UNIVERSITY OF PETROLEUM & ENERGY STUDIES CENTRE FOR CONTINUING EDUCATION

NUCLEAR ENERGY LIABILITY REGIME IN INDIA AND ITS EFFECTS

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Preface

In the development of international law relating to Safety Standards and liability in the use of the nuclear energy India has taken a very big step specially keeping on mind the alternative approach to national and trans boundary liability regime. The tragic Chernobyl accident gave rise to international consensus for a stronger transboundary legal regime in the event of a nuclear disaster. However, after independence in 1947 and the existence of international nuclear liability laws and more recently the Chernobyl incident, the primary objective of the Conventions to harmonize the regime as per International standard the national regime remains unfulfilled though India expanding nuclear energy development is in a unique position in the region.

This dissertation undertaken to bring out difficulties that lie ahead in achieving a nuclear liability architecture in the densely populated subcontinent region as the existing legal regime and legal arrangements are inadequate unlikely to secure a liability remedy.

Acknowledgments

My interest in 'nuclear energy and law' is based on my reading the various damage caused by the use of nuclear arsenal in the WW II and followed by the various manmade disaster around the world resulting in death of several thousand world citizens and causing genetic disorder in humans ,fauna and flora species . As a external student of LLM in 2014-2015, I am indebted to Mary Sabrina Coordinator UPES in her support for the program as this course opened a world of opportunities, and was introduced to Dr Tony George Mr. Kher both of them have been very kind enough to be the guide and have patiently encouraged me and guided me through the several sessions and discussions.

Although now nuclear energy has fast becoming a 'topic' for mainstream discussion with so much importance given to energy by the present Government in power I am grateful to UPES and all the faculty member who have contributed to my completion of this LLM program.

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About the Author

RIJU RAJ SINGH JAMWAL is a Practicing Lawyer at the Supreme Court and High Court of Delhi at New Delhi. He is a member of the Supreme Court Bar Association and Bar Association of India. Presently he is pursuing his IV semester in LLM from the UPES Dehradun. He started his career as an advocate practicing at the Jammu and Kashmir High t Court at Jammu and shifted to the Supreme Court in 2001 and since has been practicing at Delhi.

Symbols and Abbreviations

AEA Atomic Energy Act, 1962 (India)

AEC Atomic Energy Commission

AERB Atomic Energy Regulatory Board

DAE Department of Atomic Energy

EU European Union

KNPP Kudankulam Nuclear Power Plant

MoEF Ministry of Environment and Forest (India)

MW Megawatt

NPCIL Nuclear Power Corporation of India Limited

NPP Nuclear Power Plant

NSG Nuclear Suppliers Group

OECD Organization for Economic Co-operation and Development

OECD-NEA OECD Nuclear Energy Agency

US United States of America

List of Statutes and International Conventions

1. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986.
2. The Convention on Early Notification of a Nuclear Accident, 1986.
3. The Convention on Supplementary Compensation for Nuclear Damage, 1997. 4. The Convention Supplementary to the Paris Convention of 29 July 1960.
5. The Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, 1988.
6. The Nuclear Non-Proliferation Treaty (NPT), 1968.
7. The Paris Convention on Third Party Liability in the Field of Nuclear Energy, 1960.
8. The Price-Anderson Nuclear Industries Indemnity Act, 1957.
9. The Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage, 1997.
10. The Protocol to Amend the Brussels Convention Supplementary to the Paris Convention, 2004.
11. The Atomic Energy Act 1962.
12. The Civil Liability for Nuclear Damage Act, 2012.
13. The Environmental Protection Act, 1986.
14. The Nuclear Non-proliferation Act, 1978.
15. The Public Liability Insurance Act, 1991.

16. The Vienna Convention on Civil Liability for Nuclear Damage, 1963.

17. The Bhopal Gas Leak Disaster (Processing Of Claims) Act, 1985

List of Cases

1. Common Cause and others v. Union of India (WP 464/2011)
2. G. Sundarrajan v. Union of India (W.P.Nos. 24770 and 22771 of 2011, 8262 and 13987 of 2012 and W.P.(MD) Nos. 14054 and 14172 of 2011, 1823 and 2485 of 2012)
3. Indian Council of Environ-Legal Action v. Union of India (AIR 1996 SC 1466)
4. M.C. Mehta v. Union of India (Oleum Gas Leak Case) AIR 1987 SC 1086)
5. Ryland v. Fletcher (L.R. 3 H.L. 330; [1861–1873] All E.R)
6. Charan Lal Sahu Etc. Etc vs Union Of India And Ors

I. Introduction

Abstract: This work brings out the effects of the Nuclear Liability legal framework within the national boundaries and beyond. As Indian Sub Continent is a densely populated region, the existing legal protocol and regime which are being referred herein are fully equipped to secure a liability remedy. The technical risk assessment reflects the impact in case of a nuclear accident. However there has not been any attempt in forging a National consensus on the issue of nuclear energy risk to date the need to on implementing measures that addressing the nuclear energy risk concern.

Keywords Nuclear liability · Effect of nuclear liability law · Nuclear energy and India · nuclear liability regime

The use of nuclear energy for power and electricity generation by several countries around the world, specially the developed nation has been a contentious issue because after WW II the development of nuclear energy was initiated for military purposes specially after the bombing of Hiroshima and Nagasaki, Japan, on 6 and 9 August 1945

which has generated the perception of fear. Although many developed countries have emerged from this holocaust and adopted this technology for generating power. However the moot question remains whether these countries have the understanding of the larger implications of the use and consequences of nuclear energy technology. The world is witness to the nuclear disaster -Three-Mile Island nuclear accident in the United States (US) (1979), Chernobyl in the former Soviet Union (USSR) (1986) and the nuclear accident due to earthquake and tsunami in Fukushima, Japan (2011) exposed the vulnerability of the nature of nuclear accidents and the helplessness of the human race to grapple with the accidents of such large magnitude.

For the above disasters, one can draw out a significant inference that the geographical scope of nuclear damage is not necessarily confined to national boundaries. This experience led the international community to believe that an international consensus on 'state liability' in the event of a nuclear accident is necessary which has resulted in the world community to endeavored through international legal instruments to impose stricter and tighter obligations upon States pursuing civil nuclear energy.

Even today many of the existing international conventions are not adequately adhered to by the countries using such nuclear technology and the national laws are at variance with

each other and also with the international conventions. As a matter of fact most of the countries operating nuclear power plants which include Canada, China, Japan, Korea, South Africa, Switzerland USA and India are yet to be part of an international regime and have relied on their own domestic liability laws.

In India undoubtly there have been significant legal precedents on the question of liability and therefore this question is of great significance on account of the recent large-scale development of nuclear power plants all over the sub continent. Although the Indian regime while embracing nuclear energy have capped the compensation and provided very little or no legal safeguards to fall back to, in the case of a disaster.

II. Background

Historically the Organization for Economic Cooperation and Development (OECD) established , The Convention on Third Party Liability in the Field of Nuclear Energy 1960 (Paris Convention) for liability regime which has been adopted by the Western Europe. Subsequently to provide enhanced compensation to victims of nuclear disaster the Paris Convention, the 1963 Convention Supplementary to the Paris Convention of 29 July 1960 (Brussels Supplementary Convention) was established. This was followed by the Vienna Convention on Civil Liability for Nuclear Damage

(Vienna Convention), largely on the principles laid down in the Paris Convention.

The principles laid down by these two conventions namely Paris and Vienna Conventions practically now form the fundamental principles of international nuclear liability law and are the bed rock of Countries responsibility and liability which are adopted in the national domestic legislations.

It important to understand the broad principles of these conventions:

Firstly the Conventions have a no-fault liability i.e. absolute liability; Secondly the Conventions channel liability exclusively to the operator of the nuclear installation (legal channeling);Thirdly the Conventions mandate only exclusive courts of the State in which the nuclear accident occurs have jurisdiction ;Fourthly the Conventions provide limitation of the amount of liability and the time for claiming damages (limited liability),Fifthly the Conventions provide limitation of time for claiming damages and lastly the operator must secure insurance or financial guarantee to the extent of his liability amount.

As India does not follow these earlier conventions it can be analyzed that the shortfall can be attributed to the non-effectiveness of these regimes, as many large nuclear energy producing countries remain outside the Paris and Vienna Conventions further the drafting of national laws

substantially differently from the provisions of the Conventions hence no harmonization and as varying industry structure in several countries the legal channeling becomes a contentious issue .However most significant impediment is the difficulty in bringing countries with unlimited and limited liability requirements with respect to compensation towards liability .IAEA sponsored another international nuclear liability regime—Convention on Supplementary Compensation (CSC or Compensation Convention).This was brought in place to align the US domestic legislation-Price-Anderson Nuclear Industries Indemnity Act (1957) (The Price Anderson Act) with inter-national law. CSC provides additional amounts to be offered through contributions by the State parties on the basis of installed nuclear capacity. The uniqueness and advantage of CSC is that this is an instrument to which all States may adhere to, regardless of whether they are parties to any existing nuclear liability conventions or not, or whether they have nuclear installations on their territories or not and the requirement is that the countries should enact/amend national liability laws consistent with the annex (model law) to the CSC.

Even though IAEA revised its projection estimates where the major portion of global expansion of nuclear power is still projected to be in Asia which includes Afghanistan, Bangladesh, Bhutan, India, Pakistan, Nepal, Maldives and

Sri Lanka While these countries are signatories to the Nuclear Non-Proliferation Treaty (NPT), 1970, India has deliberately no participated in NPT and the reason being that India has weapon programmes along with the Nuclear Power Plants (NPPs).

Although India became party to CSC in 2010 and accordingly India legislated the Civil Liability for Nuclear Damage Act, 2010 and also is party to the Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency, 1986 and the Convention on Early Notification of a Nuclear Accident, 1986 (Emergency Conventions) albeit with some reservations. However, these conventions do not dwell into any legal obligations for India to accept its responsibility for liability and compensation to victims of nuclear accident. Therefore the adherence to nuclear liability regime as it exists today, does not seem to give hope to India for either strengthening the international liability regime. Many developments have happened with respect to liability law in terms of domestic efforts and in the broader adherence to the Paris Convention and its protocols. The nuclear industry is an area where liability regimes are governed by statutory provisions and not by the strict liability rule expounded by Ryland v. Fletcher. An important milestone from the perspective of developing countries is India's nuclear liability law. India, after nearly three decades of international nuclear isolation, became a part of the nuclear

community subsequent to the India–United States Civil Nuclear Energy Cooperation Agreement in 2005 and later became eligible for international nuclear trade and commerce when Nuclear Suppliers Group (NSG) granted wavier to India in 2008. Among several legal measures required to initiate the import of nuclear reactors from other countries, liability law is considered as one of the crucial legal elements. The Indian nuclear liability law, its content and the process of law making have been unique in many ways and as a test case for several of the international legal scenarios from an emerging country. The Absolute liability, with no exceptions to liability, unlike the principles in strict liability became part of Indian law through the decision of the Supreme Court in M C Mehta v. Union of India, AIR 1987 SC 1086 known as the Oleum Gas Leak Case.

Several authors have written on the political, legal and judicial experience of the Bhopal accident and the subsequent progress of liability law in India. It may be remembered that before the Supreme Court took a view on the Bhopal gas leak case in 1986 while deciding the Oleum Gas Leak Case, the Court had expanded the meaning of principle of liability and said:

> We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the

persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

The Indian nuclear liability law, enacted nearly three decades after the Bhopal gas tragedy, is an attempt to address statutorily, the specific issue of nuclear liability and compensation.

With the legislative enactment of the civil nuclear liability law, India hopes to expand the nuclear power programme considerably by addressing the concerns of the public with sufficient mitigating measures, and that of the industry by limiting the liability both in terms of amount and time. Along with the legislative process, India became signatory to the CSC, thus becoming a part of an international liability regime. There have been numerous writings on the content of the law and

How it is different from other national laws, and whether the law is in variance with the international commitment. Deviations were particularly in three aspects, on the limitation in liability, legal channeling and on the right to recourse. Though there has been some discussion on India's divergent stance on CSC, strict provisions relating to liability claims and right of recourse were retained. It was also in

parts argued that India's attempt should be considered as the next step in the evolution of nuclear liability law. While analyzing the Indian law that was tabled in the Parliament for discussion, observes that even though India faced a lot of criticisms in changing the rules of nuclear liability game, the Indian bill provides an opportunity to modernize the out-dated nuclear liability regime. She further observes that even with few interpretational issues, the Bill "is a significant step towards providing the public and the environment with greater protection by updating the nuclear liability regime to reflect the industry's current status as a mature industry no longer in need of such strong liability protections". The final liability law went much ahead on the questions of liability amount and claims and also on the operator's right of recourse against suppliers. Although much has been talked on the substantive content of the law, there has not been any discussion either in public or in Parliament on the harmonization issues in the liability framework that nuclear damage India and the rest of region may have to face.

III Relevant Judgments in India on Liability

It is therefore relevant to understand the historical evolution of the liability law as understood and held by Supreme Court of India based on the landmark judgments with respect to Tort and Liability which had its resource from the landmark judgment of Ryland and Fletcher. It's pertinent to

evaluate the reasoning and the view taken by the courts which has influenced the passing of the Legislation for nuclear Civil damage in India .

a. 3 LR HL 330

[HOUSE OF LORDS]

JOHN RYLANDS AND JEHU HORROCKS PLAINTIFFS IN ERROR; AND THOMAS FLETCHER DEFENDANT IN ERROR.

1868 July 6, 7, 17.

THE LORD CHANCELLOR (Lord *Cairns*):—

My Lords, in this case the Plaintiff (I may use the description of the parties in the action) is the occupier of a mine and works under a close of land. The Defendants are the owners of a mill in his neighborhood, and they proposed to make a reservoir for the purpose of keeping and storing water to be used about their mill upon another close of land, which, for the purposes of this case, may be taken as being adjoining to the close of the Plaintiff, although, in point of fact, some intervening land lay between the two. Underneath the close of land of the Defendants on which they proposed to construct their reservoir there was certain old and disused mining passages and works. There were five vertical shafts, and some horizontal shafts communicating with them. The vertical shafts had been filled up with soil and rubbish, and it does not appear that any person was aware of the existence either of the vertical shafts or of the

horizontal works communicating with them. In the course of the working by the Plaintiff of his mine, he had gradually worked through the seams of coal underneath the close, and had come into contact with the old and disused works underneath the close of the Defendants.

In that state of things the reservoir of the Defendants was constructed. It was constructed by them through the agency and inspection of an engineer and contractor. Personally, the Defendants appear to have taken no part in the works, or to have been aware of any want of security connected with them. As regards the engineer and the contractor, we must take it from the case that they did not exercise, as far as they were concerned, that reasonable care and caution which they might have exercised, taking notice, as they appear to have taken notice, of the vertical shafts filled up in the manner which I have mentioned. However, my Lords, when the reservoir was constructed, and filled, or partly filled, with water, the weight of the water bearing upon the disused and imperfectly filled-up vertical shafts, broke through those shafts. The water passed down them and into the horizontal workings, and from the horizontal workings under the close of the Defendants it passed on into the workings under the close of the Plaintiff, and flooded his mine, causing considerable damage, for which this action was brought.

The Court of Exchequer, when the special case stating the facts to which I have referred, was argued, was of opinion that the Plaintiff had established no cause of action. The Court of Exchequer Chamber, before which an appeal from this judgment was argued,

was of a contrary opinion, and the Judges there unanimously arrived at the conclusion that there was a cause of action, and that the Plaintiff was entitled to damages.

My Lords, the principles on which this case must be determined appear to me to be extremely simple. The Defendants, treating them as the owners or occupiers of the close on which the reservoir was constructed, might lawfully have used that close for any purpose for which it might in the ordinary course of the enjoyment of land be used; and if, in what I may term the natural user of that land, there had been any accumulation of water, either on the surface or underground, and if, by the operation of the laws of nature, that accumulation of water had passed off into the close occupied by the Plaintiff, the Plaintiff could not have complained that that result had taken place. If he had desired to guard himself against it, it would have lain upon him to have done so, by leaving, or by interposing, some barrier between his close and the close of the Defendants in order to have prevented that operation of the laws of nature.

As an illustration of that principle, I may refer to a case which was cited in the argument before your Lordships, the case of Smith v. Kenrick in the Court of Common Pleas 7 CB 515 .

On the other hand if the Defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water either above or below ground in quantities and in a manner not the result of any work or operation on

or under the land, — and if in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the Plaintiff, then it appears to me that that which the Defendants were doing they were doing at their own peril; and, if in the course of their doing it, the evil arose to which I have referred, the evil, namely, of the escape of the water and its passing away to the close of the Plaintiff and injuring the Plaintiff, then for the consequence of that, in my opinion, the Defendants would be liable. As the case of Smith v. Kenrick is an illustration of the first principle to which I have referred, so also the second principle to which I have referred is well illustrated by another case in the same Court, the case of Baird v. Williamson 15 CB(NS) 317 , which was also cited in the argument at the Bar.

My Lords, these simple principles, if they are well founded, as it appears to me they are, really dispose of this case.

The same result is arrived at on the principles referred to by Mr. Justice *Blackburn* in his judgment, in the Court of Exchequer Chamber, where he states the opinion of that Court as to the law in these words: "We think that the true rule of law is, that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is *primâ facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the Plaintiff's default; or, perhaps, that the escape was the consequence

of *vis major*, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbour who has brought something on his own property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. And upon authority this we think is established to be the law, whether the things so brought be beasts, or water, or filth, or stenches."

My Lords, in that opinion, I must say I entirely concur. Therefore, I have to move your Lordships that the judgment of the Court of Exchequer Chamber be affirmed, and that the present appeal be dismissed with costs.

LORD CRANWORTH:—

My Lords, I concur with my noble and learned friend in thinking that the rule of law was correctly stated by Mr. Justice *Blackburn* in delivering the opinion of the Exchequer Chamber. If a person brings, or accumulates, on his land anything which, if it should escape, may cause damage to his neighbour, he does so at his peril. If it does escape, and cause damage, he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent the damage.

In considering whether a Defendant is liable to a Plaintiff for damage which the Plaintiff may have sustained, the question in general is not whether the Defendant has acted with due care and caution, but whether his acts have occasioned the damage. This is all well explained in the old case of Lambert v. Bessey, reported by Sir *Thomas Raymond* Sir TRaym 421 . And the doctrine is founded on good sense. For when one person, in managing his own affairs, causes, however innocently, damage to another, it is obviously only just that he should be the party to suffer. He is bound *sic uti suo ut non lædat alienum.* This is the principle of law applicable to cases like the present, and I do not discover in the authorities which were cited anything conflicting with it.

The doctrine appears to me to be well illustrated by the two modern cases in the Court of Common Pleas referred to by my noble and learned friend. I allude to the two cases of Smith v. Kenrick 7 CB 564 , and Baird v. Williamson 15 CB (NS) 376 . In the former the owner of a coal mine on the higher level worked out the whole of his coal, leaving no barrier between his mine and the mine on the

lower level, so that the water percolating through the upper mine flowed into the lower mine, and obstructed the owner of it in getting his coal. It was held that the owner of the lower mine had no ground of complaint. The Defendant, the owner of the upper mine, had a right to remove all his coal. The damage sustained by the Plaintiff was occasioned by the natural flow or percolation of water from the upper strata. There was no obligation on the Defendant to protect the Plaintiff against this. It was his business to erect or leave a sufficient barrier to keep out the water, or to adopt proper means for so conducting the water as that it should not impede him in his workings. The water, in that case, was only left by the Defendant to flow in its natural course.

But in the later case of Baird v. Williamson the Defendant, the owner of the upper mine, did not merely suffer the water to flow through his mine without leaving a barrier between it and the mine below, but in order to work his own mine beneficially he pumped up quantities of water which passed into the Plaintiff's mine in addition to that which would have naturally reached it, and so occasioned him damage. Though this was done without negligence, and in the due working of his own mine, yet he was held to be responsible for the damage so occasioned. It was in consequence of his act, whether skillfully or unskillfully performed, that the Plaintiff had been damaged, and he was therefore held liable for the consequences. The damage in the former case may be treated as having arisen from the act of God; in the latter, from the act of the Defendant.

Applying the principle of these decisions to the case now before the House, I come without hesitation to the conclusion that the judgment of the Exchequer Chamber was right. The Plaintiff had a right to work his coal through the lands of Mr. *Whitehead*, and up to the old workings. If water naturally rising in the Defendants' lana (we may treat the land as the land of the Defendants for the purpose of this case) had by percolation found its way down to the Plaintiff's mine through the old workings, and so had impeded his operations, that would not have afforded him any ground of complaint. Even if all the old workings had been made by the Plaintiff, he would have done no more than he was entitled to do; for, according to the principle acted on in Smith v. Kenrick, the person working the mine, under the close in which the reservoir was made, had a right to win and carry away all the coal without leaving any wall or barrier against *Whitehead's* land. But that is not the real state of the case. The Defendants, in order to effect an object of their own, brought on to their land, or on to land which for this purpose may be treated as being theirs, a large accumulated mass of water, and stored it up in a reservoir. The consequence of this was damage to the Plaintiff, and for that damage, however skillfully and carefully the accumulation was made, the Defendants, according to the principles and authorities to which I have adverted, were certainly responsible.

I concur, therefore, with my noble and learned friend in thinking that the judgment below must be affirmed, and that there must be judgment for the Defendant in Error.

Judgment of the Court of Exchequer Chamber affirmed.

Lord's Journals, 17th July, 1868.

Attorneys for Plaintiffs in Error: *N. C. & C. Milne.*

Attorneys for Defendant in Error: *Norris & Allen.*

This British judgment laid down the foundation of the absolute Liability. In India the major accident in Bhopal settled the principle of absolute liability and it's important to understand how the Supreme Court and the Parliament arrived at the conclusion and issued directions and settled claims in one of the major disaster in India .

The Claim act was passed by Parliament immediately after the tragic accident which is legislation and can be considered one of the foremost liability mechanisms.

b. **The Bhopal Gas Leak Disaster (Processing Of Claims) Act, 1985**

ACT NO. 21 OF 1985 [29th March, 1985.]

An Act to confer certain powers on the Central Government to secure that claims arising out of, or connected with, the Bhopal gas leak disaster are dealt with speedily, effectively, equitably and to the best advantage of the claimants and for matters incidental thereto.

BE it enacted by Parliament in the Thirty- sixth Year of the Republic of India as follows:--

1. Short title and commencement.
   (1) This Act may be called the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 .
   (2) It shall be deemed to have come into force on the 20th day of February, 1985 .

2 Definitions. In this Act, unless the context otherwise requires,--
(a) " Bhopal gas leak disaster" or" disaster" means the occurrence on the 2nd and 3rd days of December, 1984 , which involved the release of highly noxious and abnormally dangerous gas from a plant in Bhopal (being a plant of the Union Carbide India Limited, a subsidiary of the Union Carbide Corporation, U. S. A.) and which resulted in loss of life and damage to property on an extensive scale;
(b) " claim" means--
(i) a claim, arising out of, or connected with, the disaster, for compensation or damages for any loss of life or personal injury which has been, or is likely to be, suffered;
(ii) a claim, arising out of, or connected with, the disaster, for any damage to property which has been, or is likely to be, sustained;
(iii) a claim for expenses incurred or required to be incurred for containing the disaster or mitigating or otherwise coping with the effects of the disaster;
(iv) any other claim (including any claim by way of loss of business or employment) arising out of, or connected with, the disaster;
(c) " claimant" means a person entitled to make a claim;
(d) " Commissioner" means the Commissioner appointed under section 6;
(e) " person" includes the Government;
(f) " Scheme" means a Scheme framed under section 9. Explanation.-- For the purposes of clauses (b) and (c), where the death of a person has taken place as a result of the disaster, the claim for compensation or damages for the death of such person shall be for the benefit of the spouse, children (including a child in the womb) and other heirs of the deceased and they shall be deemed to be the claimants in respect thereof.
(3) Power of Central Government to represent claimants.
(1) Subject to the other provisions of this Act, the Central Government shall, and shall have the exclusive right to, represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes

connected with such claim in the same manner and to the same effect as such person.

(2) In particular and without prejudice to the generality of the provisions of sub- section (1), the purposes referred to therein include--

(a) institution of any suit or other proceeding in or before any court or other authority (whether within or outside India) or withdrawal of any such suit or other proceeding, and

(b) entering into a compromise.

(3) The provisions of sub- section (1) shall apply also in relation to claims in respect of which suits or other proceedings have been instituted in or before any court or other authority (whether within or outside India) before the commencement of this Act: Provided that in the case of any such suit or other proceeding with respect to any claim pending immediately before the commencement of this Act in or before any court or other authority outside India, the Central Government shall represent, and act in place of, or along with, such claimant, if such court or other authority so permits.

4. Claimant' s right to be represented by a legal practitioner, Power of Central Government. Notwithstanding anything contained in section 3, in representing, and acting in place of, any person in relation to any claim, the Central Government shall have due regard to any matters which such person may require to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim.

5. Power of Central Government.

(i) For the purpose of discharging its functions under this Act, the Central Government shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908 .) in respect of the following matters, namely:--

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

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

© 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) any other matter which the Central Government may, by notification in the Official Gazette, specify.
(2) Every notification made under clause (f) of sub- section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.
6. Commissioner and other officers and employees.
(1) For the purpose of assisting it in discharging its functions under this Act, the Central Government may appoint an officer, to be known as the Commissioner for the welfare of the victims of the Bhopal gas leak disaster, and such other officers and employees to assist him as that Government may deem fit.
(2) The Commissioner shall discharge such functions as may be assigned to him by the Scheme.
(3) The Commissioner and such of the officers subordinate to him as may be authorised by the Central Government by notification in the Official Gazette in this behalf may, for the discharge of their functions under the Scheme, exercise all or any of the powers which the Central Government may exercise under section 5.
(4) All officers and authorities of the Government shall act in aid of the Commissioner.

(5)[1] The Commissioner and the officers subordinate to him authorized to discharge functions under the scheme shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the code of criminal procedure, 1973 .

(7). Power to delegate. The Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, all or any of its powers under this Act (excepting the power under section 9 to frame a Scheme) to the Government of Madhya Pradesh or an officer of the Central Government not below the rank of a Joint Secretary to that Government or an officer of the Government of Madhya Pradesh not below the rank of a Secretary to that Government. or the Commissioner]

1. Ins. by Act 24 of 1992, s. 2. 2. Ins. by s. 3 ib

(8)

(1) In computing; under the Limitation Act, 1963 (36 of 1963 .) or any other law for the time being in force, the period of limitation for the purpose of instituting a suit or other proceeding for the enforcement of a claim, any period after the date on which such claim is registered under, and in accordance with, the provisions of the Scheme shall be excluded.

(2) Nothing in sub- section (1) shall apply to any proceedings by way of appeal.

9. Power to frame a Scheme.

(1) The Central Government shall, for carrying into effect the purposes of this Act, frame by notification in the Official Gazette a Scheme as soon as may be after the commencement of this Act.

(2) In particular and without prejudice to the generality of the provisions of sub- section (1), a Scheme may provide for all or any of the following matters, namely:--

(a) the registration of the claims under the Scheme and all matters connected with such registration;

(b) the processing of the claims for securing their enforcement and matters connected therewith;

© the maintenance of records and registers in respect of the claims;

(d) the creation of a fund for meeting expenses in connection with the administration of the Scheme and of the provisions of this Act;
(e) the amounts which the Central Government may, after due appropriation made by Parliament by law in that behalf, credit to the fund referred to in clause (d) and any other amounts which may be credited to such fund;
(f) the utilization, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of the claims;
(g) the officer (being a judicial officer of a rank not lower than that of a District Judge) who may make such disbursal or apportionment in the event of a dispute;
(h) the maintenance and audit of accounts with respect to the amounts referred to in clauses (e) and (f);
(i) the functions of the Commissioner and other officers and employees appointed under section 6.
(3) Every Scheme framed under sub- section (1) shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be framed, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.
(10) Removal of doubts. For the removal of doubts, it is hereby declared that--
(a) any sums paid by the Government to a claimant otherwise than by way of disbursal of the compensation or damages received as a result of the adjudication or settlement of his claim by a court or other authority, shall be deemed to be without prejudice to the adjudication or settlement by such court or other authority of his claim to receive compensation or damages in satisfaction of his

claim and shall not be taken into account by such court or other authority in determining the amount of compensation or damages to which he may be entitled in satisfaction of his claim;
(b) in disbursing under the Scheme the amount received by way of compensation or damages in satisfaction of a claim as a result of the adjudication or settlement of the claim by a court or other authority, deduction shall be made from such amount of the sums, if any, paid to the claimant by the Government before the disbursal of such amount.
11. Overriding effect. The provisions of this Act and of any Scheme framed there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.
12. Repeal and saving.
(1) The Bhopal Gas Leak Disaster (Processing of Claims) Ordinance, 1985 (1 of 1985), is hereby repealed.
(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

The constitution validly of this Act was questioned before the Supreme Court and in an elaborate judgment the Supreme Court settled the principles of claims and guideline for such calamities specially incase of Tran boundary Corporation. The matter of discuss in the case

b. **Charan Lal Sahu Etc. Etc vs Union Of India And Ors**
Order and Judgment dated 22 December, 1989
Bench: Mukharji, Sabyasachi (Cj), Singh, K.N. (J), Rangnathan, S., Ahmadi, A.M. (J), Saikia, K.N. (J)
DATE OF JUDGMENT22/12/1989

JUDGMENT:

MUKHARJI, CJ. 1. Is the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter referred to as 'the Act') is constitutionally valid? That is the question.

2. The Act was passed as a sequel to a grim tragedy. On the night of 2nd December, 1984 occurred the most tragic industrial disaster in recorded human history in the city of Bhopal in the State of Madhya Pradesh in India. On that night there was massive escape of lethal gas from the MIC storage tank at Bhopal Plant of the Union Carbide (I) Ltd. (hereinafter referred to as 'UCIL') resulting in large scale death and untold disaster. A chemical plant owned and operated by UCIL was situated in the northern sector of the city of Bhopal. There were numerous hutments adjacent to it on its southern side, which were occupied by impoverished squatters. UCIL manufactured the pesticides, Seven and Tamik, at the Bhopal plant, at the request of, it is stated by Judge John F. Keenan of the United States District Court in his judgment, and indubitably with the approval of the Govt. of India. UCIL was incorporated in 1984 under the appropriate Indian law: 50.99% of its shareholdings were owned by the Union Carbide Corporation (UCC), a New York Corporation, L.I.C. and the Unit Trust of India own 22% of the shares of U.C.I.L., a subsidiary of U.C.C.

3. Methyl Isocyanate (MIC), a highly toxic gas, is an ingredient in the production of both Sevin and Temik. On the night of the tragedy MIC leaked from the plant in substantial quantities. the exact reasons for and circumstances of such leakage have not yet been ascertained or clearly established. The results of the disaster were horrendous. Though no one is yet certain as to how many actually died as the immediate and direct result of the leakage, estimates attribute it to about 3,000. Some suffered injuries the effects of which are described as Carcinogenic and ontogenic by Ms. Indira Jaisingh,

learned counsel; some suffered injuries serious and permanent and some mild and temporary. Livestock was killed, damaged and infected. Businesses were interrupted. Environment was polluted and the ecology affected, flora and fauna disturbed.

4. On 7th December, 1984, Chairman of UCC Mr. Warren Anderson came to Bhopal and was arrested. He was later released on bail. Between December 1984 and January 1985 suits were filed by several American lawyers in the courts in America on behalf of several victims. It has been stated that within a week after the disaster, many American lawyers, described by some as 'ambulance chasers', whose fees were stated to be based on a percentage of the contingency of obtaining damages or not, flew over to Bhopal and obtain Powers of Attorney to bring actions against UCC and UCIL. Some suits were also filed before the District Court of Bhopal by individual claimants against UCC (the American Company) and the UCIL.

5. On or about 6th February, 1985, all the suits in various U.S. Distt . Courts were consolidated by the Judicial Panel on Multi-District Litigation and assigned to U.S. Distt. Court, Southern Distt. of New York. Judge Keenan was at all material times the Presiding Judge there.

6. On 29th March, 1985, the Act in question was passed. The Act was passed to secure that the claims arising out of or connected with the Bhopal gas leak disaster were dealt with speedily, effectively and equitably. On 8th April, 1985 by virtue of the Act the Union of India filed a complaint before the U.S. Distt. Court, Southern Distt. of New York. On 16th April, 1985 at the first pre-trial conference in the consolidated action transferred and assigned to the U.S. Distt. Court, Southern Distt., New York, Judge Keenan gave the following directions:

(i) that a three member Executive Committee be formed to frame and develop issues in the case and prepare expeditiously for trial or settlement negotiations. The Committee was to comprise of one lawyer selected by the firm retained by the Union of India and two other lawyers chosen by lawyers retained by the individual plaintiffs. (ii) that as a matter of fundamental human decency, temporary relief was necessary for the-victims and should be furnished in a systematic and coordinated fashion without unnecessary delay regardless of the posture of the litigation then pending.

7. On 24th September, 1985 in exercise of powers conferred by section 9 of the Act, the Govt. of India framed the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 (hereinafter called the Scheme).

8. On 12th May, 1986 an order was passed by Judge Keenan allowing the application of UCC on forum non convenience as indicated hereinafter. On 21st May, 1986 there was a motion for fairness hearing on behalf of the private plaintiffs. On 26th June, 1986 individual plaintiffs filed appeal before the US Court of Appeal for the second circuit challenging the order of Judge Keenan. By an order dated 28th May, 1986 Judge Keenan declined the motion for a fairness hearing. The request for fairness hearing was rejected at the instance of Union of India in view of the meagerness of the amount of proposed settlement. On 10th July, 1986 UCC filed an appeal before the US Court of Appeal for the Second Circuit. It challenged Union of India being entitled to American mode of discovery, but did not challenge the other two conditions imposed by Judge Keenan, it is stated. On 28th July, 1986 the Union of India filed cross-appeal before the US Court of Appeal praying that none of the conditions imposed by Judge Keenan should be disturbed. In this connection it would be pertinent to set out the conditions incorporated in the order of Judge Keenan, dated 12th May, 1986 whereby he had dismissed the case before him on the ground of

forum non convenience, as mentioned before. The conditions were following:

1. That UCC shall consent to the jurisdiction of the courts of India and shall continue to waive defenses based on the statute of limitation,
2. That UCC shall agree to satisfy any judgment rendered by an Indian court against it and if applicable, upheld on appeal, provided the judgment and-affirmance "comport with minimal requirements of due process"; and
3. That UCC shah be subject to discovery under the Federal Rules of Civil Procedure of the US after appropriate demand by the plaintiffs.

9. On 5th September, 1986 the Union of India filed a suit for damages in the Distt. Court of Bhopal, being regular suit No. H 13/86. It is this suit, inter alia, and the orders passed therein which were settled by the orders of this Court dated 14th & 15th February, 1989, which will be referred to later. On 17th November, 1986 upon the application of the Union of India, the Distt. Court, Bhopal, granted a temporary injunction restraining the UCC from selling assets, paying dividends or buying back debts. On 27th November, 1986 the UCC gave an undertaking to preserve and maintain unencumbered assets to the extent of 3 billion US dollars.

10. On 30th November, 1986 the Distt. Court, Bhopal lifted the injunction against the Carbide selling assets on the strength of the written undertaking by UCC to maintain unencumbered assets of 3 billion US dollars. On 16th December, 1986 UCC filed a written statement contending that they were not liable on the ground that they had nothing to do with the Indian Company; and that they were a different legal entity; and that they never exercised any control and that they were not liable in the suit. Thereafter, on 14th January, 1987 the Court of Appeal for the Second Circuit affirmed the decision of Judge Keenan but deleted the condition regarding the

discovery under the American procedure granted in favour of the Union of India. It also suo motu set aside the condition that on the judgment of the Indian court complying with due process and the decree issued should be satisfied by UCC. 1t ruled that such a condition cannot be imposed as the situation was covered by the provisions of the Recognition of Foreign Country Money Judgments Act.

11. On 2nd April, 1987, the court made a written propos- al to all parties for considering reconciliatory interim relief to the gas victims. In September, 1987, UCC and the Govt. of India sought time from the Court of Distt. Judge, Bhopal, to explore avenues for settlement. It has been asserted by the learned Attorney General that the possibility of settlement was there long before the full and final settlement was effected. He sought to draw our attention to the assertion that the persons concerned were aware that efforts were being made from time to time for settlement. However, in November'87 both the Indian Govt. and the Union Carbide announced that settlement talks had failed and Judge Deo extended the time.

12. The Distt. Judge of Bhopal on 17th December, 1987 ordered interim relief amounting to Rs.350 crores. Being aggrieved thereby the UCC filed a Civil Revision which was registered as Civil Revision Petition No. 26/88 and the same was heard. On or about 4th February, 1988, the Chief Judicial Magistrate of Bhopal ordered notice for warrant on Union Carbide, Hong Kong for the criminal case filed by CBI against Union Carbide. The charge sheet there was under sections 304, 324, 326, 429 of the Indian Penal Code read with section 35 IPC and the charge was against S/Shri Warren Anderson, Keshub Mahindra. Vijay Gokhale, J. Mukund, Dr. R.B. Roy Chowdhay. S.P. Chowdhary, K.V. Shetty, S.1. Qureshi and Union Carbide of U.S.A., Union Carbide of Hong Kong and Union Carbide having Calcutta address. It charged the Union Carbide by

saying that MIC gas was stored and it was further stated that MIC had to be stored and handled in stainless steel which was not done. The charge sheet, inter alia, stated that a Scientific Team headed by Dr. Varadarajan had concluded that the factors which had led to the toxic gas leakage causing its heavy toll existed in the unique properties of very high reactivity, volatility and inhalation toxicity of MIC. It was further stated in the charge sheet that the needless storage of large quantities of the material in very large size containers for inordinately long periods as well as insufficient caution in design, in choice of materials of construction and in provision of measuring and alarm instruments, together with the inadequate controls on systems of storage and on quality of stored materials as well as lack of necessary facilities for quick effective disposal of material exhibiting instability, led to the accident. It also charged that MIC was stored in a negligent manner and the local administration was not informed, inter alia, of the dangerous effect of the expo- sure of MIC or the gases produced by its reaction and the medical steps to be taken immediately. It was further stated that apart from the design defects the UCC did not take any adequate remedial action to prevent back flow of solution from VGS into RVVH and PVH lines. There were various other acts of criminal negligence alleged. The High Court passed an order staying the operation of the order dated 17.12.87 directing the defendant-applicant to deposit Rs.3,500 mil- lions within two months from the date of the said order. On 4th April, 1988 the judgment and order were passed by the High Court modifying the order of the Distt. Judge, and granting interim relief of Rs.250 crores. The High Court held that under the substantive law of torts, the Court has jurisdiction to grant interim relief under Section 9 of the CPC. On 30th June, 1988 Judge Deo passed an order restraining the Union Carbide from settling with any individual gas leak plaintiffs. On 6th September, 1988 special leave was granted by this Court in the petition filed by UCC against the grant of interim relief and Union of India was also

granted special leave in the petition challenging the reduction of quantum of compensation from Rs.350 crores to Rs.250 crores. Thereafter, these matters were heard in November- December'88 by the bench presided over by the learned Chief Justice Of India and hearing, continued also in January Feb- ruary'89 and ultimately on 14-15th February, 1989 the order culminating in the settlement was passed.

13. In judging the constitutional validity of the Act, the subsequent events, namely, how the Act has worked itself out, have to be looked into. It is, therefore, necessary to refer to the two orders of this Court. The proof of the cake is in its eating, it is said, and it is perhaps not possible to ignore the terms of the settlement reached on 14th and 15th February, 1989 in considering the effect of the language used in the Act. Is that valid' or proper--or has the Act been worked in any improper way? These questions do arise.

14. On 14th February, 1989 an order was passed in C.A. Nos. 3187-88/88 with S.L.P. (C) No. 13080/88. The parties thereto were UCC and the Union of India as well as Jana Swasthya Kendra, Bhopal, Zehraeli Gas Kand Sangharsh Morcha, Bhopal. MP. That order recited that having considered all the facts and the circumstances of the case placed before the Court, the material relating to the proceedings in the Courts in the United States of America, the offers and counter-offers made between the parties at different stages during the various proceedings, as well as the complex issues of law and fact raised and the submissions made thereon, and in particular the enormity of human suffering occasioned by the Bhopal Gas disaster and the pressing urgency to provide immediate and substantial relief to victims of the disaster, the 'Court found that the case was preeminently fit for an overall settlement between the parties covering all litigations, claims, rights and liabilities relating to and arising out of the disaster and it was found just, equitable and reasonable to pass, inter alia, the following orders:

.lm "(1) The Union Carbide Corporation shall pay a sum of U.S. Dollars 470 million (Four hundred and seventy millions) to the Union of India in full settlement of all claims, fights and liabilities related to and arising out of Bhopal Gas disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31st March, 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand transferred to this Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending

15. A written memorandum was filed thereafter and the Court on 15th February, 1989 passed an order after giving due consideration thereto. The terms of settlement were as follows:

"1. The parties acknowledge that the order dated February 14, 1989 disposes of in its entirety all proceedings in Suit No. 1113 of 1986. This settlement shall finally dispose of all past, present and future claims, causes of action and civil and criminal proceedings (of any nature whatsoever wherever pending) by all Indian citizens and all public and private entities with respect to all past, present or future deaths, personal injuries, health effects, compensation, losses, damages and civil and criminal complaints of any nature whatsoever against UCC, Union Carbide India Limited, Union Carbide Eastern, and all of their subsidiaries and affiliates as well as each of their present and former directors, officers, employees, agents, representatives, attorneys, advocates and solicitors arising out of, relating to or connected with the Bhopal gas leak disaster, including past, present and future claims, causes of action and proceedings against each other. All such claims and causes of action whether within or outside India of Indian citizens, public or private entities

are hereby extinguished, including without limitation each of the claims filed or to be filed under the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme 1985, and all such civil proceedings in India are hereby transferred to this Court and are dismissed without prejudice, and all such criminal proceedings including contempt proceedings stand quashed and accused deemed to be acquitted.

2. Upon full payment in accordance with the Court's directions the undertaking given by UCC pursuant to the order dated November 30, 1986 in the District Court, Bhopal stands discharged, and all orders passed in Suit No. 1113 of 1986 and or in any Revision there from, also stand discharged."

16. It appears from the statement of objects & reasons of the Act that the Parliament recognized that the gas leak disaster involving the release, on 2nd and 3rd December, 1984 of highly noxious and abnormally dangerous gas from a plant of UCIL, a subsidiary of UCC, was of an unprecedented nature, which resulted in loss of life and damage to property on an extensive scale, as mentioned before. It was stated that the victims who had managed to survive were still suffering from the adverse effects and the further complications which might arise in their cases, of course, could not be fully visualised. It was asserted by Ms. Indira Jaising that in case of some of the victims the injuries were carcinogenic and ontogenic and these might lead to further genetic complications and damages. The Central Govt. and the Govt. of Madhya Pradesh and various agencies had to incur expenditure on a large scale for containing the disaster and mitigating or otherwise coping with the effects thereto. Accordingly, the Bhopal Gas Leak Disaster (Processing of Claims) Ordinance, 1985 was promulgated, which provided for the appointment of a Commissioner for the welfare of the victims of the disaster and for the formulation of the Scheme to provide for various matters necessary for processing of the claims and for the utilization

by way of disbursal or otherwise of amounts received in satisfaction of the claims.

17. Thereafter, the Act was passed which received the assent of the President on 29th March, 1985. Section 2(b) of the Act defines 'claim'. It says that "claims" means--(i) a claim, arising out of, or connected with, the disaster, for compensation or damages for any loss of life or personal injury which has been, or is likely to be suffered; (ii) a claim, arising out of, or connected with, the disaster, for any damage to property which has been, or is likely to be, sustained; (iii) a claim for expenses incurred or required to be incurred for containing the disaster or mitigating or otherwise coping with the effects of the disaster; (iv) any other claim (including any claim by way of loss of business or employment) arising out of, or connected with, the disaster. A "claimant" is defined as a person entitled to make a claim. It has been provided in the Explanation to Section 2 that for the purpose of clauses (b) and (c), where the death of a person has taken place as a result of the disaster, the claim for compensation or damages for the death of such person shall be for the benefit of the spouse, children (including a child in the womb) and other heirs of the deceased and they shall be deemed to be the claimants in respect thereof.

18. Section 3 is headed "Power of Central Govt. to represent claimants". It provides as follows:

"3(1) Subject to the other provisions of this Act, the Central Government shall, and shall have the exclusive right to, represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such persons. (2) In particular and without prejudice to the generality of the provisions of sub-section (1), the purposes referred to therein include--

(a) Institution of any suit or other proceeding in or before any court or other authority (whether within or outside India) or withdraw- al of any such suit or other proceeding, and
(b) entering into a compromise.
(3) The provisions of sub-section (1) shall apply also in relation to claims in respect of which suits or other proceedings have been instituted in or before any court or other authority (whether within or outside India) before the commencement of this Act: Provided that in the case of any such suit or other proceeding with respect to any claim pending immediately before the commencement of this Act in or before any court or other authority outside India, the Central Govt. shall represent, and act in place of, or along with, such claimant, if such court or other authority so permits."

19. Section 4 of the Act is headed as "Claimant's right to be represented by a legal practitioner". It provides as follows:

"Notwithstanding anything contained in section 3, in representing, and acting in place of, any person in relation to any claim, the Central Government shall have due regard to any matters which such person may require to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim."
20. Section 5 deals with the powers of the Central Govt.

and enjoins that for the purpose of discharging its functions under this Act, the Central Govt. shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908.Section 6 provides for the appointment of a Commissioner and other officers and employees. Section 7 deals with powers to delegate. Section 8 deals with limitation, while section 9 deals with the power to frame Scheme. The Central Govt. was enjoined to frame a scheme which was to take into account, inter alia, the processing of the

claims for securing their enforcement, creation of a fund for meeting expenses in connection with the administration of the Scheme and of the provisions of this Act and the amounts which the Central Govt. might, after due appropriation made by the Parliament by law in that behalf, credit to the fund referred to in clauses above and any other amounts which might be credited to such fund. Such Scheme was enjoined, as soon as after it had been framed, to be laid before each House of Parliament. Section 10 deals with removal of doubts. Section 11 deals with the overriding effect and provides that the provisions of the Act and of any Scheme framed there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or any instrument having effect by virtue of any enactment other than the Act.

21. A Scheme has been framed and was published on 24th September, 1985. Clause 3 of the said Scheme provides that the Deputy Commissioners appointed under Section 6 of the Act shall be the authorities for registration of Claims (including the receipt, scrutiny and proper categorisation of such claims under paragraph 5 of the Scheme) arising within the areas of their respective jurisdiction and they shall be assisted by such other officers as may be appointed by the Central Govt. under Section 6 of the Act for scrutiny and verification of the claims and other related matters. The Scheme also provides for the manner of filing claims. It enjoins that the Dy. Commissioner shall provide the required forms for filing the applications. It also provides for categorisation and registration of claims. Sub-clause (2) of Clause 5 enjoins that the claims received for registration shall be placed under different heads.

22. Sub-clause (3) of clause 5 enjoins that on the consideration of claims made under paragraph 4 of the Scheme, if the Dy. Commissioner is of the opinion that the claims fall in any category different from the category mentioned by the claimant, he may decide the appropriate category after giving an opportunity to the

claimant to be heard and also after taking into consideration any facts made available to him in this behalf. Sub-clause (6) of Clause 5 enjoins that if the claimant is not satisfied with the order of the Dy. Commissioner, he may prefer an appeal against such order to the Commissioner, who shall decide the same.

23. Clause 9 of the Scheme provides for processing of Claims Account Fund, which the Central Govt. may, after due appropriation made by Parliament, credit to the said Fund. It provides that there shall also be a Claims and Relief Fund, which will include the amounts received in satisfaction of the claims and any other amounts made available to the Commissioner as donation or for relief purposes. Sub clause (3) of clause 10 provides that the amount in the said Fund shall be applied by the Commissioner for, disbursal of amounts in settlement of claims, or as relief, or apportionment of part of the Fund for disbursal of amounts in settlement of claims arising in future or for disbursal of amounts to the Govt. of Madhya Pradesh for the social and economic rehabilitation of the persons affected by the Bhopal gas leak disaster.

24. Clause 11 of the Scheme deals with the disbursal, apportionment of certain amounts, and sub-clause (2) thereof enjoins that the Central Govt. may determine the total amount of compensation to be apportioned for each category of claims and the quantum of compensation payable, in general, in relation to each type of injury or loss. Sub-clause (5) thereto provides that in case of a dispute as to disbursal of the amounts received in satisfaction of claims, an appeal shall lie against the order of the Dy. Commissioner to the Additional Commissioner, who may decide the matter and make such disbursal as he may, for reasons to be recorded in writing, think fit. The other clauses are not relevant for our present purposes.

25. Counsel for different parties in all these matters have canvassed their submissions before us for the gas victims. Mr. R.K. Garg, Ms.

Indira Jaising, and Mr. Kailash Vasudev have made various submissions challenging the validity of the Act on various grounds. They all have submitted that the Act should be read in the way they suggested and as a whole. Mr. Shanti Bhushan, appearing for interveners on behalf of Bhopal Gas Peedit Mahila Udyog Sangathan and following him Mr. Prashant Bhushan have urged that the Act should be read in the manner canvassed by them and if the same is not so read then the same would be violative of the fundamental rights of the victims, and as such unconstitutional. The learned Attorney General assisted by Mr. Gopal Subramanium has on the other hand urged that the Act is valid and constitutional and that the settlement arrived at on 14th/15th February is proper and valid.

26. In order to appreciate the background Ms. Indira Jaising placed before us the proceedings of the Lok Sabha wherein Mr. Veerendra Patil, the Hon'ble Minister, stated on March 27, 1985 that the tragedy that had occurred in Bhopal on 2nd and 3rd December, 1984 was unique and unprecedented in character and magnitude not only for our country but for the entire world. It was stated that one of the options available was to settle the case in Indian courts. The second one was to file the cases in American courts. Mr. Patil reiterated that the Govt. wanted to proceed against the parent company and also to appoint a Com- mission of Inquiry.

27. Mr. Garg in support of the proposition that the Act was unconstitutional, submitted that the Act must be examined on the touchstone of the fundamental rights on the basis of the test laid down by this court in state of Madras v. V.G, Row, [1952] SCR 597, There at page 607 of the report this Court has reiterated that in considering the reasonableness of the law imposing restrictions on the fundamental rights, both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness. And the test of reasonableness,

wherever prescribed, should be applied to each individual Statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. (The emphasis supplied). Chief Justice Patanjali Sastri reiterated that in evaluating such elusive factors and forming their own conception of what is reasonable, in the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision would play an important role.

28. Hence, whether by sections, 3, 4 & 11 the rights of the victims and the citizens to fight for their own causes and to assert their own grievances have been taken away validly and properly, must be judged in the light of the prevailing conditions at the time, the nature of the right of the citizen, the purpose of the restrictions on their rights to sue for enforcement in the courts of law or for punishment for offences against his person or property, the urgency and extent of the evils sought to be remedied by the Act, and the proportion of the impairment of the rights of the citizen with reference to the intended remedy pre- scribed. According to Mr. Garg, the present position called for a comprehensive appreciation of the national and international background in which precious rights to life and liberty were enshrined as fundamental rights and remedy for them was also guaranteed under Article 32 of the Constitution. He sought to urge that multinational corporations have assumed powers or potencies to override the political and economic independence of the sovereign nations which have been used to take away in the last four decades, much wealth out of the Third World. Now these are plundered much more than what was done to the erstwhile colonies by imperialist

nations in the last three centuries of foreign rule. The role of courts in cases of conflict between rights of citizens and the vast economic powers claimed by multinational corporations to deny moral and legal liabilities for their corporate criminal activities should not be lost sight of. He, in this background, urged that these considerations assume immense importance to shape human fights jurisprudence under the Constitution, and for the Third World to regulate and control the power and economic interests of multinational corporations and the power of exploitation and domination by developed nations without submitting to due observance of the laws of the developing countries. It therefore appears that the production of, or carrying on trade in dangerous chemicals by multinational industries on the soil of Third World countries call for strictest enforcement of constitutional guarantees for enjoying human fights in free India, urged Mr. Garg. In this connection, our attention was drawn to the Charter of Universal Declaration of Human Rights. Article 1 of the Universal Declaration of Human Rights, 1948 reiterates that all human-beings are born free and equal in dignity and rights. Article 3 states that everyone has right to life, liberty and security of person. Article 6 of the Declaration states that everyone has the right to recognition everywhere as a person before the law. Article 7 states that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration of Human Rights and against any incitement to such discrimination. Article 8 states that everyone has the right to an effective remedy by competent National Tribunal for acts violating fundamental rights guaranteed to him by the Constitution or by the law. It is, therefore, necessary to bear in mind that Indian citizens have a fight to live which cannot be taken away by the Union of India or the Govt. of a State, except by a procedure which is just, fair and reason- able. The right to life includes the fight to protection of limb against mutilation and physical injuries,

and does not mean merely the fight to breathe but also includes the fight to livelihood. It was urged that this right is available in all its dimension till the last breath against all injuries to head, heart and mind or the lungs affecting the citizen or his next generation or of genetic disorders. The enforcement of the right to life or limb calls for adequate and appropriate reliefs enforceable in courts of law and of equity with sufficient power to offer adequate deterrence in all cases of corporate criminal liability under strict liability, absolute liability, punitive liability and criminal prosecution and punishment to the delinquents. The damages awarded in civil jurisdiction must be commensurate to meet well-defined demands of evolved human rights jurisprudence in modern world. It was, therefore, submitted that punishment in criminal jurisdiction for serious offences is independent of the claims enforced in civil jurisdiction and no immunity against it can be granted as part of settlement in any civil suit. If any Act authorizes or permits doing of the same, the same will be unwarranted by law and as such bad. The Constitution of India does not permit the same.

29. Our attention was drawn to Article 21 of the Constitution and the principles of international law. Right to equality is guaranteed to every person under Art. 14 in all matters like the laws of procedure for enforcement of any legal or constitutional right in every jurisdiction, substantive law defining the rights expressly or by necessary implications, denial of any of these rights to any class of citizens in either field must have nexus with constitution- ally permissible object and can never be arbitrary. Arbitrariness is, therefore, anti-thetical to the right of equality. In this connection, reliance was placed on the observations of this Court in E.P. Royappa v. State of Tamil Nadu & Anr., [1974] 2 SCR 348 and Maneka Gandhi v. Union of India, [1978] 2 SCR 621 where it was held that the view that Articles 19 & 21 constitute watertight compartments has been rightly overruled. Articles dealing with

different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at any point of time. They. are all parts of an integrated scheme in the Constitution and must be preserved and cannot be destroyed arbitrarily. Reliance was placed on the observations in R.D. Shetty v. The I.A.A. of India & Ors., [1979] 3 SCR 1014. Hence, the rights of the citizens to fight for remedies and enforce their rights flowing from the breach of obligation in respect of crime cannot be obliterated. The Act and Sections 3, 4 & 11 of the Act in so far as these purport to do so and have so operated, are violative of Articles 14, 19(1)(g) and 21 of the Constitution. The procedure envisaged by the said Sections deprives the just and legitimate rights of the victims to assert and obtain their just dues. The rights cannot be so destroyed. It was contended that under the law the victims had right to ventilate their rights.

30. It was further contended that Union of India was a joint tort-feasor along with UCC and UCIL. It had negligently permitted the establishment of such a factory without proper safeguards exposing the victims and citizens to great danger. Such a person or authority cannot be entrusted to represent the victims by denying the victims their rights to plead their own cases. It was sub- mitted that the object of the Act was to fully protect people against the disaster of highly obnoxious gas and disaster of unprecedented nature. Such an object cannot be achieved without enforcement of the criminal liability by criminal prosecution. Entering into settlement without reference to the victims was, therefore, bad and unconstitutional, it was urged. If an Act, it was submitted, permits such a settlement or deprivation of the rights of the victims, then the same is bad.

31. Before we deal with the various other contentions raised in this case, it is necessary to deal with the application for intervention and submission made on behalf of the Coal India in Writ Petition No. 268/89 wherein Mr. L.N. Sinha in his written submission had urged

for the intervener that Article 21 of the Constitution neither confers nor creates nor determines the dimensions nor the permissible limits of restrictions which appropriate legislation might impose on the right to life or liberty. He submitted that provisions for procedure are relevant in judicial or quasi judicial proceedings for enforcement of rights or obligations. With regard to alteration of rights, procedure is governed by the Constitution directly. He sought to intervene on behalf of Coal India and wanted these submissions to be taken into consideration. However, when this contention was sought to be urged before this Court on 25th April, 1989, after hearing all the parties, it appeared that there was no dispute between the parties in the instant writ petitions between the victims and the Government of India that the rights claimed in these cases are referable to Article 21 of the Constitution. Therefore, no dispute really arises with regard to the contention of Coal India and we need not consider the submissions urged by Shri Sinha on behalf of the intervener in this case. It has been so re- corded.

32. By the order dated 3rd March, 1989, Writ Petitions Nos. 268/89 and 164/86 have been directed to be disposed of by this Bench.' We have heard these two writ petitions along with the other writ petitions and other matters as indicated hereinbefore. The contentions are common. These writ petitions question the validity of the Act and the settlement entered into pursuant to the Act. Writ Petition No. 164/86 is by one Shri Rakesh Shrouti who is an Indian citizen and claims to be a practicing advocate having his residence at Bhopal. He says that he and his family members were at Bhopal on 2nd/3rd December, 1984 and suffered immensely as a result of the gas leak. He challenges the validity of the Act on various grounds. He contends that the Union of India should not have the exclusive right to represent the victims in suits against the Union Carbide and thereby deprive the victims of their right to sue and deny access to justice. He further challenges the right of the Union of India to

represent the victims against Union Carbide because of conflict of interests. The conduct of the Union of India was also deprecated and it was further stated that such conduct did not inspire confidence. In the premises, the said petitioner sought a declaration under Article 32 of the Constitution that the Act is void, inoperative and unenforceable as violative of Articles 14, 19 & 21 of the Constitution- Similarly, the second writ petition, namely, writ petition No. 268/89 which is filed by Sh. Charan Lal Sahu, who is also a practicing Advocate on behalf of the victims and claims to have suffered damages as a result of the gas leak. challenges the Act. He further challenges the settlement entered into under the Act. He says that the said settlement was violative of principles of natural justice and the fundamental right of the said petitioner and other victims. It is his case that in so far as the Act permits such a course to be adopted, such a course was not permissible under the Constitution. He further asserts that the Union of India was negligent and a joint tort-feasor. In the premises, according to him, the Act is bad, the settlement is bad and these should be set aside.

33. In order to determine the question whether the Act in question is constitutionally valid or not in the light of Articles 14, 19(l)(g) and 21 of the Constitution, it is necessary to find out what does the Act actually mean and provide for. The Act in question, as the Preamble to the Act states, was passed in order to confer powers on the Central Government to secure that the claims arising out of, or connected with, the Bhopal gas leak disaster are dealt with speedily, effectively, equitably and to the best advantage of the claimants and for matters incidental thereto. There- fore, securing the claims arising out of or connected with the Bhopal gas leak disaster is the object and purpose of the Act. We have noticed the proceedings of the Lok Sabha in connection with the enactment of the Act. Our attention was also drawn by the learned Attorney General to the proceedings of the Rajya Sabha wherein the Hon'ble Minister, Shri

Virendra Patil explained that the bill enabled the Govern- ment to assume exclusive right to represent and act, whether within or outside India in place of every person who had made or was entitled to make claim in relation to the disaster and to institute any suit or other proceedings or enter into any compromise as mentioned in the Act. The whole object of the Bill was to make procedural changes to the existing Indian law which would enable the Central Government to take up the responsibility of fighting litigation on behalf of these victims. The first point was that it sought to create a locus standi in the Central Government to file suits on behalf of the victims. The object of the Statute. it was highlighted, was that because of the dimension of the tragedy covering thousands of people, large number of whom being poor, would not be able to go to the courts, it was necessary to create the locus standi in the Central Government to start the litigation for payment of compensation in the courts on their behalf. The second aspect of the Bill was that by creating this locus standi in the Central Government, the Central Government became competent to institute judicial proceedings for payment of compensation on behalf of the victims. The next aspect of the Bill was to make a distinction between those on whose behalf suits had already been filed and those on whose behalf proceedings had not yet then been instituted. One of the Members emphasised that under Article 21 of the Constitution, the personal liberty of every citizen was guaranteed and it has been widely interpreted as to what was the meaning of the expression 'personal liberty'. It was cmphasised that one could not take away the right of a person, the liberty of a person, to institute proceedings for his own benefit and for his protection. It is from this point of view that it was necessary, the member debated, to preserve the right of a claimant to have his own lawyers to represent him along with the Central Government in the proceedings under Section 4 of the Act, this made the Bill constitution- ally valid.

34. Before we deal with the question of constitutionality, it has to be emphasized that the Act in question deals with the Bhopal gas leak disaster and it deals with the claims meaning thereby claims arising out of or connected with the disaster for compensation of damages for loss of life or any personal injury which has been or is likely to be caused and also claims arising out of or connected with the disaster for any damages to property or claims for expenses incurred or required to be incurred for containing the disaster or making or otherwise coping with the impact of the disaster and other incidental claims. The Act in question does not purport to deal with the criminal liability, if any, of the parties or persons concerned nor it deals with any of the consequences flowing from those. This position is clear from the provisions and the Preamble to the Act. Learned Attorney General also says that the Act does not cover criminal liability. The power that has been given to the Central Government is to represent the 'claims', meaning thereby the monetary claims. The monetary claims, as was argued on behalf of the victims, are damages flowing from the gas disaster. Such damages, Mr. Garg and Ms. Jaising submitted, are based on strict liability, absolute liability and punitive liability. The Act does not, either expressly or impliedly, deal with the extent of the damages or liability. Neither section 3 nor any other section deals with any consequences of criminal liability. The expression "the Central Government shall, and shall have the exclusive right to, represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person", read as it is, means that Central Government is substituted and vested with the exclusive right to act in place of the victims, i.e., eliminating the victims, their heirs and their legal representatives, in respect of all such claims arising out of or connected with the Bhopal gas leak disas- ter. The right, therefore, embraces right to institute proceedings within or outside India along

with right to institute any suit or other proceedings or to enter into compromise. Sub-section 1 of section 3of the Act, there- fore, substitutes the Central Government in place of the victims. The victims, or their heirs and legal representatives, get their rights substituted in the Central Government along with the concomitant right to institute such proceedings, withdraw such proceedings or suit and also to enter into compromise. The victims or the heirs or the legal representatives of the victims, are substituted and their rights are vested in the Central Government. This happens by operation of section 3 which is the legislation in question. Sub-section (3) of section 3 makes it clear that the provisions of sub-section (1) of section 3 shall also apply in relation to claims in respect of which suits or other proceedings have been instituted in or before any court or other authority (whether within or outside India) before the commencement of this Act, but makes a distinction in the case of any such suit or other proceeding with respect to any claim pending immediately before the commencement of this Act in or before any court or other authority outside India, and provides that the Central Government shall represent, and act in place of, or along with, such claimant, if such court or other authority so permits. Therefore, in cases where such suits or proceedings have been instituted before the commencement of the Act in any court or before any authority outside India, the section by its own force will not come into force in substituting the Central Government in place of the victims or the heirs or their legal representatives, but the Central Government has been given the right to act in place of, or along with, such claimant, provided such court or other authority so permits. It is to have adherence and conformity with the procedure of the countries or places outside India, where suits or proceedings are to be instituted or have been instituted. There- fore, the Central Government is authorised to act along with the claimants in respect of proceedings instituted outside India subject to the orders of such courts or the authorities. Is such a right valid and proper?

35. There is the concept known both in this country and abroad, called "parens patriae. Dr. D.K. Mukherjea in his "Hindu Law of Religious and Charitable Trusts", Tagore Law Lectures, Fifth Edition, at page 404, referring to the concept of parens patriae, has noted that in English Law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognized King as the protector of all citizens and as parent. In Budhakaran Chankhani v. Thakur Prasad Shah, AIR 1942 Cal. 311 the position was explained by the Calcutta High Court at page 3 18 of the report. The same position was reiterated by the said Court in Banku Behary Mondal v. Banku Behary Hazra & Anr., AIR 1943 Cal. 203 at page 205 of the report. The position was further elaborated and explained by the Madras High Court in Medai Dalavoi T. Kumaraswami Mudaliar v. Medai Dalavoi Rajammal, AIR 1957 Mad. 563 at page 567 of the report. This Court also recognized the concept of parens patriae relying on the observations of Dr. Mukherjea aforesaid in Ram Saroop v. S.P. Sahi, [1959] 2 Supp. SCR 583, at pages 598 and 599. In the "Words and Phrases" Permanent edition, Vol. 35 at p. 99, it is stated that parens patriae is the inherent power and author- ity of a Legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words "parens patriae" meaning thereby 'the father of the country', were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability, (Emphasis supplied). Parens patriae jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term "parens patriae" differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within

its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and take into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the Directive Principles, Articles 38, 39 and 39A enjoins the State to take up these responsibilities. It is the protective measure to which the social welfare state is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further. Reference may be made to Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 US 592, 73 L. Ed. 2d 995, 1028. Ct, 3260 in this connection. There it was held by the Supreme Court of the United States of America that Commonwealth of Puerto have standing to sue as parens patriae to enjoin apple growers' discrimination against Puerto Rico migrant farm workers. This case illustrates in some aspect the scope of 'parens patriae'. The Commonwealth of Puerto Rico sued in the United States District Court for the Western District of Virginia, as parens patriae for Puerto Rican migrant farm workers, and against Virginia apple growers, to enjoin discrimination against Puerto Ricans in favour of Jamaican workers in violation of the Wagner-Peyser Act, and the Immigration and Nationality Act. The District Court dismissed the action on the ground that the Commonwealth lacked standing to sue, but the Court of Appeal for the Fourth Circuit reversed it. On certiorari, the United States Supreme Court affirmed. In the opinion by White, J. joined by Burger, Chief Justice and Brennan, Marshall,

Blackman, Rennquist, Stevens, and O'Connor, JJ., it was held that Puerto Rico had a claim to represent its quasi sovereign interests in federal court at least which was as strong as that of any State, and that it had parens patriae standing to sue to secure its residents from the harmful effects of discrimination and to obtain full and equal participation in the federal employment service scheme established pursuant to the Wagner-Peyser Act and the Immigration and Nationality Act of 1952. Justice White referred to the meaning of the expression "parens patriae". According to Black's Law Dictionary, 5th Edition 1979, page 1003, it means literally 'parent of the country' and refers traditionally to the role of the State as a sovereign and guardian of persons under legal disability. Justice White at page 1003 of the report emphasised that the parens patriae action had its roots in the common-law concept of the "royal prerogative". The royal prerogative included the right or responsibility to take care of persons who were legally unable, on account of mental incapacity, whether it proceeds from nonage, idiocy, or lunacy to take proper care of themselves and their property. This prerogative of parens patriae is inherent in the supreme power of every state, whether that power is lodged in a royal person or m the legislature and is a most beneficent function. After discussing several cases Justice White observed at page 1007 of the report that in order to maintain an action, in parens patriae, the state must articulate an interest apart from the interests of particular parties, and i.e. the State must be more than a nominal party. The State must express a quasi-sovereign interest. Again an instructive insight can be obtained from the observations of Justice Holmes of the American Supreme Court in the case of Georgia v. Tennessee Copper Co., 206 US 230, 51 L.Ed. 1038, 27 S Ct 618, which was a case involving air pollution in Georgia caused by the discharge of noxious gases from the defendant's plant in Tennessee. Justice Holmes at page 1044 of the report described the State's interest as follows:

"This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power .....

..... When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests"

36. Therefore, conceptually and from the jurisprudential point of view, especially in the background of the Preamble to the Constitution of India and the mandate of the Directive Principles, it was possible to authorize the Central Government to take over the claims of the victims to tight against the multinational Corporation in respect of the claims. Because of the situation the victims were under disability in pursuing their claims in the circumstances of the situation fully and properly. On its plain terms the State has taken over the exclusive right to represent and act in place of every person who has made or is entitled to make a claim for all purposes connected with such claim in the same manner and to the same effect as such person. Whether such provision is valid or not in the background of the requirement of the Constitution and the Code of Civil Procedure, is another debate. But there is no prohibition or inhibition, in our opinion, conceptually or jurisprudentially for Indian State taking over the claims of the victims or for the State acting for the victims as the Act has sought to provide. The actual meaning of what the Act has provided and the validity thereof, however, will have to be examined in the light of the specific submissions advanced in this case.

37. Ms. Indira Jaising as mentioned hereinbefore on behalf of some other victims drew out attention to the background of the passing of the Act in question. She drew our attention to the fact that the Act was to meet a specific situation that had arisen after the tragic disaster and the advent of American lawyers seeking to represent the victims in American courts. The Government's view, according to her, as was manifest from the Statement of Objects and Reasons, debates of the Parliament, etc. was that the interests of the victims would be best served if the Central Government was given the right to represent the victims in the courts of United States as they would otherwise be exploited by 'ambulance-chasers' working on contingency fees. The Government also proceeded initially on the hypothesis that US was the most convenient forum in which to sue UCC. The Government however feared that it might not have locus standi to represent the victims in the courts of the United States of America unless a law was passed to enable it to sue on behalf of the victims. The dominant object of the Act, therefore, according to her, was to give to the Government of India locus Standi to sue on behalf of the victims in foreign jurisdiction, a standing which it other- wise would not have had. According to her, the Act was never intended to give exclusive rights to the Central Government to sue on behalf of the victims in India or abroad. She drew our attention to the parliamentary debates as mentioned hereinbefore. She drew our attention to the expression 'parens patriae' as appearing in the Words and Phrases, Volume 31 p. 99. She contends that the Act was passed to provide locus standi only to represent in America. She drew our attention to the "American Constitutional Law by Laurence B. Triode, 1978 Edition at paragraph 3.24, where it was stated that in its capacity as proprietor, a state may satisfy the requirement of injury to its own interests by an assertion of harm to the state as such. It was further stated by the learned author there that the State may sue under the federal anti-trust laws to redress wrongs suffered by it as the owner of a railroad and as the owner and opera- tor of

various public institutions. It was emphasised that in its quasi-sovereign capacity, the state has an interest, independent of and behind the titles of its citizens, in all the earth and air within its domain. It was sought to be suggested that in the instant Act no such right was either asserted or mentioned. The State also in its quasi-sovereign capacity is entitled to bring suit against a private individual to enjoin a corporation not to discharge noxious gases from its out of state plant into the suing state's territory. Finally, it was emphasised that as 'parens patriae' on behalf of the citizens, where a state's capacity as parens patriae is not negated by the federal structure, the protection of the general health, comfort, and welfare of the state's inhabitants has been held to give the state itself a sufficient interest. Ms. Jaising sought to contend that to the extent that the Act was not confined to empowering the Government to sue on behalf of those who were not sui generis but extended also to representing those who are, this exercise of the power cannot be referable to the doctrine of 'parens patriae'. To the extent, it is not confined in enabling the Government to represent its citizens in foreign jurisdiction but empowered it to sue in local courts to the exclusion of the victims it cannot be said to be in exercise of doctrine of 'parens patriae', according to her. We are unable to agree. As we have indicated before conceptually and jurisprudentially there is no warrant in the background of the present Act, in the light of circumstances of the Act in question to confine the concept into such narrow field. The concept can be varied to enable the Government to represent the victims effectively in domestic forum if. the situation so warrants. We also do not find any reason to confine the 'parens patriae' doctrine to only quasi sovereign right of the State independent of and behind the title of the citizens, as we shall indicate later.

38. It was further contended that deprivation of the rights of the victims and denial of the rights of the victims or the fights of the

heirs of the victims to access to justice was unwarranted and unconstitutional. She submitted that it has been asserted by the Government that the Act was passed pursuant to Entry 13 of the List I of the Seventh Schedule to the Constitution. It was therefore submitted that to the extent it was a law relating to civil procedure, it sets up a different procedure for the Bhopal gas victims and denies to them equality before law, violating Article 14of the Constitution. Even assuming that due to the magnitude of the disaster, the number of claimants and their disability they constituted a separate class and that it was permissible to enact a special legislation setting up a special procedure for them, the reasonableness of the procedure has still to be tested. Its reasonableness, according to her, will have to be judged on the touchstone of the existing Civil Procedure Code of 1908 and when so tested, it is found wanting in several respects. It was also contended by the Government that it was a legislation relating to "actionable wrongs" under Entry 8 of the Concurrent List of the Seventh Schedule. But so read, she said, it could only deal with the procedural aspects and not the substantive aspect of "actionable wrongs". If it does, then the reasonableness of a law must be judged with reference to the existing substantive law of actionable wrongs and so judged it is in violation of many constitutional rights as it takes away from the victims the right to sue for actionable wrongs according to counsel for the victims. According to her, it fails to take into account the law of strict liability for ultra hazardous activity as clarified by this Court in M.C. Mehta's, case (supra). She further submitted that it is a bad Act as it fails to provide for the right to punitive damages and destruction of environment.

39. It was contended on behalf of the Central Government that the Act was passed to give effect to the Directive Principle as enshrined under Article 39-A of the Constitution of India. It was, on the other side, submitted that it is not permissible for the State to grant legal

aid on pain of destroying rights that inhere in citizens or on pain of demanding that the citizens surrender their rights to the State. The Act in fact demands a surrender of rights of the citizens to the State. On the interpretation of the Act, Ms. Indira Jaising submitted that sections 3 and 4 as noted above, give exclusive power to the Government to represent the victims and there is deprivation of the victims' right to sue for the wrongs done to them which is uncanalised and unguided and the expression "due regard" in section 4 of the Act does not imply consent and as such violative of the rights of the victims. The right to be associated with the conduct of the suit is hedged in with so many conditions that it is illusory. According to her, a combined reading of sections 3 and 4 of the act lead to the conclusion that the victims are displaced by the Central Government which has constituted itself as the "surrogate" of the claimants, that they have no control over the proceedings, that they have no right to decide whether or not to compromise and if so on what terms and they have no right to be heard by the court before any such compromise is affected. Therefore, section 3 read with section 4, according to her, hands over to the Government all effective rights of the victims to sue and is a naked usurpation of power. It was submitted that in any event on a plain reading of the Act, section 3 read with section 4 did not grant the Government immunity from being sued as a joint tort-feasor.

40. It was further urged that section 9 makes the Government the total arbitor in the matter of the registration, processing and recording of claims. Reference was made to section 9(2)(a), (b) and (c) and disbursal of claims under sections 9(2)(f) and 10. It was urged that the Deputy Com- missioner and Commissioner appointed under the Act and the Scheme are subordinates and agents of the Central Government. They replace impartial and independent civil court by officers and subordinates of the Central Government. Clause 11 of the Scheme makes the Central Government, according

to counsel, judge in its own cause inasmuch as the Central Government could be and was in fact a joint tort-feasor. It was submitted that sections 5 to 9 of the Act read with the Scheme do not set up a machinery which is constitutionally valid. The Act, it was urged, deprives the victims of their rights out of all proportion to the object sought to be achieved, namely, to sue in foreign jurisdiction or to represent those incapable of representing them- selves. The said object could be achieved, according to counsel, by limiting the right to sue in foreign jurisdiction alone and in any event representing only those victims incapable of representing themselves. The victims who wish to sue for and on their own behalf must have power to sue, all proper and necessary parties including Government of India, Government of Madhya Pradesh, UCIL and Shri Arjun Singh to vindicate their right to life and liberty and their rights cannot and should not be curtailed, it was submitted. Hence, the Act goes well beyond its objects and imposes excessive restriction amounting to destruction of the rights of the victims, according to. counsel. In deciding whether any rights are affected, it is not the object of the Act that is relevant but its direct and inevitable effect on the rights of the victims that is material. Hence no matter how laudable the object of the Act is alleged to be by the Government of India, namely, that it is an Act to give effect to Directive Principles enshrined in Article 39-A of the Constitution, the direct and inevitable effect of section 3 according to counsel for the victims is to deprive the victims of the right to sue for and on their own behalf through counsel of their choice and instead empower the Central Government to sue for them.

41. The Act is, it was contended, unconstitutional because it deprives the victims of their right to life and personal liberty guaranteed by Article 21. The right to life and liberty includes the right to sue for violations of the right, it was urged. The right to life guaranteed by Article 21 must be interpreted to mean all that makes

life livable, life in all its fullness. According to counsel, it includes the right to livelihood. Reference was made to the decision of Olga Tellis v. B.M.C., [1985] Supp. 2 SCR 51 at p. 78-83. This right, it was contended, is inseparable from the remedy. It was urged that personal liberty includes a wide range of freedoms to decide how to order one's affairs. Reference was made to Maneka Gandhi v. Union of India, (supra), The right to life and liberty also includes the right to healthy environment free from hazardous pollutants. The right to life and liberty, it was submitted, is inseparable from the remedy to judicial vindication of the violation of that right--the right of access to justice must be deemed to be part of that right. Therefore, the importance is given to the right to file a suit for an actionable wrong. See Ganga Bai v. Vijay Kumar, [1974] 3 SCR 882 at 886. According to counsel appearing for the victims, the Act read strictly infringes the right to life and personal liberty because the right to sue by the affected person for damages flowing from infringement of their rights is taken away. Thus, it was submitted that not just some incidents of the right to life, but the right itself in all its fullness is taken away. Such depravation, according to counsel, of the right is not in accordance with procedure established by law inasmuch as the law which takes away the right, i.e., impugned Act is neither substantively nor procedurally just, fair or reasonable. A law which divests the victims of the right to sue to vindicate for life and personal liberty and vests the said right in the Central Government is not just, fair or reasonable. The victims are sui generis and able to decide for themselves how to vindicate their claims in accordance with law. There is, there- fore, no reason shown to exist for divesting them of that right and vesting that on the Central Government.

42. All the counsel for the victims have emphasised that vesting of the right in Central Government is bad and unreasonable because there is conflict of interests between the Central Government and the victims. It was emphasised that the conflict of interest has already

prejudiced the victims in the conduct of the case inasmuch as a compromise unacceptable to the victims has been entered into in accordance with the order of this Court of 14th/15th February, 1989 without heating the victims. This conflict of interest will continue, it was emphasised, to adversely affect the victims inasmuch as section 9 of the Act read with clauses 5, 10 and 11 of the Scheme empower the Central Government to process claims, determine the category into which these fall, deter- mine the basis on which damages will be payable to each category and determine the amount of compensation payable to each claimant. Learned counsel urged that the right to a just, fair and reasonable procedure was itself a guaranteed fundamental right under Article 14 of the Constitution. This included right to natural justice. Reference was made to Olga Tellis's. case (supra) and S.L. Kapoor v. Jagmohan, [1981] 1 SCR 746 at 753, 766. The right to natural justice is included in Article 14 Tulsi Ram v. Union of India, [1985] Supp. 2 SCR 131. Reference was also made to Maneka Gandhi's, case (supra). It was contended by counsel that the right to natural justice is the right to be heard by Court at the pre-decisional stage, i.e., before any compromise is effected and accepted. Reference was made to the decision of this Court in Swadeshi Cotton v. Union of India, [1981] 2 SCR 533. It was submitted that natural justice is a highly effective tool devised by the Courts to ensure that a statutory authority arrives at a just decision. It is calculated to act as a healthy check on the abuse of power. Natural justice is not dispensable nor is it an empty formality. Denial of that right can and has led to the miscarriage of justice in this case. According to counsel, if the victims had been given an opportunity to be heard, they would, inter alia, have pointed out that the amount agreed to be paid by UCC was hopelessly inadequate and that UCC, its officer and agents ought not to be absolved of criminal liability, that the Central Government itself was liable to have been sued as a joint tort-feasor and, according to counsel, had agreed to submit to a decree if found liable under the order dated 31st December, 1985,

that suits had been filed against the State of Madhya Pradesh, Shri Arjun Singh and UCIL which said suits cannot be deemed to have been settled by the compromise/order of 14th/15th February, 1989. It was also pointed out that Union of India was under a duty to sue UCIL, which it had failed and neglected to do. It was submitted that to the extent that the statute does not provide for a pre-decisional hearing on the fairness of the proposed settlement or compromise by Court, it is void as offending natural justice hence violative of Articles 14 and 21 of the Constitution. Alternatively, it was contended by the counsel that since the statute neither expressly nor by necessary implication bars the right to be heard by Court before any compromise is effected such a right to a pre- decisional hearing by Court must be read into section 3(2)(b) of the Act. Admittedly, it does not expressly exclude the right to a hearing by Court prior to any settlement being entered into. Far from excluding such a right by necessary implication, having regard to the nature of the rights affected, i.e., the right to life and personal liberty, such a right to hearing must be read into the Act in order to ensure that justice is done to the victims, according to all the counsel. The Act sets up a procedure different from the ordinary procedure established by law, namely, Civil Procedure Code. But it was submitted that the Act should be harmoniously read with the provisions of Civil Procedure Code and if it is not so read, then the Act in question would be unreasonable and unfair. In this connection, reliance was placed on the provisions of Order I, Rule 4, Order 23, Rule 1 proviso, Order 23, Rule 3-9 and Order 32, Rule 7 of CPC and it was submitted that these are not inconsistent with the Act. On the contrary these are necessary and complementary, intended to ensure that there is no miscarriage of justice. Hence these must be held to apply to the facts and circumstances of the case and the impugned Act must be read along with these provisions. Assuming that the said provisions do not directly apply then, provisions analogous to the said provisions must be read with section 3(2)(b) to make the Act reasonable, it was

submitted. It was urged that if these are not so read then the absence of such provisions would vest arbitrary and unguided powers in the Central Government making section unconstitutional. The said provisions are intended to ensure the machinery of accountability to the victims and to provide to them, an opportunity to be heard by court before any compromise is arrived at. In this connection, reference was made to Rule 23(3) of the Federal Rules of Civil Procedure in America which provides for a hearing to the victims before a compromise is affected. The victims as plaintiffs in an Indian court cannot be subjected to a procedure which is less fair than that provided by a US forum initially chosen by the Government of India, it was urged.

43. Counsel submitted that Section 6 of the Act is unreasonable because it replaces an independent and impartial Civil Court of competent jurisdiction by an Officer known as the Commissioner to be appointed by the Central Government. No qualification, according to counsel, had been prescribed for the appointment of a Commissioner and clause 5 of the Scheme framed under the Act vests in the Commissioner the judicial function of deciding appeals against the order of the Deputy Commissioner registering or refusing to register a claim. It was further submitted that clause 11(2) of the Scheme is unreasonable because it replaces an independent and impartial civil court of competent jurisdiction with the Central Government, which is a joint tort-feasor for the purpose of determining the total amount of compensation to be apportioned for each category of claims and the quantum of compensation payable for each type of injury or loss. It was submitted that the said function is a judicial function and if there is any conflict of interest between the victims and Central Government, vesting such a power in the Central Government amounts to making it a judge in its own cause. It was urged that having regard to the fact that amount received in satisfaction of the claims is ostensibly pre-determined, namely, 470

million dollars unless the order of 14th/15th February is set aside which ought to be done, according to counsel, the Central Government would have a vested interest in ensuring that the amount of damages to be disbursed does not exceed the said amount. Even otherwise, according to counsel, the Government of India has been sued as a joint tort-feasor, and as they would have a vested interest in depressing the quantum of damages, payable to the victims. This would, according to counsel, result in a deliberate under-estimation of the extent of injuries and compensation payable.

44. Clause 11(4) of the Scheme, according to counsel, is unreasonable inasmuch as it does not take into account the claims of the victims to punitive and exemplary damages and damages for loss and destruction of environment. Counsel submitted that in any event the expression "claims" in section 2(b) cannot be interpreted to mean claims against the Central Government, the State of Madhya Pradesh, UCIL, which was not sued in suit No. 1113/86 and Shri Arjun Singh, all of whom have been sued as joint tort feasors in relation to the liability arising out of the disaster. Counsel submitted that if section 3 is to be held to be intra vires, the word "exclusive" should be severed from section 3 and on the other hand, if section 3 is held ultra vires, then victims who have already filed suits or those who had lodged claims should be entitled to continue their own suits as well as Suit No. 1113/86 as plaintiffs with leave under Order 1 Rule 8. Counsel submitted that interim relief as decided by this Court can be paid to the victims even otherwise also, according to counsel, under clause 10(2)(b) of the Scheme.

45. Counsel submitted that the balance of $ 470 million after deducting interim relief as determined by this Court should be attached. In any event, it was submitted that, it be declared that the word "claim" in section 2 does not include claims against Central Govt. or State of Madhya Pradesh or UCIL. Hence, it was urged that the rights of the victims to sue the Government of India, the State of

Madhya Pradesh or UCIL would remain unaffected by the Act or by the compromise affected under the Act. Machinery to decide suit expeditiously has to be devised, it was submitted. Other suits filed against UCC, UCIL, State of Madhya Pradesh and Arjun Singh should to be transferred to the Supreme Court for trial and disposal, according to counsel. It was submit- ted that the Court should fix the basis of damages payable to different categories, namely, death and disablement mentioned under clause 5(2) of the scheme. Counsel submitted that this Court should set up a procedure which would ensure that an impartial judge assisted by medical experts and assessors would adjudicate the basis on which an individual claimant would fall into a particular category. It was also urged that this Court should quantify the amount of compensation payable to each category of claimant in clause 5(2) of the Scheme. This decision cannot, it was submitted, be left to the Central Government as is purported to be done by clause 11(2) of the Scheme.

This Court must set up, it was urged, a trust with independent trustees to administer the trust and trustees to be accountable to this Court. An independent census should be carried out of number of claimants, nature and extent of injury caused to them, the category into which they fall. Apportionment of amounts should be set aside or invested for future claimants, that is the category in clause 5(2)(a) of the Scheme, which is, according to counsel, of utmost importance since the injuries are said to be carcinogenic and ontogenic and wide affecting persons yet unborn.

47. Shri Garg, further and on behalf of some of the victims counsel, urged before us that deprivation of the rights of the victims and vesting of those fights in the State is violative of the rights of the victims and cannot. be justified or warranted by the Constitution. Neither section 3nor section 4 of the Act gives any right to the victims; on the other hand, it is a complete denial of access to justice for the victims, according to him. This, according to counsel, is

arbitrary. He also submitted that section 4 of the Act, as it stands, gives no right to the victims and as such even assuming that in order to fight for the rights of the victims, it was necessary to substitute the victims even then in so far as the victims have been denied the right of say, in the conduct of the proceedings, this is disproportionate to the benefit conferred upon the victims. Denial of rights to the victims is so great and deprivation of the right to natural justice and access to justice is so tremendous that judged by the well settled principles by which yardsticks provisions like these should be judged in the constitutional framework of this country, the Act is violative of the fundamental rights of the victims. It was further submitted by him that all the rights of the victims by the process of this Act, the right of the victims to enforce full liability against the multinationals as well as against the Indian Companies, absolute liability and criminal liability have all been curtailed.

48. All the counsel submitted that in any event, the criminal liability cannot be subject matter of this Act. Therefore, the Government was not entitled to agree to any settlement on the ground that criminal prosecution would be withdrawn and this being a part of the consideration or inducement for settling the civil liability, he submitted that the settlement arrived at on the 14th/15th February, 1989 as recorded in the order of this Court is wholly unwarranted, unconstitutional and illegal.

49. Mr. Garg additionally further urged that by the procedure of the Act, each individual claim had to be first determined and the Government could only take over the aggregate of all individual claims and that could only be done by aggregating the individual claims of the victims. That was not done, according to him. Read in that fashion, according to Shri Garg, the conduct of the Government in implementing the Act is wholly improper and unwarranted. It was submitted by him that the enforcement of the fight of the victims without a just, fair and reasonable procedure which is vitally

necessary for representing the citizens or victims was bad. It was further urged by him that the Bhopal gas victims have been singled out for hostile discrimination resulting in total denial of all procedures of approach to competent courts and tribunals. It was submitted that the Central Government was incompetent to represent the victims in the litigations or for enforcement of the claims. It was then submitted by him that the claims of the victims must be enforced fully against the Union Carbide Corporation carrying on commercial activities for profit resulting in unprecedented gas leak disaster responsible for a large number of deaths and severe injuries to others. It was submitted that the liability of each party responsible, including the Government of India, which is a joint tort-feasor along with the Union Carbide, has to be ascertained in appropriate proceedings. It was submitted on behalf of the victims that Union of India owned 22% of the shares in Union Carbide and therefore, it was incompetent to represent the victims. There was conflict of interest between the Union of India and the Union Carbide and so Central Government was incompetent. It is submitted that pecuniary interest howsoever small disqualifies a person to be a judge in his own cause. The settlement accepted by the Union of India, according to various counsel is vitiated by the pecuniary bias as holders of its shares to the extent of 22%.

50. It was submitted that the pleadings in the court of the United States and in the Bhopal court considered in the context of the settlement order of this Court accepted by the Union of India establish that the victims' individuality were sacrificed wontedly and callously and, therefore, there was violation, according to some of the victims, both in the Act and in its implementation of Articles 14, 19(l)(g) and 21 of the Constitution.

51. The principles of the decision of this Court in M.C. Mehta & Anr. v. Union of India, [1987] 1 SCR 819 must be so interpreted that complete justice is done and it in no way excludes the grant of

punitive damages for wrongs justifying deterrents to ensure the safety of citizens in free India. No multinational corporation, according to Shri Garg, can claim the privilege of the protection of Indian law to earn profits without meeting fully the demands of civil and criminal justice administered in India with this Court functioning as the custodian. Shri Garg urged that the liability for damages, in India and the Third World Countries, of the multinational companies cannot be less but must be more because the persons affected are often without remedy for reasons of inadequate facilities for protection of health or property. Therefore, the damages sustainable by Indian victims against the multinationals dealing with dangerous gases without proper security and other measures are far greater than damages suffered by the citizens of other advanced and developed countries. It is, therefore, necessary to ensure by damages and deterrent remedies that these multinationals are not tempted to shift dangerous manufacturing operations intended to advance their strategic objectives of profit and war to the Third World Countries with little respect for the right to life and dignity of the people of sovereign third world countries. The strictest enforcement of punitive liability also serves the interest of the American people. The Act, therefore, according to Shri Garg is clearly unconstitutional and therefore, void.

52. It was urged that the settlement is without jurisdiction. This Court was incompetent to grant immunity against criminal liabilities in the manner it has purported to do by its order dated 14th/15th February, 1989, it was strenuously suggested by counsel. It was further submitted that to hold the Act to be valid, the victims must be heard before the settlement and the Act can only be valid if it is so interpreted. This is necessary further, according to Shri Garg, to lay down the scope of heating. Shri Garg also drew our attention to the scheme of disbursement of relief to the victims. He submitted that the scheme of disbursement is unreasonable and discriminatory

because there is no procedure which is just, fair and reasonable in accordance with the provisions of Civil Procedure Code. He further submitted that the Act does not lay down any guidelines for the conduct of the Union of India in advancing the claims of the victims. There were no essential legislative guidelines for determining the rights of the victims, the conduct of the proceedings on behalf of the victims and for the relief- claimed. Denial of access to justice to the victims through an impartial judiciary is so great a denial that it can only be consistent with the situation which calls for such a drastic provision. The present circumstances were not such. He drew our attention to the decision of this Court in Basheshar v. Income Tax Commissioner, AIR 1959 SC 149; in Re Special Courts Bill, [1979] 2 SCR 476; A.R. Antulay v. R.S. Nayak & Anr., [1988] 2 SCC 602; Ram Krishna Dalmia v. Ten- dulkar, [1955] SCR 279; Ambika Prasad Mishra etc. v. State of U.P. & Ors. etc., [1960] 3 SCR 1159 and Bodhan Chowdhary v. State of Bihar, [1955] 1 SCR 1045. Shri Garg further submitted that Article 21 must be read with Article 51 of the Constitution and other directive principles. He drew our attention to Lakshmi Kant Pandey v. Union of India, [1984] 2 SCR 795; M/s Mackinnon Machkenzie & Co. Ltd. v. Audrey D'Costa and Anr., [1987] 2 SCC 469; Sheela Barse v. Secretary, Children Aid Society & Ors., [1987] 1 SCR 870. Shri Garg submitted that in India, the national dimensions of human rights and the international dimensions are both congruent and their enforcement is guaranteed under Articles 32 and 226 to the extent these are enforceable against the State, these are also enforceable against transnational corporations inducted by the State on conditions of due observance of the Constitution and all laws of the land. Shri Garg submitted that in the background of an unprecedented disaster resulting in extensive damage to life and property and the destruction of the environment affecting large number of people and for the full protection of the interest of the victims and for complete satisfaction of all claims for compensation, the Act was passed empowering the

Government of India to take necessary steps for processing of the claims and for utilization of disbursal of the amount received in satisfaction of the claims. The Central Government was given the exclusive right to represent the victims and to act in place of, in United States or in India, every citizen entitled to make a claim. Shri Garg urged that on a proper reading of section 3(1) of the Act read with section 4 exclusion of all victims for all purpose is incomplete and the Act is bad. He submitted that the decree for adjudication of the Court must ascertain the magnitude of the dam- ages and should be able to grant reliefs required by law under heads of strict liability, absolute liability and punitive liability.

53. Shri Garg submitted that it is necessary to consider that the Union of India is liable for the torts. In several decisions to which Shri Garg grew our attention, it has been clarified that Government is not liable only if the tortious act complained has been committed by its servants in exercise of its sovereign powers by which it is meant powers that can be lawfully exercised under sovereign rights only vide Nandram Heeralal v. Union of India & Anr., AIR 1978 M.P. 209 at p. 212. There is a real and marked distinction between the sovereign functions of the government and those which are non-sovereign and some of the functions that fall in the latter category are those connected with trade, commerce, business and industrial undertakings. Sovereign functions are such acts which are of such a nature as cannot be performed by a private individual or association unless powers are delegated by sovereign authority of state.

54. According to Shri Garg, the Union and the State Governments under the Constitution and as per laws of the Factories, Environment Control, etc. are bound to exercise control on the factories in public interest and public purpose. These functions are not sovereign functions, according to Sheri Garg, and the Government in this case was guilty of negligence. In support of this, Shri Garg submitted that

the offence of negligence on the part of the Govt. would be evident from the fact that--

(a) the Government allowed the Union Carbide factory to be installed in the heart of the city;
(b) the Government allowed habitation in the front of the factory knowing that the most dangerous and lethal gases were being used in the manufacturing processes;
(c) the gas leakage from this factory was a common affair and it was agitated continuously by the people journalists and it was agitated in the Vidhan Sabha right from 1980 to 1984. These features firmly proved, according to Shri Garg, the grossest negligence of the governments. Shri Garg submitted that the gas victims had legal and moral right to sue the governments and so it had full right to implead all the necessary and proper parties like Union Carbide, UCIL, and also the then Chief Minister Shri Arjun Singh of the State. He drew our attention to Order 2, rule 3, of the Civil Procedure Code. In suits on joint torts, according to Shri Garg, each of the joint tort feasors is responsible for the injury sustained for the common acts and they can all be sued together. Shri Garg's main criticism has been that the most crucial question of corporate responsibility of the people's right to life and their right to guard it as enshrined in Article 21 of the Constitution were sought to be gagged by the Act. Shri Garg tried to submit that this was an enabling Act only but not an Act which deprived the victims of their right to sue. He submitted that in this Act, there is denial of natural justice both in the institution under section 3 and in the conduct of the suit under section. It must be seen that justice is done to all (R. Viswanathan v. Rukh-ul-Mulk Syed Abdul Wajid, [1963] 3 SCR 22). It was urged that it was necessary to give a reasonable notice to the parties. He referred to M. Narayanan Nambiar v. State of Kerala, [1963] Supp. 2 SCR 724.

55. Shri Shanti Bhushan appearing for Bhopal Gas Peedit Mahila Udyog Sangathan submitted that if the Act is to be upheld, it has to be read down and construed in the manner urged by him. It was submitted that when the Bhopal Gas disaster took place, which was the worst industrial disaster in the world which resulted in the deaths of several thousands of people and caused serious injuries to lakhs others, there arose a right to the victims to get not merely damages under the law of the torts but also arose clearly, by virtue of right to life guaranteed as fundamental right by Article 21 of the Constitution a right to get full protection of life and limb. This fundamental right also, according to Shri Shanti Bhushan, embodied within itself a right to have the claim adjudicated by the established courts of law. It is well settled that right of access to courts in respect of violation of their fundamental rights itself is a fundamental right which cannot be denied to the people. Shri Shanti Bhushan submitted that there may be some justification for the Act being passed. He said that the claim against the Union Carbide are covered by the Act. The claims of the victims against the Central Government or any other party who is also liable under tort to the victims is not covered by the Act. The second point that Shri Shanti Bhushan made was that the Act so far as it empowered the Central Government to represent and act in place of the victims is in respect of the civil liability arising out of disaster and not in respect of any right in respect of criminal liability. The Central Govt., according to Shri Shanti Bhushan, cannot have any right or authority in relation to any offences which arose out of the disaster and which resulted in criminal liability. It was submitted that there cannot be any settlement or compromise in relation to non-compoundable criminal cases and in respect of compoundable criminal cases the legal right to compound these could only be possessed by the victims alone and the Central Government could not compound those offences on their behalf. It was submitted by Shri Shanti Bhushan that even this Court has no jurisdiction whatsoever to transfer any criminal proceedings

to itself either under any provision of the Constitution or under any provision of the Criminal Procedure Code or under any other provision of law and, therefore, if the settlement in question was to be treated not as a compromise but as an order of the Court, it would be without jurisdiction and liable to be declared so on the principles laid down, according to Shri Bhushan, by this Court in Antulay's case (supra). Shri Shanti Bhushan submitted that even if under the Act, the Central Government is considered to be able to represent the victims and to pursue the litigation on their behalf and even to enter into compromise on their behalf, it would be a gross violation of the constitutional rights of the victims to enter into a settlement with the Union Carbide without giving the victims opportunities to express their views about the fairness or adequacy of the settlement before any court could permit such a settlement to be made.

56. Mr. Shanti Bhushan submitted that the suit which may be brought by the Central Government against Union Carbide under section 3 of the Act would be a suit of the kind contemplated by the Explanation to Order 23, rule 3 of the Code of Civil Procedure since the victims are not parties and yet the decree obtained in the suit would bind them. It was, therefore, urged by Shri Shanti Bhushan that the provisions of Section 3(1) of the Act merely empowers the Central Government to enter into a compromise but did not lay down the procedure which was to be followed for entering into any compromise. Therefore, there is nothing which is inconsistent with the provisions of Order 23 Rule 3-B of the CPC to which the provisions Section 11 of the Act be applied. If, however, by any stretch of argument the provisions of the Act could be construed so as to override the provisions of Order 23 Rule 3-B CPC, it was urged, the same would render the provisions of the Act volatile of the victims' fundamental rights and the actions would be rendered unconstitutional. If it empowered the Central Government to compromise the victims' rights, without even having to apply the

principles of natural justice, then it would be unconstitutional and as such bad. Mr. Shanti Bhushan, Ms. Jaising and Mr. Garg submitted that these procedures must be construed in accordance with the provisions contained in Order 23 Rule 3-B CPC and an opportunity must be given to those whose claims are being compromised to show to the court that the compromise is not fair and should not accordingly be permit- ted by the court. Such a hearing in terms, according to counsel, of Order 23 Rule 3-B CPC has to be before the compromise is entered into. It was then submitted that section 3 of the Act only empowers the Central Government to represent and act in place of the victims and to institute suits on behalf of the victims or even to enter into compromise on behalf of the victims.

57. The Act does not create new causes of action create special courts. The jurisdiction of the civil court to entertain suit would still arise out of section 9 of the CPC and the substantive cause of action and the nature of the reliefs available would also continue to remain unchanged. The only difference produced by the provisions of the Act would be that instead of the suit being filed by the victims themselves the suit would be filed by the Central Government on their behalf.

58. Shri Shanti Bhushan then argued that the cause of action of each victim is separate and entitled him to bring a suit for separate amount according to the damages suffered by him. He submitted that even where the Central Government was empowered to file suits on behalf of all the victims it could only ask for a decree of the same kind as could have been asked for by the victims themselves, namely, a decree awarding various specified amounts to different victims whose names had to be disclosed. According to Shri Shanti Bhushan, even if all the details were not available at the time when the suit was filed, the details of the victims' damages had to be procured and specified in the plaint before a proper decree could be passed in the suit. even if the subject matter of the suit had to be

compromised between the Central Government and the Union Carbide the compromise had to indicate as to what amount would be pay- able to each victim, in addition to the total amount which was payable by Union Carbide, submitted Shri Shanti Bhushan. It was submitted that there was nothing in the Act which permitted the Central Government to enter into any general compromise with Union Carbide providing for the lumpsum amount without disclosure as to how much amount is payable to each victim.

59. If the Act in question had not been enacted, the victims would have been entitled to not only sue Union Carbide themselves but also to enter into any compromise or settlement of their claims with the Union Carbide immediate- ly. The provisions of the Act, according to Mr. Shanti Bhushan, deprive the victims of their legal right and such deprivation of their rights and creation of a corresponding right in the Central Government can be treated as reasonable only if the deprivation of their rights imposed a corresponding liability on the Central Government to continue to pay such interim relief to the victims as they might be entitled to till the time that the Central Government is able to obtain the whole amount of compensation from the Union Carbide. He submitted that the deprivation of the right of the victims to sue for their claims and denial of access to justice and to assert their claims and the substitution of the Central Government to carry on the litigation for or on their behalf can only be justified, if and only if the Central Government is enjoined to provide for such interim relief or continue to provide in the words of Judge Keenan, as a matter of fundamental human decency, such interim relief, necessary to enable the victims to fight the battle. Counsel submitted that the Act must be so read. Shri Shanti Bhushan urged that if the Act is construed in such a manner that it did not create such an obligation on the Central Government, the Act cannot be upheld as a reasonable provision when it deprived the victims of their normal legal rights of

immediately obtaining compensation from Union Carbide. He referred to section 10(b) of the Act and clause 10 and 11(1) of the Scheme to show that the legislative policy underlying the Bhopal Act clearly contemplated payment of interim relief to the victims from time to time till such time as the Central Government was able to recover from Union Carbide full amount of compensation from which the interim reliefs paid by the Central Government were to be deducted from the amount payable to them by way of final disbursal of the amounts recovered.

60. The settlement is bad, according to Shri Shanti Bhushan if part of the bargain was giving up of the criminal liability against UCIL and UCC. Shri Shanti Bhushan submit- ted that this Court should not hesitate to declare that the settlement is bad because the fight will go on and the victims should be provided reliefs and interim compensation by the Central Government to be reimbursed ultimately from the amount to be realised by the Central Government. This obligation was over and above the liability of the Central Government as a joint tort-feasor, according to Shri Shanti Bhushan.

61. Shri Kailash Vasdev, appearing for the petitioners in Writ Petition No. 155 1/86 submitted that the Act displaced the claimants in the matter of their right to seek redressal and remedies of the actual injury and harm caused individually to the claimants. The Act in question by re- placing the Central Government in place of the victims. by conferment of exclusive right to sue in place of victims, according to him, contravened the procedure established by law. The right to sue for the wrong done to an individual was exclusive to the individual. It was submitted that under the civil law of the country, individuals have rights to enforce their claims and any deprivation would place them into a different category from the other litigants. The right to enter into compromise, it was further submitted, without consultation of the victims, if that is the

construction of section 3 read with section 4 of the Act, then it is violative of procedure established by law. The procedure substituted, if that be the construction of the Act, would be in violation of the principles of natural justice and as such bad. It was submitted that the concept of 'parens patriae' would not be applicable in these cases. It was submitted that traditionally, sovereigns can sue under the doctrine of 'parens patriae' only for violations of their "quasi-sovereign" interests. Such interests do not include the claims of individual citizens. It was submitted that the Act in question is different from the concept of parens patriae because there was no special need to be satisfied and a class action, according to Shri Vasdev, would have served the same purpose as a suit brought under the statute and ought to have been preferred because it safeguarded claimants' right to procedural due process. In addition, a suit brought under the statute would threaten the victims' substantive due process rights. It was further submitted that in order to sustain an action, it was neces- sary for the Government of India to have standing

62. Counsel submitted that 'parens patriae' has received no judicial recognition in this country as a basis for recovery of money damages for injuries suffered by individuals. He may be right to that extent but the doctrine of parens patriae has been used in India in varying contexts and contingencies.

63. We are of the opinion that the Act in question was passed in recognition of the right of the sovereign to act as parens patriae as contended by the learned Attorney General. The Government of India in order to effectively safeguard the rights of the victims in the matter of the conduct of the case was entitled to act as parens patriae, which position was reinforced by the statutory provisions, namely, the Act. We have noted the several decisions re- ferred to hereinbefore, namely, Bhudhkaran Chankhani v. Thakur Prasad Shad, (supra); Banku Behary Mondal v. Banku Behari Hazra, (supra); Medai Dalavoi T. Kumaraswami Mudaliar v. Medai Dalavai

Rajammal, (supra) and to the decision of this Court in Mahant Ram Saroop Dasji v. S.P. Sahi, (supra) and the decision of the American Supreme Court in Alfred Schnapp v. Puerto Rico, (supra). It has to be borne in mind that conceptually and jurisprudentially, the doctrine of parens patriae is not limited to representation of some of the victims outside the territories of the country. It is true that the doctrine has been so utilised in America so far. In our opinion, learned Attorney General was right in contending that where citizens of a country are victims of a tragedy because of the negligence of any multinational, a peculiar situation arises which calls for suitable effective machinery to articulate and effectuate the grievances and demands of the victims, for which the conventional adversary system would be totally inadequate. The State in discharge of its sovereign obligation must come forward. The Indian state because of its constitutional commitment is obliged to take upon itself the claims of the victims and to protect them in their hour of need. Learned Attorney General was also right in submitting that the decisions of the Calcutta, Madras and U.S. Supreme Court clearly indicate that parens patriae doctrine can be invoked by sovereign state within India, even if it be contended that it has not so far been invoked inside India in respect of claims for damages of victims suffered at the hands of the multinational. In our opinion, conceptually and jurisprudentially, there is no bar on the State to assume responsibilities analogous to parens patriae to discharge the State's obligations under the Constitution. What the Central Government has done in the instant case seems to us to be an expression of its sover- eign power. This power is plenary and inherent in every sovereign state to do all things which promote the health, peace, morals, education and good order of the people and tend to increase the wealth and prosperity of the state. Sovereignty is difficult to define. See in this connection, Weaver on Constitional Law, p. 490. By the nature of things, the state sovereignty in these matters cannot be limited. It has to be adjusted to the conditions

touching the common welfare when covered by legislative enactments. This power is to the public what the law of necessity is to the individual. It is comprehended in the maxim salus populi suprema lex regard for public welfare is the highest law. It is not a rule, it is an evolution. This power has always been as broad as public welfare and as strong as the arm of the state, this can only be measured by the legislative will of the people, subject to the fundamental rights and constitutional limitations. This is an emanation of sovereignty subject to as aforesaid. Indeed, it is the obligation of the State to assume such responsibility and protect its citizens. It has to be borne in mind, as was stressed by the learned Attorney General, that conferment of power and the manner of its exercise are two different matters. It was submitted that the power to conduct the suit and to compromise, if neces- sary, was vested in the Central Government for the purpose of the Act. The power to compromise and to conduct the proceedings are not uncanalised or arbitrary. These were clearly exercisable only in the ultimate interests of the victims. The possibility of abuse of a statute does not impart to it any element of invalidity. In this connection, the observations of Viscount Simonds in Belfast Corporation v. O.D. Commission, [1950] AC 490 at 520-21 are relevant where it was emphasised that validity of a measure is not be determined by its application to particular cases. This Court in Collector of Customs, Madras v. Nathella Sampathu Chetty, [1962] 3 SCR 786 at 825 emphasised that the constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. It has to be borne in mind that if upon so judged it passes the test of reasonableness, then the possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid. See in this connection also the observations in P.J. Irani v. State of Madras, [1962] 2 SCR 169 at 178 to 181 and D.K. Trivedi v. State of Gujarat, [1986] Supp. SCC 20 at 60-61

64. Sections 3 and 4 of the Act should be read together as contended by the learned Attorney General, along with other provisions of the Act and in particular sections 9 and 11 of the Act. These should be appreciated in the context of the object sought to be achieved by the Act as indicated in the Statement of Objects and Reasons and the Preamble to the Act. The Act was so designed that the victims of the disaster are fully protected and the claims of compensation or damages for loss of life or personal injuries or in' respect of other matters arising out of or connected with the disaster are processed speedily, effectively, equitably and to the best advantage of the claimants. Section 3 of the Act is subject to other provisions of the Act which includes sections 4 and 11. Section 4 of the Act opens with non- obstante clause, vis-a-vis, section 3 and therefore, over-rides section 3. Learned Attorney General submitted that the right of the Central Government under section 3 of the Act was to represent the victims exclusively and act in the place of the victims. The Central Government, it was urged, in other words, is substituted in the place of 'the victims and is the dominus litis. Learned Attorney General submitted that the dominus litis carries with it the right to conduct the suit in the best manner as it deems fit, including, the right to withdraw and right to enter into compromise. The right to withdraw and the right to compromise conferred by section 3(2) of the Act cannot be exercised to defeat the rights of the victims. As to how the rights should be exercised is guided by the objects and the reasons contained in the Preamble, namely, to speedily and effectively process the claims of the victims and to protect their claims. The Act was passed replacing the Ordinance at a time when many private plaintiffs had instituted complaints/suits in the American Courts. In such a situation, the Government of India acting in place of the victims necessarily should have right under the statute to act in all situations including the position of withdrawing the suit or to enter into com- promise. Learned Attorney General submitted that if the UCC were to agree to pay a lump sum amount

which would be just, fair and equitable, but insists on a condition that the proceedings should be completely withdrawn, and then necessarily there should be power under the Act to so withdraw. According to him, therefore, the Act engrafted a provision empowering the Government to compromise. The provisions under section 3(2) (b) of the Act to enter into compromise was consistent with the powers of dominus litis. In this connection, our attention was drawn to the definition of 'Dominus Litis' in Black's Law Dictionary, Fifth Edition, P. 437, which states as follows:

"'Dominus litis'. The master of the suit; i.e. the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. But the term is also applied to one who, though not originally a party, has made himself such, by intervention or otherwise, and has assumed entire control and responsibility for one side and is treated by the Court as liable for costs. Virginia Electric & Power Co, v. Bowers, ISI Va., 542, 25 S.E. 2d 361,263".

65. Learned Attorney General sought to contend that the victims had not been excluded entirely either in the conduct of proceedings or in entering into compromise, and he referred to the proceedings in detail emphasising the participation of some of the victims at some stage. He drew our attention to the fact that the victims had filed separate consolidated complaints in addition to the complaint filed by the Government of India. Judge Keenan of the Distt. Court of America had passed orders permitting the victims to be represented not only 'by the private Attorneys but also by the Govt. of India. Hence, it was submitted that it could not be contended that the victims had been excluded. Learned Attorney General further contended that pursuant to the orders passed by Judge Keenan imposing certain conditions against the Union Carbide and allowing the motion for forum non convenience of the UCC that the suit came back to India and was instituted before the Distt. Court of Bhopal. In

those circumstances, it was urged by the learned Attorney General that the private plaintiffs who went to America and who were represented by the contingency lawyers fully knew that they could also have joined in the said suit as they were before the American Court along with the Govt. of India. It was contended that in the proceedings at any point of time or stage including when the compromise was entered into, these private plaintiffs could have participated in the court proceedings and could have made their representation, if they so desired. Even in the Indian suits, these private parties have been permitted to continue as parties represented by separate counsel even though the Act empowers the Union to be the sole plaintiff. Learned Attorney General submitted that Section 4 of the Act clearly enabled the victims to exercise their right of participation in the proceedings. The Central Govt. was enjoined to have due regard to any matter which such person might require to be urged. Indeed, the learned Attorney General urged very strenuously that in the instant case, Zehreeli Gas Kand Sangharsh Morcha and Jana Swasthya Kendra (Bhopal) had filed before the Distt. Judge, Bhopal, an application under Order I Rule 8 read with Order I Rule 10 and Section 15 1 of the CPC for their-intervention on behalf of the victims. They had participated in the hearing before the learned Distt. Judge, who referred to their intervention in the order. It was further emphasised that when the UCC went up in revision to the High Court of Madhya Pradesh at Jabalpur against the interim compensation ordered to be paid by the Distt. Court, the intervener through its Advocate, Mr. Vibhuti Jha had participated in the proceedings. The aforesaid Association had also intervened in the civil appeals preferred pursuant to the special leave granted by this Court to the Union of India and Union Carbide against the judgment of the High Court for interim compensation. In those circumstances, it was submitted that there did not exist any other gas victim intervening in the proceedings, claiming participation under Section 4. Hence, the right to compromise provided for by the Act, could not

be held to be violative of the principles of natural justice. According to the learned Attorney General, this Court first proposed the order to counsel in court and after they agreed thereto, dictated the order on 14th February, 1989. On 15th February, 1989 after the Memorandum of Settlement was filed pursuant to the orders of the court, further orders were passed. The said Association, namely, Zehreeli Gas Kand Sangharsh Morcha was present, according to the records, in the Court on both the dates and did not apparently object to the compromise. Mr. Charanlal Sahu, one of the petitioners in the writ petition, had watched the proceedings and after the Court had passed the order on 15th February, 1989 mentioned that he had filed a suit for Rs. 100 crores. Learned Attorney General submit- ted that Mr. Sahu neither protested against the settlement nor did he make any prayer to be heard. Shri Charan Lal Sahu, in the petition of opposition in one of these matters have prayed that a sum of Rs. 100 million should be paid over to him for himself as well as on behalf of those victims whom he claimed to represent. In the aforesaid back- ground on the construction of the Section, it was urged by the learned Attorney General that Section 3 of the Act cannot be held to be unconstitutional. The same provided a just, fair and reasonable procedure and enabled the victims to participate in the proceedings at all stages--those who were capable and willing to do so. Our attention was drawn to the fact that Section 11 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment other than the Act. It was, therefore, urged that the provisions of the Civil Procedure Code stood overridden in respect of the areas covered by the Act, namely, (a) representation, (b) powers of representation; and (c) com- promise.

66. According to the learned Attorney General, the Act did not violate the principles of natural justice. The provisions of the CPC could not be read into the Act for Section 11 of the Act provides that

the application of the provision of the Civil Procedure Code in so far as those were inconsistent with the Act should be construed as over-ridden in respect of areas covered by it. Furthermore, inasmuch as Section 4 had given a qualified right of participation to the victims, there cannot be any question of violation of the principles of natural justice. The scope of the application of the principles of natural justice cannot be judged by any strait jacket formula. According to him, the extension of the principles of natural justice beyond what is provided by the Act in Sections 3 & 4, was unwarranted and would deprive the provisions of the Statute of their efficacy in relation to the achievement of 'speedy relief', which is the object intended to be achieved. He emphasised that the process of notice, consultation and exchange of information, informed decision-making process, the modalities of assessing a consensus of opinion would involve such time that the Govt. would be totally unable to act in the matter efficiently, effectively and purposefully on behalf of the victims for realisation of the just dues of the victims. He further urged that the Civil Procedure Code before its amendment in 1976 did not have the provisions of Order 1 Rules 8(4), (5) & (6) and Explanations etc. nor Order XXIII Rules 3A and 3B. Before the amendment the High Court had taken a view against the requirement of hearing the parties represented in the suit under Order 1, Rule 8 before it before settling or disposing of the suit. Our attention was drawn to the decision of the Calcutta High Court in Chintaharan Ghose & Ors. v. Gujaraddi Sheik & Ors., AIR 1951 Cal. 456 at 457-459, wherein it was held by the learned Single Judge that the plaintiff in a representative suit had right to compromise subject to the conditions that the suit was properly filed in terms of the provisions of that Rule and the settlement was agreed bona fide. Learned Attorney General in that context contended that when the suit was validly instituted, the plaintiff had a right to compromise the suit and there need not be any provision for notice to the parties represented before entering into any compromise. Reliance was

placed on the decision of the Allahabad High Court in Ram Sarup v. Nanak Ram, AIR 1952 Allahabad 275, where it was held that a compromise entered into in a suit filed under Order 1 Rule 8 of the CPC was binding on all persons as the plaintiffs who had instituted the suit in representative capacity had the authority to compromise. He further submitted that most, if not all, of the victims had given their powers of attorney which were duly filed in favour of the Union of India. These powers or attorney have neither been impeached nor revoked or with- drawn. By virtue of the powers of attorney the Union of India, it was stated, had the authority to file the suits and to compromise the interests of the victims if so required. The Act in question itself contemplates settlement as we have noted, and a settlement would need a common spokesman.

67. It was submitted that the Govt. of India as the statutory representative discharged its duty and is in a centralised position of assessing the merits and demerits of any proposed course of action. So far as the act of compromise, abridging or curtailing the ambit of the rights of the victims, it was submitted that in respect of liabilities of UCC & UCIL, be it corporate, criminal or tortious, it was open to an individual to take a decision of enforcing the liability to its logical extent or stopping short of it and acceding to a compromise. Just as an individual can make an election in the matter of adjudication of liability so can a statutory representative make an election. Therefore, it is wholly wrong to contend, it was urged, that Section 3(ii)(b) is inconsistent with individual's right of election and at the same time it provides the centralised decision-making processes to effectively adjudge and secure the common good. It was only a central agency like the Govt. of India, who could have a perspective of the totality of the claims and a vision of the problems of individual plaintiffs in enforcing these, it was urged. It was emphasised that it has to be borne in mind that a com- promise is a legal act. In the present case, it is a part of the conduct of the suit. It

is, therefore, imperative that the choice of compromise is made carefully, cautiously and with a measure of discretion, it was submitted. But if any claimant wished to be associated with the conduct of the suit, he would necessarily have been afforded an opportunity for that purpose, according to the learned Attorney General. In this connection, reference was made to Section 4 of the Act. On the other hand, an individual who did not participate in the conduct of the suit and who is unaware of the various intricacies of the case could hardly be expected to meaningfully partake in the legal act of settlement either in conducting the proceedings or entering into compromise, it was urged. In those circumstances, the learned Attorney General submitted that the orders of 14-15th February, 1989 and the Memorandum of Settlement were justified both under the Act and the Constitution. According to him, the terms of Settlement might be envisaged as pursuant to Section 3(ii) (b) of the Act, which was filed according to him pursuant to judicial direction. He sought more than once to emphasise, that the order was passed by the highest Court of the land in exercise of extraordinary jurisdiction vested in it under the Constitution.

68. Our attention was drawn to several decisions for the power of this Court under Articles 136 and 142 of the Constitution. Looked closely at the provisions of the Act, it was contended that taking into consideration all the factors, namely, possibilities of champerty, exploitation, unconscionable agreements and the need to represent the dead and the disabled, the course of events would reveal a methodical and systematic protection and vindication of rights to the largest possible extent. It was observed that the rights are indispensably valuable possessions, but the rights is something which a man can stand on, something which must be demanded or insisted upon without embarrassment or shame. When rights are curtailed, permissibility of such a measure can be examined only upon the strength, urgency and the preeminence of rights and the

largest good of the largest number sought to be served by curtailment. Under the circumstances which were faced by the victims of Bhopal gas tragedy, the justifying basis, according to the learned Attorney General, or ground of human rights is that every person morally ought to have something to which he or she is entitled. It was emphasised that the Statute aimed at it. Act provides for assumption of rights to sue with the aim of securing speedy, effective and equitable results to the best advantage of the claimants. The Act and the scheme, according to the learned Attorney General, sought to translate that profession into a system of faith and possible association when in doubt. Unless such a profession is shown to be unconscionable under the circumstances or strikes judicial conscience as a sub- version of the objects of the Act, a declaredly fair, just and equitable exercise of a valid power would not be open to challenge. He disputed the submission that the right to represent victims postulated as contended mainly by the counsel on behalf of the petitioners, a pre-determination of each individual claim as a sine qua non for proceeding with the action. Such a construction would deplete the case of its vigour, urgency and sense of purpose, he urged. In this case, with the first of the cases having been filed in U.S. Federal Court on December 7, 1984 a settlement would have been reached for a much smaller sum to the detriment of the victims. Learned Attorney General emphasised that this background has to be kept in mind while adjudging the validity of the Act and the appropriateness of the conduct of the suit in the settlement entered into.

69. He submitted that it has to be borne in mind that if the contentions of the petitioners are entertained, the rights theoretically might be upheld but the ends of justice would stand sacrificed. It is in those circumstances that it was emphasised that the claimant is an individual and is the best person to speak about his injury. The knowledge in relation to his injury is relevant for the purpose of

compensation, whose distribution and disbursement is the secondary stage. It is fallacious to suggest that the plaint was not based upon necessary data. He insisted that the figures mentioned in the plaint although tentative were not mentioned without examination or analysis.

70. It was further submitted by the learned Attorney General that while the Govt. of India had proceeded against the UCC, it had to represent the victims as a class and it was not possible to define each individual's right after careful scrutiny, nor was it necessary or possible to do so in a mass disaster case. The settlement was a substitute for adjudication since it involved a process of reparation and relief. The relief and reparation cannot be said to be irrelevant for the purpose of the Act. It was stated that the alleged liability of the Govt. of India or any claim asserted against the alleged joint tort-feasor should not be allowed to be a constraint on the Govt. of India to protect the interests of its own citizens. Any counter-claim by UCC or any claim by a citizen against the Govt. cannot vitiate the action of the State in the collective interest of the victims, who are the citizens. Learned Attorney General submitted that any industrial activity, normally, has to be licensed. The mere regulation of any activity does not carry with it legally a presumption of liability for injury caused by the activity in the event of a mishap occurring in the course of such an activity. In any event, the learned Attorney General submitted the Govt. of India enjoys sovereign immunity in accordance with settled law. If this were not the case, the Sovereign will have to abandon all regulatory functions including the licensing of drivers of automobiles. Hence, we have to examine the question whether even on the assumption that there was negligence on the part of the Govt. of India in permitting/licensing of the industry set up by the Union Carbide in Bhopal or permitting the factory to grow up, such permission or conduct of the Union of India was responsible for the damage which has been suffered as a result of

Bhopal gas leakage. It is further to be examined whether such conduct was in discharge of the sovereign functions of the Govt., and as such damages, if any, resulting there from are liable to be proceeded against the Govt. as a joint tort-feasor or not. In those circumstances, it was further asserted on behalf of the Union of India that though calculation of damages in a precise manner is a logical consequence of a suit in progress it cannot be said to be a condition precedent for the purpose of settling the matter. Learned Attorney General urged that the accountability to the victims should be through the court. He urged that the allegation that a large number of victims did not give consent to the settlement entered into is really of no relevance in the matter of a compromise in a mass tort action. It was highlighted that it is possible that those who do not need urgent relief or are uninformed of the issues in the case, may choose to deny consent and may place the flow of relief in jeopardy. Thus, consent based upon individual subjective opinion can never be correlated to the proposal of an overall settlement in an urgent matter. Learned Attorney General urged further that if indeed consent were to be insisted upon as a mandatory requirement of a Statute, it would not necessarily lead to an accurate reflection of the victims' opinion as opinions may be diverse. No individual would be in a position to relate himself to a lump sum figure and would not be able to define his expectations on global criteria. In such circumstances the value of consent is very much diminished. It was urged that if at all consent was to be insisted it should not be an expression of the mind without supporting information and response. To make consent meaningful it is necessary that it must be assertion of a fight to be exercised in a meaningful manner based on information and comprehension of collective welfare and individual good. In a matter of such dimensions the insistence upon consent will lead to a process of enquiry which might make effective consideration of any proposal impossible. For the purpose of affording consent, it would also be necessary that each individual

not only assesses the damages to himself objectively and places his opinion in the realm of fair expectation, but would also have to do so in respect of others. The learned Attorney General advanced various reasons why it is difficult now or impossible to have the concurrence of all.

71. In answer to the criticism by the petitioners, it was explained on behalf of the Union of India that UCIL was not impleaded as a party in the suit because it would have militated against the plea of multinational enterprise liability and the entire theory of the case in the plaint. It was highlighted that the power to represent under the Act was exclusive, the power to compromise for the Govt. of India is without reference to the victims, yet it is a power guided by the sole object of the welfare of the victims. The presence and ultimately the careful imprimatur of the judicial process is the best safeguard to the victims. Learned Attorney General insisted that hearing the parties after the settlement would also not serve any purpose. He urged that it can never be ascertained with certainty whether the victims or groups have authorised what was being allegedly spoken on their behalf; and that the victims would be unable to judge a proposal of this nature. A method of consensus need not be evolved like in America where every settlement made by contingency fee lawyers who are anxious to obtain their share automatically become adversaries of the victims and the court should therefore be satisfied. Here the Court arrived at the figure and directed the parties to file a settlement on the basis of its order of February 14, 1985 and the interveners were heard, it was urged. It was also urged that notice to the victims individually would have been a difficult exercise and analysis of their response time consuming.

72. The learned Attorney General urged that neither the Central Govt. nor the State Govt. of Madhya Pradesh is liable for the claim of the victims. He asserted that, on the facts of the present case, there is and can be no liability on their part as joint tort-feasors. For the

welfare of the community several socio-economic activities will have to be permitted by the Govt. Many of these activities may have to be regulated by licensing provisions contained in Statutes made either by Parliament or by State Legislatures. Any injury caused to a person, to his life or liberty in the conduct of a licensed authority so as to make the said licensing authority or the Govt. liable to damages would not be in conformity with jurisprudential principle. If in such circumstances it was urged on behalf of the Govt., the public exchequer is made liable, it will cause great public injury and may result in drainage of the treasury. It would terrorise the welfare state from acting for development of the people, and will affect the sovereign governmental activities which are beneficial to the community not being adequately licensed and would thereby lead to public injury. In any event, it was urged on behalf of the Govt., that such licensing authorities even assuming without admitting could be held to be liable as joint tort feasors, it could be so held only on adequate allegations of negligence with full particulars and details of the alleged act or omission of the licensing authority alleged and its direct nexus to the injury caused to the victims. It had to be proved by cogent and adequate evidence. On some conjecture or surmise without any foundation on facts, Govt's right to represent the victims cannot be challenged. It was asserted that even if the Govt. is considered to be liable as a joint tort feasor, it will be entitled to claim sovereign immunity on the law as it now stands.

73. Reference was made to the decision of this Court in Kasturilal Kalia Ram Jain v. The State of U.P., [1965] 1 SCR 375 where the conduct of some police officers in seizing gold in exercise of their statutory powers was held to be in discharge of the sovereign functions of the State and such activities enjoyed sovereign immunities. The liability of the Govt. of India under the Constitution has to be referred to Article 300, which takes us to Sections 15 & 18 of the Indian Independence Act, 1947, and Section 176(1) of the

Govt. of India Act, 1935. Reference was also made to the observations of this Court in The State of Rajasthan v. Mst. Vidhyawati, & Anr., [1962] 2 Supp. SCR 989.

74. We have noted the shareholding of UCC. The circum- stances that financial institutions held shares in the UCIL would not disqualify the Govt. of India from acting as patens patriae and in discharging of its statutory duties under the Act. The suit was filed only against the UCC and not against UCIL. On the basis of the claim made by the Govt. of India, UCIL was not a necessary party. It was suing only the multinational based on several legal grounds of liability of the UCC, inter alia. on the basis of enterprise liability. If the Govt. of India had instituted a suit against UCIL to a certain extent it would have weakened its case against UCC in view of the judgment of this Court in M.C. Mehta's case (supra). According to learned Attorney General, the Union of India in the present case was not proceeding on the basis of lesser liability of UCC predicated in Mehta's case but on a different jurisprudential principle to make UCC strictly and absolutely liable for the entire damages.

75. The learned Attorney General submitted that even assuming for the purpose of argument without conceding that any objection can be raised for the Govt. of India representing the victims, to the present situation the doctrine of necessity applied. The UCC had to be sued before the American courts. The tragedy was treated as a national calamity, and the Govt. of India had the right, and indeed the duty, to take care of its citizens, in the exercise of its parens patriae jurisdiction or on principle analogous thereto. After having statutorily armed itself in recognition of such parens patraie right or on principles analogous thereto, it went to the American courts. No other person was properly designed for representing the victims as a foreign court had to recognise a right of representation. The Govt. of India was permitted to represent the victims before the American courts. Private plaintiffs were also represented by their attorneys. A

Committee of three attorneys was formed before the case proceeded before Judge Keenan. It was high- lighted that the order of Judge Keenan permitted the Govt. of India to represent the victims. If there was any remote conflict of interests between the Union of India and the victims from the theoretical point of view the doctrine of necessity would override the possible violation of the principles of natural justice--that no man should be Judge in his own case. Reference may be made to Halsbury's Laws of England, Vol. 1, 4th Edn., page 89, para 73, where it was pointed that that if all the members of the only tribunal competent to determine a matter are subject to disqualification, they may be authorised and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity. Reference was also made to De Smith's Judicial Review of Administrative Action (4th Edn. pages 276-277. See also G.A. Flick--Natural Justice, [1879] pages 138-141. Reference was also made to the observations of this Court in J. Mohapatra & Co.

& Anr. v. State of Orissa & Anr., [1984] 4 SCC 103, where at page 112 of the report, the Court recognised 'the principle of necessity. It was submitted that these were situations where on the principle of doctrine of necessity a person interested was held not disqualified to adjudicate on his rights. The present is a case where the Govt. of India only represented the victims as a party and did not adjudicate between the victims and the UCC. It is the Court which would adjudicate the rights of the victims. The representation of the victims by the Govt. of India cannot be held to be bad, and there is and there was no scope of violation of any principle of natural justice. We are of the opinion in the facts and the circumstances of the case that this contention urged by Union of India is right. There was no scope of violation of the principle of natural justice on this score.

76. It was also urged that the doctrine of de facto representation will also apply to the facts and the circum- stances of the present case.

Reliance was placed on the decision of this Court in Gokaraju Rangaraju etc. v. State of A.P., [1981] 3 SCR 474, where it was held that the doc- trine of de facto representation envisages that acts performed within the scope of assumed official authority in the interest of public or third persons and not for one's own benefit, are generally to be treated as binding as if they were the acts of officers de jure. This doctrine is rounded on good sense, sound policy and practical expediency. It is aimed at the prevention of public and private mischief and protection of public and private interest. It avoids end- less confusion and needless chaos. Reference was made to the observations of this Court in Pushpadevi M. Jatia v. M.L. Wadhawan, [1987] 3 SCC 367 at 389-390 and M/s. Beopar Shayak (P) Ltd. & Ors. v. Vishwa Nath & Ors., [1987] 3 SCC 693 at 702 & 703. Apart from the aforesaid doctrine, doctrine of bona fide representation was sought to be resorted to in the circumstances. In this connection, reference was made to Dharampal Sing, v. Director of Small Industries Services & Ors., AIR 1980 SC 1888;N.K. Mohammad Sulaiman v. N.C. Mohammad Ismail & Ors., [1966] 1 SCR 937 and Malkarjun Bin Shigramappa Pasara v. Narhari Bin Shivappa & Anr., 27 IA 2

16.

77. It was further submitted that the initiation of criminal proceedings and then quashing thereof, would not make the Act ultra vires so far as it concerned. Learned Attorney General submitted that the Act only authorised the Govt. of India to represent the victims to enforce their claims for damages under the Act. The Govt. as such had nothing to do with the quashing of the criminal proceedings and it was not representing the victims in respect of the criminal liability of the UCC or UCIL to the victims. He further submitted that quashing of criminal proceedings was done by the Court in exercise of plenary powers under Articles 136 and 142 of the Constitution. In this connection, reference was made to State of U.P. v. Poosu &

Anr., [1976] 3 SCR 1005; K.M. Nanavati v. The State of Bombay, [1961] 1 SCR 497. According to the learned Attorney General, there is also power in the Supreme Court to suggest a settlement and give relief as in Ram Gopal v. Smt. Sarubai & Ors., [1981] 4 SCC 505; India Mica & Micanite Industries Ltd. v. State of Bihar & Ors., [1982] 3 SCC 182.

78. Learned Attorney General urged that the Supreme Court is empowered to act even outside a Statute and give relief in addition to what is contemplated by the latter in exercise of its plenary power. This Court acts not only as a Court of Appeal but is also a Court of Equity. See Roshanlal Kuthiala & Ors. v. R.B. Mohan Singh Oberoi, [1975] 2 SCR 49

1. During the course of heating of the petitions, he in- formed this Court that the Govt. of India and the State Govt. of Madhya Pradesh refuted and denied any liability, partial or total, of any sort in the Bhopal gas Leak disaster, and this position is supported by the present state of law. It was, however, submitted that any claim against the Govt. of India for its alleged tortious liability was outside the purview of the Act and such claims, if any, are not extinguished by reason of the orders dated 14th & 15th February, 1989 of this Court.

79. Learned Attorney General further stated that the amount of $ 470 million which was secured as a result of the memorandum of settlement and the said orders of this Court would be meant exclusively for the benefit of the victims who have suffered on account of the Bhopal gas leak disaster. The Govt. of India would not seek any reimbursement on account of the expenditure incurred suo motu for relief and rehabilitation of the Bhopal victims nor will the Govt. or its instrumentality make any claim on its own arising from this disaster. He further assured this Court that in the event of disbursement of compensation being initiated either under the Act or

under the orders of this Court, a notification would be instantaneously issued under Section 5(3)of the Act authorising the Commissioner or any other officers to discharge functions and exercise all or any powers which the Central Govt. may exercise under Section 5 to enable the victims to place before the Commissioner or the Dy. Commissioner any additional evidence that they would like to be considered.

80. The Constitution Bench of this Court presided over by the learned Chief Justice has pronounced an order on 4th May, 1989 giving reasons for the orders passed on 14th-- 15th February, 1989. Inasmuch as good deal of criticism was advanced before this Court during the hearing of the arguments on behalf of the petitioners about the propriety and validity of the settlement dated 14th-15th February, 1989 even though the same was not directly in issue before us, it is necessary to refer briefly to what the Constitution Bench has stated in the said order dated 4th May, 1989. After referring to the facts leading to the settlement, the Court has set out the brief reason on the following points:

(a) How did the Court arrive at the sum of 470 million US dollars for an overall settlement?
(b) Why did the Court consider the sum-of 470 millions US dollars as 'just, equitable and reasonable'? (c) Why did the Court not pronounce on certain important legal questions of far-reaching importance said to arise in the appeals as to the principles of liability of monolithic, economically entrenched multinational companies operating with inherently dangerous technologies in the developing countries of the third world? These questions were said to be of great contemporary relevance to the democracies of the third world. This Court recognised that there was another aspect of the review pertaining to the part of the settlement which terminated the criminal proceedings. The questions raised on the point in the review-petitions, the Court was of the view, prima facie merit consideration

and therefore, abstained from saying anything which might tend to prejudge this issue one way or the other.

81. The basic consideration, the Court recorded, motivating the conclusion of the settlement was the compelling need for urgent relief, and the Court set out the law's delays duly considering that there was a compelling duty both judicial and humane, to secure immediate relief to the victims. In doing so, the Court did not enter upon any forbidden ground, the court stated. The Court noted that indeed efforts had already been made in this direction by Judge Keenan and the learned District Judge of Bhopal. Even at the opening of the arguments in the appeals, the Court had suggested to learned counsel to reach a just and fair settlement. And when counsel met for re-scheduling of the hearings the suggestion was reiterated. The Court recorded that the response of learned counsel was positive in at- tempting a settlement but they expressed a certain degree of uneasiness and skepticism at the prospects of success in view of their past experience of such negotiations when, as they stated, there had been uninformed and even irresponsible criticism of the attempts at settlement.

82. Learned Attorney General had made available to the Court the particulars of offers and counter-offers made on previous occasions and the history of settlement. In those circumstances, the Court examined the prima facie material as the basis of quantification of a sum which, having regard to all the circumstances including the prospect of delays inherent in the judicial process in India and thereafter in the matter of domestication of the decree in the U.S. for the purpose of execution and directed that 470 million US dollars, which upon immediate payment with interest over a reasonable period, pending actual distribution amongst the claimants, would aggregate to nearly 500 million US dollars or its rupee equivalent of approximately Rs.750 cores which the learned Attorney General had

suggested, be made the basis of settlement, and both the parties accepted this direction.

83. The Court reiterated that the settlement proposals were considered on the premise that the Govt. had the exclusive statutory authority to represent and act on behalf of the victims and neither counsel had any reservation on this. The order was also made on the premise that the Act was a valid law. The Court declared that in the event the Act is declared void in the pending proceedings challenging its validity, the order dated 14th February, 1989 would require to be examined in the light of that decision. The Court also reiterated that if any material was placed before it from which a reasonable inference was possible that the UCC had, at any time earlier, offered to pay any sum higher than an outright down payment of US 470 million dollars, this Court would straightaway initiate sue mote action requiring the concerned parties to show cause why the order dated 14th February'89 should not be set aside and the parties relegated to their original positions. The Court reiterated that the reasonableness of the sum was based not only on independent quantification but the idea of reasonableness for the present purpose was necessarily a broad and general estimate in the context of a settlement of the dispute and not on the basis of an accurate assessment by adjudication. The Court stated that the question was how good or reasonable it was as a settlement, which would avoid delay, uncertainties and assure immediate payment. An estimate in the very nature of things would not have the accuracy of adjudication. The Court recorded the offers, counter-offers, reasons and the numbers of the persons treated and the claims already made. The Court found that from the order of the High Court and the admitted position on the plaintiff's side, a reasonable prima facie estimate of the number of fatal cases and serious personal injury cases, was possible to be made. The Court referred to the High Court's assessment and procedure to examine the task of assessing

the quantum of interim compensation. The Court referred to M. C Mehta's case reiterated by the High Court, bearing in mind the factors that if the suit proceeded to trial the plaintiff-Union of India would obtain judgment in respect of the claims relating to deaths and personal injuries in the following manner:-

(a) Rs.2 lakhs in each case of death; (b) Rs.2 lakh in each case of total permanent disability; (c) Rs. 1 lakh in each case of permanent partial disablement; and (d) Rs.50,000 in each case of temporary partial disablement.

84. Half of these amounts were awarded as interim compensation by the High Court.

85. The figures adopted by the High Court in regard to the number of fatal cases and cases of serious personal injuries did not appear to have been disputed by anybody before the High Court, this Court observed. From those figures, it came to the conclusion that the total number of fatal cases was about 3,000 and of grievous and a serious personal injury, as verifiable from the records was 30,000. This Court also took into consideration that about 8 months after the occurrence a survey had been conducted for the purpose of identification of cases. These figures indicated less than 10,000. In those circumstances, as a rough and ready estimate, this Court took into consideration the prima facie findings of the High Court and estimated the number of fatal cases of 3,000 where compensation could range from Rs. 1 lakh to Rs.3 lakhs. This would account for Rs.70 crores, nearly 3 times higher than what would have otherwise been awarded in comparable cases in motor vehicles accident claims.

86. The Court recognised the effect of death and reiterated that loss of precious human lives is irreparable. The law can only hope to compensate the estate of a person whose life was lost by the

wrongful act of another only in the way the law was equipped to compensate i.e. by monetary compensation calculated on certain well-recognised principles. "Loss to the estate" which is the entitlement of the estate and the 'loss of dependency' estimated on the basis of capitalised present value awardable to the heirs and depend- ants, this Court considered, were the main components in the computation of compensation in fatal accident actions, but the High Court adopted a higher basis. The Court also took into account the personal injury cases, and stated that these apportionments were merely broad considerations generally guiding the idea of reasonableness of the overall basis of settlement, and reiterated that this exercise was not a pre-determination of the quantum of compensation amongst the claimants either individually or category-wise, and that the determination of the actual quantum of compensation payable to the claimants has to be done by the authorities under the Act. These were the broad assessments and on that basis the Court made the assessment. The Court believed that this was a just and reasonable assessment based on the materials available at that time. So far as the other question, namely, the vital juristic principles of great contemporary relevance to the Third World generally, and to India in particular, touching problems emerging from the pursuit of such dangerous technologies for economic gains by multi- nationals in this case, the Court recognised that these were great problems and reiterated that there was need to evolve a national policy to protect national interests from such ultra-hazardous pursuits of economic gain; and that Jurists, technologists and other experts in economics. environmentology, futurology, sociology and public health should identify the areas of common concern and help in evolving proper criteria which might receive judicial recognition and legal sanction. The Court reiterated that some of these problems were referred to in M.C. Mehta's case (supra). But in the present case, the compulsions of the need for immediate relief to tens of thousands of suffering victims could not

wait till these questions vital though these be, were resolved in due course of judicial proceedings; and the tremendous suffering of thousands of persons compelled this Court to move into the direction of immediate relief which, this Court thought, should not be subordinated to the uncertain promises of the law, and when the assessment of fairness of the amount was based on certain factors and assumptions not disputed even by the plaintiffs.

87. Before considering the question of constitutional validity of the Act, in the light of the background of the facts and circumstances of this case and submissions made, it is necessary to refer to the order dated 3rd March, 1989 passed by the Constitution Bench in respect of writ petitions Nos. 164/86 and 268/89, consisting of 5 learned Judges presided over by the Humble the Chief Justice of India. The order stated that these matters would be listed on 8th March, 1989 before a Constitution Bench for decision "on the sole question whether the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 is ultra vires". This is a judicial order passed by the said Constitution Bench. This is not an administrative order. Thus, these matters are before this Court. The question, therefore, arises; what are these matters? The aforesaid order specifically states that these matters were placed before this Bench on the "sole question" whether the Act is ulta vires.

Hence, these matters are not before this Bench for disposal of these writ petitions. If as a result of the determination, one way or the other, it is held, good and bad, and that some relief becomes necessary, the same cannot be given or an order cannot be passed in respect thereof, except declaring the Act or any portion of the Act, valid or in- valid constitutionally as the decision might be.

88. In writ petition No. 268/89 there is consequential prayer to set aside the order dated 14/15th February, 1989. But since the order dated 3rd March, 1989 above only suggests that these matters have

been placed before this Bench 'on the sole question' whether the Bhopal Act is ultra vires or not, it is not possible by virtue of that order to go into the question whether the settlement is valid or liable to be set aside as prayed for in the prayers in these applications.

89. The provisions of the Act have been noted and the rival contentions of the parties have been set out before. It is, however, necessary to reiterate that the Act does not in any way circumscribe the liability of the UCC, UCIL or even the Govt. of India or Govt. of Madhya Pradesh if they are jointly or severally liable. This follows from the construction of the Act, from the language that is apparent. The context and background do not indicate to the contrary. Counsel for the victims plead that that is so. The learned Attorney General accepts that position. The liability of the Government is, however, disputed. This Act also does not deal with any question of criminal liability of any of the parties concerned. On an appropriate reading of the relevant provisions of the Act, it is apparent that the criminal liability arising out of Bhopal gas leak disaster is not the subject-matter of this Act and cannot be said to have been in any way affected, abridged or modified by virtue of this Act. This was the contention of learned counsel on behalf of the victims. It is also the contention of the learned Attorney General. In our opinion, it is the correct analysis and consequence of the relevant provisions of the Act. Hence, the submissions made on behalf of some of the victims that the Act was bad as it abridged or took away the victims' right to proceed criminally against the delinquent, be it UCC or UCIL or jointly or severally the Govt. of India, Govt. of Madhya Pradesh or Mr. Arjun Singh, the erstwhile Chief Minister of Madhya Pradesh, is on a wrong basis. There is no curtailment of any right with respect to any criminal liability. Criminal liability is not the subject-matter of the Act. By the terms of the Act and also on the concessions made by the learned Attorney General, if that be so, then can non-

prosecution in criminal liability be a consideration or valid consideration for settlement of claims under the Act?

This is a question which has been suggested and articulated by learned counsel appearing for the victims. On the other hand, it has been asserted by the learned Attorney General that that part of the order dated 14/15th February, 1989 dealing with criminal prosecution or the order of this Court was by virtue of the inherent power of this Court under Articles 136 & 142 of the Constitution. These, the learned Attorney General said, were in the exercise of plenary powers of this Court. These are not considerations which induced the parties to enter into settlement. For the purpose of determination of constitutional validity of the Act, it is however necessary to say that criminal liability of any of the delinquents or of the parties is not the subject-matter of this Act and the Act does not deal with either claims or rights arising out of such criminal liability. This aspect is necessary to be reiterated on the question of validity of the Act.

90. We have set out the language and the purpose of the Act, and also noted the meaning of the expression 'claim' and find that the Act was to secure the claims connected with or arising out of the disaster so that these claims might be dealt with speedily, affectively, equitably and to the best advantage of the claimants. In our opinion, Clause

(b) of Section 2 includes all claims of the victims arising out of and connected with the disaster for compensation and damages or loss of life or personal injury or loss to the business and flora and fauna. What, however, is the extent of liability, is another question. This Act does not purport to or even to deal with the extent of liability arising out of the said gas leak disaster. Hence, it would be improper or incorrect to contend as did Ms. Jaising, Mr Garg and other learned counsel appearing for the victims, that the Act circumscribed the

liability--criminal, punitive or absolute of the parties in respect of the leakage. The Act provides for a method or procedure for the establishment and enforcement of that liability. Good deal of argument was advanced before this Court on the question that the settlement has abridged the liability and this Court has lost the chance of laying down the extent of liability arising out of disaster like the Bhopal Gas Leak disaster. Submissions were made that we should lay down clearly the extent of liability arising out of these types of disasters and we should further hold that the Act abridged such liability and as such curtailed the rights of the victims and was bad on that score. As mentioned hereinbefore, this is an argument under a misconception. The Act does not in any way except to the extent indicated in the relevant provisions of the Act circumscribe or abridge the extent of the rights of the victims so far as the liability of the delinquents are concerned. Whatever are the rights of the victims and what- ever claims arise out of the gas leak disaster for compensation, personal injury, loss of life and property, suffered or likely to be sustained or expenses to be incurred or any other loss are covered by the Act and the Central Govt. by operation of Section 3 of the Act has been given the exclusive right to represent the victims in their place and stead. By the Act, the extent of liability is not in any way abridged and, therefore, if in case of any industrial disaster like the Bhopal Gas Leak disaster, there is right in victims to recover damages or compensation on the basis of absolute liability, then the same is not in any manner abridged or curtailed.

91. Over 120 years ago Rylands v. Fletcher, [1868] Vol. 3 LR E & I Appeal Cases 330 was decided in England. There A, was the lessee of certain mines. B, was the owner of a mill standing on land adjoining that under which the mines were worked. B, desired to construct a reservoir, and employed competent persons, such as engineers and a contractor, to construct it. A, had worked his mines up to a spot where there were certain old passages of disused mines;

these passages were connected with vertical shafts which communicated with the land above, and which had also been out of use for years, and were apparently filled with marl and the earth of the surrounding land. No care had been taken by the engineer or the contractor to block up these crafts, and shortly after water had been introduced into the reservoir it broke through some of the shafts, flowed through the old passage and flooded As mine. It was held by the House of Lords in England that where the owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though mischief should thereby be occasioned to his neighbour, he will not be liable in damages. But if he brings upon his land any thing which would not naturally come upon it, and which is in itself dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal wilfulness or negligence, he will be liable in' damages for any mischief thereby occasioned. In the background of the facts it was held that A was entitled to recover damages from B, in respect of the injury. The question of liability was high- lighted by this Court in M.C. Mehta's case (supra) where a Constitution Bench of this Court had to deal with the rule of strict liability. This Court held that the rule in Rylands v. Fletcher, (supra) laid down a principle that if a person who brings on his land and collects and keep there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. This rule applies only to nonnatural user of the land and does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the things which escape are present by the consent of the person injured or in certain cases where there is a statutory authority. There, this Court observed that the rule in Rylands v. Fletcher, (supra) evolved in the 19th century at a time when all the developments of science and technology had not taken place, and the same cannot afford any guidance in evolving any standard of liability consistent with the

constitutional norms and the needs of the present day economy and social structure. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to be carried on as part of the developmental process, Courts should not feel inhibited by this rule merely because the new law does not recognise the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. This Court noted that law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. This Court reiterated there that if it is found 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, the Court should not hesitate to evolve such principle of liability merely because it has not been so done in England. According to this Court, an enterprise which is engaged in a hazardous or inherently dangerous industry which poses potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results to anyone on account of an accident in the operation of such activity resulting, for instance, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who were affected by the accident as part of the social cost for carrying on such activity, regardless of whether it is carried on carefully or not. Such liability is not subject to any of the exceptions which operate vies-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher. If the enterprise is permitted to carry

on a hazardous or dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads. The enterprise alone has the resources to discover and guard against hazards or dangers and 'to provide warning against potential hazards.

This Court reiterated that the measure of compensation in these kinds of cases must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. The determination of actual damages payable would depend upon various facts and circum- stances of the particular case.

92. It was urged before us that there was an absolute and strict liability for an enterprise which was carrying on dangerous operations with gases in this country. It was further submitted that there was evidence on record that sufficient care and attention had not been given to safe- guard against the dangers of leakage and protection in case of leakage. Indeed, the criminal prosecution that was launched against the Chairman of Union Carbide Shri Warren Anderson and others, as indicated before, charged them along with the defendants in the suit with delinquency in these matters and criminal negligence in conducting the toxic gas operations in Bhopal. As in the instant adjudication, this Court is not concerned with the determination of the actual extent of liability, we will proceed on the basis that the law enunciated by this Court in M.C. Mehta's case (supra) is the decision upon the basis of which damages will be payable to the victims in this case. But then the practical question arises: what is the extent of actual damages payable, and how would the quantum of damages be computed? Indeed, in this

connection, it may be appropriate to refer to the order passed by this Court on 3rd May, 1989 giving reasons why the settlement was arrived at the figure indicated. This Court had reiterated that it had proceeded on certain prima facie undisputed figures of death and substantially compensating personal injury. This Court has referred to the fact that the High Court had proceeded on the broader principle in M.C. Mehta's case (supra) and on the basis of the capacity of the enterprise because the compensation must have deterrent effect. On that basis the High Court had proceeded to estimate the damages on the basis of Rs.2 lakhs for each case of death and of total permanent disability, Rs. 1 lakh for each case of partial permanent disability and Rs.50,000 for each case or' temporary partial disability. In this connection, the controversy as to what would have been the damages if the action had proceeded, is another matter. Normally, in measuring civil liability, the law has attached more importance to the principle of compensation than that of punishment. Penal redress, however, involves both compensation to the person injured and punish-

ment as deference. These problems were highlighted by the House of Lords in England in Rookes v. Barnard, [1964]AC 1129, which indicate the difference between aggravated and exemplary damages. Salmond on the Law of Torts, 15th Edition at p. 30 emphasises that the function of damages is compensation rather than punishment, but punishment cannot always be ignored. There are views which are against exemplary damages on the ground that these infringe in principle the object of law of torts, namely, compensation and not punishment and these tend to impose something equivalent to fine in criminal law without the safeguards provided by the criminal law. In Rookes v. Barnard (supra), the House of Lords in England recognised three classes of cases in which the award of exemplary damages was considered to be justifiable. Awards must not only, it is said, compensate the parties but also deter the wrong doers and

others from similar conduct in future. The question of awarding exemplary or deterrent damages is said to have often confused civil and criminal functions of law. Though it is considered by many that it is a legitimate. encroachment of punishment in the realm of civil liability, as it operates as a restraint on the transgression of law which is for the ultimate benefit of the society. Perhaps, in this case, had the action proceeded, one would have realised that the fall out of this gas disaster might have been formulation of a concept of damages, blending both civil and criminal liabilities. There are, however, serious difficulties in evolving such an actual concept of punitive damages in respect of a civil action which can be integrated and enforced by the judicial process. It would have raised serious problems of pleading, proof and discovery, and interesting and challenging as the task might have been, it is still very uncertain how far decision based on such a concept would have been a decision according to 'due process' of law acceptable by international standards. There were difficulties in that attempt. But as the provisions stand these considerations do not make the Act constitutionally invalid. These are matters on the validity of settlement. The Act, as such does not abridges or curtail damages or liability whatever that might be. So the challenge to the Act on the ground that there has been curtailment or deprivation of the rights of the victims which is unreasonable in the situation is unwarranted and cannot be sustained.

93. Mr. Garg tried to canvass before us the expanding of horizons of human rights. He contended that the conduct of the multinational corporations dealing with dangerous gases for the purpose of development specially in the conditions prevailing under the Third world countries requires closer scrutiny and vigilance on the part of emerging nations. He submitted that unless courts are alert and active in preserving the rights of the individuals and in enforcing criminal and strict liability and in setting up norms compelling the

Govt. to be more vigilant and enforcing the sovereign will of the people of India to oversee that such criminal activities which endanger even for the sake of developmental work, economy and progress of the country, the health and happiness of the people and damage the future prospects of health, growth and affect and pollute the environment, should be curbed and, according to him, these could only be curbed by insisting through the legal adjudication, punitive and deterrent punishment in the form of damages. He also pleaded that norms should be set up indicating how these kinds of dangerous operations are to be permitted under conditions of vigilance and survillence. While we appreciate the force of these arguments, and endorse his plea that norms and deterrence should be aspired for, it is difficult to correlate that aspect with the present problem in this decision.

94. We do reiterate, as mentioned in the Universal Declaration of Human Rights that people are born free and the dignity of the persons must be recognised and an effective remedy by competent tribunal is one of the surest method of effective remedy. If, therefore, as a result of this tragedy new consciousness and awareness on the part of the people of this country to be more vigilant about measures and the necessity of ensuring more strict vigilance for permitting the operations of such dangerous and poisonous gases dawn, then perhaps the tragic experience of Bhopal would not go in vain.

95. The main question, however, canvassed by all learned counsel for the victims was that so far as the Act takes away the right of the victims to fight or establish their own rights, it is a denial of access to justice, and it was contended that such denial is so great a deprivation of both human dignity and right to equality that it cannot be justified because it would be affecting right to life, which again cannot be deprived without a procedure established by law which is just, fair and reasonable.

96. On this aspect, Shri Shanti Bhushan tried to urge before us that sections 3 & 4 of the Act. in so far as these enjoin and empower the Central Govt. to institute or prose- cute proceedings was only an enabling provision for the Central Govt. and not depriving or disabling provisions for the victim. Ms. Jaising sought to urge in addition, that in order to make the provisions constitutionally valid, we should eliminate the concept of exclusiveness to the Central Govt. and give the victims right to sue along with the Central Govt. We are unable to accept these submissions.

97. In our opinion, Sections 3 & 4 are categorical and clear. When the expression is explicit, the expression is conclusive, alike in what it says and in what it does not say. These give to the Central Government an exclusive right to act in place of the persons who are entitled to make claim or have already made claim. The expression 'exclusive' is explicit and significant. The exclusivily cannot be whittled down or watered down as suggested by counsel. The said expression must be given its full meaning and extent. This is corroborated by the use of the expression 'claim' for all purposes. If such duality of rights are given to the Central Govt. along with the victims in instituting or proceeding for the realisation or the enforcement of the claims arising out of Bhopal gas leak disaster, then that would be so cumbersome that it would not be speedy, effective or equitable and would not be the best or more advantageous procedure for securing the claims arising out of the leakage. In that view of the matter and in view of the language used and the purpose intended to be achieved, we are unable to accept this aspect of the arguments advanced on behalf of the victims. It was then contended that by the procedure envisaged by the Act, the victims have been de- prived and denied.their rights and property to fight for compensation. The victims, it has been asserted, have been denied access to justice. It is a great deprivation, it was urged. It was contended that the procedure evolved under the Act for the victims

is peculiar and having good deal of disadvantages for the victims. Such special disadvantageous procedure and treatment is unequal treatment, it was suggested. It was, therefore, violative of Article 14 of the Constitution that is the argument advanced.

98. The Act does provide a special procedure in respect of the rights of the victims and to that extent the Central Government takes upon itself the rights of the victims. It is a special Act providing a special procedure for a kind of special class of victims. In view of the enormity of the disaster the victims of the Bhopal gas leak disaster, as they were placed against the multinational and a big Indian corporation and in view of the presence of foreign contingency lawyers to whom the victims were exposed, the claim- ants and victims can legitimately be described as a class by themselves different and distinct, sufficiently separate and indentifiable to be entitled to special treatment for effective, speedy, equitable and best advantageous settlement of their claims. There indubitably is differentiation. But this differentiation is based on a principle which has rational nexus with the aim intended to be achieved by this differentiation. The disaster being unique in its character and in the recorded history of industrial disasters situated as the victims were against a mighty multinational with the presence of foreign contingency lawyers. Looming on the scene, in our opinion, there were sufficient grounds for such differentiation and different treatment. In treating the victims of the gas leak disaster differently and providing them a procedure, which was just, fair, reasonable and which was not unwarranted or unauthorised by the Constitution, Article 14 is not breached. We are, therefore, unable to accept this criticism of the. Act.

99. The second aspect canvassed on behalf of the victims is that the procedure envisaged is unreasonable and as such not warranted by the situation and cannot be treated as a procedure which is just, fair and reasonable. The argument has to be judged by the yardstick, as

mentioned herein before, enunciated by this Court in State of Madras v. V.G. Rao, (supra). Hence, both the restrictions or limitations on the substantive and procedural rights in the impugned legislation will have to be judged from the point of view of the particular Statute in question. No abstract rule or standard of reasonableness can be applied. That question has to be judged having regard to the nature of the rights alleged to have been infringed in this case, the extent and urgency of the evil sought to be remedied, disproportionate imposition, and prevailing conditions at the time, all these facts will have to be taken into consideration. Having considered the back- ground, the plight of the impoverished, the urgency of the victims' need, the presence of the foreign contingency lawyers, the procedure of settlement in USA in mass action, the strength for the foreign multinationals, the nature of injuries and damages, and the limited but significant right of participation of the victims as contemplated by s.4 of the Act, the Act cannot be condemned as unreasonable.

100. In this connection, the concept of 'parens patriae' in jurisprudence may be examined. It was contended by the learned Attorney General that the State had taken upon itself this onus to effectively come in as parens patriae, we have noted the long line of Indian decisions where, though in different contexts, the concept of State as the parent of people who are not quite able to or competent to fight for their rights or assert their rights, have been utilised. It was contended that the doctrine of parens patriae cannot be applicable to the victims. How the concept has been understood in this country as well as in America has been noted. Legal dictionaries have been referred to as noted before. It was asserted on behalf of the victims by learned counsel that the concept of 'parens patriae' can never be invoked for the purpose of suits in domestic jurisdiction of any country. This can only be applied in respect of the claims out of the country in foreign jurisdiction. It was further contended that this

concept of 'parens patraie' can only be applied in case of persons who are under disability and would not be applicable in respect of those who are able to assert their own rights. It is true that victims or their representatives are sui generis and cannot as such due to age, mental capacity or other reason not legally incapable for suing or pursuing the remedies for the rights yet they are at a tremendous disadvantage in the broader and comprehensive sense of the term. These victims cannot be considered to be any match to the multinational companies or the Govt. with whom in the conditions that the victims or their representatives were after the disaster physically, mentally, financially, economically and also because of the position of litigation would have to contend. In such a situation of predicament the victims can legitimately be considered to be disabled. They were in no position by themselves to look after their own interests effectively or purposefully. In that background, they are people who needed the State's protection and should come within the umbrella of State's sovereignty to assert, establish and maintain their rights against the wrong doers in this mass disaster. In that perspective, it is jurisprudentially possible to apply the principle of parents patria doctrine to the victims. But quite apart from that, it has to be borne in mind that in this case the State is acting on the basis of the Statute itself. For the authority of the Central Govt. to sue for and on behalf of or instead in place of the victims, no other theory, concept or any jurisprudential principle is required than the Act itself. The Act empowers and substitutes the Central Govt. It displaces the victims by operation of Section 3 of the Act and substitutes the Central Govt. in its place. The victims have been divested of their rights to sue and such claims and such rights have been vested in the Central Govt. The victims have been divested because the victims were disabled. The disablement of the victims vis-a-vis their adversaries in this matter is a self-evident factor. If that is the position then, in our opinion, even if the strict application of the 'parens patriae' doctrine is not in order, as a concept it is a

guide. The jurisdiction of the State's power cannot be circumscribed by the limitations of the traditional concept of parens patriae. Jurisprudentially, it could be utilised to suit or alter or adapt itself in the changed circum- stances. In the situation in which the victims were, the State had to assume the role of a parent protecting the rights of the victims who must come within the protective umbrella of the State and the common sovereignty of the Indian people. As we have noted the Act is an exercise of the sovereign power of the State. It is an appropriate evolution of the expression of sovereignty in the situation that had arisen. We must recognize and accept it as such.

101. But this right and obligation of the State has another aspect. Shri Shanti Bhushan has argued and this argument has also been adopted by other learned counsel appearing for the victims that with the assumption by the State of the jurisdiction and power as a parent to fight for the victims in the situation there is an incumbent obligation on the State, in the words of Judge Keenan, 'as a matter of fundamental human decency' to maintain the victims until the claims are established and realised from the foreign multinationals. The major inarticulate premise apparent from the Act and the scheme and the spirit of the Act is that so long as the rights of the victims are prosecuted the State must protect and preserve the victims. Otherwise the object of the Act would be defeated, its purpose frustrated. Therefore, continuance of the payments of the interim maintenance for the continued sustenance of the victims is an obligation arising out of State's assumption of the power and temporary deprivation of the rights of the victims and divestiture of the rights of the victims to fight for their own rights. This is the only reasonable interpretation which is just, fair and proper. Indeed, in the language of the Act there is support for this interpretation. Section 9 of the Act gives power to the Central Govt. to frame by notification, a scheme for carrying into effect the purposes of the

Act. Sub-section (2) of Section 9 provides for the matters for which the scheme may provide. Amongst others, clause (d) of Section 9(2) provides for creation of a fund for meeting expenses in connection with the administration of the Scheme and of the provisions of the Act; and clause (e) of Section 9(2) covers the amounts which the Central Govt. "may after due appropriation made by Parliament by law in that behalf, credit to the fund referred to in clause (d) and any other amounts which may be credited to such fund". Clause (f) of Section 9(2) speaks of the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of the claims. These provisions are suggestive but not explicit. Clause (b) of Section 10 which provides that in disbursing under the scheme the amount received by way of compensation or damages in satisfaction of a claim as a result of the adjudication or settlement of the claim by a court or other authority, deduction shall be made from such amount of the sums, if any, paid to the claimant by the Govt. before the disbursal of such amount. The Scheme framed is also significant. Clause 10 of the Scheme provides for the claims and relief funds and includes disbursal of amounts as relief including interim relief to persons affected by the Bhopal gas leak disaster and Clause 11(1) stipulates that disbursal of any amounts under the scheme shall be made by the Deputy Commissioner to each claimant through credit in a bank or postal saving account, stressing that the legislative policy underlined the Bhopal Act contemplated payment of interim relief till such time as the' Central Govt. was able to recover from the Union Carbide full amount of compensation from which the interim reliefs already paid were to be deducted from the amount payable to them for the final disbursal. The Act should be construed as creating an obligation oh the Central Govt. to pay interim relief as the Act deprives the victims of normal and immediate right of obtaining compensation from the Union Carbide. Had the Act not been enacted, the victims could have and perhaps would have been entitled not only to sue the

Union Carbide themselves, but also to enter into settlement or compromise of some sort with them. The provisions of the Act deprived the victims of that legal right and opportunity, and that deprivation is substantial deprivation because upon immediate relief depends often the survival of these victims. In that background, it is just and proper that this deprivation is only to be justified if the Act is read with the obligation of granting interim relief or maintenance by the Central Government until the full amount of the dues of the victims is realised from the Union Carbide after adjudication or settlement and then deducting therefrom the interim relief paid to the victims. As submitted by learned Attorney General, it is true that there is no actual expression used in the Act itself which expressly postulates or indicates such a duty or obligation under the Act. Such an obligation is, however, inherent and must be the basis of properly construing the spirit of the Act. In our opinion, this is the true basis and will be in consonance with the spirit of the Act. It must be, to use the well-known phrase 'the major inarticulate premise' upon which though not expressly stated, the Act proceeds. It is on this promise or premise that the State would be justified in taking upon itself the right and obligation to proceed and prosecute the claim and deny access to the courts of law to the victims on their own. If it is only so read, it can only be held to be constitutionally valid. It has to be borne in mind that the language of the Act does not militate against this construction but on the contrary,Sections 9, 10 and the scheme of the Act suggest that the Act contains such an obligation. If it is so read, then only meat can be put into the skeleton of the Act making it meaningful and purposeful. The Act must, therefore, be so read. This approach to the interpretation of the Act can legitimately be called the 'constructive intuition' which, in our opinion, is a permissible mode of viewing the Acts of Parliament. The freedom to search for 'the spirit of the Act' or the quantity of the mischief at which it is aimed (both synonymous for the intention of the parliament) opens up the possibility of liberal interpretation "that

delicate and important branch of judicial power, the concession of which is dangerous, the denial ruinous". Given this freedom it is a rare opportunity though never to be misused and challenge for the Judges to adopt and give meaning to the Act, articulate and inarticulate, and thus translate the intention of the Parliament and fulfil the object of the Act. After all, the Act was passed to give relief to the victims who, it was thought, were unable to establish their own rights and fight for themselves. it is common knowledge that the victims were poor and impoverished. How could they survive the long ordeal of litigation and ultimate execution of the decree or the orders unless provisions be made for their sustenance and maintenance, especially when they have been deprived of the fight to fight for these claims themselves? We, there- fore, read the Act accordingly.

102. It was, then, contended that the Central Govt. was not competent to represent the victims. This argument has been canvassed on various grounds. It has been urged that the Central Govt. owns 22% share in UCIL and as such there is a conflict of interest between the Central Govt. and the victims, and on that ground the former is disentitled to represent the latter in their battle against UCC and UCIL. A large number of authorities on this aspect were cited. However, it is not necessary in the view we have taken to deal with these because factually the Central Govt. does not own any share in UCIL. These are the statutory independent organizations, namely, Unit Trust of India and Life Insurance Corporation, who own 20 to 22% share in UCIL. The Govt. has certain amount of say and control in LIC and UTI. Hence, it cannot be said, in our opinion, that there is any conflict of interest in the real sense of the matter in respect of the claims of Bhopal gas leak disaster between the Central Govt. and the victims. Secondly, in a situation of this nature, the Central Govt. is the only authority which can pursue and effectively represent the victims. There is no other organisation or Unit which

can effectively represent the victims. Perhaps, theoretically, it might have been possible to constitute another independent statutory body by the Govt. under its control and supervision in whom the claim of the victims might have been vested and substituted and that Body could have been entrusted with the task of agitating or establishing the same claims in the same manner as the Central Govt. has done under the Act. But the fact that that has not been done, in our opinion, does not in any way affect the position. Apart from that, lastly, in our opinion, this concept that where there is a conflict of interest, the person having the conflict should not be entrusted with the task of this nature, does not apply in the instant situation. In the instant case, no question of violation of the principle of natural justice arises, and there is no scope for the application of the principle that no man should be a Judge in his own cause. The Central Govt. was not judging any claim, but was fighting and advancing the claims-of the victims. In those circumstances, it cannot be said that there was any violation of the principles of natural justice and such entrustment to the Central Govt. of the right to ventilate for the victims was improper or bad. The adjudication would be done by the courts, and therefore there is no scope of the violation of any principle of natural justice.

103. Along with this submission, the argument was that the power and the right given to the Central Govt. to fight for the claims of the victims, is unguided and uncanalised. This submission cannot be accepted. Learned Attorney General is right that the power conferred on the Central Govt. is not uncanalised. The power is circumscribed by the purpose of the Act. If there is any improper exercise or transgression of the power then the exercise of that power can be called in question and set aside, but the Act cannot be said to be violative of the rights of the victims on that score. We have noted the relevant authorities on the question that how power should be exercised is different and separate from the question whether the

power is valid or not. The next argument on behalf of the victims was that there was conflict of interest between the victims and the Govt. viewed from another aspect of the matter. It has been urged that the Central Govt. as well as the Govt. of Madhya Pradesh along with the erstwhile Chief Minister of the State of Madhya Pradesh Shri Arjun Singh were guilty of negligence, malfeasance and non-feasance, and as such were liable for damages along with Union Carbide and UCIL. In other words, it has been said that the Govt. of India and the Govt. of Madhya Pradesh along with Mr. Arjun Singh are joint tort- feasors and joint wrong doers. Therefore. it was urged that there is conflict of interest in respect of the claims arising out of the the gas leak disaster between the Govt. of India and the victims and in such a conflict, it is improper, rather illegal and unjust to vest in the Govt. of India the rights and claims of the victims. As noted before, the Act was passed in a particular background and, in our opinion, if read in that background, only covers claims against Union Carbide or UCIL. "Bhopal gas leak disaster" or "disaster" has been defined in clause (a) of Section (2) as the occurrence on the 2nd and 3rd days of December, 1984 which involved the release of highly noxious and abnormally dangerous gas from a plant in Bhopal (being a plant of the UCIL, a subsidiary of the UCC of U.S.A.) and which resulted in loss of life and damage to property on an extensive scale.

104. In this context, the Act has to be understood that it is in respect of the person responsible, being the person in-charge-of the UCIL and the parent company UCC. This interpretation of the Act is further strengthened by the fact that a "claimant" has been defined in clause (c) of Section 2as a person who is entitled to make a claim and the expression "person" in Section 2(e) includes the Govt. Therefore, the Act proceeded on the assumption that the Govt. could be a claimant being a person as such. Further- more, this construction and the perspective of the Act is strengthened if a

reference is made to the debate both in the Lok Sabha and Rajya Sabha to which references have been made.

105. The question whether there is scope for the Union of India being responsible or liable as a joint tort feasor is a difficult and different question. But even assuming that it was possible that the Central Government might be liable in a case of this nature, the learned Attorney General was right in contending that it was only proper that the Central Government should be able and authorised to represent the victims. In such a situation, there will be no scope of the violation of the principles of natural justice. The doctrine of necessity would be applicable in a situation of this nature. The doctrine has been elaborated, in Halsbury's Laws of England, 4th Edition, p, 89, paragraph 73, where it was reiterated that even if all the members of the Tribunal competent to determine a matter were subject to disqualification, they might be authorised and obliged to hear that matter, by virtue of the operation of the common law doctrine of necessity,, An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide may in certain circumstances be required to adjudicate if there is no other person who is competent or authorised to be adjudicator or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In the circumstances of the case, as mentioned hereinbefore, the Government of India is only capable to represent the victims as a party. The adjudication, however, of the claims would be done by the Court. In those circumstances, we are unable to accept the challenge on the ground of the violation of principles of natural justice on this score. The learned Attorney General, however, sought to advance, as we have indicated before, his contention on the ground of de facto validity. He referred to certain decisions. We are of the opinion that this principle will not be applicable. We are also not impressed by the plea of the doctrine of bona fide representation of the interests of

victims in all these proceedings. We are of the opinion that the doctrine of bonafide representation would not be quite relevant and as such the decisions cited by the learned Attorney General need not be considered.

106. There is, however, one other aspect of the matter which requires consideration. The victims can be divested of their rights i.e. these can be taken away from them provided those rights of the victims are ensured to be established and agitated by the Central Govt. following the procedure which would be just, fair and reasonable. Civil Procedure Code is the guide which guides civil proceedings in this country and in other countries procedure akin to Civil Procedure Code. Hence, these have been recognised and accepted as being in consonance with the fairness of the proceedings and in conformity with the principles of natural justice. Therefore, the procedure envisaged under the Act has to be judged whether it is so consistent. The Act, as indicated before. has provided the procedure under sections 3 and 4. Section 11 provides that the provisions of the Act and of any Scheme flamed thereunder shall have effect not- withstanding anything inconsistent therewith contained in any enactment other than the Act or any instrument having effect by virtue of any enactment other than the Act. Hence, if anything is inconsistent with the Act for the time being, it will not have force and the Act will override those provisions to the extent it does. The Act has not specifically contemplated any procedure to be followed in the action to be taken pursuant to the powers conferred under section 3 except to the extent indicated in section 4 of the Act. Section 5, however, authorises the Central Government to have the powers of a civil court for the purpose of discharging the functions pursuant to the authority vested under sections and 4 of the Act. There is no question of Central Government acting as a court in respect of the claims which it should enforce for or on behalf or instead of the victims of the Bhopal gas leak disaster. In this

connection, it is necessary to note that it was submitted that the Act, so far as it deals with the claims of the victims, should be read in conformity with Civil Procedure Code and/or with the principles of natural justice; and unless the provisions of/the Act are so read it would be violative of Articles 14 and 21 of the Constitution in the sense that there will be deprivation of rights to/fife and liberty without following a procedure which is just, fair and reasonable. That is the main submission and contention of the different counsel for the victims who have appeared. The different view points from which this contention has been canvassed have been noted before. On the other hand, on behalf of the Government, the learned Attorney General has canvassed before us that there were sufficient safeguards consistent with the principles of natural justice within this Act and beyond what has been provided for in a situation for which the Act was enacted, nothing more could be provided and further reading down the provisions of the Act in the manner suggested would defeat the purpose of the Act. The aforesaid section 3 provides for the substitution of the Central Government with the' right to represent and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim in respect of the disaster. The State has taken over the rights and claims of the victims in the exercise of sovereignty in order to discharge the constitutional obligations as the parent and guardian of the victims who in the situation as placed needed the umbrella of protection. Thus, the State has the power and jurisdiction and for this purpose unless the Act is otherwise unreasonable or violative of the constitutional provisions, no question of giving a hearing to the parties for taking over these fights by the State arises. For legislation by the Parliament, no principle of natural justice is attracted provided such legislation is within the competence of the legislature, which indeed the present Act is within the competence of the Parliament. We are in agreement with the submission of the learned Attorney General that section makes the Central Government the

dominus litis and it has the carriage of the proceedings, but that does not solve the problem of by what procedure the proceedings should be carried.

107. The next aspect is that section 4 of the Act, which, according to the learned Attorney General gives limited rights to the victims in the sense that it obliges the Central Government to have due regard to any matters which such person may require to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim". Therefore, it obliges the Central Government to have 'due regard' to any matters, and it was urged on behalf of the victims that this should be read in order to make the provisions constitutionally valid as providing that the victims will have a say in the conduct of the proceedings and as such must have an opportunity of knowing what is happening either by instructing or giving Opinions to the Central Government and/or providing for such directions as to settlement and other matters. In other words, it was contended on behalf of the victims that the victims should be given notice of the proceedings and there- by an opportunity, if they so wanted, to advance their view: and that to make the provisions of s. 4 meaningful and effective unless notice was given to the victim, disabled as he is, the assumption upon which the Act has been enacted, could not come and make suggestion in the proceedings. If the victims are not informed and given no opportunity, the purpose of s. 4 cannot be attained.

108. On the other hand, the learned Attorney General suggested that s. 4 has been complied with, and contended that the victims had notice of the proceedings. They had knowledge of the suit in America, and of the order passed by Judge Keenan. The private plaintiffs who had gone to America were represented by foreign contingency lawyers who knew fully well what they were doing and

they had also joined the said suit along with the Government of India. Learned Attorney General submitted that s. 4 of the Act clearly. Enabled the victims to exercise their right of participation in the proceedings. According to him, there was exclusion of victims from the process of adjudication but a limited participation was provided and beyond that participation no further participation was warranted and no further notice was justfied either by the provisions of the Act as read with the constitutional requirements or under the general principles of natural justice. He submitted that the principles of natural justice cannot be put into strait jacket and their application would depend upon the particular facts and the circumstances of a situation. According to the learned Attorney General, in the instant case, the legislature had formulated the area where natural justice could be applied, and upto what area or stage there would be association of the victims with the suit, beyond that no further application of any principle of natural justice was contemplated.

109. The fact that the provisions of the principles of natural justice have to be complied with, is undisputed. This is well-settled by the various decisions of the Court. The Indian Constitution mandates that clearly, otherwise the Act and the actions would be violative of Article 14 of the Constitution and would also be destructive of Article 19(1)(g) and negate Article 21 of the Constitution by denying a procedure which is just, fair and reasonable. See in this connection, the observations of this Court in Maneka Gandhi's case (supra) and Olga Tellis's case (supra). Some of these aspects were noticed in the decision of this Court in Swadeshi Cotton Mills v. Union of India (supra). That was a decision which dealt with the question of taking over of the industries under the Industries (Development and Regulation) Act, 1951. The question that arose was whether it was necessary to observe the rules of natural justice before issuing a notification under section 18A (1) of the Act. It was held by the majority of Judges that in the facts of that case there had

been non-compliance with the implied requirement of the audi alteram partem rule of natural justice at the pre-decisional stage. The order in that case could be struck down as invalid on that score but the court found that in view of the concession a heating would be afforded to the company, the case was remitted to the Central Government to give a full, fair and effective hearing. It was held that the phrase 'natural justice' is not capable of static and precise definition. It could not be imprisoned in the straight-jacket or a cast-iron formula. Rules of natural justice are not embodied rules. Hence, it was not possible to make an exhaustive catalogue of such rules. This Court reiterated that audi ateram partem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. The rules of natural justice can operate only in areas not covered by any law validly made. The general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not in terms exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. If the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected the administrative decision after post-decisional hearing was good.

110. The principles of natural justice have been examined by this Court in Union of India & Anr. v. Tulsi Ram Patel & Ors., (supra). It was reiterated, that the principles of natural justice are not the creation of Article 14 of the Constitution. Art. 14 is not the begetter of the principles of natural justice but their constitutional guardian. The principles of natural justice consist, inter alia, of the requirement that no man should be condemned unheard. If, however, a legislation or a Statute expressly or by necessary implication excludes the

application of any particular principle of natural justice then it requires close Scrutiny of the Court.

111. It has been canvassed on behalf of the victims that the Code of Civil Procedure is an instant example of what is a just, fair and reasonable procedure, at least the principles embodied therein and the Act would be unreasonable if there is exclusion of the victims to vindicate properly their views and rights. This exclusion may amount to denial of justice. In any case, it has been suggested and in our opinion, there is good deal of force in this contention that if a part of the claim, for good reasons or bad, is sought to be compromised or adjusted without at least con- sidering the views of the victims that would be unreasonable deprivation of the rights of the victims. After all, it has to be borne in mind that injustice consists in the sense in the minds of the people affected by any act or inaction a feeling that their grievances. views or claims have gone 'unheeded or not considered. Such a feeling is in itself an injustice or a wrong. The law must, be so construed and implemented that such a feeling does not generate among the people for whose benefit the law is made. Right to a hearing or representation before entering into a compromise seems to be embodied in the due process of law understood in the sense the term has been used in the constitutional jargon of this country though perhaps not originally intended. In this connection, reference may be made to the decision of this Court in Sangram Singh v. Election Tribunal, Kotah, [1955] 2 SCR 1. The Representation of the People Act, 1951 contains section 90and the procedure of Election Tribunals under the Act was governed by the said provision. Sub-section (2) of section 90 provides that "Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits". Justice Bose speaking for the court said that it is procedure, something designed to facilitate

justice and further its ends, and cannot be considered as a penal enactment for punishment or penalties; not a thing designed to trip people up rather then help them. It was reiterated that our laws of procedure are grounded on the principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there may be exceptions and where they are clearly defined these must be given effect to. But taking by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle. At page 9 of the report, Justice Bose observed as under:

"But that a law of natural justice exists in the sense that a party must be heard in a Court of law, or at any rate be afforded an opportunity to appear and defend himself, unless there is express provision to the contrary, is, we think, beyond dispute. See the observations of the Privy Council in Balakrishna Udayar v. Vasudeva Ayyar, (ILR 40 Mad. 793, 800) and especially in T.M. Barter v. African Products Ltd., (AIR 1928 PC 261) where Lord Buckmaster said "no forms or procedure should ever be permitted to exclude the presentation of a litigant's defence". Also Hari Vishnu's case which we have just quoted. In our opinion, Wallace J. was right in Venkatasubbiah v. Lakshminarasimham, (AIR 1925 Mad. 1274) in holding that "One cardinal principle to be observed in trials by a Court obviously is that a party has a right to appear and plead his cause on all occasions when that cause comes on for hearing", and that "It follows that a party should not be deprived of that right and in fact the Court has no option to refuse that right, unless the Code of Civil Procedure deprives him of it".

112. All civilised countries accept the right to be heard as part of the due process of law where questions affecting their rights, privileges or claims are considered or adjudicated.

113. In S.L. Kapoor v. Jagmohan & Ors., [1981] 1 SCR 746 at 765, Chinnappa Reddy, J. speaking for this Court observed that the concept that justice must not only be done but must manifestly be seen to be done, is basic to our system. It has been reiterated that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been ob- served. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary and it has been said that it will come from a person who has denied justice that the person who has been denied justice, is not prejudiced. Principles of natural justice must, therefore, be followed. That is the normal requirement:

114. In view of the principles settled by this Court and accepted all over the world, we are of the opinion that in case of this magnitude and nature, when the victims have been given some say bySection 4 of the Act, in order to make that opportunity contemplated by section 4 of the Act, meaningful and effective, it should be so read that the victims have to be given an opportunity of making their representation before the court comes to any conclusion in respect of any settlement. How that opportunity should be given, would depend upon the particular situation. Fair procedure should be followed in a representative mass tort action. There are instances and some of these were also placed before us during the hearing of these matters indicating how the courts regulate giving of the notice in respect of a mass action where large numbers of people's views have to be ascertained. Such procedure should be evolved by the court when faced with such a situation.

115. The Act does not expressly exclude the application of the Code of Civil Procedure. Section 11of the Act provides the overriding effect indicating that anything inconsistent with the provisions of the Act in other law including the Civil Procedure Code should be ignored and the Act should prevail. Our attention was drawn to the provisions of Order 1 Rule 8(4) of the Code. Strictly speaking, Order 1 Rule 8 will not apply to a suit or a proceeding under the Act. It is not a case of one having common interest with others. Here the plaintiff, the Central Govt. has replaced and divested the victims.

116. Learned Attorney General submitted that as the provisions of the Code stood before 1976 Amendment, the High Courts had taken the view that hearing of the parties represented in the suit, was not necessary, before compromise. Further reference was made to proviso to Order XXIII Rule 1. As in this case there is no question, in our opinion, of abandonment as such of the suit or part of the suit, the provisions of this Rule would also not strictly apply. However, Order XXIII Rule 3B of the Code is an important and significant pointer and the principles behind the said provision would apply to this case. The said rule 3B pro- vides that no agreement or compromise in a representative suit shall be entered into without the leave of the court expressly recorded in the proceedings; and sub-rule (2) of rule 3B enjoins that before granting such leave the court shall give notice in such manner as it may think fit in a representative action. Representative suit, again, has been defined under Explanation to the said rule vide clause (d) as any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit. In this case, indubitably the victims would be bound by the settlement though not named in the suit. This is a position conceded by all. If that is so, it would be a representative suit in terms of and for the purpose of Rule 3B of Order XXIII of the Code. If the principles of this rule are the

principles of natural justice then we are of the opinion that the principles behind it would be applicable; and also that section 4 should be so construed in spite of the difficulties of the process of notice and other difficulties of making "informed decision making process cumbersome", as canvassed by the learned Attorney General.

117. In our opinion, the constitutional requirements, the language of the Section, the purpose of the Act and the principles of natural justice lead us to this interpretation of Section 4 of the Act that in case of a proposed or con- templated settlement, notice should be given to the victims who are affected or whose rights are to be affected to ascertain their views. Section 4 is significant. It enjoins the Central Govt. only to have "due regard to any matters which such person may require to be urged". So, the obligation is on the Central Govt. in the situation contemplated by Section 4to have due regard to the views of the victims and that obligation cannot be discharged by the Central Govt. unless the victims are told that a settlement is proposed, intended or contemplated. It is not necessary that such views would require consent of all the victims. The Central Govt. as the representative of the victims must have the views of the victims and place such views before the court in such manner it considers necessary before a settlement is entered into. If the victims want to advert to certain aspect of the matter during the proceedings under the Act and settlement indeed is an important stage in the proceedings, opportunities must be given to the victims. Individual notices may not be necessary. The Court can, and in our opinion, should in such situation formulate modalities of giving notice and public notice can also be given inviting views of the victims by the help of mass media.

118. Our attention was drawn to similar situations in other lands, where in mass disaster actions of the present type or mass calamity actions affecting large number of people, notices have been given in

different forms and it may be possible to invite the views of the victims by announcement in the media, Press, Radro, and TV etc. intimating the victims that a certain settlement is proposed or contemplated and inviting views of the victims within a stipulated period. And having regard to the views, the Central Govt. may proceed with the settlement of the action. Consent of all is not a pre-condition as we read the Act under Section

4. Hence, the difficulties suggested by the learned Attorney General in having the consent of all and unanimity, do not really arise and should not deter us from construing the section as we have.

119. The next aspect of the matter is, whether in the aforesaid light Section 4 has been complied with. The fact that there was no Learned Attorney General, however, sought to canvas the view that the victims had notice and some of them had participated in the proceedings. We are, however, unable to accept the position that the victims had notice of the nature contemplated under the Act upon the underling principle of Order XXIII Rule 3B of the Code. It is not enough to say that the victims must keep vigil and watch the proceeding. One assumption under which the Act is justified is that the victims were disabled to defend themselves in an action of this type. If that is so, then the Court cannot presume that the victims were a lot, capable and informed to be able to have comprehended or contemplated the settlement. In the aforesaid view of the matter, in our opinion, notice was necessary. The victims at large did not have the notice.

120. The question, however, is that the settlement had been arrived at after great deal of efforts to give immediate relief to the victims. We have noticed the order dated 4th May, 1989 passed by this Court indicating the reasons which impelled the Court to pass the orders on 14/15th February, 1989 in terms and manner as it did. It has been urged before us on behalf of some of the victims that justice has not

been done to their views and claims in respect of the damages suffered by them. It appears to us by reading the reasons given by this Court on 4th May, 1989 that justice perhaps has been done but the question is, has justice appeared to have been done and more precisely, the question before this Court is: does the Act envisage a procedure or contemplate a procedure which ensures not only that justice is done but justice appears to have been done. If the procedure does not ensure that justice appears to have been done, is it valid? Therefore, in our opinion, in the background of this question we must hold that Section 4 means and entails that before entering into any settlement affecting the rights and claims of the victims some kind of notice or information should be given to the victims; we need not now spell out the actual notice and the manner of its giving to be consistent with the mandate and purpose of section of the Act.

121. This Court in its order dated 4th May, 1989 had stated that in passing orders on 14th/15th February, 1989, this Court was impelled by the necessity of urgent relief to the victims rather than to depend upon the uncertain promise of law. The Act, as we have construed, requires notice to be given in what form and in what manner, it need not be spelled out, before entering into any settlement of the type with which we are concerned. It further appears that that type of notice which is required to be given had not been given. The question, therefore, is what is to be done and what is the consequence? The Act would be bad if it is not construed in the light that notice before any settlement under S. 4 of the Act was required to be given. Then arises the question of consequences of not giving the notice. In this adjudication, we are not strictly concerned with the validity or otherwise of the settlement, as we have indicated hereinbefore. But constitutional adjudication cannot be divorced from the reality of a situation, or the impact of adjudication. Constitutional deductions are never made in the vacuum. These deal

with life's problems in the reality of a given situation. And no constitutional adjudication is also possible unless one is aware of the consequences of such adjudication. One hesitates in matters of this type where large consequences follow one way or the other to put as under what others have put together. It is well to remember, as did Justice Holmes, that time has upset many fighting faiths and one must always wagar one's salvation upon some prophecy based upon imperfect knowledge. Our knowledge changes; our perception of truth also changes. It is true that notice was required to be given and notice has not been given. The notice which we have contemplated is a notice before the settlement or what is known in legal terminology as 'pre- decisional notice'. But having regard to the urgency of the situation and having regard to the need for the victims for relief and help and having regard to the fact that so much effort has gone in finding a basis for the settlement, we, at one point of time, thought that a post-decisional hearing in the facts and circumstances of this case might be considered to be sufficient compliance with the requirements of principles of natural justice as embodied under s. 4 of the Act. The reasons that impelled this Court to pass the orders of 14th/15th February, 1989 are significant and compelling. If notice was given, then what would have happened? It has been suggested on behalf of the victims by counsel that if the victims had been given an opportunity to be heard, then they would have perhaps pointed out, inter alia, that the amount agreed to be paid through the settlement was hopelessly inadequate. We have noted the evidence available to this Court which this Court has recorded in its order dated 4th May, 1989 to be the basis for the figure at which the settlement was arrived at. It is further suggested that if an opportunity had been given before the settlement, then the victims would have perhaps again pointed out that criminal liability could not be absolved in the manner in which this Court has done on the 14th/15th February, 1989. It was then contended that the Central Government was itself sued as a joint tort feasor. The Central

Government would still be liable to be proceeded in respect of any liability to the victims if such a liability is established; that liability is in no way abridged or affected by the Act or the settlement entered into. It was submitted on behalf of the victims that if an opportunity had been given, they would have perhaps pointed out that the suit against the Central Government, Government of Madhya Pradesh and UCIL could not have been settled by the compromise. It is further-suggested that if given an opportunity, it would have been pointed out that the UCIL should have also been sued. One of the important requirements of justice is that people affected by an action or inaction should have opportunity to have their say. That opportunity the victims have got when these applications were heard and they were heard after utmost publicity and they would have further opportunity when review application against the settlement would be heard.

122. On behalf of the victims, it was suggested that the basis of damages in view of the observations made by this Court in M.C. Mehta's case (supra) against the victims of UCC or UCIL would be much more than normal damages suffered in similar case against any other company or party which is financially not so solvent or capable. It was urged that it is time in order to make damages deterrent the damages must be computed on the basis of the capacity of a delinquent made liable to pay such damages and on the monitory capacity of the delinquent the quantum of the damages awarded would vary and not on the basis of actual consequences suffered by the victims. This is an uncertain promise of law. On the basis of evidence available and on the basis of the principles so far established, it is difficult to foresee any reasonable possibility of acceptance of this yardstick. And even if it is accepted, there are numerous difficulties of getting that view accepted internationally as a just basis in accordance with law. These, however, are within the realm of possibility.

123. It was contended further by Shri Garg, Shri Shanti Bhushan and Ms. Jaising that all the further particulars upon which the settlement had been entered into should have been given in the' notice which was required to be given before a settlement was sanctified or accepted. We are unable to accept this position. It is not necessary that all other particulars for the basis of the proposed settlement should be disclosed in a suit of this nature before the final decision. Whatever data was already there have been disclosed, that, in our opinion, would have been sufficient for the victims to be able to give their views, if they want to. Disclosure of further particulars are not warranted by the requirement of principles of natural justice. Indeed, such disclosure in this case before finality might jeopardise luther action, if any, necessary so consistent with justice of the case.

124. So on the materials available, the victims would have to express their views. The victims have not been able to show at all any other point or material which would go to impeach the validity of the settlement. Therefore, in our opinion, though settlement without notice is not quite proper, on the materials so far available, we are of the opinion that justice has been done to the victims but justice has not appeared to have been done. In view of the magnitude of the misery involved and the problems in this case, we are also of the opinion that the setting aside of the settlement on this ground in view of the facts and the circumstances of this case keeping the settlement in abeyance and giving notice to the victims for a post-decisional hearing would not be in the ultimate interest of justice. It is true that not giving notice, was not proper because principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. We are also conscious that justice is a psycho-logical yearning, in which men seek acceptance of their view point by having an opportunity of vindication of their view point before the forum or the authority enjoined or obliged to take a decision

affecting their right. Yet, in the particular situations, one has to bear in mind how an infraction of that should be sought to be removed is accordance with justice. In the facts and the circumstances of this case where sufficient opportunity is available when review application is heard on notice, as directed by Court, no further opportunity is necessary and it cannot be said that injustice has been done. "To do a great right" after all, it is permissible sometimes "to do a little wrong". In the facts and circumstances of the case, this is one of those rare occasions. Though entering into a settlement without the required notice is wrong, in the facts and the circumstances of this case, therefore, we are of the opinion, to direct that notice should be given now, would not result in dain justice in the situation. In the premises, no further consequential order is necessary by this Court. Had it been necessary for this Bench to have passed such a consequential order, we would not have passed any such consequential order in respect of the same.

125. The sections and the scheme dealing with the determination of damages and distribution of the amount have also been assailed as indicated before. Our attention was drawn to the provisions of the Act dealing with the payment of compensation and the scheme framed therefore. It was submit- ted that section 6 of the Act enjoins appointment by the Central Government of an officer known as the Commissioner for the welfare of the victims. It was submitted that this does not give sufficient judicial authority to the officer and would be really leaving the adjudication under the scheme by an officer of the executive nature. Learned Attorney General has, however, submitted that for disbursement of the compensation contemplated under the Act or under the orders of this Court, a notification would be issued under section 6(3)of the Act authorising the Commissioner or other officers to exercise all or any of the powers which the Central Government may exercise under section 6 to enable the victims to place before the Commissioner or Deputy

Commissioner any additional evidence that they would like to adduce. We direct so, and such appropriate notification be issued. We further direct that in the scheme of categorisation to be done by the Deputy Commissioner should be appealable to an appropriate judicial authority and the Scheme should be modified accordingly. We reiterate that the basis of categorisation and the actual categorisation should be justifiable and judicially reviewable-the provisions in the Act and the Scheme should be so read. There were large number of submissions made on behalf of the victims about amending the scheme. Apart from and to the extent indicated above, in our opinion, it would be unsafe to tinker with the scheme piecemeal. The scheme is an integrated whole and it would not be proper to amend it piecemeal. We, however, make it clear that in respect of categorisation and claim, the authorites must act on principles of natural justice and act quasi-judicially.

126. As mentioned hereinbefore, good deal of arguments were advanced before us as to whether the clause in the settlement that criminal proceedings would not be proceeded with and the same will remain quashed is valid or invalid. We have held that these are not part of the proceedings under the Act. So the orders on this aspect in the order of 14th/15th February, 1989 are not orders under the Act. Therefore, on the question of the validity of the Act, this aspect does not arise whether the settlement of criminal proceedings or quashing the criminal proceedings could be a valid consideration for settlement or whether if it was such a consideration or not is a matter which the court reviewing the settlement has to decide.

127. In the premise, we hold that the Act is constitutionally valid in the manner we read it. It proceeds on the hypothesis that until the claims of the victims are realised or obtained. from the delinquents, namely, UCC and UCIL by settlement or by adjudication and until the proceedings in respect thereof continue the Central Government must pay interim compensation or maintenance for the victims. In

entering upon the settlement in view of s. 4 of the Act, regard must be had to the views of the victims and for the purpose of giving regard to these, appropriate notices before arriving at any settlement, was necessary. In some cases, however, post-decisional notice might be sufficient but in the facts and the circumstances of this case, no useful purpose would be served by giving a post-decisional hearing having regard to the circumstances mentioned in the order of this Court dated 4th May, 1989 and having regard to the fact that there are no further additional data and facts available with the victims which can be profitably and meaningfully presented to controvert the basis of the settlement and further having regard to the fact that the victims had their say or on their behalf their views had been agitated in these proceedings and will have further opportunity in the pending review proceedings. No further order on this aspect is necessary. The sections dealing with the payment of compensation and categorisation should be implemented in the manner indicated before.

128. The Act was conceived on the noble promise of giving relief and succour to the dumb, pale, meek and impoverished victims of a tragic industrial gas leak disaster, a concomitant evil in this industrial age of technological advancement and development. The Act had kindled high hopes in the hearts of the. weak and worn, wary and forlorn. The Act generated hope of humanity. The implementation of the Act must be with justice. Justice perhaps has been done to the victims situated as they were, but it is also true that justice has not appeared to have been done. That is a great infirmity. That is due partly to the fact that procedure was not strictly followed as we have understood it and also partly because of the atmosphere that was created in the country, attempts were made to shake the confidence of the people in the judicial process and also to undermine the credibility of this Court. This was unfortunate. This was perhaps due to misinformed public opinion and also due to the

fact that victims were not initially taken into confidence in reaching the settlement. This is a factor which emphasises the need for adherence to the principles of natural justice. The credibility of judiciary is as important as the alleviation of the suffering of the victims, great as these were. We hope these adjudications will restore that credibility. Principles of natural justice are integrally embedded in our constitutional framework and their pristine glory and primacy cannot and should not be allowed to be submerged by the exigencies of particular situations or cases. This Court must always assert primacy of adherence to the principles of natural justice in all adjudications. But at the same time, these must be applied in a particular manner in particular cases having regard to the particular circumstances. It is, therefore, necessary to reiterate that the promises made to the victims and hopes raised in their hearts and minds can only be redeemed in some measure if attempts are made vigorously to distribute the amount realised to the victims in accordance with the scheme as indicated above. That would be redemption to a certain extent. It will also be necessary to reiterate that attempts should be made to formulate the principles of law guiding the Government and the authorities to permit carrying on of trade dealing with materials and things which have dengerous consequences within sufficient specific safeguards especially in case of multinational corporations trading in India. An awareness on these lines has dawned. Let action follow that awareness. It is also necessary to reiterate that the law relating to damages and payment of interim damages or compensation to the victims of this nature should be seriously and scientifically examined by the appropriate agencies.

129. The Bhopal Gas Leak disaster and its aftermath of that emphasise the need for laying down certain norms and standards the Government to follow before granting permissions or licences for the running of industries dealing with materials which are of

dangerous potentialities. The Government should, therefore, examine or have the problem examined by an expert committee as to what should be the conditions on which future licences and/or permission for running industries on Indian soil would be granted and for ensuring enforcement of those conditions, sufficient safety measures should be formulated and scheme of enforcement indicated. The Government should insist as a condition precedent to the grant of such licences or permissions, creation of a fund in anticipation by the industries to be available for payment of damages out of the said found in case of leakages or damages in case of accident or disaster flowing from negligent working of such industrial operations or failure to ensure measures preventing such occurrence. The Government should also ensure that the parties must agree to abide to pay such damages out of the said damages by procedure separately evolved for computation and payment of damages with- out exposing the victims or sufferers of the negligent act to the long and delayed procedure. Special procedure must be provided for and the industries must agree as a condition for the grant of licence to abide by such procedure or to abide by statutory arbitration. The basis for damages in case of leakages and accident should also be statutorily fixed taking into consideration the nature of damages inflicted, the consequences thereof and the ability and capacity of the parties to pay. Such should also provide for deterrent or punitive damages, the basis for which should be formulated by a proper expert committee or by the Government. For this purpose, the Government should have the matter examined by such body as it considers necessary and proper like the Law Commission or other competent bodies. This is vital for the future.

130. This case has taken some time. It was argued extensively. We are grateful to counsel who have assisted in all these matters. We have reflected. We have taken some time in pronouncing our decision. We wanted time to lapse so that the heat of the moment

may calm down and proper atmosphere restored. Justice, it has been said, is the constant and perpetual disposition to render every man his due. But what is a man's due in a particular situation and in a particular circumstances is a matter for appraisement and adjustment. It has been said that justice is balancing. The balances have always been the symbol of even-handed justice. But as said Lord Denning in Jones v. National Coal Board Ltd., [1957] 2 QB 55, at 64-let the advocates one after the other put the weights into the scales--the 'nicely calculated less or more'--but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every situation.

13 1. The applications are disposed of in the manner and with the direction, we have indicated above. SINGH, J. 1 have gone through the proposed judgment of my learned brother, Sabyasachi Mukharji, CJI. I agree with the same but I consider it necessary to express my opinion on certain aspects.

Five years ago between the night of December 2-3, 1984 one of the most tragic industrial disasters in the recorded history of mankind occurred in the city of Bhopal, in the State of Madhya Pradesh, as a result of which several per- sons died and thousands were disabled and physically incapacitated for life. The ecology in and around Bhopal was adversely affected and air, water and the atmosphere was polluted, its full extent has yet to be determined. Union Carbide India Limited (UCIL) a subsidiary of Union Carbide Corporation (a Transnational Corporation of United States) has been manufacturing pesticides at its plant located in the city of Bhopal. In the process of manufacture of pesticide the UCIL had stored stock of Methyl Isocyanate commonly known as MlC a highly toxic gas. On the night of the tragedy, the MIC leaked from the plant in substantial quantity causing death and misery to the people working in the plant and those residing around it. The unprecedented catastrophe demonstrated the dangers inherent in the production of hazardous

chemicals even though for the purpose of industrial development. A number of civil suits for damages against the UCC were filed in the United States of America and also in this Country. The cases filed in USA were referred back to the Indian courts by Judge Keenan details of which are contained in the judgment of my learned brother Mukharji, CJI. Since those who suffered in the catastrophe were mostly poor, ignorant, illiterate and ill-equipped to pursue their claims for damages either before the courts in USA or in Indian courts, the Parliament enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 (hereinafter referred to as 'the Act') conferring power on the Union of India to take over the conduct of litigation in this regard in place of the individual claimants. The facts and circumstances which led to the settlement of the claims before this Court have already been stated in detail in the judgment of Mukharji, CJI, and therefore, I need not refer to those facts and circumstances. The constitutional validity of the Act has been assailed before us in the present petitions. If the Act is declared unconstitutional, the settlement which was recorded in this Court, under which the UCC has already deposited a sum of Rs.750 crores for meeting the claims of Bhopal Gas victims, would fall and the amount of money which is already in deposit with the Registry of this Court would not be available for relief to the victims. Long and de- tailed arguments were advanced before us for a number of days and on an anxious consideration and having regard to the legal and constitutional aspects and especially the need for immediate help and relief to the victims of the gas disaster, which is already delayed, we have upheld the constitutional validity of the Act. Mukharji, CJI has rendered a detailed and elaborate judgment with which I respectfully agree. However, I consider it necessary to say few words with regard to the steps which should be taken by the Executive and the Legislature to prevent such tragedy in future and to avoid the prolonged misery of victims of in industrial disaster.

We are a developing country, our national resources are to be developed in the field of science, technology, industry and agriculture. The need for industrial development has led to the establishment of a number of plants and factories by the domestic companies and under industries are engaged in hazardous or inherently dangerous activities which pose potential threat to life, health and safety of persons working in the factory, or residing in the surrounding areas. Though working of such factories and plants is regulated by a number of laws of our country, i.e. the Factories Act, Industrial Development and Regulation Act and Workmen'sCompensation Act etc. there is no special legislation providing for compensation and damages to outsiders who may suffer on account of any industrial accident. As the law stands to-day, affected persons have to approach civil courts for obtaining compensation and damages. In civil courts, the determination of amount of compensation or damages as well as the liability of the enterprise has been bound by the shackles of conservative principles laid down by the House of Lords in Ryland v. Herchief, [1868] LR 3 HL page 330. The principles laid therein made it difficult to obtain adequate damages from the enterprise and that too only after the negligence of the enterprise was proved. This continued to be the position of law, till a Constitution Bench of this Court in M.C. Mehta v. Union of India, [1987] 1 SCC 420, commonly known as Sriram Oleum Gas Leak case evolved principles and laid down new norms to deal adequately with the new problems arising in a highly industrialised economy. This Court made judicial innovation in laying down principles with regard to liability of enterprises carrying hazardous or inherently dangerous activities departing from the rule laid down in Ryland v. Fletcher. The Court held as under:

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the" health and safety of the persons working in the factory

and residing in the surrounding areas owes an absolute and non-delegiable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is en- gaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and 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. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous

or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and 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."

The law so laid down made a land-mark departure from the conservative principles with regard to the liability of an enterprise carrying on hazardous or inherently dangerous activities.

In the instant cases there is no dispute that UCIL a subsidiary of UCC was carrying on activity of manufacturing pesticide and in that process it had stored MIC a highly toxic and dangerous gas which leaked causing vast damage not only to human life but also to the flora and fauna and ecology in and around Bhopal. In view of this Court's decision in M.C. Mehta's case there is no scope for any doubt regarding the liability of the UCC for the damage caused to the human beings and nature in and around Bhopal. While entering into the settlement the UCC has accepted its liability and for that reason it has deposited a sum of Rs.750 crores in this Court. The inadequacy of the amount of compensation under the settlement was assailed by the counsel for the petitioners but it is not necessary for us to ex- press any opinion on that question as review petitions are pending before another Constitution Bench and more so as in the present cases we are concerned only with the constitutional validity of the Act.

The Bhopal Gas tragedy has raised several important questions regarding the functioning of multi-nationals in third world countries. After the Second world war colonial rule came to end in several parts of the globe, as a number of natives secured independence from foreign rule. The political domination was over but the newly born nations were beset with various problems on account of lack of

finances and development. A number of multi-nationals and transnational corporations offered their services to the under-developed and developing countries to provide finances and technical know-how by setting up their own industries in those countries on their own terms that brought problems with regard to the control over the functioning of the transnational corporations. Multi-national companies in many cases exploited the under-developed nations and in some cases they influenced political and economic policies of host countries which subverted the sovereignty of those countries. There has been com- plaints against the multi-nationals for adopting unfair and corrupt means to advance their interests in the host countries. Since this was a worldwide phenomena the United Nations took up the matter for consideration. The Economic and Social Council of the United Nations established a Commission on Transnational Corporations to conduct research on various political, economic and social aspects relating to transnational corporations. On a careful and detailed study the Commission submitted its Report in 1985 for evolving a Code of Conduct for Transnational Corporations. The Code was adopted in 1986 to which large number of countries of the world are signatories. Although it has not been fully finalised as yet, the Code presents a comprehensive instrument formulating the principles of Code of Conduct for transnational corporations carrying on their enterprises in under developed and developing countries. The Code contains provisions regarding ownership and control designed to strike balance between the competing interests of the Trans- national Corporation and the host countries. It extensively deals with the political, economic, financial, social and legal questions. The Code provides for disclosure of information to the host countries and it also provides guidelines for nationalisation and compensation, obligations to inter- national law and jurisdiction of courts. The Code lays down provisions for settlement of disputes between the host States and an affiliate of a Transnational

Corporation. It suggests that such disputes should be submitted to the national courts or authorities of host countries unless amicably settled between the parties. It provides for the choice of law and means for dispute settlement arising out of contracts. The Code has also laid down guidelines for the determination of settlement of disputes arising out of accident and disaster and also for liability of Transnational Corporations and the jurisdiction of the courts. The Code is binding on the countries which formally accept it. It was stated before us that India has accepted the Code. If that be so, it is necessary that the Government should take effective measures to translate the provisions of the Code into specific actions and policies backed by appropriate legislation and enforcing machinery to prevent any accident or disaster and to secure the welfare of the victims of any industrial disaster.

In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under Articles 21, 48A and 5l(g), it is the duty of the State to take effective steps to protect the guaranteed constitutional rights. These rights must be integrated and illumined by the evolving international dimensions and standards, having regard to our sovereignty, as highlighted by Clauses 9 and 13 of U.N. Code of conduct on Transnational Corporations. The evolving standards of international obligations need to be respected, maintaining dignity and sovereignty of our people, the State must take effective steps to safeguard the constitutional rights of citizens by enacting laws. The laws so made may provide for conditions for granting licence to Transnational Corporations, prescribing norms and standards for running industries on Indian soil ensuring the constitutional rights of our people relating to life, liberty, as well as safety to environment and ecology to enable the people to lead a healthy and clean life. A Transnational Corporation should be made liable and subservient to laws of our country and the liability should not be restricted to

affiliate company only but the parent corporation should also be made liable for any damage caused to the human being or ecology. The law must require transnational corporations to agree to pay such damages as may be determined. by the statutory agencies and forum constituted under it without exposing the victims to long drawn litigation. Under the existing civil law damages are determined by the Civil Courts, after a long drawn litigation, which destroys the very purpose of awarding damages. In order to meet the situation, to avoid delay and to ensure immediate relief to the victims we would suggest that the law made by the Parliament should provide for constitution of tribunals regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on limited ground of questions of law only after depositing the amount determined by the Tribunal. The law should also provide for interim relief to victims during the pendency of proceedings. These steps would minimise the misery and agony of victims of hazardous enterprises.

There is yet another aspect which needs consideration by the Government and the Parliament. Industrial development in our country and the hazards involved therein, pose a mandatory need to constitute a statutory "Industrial Disaster Fund", contributions to which may be made by, the Government, the industries whether they are transnational corporations or domestic undertakings public or private. The extent of contribution may be worked out having regard to the extent of hazardous nature of the enterprise and other allied matters. The Fund should be permanent in nature, so that money is readily available for providing immediate effective relief to the victims. This may avoid delay, as has happened in the instant case in providing effective relief to the victims. The Government and the Parliament should therefore take immediate steps for enacting laws, having regard to these suggestions, consistent with the international

norms and guidelines as contained in the United Nations Code of Con- duct on Transnational Corporations.

With these observations, I agree with the order proposed by my learned brother, Sabyasachi Mukharji, CJI. RANGANATHAN, J. Five years ago, this country was shaken to its core by a national catastrophe, second in magnitude and disastrous effects only to the havoc wrought by the atomic explosions in Hiroshima and Nagasaki. Multitudes of illiterate and poverty-stricken people in and around Bhopal suffered damage to life and limb due to the escape of poisonous Methyl Isocyanate (MIC) gas from one of the storage tanks at the factory of the Union Carbide (India) Limited (UCIL) in Bhopal, a wholly owned subsidiary of the multinational giant, the Union Carbide Corporation (UCC). A number of civil suits claiming damages from the UCC were filed in the United States of America and similar litigation also followed in Indian courts. Fearing the possibilities of the exploitation of the situation by vested interests, the Government of India enacted, the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 ('the Act') to regulate the course of such litigation. Briefly speaking, it empowered the Union of India to take over the conduct of all litigation in this regard and conduct it in place of, or in association with, the individual claimants. It also enabled the Union to enter into a compromise with the UCC and UCIL and arrive at a settlement. The writ petitions before us have been filed challenging the constitutional validity of this statute on the ground that the divestiture of the claimants' individual rights to legal remedy against the multinational for the consequences of carrying on dangerous and hazardous activities on our soil violates the fundamental rights guaranteed under article, 19 and 21 of the Constitution. In consequence of certain proceedings before Judge Keenan of the U.S. District Courts, the venue of the litigation shifted to India. In the principal suit filed in India by the Union (Civil Suit No. 1113/86) orders were passed by the trial court in Bhopal

directing the UCC to deposit Rs.370 crores (reduced to Rs.250 crores by the Madhya Pradesh High Court) as interim payment to the gas victims pending disposal of the suit. There were appeals to this Court in which the UCC contested the Court's jurisdiction to pass an order for an interim payment in a suit for money, while the Union pleaded that a much higher interim payment should have been granted. When the matter was being argued in this Court, a settlement was arrived at between the Union and the UCC under which a sum of Rs.750 crores has been received by the Union in full settlement of all the claims of all victims of the gas leak against the UCC. The Union also agreed to withdraw certain prosecutions that had been initiated against the officials of the UCC and UCIL in this connection. This settlement received the imprimatur of this Court in its orders dated 14th & 15th February, 1989. It is unfortunate that, though the writ petitions before us were pending in this Court at that time, neither their contents nor the need for considering first the issue of the validity of the Act before thinking of a settlement in pursuance of its provisions seem to have been effectively brought to the notice of the Bench which put an end to all the litigation on this topic in terms of the settlement. The settlement thus stood approved while the issue of validity of the Act under which it was effected stood undecided. When this was brought to the notice of the above Bench, it directed these writ petitions to be listed before a different Bench 'to avoid any possible feeling that the same Bench may be coloured in its views on the issue by reason of the approval it had given to the fait accompli viz. the settlement. That is now these matters came before us. The petitioners, claiming to represent a section of the victims are, firstly, against any settlement at all being arrived at with the UCC. According to them, it is more important to ensure by penal action that multinational corporations do not play with the lives of people in developing and under developed countries than to be satisfied with mere compensation for injury and that the criminal prosecutions initiated in this case should have been

pursued. Secondly, they are of the view that the amount for which the claims have been settled is a pittance, far below the amount of damages they would have been entitled to, on the principles of strict, absolute and punitive liability enunciated by this Court in Mehta's case [1987] 1 S.C.R.

819. Thirdly, their grievance is that no publicity at all was given, before this court passed its order, to enable individual claimants or groups of them to put forward their suggestions or objections to the settlement proposed. Their interests were sealed, they say, without complying with elementary principles of natural justice. They contend that the provisions of an Act which has made such a settlement possible cannot be constitutionally valid.

The arguments before us ranged over a very wide ground, covered several issues and extended to several days. This Bench has been placed in somewhat of a predicament as it has to pronounce on the validity of the provisions of the Act in the context of an implementation of its provisions in a particular manner and, though we cannot (and do not) express any views regarding the merits of the settlement, we are asked to consider whether such settlement can be consistent with a correct and proper interpretation of the Act tested on the touchstone of the fundamental rights guaranteed under the Constitution. Mukharji, C.J., has outlined the issues, dealt elaborately with the contentions urged, and given expression to his conclusions in a learned, elaborate and detailed judgment which we have had the advantage of perusing in draft. Our learned brother K.N. Singh, J., has also highlighted certain aspects in his separate judgment. We are, in large measure, in agreement with them, but should like to say a few words on some of the issues in this case, particularly those in regard to which our approach has been somewhat different:

1. The issue regarding the validity of the Act turns principally on the construction of sections 3and 4 of the Act. We are inclined to hold that the fact that a settlement has been effected, or the circumstances in which or the amount for which the claims of the victims have been settled, do not have a bearing on this question of interpretation and have to be left out of account altogether except as providing a contextual background in which the question arises. Turning therefore to the statute and its implications, the position is this. Every person who suffered as a consequence of the gas leak had a right to claim compensation from the persons who, according to him, were liable in law for the injury caused to him and also a fight to institute a suit or proceeding before any court or authority with a view to enforce his right to claim damages. In the normal course of events, such a claimant who institute a suit or proceeding would have been at complete liberty to withdraw the said suit or proceeding or enter into any compromise he may choose in that regard. Section 3 undoubtedly takes away this fight of the claimant altogether: (a) except to the limited extent specified in the proviso to S. 3(3) and (b) subject to the provisions ofS. 4, for this section clearly states that it is the Central Government and the Central Government alone which has the right to represent and act in place of the claimants, whether within or outside India, for all purposes in connection with the enforcement of his claims. We may first consider how far the main provision in S. 3 (leaving out of account the proviso as well as section 4) is compatible with the Constitution The first question that arises is whether the legislature is justified in depriving the claimants of the right and privilege of enforcing their claims and prosecuting them in such manner as they deem fit and in compulsorily inter- posing or substituting the Government in their place. We think that, to this question, there can be only one answer. As pointed out by our learned brother, the situation was such that the victims of the tragedy needed to be protected against themselves as their adversery was a mighty multi- national corporation and

proceedings to a considerable extent had been initiated in a foreign country, where the conduct of the cases was entrusted to foreign lawyers under a system of litigation which is unfamiliar to us here. In the stark reality of the situation, it cannot even be plausibly contended that the large number of victims of the gas leak disaster should have been left to fend for itself and merely provided with some legal aid of one type or another. It is necessary to remember that, having regard to the identity of the principal ground of claim of all the victims, even if a single victim was not diligent in conducting his suit or entered into a compromise or submitted to a decree judging the issues purely from his individual point of view, such a decision or decree could adversely affect the interests of the innumerable other victims as well. In fact, it appears that a settlement between one set of claim- ants and the adversary corporation was almost imminent and would perhaps have been through out for the timely intervention of the Government of India. The battle for the enforcement of one's rights was bound to be not only prolonged but also very arduous and expensive and the decision of the legislature that the fight against the adversary should be consolidated and its conduct handed over to the Government of India--it may perhaps have been better if it had been handed over to an autonomous body independent of the Government but, as pointed out by our learned brother, the course adopted was also not objectionable--was perhaps the only decision that could have been taken in the circumstances. This is indeed a unique situation in which the victims, in order to realise to the best advantage their rights against UCC, had to be helped out by transposing that right to be enforced by the Government.

We did not indeed understand any learned counsel before us to say that the legislature erred in entrusting the Government of India with the responsibility of fighting for the victims. The only grievance is that in the process their right to take legal proceedings should not

have been completely taken away and that they should also have had the liberty of participating in the proceedings right through. In fact, though the Act contemplates the Central Government to completely act in place of the victims, the Government of India has not in fact displaced them altogether. In all the proceedings pending in this country, as well as those before Judge Keenan, the Government of India has conducted the proceedings but the other victims or such of them as chose to associate themselves in these proceedings by becoming par- ties were not shut out from taking part in the proceedings. In fact, as the learned Attorney General pointed out, one of the groups of litigants did give great assistance to the trial judge at Bhopal. But even if the provisions of S. 3 had been scrupulously observed and the names of all parties, other than the Central Government, had been got deleted from the array of parties in the suits and proceedings pending in this country, we do not think that the result would have been fatal to the interests of the litigants. On the contrary, it enabled the litigants to obtain the benefit of all legal expertise at the command of the Government of India in exercising their rights against the Union Carbide Corporation. Such representation can well be justified by resort to a principle analogous to, if not precisely the same as that of, "parens patriae". A victim of the tragedy is compelled to part with a valuable right of his in order that it might be more efficiently and satisfactory 'exploited for his benefit than he himself is capable of. It is of course possible that there may be an affluent claimant or lawyer engaged by him, who may be capable of fighting the litigation better. It is possible that the Government of India as a litigant may or may not be able to pursue the litigation with as much determination or capability as such a litigant. But in a case of the present type one should not be confounded by such a possibility. There are more indigent litigants than affluent ones. There are more illiterates than enlightened ones. There are very few of the claimants, capable of finding the financial wherewithal required for fighting the litigation. Very few of them

are capable of prosecuting such a litigation in this country not to speak of the necessity to run to a foreign country. The financial position of UCIL was negligible compared to the magnitude of the claim that could arise and, though eventually the battle had to be pitched on our own soil, an initial as well as final recourse to legal proceedings in the United States was very much on the cards, indeed inevitable. In this situation, the legislature was perfectly justified in coming to the aid of the victims with this piece of legislation and in asking the Central Government to shoulder the responsibility by substituting itself in place of the victims for all purposes connected with the claims. Even if the Act had provided for a total substitution of the Government of India in place of the victims and had completely precluded them from exercising their rights in any manner, it could perhaps have still been contended that such deprivation was necessary in larger public interest.

But the Act is not so draconian in its content. Actually, as we have said a little earlier, the grievance of the petitioners is not so much that the Government was entrusted with the functions. of a dominus litis in this litigation. Their contention is that the whole object and purpose of the litigation is to promote the interests of the claimants, to enable them to fight the UCC with greater strength and determination, to help them overcome limitations of time, money and legal assistance and to realise the best compensation possible consistent not only with the damage suffered by them but also consistent with national honour and prestige. It is suggested that the power conferred on the Government should be construed as one hedged in by this dominant object. A divestiture of the claimant's right in this situation would be reasonable, it is said, only if the claimant's rights are supplemented by the Government and not supplanted by it.

Assuming the correctness of the argument, the provisions of the proviso to S. 3(3) and of section 4 furnish an answer to this

contention. While the provision contained in the main part of section 3 may be sufficient to enable the Government of India to claim to represent the claimants and initiate and conduct suits or proceeding on their behalf, the locus standi of the Government of India in suits filed by other claimants before the commencement of the Act outside India would naturally depend upon the discretion of the court enquiring into the matter. That is why the proviso to section 3 makes the right of the Government of India to represent and act in place of the victims in such proceedings subject to the permission of the court or authority where the proceedings are pending. It is of course open to such court to permit the Central Government even to displace the claimants if it is satisfied that the authority of the Act is sufficient to enable it to do so. In the present case it is common ground that the proceedings before Judge Keenan were being prosecuted by the Central Government along with various individual claimants. Not only did Judge Keenan permit the association of the Government of India in these proceedings but the Government of India did have a substantial voice in the course of those proceedings as well. Again section 4 mandates that, notwithstanding anything contained in section 3, the Central Government, in representing and acting in place of any person in relation to any claim, shall have due regard to any matters which such person may require to be urged with respect to his claim. It also stipulates that if such person so desires, the Central Government shall permit, at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim. In other words, though, perhaps, strictly speaking, under section 3 the Central Government can totally exclude the victim himself or his legal practitioner from taking part in the proceedings (except in pending suits outside India), section 4keeps the substance of the rights of the victims intact. It enables, and indeed obliges, the Government to receive assistance from individual claimants to the extent they are able to offer the same. If

any of the victims or their legal advisers have any specific aspect which they would like to urge, the Central Government shall take it into account. Again if any individual claimant at his own expense retains a legal practitioner of his own choice, such legal practitioner will have to be associated with the Government in the conduct of any suit or proceeding relating to his claim. Sections and 4 thus combine together the interests of the weak, illiterate, helpless and poor victims as well as the interests of those who could have managed for themselves, even without the help of this enactment. The combination thus envisaged enables the Government to fight the battle with the foreign adversary with the full aid and assistance of such of the victims or their legal advisers as are in a position to offer any such assistance. Though section 3 denies the claimants the benefit of being a nominee parties in such suits or proceedings, section 4preserves to them substantially all that they can achieve by proceeding on their own. In other words, while seeming to deprive the claimants of their right to take legal action on their own, it has preserved those rights, to be exercised indirectly. A conjoint reading of sections 3 and 4would, in our opinion, therefore show that there has been no real total deprivation of the right of the claimants to enforce their claim for damages in appropriate proceedings before any appropriate forum. There is only a restriction of this right which, in the circumstances, is totally reasonable and justified. The validity of the Act is, therefore, not liable to be challenged on this ground.

The next angle from which the validity of the provision is attacked is that the provision enabling the Government to enter into a compromise is bad. The argument runs thus: The object of the legislation can be furthered only if it permits the Government to prosecute the litigation more effectively and not if it enables the Government to withdraw it or enter into a compromise. According to them, the Act fails the impecunious victims in this vital aspect. The

authority conferred by the Act on the Government to enter into a settlement or compromise, it is said, amounts to an absolute negation of the rights of the claimants to compensation and is capable of being so exercised to render such rights totally valueless, as in fact, it is said, has happened.

It appears to us that this contention proceeds on a misapprehension. It is common knowledge that any authority given to conduct litigation cannot be effective unless it is accompanied by an authority to withdraw or settle the same if the circumstances call for it. The vagaries of a litigation of this magnitude and intricacy could not be fully anticipated. There were possibilities that the litigation may have to be fought out to the bitter finish. There were possibilities that the UCC might be willing to adequately compensate the victims either on their own' or at the insistence of the Government concerned. There was also the possibility, which had already been in evidence before Judge Keenan, that the proceedings might ultimately have to end in a negotiated settlement. One notices that in most of the mass disaster cases reported, proceedings finally end in a compromise if only to avoid an indefinite prolongation of the agonies caused by such litigation. The legislation, therefore, cannot be considered to be unreasonable merely because in addition to the right to institute a suit or other proceedings it also empowers the Government to with- draw the proceedings or enter into a compromise. Some misgivings were expressed, in the course of the hearing, of the legislative wisdom (and, hence the validity) of entrusting the carriage of these proceedings and, in particular, the power of settling it out of Court, to the Union of India. It was contended that the union is itself a joint tort-feasor (sued as such by some of the victims) with an interest (adverse to the victims) in keeping down the amount of compensation payable to the minimum so as to reduce its own liability as a joint tort-feasor. It seems to us that this contention in

misconceived. As pointed out by Mukharji, C.J., the Union of India itself is one of the entities affected by the gas leak and has a claim for compensation from the UCC quite independent of the other victims. From this point of view, it is in the same position as the other victims and, in the litigation with the UCC, it has every interest in securing the maximum amount of compensation possible for itself and the other victims. It is, therefore, the best agency in the circumstances that could be looked up to for fighting the UCC on its own as well as on behalf of the victims. The suggestion that the Union is a joint tort-lessor has been stoutly resisted by the learned Attorney General. But, even assuming that the Union has some liability in the matter, we fail to see-how it can derive any benefit or advantage by entering into a low settlement with the UCC. as is pointed out later in this judgment and by Mukharji, C.J., the Act and Scheme thereunder have provided for an objective and quasi-judicial determination of the amount of damages payable to the victims of the tragedy. There is no basis for the fear expressed during the hearing that the officers of the Government may not be objective and may try to cut down the amounts of compensation, so as not to exceed the amount received from the UCC. It is common ground and, indeed, the learned Attorney General fairly conceded, that the settlement with the UCC only puts an end to the claims against the UCC and UCIL and does not in any way affect the victims' rights, if any, to proceed against the Union, the State of Madhya Pradesh or the ministers and officers thereof, if so advised. If the Union and these officers are joint tort- lessors, as alleged, the Union will not stand to gain by allowing the claims against the UCC to be settled for a low figure. On the contrary it will be interested in settling the claims against the UCC at as high a figure as possible so that its own liability as a joint tort-feasor (if made out) can be correspondingly reduced. We are, therefore, unable to see any vitiating element in the legislation insofar as it has entrusted the responsibility not only of carrying on but also of entering into a settlement, if thought fit.

Nor is there basis for the contention that the Act enables a settlement to be arrived at without a proper opportunity to the claimants to express their views on any proposals for settlement that may be mooted. The right of the claimant under section 4 to put forward his suggestions or to be represented by a legal practitioner to put forth his own views in the conduct of the suit or other proceeding certainly extends to everything connected with the suit or other proceeding. If, in the course of the proceedings there should arise any question of compromise or settlement, it is open to the claimants to oppose the same and to urge the Central Government to have regard to specific aspects m arriving at a settlement. Equally it is open to any claimant to employ a legal practitioner to ventilate his opinions in regard to such proposals for settlement. The provisions of the Act, read by themselves, therefore, guarantee a complete and full protection to the rights of the claimants in every respect. Save only that they cannot file a suit themselves, their right to acquire redress has not really been abridged by the provisions of the Act. Sections 3 and 4 of the Act properly read, in our opinion, completely vindicate the objects and reasons which compelled Parliament to enact this piece of legislation.

Far from abridging the rights of the claimants in any manner, these provisions are so worded as to enable the Government to prosecute the litigation with the maximum amount of resources, efficiency and competence at its command as well as with all the assistance and help that can be extended to it by such of those litigants and claimants as are capable of playing more than a mere passive rule in the litigations But then, it is contended, the victims have had no opportunity of considering the settlement proposals mooted in this case before they were approved by the Court. This aspect is dealt with later.

2. One of the contentions before us was that the UCC and UCIL are accountable to the public for the damages caused by their industrial

activities not only on a basis of strict liability but also on the basis that the damages to be awarded against them should include an element of punitive liability and that this has been lost sight of while approving of the proposed settlement. Reference was made in this context to M.C. Mehta's case (supra). Whether the settlement should have taken into account this factor is, in the first place, a moot question. Mukharji, C.J. has pointed out--and we are inclined to agree-that this is an "uncertain province of the law" and it is premature to say whether this yard- stick has been, or will be, accepted in this country, not to speak of its international acceptance which may be necessary should occasion arise for executing a decree based on such a yardstick in another country. Secondly, whether the settlement took this into account and, if not, whether it is bad for not having kept this basis in view are questions that touch the merits of the settlement with which we are not concerned. So we feel we should express no opinion here on this issue. It is too far-fetched, it seems to us, to con- tend that the provisions of the Act permitting the Union of India to enter into a compromise should be struck down as unconstitutional because they have been construed by the Union of India as enabling it to arrive at such a settlement.

The argument is that the Act confers a discretionary and enabling power in the Union to arrive at a settlement but lays down no guidelines or indications as to the stage at which, or circumstances in which, a settlement can be reached or the type of settlement that can be arrived at; the power conferred should, therefore, be struck down as unguided, arbitrary and uncanalised. It is difficult to accept this contention. The power to conduct a litigation, particularly in a case of this type, must, to be effective, necessarily carry with it a power to settle it at any stage. It is impossible to provide statutorily any detailed catalogue of the situations that would justify a settlement or the basis or terms on which a settlement can be arrived at. The Act. moreover, cannot be said to have conferred any unguided or

arbitrary discretion to the Union in conducting proceedings under the Act. Sufficient guidelines emerge from the Statement of Objects and Reasons of the Act which makes it clear that the aim and purpose of the Act is to secure speedy and effective redress to the victims of the gas leak and that all steps taken in pursuance of the Act should be for the implementation of the object. Whether this object has been achieved by a particular settlement will be a different question but it is altogether impossible to say that the Act itself is bad for the reason alleged. We, therefore, think it necessary to clarify, for our part that we are not called upon to express any view on the observations in Mehta's case and should not be understood as having done so.

3. Shri Shanti Bhushan, who supported the Union's stand as to the validity of the Act, however, made his support conditional on reading into its provisions an obligation on the part of the Union to make interim payments towards their maintenance and other needs consequent on the tragedy, until the suits filed on their behalf ultimately yield tangible results. That a modern welfare State is under an obligation to give succour and all kinds of assistance to people in distress cannot at all be gainsaid. In point of fact also, as pointed out by the learned Chief Justice, the provisions of the Act and scheme thereunder envisage interim payments to the victims; so, there is nothing objectionable in this Act on this aspect. However, our learned brother has accepted the argument addressed by Shri Shanti Bhushan which goes one step further viz. that the Act would be unconstitutional unless this is read as "a major inarticulate promise" under- lying the Act. We doubt whether this extension would be justified for the hypothesis underlying the argument is, in the words of Sri Shanti Bhushan, that had the victims been left to fend for themselves, they would have had an "immedi- ate and normal right of obtaining compensation from the Union Carbide" and, as the legislation has vested their rights in this regard in the

Union, the Act should be construed as creating an obligation on the Central Government to provide interim relief. Though we would emphatically reiterate that grant of interim relief to ameliorate the plight of its subjects in such a situation is a matter of imperative obligation on the part of the State and not merely 'a matter of fundamental human decency' as Judge Keenan put it, we think that such obligation flows from its character as a welfare State and would exist irrespective of what the statute may or may not provide. In our view the validity of the Act does not depend upon its explicitly or implicitly providing for interim payments. We say this for two reasons. In the first place, it was, and perhaps still is, a moot question whether a plaintiff suing for damages in tort would be entitled to advance or interim payments in anticipation of a decree. That was, indeed, the main point on which the interim orders in this case were challenged before this Court and, in the context of the events that took place, remains undecided. It may be mentioned here that no decided case was brought to our notice in which interim payment was ordered pending disposal of an action in tort in this country. May be there is a strong case for ordering interim payments in such a case but, in the absence of full and detailed consideration, it cannot be assumed that, left to themselves, the victims would have been entitled to a "normal and immediate" right to such payment. Secondly, even assuming such right exists, all that can be said is that the State, which put itself in the place of the victims, should have raised in the suit a demand for such interim compensation--which it did--and that it should distribute among the victims such interim compensation as it may receive from the defendants. To say that the Act would be bad if it does not provide for payment of such compensation by the Government irrespective of what may happen in the suit is to impose on the State an obligation higher than what flows from its being subrogated to the rights of the victims. As we agree that the Act and the scheme thereunder envisage interim relief to the victims, the point is perhaps only academic. But we felt that

we should mention this as we are not in full agreement with Mukharji, C.J., on this aspect on the case.

4. The next important aspect on which much debate took place before us was regarding the validity of the Act qua the procedure envisaged by it for a compromise or settlement. It was argued that if the suit is considered as a representative suit no compromise or settlement would be possible without notice in some appropriate manner to all the victims of the proposed settlement and an opportunity to them to ventilate their views thereon (vide Order XXIII, r. 3B, C.P.C.). The argument runs thus: S. 4 of the Act either incorporates the safeguards of these provisions in which event any settlement effected without compliance with the spirit, if not the letter, of these provisions would be ultra vires the Act. Or it does not, in which event, the provisions of S. 4 would be bad as making possible an arbitrary deprivation of the victims' rights being inconsistent with, and derogatory of, the basic rules established by the ordinary Law of the land viz. the Code of Civil Procedure. We are inclined to take the view that it is not possible to bring the suits brought under the Act within the categories of representative action envisaged in the of Civil procedure. The Act deals with a class of action which is sui generis and for which a special formula has been found and encapsuled in S.

4. The Act divests the individual claimants of their right to sue and vests it in the Union. In relation to suits in India, the Union is the sole plaintiff, none of the others are envisaged as plaintiffs or respondents. The victims of the tragedy were so numerous that they were never defined at the stage of filing the plaint nor do they need to be de- fined at the stage of a settlement. The litigation is carried on by the State in its capacity, not exactly the same as but somewhat analogous to that of a "parens patriae". In the case of a litigation by karta of a Hindu Undivided Family or by a guardian on behalf of a ward, who is non-sui juris, for example, the junior members of the

family or the wards, are not to be consulted before entering into a settlement. In such cases, the Court acts as guardian of such persons to scrutinise the settlement and satisfy itself that it is in the best interest of all concerned. It is later discovered that there has been any fraud or collusion, it may be open to the junior members of the family or the wards to call the karta or guardian to account but, barring such a contingency, the settlement would be effective and binding. In the same way, the Union as "parens patriae" would have been at liberty to enter into such settlement as it considered best on its own and seek the Court's approval there- fore.

However, realising that the litigation is truly fought on behalf and for the benefit of innumerable, though not fully identified victims the Act has considered it necessary to assign a definite role to the individual claimants and this is spelt out in S. 4. This section directs:

(i) that the union shall have due regard to any matters which such person may require to be urged with respect to his claim; and
(ii) that the Union shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim.

This provision adequately safeguards the interests of individual victims. It enables each one of them to bring to the notice of the Union any special features or circumstances which he would like to urge in respect of any matter and if any such features are brought to its notice the Union is obliged to take it into account. Again, the individual claimants are also at liberty to engage their own counsel to associate with the State counsel in conducting the proceedings. If the suits in this case had proceeded, in the normal course, either to the stage of a decree or even to one of settlement the claimants could have kept themselves abreast of the developments and the statutory provisions would have been more than adequate to ensure that the

points of view of all the victims are presented to the court. Even a settlement or compromise could not have been arrived at without the court being apprised of the views or any of them who chose to do so. Advisedly, the statute has provided that though the Union of India will be the dominus litis in the suit, the interests of all the victims and their claims should be safeguarded by giving them a voice in the proceedings to the extent indicated above. This provision of the statute is an adaptation of the principle of O.I.r. 8 and of Or. XXIII r. 3 of the Code of Civil Procedure in its application to the suits governed by it and, though the extent of participation allowed to the victims is somewhat differently enunciated in the legislation, substantially speaking, it does incorporate the principles of natural justice to the extent possible in the circumstances. The statute cannot, therefore, be faulted, as has been pointed out earlier also, on the ground that it denies the victims an opportunity to present their views or places them at any disadvantage in the matter of having an effective voice in the matter of settling the suit by way of compromise.

The difficulty in this case has arisen, as we see it, because of a fortuitous circumstance viz. that the talks of compromise were mooted and approved in the course of the hearing of an appeal from an order for interim payments. Though compromise talks had been in the air right from the beginning of this episode, it is said that there was an element of surprise when they were put forward in Court in February, 1989. This is not quite correct. It has been pointed out that even when the issue regarding the interim relief was debated in the courts below, attempts were made to settle the whole litigation. The claimants were aware of this and they could--perhaps should--have anticipated that similar attempts would be made in this Court also. Though certain parties had been associated with the conduct of the proceedings in the trial court--and the trial judge did handsomely acknowledge their contribution to the proceedings--they were

apparently not alert enough to keep a watching brief in the Supreme Court, may be under the impression that the appeal here was concerned only with the quantum of interim relief. One set of parties was present in the Court but, apart from praying that he should be forthwith paid a share in the amount that would be deposited in Court by the UCC in pursuance of the settlement, no attempt appears to have been made to put forward a contention that the amount of settlement was inadequate or had not taken into account certain relevant considerations. The Union also appears to have been acting on the view that it could proceed ahead on its own both in its capacity as "parens patraie" as well as in view of the powers of attorney held by it from a very large number of the victims though the genuineness of this claim is now contested before us. There was a day's interval between the enunciation of the terms of the settlement and their approval by the Court. Perhaps the Court could have given some more publicity to the proposed settlement in the newspapers, radio and television and also permitted some time to lapse before approving it, if only to see whether there were any other points of view likely to emerge. Basically speaking, however, the Act has provided an adequate opportunity to the victims to speak out and if they or the counsel engaged by some of them in the trial court had kept in touch with the proceedings in this court, they could have most certainly made themselves heard. If a feeling has gained ground that their voice has not been fully heard, the fault was not with the statute but was rather due to the developments leading to the finalisation of the settlement when the appeal against the interim order was being heard in this Court. One of the points of view on which considerable emphasis was laid in the course of the arguments was that in a case of this type the offending parties should be dealt with strictly under the criminal law of the Land and that the inclusion, as part of the settlement, of a term requiring the withdrawal of the criminal prosecutions launched was totally unwarranted and vitiates the settlement. It has been pointed out by

Mukharji, C.J. ,--and we agree--that the Act talks only of the civil liability of, and the proceedings against, the UCC or UCIL or others for damages caused by the gas leak. It has nothing to say about the criminal liability of any of the parties involved. Clearly, therefore, this part of the settlement comprises a term which is outside the purview of the Act. The validity of the Act cannot, there- fore, be impugned on the ground that it permits--and should not have permitted-the withdrawal of criminal proceedings against the delinquents. Whether in arriving at the settlement, this aspect could also have been taken into account and this term included in it, is a question concerning the validity of the settlement. This is a question outside the terms of reference to us and we, therefore, express no opinion in regard thereto.

5. A question was mooted before us as to whether the actual settlement--if not the statutory provision--is liable to be set aside on the grounds that the principles of natural justice have been flagrantly violated. The merits of the settlement as such are not in issue before us and nothing we say can or should fetter the hands of the Bench hearing a review petition which has already been filed, from passing such orders thereon as it considers appropriate.

Our learned brother, however, has, while observing that the question referred to us is limited to the validity of the Act alone and not the settlement, incidentally discussed this aspect of the case too. He has pointed out that justice has in fact been done and that all facts and aspects relevant for a settlement have been considered. He has pointed out that the grievance of the petitioners that the order of this Court did not give any basis for the settlement has since been sought to be met by the order passed on 4th May, 1989 giving detailed reasons, This shows that the Court had applied its mind fully to the terms of the settlement in the light of the data as well as all the circumstances placed before it and had been satisfied that the settlement pro- posed was a fair and reasonable one that could be

approved. In actions of this type, the Court's approval is the true safety valve to prevent unfair settlements and the fact is that the highest Court of the land has given thought to the matter and seen it fit to place its seal of approval to the settlement. He has also pointed out that a post-decisional hearing in a matter like this will not be of much avail. He has further pointed out that a review petition has already been filed in the case and is listed for hearing. The Court has already given an assurance in its order of May 4, 1989, that it will only be too glad to consider any aspects that may have been overlooked in considering the terms of the settlement. Can it be said, in the circumstances, that there has been a failure of justice which compels us to set aside the settlement as totally violative of fundamental rights? Mukharji, C.J., has pointed out that the answer to this question should be in the negative. It was urged that there is a feeling that the maxim: "Justice must not only be done but must also appear to be done" has not been fully complied with and that perhaps, if greater publicity had attended the hearing, many other facts and aspects could have been high- lighted resulting in a higher settlement or no settlement at all. That feeling can be fully ventilated and that deficiency can be adequately repaired, it has been pointed out by Mukharji, C.J., in the hearing on the review petition pending before this Court. Though we are prima facie inclined to agree with him that there are good reasons why the settlement should not be set aside on the ground that the principles of natural justice have been violated, quite apart from the practical complications that may arise as the result of such an order, we would not express any final opinion on the validity of the settlement but would leave it open to be agitated, to the extent permissible in law, in the review petition pending before this Court.

There is one more aspect which we may perhaps usefully refer to in this context. The scheme of the Act is that on the one hand the Union of India pursues the litigation against the UCC and the UCIL;

on the other all the victims of the tragedy are expected to file their claims before the prescribed authority and have their claims for compensation determined by such authority. Certain infirmities were pointed out on behalf of the petitioners in the statutory provisions enacted in this regard. Our learned brother has dealt with these aspects and given appropriate directions to ensure that the claims will be gone into by a quasi judicial authority (unfettered by executive prescriptions of the amounts of compensation by categorizing the nature of in- juries) with an appeal to an officer who has judicial qualifications. In this manner the scheme under the Act provides for a proper determination of the compensation payable to the various claimants. Claims have already been filed and these are being scrutinised and processed. A correct picture as to whether the amount of compensation for which the claims have been settled is meagre, adequate or excessive will emerge only at that stage when all the claims have been processed and their aggregate is determined. In these circumstances, we feel that no useful purpose will be served by a post-decisional hearing on the quantum of compensation to be considered adequate for settlement.

For these reasons, it would seem more correct and proper not to disturb the orders of 14-15 February, 1989 on the ground that the rules of natural justice have not been complied with, particularly in view of the pendency of the review petition.

6. Before we conclude, we would like to add a few words on the state of the law of torts in this country. Before we gained independence, on account of our close association with Great Britain, we were governed by the common law principles. In the field of torts, under the common law of England, no action could be laid by the dependants or heirs of a person whose death was brought about by the tortious act of another on the maxim action personal is moritur cum persona, although a person injured by a similar act could claim damages for the wrong done to him. In England this

situation was remedied by the passing of the Fatal Accidents Act, 1846, popularly known as Lord Campell's Act. Soon thereafter the Indian Legislature enacted the Fatal accidents Act, 1855. This Act is fashioned on the lines of the English Act of 1846. Even though the English Act has undergone a substantial change, our law has remained static and seems a trifle archaic. The magnitude of the gas leak disaster in which hundreds lost their lives and thousands were maimed, not to speak of the damage to livestock, flora and fauna, business and property, is an eye opener. The nation must learn a lesson from this traumatic experience and evolve safeguards atleast for the future. We are of the view that the time is ripe to take a fresh look at the outdated century old legislation which is out of tune with modern concepts.

While it may be a matter for scientists and technicians to find solutions to avoid such large scale disasters, the law must provide an effective and speedy remedy to the victims of such torts. The Fatal Accidents Act, on account of its limited and restrictive application, is hardly suited to meet such a challenge. We are, therefore, of the opinion that the old antiquated Act should be drastically amended or fresh legislation should be enacted which should, inter alia, contain appropriate provisions in regard to the following matters:

(i) The payment of a fixed minimum compensation on a "no-fault liability" basis (as under the Motor Vehicles Act), pending final adjudication of the claims by a prescribed forum;
(ii) The creation of a special forum with specific power to grant interim relief in appropriate cases;
(iii) The evolution of a procedure to be followed by such forum which will be conducive to the expeditious determination of claims and avoid the high degree of formalism that attaches to proceedings in regular courts; and

(iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risks.

In addition to what we have said above, we should like to say that the suggestion made by our learned brother, K.N. Singh J., for the creation of an Industrial Disaster Fund (by whatever name called) deserves serious consideration. We would also endorse his suggestion that the Central Government will be well advised if, in future, it insists on certain safeguards before permitting a transnational company to do business in this country. The necessity of such safe- guards, atleast in the following two directions, is high-lighted in the present case:

(a) Shri Garg has alleged that the processes in the Bhopal Gas Plant were so much shrouded in secrecy that neither the composition of the deadly gas that escaped nor the proper anti- dote therefore were known to anyone in this country with the result that the steps taken to combat its effects were not only delayed but also totally inadequate and ineffective. It is necessary that this type of situation should be avoided. The Government should therefore insist, when granting licence to a transnational company to establish its industry here, on a right to be informed of the nature of the processes involved so as to be able to take prompt action in the event of an accident.

(b) We have seen how the victims in this case have been considerably handicapped on account of the fact that the immediate tort-feasor was the subsidiary of a multi-national with its Indian assets totally inadequate to satisfy the claims arising out of the disaster. It is, therefore, necessary to evolve, either by international consensus or by unilateral legislation, steps to overcome these handicaps and to ensure (i) that foreign corporations seeking to establish an industry here, agree to submit to the jurisdiction of the Courts in India in respect of actions for tortious acts in this country;

(ii) that the liability of such a corporation is not limited to such of its assets (or the assets of its affiliates) as may be found in this country, but that the victims are able to reach out to the assets of such concerns anywhere in the world; (iii) that any decree obtained in Indian Courts in compliance with due process of law is capable of being executed against the foreign corporation, its affiliates and their assets without further procedural hurdles, in those other countries.

Our brother, K.N. Singh, J., has in this context dealt at some length with Code of Conduct for multi-national Corporations which awaits approval of various countries. We hope that calamities like the one which this country has suffered will serve as catalysts to expedite the acceptance of an international code on such matters in the near future.

With these observations, we agree with the order pro- posed by the learned Chief Justice. Petitions disposed of.

In a subsequent case the Supreme Court passed the following judgment on the inadequacy of the Bhopal Gas Settlement in 2007.

c. **Bhopal Gas Peedith Mahila Udyog ... vs Union Of India on 4 May, 2007**
Bench: C.K. Thakker, H.S. Bedi
Appeal (civil) 3187-88 of 1988
DATE OF JUDGMENT: 04/05/2007

1. The present two interlocutory applications are filed by the applicants,

(i) Bhopal Gas Peedith Mahila Udyog Sanghathan ('BGPMUS' for short) and

(ii) Bhopal Gas Peedith Sangharsh Sahayog Samiti ('BGPSSS' for short) inter alia praying to re-examine the inadequacy of Bhopal Gas Settlement; to direct Union of India to compensate the Settlement Fund five times the initial fund; to order the Reserve Bank of India to provide detailed information on management and utilization of the Settlement Fund by rendering faithful accounts relating to withdrawal of funds by Welfare Commissioner; to command Welfare Commissioner, Bhopal to provide complete information regarding process of identification and categorization of gas victims and the manner of disbursement of compensation to them; to rectify the methodology in the process of identification and categorization of gas victims and the manner of disbursement of compensation of amounts by enhancing compensation appropriately.

2. The case relates to Bhopal Gas Tragedy. On December 2, 1984, there was a massive escape of lethal gas from a storage tank at Bhopal plant of the Union Carbide (India) Ltd. resulting in large scale of deaths, injuries to several persons and destruction of properties, livestock, etc. Several suits were filed for compensation and damages in different courts in India as also in the United States. Prosecution had also been launched. Ultimately, however, a settlement had been arrived at between the Union of India and the Union Carbide. The Union of India agreed to withdraw all cases and claims against the Union Carbide and its officers. For the said purpose, Parliament also enacted an Act known as the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 which empowered the Union of India to take over the conduct of all litigation in regard to claims arising out of gas disaster and to award compensation to the victims and affected persons.

3. According to the applicants, BGPMUS is an organization formed by the Bhopal Gas Victims in 1986. Likewise, BGPSSS is an association constituted in 1989 by a coalition of over 20 voluntary organizations of Scientists, Lawyers, Teachers, Artists, Journalists,

Workers, Women, Students, Youths etc. The object of these two organizations is to support the struggle of the Bhopal Gas Victims for justice. Both the organizations have consistently championed the cause of Bhopal Gas Victims by seeking medical/economic/social relief and also payment of adequate compensation. It was stated in the applications that several steps were taken by the organizations so as to provide Bhopal Gas Victims and their families benefits to which they were entitled. Reference was made to various orders passed by this Court from time to time and it was stated that neither all eligible victims had been identified and ascertained nor adequate compensation had been paid to them. It was also alleged that though many persons lost their lives and several others injured, the number of cases in which compensation had been awarded under the head 'death' (category '04') were very small. Likewise, compensation awarded to persons who sustained 'injury' (category '01') were also showed to be less and several others had not been paid any amount whatsoever. It was asserted that the magnitude of the disaster in case of 'death' as also 'injury' was at least five times larger than what was assumed at the time settlement had been reached. It was, therefore, prayed that appropriate directions be issued so that all Bhopal Gas Victims may get compensation as gas victims/affected persons.

4. Notice was issued pursuant to which the respondents appeared. Counter affidavits were filed on behalf of the Union of India contesting the applications. It was, inter alia, contended that the applications were based on assumptions, surmises and conjectures and on misreading of judgments of this Court. According to the respondents, the applicants are trying to reiterate and reopen the issue as to compensation which had been settled with the Union Carbide Corporation (UCC) and the Union of India and this Court had approved the said settlement. Even adequacy of amount of compensation has been finally decided by this Court. The

applications, therefore, are liable to be dismissed. Further affidavits were also filed by the parties.

5. We have heard the learned counsel appearing on both the sides.

6. The learned counsel for the applicants contended that the applications deserve to be allowed on the ground that there were many more deaths under category '04' than what was shown by the respondents and compensation had been paid. In the same manner, injuries were sustained by several persons than to whom compensation had been awarded under category '01'. For the said purpose, attention of the Court was invited to the figures which had been placed on record. Reference was also made to 2003 Annual Report published by the Bhopal Gas Tragedy (Relief and Rehabilitation) Department. Reliance was placed on an order dated July 19, 2004 passed by a two Judge Bench of this Court and an order dated August 23, 2006 passed in the present applications. It was submitted that when authentic figures are available as to 'death' and 'injury' cases, appropriate directions may be issued to the Union of India to pay compensation to gas victims under both the heads i.e. 'death' (category '04') and 'injury' (category '01'). It was also submitted that such payment must be made in US Dollars and not in Indian Rupees since the settlement was with a Foreign Company and the amount had been paid in US Dollars. Since the victims had not been paid their legal dues, the applicants were constrained to approach this Court by filing the present applications.

7. The learned Additional Solicitor General, on the other hand, submitted that from 1989 onwards, several orders had been passed by this Court from time to time. A Scheme was framed in exercise of statutory power which provided for processing of claims and in accordance with the procedure laid down therein, claims had been adjudicated and payment of compensation had been made. It was also stated that even now, if the applicants feel that the cases of

'death' (category '04') or of 'personal injury' (category '01') are more, a remedy available to the victims is not to approach this Court by filing Writ Petitions or Interlocutory Applications, but to invoke the Scheme and to get the claims adjudicated. It was, therefore, submitted that the applications are liable to be dismissed.

8. Having heard the learned counsel for the parties, in our opinion, the present applications filed by the organizations are not well-founded and cannot be allowed.

9. So far as re-examination of settlement or inadequacy of amount is concerned, in our opinion, it cannot be done as the said issue has already been decided by this Court. In this connection, we may refer to a decision of a Constitution Bench of this Court in Union Carbide Corporation v. Union of India & Ors., [1989] 1 SCC 674. In that case, after 'careful consideration' of the facts and circumstances of the case, the Court held the case to be pre-eminently fit for an 'overall settlement' between the parties covering all litigations, claims, rights and liabilities related to and arising out of the disaster. The Court, therefore, passed the following order observing that it was just, equitable and reasonable.

The Court stated;

"We order :

(1) The Union Carbide Corporation shall pay a sum of U.S. Dollars 470 millions (Four hundred and seventy Millions) to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31st March, 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand transferred to this Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending".

10. Regarding 'death' (category '04') and 'personal injury' (category '01') in Union Carbide Corporation v. Union of India & Ors., [1989] 3 SCC 38, the same Bench observed that there were about 3,000 cases of 'death' and 30,000 cases of 'personal injury'. In paragraphs 21 to 24, the Court stated:

"21. The figures adopted by the High Court in regard to the number of fatal cases and cases of serious personal injuries do not appear to have been disputed by anybody before the High Court. These data and estimates of the High Court had a particular significance in the settlement. Then again, it was not disputed before us that the total number of fatal cases was about 3000 and of grievous and serious personal injuries, as verifiable from the records of the hospitals of cases treated at Bhopal, was in the neighborhood of 30,000. It would not be unreasonable to expect that persons suffering serious and substantially compensatable injuries would have gone to hospitals for treatment. It would also appear that within about 8 months of the occurrence, a survey had been conducted for purposes of identification of cases of death and grievous and serious injuries for purposes of distribution of certain ex-gratia payments sanctioned by Government. These figures were, it would appear, less than ten thousand.

22. In these circumstances, as a rough and ready estimate, this Court took into consideration the prima facie findings of the High Court and estimated the number of fatal cases at 3000 where compensation could range from Rs. 1 lakh to Rs. 3 lakhs. This would account for

Rs. 70/-crores, nearly 3 times higher than what would, otherwise, be awarded in comparable cases in motor vehicles accident claims.

23. Death has an inexorable finality about it. Human lives that have been lost were precious and in that sense priceless and invaluable. But the law can compensate the estate of a person whose life is lost by the wrongful act of another only in the way the law is equipped to compensate i.e. by monetary compensations calculated on certain well-recognized principles. "Loss to the estate" which is the entitlement of the estate and the loss of dependency' estimated on the basis of capitalized present-value awardable to the heirs and dependants, are the main components in the computation of compensation in fatal accident actions. But, the High Court in estimating the value of compensation had adopted a higher basis.

24. So far as personal injury cases are concerned, about 30000 was estimated as cases of permanent total or partial disability. Compensation ranging from Rs. 2 lakhs to Rs. 50,000/- per individual according as the disability is total or partial and degrees of the latter was envisaged. This alone would account for Rs. 250/- crores. In another 20,000/- cases of temporary total or partial disability compensation ranging from Rs. 1 lakh down to Rs. 25000/- depending on the nature and extent of the injuries and extent and degree of the temporary incapacitation accounting for a further allocation of Rs. 100/- crores was envisaged. Again, there might be possibility of injuries of utmost severity in which case even Rs. 4 lakhs per individual might have to be considered. Rs. 80 crores, additionally for about 2000 of such cases were envisaged. A sum of Rs. 500 crores approximately was thought of as allocable to the fatal cases and 42,000 cases of such serious personal injuries leaving behind in their trail total or partial incapacitation cither of permanent or temporary character".

11. The Court, however, was conscious of the ground reality and proceeded to observe:

"29. ....These apportionments are merely broad considerations generally guiding the idea of reasonableness of the overall basis of settlement. This exercise is not a pre-determination of the quantum of compensation amongst the claimants either individually or category-wise. No individual claimant shall be entitled to claim a particular quantum of compensation even if his case is found to fall within any of the broad categories indicated above. The determination of the actual quantum of compensation payable to the claimants has to be done by the authorities under the Act, on the basis of the facts of each case and without reference to the hypothetical quantifications made only for purposes of an overall view of the adequacy of the amount.

30. These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness' of the determination and of the 'truth' of its factual foundation would seriously be impaired. The 'justness' of the settlement is based on these assumptions of truth. Indeed, there might be different opinions of the interpretation of laws or on questions of policy or even on what may be considered wise or unwise; but when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted".

12. It may also be appropriate to observe here that an Act had been enacted by Parliament known as 'the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985' referred to above, validity of which had been upheld by a Constitution Bench of this Court

in Charan Lal Sahu v. Union of India, [1990] 1 SCC 613. Section 9 of the Act empowered the Central Government to frame a Scheme for carrying into effect the purposes of the Act. In exercise of the said power, the Central Government framed a Scheme known as the 'Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985'. The Scheme is a 'complete Code' in itself. Para 3 of the Scheme enables the authorities to register claims lodged before them. Whereas Para 4 (and 4A) deals with manner of filing claims, Para 5 provides for categorization and registration of claims. Para 6 requires the Deputy Commissioner to take into consideration matters for categorization of claims. Procedure has been laid down in Para 8. Paras 9 and 10 deal with Processing of Claims Account Fund and Claims and Relief Fund respectively. Para 11 of the Scheme relates to determination of quantum of compensation payable to claimants. Clause (5) of Para 11 provides for appeal against an order passed by the Deputy Commissioner to the Additional Commissioner. Para 13 enumerates functions of Commissioner and other officers appointed under the Act. It also confers revisional jurisdiction on Additional Commissioner over an order passed by the Deputy Commissioner.

13. In Union Carbide Corporation & Ors. v. Union of India & Ors., [1991] 4 SCC 584, this Court ensured that no victim of Bhopal Gas Tragedy would be deprived of the benefit to which he/she is otherwise entitled. The Court, accordingly, proclaimed;

"After a careful thought, it appears to us that while it may not be wise or proper to deprive the victims of the benefit of the settlement, it is, however, necessary to ensure that in the perhaps unlikely-event of the settlement-fund being found inadequate to meet the compensation determined in respect of all the present claimants, those persons who may have their claims determined after the fund is exhausted are not left to fend themselves. But, such a contingency may not arise having regard to the size of the settlement-fund. If it should arise, the reasonable way to protect the interests of the

victims is to hold that the Union of India, as a welfare State and in the circumstances in which the settlement was made, should not be found wanting in making good the deficiency, if any. We hold and declare accordingly".

(emphasis supplied)

14. So far as the amount of compensation is concerned, the Government of India issued guidelines by notification dated April 13, 1992 providing for compensation payable in cases of death, injury, loss of belongings, loss of livestock etc. The relevant categories and the amount of compensation read thus:

CATEGORY RANGE/CEILING (Rs.) Deaths 1-3 lakhs Permanent total or partial disability 50,000 to 2 lakhs Injury of utmost severity Upto 4 lakhs Claims for minor injuries Upto 20,000 Loss of belongings Upto 15,000 Loss of livestock Upto 10,000

15. In Krishna Mohan Shukla v. Union of India & Ors., [2000] 10 SCC 507, this Court held that the decision of the Deputy Commissioner to put a claim in a particular categorization is a quasi judicial decision and not an administrative one. Such order is appealable as also revisable and even thereafter it could be challenged by invoking the doctrine of judicial review.

16. Again, in Krishna Mohan Shukla v.Union of India, [2000] 2 SCC 690, this Court considered the relevant paras of the Scheme and placement of claims under different categories mentioned in Para 5 of the Scheme. It also considered the grievances against placement of claims and remedy available to the aggrieved party in such cases. It observed that effective remedy is available to the aggrieved party and such remedy is exhaustive. The Court highlighted an important fact that a Welfare Commissioner was a sitting Judge of the Madhya Pradesh High Court and normally, therefore, the claimant should

have no cause of grievance after the decision by the Welfare Commissioner. But even thereafter, a remedy under Articles 226 and 227 of the Constitution was available.

17. In para 8, the Court observed;

"8. As we see it, the limits within which compensation can be awarded for claimants falling under different categories in Para 5, the Central Government has specified the amounts under Para 11(2). Specific ailments are not mentioned therein. In practice, the Deputy Welfare Commissioner and the Additional Welfare Commissioner have to deal with ailments and the question would arise as to under what category of Para 5 of the Scheme would they fall and secondly as to what is the specific amount which is payable to them within the scale. The Committee of Deputy Commissioners appear to have formulated a yardstick which would obviously avoid delay in the determination of the amount of compensation which is payable. In a modification carried out on 6th December, 1997, it has been made clear, and in our opinion rightly so, that the amount determined as compensation for different types of ailments is not final. It will be subject to determination afresh, if called in question, either in appeal or in revision before the Welfare Commissioner. We would at this stage like to emphasise that we have seen orders passed by the Welfare Commissioner where he has entertained revision petitions against the orders in appeal passed by the Additional Commissioner. A Welfare Commissioner is a sitting Judge of the Madhya Pradesh High Court and normally, therefore, the claimant should have no cause of grievance after the decision by the Welfare Commissioner. Even if thereafter there is some grievance, the right of judicial review, inter alia, provided by Articles 226 and 227 of the Constitution is always available. There can be little doubt that the aggrieved persons are entitled to receive fair and just compensation and/or damages due to them. There is now a system in place and any claims which are made have to be determined within this system.

There is first determination by the Deputy Welfare Commissioner against which an appeal can be filed to the Additional Welfare Commissioner and thereafter a revision to the Welfare Commissioner. If even then there is a grievance of a claimant, proper remedy is to approach the High Court who would be in a position to deal with a case more expeditiously and give relief to the individual claimant, where it is called for, without undue expense, rather than approaching this Court under Article 32or Article 136 of the Constitution".

18. In Para 11, this Court expressly stated that if any of the claimants had any grievance against an order passed by the Welfare Commissioner or by the Tribunal, it was open to the claimant to seek judicial review but "first it must be sought before the High Court rather than filing a writ petition under Article 32 or a special leave petition under Article 136 directly in this Court".

19. From what we have stated hereinabove, it is abundantly clear that this Court has streamlined the claims arising out of Bhopal Gas Tragedy Disaster. Precisely to deal with the cases of Bhopal Gas Tragedy that an Act has been enacted, a Scheme has been framed under the Act and the Procedure has been laid down. They have been held to be constitutional and intra vires. Any person lodging a claim is required to make an application and a duty is cast on the Authority to take an appropriate decision on the basis of the Scheme and Guidelines. Such adjudication has been held quasi- judicial in nature subject to appeal, revision and judicial review before the High Court under Articles 226 & 227 and even thereafter before this Court under Article 136 of the Constitution. Since the consideration of claim and adjudication thereof require determination of facts, the Court ruled that it must be done in accordance with the Scheme, Guidelines and Procedure under the Act and not in any other manner. So far as compensation is concerned, this Court has held that it should be in Indian currency and even under the Scheme, such

amount is fixed in Indian Rupees. We, therefore, see no grievance now can be made on that issue.

20. The learned Additional Solicitor General stated that several false and vexatious claims under category '04' (death) and category '01' (injury) had been lodged. It would not be appropriate for this Court to express any opinion one way or the other, particularly in the light of the decisions of larger Bench of this Court referred to hereinabove. If any person claims that he/she is adversely affected by Bhopal Gas Tragedy Disaster, he/she is at liberty to take appropriate steps as suggested by this Court in the above cases but not in any other manner.

21. For the foregoing reasons, in our considered opinion, no case has been made out to issue any direction in the interlocutory applications. They are not well founded and are ordered to be dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

Another case that is of significance is the Oleum gas accident case in Rajasthan which was also a highly toxic chemical and its effluent was hazardous to the environment .The case came up before the supreme court in following writ petition preferred by an NGO Indian Council for Environ-legal assoiciation .

d. Indian Council For Enviro-Legal association vs Union Of India And Ors Order and Judgment dated on 13 February, 1996

J U D G M E N T B.P.JEEVAN REDDY,J.

WRIT PETITION (C) NO.967 OF 1989:

This writ petition filed by an environmentalist organization brings to light the woes of people living in the vicinity of chemical industrial plants in India. It highlights the disregard, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialization and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings - for that matter, for anything else. And the law seems to have been helpless. Systemic defects? It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them - particularly, if they are men with means. Strong words indeed - but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us. The facts of the case will bear out these opening remarks.

Bichhri is a small village in Udaipur district of Rajasthan. To its north is a major industrial establishment, Hindustan Zinc Limited, a public sector concern. That did not affect Bichri. Its woes began somewhere in 1987 when the fourth respondent herein, Hindustan Agro Chemicals Limited started producing certain chemicals like Oleum [said to be the concentrated form of Sulphuric acid] and Single Super Phosphate. The real calamity occurred when a sister concern, Silver Chemicals [Respondent No.5], commenced production of `H' acid in a plant located within the same complex. `H' acid was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents - in particular, iron-

based and gypsum-based sludge - which if not properly treated, pose grave threat to mother Earth. It poisons the earth, the water and everything that comes in contact with it. Jyoti Chemicals [Respondent No.8] is another unit established to produce `H' acid, besides some other chemicals. Respondents Nos.6 and 7 were established to produce fertilizers and a few other products.

All the units/factories of Respondents Nos.4 to 8 are situated in the same complex and are controlled by the same group of individuals. All the units are what may be called "chemical industries". The complex is located within the limits of Bichhri village.

Because of the pernicious wastes emerging from the production of `H' acid, its manufacture is stated to have been banned in the western countries. But the need of `H' acid continues in the West. That need is catered to by the industries like the Silver Chemicals and Jyoti Chemicals in this part of the world. [A few other unites producing `H' acid have been established in Gujarat, as would be evident from the decision of the Gujarat High Court in Pravinbhai Jashbhai & Ors. v. State of Gujarat & Anr. (1995 (2) G.L.R.1210), a decision rendered by one of us, B.N.Kirpal,J. as the Chief Justice of that Court.] Silver Chemicals is stated to have produced 375 MT of `H' acid. The quantity of `H' acid produced by Jyoti Chemicals is not known. It says that it produced only 20mt., as trial production, and no more. Whatever quantity these two units may have produced, it has given birth to about 2400-2500 MT of highly toxic sludge [iron-based sludge and gypsum-based sludge] besides other pollutants. Since the toxic untreated waste waters were allowed to flow out

freely and because the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances have percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams has turned dark and dirty rendering it unfit for human consumption. It has become unfit for cattle to drink and for irrigating the land. The soil has become polluted rendering it unfit for cultivation, the main stay of the villagers. The resulting misery to the villagers needs no emphasis. It spread disease, death and disaster in the village and the surrounding areas. This sudden degradation of earth and water had an echo in Parliament too. An Hon'ble Minister said, action was being taken, but nothing meaningful was done on the spot. The villagers then rose in virtual revolt leading to the imposition of Section 144 Cr.P.C. by the District Magistrate in the area and the closure of Silver Chemicals in January, 1989. It is averred by the respondents that both the units, Silver Chemicals and Jyoti Chemicals have stopped manufacturing `H' acid since January, 1989 and are closed. We may assume it to be so. Yet the consequences of their action remain - the sludge, the long-lasting damage to earth, to underground water, to human beings, to cattle and the village economy. It is with these consequences that we are to contend with in this writ petition.

The present social action litigation was initiated in August, 1989 complaining precisely of the above situation and requesting for appropriate remedial action. To the writ petition, the petitioner enclosed a number of photographs illustrating the enormous damage

done to water, cattle, plants and to the area in general. A good amount of technical data and other material was also produced supporting the averments in the writ petition. COUNTER-AFFIDAVITS OF THE RESPONDENTS On notice being given, counter-affidavits have been filed by the Government of India, Government of Rajasthan, Rajasthan Pollution Control Board [R.P.C.B.] and Respondents Nos.4 to 8. Since the earliest counter-affidavit in point of time is that of R.P.C.B., we shall refer to it in the first instance. It was filed on October 26, 1989. The following are the averments:

(a) Re. Hindustan Agro Chemicals Limited [R-4]: The unit obtained 'No-Objection Certificate' from the P.C.B. for manufacturing sulphuric acid and alumina sulphate. The Board granted clearance subject to certain conditions. Later 'No- Objection Certificate' was granted under the Water [Prevention and Control of Pollution] Act, 1974 [Water Act] and Air (Prevention andControl of Pollution) Act, 1981 [Air Act], again subject to certain conditions. However, this unit changed its product without clearance from the Board. Instead of sulphuric acid, it started manufacturing Oleum and Single Super Phosphate [S.S.P.]. Accordingly, consent was refused to the unit on February 16, 1987. Directions were also issued to close down the unit. (b) Re.:Silver Chemicals [R-5]: This unit was promoted by the fourth respondent without obtaining 'No-Objection Certificate' from the Board for the manufacture of `H' acid. The waste water generated from the manufacture of `H' acid is highly acidic and contains very high concentration of dissolved solids along with

several dangerous pollutants. This unit was commissioned in February, 1988 without obtaining the prior consent of the Board and accordingly, notice of closure was served on April 30, 1988. On May 12, 1988, the unit applied for consent under Water and Air Acts which was refused. The Government was requested to issue directions for cutting off the electricity and water to this unit but no action was taken by the Government. The unit was found closed on the date of inspection, viz., October 2, 1989.

(c) Re.:Rajasthan Multi Fertilizers [R-6]: This unit was installed without obtaining prior 'No-Objection Certificate' from the Board and without even applying for consent under Water and Air Acts. Notice was served on this unit on February 20, 1989. In reply whereto, the Board was informed that the unit was closed since last three years and that electricity has also been cut off since February 12, 1988.

(d) Re.:Phosphates India [R-7]: This unit was also established without obtaining prior 'No-Objection Certificate' from the Board nor did it apply for consent under the Water and Air Acts. When notice dated February 20, 1989 was served upon this unit, the Management replied that this unit was closed for a long time.

(e) Re.:Jyoti Chemicals [R-8]: This unit applied for 'No- Objection Certificate' for producing ferric alum. 'No- Objection Certificate' was issued imposing various conditions on April 8, 1988. The 'No-Objection Certificate' was withdrawn on May 30, 1988 on account of non-compliance with its conditions. The consent applied for under

Water and Air Acts by this unit was also refused. Subsequently, on February 9, 1989, the unit applied for fresh consent for manufacturing `H' acid. The consent was refused on May 30, 1989. The Board has been keeping an eye upon this unit to ensure that it does not start the manufacture of `H' acid. On October 2, 1989, when the unit was inspected, it was found closed.

The Board submitted further [in its counter-affidavit] that the sludge lying in the open in the premises of Respondents Nos.4 to 8 ought to be disposed of in accordance with the provisions contained in the Hazardous Wastes (Management and Handling) Rules, 1989 framed underEnvironment (Protection) Act, 1986. According to the Board, the responsibility for creating the said hazardous situation was squarely that of Respondents Nos.4 to 8. The Board enclosed several documents to its counter in support of the averments contained therein.

The Government of Rajasthan filed its counter-affidavit on January 20, 1990. It made a curious statement in Para 3 to the following effect: "(T)hat the State Government is now aware of the pollution of under-ground water being caused by liquid effluents from the firms arrayed as Respondent Nos.4 to 8 in the writ petition. Therefore, the State Government has initiated action through the Pollution." The State Government stated that the water in certain wells in Bichri village and some other surrounding villages has become unfit for drinking by human beings and cattle, though in some other wells, the water remains unaffected.

The Ministry of Environment and Forests, Government of India filed its counter on February 8, 1990. In their counter, the Government of India stated that Silver Chemicals was merely granted a Letter of Intent but it never applied for conversion of the Letter of Intent into industrial licence. Commencing production before obtaining industrial licence is an offence under Industries [Development and Regulation] Act, 1951. So far as Jyoti Chemicals is concerned, it is stated that it has not approached the Government at any time even that in June, 1989, a study of the situation in Bichri village and some other surrounding villages was conducted by the Centre for Science and Environment. A copy of their Report is enclosed to the counter. The Report states the consequences emanating from the production of 'H' acid and the manner in which the resulting wastes were dealt with by Respondents Nos.4 to 8 thus:

"The effluents are very difficult to treat as many of the pollutants present are refractory in nature. Setting up such highly polluting industry in a critical ground water area was essentially ill-conceived. The effluents seriously polluted the nearby drain and overflowed into Udaisagar main canal, severely corroding its cement-concrete lined bed and banks. The polluted waters also seriously degraded some agricultural land and damaged standing crops. On being ordered to contain the effluents, the industry installed an unlined holding pond within its premises and resorted to spraying the effluent on the nearby hill-slope. This only resulted in extensive seepage and percolation of the effluents into ground water and their spread down the aquifer. Currently about 60 wells appear to have

been significantly polluted but every week a few new wells, down the aquifer start showing signs of pollution. This has created serious problems for water supply for domestic purposes, cattle-watering crop irrigation and other beneficial uses, and it has also caused human illness and even death, degradation of land and damage to fruit, trees and other vegetation. There are serious apprehensions that the pollution and its harmful effects will spread further after the onset of the monsoon as the water percolating from the higher parts of the basin moves down carrying the pollutants lying on the slopes - in the holding pond and those already underground."

Each of the Respondent Nos.4 to 8 filed separate counter-affidavits. All the affidavits filed on behalf of these respondents are sworn-to by Lt.Gen. M.L.Yadava, who described himself as the President of each of these units. In the counter-affidavit filed on behalf of the fourth respondent, it is stated that it is in no way responsible for the situation complained of. It is engaged in the manufacture of sulphuric acid and had commenced its operations on January 6, 1987. It has been granted 'No- Objection Certificates' from time to time. The consent obtained from R.P.C.B. is valid upto August 15, 1988. Application for extension of consent has already been filed. This counter-affidavit was filed on January 18, 1990.

In the counter-affidavit filed on behalf of the fifth respondent [Silver Chemicals], it is stated that the manufacture of 'H' acid which was commenced in February, 1988 has been completely stopped after January, 1989. The respondent is fully conscious of the need to conserve and protect environment and is prepared fully to cooperate

in that behalf. It is ready to comply with any stipulations or directions that may be made for the purpose. It, however, submitted that the real culprit is Hindustan Zinc Limited. The Archaeological Department of the Government of Rajasthan had issued environmental clearance for its unit [rather surprising statement]. 'No-Objection Certificates' had also been issued by the Executive Engineer [Irrigation], Udaipur Division and the Wild Life Warden. So far as the requirement of 'consent' under Water and Air Acts is concerned, it merely stated that it had applied for it. Its closure in January, 1989 was on account of promulgation of an order under Section 144 Cr.P.C. by the District Magistrate in view of wide-spread agitation by the villagers against its functioning.

In the counter-affidavit filed on behalf of the sixth respondent [Rajasthan Multi Fertilizers], it is stated that it commenced production on March 14, 1982 and closed down in December, 1985. Electrical connection to it was disconnected on February 13, 1988. It was submitted that since it is a small-scale industry, no consent was asked for from anyone. It denied that it was causing any pollution, either ground, air or water.

In the counter-affidavit filed on behalf of the seventh respondent [Phosphates India], it is stated that this unit commenced production on May 15, 1988 but was closed on and with effect from September 1, 1988 for want of support from the Central Government in the form of subsidies. It submitted that it has merged with the fourth respondent in 1987-88.

In the counter-affidavit filed on behalf of the eighth respondent [Jyoti Chemicals], it is stated that it has no electrical connection, that it had commenced production in April 1987 and closed down completely in January, 1989. It is stated that the unit produced `H' acid to an extent of 20 MT as a trial measure for one month with the permission of the Industries Department. It is no longer manufacturing `H' acid and, therefore, is not responsible for causing any pollution. It is further submitted that it is a small-scale industry and was registered with the District Industry Centre, Udaipur for the manufacture of ferric alum and `H' acid. It began its operation simultaneously with the fifth respondent, Silver Chemicals, and several of the clearances are common to both, as both of them are located together. The trial production of `H' acid, it is stated, took place in January, 1987.

Hindustan Zinc Limited was impleaded as the ninth respondent at the instance of Respondents Nos.4 to 8. It has filed a counter-affidavit denying that it is responsible in any manner for causing any pollution in Bichri village or the surrounding areas. According to it, its plants are situated downstream, towards north of Bichri village. We do not think it necessary to refer to this affidavit in any detail inasmuch as we are not concerned, in this writ petition, with the pollution, if any, caused by the ninth respondent in other villages but only with the pollution caused by Respondents Nos.4 to 8 in Bichhri or surrounding villages.

ORDERS PASSED AND STEPS TAKEN DURING THE PERIOD 1989-1992:

The first considered Order made, after hearing the parties, by this Court is of December 11, 1989. Under this Order, the Court requested the National Environmental Engineering Research Institute [NEERI] to study the situation in and around Bichri village and submit their report "as to the choice and scale of the available remedial alternatives". NEERI was requested to suggest both short-term and long-term measures required to combat the hazard already caused. Directions were also made for supply of drinking water to affected villages by the State of Rajasthan. The R.P.C.B. was directed to make available to the Court the Report it had prepared concerning the situation in Bichhri village.

On the next date of hearing, i.e., March 5, 1990, the Court took note of the statements made on behalf of Respondents Nos.4 to 8 that they have completely stopped the manufacture of `H' acid in their plants and that they did not propose to resume its manufacture. The Court also took note of the petitioner's statement that though the manufacture of `H' acid may have been stopped, a large quantity of highly dangerous effluent waste/sludge has accumulated in the area and that unless properly treated, stored and removed, it constitutes a serious danger to the environment. Directions were given to the R.P.C.B. to arrange for its transportation, treatment and safe storage according to the technically accepted procedures for disposal of chemical wastes of that kind. All reasonable expenses for the said operation were to be borne by Respondents Nos.4 to 8 [hereinafter referred to in this judgment as the "Respondents"]. So far as the polluted water in the wells was concerned, the Court noted the offer

made by the learned counsel for the respondents that they will themselves undertake the de-watering of the wells. The R.P.C.B. was directed to inspect and indicate the number and location of the wells to be de-watered.

The matter was next taken up on April 4, 1990. It was brought to the notice of the Court that no meaningful steps were taken for removing the sludge as directed by this Court in its Order dated March 5, 1990. Since the monsoon was about to set in, which would have further damaged the earth and water in the area, the Court directed the respondents to immediately remove the sludge from the open spaces where it was lying and store it in safe places to avoid the risk of seepage of toxic substances into the soil during the rainy season. The respondents were directed to complete the task within five weeks therefrom.

It is not really necessary to refer to the contents of the various Orders passed in 1990 and 1991, i.e., subsequent to the Order dated April 4, 1990 for the present purposes. Suffice it to say that the respondents did not comply with the direction to store the sludge in safe places. The de- watering of wells did not prove possible. There was good amount of bickering between the respondents on one side and the R.P.C.B. and the Ministry of Environment and Forests on the other. They blamed each other for lack of progress in the matter of removal of sludge. Meanwhile, years rolled by and the hazard continued to rise. NEERI submitted an interim Report. [We are, however, not referring to the contents of this interim Report inasmuch as we would be referring to the contents of the final

Report presently after referring to a few more relevant orders of this Court.] On February 17, 1992, this Court passed a fairly elaborate order observing that Respondents Nos.5 to 8 are responsible for discharging the hazardous industrial wastes; that the manufacture of `H' acid has given rise to huge quantities of iron sludge and gypsum sludge - approximately 2268 MT of gypsum-based sludge and about 189 mt, of iron- based sludge; that while the respondents blamed Respondent No. 9 as the main culprit, Respondent No. 9 denied any responsibility therefor. The immediate concern, said the Court, was the appropriate remedial action. The report of the R.P.C.B. presented a disturbing picture. It stated that the respondents have deliberately spread the hazardous material/sludge all over the place which has only heightened the problem of its removal and that they have failed to carry out the Order of this Court dated April 4, 1990. Accordingly, the Court directed the Ministry of Environment and Forests, Government of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron-based sludge, to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was to be recovered from the respondents.

Pursuant to the above Order, a team of experts visited the area and submitted a Report alongwith an affidavit dated March 30, 1992. The report presented a highly disturbing picture. It stated that the sludge was found inside a shed and also at four places outside the shed but within the premises of the complex belonging to the

respondents. It stated further that sludge has been mixed with soil and at many places it is covered with earth. A good amount of sludge was said to be lying exposed to sun and rain. The Report stated. "Above all, the extent of pollution in the ground water seems to be very great and the entire aquifer may be affected due to the pollution caused by the industry. The organic content of the sludge needs to be analysed to assess the percolation property of the contents from the sludge. It is also possible that the iron content in the sludge may be very high which may cause the reddish colorations. As the mother liquor produced during the process (with pH-1) was highly acidic in nature and was indiscriminately discharged on land by the unit, it is possible that this might have eroded soil and caused the extensive damage. It is also possible that the organic contents of the mother liquor would have gone into soil with water together with the reddish colour." The Report also suggested the mode of disposal of sludge and measures for re-conditioning the soil.

In view of the above Report, the Court made an order on April 6, 1992 for entombing the sludge under the supervision of the officers of the Ministry of Environment and Forests, Government of India. Regarding revamping of the soil, the Court observed that for this purpose, it might become necessary to stop or suspend the operation of all the units of the respondent but that, the Court said, requires to be examined further.

The work of entombment of sludge again faced several difficulties. While the respondents blamed the Government officers for the

delay, the Government officials blamed the said respondents of non-cooperation. Several Orders were passed by this Court in that behalf and ultimately, the work commenced.

ORDERS PASSED IN 1993, FILING OF WRIT PETITION (C) NO.76 OF 1994 BY RESPONDENT NO.4 AND THE ORDERS PASSED THEREIN:

With a view to find out the connection between the wastes and sludge resulting from the production of `H' acid and the pollution in the underground water, the Court directed on 20th August, 1993, that samples should be taken of the entombed sludge and also of the water from the affected wells and sent for analysis. Environment experts of the Ministry of Environment and Forests were asked to find out whether the pollution in the well water was on account of the said sludge or not. Accordingly, analysis was conducted and the experts submitted the Report on November 1, 1993. Under the heading "Conclusion", the report stated:

"5.0 CONCLUSION 5.1 On the basis of the observations and analysis results, it is concluded beyond doubt that the sludge inside the emtomed pit is the contaminated one as evident from the number of parameters analysed.

5.2 The groundwater is also contaminated due to discharge of H-acid plant effluent as well as H-

acid sludge/contaminated soil leachates as shown in the photographs and also supported by the results. The analysis result revealed good

correlation between the colour of well water and H-acid content in it. The analysis results show high degree of impurities in sludge/soil and also in well water which is a clear indication of contamination of soil and groundwater due to disposal of H- acid waste."

The report which is based upon their inspection of the area in September, 1993 revealed many other alarming features. It represents a commentary on the attitude and actions of the respondents. In Para-2, under the heading "Site Observations & Collection of Sludge/Contaminated Soil Samples", the following facts are stated:

"2.1. The Central team, during inspection of the premises of M/s.HACL, observed that H-acid sludge (iron/gypsum) and contaminated soil are still lying at different places, as shown in Fig.1, within the industrial premises (Photograph 1) which are the left overs. The area, where the solar evaporation pond was existing with H-acid sludge dumped here and there, was observed to have been levelled with borrowed soil (Photograph 2). It was difficult to ascertain whether the sludge had been removed before filling. However, there are visual evidences of contaminated soil in the area. 2.2 As reported by the Rajasthan Pollution Control Board (RPCB) representatives, about 720 tonnes out of the total contaminated soil and sludge scraped from the sludge dump sites is disposed of in six lined entombed pits covered by lime/flyash mix, brick soling and concrete (Photographs 3 & 4). The remaining scraped sludge and contaminated soil was lying near the entombed pits for want of additional disposal facility. However, during the visit, the left over

sludge and contaminated soil could not be traced at site. Inspection of the surrounding area revealed that a huge heap of foreign soil of 5 metre height (Photograph 5) covering a large area, as also indicated in Fig.1, was raised on the slopy ground at the foot hill within the industry premises. The storm water run-off pathway over the area showed indication of H-acid sludge leachate coming out of the heap. Soil in the area was sampled for analysis.

2.3 M/s.HACL has a number of other industrial units which are operating within the same premises without valid consents from the Rajasthan Pollution Control Board (RPCB). These plants are sulphuric acid (H2SO4), fertilizer (SSP) and vegetable oil extraction. The effluent of these units are not properly treated and the untreated effluent particularly from the acid plant is passing through the sludge dump area playing havoc (Photograph

7). The final effluent was collected at the outlet of the factory premises during operation of these units, at the time of groundwater monitoring in September 1993, by the RBPC. Its quality was observed to be highly acidic (pH : 1.08, Conductivity : 37,100 mg/1, So4 : 21,000 mg/1, Fe : 392 mg/1, COD : 167 mg/1) which was also revealed in the earlier visits of the Central teams. However, these units were not in operation during the present visit."

Under Para 4.2.1, the report stated inter alia:

"The sludge samples from the surroundings of the (presently non-existent) solar evaporation and the contaminated soil due to seepage from the newly raised dump site also exhibited very high values of

the above mentioned parameters. This revealed that the contaminated soil is buried under the new dump found by the team."

So much for the waste disposal by the respondents and their continuing good conduct! To the same effect is the Report of the R.P.C.B. which is dated October 30, 1993.

In view of the aforesaid Reports, all of which unanimously point out the consequences of the 'H' acid production, the manner in which the highly corrosive waste water (mother liquor) and the sludge resulting from the production of 'H' acid was disposed of and the continuing discharge of highly toxic effluents by the remaining units even in the year 1993, the authorities [R.P.C.B.] passed orders closing down, in exercise of their powers under Section 33A of the Water Act, the operation of the Sulphuric Acid Plant and the solvent extraction plant including oil refinery of the fourth respondent with immediate effect. Orders were also passed directing disconnection of electricity supply to the said plants. The fourth respondent filed Writ Petition (C) No.76 of 1994 in this Court, under Article 32 of the Constitution, questioning the said Orders in January, 1994. The main grievance in this writ petition was that without even waiting for the petitioner's [Hindustan Agro Chemicals Limited] reply to the show-cause notices, orders of closure and disconnection of electricity supply were passed and that this was done by the R.P.C.B. with a malafide intent to cause loss to the industry. It was also submitted that sudden closure of its plants is likely to result in disaster and, may be, an explosion and that this consideration was not taken into account while ordering the closure. In its Order dated March 7,

1994, this Court found some justification in the contention of the industry that the various counter-affidavits filed by the R.P.C.B. are self-contradictory. The Board was directed to adopt a constructive attitude in the matter. By another Order dated March 18, 1994, the R.P.C.B. was directed to examine the issue of grant of permission to re-start the industry or to permit any interim arrangement in that behalf. On April 8, 1994, a 'consent' order was passed whereunder the industry was directed to deposit a sum of Rupees sixty thousand with R.P.C.B. before April 11, 1994 and the R.P.C.B. was directed to carry on the construction work of storage tank for storing and retaining ten days effluents from the Sulphuric Acid plant. The construction of temporary tank was supposed to be an interim measure pending the construction of an E.T.P. on permanent basis. The Order dated April 28, 1994 noted the Report of the R.P.C.B. stating that the construction of temporary tank was completed on April 26, 1994 under its supervision. The industry was directed to comply with such other requirements as may be pointed out by R.P.C.B. for prevention and control of pollution and undertake any works required in that behalf forthwith. Thereafter, the matter went into a slumber until October 13, 1995.

NEERI REPORT:

At this juncture, it would be appropriate to refer to the Report submitted by NEERI on the subject of "Restoration of Environmental Quality of the affected area surrounding Village Bichhri due to past Waste Disposal Activities". This Report was submitted in April, 1994 and it states that it is based upon the study

conducted by it during the period November, 1992 to February, 1994. Having regard to its technical competence and reputation as an expert body on the subject, we may be permitted to refer to its Report at some length:

At Page 7, the Report mentions the industrial wates emerging from the manufacture of `H' acid. It reads:

"Solid wastes generated from H-

acid manufacturing process are:

Gypsum sludge produced during the neutralization of acidic solution with lime after nitration stage (around 6 tonnes/tonne of H-acid manufactured) Iron sludge produced during the reduction stage (around 0.5 tonnes/tonne of H-acid manufactured) Gypsum sludge contains mostly calcium sulphate along with sodium salts and organics. Iron sludge constitutes unreacted iron powder, besides ferric salts and organics.

It is estimated that, for each tonne of H-acid manufactured, about 20 m3 of wholly corrosive wastewater was generated as mother liquor, besides the generation of around 2.0 m3 of wash water. The mother liquor is characterized by low pH (around 2.0) and high concentration of total dissolved solids (80 - 280 g/L). High COD of the wastewater (90 g/L) could be attributed to organics formed during various stages of manufacture. These include naphthalene

trisulphonic acid, nitro naphthalene sulphonic acid, Koch acid and H-acid, besides, several other intermediates."

At Pages 8 and 9, the Report describes the manner in which the sludge and other industrial wastes were disposed of by the respondents. It states inter alia:

"The total quantities of wastes water and that of sludge generated were around 8250 m3 and 2440 tonnes respectively for a production of 375 tonnes by M/s.Silver Chemicals Ltd. and M/s.Jyoti Chemicals Ltd.....

* Majority of sludge brought back from disposal sites located outside the plant was transferred inside a covered shed.

* The sludge lying in the plant premises was entombed in the underground pit by RPCB as per the directions of the Hon'ble Supreme Court. It may be mentioned that only 720 MT of sludge out of the estimated quantity of 2440 MT could be entombed as the capacity of the underground tanks provided by the industry for the purpose was only to that extent.

* Remaining sludge and sludge mixed soil were, however, present in the plant premises as these could not be transferred into underground tanks. It has also been observed that only sludge above the soil was removed from the six sites and transferred to the plant site.

Subsurface soil of these sites appears to have been contaminated as the soil has reddish colour akin to that of the sludge.

* A fertilizer plant (single superphosphate), a sulphuric acid plant and an oil extraction and oil refining plant were in operation in the same premises where H-acid was earlier manufactured. The acidic wastewater (around pH 1.0) presently generated from these units was flowing over the abandoned dumpsite. This leaches the sludge mixed soil from the abandoned dumpsite and the contaminated water flows by gravity towards east and finds its way into a nallah flowing through the compound and conveys the contaminated water to an irrigation canal which originates from Udaisagar lake (Pate 1.4)."

(Emphasis added) At Page 10, the Report mentions the six dump sites outside the `H' acid plant premises where the sludge was lying in the open. At Pages 26 and 27, the Report states on the basis of V.E.S. investigations that while certain wells were found contaminated, others were not. At Page 96, the Report states thus:

"Damage to Crops and Trees The field surveys in contaminated fields in zone I and II showed that no crops were coming in the fields particularly in low lying areas. On some elevated areas, crops like jowar, maize were growing; however the growth and yield were very poor.

Further it was also observed that even trees like eucalyptus planted in contaminated fields show leaf burning and stunted growth. Many old trees which were badly affected due to contamination are still growing under stress conditions as a result of soil contamination. The top soils at the old dump sites outside the plant premises are still contaminated and require decontamination before the land is used

for other purposes. It was observed that even after the operation of hauling the sludge back to the industry premises, some sludge mixed soil was still lying in the premises of a primary school (Table 1.1), which needs decontamination."

In Chapter-6, the Report mentions the remedial measures. Para 6.1, titled "Introduction", states:

"As could be seen from the data reported in Chapter 4 and 5, the ground water and soils within 2 km from the plant have been contaminated. After critically scrutinising the date, it was concluded that there is an urgent need to work out a decontamination strategy for the affected area.

This strategy includes the decontamination of the soil, contaminated ground water and abandoned dump sites. This chapter details the remedial measures that can be considered for implementation to restore the environmental quality of the affected area."

The Chapter then sets out the various remedial measures, including land treatment, soil washing, revegetation, control over the flow of the contaminated water to adjoining lands through canals, leaching of soluble salts, design of farm to development Agroforestry and/or forestry plantation with salt tolerant crops/plants and ground water decontamination. Inter alia, the Report states:

"The entire contaminated area comprising of 350 ha of contaminated land and six abandoned dump sites outside the industrial premises has been found to be ecologically fragile due to reckless past

disposal activities practiced by M/s. Silver Chemicals Ltd. and M/s.Jyoti Chemicals Ltd.

Accordingly, it is suggested that the whole of the contaminated area be developed as a green belt at the expense of M/s.Hindustan Agrochemicals Ltd. during the monsoon of 1994."

Under Para 6.3.2, the Report suggests "Decontamination Alternatives for Groundwater" including Bioremediation, Degradation of H-acid by Azotobacter Vinelandii, Isolation of Bacterial Population from H-acid Contaminated Soil and several other methods.

Under Para 6.4.2, the Report mentions the several decontamination alternatives including containment of contaminated soil, surface control, ground water control, leachate collection and treatment, gas migration control and direct waste treatment.

At Pages 157 and 158, the report mentions the continuing discharge of effluents in an illegal and dangerous manner. It reports:

"It was also observed by NEERI's team during the current study that the industry has not provided adequate effluent treatment facilities and the wastewaters (pH.1.5) from the existing plants (Sulphuric acid, Fertilizer, and Oil extraction) are being discharged, without treatment, on land within the plant premises.

This indiscriminate and willful disposal activity is further aggravating the contamination problem in the area. Acidic effluent leaches the pollutants from the dumped sludge and the contaminated

soil and facilitates their penetration through the ground and thereby increasing the concentration of sulphates and dissolved solids in groundwater. What is most serious is the fact that the industry produced chlorosulfonic acid for a few months during late 1992 which is a hazardous and toxic substance as per MEF Notification titled 'Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, and even floated public shares for the manufactures of this obnoxious chemical. The production was however ceased due to the intervention of the Rajasthan Pollution Control Board in December 1992 as the industry was operating without obtaining site clearance, No Objection Certificate (NOC)/Consent from the concerned appropriate regularity (regulatory?) authorities and without providing for any pollution control measures. It is, therefore, essential for M/s. Hindustan Agrochemicals Ltd. to comply with these requirements for carrying out the present industrial activities. The abatement of further contamination warrants the closure of all industrial operations till an appropriate effluent treatment plant is installed, and certified by RPCB for its functions of Water Act."

The Report adds:

"The Industry management in the past [during 1988-89] has shown scant respect for Pollution Control and Environment Protection Acts. Not only this, the management continues industrial activity producing obnoxious waste waters and dumping the same without any treatment, contaminating land and ground water without any concern for ecology and public health. It is necessary that the

provisions of relevant legislations are imposed on the industry to avoid environmental damage and harm to public welfare."

(Emphasis added) We do not think that the above Report requires any emphasis at our hands. It speaks for itself - and it speaks volumes of the 'high regard' the respondents have for law! At Pages 179 onwards, the Report refers to the damage to the crops and the land and to the psychological and mental torture inflicted upon the villagers by the respondents and suggests that the principle of 'Polluter Pays' should be applied in this case inasmuch as "the incident involved deliberate release of untreated acidic process wastewater and negligent handling of waste sludge knowing Fully well the implication of such acts." The Report suggests that compensation should be paid under two heads, viz., (a) for the losses due to damage and (b) towards the cost of restoration of environmental quality. It then works out the total cost of restoration of environmental quality at Rs.3738.5 lakhs - i.e., Rs.37.385 crores.

Para 7.4 states the conclusions flowing from the material in Chapter-6 thus:

"The cost of damage to be disbursed to the affected villagers is estimated at Rs.342.8 lakhs and remediation of impacted well waters and soil at Rs.3738.5 lakhs. This cost needs to be borne by the management of the industry in keeping with the Polluter Pays principle and the doctrine of Strict/Absolute liability, as applied to Sri Ram Food and Fertilizers Industry in the case of Oleum leak in 1985."

REPORT OF R.P.C.B. SUBMITTED IN JANUARY, 1996 DURING THE FINAL HEARING OF THESE MATTERS:

When all these matters were posted before the Court on October 13, 1995, we realised that the matter requires to be heard on a priority basis. Having regard to the voluminous data gathered by this Court and the several Orders passed from time to time, the matter was listed for regular hearing. We heard all the parties at length on 10th, 11th, 16th and 17th January, 1996. We have been taken through the voluminous record. Submissions have also been made on the questions of law arising herein.

At the end of the first day of regular hearing, we made an Order calling upon the R.P.C.B. to send a team of high officials to the spot and report to us the latest position on the following aspects:

(i) Whether the factories of Silver Chemicals, Rajasthan Multi Fertilizers and Jyoti Chemicals are still working and whether the machinery installed in the said plant is still existing? [This information was required to check the statement of the respondents that the said units are lying closed since last several years.]

(ii) To report whether the factory or factories of Respondent No.4, Hindustan Agro-Chemicals Limited, are working and if they are working, what are the products being manufactured by them? The Board was also directed to report whether the seventh respondent, Phosphate India, which was said to have merged with the fourth

respondent, is having a separate factory and if so, what is being produced therein?

(iii) The approximate quantity of sludge - whether 'iron sludge' or 'gypsum sludge'- lying in the area. The report was to indicate what quantity was entombed pursuant to the Orders of this Court and whether any further sludge was lying in the area or in the premises of the respondents' complex, its approximate quantity and the time, effort and cost required to remove the same.

(iv)The Board was also to take samples of the water in wells and tanks in the area and have them analysed and tell us whether it is fit for drinking by cattle and/or fit for irrigation purposes.

Accordingly, the R.P.C.B. officials visited the site and have filed a Report dated January 16, 1996 along with an affidavit. The Report discloses the following facts: (1) The two units, Silver Chemicals and Jyoti Chemicals, do not exist now. There is no machinery. A godown and a Ferric Alum plant have been constructed at the site of the said plant. The Ferric Alum plant was not in operation at the time of inspection though plant and machinery for manufacturing it was found installed therein. Certain old stock of Ferric Alum was also found lying within the plant premises.

(2) Hindustan Agro-Chemicals Limited [R-4] has seven industrial plants, viz., Rajasthan Multi Fertilizers [manufacturing Grannulated Single Super Phosphate (G.S.S.P.)], a Suphuric Acid Plant, a Chlorosulphonic Acid Plant, Edible Oil Solvent Extraction Plant,

Edible Oil Refinery and a Ferric Alum Plant (known as M/s.Jyoti Chemicals), all of which are located within the same premises. All these seven plants were found not operating on the date of inspection by the R.P.C.B. officials though in many cases the machinery and the other equipment was in place. So far as the sludge still remaining in the area is concerned, the report stated:

"3. Village Bicchidi and other adjoining areas were visited by the undersigned officials to know whether gypsum and iron sludge is still lying in the aforesaid area. In area adjoining the irrigation canal, sludge mixed with soil were found on an area of about 3000 sq.ft. The area was covered with foreign soil. Sample of the sludge mixed soil was collected for the perusal of the Hon'ble Court. Entire premises of M/s.Hindustan Agro Chemicals Ltd. was also inspected and sludge mixed with soil was observed in a large area. It was further observed that fresh soil in the varying depth has been spread over in most of the area. In view of the fact that sludge was mixed with the soil and difficult to separate out of the soil it is very difficult to estimate the exact quantity of the sludge required to be removed. Samples of sludge mixed with soil were collected from different part of this area after serving due notices under Environment Protection Act, 1986."

So far as the water in the wells was conceded, the Report mentioned that they took samples from the wells from Bichhri and other surrounding villages, i.e., from thirty two different locations and that water in sixteen location was found to "contain colour of varying

intensities ranging from very dark brown to light pink which apparently shows that these wells/handpumps are still polluted".

Sri K.N.Bhat, learned counsel for the respondents, however, submitted that the R.P.C.B. officials have throughout been hostile to the respondents and that, therefore, the Reports submitted by them should not be acted upon. He also submitted that respondents have had no opportunity to file objections to the said Report or to produce material to contradict the statements made therein. While taking note of these submissions, we may, however, refer to the letter dated January 13, 1996 written by the fourth respondent to the R.P.C.B. In this letter, the particulars of the stocks remaining in each of its seven plants are mentioned along with the date of the last production in each of those plants. The last dates of production are the following: Sulphuric Acid Plant - November 10, 1995, S.S.P.. Plant [Phosphate India] - November 11, 1995, G.S.S.P. Plant [Rajasthan Multi Fertilizers] - July 7, 1995, Solvent Extraction Plant and Refinery - December 2, 1993, Jyoti Chemicals- October, 1990 and Chlorosulphonic Acid Plant - September 29, 1995. It is worthy of note that these dates are totally at variance with the dates of closure mentioned in the counter-affidavits filed by these units in 1990-91.

CONTENTIONS OF THE PARTIES:

Sri M.C.Mehta, learned counsel appearing for the petitioner, brought to our notice the several Reports, orders and other material on record. He submitted that the abundant material on record clearly establishes the culpability of the respondents for the devastation in

village Bichhri and surrounding areas and their responsibility and obligation to properly store the remaining sludge, stop discharge of all untreated effluents by taking necessary measures and defray the total cost required for remedial measures as suggested by NEERI [Rupees forty crores and odd]. Learned counsel suggested that in view of the saga of repeated and continuous violation of law and lawful orders on the part of the respondents, they must be closed forthwith. So far as the legal propositions are concerned, the learned counsel relied strongly upon the Constitution Bench decision in M.C.Mehta v. Union of India [Oleum Gas Leak Case] (1987 (1) S.C.C.395) as well as the recent Order of this Court in Indian Council for Enviro- Legel Action v. Union of India [1995 (5) SCALE 578]. Learned counsel also invited our attention to quite a few foreign decisions and text books on the subject of environment. Sri Altaf Ahmed, learned Additional Solicitor General appearing for the Union of India, also stressed the need for urgent appropriate directions to mitigate and remedy the situation on the spot in the light of the expert Reports including the one made by the central team of experts.

The learned counsel for the State of Rajasthan, Sri Aruneshwar Gupta, expressed the readiness of the State Government to carry out and enforce such orders as this Court may think fit and proper in the circumstances.

Sri K.B.Rohtagi, learned counsel for the R.P.C.B., invited our attention to the various Orders passed, action taken, cases instituted and Reports submitted by the Board in this matter. He submitted that

until recently the Board had no power to close down any industry for violation of environmental laws and that after conferment of such power, they did pass orders of closure. He denied the allegations of malafides or hostile intent on the part of the Board towards the respondents. Learned counsel lamented that despite its best efforts, the Board has not yet been successful in eradicating the pollution in the area and hence asked for stringent orders for remedying the appalling conditions in the village due to the acts of the respondents.

Sri K.N.Bhat, learned counsel for the respondents, made the following submissions:

(1) The respondents are private corporate bodies. They are not `State' within the meaning ofArticle 12 of the Constitution. A writ petition under Article 32 of the Constitution, therefore, does not lie against them. (2) The R.P.C.B. has been adopting a hostile attitude towards these respondents from the very beginning. The Reports submitted by it or obtained by it are, therefore, suspect. The respondents had no opportunity to test the veracity of the said Reports. If the matter had been fought out in a properly constituted suit, the respondents would have had an opportunity to cross-examine the experts to establish that their Reports are defective and cannot be relied upon.

(3) Long before the respondents came into existence, Hindustan Zine Limited was already in existence close to Bichhri village and has been discharging toxic untreated effluents in an unregulated manner. This had affected the water in the wells, streams and aquifers. This is

borne out by the several Reports made long prior to 1987. Blaming the respondents for the said pollution is incorrect as a fact and unjustified.

(4) The respondents have been cooperating with this Court in all matters and carrying out its directions faithfully. The Report of the R.P.C.B. dated November 13, 1992 shows that the work of entombment of the sludge was almost over. The Report states that the entire sludge would be stored in the prescribed manner within the next two days. In view of this report, the subsequent Report of the Central team, R.P.C.B. and NEERI cannot be accepted or relied upon. There are about 70 industries in India manufacturing 'H' acid. Only the units of the respondents have been picked upon by the Central and State authorities while taking no action against the other units. Even in the matter of disposal of sludge, the directions given for its disposal in the case of other units are not as stringent as have been prescribed in the case of respondents. The decision of the Gujarat High Court in Pravinbhai Jashbhai Patel shows that the method of disposal prescribed there is different and less elaborate than the one prescribed in this case.

(5) The Reports submitted by the various so-called expert committees that sludge is still lying around within and outside the respondents' complex and/or that the toxic wastes from the Sulphuric Acid Plant are flowing through and leaching the sludge and creating a highly dangerous situation is untrue and incorrect. The R.P.C.B. itself had constructed a temporary E.T.P. for the Sulphuric Acid Plant pursuant to the Orders of this Court made in Writ Petition (C)

No.76 of 1994. Subsequently, a permanent E.T.P. has also been constructed. There is no question of untreated toxic discharges from this plant leaching with sludge. There is no sludge and there is no toxic discharge from the Sulphuric Acid Plant.

(6) The case put forward by the R.P.C.B. that the respondents' units do not have the requisite permits/consents required by the Water Act, Air Act and the Environment [Protection] Act is again unsustainable in law and incorrect as a fact. The respondents' units were established before the amendment of Section 25 of the Water Act and, therefore, did not require any prior consent for their establishment.

(7) The proper solution to the present problem lies in ordering a comprehensive judicial enquiry by a sitting Judge of the High Court to find out the causes of pollution in this village and also to recommend remedial measures and to estimate the loss suffered by the public as well as by the respondents. While the respondents are prepared to bear the cost of repairing the damage, if any, caused by them, the R.P.C.B. and other authorities should be made to compensate for the huge losses suffered by the respondents on account of their illegal and obstructionist policy adopted towards them.

(8) The decision in Oleum Gas Leak Case has been explained in the opinion of Ranganath Misra, CJ., in the decision in Union Carbide Corporation v. Union of India (1991 (4) S.C.C.584). The law laid

down in Oleum Gas Leak Case is at variance with the established legal position in other Commonwealth countries.

Sri Bhat suggested that in the larger interests of environment, industry and public, this Court may direct the Government of India to constitute, by proper legislation, environment courts all over the country - which courts alone should be empowered to deal with such cases, to give appropriate directions including orders of closure of industries wherever necessary, to make necessary technical and scientific investigations, to suggest remedial measures and to oversee their implementation. Proceedings by way of a writ in this Court under Article 32 or in the High Court under Article 226, the learned counsel submitted, are not appropriate to deal with such matters, involve as they do several disputed questions of fact and technical issues.

Before we proceed to deal with the submissions of the learned counsel, it would be appropriate to notice the relevant provisions of law.

RELEVANT STATUTORY PROVISIONS:

Article 48A is one of the Directive Principles of State Policy. It says that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.Article 51A sets out the fundamental duties of the citizens. One of them is "(g) to protect and improve the natural environment including

forests, lakes, rivers and wild life and to have compassion for living creatures.....".

The problem of increasing pollution of rivers and streams in the country - says the Statement of Objects and Reasons appended to the Bill which became the Water [Prevention and Control of Pollution] Act, 1974 - attracted the attention of the State Legislatures and the Parliament. They realised the urgency of ensuring that domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment and that pollution of rivers and streams was causing damage to the country's economy. A committee was set up in 1962 to draw a draft enactment for prevention of water pollution. The issue was also considered by the Central Council of Local Self- Government in September, 1963. The Council suggested the desirability of having a single enactment for the purpose. A draft Bill was prepared and sent to various States. Several expert committees also made their recommendations meanwhile. Since an enactment on the subject was relatable to Entry 17 read with Entry 6 of List-II in the Seventh Schedule to the Constitution - and, therefore, within the exclusive domain of the States - the State Legislatures of Gujarat, Kerala, Haryana and Mysore passed resolutions as contemplated by Article 252 of the Constitution enabling the Parliament to make a law on the subject. On that basis, the Parliament enacted the Water [Prevention and Control of Pollution] Act, 1974. [The State of Rajasthan too passed the requisite resolution.] Section 24(1) of the Water Act provides that "subject to the provisions of this section, (a) no person shall

knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter whether (directly or indirectly) into any stream or well.....". Section 25(1), before it was amended by Act 53 of 1988, provided that "(1) subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well." As amended by Act 53 of 1988, Section 25 now reads: "25(1) Subject to the provisions of this section, no person shall without the previous consent of the State Board, (a) establish or take any steps to establish any industry, operation or process or any treatment and disposal system or an extension or an addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land [such discharge being hereafter in this section referred to as `discharge of sewage']; or (b) bring into use any new or altered outlets for the discharge of sewage or (c) begin to make any new discharge of sewage.....". [It is stated that the Rajasthan Assembly passed resolution under Article 252 of the Constitution adopting the said amendment Act vide Gazette Notification dated May 9, 1990.] Section 33 empowers the Pollution Control Board to apply to the court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, to restrain any person causing pollution if the said pollution is likely to prejudicially affect water in a stream or a well. Section 33A, which has been introduced by Amendment Act 53 of 1988, empowers the Board to order the

closure of any industry and to stop the electricity, water and any other service to such industry if it finds such a direction necessary for effective implementation of the provisions of the Act. Prior to the said amendment Act, the Pollution Control Board had no such power and the course open to it was to make a recommendation to the Government to pass appropriate orders including closure.

The Air [Prevention and Control of Pollution] Act, 1981 contains similar provisions.

In the year 1986, Parliament enacted a comprehensive legislation, Act. The defines "environment" to include "water, air and land and the inter- relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property." The preamble to the Act recites that the said Act was made pursuant to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India also participated. Section 3 empowers the Central Government "to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". Sub-section (2) elucidates the several powers inhering in Central Government in the matter of protection and promotion of environment. Section 5 empowers the Central Government to issue appropriate directions to any person, officer or authority to further the objects of the enactment. Section 6 confers rule-making power upon the Central Government in respect of matters referred to in Section 3. Section 7 says that "no

person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards, as may be prescribed".

The Central Government has made the Hazardous Wastes (Management and Handling) Rules, 1989 in exercise of the power conferred upon it by Section 6 of the Environment (Protection) Act prescribing the manner in which the hazardous wastes shall be collected, treated, stored and disposed of.

CONSIDERATION OF THE SUBMISSIONS:

Taking up the objections urged by Sri Bhat first, we find it difficult to agree with them. This writ petition is not really for issuance of appropriate writ, order or directions against the respondents but is directed against the Union of India, Government of Rajasthan and R.P.C.B. to compel them to perform their statutory duties enjoined by the Acts aforementioned on the ground that their failure to carry out their statutory duties is seriously undermining the right to life [of the residents of Bichhri and the affected area] guaranteed by Article 21 of the Constitution. If this Court finds that the said authorities have not taken the action required of them by law and that their inaction is jeopardizing the right to life of the citizens of this country or of any section thereof, it is the duty of this Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, this Court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder. This is a social action

litigation on behalf of the villagers of Bichhri whose right to life, as elucidated by this Court in several decisions, is invaded and seriously infringed by the respondents as is established by the various Reports of the experts called for, and filed before, this Court. If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, can it be suggested with any modicum of reasonableness that this Court has no power to intervene and protect the fundamental right to life and liberty of the citizens of this country. The answer, in our opinion, is self-evident. We are also not convinced of the plea of Sri Bhat that R.P.C.B. has been adopting a hostile attitude towards his clients throughout and, therefore, its contentions or the Reports prepared by its officers should not be relied upon. If the respondents establish and operate their plants contrary to law, flouting all safety norms provided by law, the R.P.C.B. was pound to act. On that account, it cannot be said to be acting out of animus or adopting a hostile attitude. Repeated and persistent violations call for repeated orders. That is no proof of hostility. Moreover, the Reports of R.P.C.B. officials are fully corroborated and affirmed by the Reports of central team of experts and of NEERI. We are also not prepared to agree with Sri Bhat that since the Report of NEERI was prepared at the instance of R.P.C.B., it is suspect. This criticism is not only unfair but is also uncharitable to the officials of NEERI who have no reason to be inimical to the respondents. If, however, the actions of the respondents invite the concern of the experts and if they depict the correct situation in their

Reports, they cannot be accused of any bias. Indeed, it is this Court that asked NEERI to suggest remedial measures and it is in compliance with those orders that NEERI submitted its interim Report and also the final Report. Similarly, the objection of Sri Bhat that the Reports submitted by the NEERI, by the Central team [experts from the Ministry of Environment and Forests, Government of India] and R.P.C.B. cannot be acted upon is equally unacceptable. These Reports were called by this Court and several Orders passed on the basis of those Reports. It was never suggested on behalf of Respondents Nos.4 to 8 that unless they are permitted to cross-examine the experts or the persons who made those Reports, their Reports cannot be acted upon. This objection, urged at this late stage of proceedings - after a lapse of several years - is wholly unacceptable. The persons who made the said Reports are all experts in their field and under no obligation either to the R.P.C.B. or for that matter to any other person or industry. It is in view of their independence and competence that their Reports were relied upon and made the basis of passing Orders by this Court from time to time.

Now coming to the question of alleged pollution by Hindustan Zinc Limited [R-9], it may be that Respondent No.9 is also responsible for discharging untreated effluents at one or the other point of time but that is not the issue we are concerned with in these writ petitions. These writ petitions are confined to the pollution caused in Bichhri village on account of the activities of the respondent. No Report among the several Reports placed before us in these proceedings

says that Hindustan Zinc Limited is responsible for the pollution at Bichhri village. Sri Bhat brought to our notice certain Reports stating that the discharges from Hindustan Zinc Limited were causing pollution in certain villages but they are all down stream, i.e., to the north of Bichhri village and we are not concerned with the pollution in those villages in these proceedings. The bringing in of Hindustan Zinc Limited in these proceedings is, therefore, not relevant. If necessary, the pollution, if any, caused by Hindustan Zinc Limited can be the subject-matter of a separate proceeding.

We may now deal with the contentions of Sri Bhat based upon the affidavit of R.P.C.B. dated November 13, 1992 which has been repeatedly and strongly relied upon by the learned counsel in support of his submission that the entire sludge has been properly stored by or at the expense of his clients. It is on the basis of this affidavit that Sri Bhat says that the subsequent Reports submitted showing the existence of sludge within and outside their complex should not be accepted or acted upon. Let us turn to the affidavit of R.P.C.B. dated November 13, 1992 and see how far does it support Sri Bhat's contention. It is in Para 2(b) that the sentence, strongly relied upon by Sri Bhat occurs, viz., "remaining work is likely to be completed by 15th November, 1992". For a proper appreciation of the purport of the said sentence, it would be appropriate to read the entire Para 2(b), which is to the following effect: "(b) that all the six tanks have been entombed with brick toppings. Roofing is complete on all tanks which have also been provided with proper outlets for the exit of gases which may form as a result of possible chemical reactions in

the sludge mass. The tanks have also been provided with reinforced concrete to prevent propping of the roof. Remaining work is likely to be completed by 15th November, 1992." We find it difficult to read the said sentence as referring to the storage of the remaining about 1700 MT of sludge. When the storage of 720 MT itself took up all the six tanks provided by the respondent, where was the remaining 1700 tonnes stored? Except relying upon the said sentence repeatedly, Sri Bhat has not been able to tell us where this 1700 MT has been stored, whether in tanks end if so, who constructed the tanks and when and how were they covered and sealed. He is also not able to tell us on what dates the remaining sludge was stored. It is evident that the aforesaid sentence occurring in clause 2(b) refers to the proper sealing and completion of the said tanks wherein 720 MT of sludge was stored. If, in fact, the said 1700 MT has also been entombed, it was not difficult for the respondents to give the particulars of the said storage. We are, therefore, unable to agree with Sri Bhat that the subsequent Reports which repeatedly and uniformly speak of the presence of sludge within and outside the complex of the respondents should not be accepted. It may be recalled that the Report of the team of Central Experts was submitted on November 1, 1993 based upon the inspection made by them in September/October, 1993. To the same effect is the affidavit of R.P.C.B. dated October 30, 1993 and the further affidavit dated December 1, 1993. These Reports together with the report of NEERI clearly establish that huge quantities of sludge were still lying around either in the form of mounds or placed in depressions, or spread over the contiguous areas and covered with local soil to

conceal its existence. It is worth reiterating that the said sludge is only part of the pernicious discharges emanating from the manufacture of 'H' acid. The other part, which is unfortunately not visible now [except in its deleterious effects upon the soil and underground water] is the 'mother liquor' produced in enormous quantities which has either flowed out or percolated into the soil.

So far as the responsibility of the respondents for causing the pollution in the wells, soil and the aquifers is concerned, it is clearly established by the analysis Report referred to in the Report of the Central experts team dated November 1, 1993 [Page 1026 of Vol.II]. Indeed, number of Orders passed by this Court, referred to hereinbefore, are premised upon the finding that the respondents are responsible for the said pollution. It is only because of the said reason that they were asked to defray the cost of removal and storage of sludge. It is precisely for this reason that, at one stage, the respondents had also undertaken the de-watering of polluted wells. Disclaiming the responsibility for the pollution in and around Bichhri village, at this stage of proceedings, is clearly an afterthought. We accordingly held and affirm that the respondents alone are responsible for all the damage to the soil, to the underground water and to the village Bichhri in general, damage which is eloquently portrayed in the several Reports of the experts mentioned hereinabove. NEERI has worked out the cost for repairing the damage at more than Rupees forty crores. Now, the question is whether and to what extent can the respondents be made responsible for defraying the cost of remedial measures in these

proceedings under Article 32. Before we advert to this question, it may perhaps be appropriate to clarify that so far as removal of remaining sludge and/or the stoppage of discharge of further toxic wastes are concerned, it is the absolute responsibility of the respondents to store the sludge in a proper manner [in the same manner in which 720 MT of sludge has already been stored] and to stop the discharge of any other or further toxic wastes from its plants including Sulphuric Acid Plant and to ensure that the wastes discharged do not flow into or through the sludge. Now, turning to the question of liability, it would be appropriate to refer to a few decisions on the subject.

In Oleum Gas Leak Case, a Constitution Bench discussed this question at length and held thus:

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no

answer to the enterprise to say that it had taken all responsible care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profits, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not.....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortuous principle of strict liability under the rule in Ryland v. Fletcher [supra].

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the entire, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

Sri Bhat, however, points out that in the said decision, the question whether the industry concerned therein was a `State' within the meaning of Article 12 and, therefore, subject to the discipline of Part-III of the Constitution including Article 21 was left open and that no compensation as such was awarded by this Court to the affected persons. He relies upon the observations in the concurring opinion of Ranganath Misra,CJ., in Union Carbide Corporation [1991 (4) S.C.C. 584]. The learned Chief Justice, referred in the first instance, to the propositions enunciated in Oleum Gas Leak Case and then made the following observations in Paras 14 and 15:

"14. In M.C.Mehta case, no compensation was awarded as this Court could not reach the conclusion that Shriram (the delinquent company) came within the meaning of `State' in Article 12 so as to be liable to the discipline of Article 21 and to be subjected to a proceeding underArticle 32 of the Constitution. Thus what was said was essentially obiter.

15. The extracted part of the observations from M.C.Mehta case perhaps is a good guidelines for working out compensation in the cases to which the ratio is intended to apply. The statement of the law ex-facie makes a departure from the accepted legal position in Rylands v. Fletcher. We have not been shown any binding precedent from the American Supreme Court where the ratio of M.C.Mehta decision has in terms been applied.

In fact Bhagwati,C.J., clearly indicates in the judgment that his view is a departure from the law applicable to western countries."

The majority judgment delivered by M.N.Venkatachaliah,J. [on behalf of himself and two other learned Judges] has not expressed any opinion on this issue. We on our part find it difficult to say, with great respect to the learned Chief Justice, that the law declared in Oleum Gas Leak Case is obiter. It does not appear to be unnecessary for the purposes of that case. Having declared the law, the Constitution Bench directed the parties and other organizations to institute actions on the basis of the law so declared.** Be that as it may, we are of the considered opinion that even if it is assumed [for the sake of argument] that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and

---------- **A distinction between the Oleum Gas Leak Case and the present case may be noticed. That was not a case where the industry was established or was being operated contrary to law as in the present case. That was

also not a case where the orders of lawful authorities and Courts were violated with impunity as in this case. In this case, there is a clear violation of law and disobedience to the Orders of this Court apart from the orders of the lawful authorities. The facts stated above and findings recorded by us hereinafter bear it out. This Court has to ensure the observance of law and of its Orders as a part of enforcement of fundamental rights. That power cannot be disputed. If so, a question may arise why is this Court not competent to make Orders necessary for a full and effective implementation of its Orders - and that includes the imposition and recovery of cost of all measures including remedial measures. Above all, the Central Government has the power under the provisions of Sections 3and 5 of the Environment (Protection) Act, 1986 to levy and recover the cost of remedial measures - as we shall presently point out. If the Central Government omits to do that duty, this Court can certainly issue appropriate directions to it to take necessary measures. Is it not open to the Court, in an appropriate situation, to award damages against private parties as part of relief granted against public authorities. This is a question upon which we do not wish to express any opinion in the absence of a full debate at the Bar.

recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to

issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2(a), Sections 3 and 5 clothe the central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. We find that similar directions have been made in a recent decision of this Court in Indian Council for Enviro-Legal Action and Ors. [supra]. That was also a writ petition filed under Article 32 of the Constitution. Following is the direction:

"It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharge of their effluents into Nakkavagu. They were responsible to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers."

It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

Sri K.N.Bhat submitted that the rule of absolute liability is not accepted in England or other Commonwealth countries and that the rule evolved by the House of Lords in Rylands v. Fletcher [1866 (3) H.L.330] is the correct rule to be applied in such matters. Firstly, in view of the binding decision of this Court in Oleum Gas Leak Case, this contention is untenable, for the said decision expressly refers to the rule in Rylands but refuses to apply it saying that it is not suited to the conditions in India. Even so, for the sake of completeness, we may discuss the rule in Rylands and indicate why that rule is inappropriate and unacceptable in this country. The rule was first stated by Blackburn,J. [Court of Exchequer Chamber] in the following words:

"We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by shewing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major, or the act of God;.....and it seems but reasonable and just that the neighbor, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property."

The House of Lords, however, added a rider to the above statement, viz., that the user by the defendant should be a "non-natural" user to attract the rule. In other words, if the user by the defendant is a natural user of the land, he would not be liable for damages. Thus, the twin tests - apart from the proof of damage to the plaintiff by the act/negligence of the defendants - which must be satisfied to attract this rule are "foreseability" and "non-natural" user of the land.

The rule in Rylands has been approved by the House of Lords in the recent decision in Cambridge Water Company v. Eastern Counties Leather, PLC [1994 (2) W.L.R.53]. The plaintiff, Cambridge Water Company, was a statutory corporation engaged in providing public water supply within a certain area including the city of Cambridge. It was lifting water from a bore well situated at some distance from Sawstyn. The defendant-company, Eastern Leather, was having a tannery in Sawstyn. Tanning necessarily involves decreasing of pelts. For that purpose, the defendant was using an oregano chlorine called P.C.E. P.C.E. was stored in a tank in the premises of the defendant. The plaintiff's case was that on account of the P.C.E. percolating into the ground, the water in its well became contaminated and unfit for human consumption and that on that account it was obliged to find an alternative source at a substantial cost. It sued the defendant for the resulting damages. The plaintiff based his claim on three alternative grounds, viz., negligence, nuisance and the rule in Rylands. The Trial Judge (High Court) dismissed the action in negligence and nuisance holding that the defendant could not have reasonably foreseen that such damage

could occur to the plaintiff. So far as the rule in Rylands was concerned, the Trial Judge held that the user by the defendant was not an non-natural user and hence, it was not liable for damages. On appeal, the Court of Appeal declined to decide the matter on the basis of the rule in Rylands. It relied strongly upon the ratio in Ballard v. Tomlinson [(1885) 29 Ch.D.115] holding that no person having a right to use a common source is entitled to contaminate that source so as to prevent his neighbor from having a full value of his right of appropriation. The Court of Appeal also opined that the defendant's use of the land was not a natural use. On appeal by the defendant, the House of Lords allowed the appeal holding that foreseability of the harm of the relevant type by the defendant was a pre-requisite to the right to recover damages both under the heads of nuisance and also under the rule in Rylands and since that was not established by the plaintiff, it has to fail. The House of Lords, no doubt, held that the defendant's use of the land was a non-natural use but dismissed the suit, as stated above, on the ground that the plaintiff has failed to establish that pollution of their water supply by the solvent used by the defendant in his premises was in the circumstances of the case forseable by the defendant.

The Australian High Court has, however, expressed its disinclination to treat the rule in Rylands as an independent head for claiming damages or as a rule rooted in the law governing the law of nuisance in Burnie Port Authority v. General Jones Pty Ltd. [(1994) 68 Australian Law Journal 331]. The respondent, General Jones Limited, has stored frozen vegetables in three cold storage rooms in

the building owned by the appellant, Burnie Port Authority [Authority]. The remaining building remained under the occupation of the Authority. The Authority wanted to extend the building. The extension work was partly done by the Authority itself and partly by an independent contractor [Wildridge and Sinclair Pty.Ltd.]. For doing its work, the contractor used a certain insulating material called E.P.S., a highly inflammable substance. On account of negligent handling of E.P.S., there was a fire which inter alia damaged the rooms in which General Jones had stored its vegetables. On an action by General Jones, the Australian High Court held by a majority that the rule in Rylands having attracted many difficulties, uncertainties, qualifications and exceptions, should now be seen, for the purposes of Australian Common Law, as absorbed by the principles of ordinary negligence. The Court held further that under the rules governing negligence, if a person in control of a premises, introduces a dangerous substance to carry on a dangerous activity, or allows another to do one of those things, owes a duty of reasonable care to avoid a reasonably foreseeable risk of injury or damage to the person or property of another. In a case where a person or the property of that other is lawfully in a place outside the premises, the duty of care varies in degree according to the magnitude of the risk involved and extends to ensuring that such care is taken. Applying the said principle, the Court held that the Authority allowed the independent contractor to introduce or retain a dangerbus substance or to engage in a dangerous activity in its premises which substance and activity caused a fire that destroyed the goods of General Jones. The evidence, the Court held,

established that the independent contractor's work was a dangerous activity in that it involved real and foreseeable risk of a serious conflagration unless special precautions were taken. In the circumstances, it was held that the Authority owed a non-delegable duty of care to General Jones to ensure that its contractor took reasonable steps to prevent the occurrence of a fire and the breach of that duty attracted liability pursuant to the ordinary principles of negligence for the damage sustained by the respondent.

On a consideration of the two lines of thought [one adopted by the English Courts and the other by the Australian High Court], we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak Case is by far the more appropriate one - apart from the fact that it is binding upon us. [We have disagreed with the view that the law stated in the said decision is obiter.] According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on

carefully or not." The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise [carrying on the hazardous or inherently dangerous activity] alone has the resource to discover and guard against hazards or dangers - and not the person affected and the practical difficulty [on the part of the affected person] in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

Once the law in Oleum Gas Leak Case is held to be the law applicable, it follows, in the light of our findings recorded hereinbefore, that Respondents Nos.4 to 8 are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area [by affected area, we mean the area of about 350 he, indicated in the sketch at Page 178 of NEERI Report] and also to defray the cost of the remedial measures required to restore the soil and the underground water spruces. Sections 3 and 4 of Environment [Protection] Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case.

The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle.

"The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The `polluter pays' principle was promoted by the Organization for Economic Co-operation and Development [OECD] during the 1970s when there was great public interest in environmental issues.

During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.

Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the

underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] O.J.C328/1) makes it clear that `the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay."

["Historic Pollution - Does the Polluter Pay?" By Carolyn Shelbourn

- Journal of Planning and Environmental Law, Aug.1974 issue.] Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.

The next question is what is the amount required for carrying out the necessary remedial measures to repair the damage and to restore the water and soil to the condition it was in before the respondents commenced their operations. The Report of NEERI has worked out the cost at wore than Rupees forty crores. The estimate of cost of remedial measures is, however, not a technical matter within the expertise of NEERI officials. Moreover, the estimate was made in the year 1994. Two years have passed by since then. Situation, if at all, must have deteriorated further on account of the presence of - and dispersal of the sludge - in and around the complex of the respondents by them. They have been discharging other toxic effluents from their other plants, as reported by NEERI and the central team. It is but appropriate that an estimate of the cost of remedial measures be made now with notice to the respondents, which amount should be paid to Central Government and/or recovered from them by the Central Government. Other directions are also called for in the light of the facts and circumstances mentioned above.

CONCLUSIONS:

From the affidavits of the parties, Orders of this Court, technical Reports and other data, referred to above [even keeping aside the latest Report of the R.P.C.B.], the following facts emerge:

(I) Silver Chemicals [R-5] and Jyoti Chemicals [R-8] had manufactured about 375 MT of `H' acid during the years 1988-

89. This had given rise to about 8250 m3 of waste water and 2440 tones of sludge [both iron-based and gypsum-based]. The waste water had partly percolated into the earth in and around Bichhri and part of it had flowed out. Out of 2440 tones of sludge, about 720 tones has been stored in the pits provided by the respondents. The remaining sludge is still there either within the area of the complex of the respondents or outside their complex. With a view to conceal it from the eyes of the inspection teams and other authorities, the respondents have dispersed it all over the area and covered it with earth. In some places, the sludge is lying in mounds. The story of entombing the entire quantity of sludge is untrue.

The units manufacturing `H' acid - indeed most of the units of the respondents - had started functioning, i.e., started manufacturing various chemicals without obtaining requisite clearances/consents/licences. They did not instal any equipment for treatment of highly toxic effluents discharged by them. They continued to function even after and inspite of the closure orders of the R.P.C.B. They did never carry out the Orders of this Court fully, [e.g., entombing the sludge] nor did they fulfil the undertaking given by them to the Court [in the matter of removal of sludge and de-watering of the wells]. Inspite of repeated Reports of officials and expert bodies, they persisted in their illegal course of action in a brazen manner, which exhibits their contempt for law, for the lawful authorities and the Courts.

(II) That even after the closure of `H' acid plant, the fourth respondent had not taken adequate measures for treating the highly

toxic waste water and other wastes emanating from the Sulphuric Acid Plant. The untreated highly toxic waste water was found - by NEERI as well as the Central team - flowing through the dumps of iron/gypsum sludge creating a highly potent mix. The letter of the fourth respondent dated January 13, 1996, shows that the Sulphuric Acid Plant was working till November 10, 1995. An assertion is made before us that permanent E.T.P. has also been constructed for the Sulphuric Acid Plant in addition to the temporary tank which was constructed under the Orders of this Court. We express no opinion on this assertion, which even if true, is valid only for the period subsequent to April, 1994.

(III) The damage caused by the untreated highly toxic wastes resulting from the production of 'H' acid - and the continued discharge of highly toxic effluent from the Sulphuric Acid Plant, flowing through the sludge [H-acid waste] - is undescribable. It has inflicted untold misery upon the villagers and long lasting damage to the soil, to the underground water and to the environment of that area in general. The Report of NEERI contains a sketch, at Page 178, showing the area that has been adversely affected by the production of 'H' acid by the respondents. The area has been divided into three zones on the basis of the extent of contamination. A total area of 350 he has become seriously contaminated. The water in the wells in that area is not fit for consumption either by human beings or cattle. It has seriously affected the productivity of the land. According to NEERI Report, Rupees forty crores is required for repairing the damage caused to men, land, water and the flora.

(IV) This Court has repeatedly found and has recorded in its Orders that it is respondents who have caused the said damage. The analysis Reports obtained pursuant to the directions of the Court clearly establish that the pollution of the wells is on account of the wastes discharged by Respondents Nos.4 to 8, i.e., production of 'H' acid. The Report of the environment experts dated November 1, 1993 has already been referred to hereinbefore. Indeed, several orders of this Court referred to supra are also based upon the said finding.

(V) Sections 3 and 5 of the Environment [Protection] Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Environment [Protection] Act. This power includes the power to prohibit an activity, close an industry, direct and/or carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The principle "Polluter Pays" has gained almost universal recognition, apart from the fact that it is stated in absolute terms in Oleum Gas Leak Case. The law declared in the said decision is the law governing this case.

DIRECTIONS:

Accordingly, the following directions are made:

1. The Central Government shall determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of Respondents 4 to 8, in the area affected in village Bichhri and other adjacent villages, on account of the production of 'H' acid and the discharges from the Sulphuric Acid Plant of Respondents 4 to 8. Chapters-VI and VII in NEERI Report [submitted in 1994] shall be deemed to be the show-cause notice issued by the Central Government proposing the determination of the said amount. Within six weeks from this day, Respondents 4 to 8 shall submit their explanation, along with such material as they think appropriate in support of their case, to the Secretary, Ministry of Environment and Forests, Government of India, [M.E.F.]. The Secretary shall thereupon determine the amount in consultation with the experts of his Ministry within six weeks of the submission of the explanation by the said Respondents. The orders passed by the Secretary, [M.E.F.] shall be communicated to Respondents 4 to 8 - and all concerned - and shall also be placed before this Court. Subject to the Orders, if any, passed by this Court, the said amount shall represent the amount which Respondents 4 to 8 are liable to pay to improve and restore the environment in the area. For the purpose of these proceedings, the Secretary, [M.E.F.] and Respondents 4 to 8 shall proceed on the assumption that the affected area is 350 ha, as indicated in the sketch at Page 178 of NEERI Report. In case of failure of the said respondents to pay the said amount, the same shall be recovered by the Central Government in accordance with law. The factories, plant, machinery and all other Immovable assets of Respondents 4 to 8 are attached herewith. The

amount so determined and recovered shall be utilised by the M.E.F. for carrying out all necessary remedial measures to restore the soil, water sources and the environment in general of the affected area to its former state.

2. On account of their continuous, persistent and insolent violations of law, their attempts to conceal the sludge, their discharge of toxic effluents from the Sulphuric Acid Plant which was allowed to flow through the sludge, and their non-implementation of the Orders of this Court - all of which are fully borne out by the expert committees' Reports and the findings recorded hereinabove - Respondents 4 to 8 have earned the dubious distinction of being characterised as "rogue industries". They have inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land, their water sources and their entire environment - all in pursuance of their private profit. They have forfeited all claims for any consideration by this Court. Accordingly, we herewith order the closure of all the plants and factories of Respondents 4 to 8 located in Bichhri village. The R.P.C.B. is directed to seal all the factories/units/plants of the said respondents forthwith. So far as the Sulphuric Acid Plant is concerned, it will be closed at the end of one week from today, within which period Respondent No.4 shall wind down its operations so as to avoid risk of any untoward consequences, as asserted by Respondent No.4 in Writ Petition (C) No.76 of 1994. It is the responsibility of Respondent No.4 to take necessary steps in this behalf. The R.P.C.B. shall seal this unit too at the end of one week from today. The re-opening of these plants shall

depend upon their compliance with the directions made and obtaining of all requisite permissions and consents from the relevant authorities. Respondents 4 to 8 can apply for directions in this behalf after such compliance.

3. So far as the claim for damages for the loss suffered by the villagers in the affected area is concerned, it is open to them or any organization on their behalf to institute suits in the appropriate civil court. If they file the suit or suits in forma pauperize, the State of Rajasthan shall not oppose their applications for leave to sue in forma pauperize.

4. The Central Government shall consider whether it would not be appropriate, in the light of the experience gained, that chemical industries are treated as a category apart. Since the chemical industries are the main culprits in the matter of polluting the environment, there is every need for scrutinizing their establishment and functioning more rigorously. No distinction should be made in this behalf as between a large-scale industry and a small-scale industry or for that matter between a large-scale industry and a medium- scale industry. All chemical industries, whether big or small, should be allowed to be established only after taking into considerations all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them. It appears that most of these industries are water-intensive industries. If so, the advisability of allowing the establishment of these industries in arid areas may also require examination. Even the existing chemical industries may be subjected

to such a study and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under Sections 3and 5 of the Environment Act. The Central Government shall ensure that the directions given by it are implemented forthwith.

5. The Central Government and the R.P.C.B. shall file quarterly Reports before this Court with respect to the progress in the implementation of Directions 1 to 4 aforesaid.

6. The suggestion for establishment of environment courts is a commendable one. The experience shows that the prosecutions launched in ordinary criminal courts under the provisions of theWater Act, Air Act and Environment Act never reach their conclusion either because of the work-load in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. Those proceedings take years and years to reach conclusion. Very often, interim orders are granted meanwhile which effectively disable the authorities from ensuring the implementation of their orders. All this points to the need for creating environment courts which alone should be empowered to deal with all matters, civil and criminal, relating to environment. These courts should be manned by legally trained persons/judicial officers and should be allowed to adopt summary procedures. This

issue, no doubt, requires to be studied and examined indepth from all angles before taking any action.

7. The Central Government may also consider the advisability of strengthening the environment protection machinery both at the Center and the States and provide them more teeth. The heads of several units and agencies should be made personally accountable for any lapses and/or negligence on the part of their units and agencies. The idea of an environmental audit by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers may be considered. The idea of an environmental audit conducted periodically and certified annually, by specialists in the field, duly recognised, can also be considered. The ultimate idea is to integrate and balance the concern for environment with the need for industrialization and technological progress.

Respondents 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this Court within two weeks from today. It shall be paid over to the petitioner.

As a result of all these unfortunate accidents and loss of human live it was therefore imperative that the nuclear law had to provide for higher standard of safety and liability law .As only Government was

the operator therefore the cap of compensation would come from the national exchequer .Eventully after much debates and discussion the nuclear liability law evolved into an Act in 2010.

IV The Indian Civil Liability for Nuclear Damage Act, 2010

The making of the 'Civil Liability for Nuclear Damage Act 2010' is a significant legislation because nuclear energy and the consequences of pursuing such an energy form was debated in the Indian Parliament very extensively inspire of the fact that this Act defied conventional international practice. The international nuclear community, led by supplier countries and vendors has argued that the law should be amended to be compatible with the established practice of international nuclear liability law.

The recently concluded India–United States Civil Nuclear Energy Cooperation, initiated in 2005 was successfully concluded in 2008 with the Nuclear Suppliers Group's (NSG) waiver to India, and the final approval by the US Congress. As India not being a member of the Nuclear Non-Proliferation Treaty (NPT), these engagements facilitated India's entry into the international civil nuclear trade after several decades of international isolation. With the execution of these international legal agreements, India is moving towards a major expansion in the high-capacity imported reactors and an indigenous program through joint ventures,

with majority share holding by the government owned and controlled, Nuclear Power Corporation of India (NPCIL). Presently the Atomic Energy Act 1962, allows only the Central Government or government owned companies to undertake commercial production of nuclear energy .While those Companies, both foreign and domestic, who become stake holders in the joint ventures, will have a pre-determined roles such as, technology and equipment providers, fuel suppliers, etc however NPCIL will remain the sole 'operator' as the Act provides a predictable civil nuclear liability regime.

The evolution of liability prior to the enactment of the Civil Liability Act in India had been through tort laws where the courts applied these principles to liabilities arising from dangerous and hazardous industrial activities. The Supreme Court interpreted and expanded the scope of the principles of liability beyond Ryland vs. Fletcher (L.R. 3 H.L. 330; [1861–73] All E.R) in the M C Mehta v. Union of India AIR 1987 SC 1086 and evolved the concept of 'absolute liability' and held that the court 'an enterprise which is engaged in a hazardous or inherently dangerous activity that poses a potential threat to the health and safety of per-sons and owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone'. The Supreme Court went further with this principle in the case Indian Council of

Enviro-Legal Action v. Union of India (AIR 1996 SC 1466), where the court held that the industry alone has the resources to discover and guard against hazards, and dangers caused by its actions. These principles expanded the scope of Article 21 of the Constitution of India which guarantees the right to life and personal liberty where the right to environment became part and parcel of right to life. Although the Environmental Protection Act was enacted in the year 1986 to provide adequate legal safeguards to protect and preserve the environment, but the provisions only provided punishment in law but did not provide a compensation regime. Thereafter in 1991 the Public Liability Insurance Act, 1991 was enacted to provided a legal remedy in terms of compensation to the victim affected by an industrial accident but under section 2(a) the act exempted 'war' and 'radioactivity' .

As India opened up to the use nuclear technology for harnessing energy source it became necessary to have a liability regime that would be provide a legal remedy for compensation and also harmonize with the internationally accepted principles. The enactment of the Civil Liability Act is an attempt to focus on three major areas; (1) The liability amount and the cap in liability, (2) right of legal recourse and (3) India's harmonization to the Convention on Supplementary Compensation (CSC).

Further the Act as stated by various experts is that the primary motive of the liability legislation in a democracy ought to be reassuring people that their interests would be fully looked after in the unlikely event of an accident. It pertinent to mention that the said Act has been framed so as to act as an incentive for attracting foreign nuclear technology investments into India.

The Civil Liability for Nuclear Damage Bill was passed by the Parliament, and received the Presidential approval on 21 September 2010 (Act No 38 of 2010). After a year and 2 months, the Act was notified, coming into force on 11 November 2011. The Civil Liability for Nuclear Damage Rules, 2011 (referred to as the 'Civil Liability Rules' or 'The Rules') have also been framed in respect of a few provisions, and were notified on the same day along with the Act.

In comparism to the International principles the Indian law can be summarized as

International principles	Indian law
Absolute (strict) liability	Under Section 4(4) No-fault liability.
Legal channeling	Section 4(1) Liability channeled to the

	operator-GOI
	Section 17 & 46 Provisions of the right of recourse by and the right under tort
Exclusive jurisdiction	The Nuclear Claims Commissioner. Constitutional right to approach the High Courts and the Supreme Court
Limited liability in amount	
Operator liability	Section 6 The operators of the nuclear installations producing more than 10 MW of energy shall be liable up to Rs. 1500 crores
	Research and spent fuels re-processing plants will have different liability amounts
	Through a notification, the central government has the power

	to increase the operator's liability
Government liability	Section 6 and 7 The total liability for a nuclear incident capped at 300 million Special Drawing Rights. Provisions for additional relief if the cap of 300 million SDR is insufficient
	The government may assume the liability of a nuclear installation by notification, if it feels that doing so is essential in the public Interest
Other remedies for victims	Section 46 Provides, that the provisions in the Act shall be, in addition to, and not in derogation of, any other law, for the time being in force, and nothing contained herein shall exempt the operators from any proceedings which might, apart from this Act, be

	instituted against such operators
Operator's right of Recourse	Section 17 The law provides that the operators after paying the compensation for nuclear damage shall have a right of recourse against the suppliers under the following conditions • such right is expressly provided for in a contract in writing; • the nuclear incident has resulted as a consequence of an act of the supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services; • if the nuclear incident has resulted from an act of commission or omission of an individual done with the intent to cause nuclear Damage
Limited liability in time	Section 18 For damage to property, the time limit is 10 years

	For personal injury to any person, the time limit is 20 years
Financial security	Section 8 All operators (except the central government) need to take insurance or provide financial security to cover their liability
	Currently, only the Central Government is allowed

V Fuel in India

India is emerging as a major nuclear energy country in Asia. The nuclear energy has adopted a three-stage programme, essentially with the use of thorium, which has a large deposit in the country and is the final fuel cycle,unlike internationally, the nuclear programmes do not rely on a close fuel cycle, and the spent fuel at the end of the first stage is treated as waste. Currently, India has an installed civilian nuclear capacity of more than 5000 MW. Inspite of the fact that India is not a party to the NPT and also not a member of the Nuclear Suppliers Group (NSG). As a result of this ,India does

not access nuclear technology from other countries , and could not cooperate with the other NPT member countries in developing its nuclear energy programmes. It was in 2005 when Government of India entered into a Civil Nuclear Cooperation agreement with United States which enhanced the nuclear capacity and access to better technology . This successful negotiation of the agreement allowed India to import Uranium and high-capacity reactors to expand the nuclear power programme considerably. Subsequent to the signing of the Civil Nuclear Cooperation Agreement in 2005, India successfully negotiated with the Nuclear Suppliers Group (NSG) countries for India's specific exception in respect of nuclear commerce and also with the IAEA for India specific safeguards .This initiative led to India signing bilateral agreements with the major nuclear supplier countries— France, Russia, South Korea, UK, US, etc., and negotiated with more supplier countries for nuclear resources, equipments and technology. Now that India could import technology and fuel, it has projected an ambitious nuclear energy plan and additionally Indian Government is planning and promoting through both the indigenous three-stage programme and importing high-capacity reactors through joint ventures. There are several joint venture which have been sanctioned as consortiums between NPCIL and foreign contractors. The selected sites are Haripur in West Bengal, MithiVirdi in Gujarat, Jaitapur in Maharashtra, Kovvada in Andhra Pradesh and Kudankulam in Tamil Nadu.

VI. EFFECT OF THE LEGISLATION:

The regime has raised certain debates on its effect over three major aspects which can be as follows:

A) Whether the law provides for a limited liability regime or can it be interpreted as an open-ended liability regime?

B) How does the implementation of the right of recourse work where the operator is the Government agency?

C) Effect of the transboundary application?

A. Limited or Open-Ended?

The Paris Convention, 1960 and the Vienna Convention, 1963 provide for limited liability in amount as is with the Convention on Supplementary Compensation for Nuclear Damage, 1997. This principle has been incorporated in several national legislations in many countries although with varying amounts, and sharing of responsibility between the government and the operator in various forms. However under the Civil Liability Act of India, the liability amount has been statutorily limited to 1500 crores the law provides for the enhancement under section 6 although the maximum drawing cannot exceed 300 million.

This indicates that the government has kept its option open with regard to nature of limited liability. Under the Atomic Energy Act or the Civil Liability Act does not allow a private enterprise to lead an NPP [Section 1(4) and Section (1) of

AEA]. Therefore NPCIL is the only government company authorized for business of nuclear energy and would hold majority stake in all the joint ventures, both international and domestic. Therefore, since the Civil Liability Act applies solely to a Government Company [Section 6(1)]) and as the Central Government will take over the liability if it exceeds the amount specified in the Act [Section 7(1)]; the combined reading of the provisions leads to the conclusion that the operator liability can be termed as unlimited in India.

The Compensation Convention CSC to which India is a signatory, and to which the Civil Liability Act adheres to, does not, in any way, limit the liability (Article 3). As in the case of the other conventions, the only requirement is that the domestic law of the country should specify a minimum amount. Subsequent to India's ratification of the CSC, India may very well retain all its liability provisions that are said to be inconsistent. However, the provision of a greater amount is required to be provided from public funds. In India's case, since no private nuclear operators are conceived of or anticipated to act as operators, any financial consequences to an accident will have to be borne entirely by the government—through government-owned operators or by the government directly (Sections 6 and 7).

The Civil Liability Act is in consonance with India's judicial precedent which expanded the concept of liability to

'absolute' and 'unlimited'. With the law providing for unlimited liability to be borne by the government, as in the Indian case, the possible magnitude of the liability would act as a deterrent against a lax legal regime. The law allows the operator to seek liability from errant suppliers through its right of recourse. While on the other hand Section 46 provides, 'that the provisions in the Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt the operator from any proceeding which might, apart from this Act, be instituted against such operator'. Therefore this Act acknowledged the constitutional right of Indian citizens to approach the Supreme Court and the High Courts under writ jurisdiction and the section allows for the fixation of liability through both tort and criminal action, in addition to any other statutory claims.

The interpretation of this provision has lead to several Public Interest Litigations been filed across the country on the grounds that the capping of liability goes against the judicial interpretations and against Article 21 of the constitution of India . There were the following PIL examining the constitutional validity of the Act that limits the liability of an operator (Special Leave Petition (C) No. 27335 of 2012 along with SLP(C) 29121 of 2012 and WP(C) 407/2012). The main contention has been that the 'polluter pays principle' and 'absolute liability principle', cannot be sustained while capping of nuclear liability at Rs. 1500

crores being is ultra vires of Article 21 of the Indian Constitution, which protects life and liberty.

These petitions were disposed off by the Supreme Court, known as the " Kudankulam judgment" held interalia:

" I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property. I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from and or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in

danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different. I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be zero" regard being had to the nature's unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of come cannot be sacrificed for the purpose of the eventual larger good.

229. Before proceeding to issue certain directions, it is required to be stated that the appellant, by this Public interest Litigation, has, in a way, invoked and aroused the conscience/concern of the court to such an issue. True it is, the prayer is for the total closure of the plant and the court has not acceded to the said prayer but his noble effort is appreciated to put forth the grievance of the local people and the necessity of adequate safety measures as is perceived. When such cause comes up before this court, it is the bounden duty to remind the authorities "Be alert, remain always alert and duty calls you to nurture constant and sustained vigilance and nation warns you not to be complacent and get into a mild slumber". The AERB as the regulatory authority and the MoEF are obliged to perform their duty that safety measures are adequately taken before the plant commences its operation. That is the trust of the people in the

authorities which they can ill afford to betray, and it shall not be an exaggeration to state that safety in a case of this nature in any one's hand has to be placed on the pedestal of "Constitutional Trust".

And issued the following directions:

"We, therefore, fully endorse the view taken by the Division Bench of the High Court, however, in the facts and circumstances of the case, we are inclined to give the following directions:

DIRECTIONS:

1. The plant should not be made operational unless AERB, NPCIL, DAE accord final clearance for commissioning of the plant ensuring the quality of various components and systems because their reliability is of vital importance.
2. MoEF should oversee and monitor whether the NPCIL is complying with the conditions laid down, while granting clearance vide its communication dated 23.9.2008 under the provisions of EIA Notification of 2006, so also the conditions laid down in the environmental clearance granted by the MoEF vide its communication dated 31.12.2009. AERB and MoEF will see that all the conditions stipulated by them are duly complied with before the plant is made operational.
3. Maintaining safety is an ongoing process not only at the design level,but also during the operation for the nuclear plant. Safeguarding NPP, radioactive materials, ensuring physical security of the NSF are of paramount importance. NPCIL, AERB, the regulatory authority, should maintain constant vigil and make periodical inspection of the plant at least once in three months and if any defect is noticed, the same has to be rectified forthwith.
4. NPCIL shall send periodical reports to AERB and the AERB shall take prompt action on those reports, if any fallacy is noticed in the reports.

5. SNF generated needs to be managed in a safe manner to ensure protection of human health and environment from the undue effect of ionizing radiation now and future, for which sufficient surveillance and monitoring programme have to be evolved and implemented.

6. AERB should periodically review the design-safety aspects of AFR feasibly at KKNPP so that there will be no adverse impact on the environment due to such storage which may also allay the fears and apprehensions expressed by the people.

7. DGR has to be set up at the earliest so that SNF could be transported from the nuclear plant to DGR. NPCIL same the same would be done within a period of five years. Effective steps should be taken by the Union of India, NPCIL, AERB, AEC, DAE etc. to have a permanent DGR at the earliest so that apprehension voiced by the people of keeping the NSF at the site of Kudankulam NPP could be dispelled.

8. NPCIL should ensure that the radioactive discharges to the environmental aquatic atmosphere and terrestrial route shall not cross the limits prescribed by the Regulatory Body.

9. The Union of India, AERB and NPCIL should take steps at the earliest to comply with rest of the seventeen recommendations, within the time stipulated in the affidavit filed by the NPCIL on 3.12.2012.

10. SNF is not being re-processed at the site, which has to be transported to a Re-Processing facility. Therefore, the management and transportation of SNF be carried out strictly by the Code of Practices laid down by the AERB, following the norms and regulations laid down by IAEA.

11. NPCIL, AERB and State of Tamil Nadu should take adequate steps to implement the National Disaster Management Guidelines, 2009 and also carry out the periodical emergency exercises on and

off site, with the support of the concerned Ministries of the Government of India, Officials of the State Government and local authorities.

12. NPCIL, in association with the District Collector, Tiruneveli should take steps to discharge NPCIL Corporate Social Responsibilities in accordance with DPE Guidelines and there must be effective and proper monitoring and supervision of the various projects undertaken under CSR to the fullest benefit of the people who are residing in and around KKNPP.

13. NPCIL and the State of Tamil Nadu, based on the comprehensive emergency preparedness plan should conduct training courses on site and off site administer personnel, including the State Government officials and other stake holders, including police, fire service, medicos, emergency services etc.

14. Endeavour should be made to withdraw all the criminal cases filed against the agitators so that peace and normalcy be restored at Kudankulam and nearby places and steps should be taken to educate the people of the necessity of the plant which is in the largest interest of the nation particularly the State of Tamil Nadu.

15. The AERB, NPCIL, MoEF and TNPCB would oversee each and every aspect of the matter, including the safety of the plant, impact on environment, quality of various components and systems in the plant before commissioning of the plant. A report to that effect be filed before this Court before commissioning of the plant.

The appeals are accordingly disposed of without any order as to costs.

This judgment settled the constitutional validity of the Act in the current situation specially with respect to the safety standard and the legal framework to regulate atomic energy in India under Nuclear and other statutory provisions.

B. Operator's Right of Recourse:

The other provisions of the Civil Liability Act pertains to the supplier's liability which is the operator's right of recourse against the supplier or legal channeling of liability which provides that the operator is solely responsible for an accident. Nevertheless, the three international nuclear liability regimes allow the operator to seek remedies against its supplier under special circumstances.

The provisions relating to right of recourse under the Indian Civil liability law are as follows:

Section 17: The Operator of the nuclear installation after paying the compensation for nuclear damage in accordance with Section 6, shall have a right to recourse where:

(a) Such right is expressly provided for in a contract in writing;

(b) The nuclear incident has resulted as a consequence of an act of suppliers or his employees, which includes supply of equipment or material or patent or latent defects or sub-standard services;

(c) The nuclear incident has resulted from the act of commission or omission of an individual done with the intent to cause nuclear damage

As per this provision, in the event of an accident, the operator is required to pay compensation before seeking any investigation on the accident and if the operator concludes that the accident occurred due to the fault of a supplier; the operator has a right of recourse against any such supplier. Therefore the Indian laws with the inclusion of Section 17(b), in the Civil Liability Rules 2011 have sought to clarify some of the interpretational issues. As per Rule 24: Right of Recourse states:

A contract referred to in clause (a) of Section 17 of the Act shall include a provision for the right of recourse for not less than the extent of the operator's liability under sub-Section (2) of Section 6 of the Act or the value of the contract itself, whichever is less.

The provisions for right of recourse referred to above sub-rule (1) shall be for the duration of initial license issues under the Atomic Energy (Radiation Protection) Rules, 2004 or the product liability period, whichever is longer.

Rule 24 defines 'Product Liability Period' and 'Supplier'. 'Product Liability Period' means the period for which the supplier has undertaken liability for patent or latent defects or sub-standard services under a contract [Rule 24 Explanation 1(a)]. The term 'supplier' has been given a broad definition [Rule 24 Explanation 1(b)]. The operator according to the Rules is entitled to sue any or all the suppliers for damages under a 'right of recourse' claim. At the same time, the Rules also limit the claim against the supplier both in amount and time. The Rules restrict the right of recourse to either the duration of the initial license or the product liability period, whichever is longer. Five years is the period of the initial license, accordingly the liability is limited to 5 years [the Atomic Energy (Radiation Protection) Rules 2004: Rule 24(2) and Rule 9]. However according to some jurist Rule 24(1) is clearly inconsistent with Section 6 of the said Act read with Section 17 inasmuch it scales down and reduces the liability prescribed by the said Act but on the contrary there are others who are of the opinion that Rule 24 would have absolutely no application in cases falling under Section 17(b) and (c), i.e. where the nuclear incident has resulted as a consequence of an act of a supplier or his employee which includes supply of equipment with patent or latent defects or sub-standard services or if it is done by an individual with the intent to cause damage. Therefore, it would not be accurate to state that the supplier's liability has entirely been limited by virtue of Rule 24. In the event the

circumstances under Section 17(b) or (c) are made out, the operator would clearly have a right of recourse against the supplier".

The Indian government clarified the position that 'The Civil Liability for Nuclear Damage Rules, 2011 are in conformity with the Civil Liability for Nuclear Damage Act, 2010'

On the whole, the enactment of the Civil Liability Act represents the Parliament's concerns regarding fixation of responsibility. However, the execution of the law, in particular the explanation made under the Rules seems to have created interpretational issues. There is a marked divergence between the official positions as stated in the Parliament, that the Rules are in conformity with the Act; and opinion of legal experts and other political parties who find the Rules to be circumventing the parent Act.

C. Tran boundary Applicability

The issue of transboundary applicability of the Indian among the neighbouring nation has never been much in discussion specially the geographical scope of damage caused by a nuclear accident may not be confined to national boundaries and it may have transboundary effects. The Civil Liability Act extends to the whole territory of India and its maritime zones, including vessels registered in India. India has also

made commitments to an international liability convention, becoming a signatory to the Convention on Supplementary Compensation. The effect of this position and India's accession to the Compensation Convention has implications on trans-boundary applicability. As mentioned above, India ratified the Convention and it came into effect in April 2015 and this has brought an issue of pertaining to transboundary liability and compensation, and India's financial obligations relating to the same. With this as per the CSC, it allow India to access international funds to pay victims within the country and makes India responsible for the payment of compensation to neighbouring countries.

Section 1(2) it extends to the whole of India.
(3) It also applies to nuclear damage suffered—(a) in or over the maritime areas beyond the territorial waters of India

(b) in or over the exclusive economic zone of India as referred to in Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976; 80 of 1976.

(c) on board or by a ship registered in India under Section 22 of the Merchant Shipping Act, 1958 or under any other law for the time being in force; 44 of 1958.

(d) on board or by an aircraft registered in India under clause (d) of sub-Section (2) of Section 5 of the Aircraft Act, 1934 or under any other law for the time being in force; 22 of 1934.

(e) on or by an artificial island, installation or structure under the jurisdiction of India.

Thus, if an accident in India impacting Nepal or Bhutan or Sri Lanka–non-generating and also non-members, the interpretation of provisions of the Convention obligates India to pay compensation. On non-contracting states, the Convention does not specify any bar to the payment of compensation, but has left it to the Contracting States to decide as per their discretion.

With respect to the availability of funds and its distribution, the Convention is clear that it should be based on non-discrimination of nationality, domicile or residence [Article 3(2) (a)]. This means that with the ratification of the CSC, when the convention comes into effect, the amount referred in Indian law, i.e. 300 million SDR, in the event of transboundary consequence, has to be distributed between the
affected citizens and the neighbours. The Indian victims will not have any preferential treatment. Only in the case of a non-contracting party, a refusal could be made. The debates

within India barely touched India's transboundary commitment through the CSC or otherwise. The right of recourse and its interpretational issues became the dominant legal discussion. Being a member of the CSC, in the event of a transboundary accident, Indian victims may not be fully compensated from first tier compensation due to its non-discriminatory commitments. The Government may have to take over the additional funding of compensation; to satisfy the Indian victims and for the reparation of environment—this would involve payment by the tax payers.

VII. Conclusion

The Civil Liability Act has raised more questions than answers. It is clear that the limited liability regime that has been advocated as an integral part may not be a case in reality. Apart from the early perception at the debates of passing of the legislation and the perceived limitation imposed by the statute, the statute has certainly stipulated extraordinary right for the public to seek 'unlimited' compensation. The clarification from the government, demonstrates the government's commitment to the law and also eagerness to move forward with nuclear energy collaboration and joint venture . This has assuaged some of the concerns of foreign suppliers as most of the material is not manufacture in India but sourced from other countries. However, it is very likely that the application of the law,

other than the Constitutionality which is already being heard in court, will be challenged before courts. Thus, the certainty sought still remains quite elusive. In respect of the right of recourse against the suppliers , the operator, i.e. NPCIL has been vested with enormous authority but at the same time has greater responsibility; even after dilution as were suggested through the Rules for the implementation of the joint venture agreements between NPCIL and the supplier countries, and its interpretation and perception will require clarification, considering that there exist a lot of confusion on the exact meaning and nature of the Rules framed. In respect of the gap and the inconsistency of the Indian law with the CSC, it can be best accepted that the Indian approach is fully in line with the evolution of International nuclear liability law, i.e. importance of domestic law in the evolution of the CSC. On the question of transboundary applicability, provision of compensation payment is based on the principle of non-discrimination. Since there is no priority principle either in the domestic law or the CSC, India would be asked to treat all the victims, wherever they reside, irrespective of country and offer compensation. Thus the effect of the regime over the nuclear civil operation in India will largely depend on the responsibility of the operator and the commitment by the Government to its citizen and how efficiently the rule of law functions because The Right to life has been enshrined in our constitution under Article 21 of the Constitution of India. Although the provisions of the Civil Liability Nuclear

Damage Act are broadly in conformity with the CSC and its Annex in terms of channeling the strict/absolute legal liability to the operator, the limitations of the liability in amount and time, liability cover by insurance or financial security, definitions of nuclear installation, damage, etc. In fact, the CLND Act provides the basis for India joining an appropriate international liability regime such as the CSC. Article XVIII of CSC requires that the national law of a Contracting Party that is not a Party to either the Vienna Convention or the Paris Convention has to comply with the provisions of the Annex to this Convention. The CLND Act is compliant with the Annex to the Convention. Therefore its can be said that the Nuclear Damage law is evolving to be in consonance with the principle of equity and natural justice for the continuance of the nuclear energy resource to co exit in India.

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