

STATEMENT

Decayed Justice

[Following is a slightly shortened version of a statement issued by the Asian Human Rights Commission in the wake of the Bhopal Judgement on June 7, 2010]

The recent judgment delivered by a court in the Bhopal Gas disaster case convicting all the seven accused could have been a welcome one and could have gone a long way in ensuring people's faith in the country's judiciary and the rule of law, but for the features of a failing justice regime the investigation and trial exhibits. It took 25 years for the court to decide the case letting many of the accused slip out of the hands of law. When the verdict finally came, convicting seven executives of the erstwhile Union Carbide India Limited, the fact that the multinational responsible for the gas leak, the Union Carbide Corporation, a wholly owned subsidiary of The Dow Chemical Company, is left scot-free proved to be a far bigger disaster than the tragedy itself.

What can be a bigger subversion of justice than giving a two-year prison term to those responsible for killing more than 15000 people and causing grave health problems for more than half a million? As if with an intention of rubbing salt to the injury, the convicts barring one who is now deceased are bailed out within two hours of their sentencing. In addition, Mr Warren Anderson, one of the accused in the case was never produced in the court despite the court's order to Central Bureau of Investigation to produce him in court. The CBI declared him untraceable and thus unable to serve the arrest warrant upon him and failed to get him extradited even after Greenpeace activists traced him and informed the world about his whereabouts with his address in the US.

What is the difference if a perpetrator of crime can get away after killing people either in Manipur, a troubled area by Indian government's own admissions or in Bhopal a city within the largely 'peaceful mainland' India?

Rather, one can find a lot of similarities in the ways the criminal investigation and justice systems operate in both these areas. In Manipur, Jammu and Kashmir and other 'disturbed' areas of India, the state itself encourages the Army and paramilitary units to engage in violations and abuse of democratic rights of the people in the name of maintaining law and order. In these areas it not only tolerates but also actively promotes undemocratic methods of quelling dissent by means of extrajudicial executions and torture; by stalling any criminal investigation into the conduct of guilty officers by providing them impunity by draconian laws like the AFSPA. The point that these laws are bad in both letter and the spirit does not even require mentioning.

The only thing that changes in the Bhopal case is the modus operandi. Instead of supporting the criminals proactively the state helped them with acts of omission than commission. So it would let Warren Anderson slip out of the country merely four days after the tragedy on a bail knowing fully well that he would be most unlikely to return. Then the CBI, the prosecuting agency would take full four years just for filing a charge-sheet which it did in December 1987. It would let the accused, the powerful and mighty

as the representative of the international capital, use all the delaying tactics including going to the Supreme Court asking relief for the fact that charges against them were harsher than justified.

Then the Government of India would go for an out of court settlement with the Union Carbide offering the corporation immunity from all civil and criminal cases regarding the disaster and startlingly the Supreme Court of India would ratify this out of court settlement. Thankfully, another bench of the Supreme Court reversed the decision in 1991 and the proceedings resumed only after that. Add to this the Union Carbide paying a meagre USD 470 million as a compensation, which incidentally means Indian Rupees 12410 for each person who got killed in the tragedy. And finally, the Minister of State for Environment recently certified the land around the plant as safe because he claimed he was all right even after visiting the area. No wonder that any action were taken against him despite the fact that Centre for Science and Environment had found that the groundwater in the area near the plant contained almost forty times more pesticides than the normal standard.

Taking all the facts into account, Bhopal Gas Leak case was an open and shut case of criminal and corporate liability. A thorough enquiry and trial in the case could have paved the way for far stricter rules to insure industrial safety and corporate responsibility.

The Government of India is contemplating to enact a legislation named Civil Liability For Nuclear Damages Bill which caps the maximum liability to five billion Rupees in case of a nuclear accident, while providing complete immunity to a foreign nuclear reactor builder from any victim-initiated civil suit or a criminal proceedings both in an Indian court or in a court in its home country. Incidentally, the US with whom the Government of India is intending to sign the Bill is contemplating a criminal prosecution against British Petroleum, the petroleum major for causing the oil spill in the Gulf of Mexico.

It is a state that will protect the interests of the corporations at the cost of the common man it pledges allegiance to and that it will sell its dead real cheap, around USD 249 to be precise.