

Different Strokes

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The processes followed in estimating and adjudicating damage in arriving at the recent settlement in the five-year old BP oil well disaster are an object lesson in what should have happened in the case of the Bhopal Union Carbide Disaster of 1984, but sadly didn't.

The USD 18.7 billion settlement between the US government and British multinational BP (British Petroleum) finalised earlier this month on the oil spill in the Gulf of Mexico is the largest corporate settlement in US history, and, it is safe to say, in the world. The settlement brought an end to the litigation on the April 20, 2010, disaster when an oil rig, Deepwater Horizon, exploded due to the failure of a cement seal, killing 11 workers and starting an 87-day underwater spill that sent more than 3.1 million barrels of oil into the Gulf.

The July 2 settlement covers damages sought by the US federal government, the states of Alabama, Florida, Louisiana, Mississippi and Texas, as well as more than 400 civic entities along the Gulf Coast. The payment includes a USD 5.5 billion civil penalty under the Clean Water Act and a USD 7.1 billion fine for environmental damage to the Gulf. The settlement is in addition to the USD 20 billion compensation fund that BP had set up within days of the disaster. Earlier, criminal charges had been settled for USD 4.5 billion. According to BP the charge for the Deepwater Horizon oil spill is an estimated USD 53.8 billion.

A comparison of this unprecedented settlement with that between US multinational Union Carbide and the Indian government in 1989, five years after the world's worst industrial disaster in Bhopal, India, should be of much significance in a world where, according to UNEP's 2012 report, industrial pollution is among the top five causes of death worldwide.

BP, a corporation worth USD 131.44 billion in June 2013, charged with causing the death of 11 workers and "lying to US Congress" paid a sum of USD 4.5 billion to settle its criminal liabilities. Union Carbide charged with causing the death of 5,295 persons (the unofficial and more correct figures are more that four times of this), and injury to over half million people is still absconding the Bhopal District court where the criminal case against it is pending for last 23 years. Its Indian subsidiary, a co-accused, albeit charged with negligence and not manslaughter, has been convicted and asked to pay a fine of less than USD 8,000.

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Civil liabilities of Union Carbide, USA were settled for USD 470 million, a sum that hardly put a dent in a corporation that was worth USD 10 billion, in 1984, the year the disaster struck Bhopal. In fact, it cost the corporation 43 cents per share and miserably failed to have any semblance of a deterrent.

If the Bhopal settlement failed the first test of compensation, the test of deterrence, it did worse in the test of repair, the second test of compensation. In comparing processes of injury assessment and claim registration and official initiatives in relief and rehabilitation, we see more such shocking disparities.

In the case of the BP disaster through a process known as National Resource Damage Assessment (NRDA) set up under the Oil Pollution Act of 1990, US government agencies such as the Environmental Protection Agency, National Oceanic and Atmospheric Administration, National Institute of Occupational Safety and Health and the Centre for Disease Control carried out studies on the effects on marine mammals and sea turtles; fish and shellfish, birds, deep water habitat, near-shore habitats, shoreline habitats, land-based wildlife and habitat, and the public uses of natural resources. Based on the ongoing studies the NRDA was able to challenge BP's five-year report that concluded that the Gulf was rebounding to health, calling it "inappropriate as well as premature". The NRDA has gone on record stating that the environmental impact of the oil spill is likely to last for generations.

In Bhopal, the Directorate of Claims set up under the Bhopal Gas Disaster Processing of Claims Act 1985, followed a deeply flawed procedure of injury assessment. It categorised 94 per cent of the exposed population as only being temporarily injured that was quite in line with the Corporation's claim that Bhopal was bouncing back to health. Interestingly, in the aftermath of the disaster, it was Union Carbide's negotiators with the Indian government that offered the advice of placing some of the exposed people in the category of temporary injury. This, when the Corporation's safety related documents on methyl isocyanate (the gas that leaked in Bhopal) describe it as a chemical that causes "residual injury despite prompt treatment". The government premier research body, the Indian Council of Medical Research (ICMR) entrusted with a long term epidemiological study on a cohort of about a hundred thousand, failed to follow up on 80 per cent of the exposed cohort and 67 per cent of the unexposed cohort rendering its findings on mortality and multi systemic morbidities unreliable.

Those affected by the BP disaster could submit their claims and related documents through uploading on a secure dedicated portal, fax, mail and email, and check on the status of their claims through a 1-800 number or online. Claimant Assistance Centres were located throughout the Gulf region to help with the filing of claims.

The over half million claimants in Bhopal have had to stand in queues for several days to have their claims registered by inadequately trained officials on temporary deputation; lose a minimum of 10 days of gainful employment, and walk a minimum distance of 100 km in going through the process of injury assessment and claim adjudication.

The sharpest departure of the two stories is possibly found in the area of restitution and repair of the damage caused by the disaster. In the case of BP, NRDA has already carried out substantial work on the need for restoration based on scientific assessment of damage. A couple of hundred research projects, 150 of which have been published on the government website, are in various stages of progress. Public

participation in designing and carrying out restoration has been invited and welcomed through dedicated portals.

In the case of Bhopal, a veritable medical disaster has followed the leak of December 1984. Even today, as the disaster continues with over a hundred thousand people still battling multi systemic chronic illnesses and tens of thousands of children being born with congenital malformations and development disorders, there are no treatment protocols for medical care or rehabilitation of exposure induced injuries. Union Carbide continues to withhold medical information on the leaked gases as “trade secrets”. Indiscriminate prescription of steroids, antibiotics, painkillers and psychotropic medicines, well documented by independent researchers and activist organisations since the disaster indicate that the symptomatic treatment available to the victims for the last three decades has possibly done more harm than good.

A comparison between the two situations is telling: in one the US government is the prosecution, a British corporation is the accused and victims are American citizens and marine and other animals, and in the other, the Indian government is the prosecution, a US corporation is the accused and the victims are Indian citizens and animals. And it is wont to provide much material for cynicism on basic issues of global justice. However, it is the difference in the manner that compensation was registered, adjudicated and paid in the two cases that, to a Bhopali who sees the survivors of the disaster everyday, is of far greater human significance