Redressal Authority and an Appellate Authority, as notified by the management with a further condition that the Appellate Authority should be a higher officer than that of the Grievance Redressal Authority, the Bill has not prescribed any qualifications for the persons constituting the GRA or AA. It is enough if the management nominates any two persons. It is obvious that these authorities will necessarily have to function within the overall control of the managers of the Personnel or Industrial Relations Department. This is making a mockery of impartial justice.

Further, even when the workman gets an award, the Government has the power to nullify the award or delete portions of it. This proposal makes serious in-roads in the concept of rule of law. Even these very minimal protections are not available to all employees, as wholesale exemptions have been given to all establishments owned and controlled by the Central Government. Societies which are financed by the Government and which provide for similar machineries within their organisation can also be exempted. Besides, this blanket power has been conferred on the Central Government enabling it to exempt any class of establishments from the Act. In cases where there is state legislation regarding educational institutions, the Act will not automatically apply to those establishments.

What is Lost

The main idea of the Act is to prohibit any strike including any work to rule, go-slow etc. Section 8 prohibits any strike or any other form of retardation of work such as work to rule, go-slow and breach of contract. For resorting to a strike, a worker can be punished with imprisonment ranging from one to three months and with

*The main idea
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fine. Instigation of such a strike will meet with a punishment of imprisonment from two to six months and fine which may extend up to Rs.10,000/-.

Making the aggrieved workman compulsorily resort to the grievance (collective or individual) redressal procedure before the appropriate management appointed authorities and to arbitration or to the Tribunal as the case may be and prohibiting any strike during the pendency of any proceedings, ensures that no legal strike is possible under the provisions of this legislation. The language of Section 8 is so vague, that even in cases of "any grievance" (which includes even individual grievances) pending with the authorities, no strike is permitted. This means that if a dispute of a single workman is pending before the Grievance Redressal Authority, a strike for any other reason cannot be resorted to.

The Tribunal dealing with individual grievances regarding dismissal and discharge has no power to vary the quantum of punishment meted out and this would amount to throwing the worker to the mercy of the employer even in the matter of his termination. Thus it not only nullifies the effect of Section 11A of the I. D. Act, but is also contrary to the spirit of recommendation No. 119 of the International Labour Organisation (adopted in June 1963) which provided that a neutral body such as an arbitrator or court should have the power to alter the punishment. The present Bill has no pro-

vision to prevent employers from changing the conditions of employment without due notice to the workers.

The provisions regarding retrenchment, lock-out and closures, and statutory procedures before the employer resorts to such steps are totally absent. The "unfair labour practices" which have been enumerated under the I.D. Act are also absent in the present Bill. There is no provision for the formation of Works Committees nor is there any provision to confer the status of "protected workmen" on office bearers of trade unions. Even the definition of "workman" is more restricted than that of the I.D. Act.

A perusal of the Bill shows that its real object is not to provide better or more expeditious methodology to resolve industrial disputes, but under the facade of a novel procedure for redressal of grievances, to denude the workmen altogether of rights of effective collective bargaining. Instead of ending exploitation of the working people, the Bill, as others, wants to provide greater powers to the employer and the Government to achieve a more effective stranglehold on the working class as a whole. The curious aspect is that a similar Bill, when introduced in the year 1978 by the Janata Party, was opposed by the Congress headed by Mrs. Indira Gandhi and therefore had to be dropped. Now the Congress has introduced the very same Bill, exposing the anti working class characters of both parties.

Apartheid Shall Not Pass

Any attempt to divide the working class by making invidious discrimination and split them on the basis of the character of their work establishment should be defeated. The attempt to exclude hospitals, educational, scientific, research and training institutions on the ground that they have special and distinct characteristics of their own and hence, an atmosphere that eschews strife and conflict has to be maintained therein, is a naked attempt to split the workers.

K. Chandru is an advocate practising in the Madras High Court.

State Inaction Frustrates Accident Victims

The number of accident claims filed before the Motor Accident Claims Tribunals is constantly increasing, but the pace of judgements delivered leaves a lot to be desired, to say the least. The Tribunal is plagued with a score of problems which further stall the settlement of claims. A. A. Kudrolli elaborates on this sorry state of affairs at the M. A. C. T.

Motor Accidents Claims Tribunals are constituted for the specific purpose of adjudicating upon the claims of accident victims. A large number of these victims belong to the economically weaker sections of society, for whom recovery of compensation in the shortest possible time is an urgent necessity.

One of the earliest Claims Tribunals was constituted in 1959, for the city and suburbs of Bombay. The explosion in the number of motor vehicles and the chaotic road condition have given to the metropolis the dubious distinction of recording the highest number of accidents. A large number of the accident victims do not litigate on account of illiteracy or ignorance and for want of legal assistance. The number of claims which are brought before the Bombay Tribunals in a year have nonetheless crossed 3000 and at present four Claims Tribunals are constituted to adjudicate upon these claims. The total number of pending claims are nearly 10,000, some of which have languished for nearly a decade.

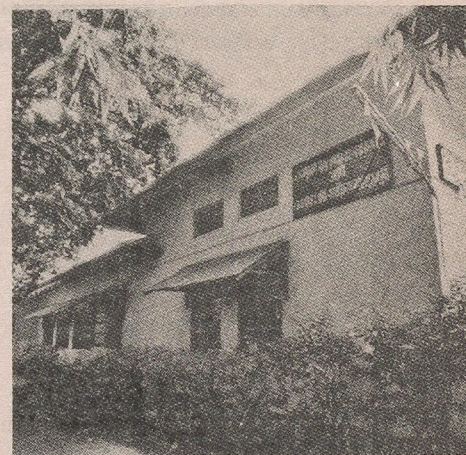
No Judges

The Tribunal reopened after summer holidays on 6 June. Normally about 500 cases should have been listed for adjudication before the Tribunals. But being the opening day of the session there were only 179 claims. Twenty claims were heard by Judge P. D. Syed, the solitary Presiding Officer who was officiating. The rest of the claimants had to go back empty handed, for the simple reason that the State Government had failed to make appointments to replace three members who had retired during the last sessions, some even earlier.

The failure of the State Government to appoint adequate number of judges is one of the factors contributing to the evil of mounting arrears in courts. But to aggravate the miseries of the hapless victims of road mishaps is sheer callousness. There are more than enough retired High Court judges or District judges ever too willing to sit on the Tribunal Bench. Whenever Lok Adalat Sessions are held, all of them readily participate with enthusiasm and derive great satisfaction from being able to be of some service to a section of humanity greatly in need of immediate relief. The self imposed but discriminatory practice of retiring members of the Claims Tribunal at the age of 60 years, as against 62 for High Court judges and 65 for Supreme Court judges restricts the administration's options. As most of these appointments are made from the ranks of the retired judges, their tenure gets restricted to less than two years. Surprisingly, the judges presiding over Revenue, Industrial and Labour Tribunals are continued till the age of 65 years. The incumbent can at least be continued till a suitable replacement is found.

Inadequate Premises

Earlier the failure of the State administration to provide suitable accommodation for housing the Tribunals had disrupted their working. The fourth floor of Jehangir Building, accessible only by climbing 94 rickety and dark steps, was cramped for space and the four Tribunals existed only in name as there were only three court rooms. The refusal to accommodate the Tribunals in the building vacated by the Administrative Staff College at Bori Bunder was challenged by the



The New Premises of the Tribunal.

Bar Association, by invoking the writ jurisdiction of the High Court.

The atrocious and untenable defence contentions that the Motor Accidents Claims Tribunal is a department or an office of the Government of Maharashtra and that the allotment of accommodation was purely an administrative function of the Government, were rejected by the judge who held that even though the Government had realised that the demand for allotment of suitable premises for the Tribunal was just, it had made it a prestige issue and was therefore opposing the just demand.

The State Administration finally relented and the Tribunals were shifted to Bori Bunder with fond hopes that the delivery, of justice will be speeded up. But these hopes have been belied, as there are no judges to adjudicate claims. By its refusal to appoint judges, the State Government has failed to carry out the directions given by the legislature and to uphold the rule of law.

A. A. Kudrolli is an advocate practicing in the Bombay High Court.

Family Laws of Pakistan, Bangladesh and China

There has been much discussion and controversy about personal laws in India following the famous Shah Bano judgement. The experience of other countries, especially India's immediate neighbours has acquired much importance in this context. Vahida Nainar outlines the basic features of personal laws in Pakistan, Bangladesh and China.

The family laws of Pakistan and Bangladesh and the Muslim minority of India are very similar due to their common origin in Moghul Rule and later influence of British imperialism. The family codes of Pakistan and Bangladesh were influenced by three major acts passed during British Rule. These acts were:

1. The Child Marriage Restraint Act, 1929 — This fixed the minimum age for marriage of girls as not earlier than at puberty and provides a penalty in case of violation thereof.

2. Dissolution of Muslim Marriages Act, 1939 — Under this Act, a married minor girl after coming of age may exercise her "option of puberty" and repudiate her marriage if she so wishes, before she is eighteen years of age, provided that the marriage has not been consummated. The right to dissolve a minor's marriage is conferred on her guardian. This act gives the wife the right to get a decree from the court, dissolving her marriage in case her husband neglects to maintain her, treats her cruelly, or commits any such other acts mentioned in Section 2 of the Act.

3. The Shariat Act, 1939 — This act made the Shariat laws applicable to Muslims all over the country, and customs and usages contrary to it were declared null and void (except in matters relating to agricultural land).

Post 1947

In 1961, the Muslim Family Law Ordinance was passed, which applies to all citizens of Pakistan and includes matters relating to succession, registration of marriage, polygamy and ta-

laq. The main features of this Ordinance are as follows:

1. Registration of marriage was made compulsory and a standard form of nikaahnama introduced.

2. It provides that no man, shall practise polygamy during the subsistence of an existing marriage without prior written permission from the Arbitration Council; violation of this provision entails liability of conviction and sentence.

3. Unilateral pronouncement of talaq by husbands was curtailed procedurally. The husband must apply to the Arbitration Council for such talaq and the Council after due consideration may or may not grant talaq.

4. Amendment to the Child Marriage Restraint Act, 1929, by raising the permissible age of marriage for females from 14 to 16 and reducing it from 21 to 18 for males.

5. Amendment to the Dissolution of Muslim Marriages Act, 1939, by adding a clause that in case the husband remarries in contravention of the provisions of the Muslim Family Laws Ordinance, the wife may exercise her right to decree for divorce.

6. It further provides that if any husband fails to maintain his wife or wives equitably, the wife or wives may, in addition to seeking any other legal remedy available, apply to the Arbitration Council to determine the matter.

Other important laws enacted in Pakistan are —

1. The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 — This Act provides for the application of Shariat Law in disputes

relating to succession, special property of females, betrothal, marriage, divorce, dowry, adoption, guardianship and other matters as specified in Section 2 of the Act, notwithstanding any custom or usage, to all parties who are Muslims. Such application is subject to and superseded by any statute in force. Besides under this Act, Muslim Law is applicable in accordance to the sect to which an individual belongs.

2. The West Pakistan Family Law Courts Act, 1964 — This act was expected to cut down on procedures for expeditious settlement and disposal of family disputes.

3. The West Pakistan Family Courts Rules, 1965 — Under this law, certain rules were laid down, which provide for the procedure to be followed by Family Courts while deciding disputes relating to family affairs.

4. Dowry and Bridal Gifts (Restriction) Act, 1976 — This Act was passed to provide for restrictions on dowry and bridal gifts, and for matters connected therewith, like restrictions on expenditure on marriage, compulsory display of dowry, vesting of dowry in the bride list of dowry to be compulsorily furnished before the Registrar. Violation of rules mentioned in this Act invites penalty and confinement.

The Martial Law Regime from 1977 to 1984 saw the Islamisation of Personal Laws in Pakistan, which stalled all attempts at progress. The Hudood Ordinance was passed in 1979. The next ordinance to be passed was the Zina Ordinance which is the most derogatory one, whereby a woman can easily be victimised by unscrupulous people who could go scot free for want

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of proper evidence against them. The more recent Qanoon-e-Shahaadat, passed in 1984, has placed restrictions on the right of women to attest documents.

In 1971, East Pakistan inherited its legal system from India and Pakistan. The major statutes in Family Law, like Muslim Family Law Ordinance, 1961 and East Pakistan Waqf Ordinance, 1962 are still in force. These laws govern major aspects of family life and matters arising out of it.

In addition, the Muslim Marriages and Divorce (Registration) Act, 1974, formulated simple procedures so as to make registration of marriages and divorce easier. The Dowry Prohibition Act and the Cruelty to Women (Deterrent Punishment) Ordinance were passed in 1980 and 1983 respectively. Both these laws recognize the acts as offences and the commission of these acts was made punishable by law although the offences were bailable. In 1985, Family Courts were established by passing an Ordinance to that effect to ensure expeditious disposal of cases related to family life. Thus Family Laws operational in Bangladesh are not very different from those in Pakistan.

China

The early twentieth century saw the rise of Dr. Sun Yat-Sen. In 1911 he overthrew the Manchu regime and founded the Republic of China. The family law of the Republic of China was promulgated in 1930, during which period China experienced conflict between old and new trends of thought. China adopted many judicial concepts from foreign countries, especially Germany, France, Switzerland, and Japan to amend some traditional Chinese thoughts to a certain degree. As a result, most regulations in Family Law are discordant with what is known as traditional Chinese concepts and adopt the principle of equal rights for both sexes. However, due to sharp discrepancy between the current social situation and that entailed in this Family Law, it was revised in 1985. The Family Law revised in 1985 rectified many unfair rules to promote equality for both sexes. How far it has succeeded in its objectives may be judged from

the various family issues discussed below as specified in the Revised Family Law:

Marriage: According to the Revised Family Law of China for a valid marriage the following conditions need to be fulfilled.

- i) 18 years of age for a man and 16 years for a girl.
- ii) non-existence of bigamy
- iii) non-existence of a marriage between persons committing adultery
- iv) an open ceremony in the presence of two or more witnesses.

Anyone under 20 years of age should obtain the consent of his/her statutory guardian before marrying.

Divorce: There are two forms of divorce under the Revised Family Law, 1985, They are:

1) Divorce by Agreement — This is a concept similar to that of divorce by mutual consent. It must be rendered in written form and bear the signatures of two or more witnesses in order to be enforceable by law. Such an agreement shall then be registered.

2) Judicial Divorce — Under judicial divorce, either of the spouses may appeal to the court for dissolution of marriage establishing the existence of any of the following situation:-

- i) bigamy
- ii) adultery
- iii) cruelty that renders cohabitation impossible
- iv) cruelty to or by the adverse party's lineal ascendant
- v) willful desertion
- vi) attempt to murder
- vii) incurable loathsome disease
- viii) serious and incurable mental disease
- ix) existence unknown for over three years
- x) sentenced for imprisonment of over three years or conviction for infamous crime.

Besides the above, if any significant event renders the maintenance of marriage impossible, the innocent

party may appeal to the court for divorce.

Alimony: The Chinese law has provided that in case of divorce by agreement, it is up to the husband to decide whether or not he should give alimony to his wife. In case of judicial divorce, either of the spouses who is not at fault, can on divorce claim alimony from the other party, if he/she has no work ability or property to support himself/herself.

Matrimonial Property: The matrimonial property system in the Republic of China is divided into two types:

1) The Contractual Property Scheme — This scheme covers two other forms of matrimonial property schemes. They are:

i) Integrated Property Scheme — According to this scheme, except the special property, all property and income of the spouses combine to the integrated property which is managed by the husband, while the management expenses are supported by their integrated property. The living expenses of the household are also supposed to be paid by their integrated property.

ii) Separate Property Scheme : - Under this scheme, either of the spouses retains the right of ownership, management and collection of the proceeds of their separate property.

2) The Statutory Scheme : Unless otherwise provided by both parties before or after marriage, this scheme applies to all couples. Under this scheme, barring special property, all property belonging to the spouses at the time of marriage and property acquired by them after their marriage becomes their union property.

Succession: The law provides that both man and woman whether married or unmarried, are entitled to succeed to their parent's legacy, and their shares are the same. Besides, a wife is also entitled to her husband's legacy and enjoys the same share with her children.

Vahida Nainar is an activist working among Muslim women and is also a student of law in Bombay.

Dr. E. P. Bharucha

Recently, in the Kerala High Court, a public interest petition was filed challenging Section 4(b) (iii) of the Hindu Marriage Act and Section 5(ii) (c) which provide as a condition of valid marriage that neither party to the marriage should suffer from recurrent fits of epilepsy, and is further, a ground for annulment. We talked to Dr. E. P. Bharucha, the Secretary General of the Indian Epilepsy Association about this and other issues.

Q. What is the extent of the prevalence of epilepsy in our country?

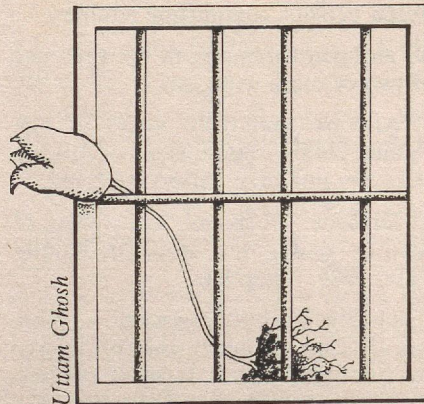
A. It is estimated that 5 in every 1,000 persons suffer from epilepsy. This would amount to nearly 6 million people in our country.

Q. What has the Indian Epilepsy Association (IEA) been set up for, and what has it been doing since its formation?

A. The IEA was set up in 1971. We, in the Association felt that persons subject to attacks of epilepsy suffered a considerable amount of social stigma and discrimination in various aspects of life, both personal and social. This is largely due to the prevailing misinformation in the country. We felt the necessity to inform persons in authority, who would come into contact with epilepsy patients, such as school principals, employers, government functionaries, etc. about the true nature of epilepsy, so that the social stigma and discrimination could be eroded over a period of time.

Q. What has your Organisation been doing about this?

A. Our Constitution provides that any 15 persons in India can set up a branch anywhere. Each individual branch functions practically autonomously. The local branches take their own initiatives. Most of the branches have been active in propagating the correct information about epilepsy in schools. The usual thing that happens in schools is, that if a child has an epileptic fit in class, the authorities remove the child on the ground that it disturbs the whole class. We have been arguing that an epileptic fit is a momentary thing in a child, and as a solution, he or she can momentarily be put aside and the class can go on. The other children would learn to deal



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He or she loses consciousness during the fit. ...In mental illness,

the abnormality continues. The whole life process is abnormal.

Moreover, the mentally ill are fully aware of what they are doing.”

with epilepsy in a more mature fashion.

In Bombay, for instance, we have been active in conducting film shows as well as talks and lectures on epilepsy. Such shows are also arranged for government officers, employers and other social organisations.

Q. What about the persons suffering from epileptic fits? Do you cater to their personal needs?

A. As you can well imagine, because of social attitudes, the person suffering from epilepsy withdraws into a shell and suffers considerable psychological and social problems. The result is that the person tries to hide the fact that he or she has fits. Even parents try to hide that their children have fits.

The Association tries to encourage the person concerned to be frank about his or her own condition, not to regard it as an illness and to allow his/her friends to help him/her. In individual cases we also go and talk to the authorities concerned — the principal, employer, government authorities, as the case may be. Apart from all this, the Association also publishes a bi-annual newsletter which goes to all the doctors in the country and to some epilepsy associations abroad. We also hold periodic workshops and seminars.

Q. Can you tell us about epilepsy itself?

A. Epilepsy by definition, medically and otherwise, is recurrent attacks of epileptic fits. A fit is basically a series of convulsions in the body. It can occur in an otherwise healthy person in certain circumstances. For instance, a severe drop in blood sugar, and severe lack of oxygen can result in a fit. Actually, the causative factor of an epileptic fit is the disturbance in the electrical activity of the brain.

All living tissues have electrical activity. A change in the electrical potential in the tissue produces an impulse. All cells in the brain produce impulses. A summation of all the potentials from millions of brain cells produces well modulated electrical

HAAZIR HAI

rhythm/s which can be recorded on an instrument known as the electroencephalograph. These are the well known beta, alpha, theta and delta waves. During an epileptic fit, this modulation of electrical rhythm is disturbed and from time to time there are large discharges of electrical potential resulting in large amplitudes. This spreads through the entire brain, resulting in loss of consciousness creating convulsions. There are basically two causative mechanisms. In one case, there is an imbalance of biochemical excitatory and inhibitory factors in which the whole brain becomes involved. In other cases, as a result of some structural damage in a part of the brain such as takes place in cases of brain tumor, the cells around the damaged area start producing spontaneous discharges which envelop the brain.

Q. *What is the difference between mental illness and epilepsy?*

A. Basically, the person subject to epileptic attacks, is normal in his or her behaviour and thinking. He or she loses consciousness during the fit. There is only one exception to this general rule. This is known as psychomotor (temporal lobe) epilepsy. In such cases, the person can perform purposeful activity without being aware of what he/she has been doing, after which he/she can suddenly regain consciousness without recalling what he/she has done earlier. In mental illness, the abnormality continues. The whole life process is abnormal. Moreover, the mentally ill are fully aware of what they are doing.

Q. *Can epilepsy be cured?*

A. Yes, if drug therapy is administered early enough. The drug consists of one tablet taken 2-3 times a day for about five years. The drug does not affect alertness or efficiency and the success rate is about 70%. Unfortunately, people are not aware that there is any drug therapy available for epilepsy.

Q. *Section 4 (b)(iii) of the Special Marriage Act, and Section 5 (ii) (c) make it a condition for a valid marriage, that neither party should suffer from recurrent attacks of epilepsy. On this ground, in both the Acts, a marriage can be annulled and*

declared to be void. What is your reaction to these provisions?

A. It is totally primitive and not based on any knowledge of the epileptic condition. It treats epilepsy as an incurable disease. The fact is, it is neither incurable nor a disease. Moreover, it assumes that the person subject to epilepsy is mentally ill, as it equates epilepsy with insanity. There is no basis for this. The most unfortunate thing is that this was included in the Amendment of 1976 in the Hindu Marriage Act, as well as in the Special Marriage Act. Prior to this, recurrent attacks of epilepsy were not a bar for a valid marriage nor a ground for annulment. It is surprising that Parliament, even in 1976, when a lot more was known about epilepsy in the country, framed such a law.


Q. *Did you do anything about these amendments to the Hindu Marriage and Special Marriage Act?*

“The more unfortunate thing is that changes in the law are not widely publicised in this country. When the law was amended and came into force, we did not come to know of it immediately. We became aware of its pernicious nature when a person affected by this provision of law brought it to our notice. At that time we tried to take the issue to court, but nobody concerned was willing to come forward, given the nature of the condition and the social stigma attached to it.”

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Q. *These provisions have now been challenged in the Kerala High Court by the People's Council for Social Justice. What is your reaction to it?*

A. It is what we have been waiting for. We hope that the petition is successful. Fortunately, we have been made a party to it, and we will support it.



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IT'S YOUR TURN NOW

Lawyers, litigants, readers! The Devil's Advocate would welcome your contributions to Adaalat Antics.

All contributions must of course be entirely authentic and verifiable.

A Male Constitution

Watching the proceedings in the court of Justice Pratap, was like being witness to male chauvinism in the law. The Censor Board, consisting of both men and women refused a censorship certificate on the ground that it depicts women in servile positions to men — Now that should be obvious from the name of the film — *Your Husband is your God!*

The guidelines issued under the Act state that films which show women in positions of servility to men are considered indecent. Justice Pratap is reported to have commented, "If this film is to be banned, then all our culture and tradition will have to be banned." In his opinion, Pati Parmeshwar has depicted the best in Indian womanhood — their ability to consider their husbands as Gods!

To a comment that the Censor Board which banned the film had women on it, he said, "but they don't represent the true Indian woman," meaning thereby that they were "urban" as contrasted with the true rural Indian woman. All woman lawyers please note — you are not the true blue blooded Indian woman.

When B. A. Desai pointed out that one of the women on the Board was Aruna Desai, who had written books on censorship, up popped Navroze Seervai representing Parmeshwar, "but she is divorced!" So much for gender justice in our courts.

Lawyers for the producers of the film argued that the words "decency and morality" in the Constitution mean only anything connected with sex. So should we now say the Constitution is male and has nothing but sex on its mind? Or should we say that male lawyers and judges see nothing but sex in Article 19?

Beat the Fee Freeze

About a year ago, the Supreme Court Bar Association passed a Resolution imposing a freeze on fees at Rs.3,500/- per day of hearing. We now hear that lawyers being lawyers, have found a way to get around it. Lawyers now get together and adjournment orders are passed "by consent." The clients get billed Rs.3,500/- anyway, for the Resolution did not say that no fees will be charged if the case is adjourned. It's fun being a lawyer in the Supreme Court!

Wishing Away Delays

Judges today have found a brand new way of getting rid of arrears, or disposing off arrears as they would say. From New Delhi comes the news that Chief Justice R. S. Pathak has "released" 22 cases from his docket. In case you think he has given 22 judgements you are wrong. He has reportedly delegated them to his colleagues for rehearing. So of course his docket has no pending case, while his colleagues will, no doubt, patiently rehear the cases which he heard equally patiently. And people innocently ask, "Why delays?"

But there is good news too, so cheer up. From Delhi also comes the news that the Administrative Tribunal has delivered 24,273 judgements — a huge number that!

What kind of quick justice is this? If litigants' complaints are to be believed, a huge number of those are complaints dismissed on the ground that they are barred by limitation! Well, there is another quick way of getting rid of arrears!

In case you are interested in the break down, 3,246 judgements were delivered by Madras Bench, 2855 by Calcutta, 2418 by Delhi, 2654 by Bangalore, 2443 by Allahabad and 540 by Guwahati.

A social audit of the judiciary is badly needed, and it would be a good idea for all courts to regularly declare the number of cases pending in each court, so we can at least begin to understand the reasons for delays.

Of Honest Judges

Justice E. S. Venkataramiah and Justice K. N. Singh have bent over back-

wards to protect so called honest judges, reversing the decision of the Haryana High Court of terminating the services of Judge Iswar Chand Jain. The Supreme Court was concerned about "ill conceived and motivated complaints" being made by "unscrupulous" lawyers against judges. Judge Jain's services were terminated by the High Court after an inquiry into his conduct was made following complaints. The Supreme Court being overly concerned about the 'honour' of judges directed his reinstatement. But while judges of the Supreme Court are so concerned about protecting honest judges from "unscrupulous" lawyers, they show no matching concern when complaints are made by scrupulous lawyers against dishonest judges.

Perhaps the Supreme Court wants us to believe that we live in a paradise, a Ram Raj, in which all judges, by definition are honest and all complaints against them are necessarily unscrupulous. It is perhaps, after all, their duty to protect 'brother' judges. Solidarity is the name of the game!

All this leads you to believe that perhaps, the best known way of dealing with judicial corruption to date, is that discovered by a Bombay lawyer, who went on a hunger strike at Fountain, protesting against corruption in the courts. If judges mean business, while showing concern for honest judges, they must surely also evolve remedies against dishonest judges.

Injustice In Court

While judges dispense justice to litigants everyday, there is much injustice at their own doorstep. It is rumoured that some employees of the High court will soon be going to Court claiming violation of Article 14 by the judges - they claim equal pay for equal work. Elementary isn't it? But then, even elementary rights have to be delivered through court.

