

BHOPAL GAS TRAGEDY AFTERMATH: DEVELOPMENT OF ENVIRONMENTAL POLICY IN INDIA

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The disastrous Bhopal Gas Tragedy occurred on December 2, 1984 at the premises of Union Carbide India Limited officially killing 3000 people and unofficially around 10,000 people. After the leakage of 27 tons of deadly "Methyl Isocyanate", about half a millions of people became direct victims of the said tragedy and a large number of people are exposed to fatal diseases and environmental hazards in the surroundings. During the manufacturing process at the UCIL, highly volatile and toxic Methyl Isocyanate (MIC)¹ was combined with Alpha-Nepthol to produce Sevin, a kind of pesticide which was widely used in India at that time.

Introduction

The Supreme Court of India in 1989 reached at the settlement mentioning that Union Carbide Corporation (UCC) was to pay 470 million US dollars as full and final settlement of all civil and criminal claims by the victims by giving the justification that "*this court, considered it a compelling duty, both judicial and humane to secure immediate relief to the victims.*" For the Bhopal gas victims despite sincere efforts made by various civil society organizations justice remain a far distant dream over the last thirty years. With this all, the tragedy can surely be said to be a stigma in the Indian history as the government, firstly, for giving a boost to the economic development started industrialization in densely populated areas putting people's lives in danger, and secondly no strict surveillance mechanism was put in place to cope up with the situations arising after a disaster.

Following this disaster, the Government of India soon passed the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.² Under this Act, the Government in 1985 itself formulated a scheme known as the Bhopal Gas Leak Disaster Scheme for the registration, processing, and determination of compensation to each claim and appeals arising from thereon. However, the saddest part of this incident is that even after the passage of more than 30 years the victims are still running from the pillar to the post in search of just and

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¹MIC is produced by treating Methylamine with Phosgene. Phosgene, a lethal gas used during First World War against Germany is derived by mixing toxic carbon monoxide gas with chlorine.

²The Act gave power to the Central Government to represent all claimants in appropriate forums, appoint a Welfare Commissioner and other staff and to discharge duties connected with hearing of the claims and distribution of compensation.

fair justice. It is, therefore, appropriate to recall the words of Prof. Upendra Baxi: “*The broken world of Bhopal victims invites a jurisprudence of human solidarity.*”³

2. Legislative Developments after the Bhopal Gas Tragedy

When the Constitution of India came into being, at that time, there were no direct provisions related to the protection of environment. The emphasis on issues relating to environmental concerns increased with the passage of time as the country faced newer challenges as regards environmental damage. The constitutional framers, in fact, did not mention direct provisions in the constitution learning that Indians, who are too close to the nature to disturb her to an alarming level.

In India, a sharp decline in natural resources has been observed all across the country following the liberalized move of the government in the year 1991 i.e. LPG. In 1991, the country faced a major foreign exchange crisis which made the economic position of the country very vulnerable.⁴ To give a further push to the economic development of the country, a large number of industrial units were established by the government. After the Bhopal tragedy i.e. after 1984, the country witnessed a sea change was observed. Several comprehensive enactments⁵ including Environmental Protection Act, 1986, legislative amendments, rules and regulations relating to the environment with a view to having a strict vigil on industrial activities were passed.

Before the tragedy, Ms. Indira Gandhi went to attend the Stockholm Declaration⁶ wherein she focussed a lot on equity while addressing the conference. Further, this concept gave rise to a new concept named “*Sustainable Development*”⁷. In the term, the word “*sustainability*” is derived from the Latin word “*Sustinere*” which means to hold up. Sustainable Development is a pattern of resource use that aims to meet human needs not only to the present generation, but also for future generations. The principle of

³Upendra Baxi, “Writing about impunity and environment: the silver jubilee of the Bhopal catastrophe”, 23-24 *Journal of Human Rights and Environment*, (2010).

⁴Available at: <https://planningtank.com/development-planning/liberalization-privatization-globalization-lpg-model-in-india> (last visited on June 6, 2016).

⁵The Water (Prevention and Control of Pollution) Act,1974; The Water (Prevention and Control of Pollution) Cess Act,1977; The Air (Prevention and Control of Pollution) Act,1981; The Wildlife Protection Act,1972; The Forest (Conservation) Act, 1980; The Motor Vehicles Act,1988; The Public Liability Insurance Act, 1991; Biological Diversity Act, 2002.

⁶India made an international commitment at the United Nations Conference on the Human Environment held at Stockholm in June 1972 to protect and improve the human environment in order to prevent hazards to human life and other living creatures, plants and property.

⁷The term was used at the first time by the “Brundtland Commission” describing that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”

intergenerational equity has its genesis in Principles 1 and 2 of the Stockholm Declaration, 1972.⁸

2.1 The Environment (Protection) Act, 1986

The Environment (Protection) Act, 1986 is popularly known as mother legislation or umbrella legalization as it covers almost all the possible dimensions relating to the environment. It is, in fact, a comprehensive piece of legislation which extends to the whole of India. The opening preambular words of the Act goes like this “.....to provide for the protection and improvement of environment and for matters connected therewith.” If we look closely upon the wordings used “matters connected therewith”, one thing is clear therefrom that the legislators are intended to cover all matters arising in the future to come with the help of the comprehensive legislation i.e. Environmental Protection Act, 1986. Further, it also makes an attempt to define the term “Environment”⁹ which includes water, air, land, and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganisms and property.

Moreover, the Act empowers the central government to take all such measures as it deems necessary or expedient for the purposes of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.¹⁰ In this connection, the central government has the authority to issue direct written orders including orders to close, prohibit, or regulate any industry, operation or process or to stop or regulate the supply of electricity, water or any other service.¹¹

Other powers granted to the central government to ensure compliance with the Act include the power of entry for examination, testing of equipment, etc.¹² and the power to take samples of air, water, soil or any other substances from any place for analysis.¹³ The Act prescribes the penalties for a prison term of up to 5 years or a fine of up to Rs.1 lakh, or both.¹⁴ The Act has a unique section which underlines where an offence under this Act is also an offence under any other Act, the offender shall be punished only under the other Act.¹⁵

Under the Act, “*Environmental Protection Rules*” were also framed in the year 1986 itself so as to deal with specific environmental issues like Hazardous Waste, Biomedical Waste

⁸Wherein Environment has been taken to be resource basis for the survival of the present generation and right to be beneficially used by the future generations.

⁹The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec. 2(a).

¹⁰The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec.3.

¹¹The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec. 5.

¹²The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec.10.

¹³The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec.11.

¹⁴The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec.15.

¹⁵The Environment (Protection) Act, 1986 (Act 29 of 1986), Sec. 24.

etc.¹⁶ The EPA, 1986¹⁷ largely bears the influence of the commitments made by the world community at the Stockholm Declaration, 1972. The government evolved guidelines for submission of yearly environmental audit/statement¹⁸ by units requiring consent under the Water Act, Air Act and authorization under Hazardous Wastes (Management and Handling) Rules. Several important aspects of the environment are contained in Sec. 8 of the 1986 Act which imposes a liability to comply with procedural safeguards in disposal of Bio-Medical Waste.

2.2 Public Liability Insurance Act, 1991

The Public Liability Insurance Act, 1991 is a well-intended act to provide immediate relief to the victims affected by accidents while handling hazardous substances and for matters connected therewith or incidental thereto. The Act incorporates a provision making it mandatory for the industrial units that every owner shall take out before he starts handling any hazardous substance, one or more insurance policies and renew it or them from time to time before the expiry of validity.¹⁹ The Rule 11²⁰ states that an owner shall contribute to “*Environmental Relief Fund*” a sum equal to premium. The accidents by reason of war or radio-activity are excluded from the scope of the Act. The Act further imposes a duty and liability for providing relief specified in schedule for such death, injury or damage.²¹ However, it is also the duty of the state to provide for effective remedies against the environmental hazards.

The Act mandates the need to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victims. Such insurance policy, on the one hand, would safeguard the interests of the victims and on the other hand, it would also enable the industry to discharge its liability to settle large claims arising out of major accidents. Moreover, the positive aspect of this Act which is in the public interest is that the availability of immediate relief would not prevent the victims to go to courts for claiming larger compensation.

¹⁶Hazardous Wastes (Management and Handling) Rules 1989; Manufacture, Storage, and Import of Hazardous Chemicals, Rules 1989, Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996; Bio-medical Waste (Management and Handling) Rules, 1998 were framed using the powers given in this Act.

¹⁷The Environment (Protection) Act, 1986, enacted under Art. 253 of the Constitution of India to implement the decisions made at the United Nations Conference on Human Environment held at Stockholm, 1972.

¹⁸Under Rule 14 of the E.P. Rules 1986.

¹⁹The Public Liability Insurance Act, 1991, Sec.4.

²⁰The Public Liability Insurance Rules, 1991.

²¹The Public Liability Insurance Act, 1991, Sec. 3.

Moreover, the Act also recognizes the principle of “*No fault liability or Absolute Liability*.”²² The claimant shall not be required to plead that the accident was due to any wrongful act. The owner is also liable to pay other compensation, if any. Every application for claim²³ should be filed to the Collector within 5 years of the occurrence of accident. The Collector should decide the amount and inform the parties within 15 days. The insurer shall pay within 30 days. The Collector shall have the power of Civil Court and the case should be disposed of within 3 months.

The Public Liability Insurance (Amendment) Act, 1992 states that the 1991 Act could not be implemented on account of the insurance companies not agreeing to give insurance policies for unlimited liability of the owners. This Amendment limits the liability of insurance companies to the amount of insurance policy but the owner’s liability shall continue to be unlimited under the Act.

The Act provides for creation of an an “*Environmental Relief Fund*”²⁴ established by the Central Government with the additional money collected from the owners having control over handling of hazardous substances. This fund was also required to be used to meet the requirement of providing immediate relief to the victims. As per this Act, the owner shall be liable to pay relief as specified in the Schedule:²⁵

- (i) Reimbursement of medical claim up to Rs. 12, 500 in each case;
- (ii) Relief of Rs. 25,000 per person for fatal accident in addition to the reimbursement of medical expenses up to Rs. 12,500;
- (iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case and (b) cash relief on the basis of percentage of disablement as certified by an authorized physician. The relief for total permanent disability will be Rs. 25,000;
- (iv) Compensation for loss of wages due to temporary disability will be Rs.1000 per month for a maximum of 3 months; provided the victim has been hospitalized for a period exceeding 3 days and is above 16 years of age.

²²The principle of absolute liability states when an enterprise is engaged in hazardous or inherently dangerous industry and if any harm results in account of such activity then the enterprise is absolutely liable to compensate for such harm and that it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. In the case of absolute liability, even the defences available under strict liability would not apply. The occupier of the industry will be liable for the injury and the damage caused to the environment irrespective of fault on his part.

²³The Public Liability Insurance Act, 1991, Sec.6.

²⁴The Public Liability Insurance Act, 1991, Sec. 7A.

²⁵See Section 3(1), The Schedule.

(v) Up to Rs. 6,000 depending on the actual damage, for any damage to private property.

Thus, the Public Liability Insurance Act, 1991 can be considered to be a milestone in the Indian context as in our country a vast population is vulnerable due to many reasons like poverty and illiteracy. The people living in the nearby areas are more prone to disastrous accidents due to the poor implementation of rules and regulations in place. The very objectives of the Act can be met when the vulnerable sections are saved from hardships arising out of delayed relief and inadequate compensation.

2.3 Establishment of National Green Tribunal

The Supreme Court of India laid down the foundation of Environmental Courts in India by passing a remark in the case of *M.C.Mehta v. Union of India*²⁶ that *“Since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evaluation of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional judge and two experts drawn from the Ecological Science Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would be of course a right of appeal to the Supreme Court from the decision of the environment court.”*

The urgency of Environmental Courts can be understood by the fact that the environment is the base for survival of all beings on the earth. If the environment is at stake, it may lead to serious repercussions in the near future. As we all know that a large backlog of cases pending before several courts in the country present a gloomy picture before all of us. In this regard, if environmental cases are delayed for a long time, it would not be a healthy practice towards environmental justice for the country as a whole. The expeditious disposal of cases especially relating to the environment must be taken as a priority issue.

To give effect to the international commitment²⁷ and to provide for a forum for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance, the Government of India enacted the National Green Tribunal Act, 2010 to fulfill the long standing demand. The Act was enacted in response to the recommendations of the Law Commission of India and the Indian Supreme Court which

²⁶AIR 1987 SC 965.

²⁷The Principle 11 of the Stockholm Declaration, 1972 states that “the environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.” The Principle 13 of the Rio Declaration, 1992 states that “states shall develop the national law regarding liability and compensation for the victims of Pollution and other environmental damage.”

highlighted the large number of environment-related cases pending in the courts.²⁸ The Act finally come into being on June 2, 2010.

The National Green Tribunal has, no doubt, added a new chapter²⁹ in the field of environmental litigation in India and has remained successful in drawing the attention of the people as regards critical environmental issues. Unlike its predecessor, the National Environment Appellate Authority, its five benches have wide ranging powers to adjudicate upon any dispute that involves questions of seminal importance to the environment as specified in Schedule-I.³⁰ This power coupled with technical expertise has exponentially strengthened the environmental protection regime in the country. In a number of decisions, the Tribunal has proved its efficiency in resolving environmental disputes.³¹

Tough the National Green Tribunal is headquartered at New Delhi yet its four circuit benches³² all across the country have undeniably ensured door step justice to the people. It is crystal clear that mostly poor people who are subject to the victims of environment pollution come to the tribunal with the help of non-governmental organizations working at the grassroots level.

3. Procedural Development after Bhopal Gas Tragedy Case

3.1 Initiative of Judicial Activism

Finding vacuum on the point of environmental concerns, the courts especially Supreme Court of India went a step further and applied the concept of Judicial Activism³³ in the Indian context to bridge the legislative gap. The credit for the same can be attributed to two of the most revered Judges of the Supreme Court Namely Justice V.R. Krishna Iyer and Justice P.N. Bhagwati who widened the scope of Article 21 of the constitution to meet the constitutional objectives for the poor and the deprived.

²⁸Aruna B.Venkat, "The National Green Tribunal Act, 2010: An Overview" Vol. 6: No. 1 *NALSAR Law Review*.

²⁹The Act mandates for the effective and expeditious disposal of cases relating to environment protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to prisons and property and for matters connected therewith or incidental thereto.

³⁰In Schedule-I, the Acts that are mentioned are: The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act 1981; The Environment (Protection) Act, 1976. The Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002.

³¹Armin Rosencrantz and Geetanjoy Sahu, "Assessing the National Green Tribunal After Four Years" Vol. 5: Monsoon *JILS*.

³²The tribunal is functioning in full swing with its four circuit benches established in Bhopal, Pune, Chennai and Kolkata. The recently established branch is at Kolkata.

³³The judiciary plays the central role in the enforcement of legislations and interpreting the laws going extra miles to render justice to the needy.

With the passage of time, in India also the trajectory of environmental pollution has reached to a threatening level. The environment is considered to be the very basic element of human survival; therefore, its protection has drawn not only national but international attention too. In this regard, the statement of Justice Lodha is worth mentioning herein as he rightly puts that “*Judiciary exists for the people and not for vice-versa.*”

If all or any of the fundamental rights is infringed by a state action then the citizen or the person as the case may be may approach the Supreme Court under Article 32 or the High Courts under Article 226 having territorial jurisdiction in order to get their redressal.³⁴ It is very interesting to note that Article 32 itself is a fundamental right and the courts has no power to refuse in its direction to grant appropriate remedy if the violation of any fundamental right is proved.

The idea of the Social Interest Litigation or Public Interest Litigation came from “*action popularis*” of the Roman Jurisprudence which allowed court access to every citizen in matters of public wrongs. The Supreme Court by relaxing the process of “*Locus Standi*”³⁵ allowed PIL³⁶ to enable the poor, downtrodden, under-privileged, and ignorant to be heard. In *the Mumbai Kamgar Sabha, Bombay v. Abdulbhai Faizullabhai and Ors.*³⁷ the Supreme Court of India made conscious efforts to improve the judicial access for the masses by relaxing the traditional rule of “*Locus Standi.*”

In the case of *Ramsharan Autyanuprasi and Anr. v. Union of India and Ors.*³⁸, the Court observed that the public interest litigation is for making basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice.

3.2 Principle of Absolute Liability

The Principle of Absolute Liability came as a result of farsighted approach followed by the apex court setting aside all the exceptions provided in the case of *Rylands v. Fletcher.*³⁹ The proposition involved in this case is that a person who for his own purpose brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it

³⁴The Supreme Court and the High Courts can issue any order, direction, or writs including the writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto.

³⁵According to the “*Locus Standi*” rule, only those persons can approach the court for their remedies, whose rights have been infringed. Any petitioner having no ‘*Locus Standi*’ cannot be heard in a court of law.

³⁶According to the concept of PIL, any public spirited person or an organization can approach to the courts seeking remedies on behalf of the people who cannot approach to the courts because of their social, educational and economical situations.

³⁷AIR 1976 SC 1455.

³⁸AIR 1989 SC 549.

³⁹(1868), L.R. 3 H.L. 330.

at his peril and, if he fails to do so, is *prima facie* liable for the damage which is the natural consequence of its escape.

The apex court finding the principle held in *Rylands case* inadequate in the Indian context, evolved a new principle to mitigate the challenges arising out of environmental pollution as it is often said that law cannot afford to remain static.⁴⁰ Judicial thinkers should not be constricted by reference to the law as it prevails in England or in any other foreign country. Bhagwati. J., therefore, states in “*M.C. Mehta v. Union of India*”⁴¹ that, “*We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England.*”

Having evolved the Absolute Liability Principle, the Supreme Court of India has made the public stand stronger than ever before. The poor and indigent people have taken a sigh of relief. Now, it is crystal clear that if an enterprise is engaged in a hazardous or inherently dangerous activity, it will be strictly and absolutely liable to compensate all those who are affected by an accident. Moreover, such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in “*Rylands v. Fletcher.*”

Conclusion

Marine biodiversity is the prosperous and magnificent variety of plants and animals that live in watery habitation. It is the quantity of diverse native species, or species adequateness. Some marine organisms endure in the deep sea, whereas others, like water striders, subsist floating along the water surface. So protecting and maintaining biodiversity is necessary for the wellbeing of our environment and for the development of human life. Human beings depend on various marine plants, animals and their ecological functions for their survival. Aquatic and terrestrial biodiversity are sources of food, medicine, shelter, energy and the raw materials that is required for survival. Although it is hardly ever recognized, each marine genus or species has a significant role in making lives comfortable, healthier, easier and more dynamic. More or less, all the components of environment are equally important for ecosystem. Though there are many laws for the protection of biodiversity but still there is need for proper implementation and for proper implementation there is need of awareness among the common people. Therefore, the world community has focused on creating awareness among the common people by arranging various conventions, conferences and declarations so that conservation and preservation of marine biodiversity can be done for present and future generation. Thus, it can be concluded by saying that

⁴⁰S. R. Myneni, “An Introduction to Jurisprudence”, Allahabad Law Agency, Fifth Edition 2006, Allahabad.

⁴¹AIR 1989 SC 424.

exploitation of marine biodiversity must be done but it should be done in a sustainable manner.