

# Indian court refuses to reduce homicide charges over Bhopal disaster

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The Indian government has suffered a setback in its bid to reduce the charges against the former Union Carbide chief executive officer Warren Anderson, over the 1984 chemical disaster at the US company's pesticide plant in Bhopal that claimed thousands of lives.

The Bhopal magistrate's court rejected a request by the Central Bureau of Investigation (CBI) to lower the charges against Anderson from culpable homicide to "hurt by negligence" and thus the maximum jail term from 20 to just two years.

At the instigation of India's Ministry of External Affairs, the CBI argued that the change would facilitate Anderson's extradition from the US. But the opposite is the case. If the application had been accepted, Anderson would have been let off the hook, which was the real aim of the Indian government.

In making his ruling late last month, Chief Judicial Magistrate Rameshwar Kotha declared: "There is no sense in reducing the charges, since Warren Anderson, who has been declared an absconder and against whom a permanent arrest warrant has been issued, has not appeared in any court." He urged the prosecutors to press ahead with extradition proceedings, which, 18 years on, have not even begun.

Lawyers representing survivors of the disaster accused Prime Minister Atal Behari Vajpayee's government of bowing to pressure from Washington. The application for lesser charges was a manoeuvre aimed at burying the case in order to send a signal to potential foreign investors that they can expect a free hand in India.

Following the court decision, Anderson's lawyer William Krohley opposed any attempt to bring his client to trial in India: "We never agreed to submit to the criminal jurisdiction of the Indian courts. The civil case was settled long ago. You can't undo injury. The best that could be done was done."

Krohley's comments simply underscore the duplicity of Union Carbide and the Indian government. While opposing any criminal trial in India, the company pressed for civil action to be transferred to India where the compensation claims were a tiny fraction of what would have been expected in the US. The outcome of the civil case in 1989 was a paltry settlement of \$470 million.

The survivors of the Bhopal tragedy and their supporters in India and internationally have continued their protracted campaign for justice. They organised protests outside the Bhopal court and elsewhere in India to oppose the government's attempts to water down the charges against Anderson and to demand his extradition.

Their other demands were for the distribution for compensation to the victims and an assurance from Dow Chemical, which acquired Union Carbide in 2001, that it would assume responsibility for the company's liabilities in India, as it had done in the US.

After the court ruling, an organiser of the Bhopal Gas Women Victims Organisation, Rashida Bee, declared: "Our battle has succeeded and we have to continue to fight to bring Anderson to court and punish the guilty. Bhopal should never happen again," she said. Rashida, 46, has lost five members of her family from cancer and is suffering partial blindness and nerve ailments herself.

Saida, a teenage girl at the time of the disaster, was more sceptical. "They haven't managed to bring him to court for the past 18 years and they are not likely to do so now, regardless of the court ruling. We are happy at the court ruling but not sure that Anderson will be extradited. He should be brought before the courts in Bhopal at least to face the victims once."

Tens of thousands of Bhopal residents were affected by the world's greatest industrial disaster. In the early hours of December 3, 1984, a tank at the Union Carbide plant containing some 40 tonnes of the lethal, volatile chemical methyl isocyanate (MIC) burst and over the next three hours leaked a cloud of gases over the surrounding suburbs of Bhopal. According to the official figures, at least 4,000 people were killed within hours. Over the years the death toll has risen to 14,410 as those affected by the gas have died.

While the company attempted to blame employee negligence, it was clearly responsible for the neglect of elementary safety precautions that led to the disaster. The company built the plant in 1969 and began to manufacture the pesticide Sevin in 1980 but failed to apply US standards to its Indian operation. Unlike the US, where MIC was stored in small concentrations to minimise risks, the Indian plant had a single MIC massive tank. Moreover, contrary to warnings, the plant was right in the centre of Bhopal, the densely populated capital of the Indian state of Madhya Pradesh.

There had been at least three accidents at the Bhopal factory prior to 1984. A plant operator died from exposure to phosgene or mustard gas in December 1981 and in October 1982 a large leak of MIC into the neighbouring residential areas forced an evacuation. In February 1983 a number of workers fell ill after breathing poisonous gas. In mid-1982, American specialists who inspected

the factory had to point out: “This factory operates under risk of a massive accident.”

An article entitled “After 18 years Bhopal still awaits justice” in the British-based *Independent* newspaper explained that in 1984 the plant was put into “care and maintenance” mode after a drought cut demand for its pesticides. “They slashed staffing, and safety was the first victim. By December 1984, the lethal MIC tank was fatally compromised. It was nearly 90 percent full, despite a rule that it should never be more than half full. The cooling system, designed to keep the content at 0C (32F), and therefore safe even if it became contaminated, had been disconnected. A spray intended to neutralise escaping gas was defunct; a flare tower meant to burn it off was being repaired. The maintenance crew had been cut from six men to two, and the job of night maintenance supervisor had been abolished.”

When the gas leak occurred shortly after midnight, the main siren was not functioning. Management only activated a small siren, usually associated with minor accidents, to which the townspeople did not pay particular attention. The result was a calamity as the cloud of poisonous gas rolled into the sleeping slums downwind from the plant.

Eighteen years after the disaster, its terrible impact is still being felt. More than 120,000 of Bhopal’s residents suffer from chronic gas-related disorders, from which 10 to 15 die every month. MIC has permanently damaged the lungs of its victims, by altering the proteins in the tissue and membranes.

A report by the Indian Council of Medical Research estimates the total number of people affected as 521,262. Of these, 10 percent suffer from numbness in limbs and mental health problems. Women in the affected area are three times more prone to spontaneous miscarriages than those from other areas. The Welfare Commissioners Office reports that 5,325 people had died of cancer and other ailments by 1992.

Many of the children born in the area are mentally and physically retarded. A 1987-89 study has shown that people who were under five years of age at the time of gas leak are now two to four times more vulnerable to fever, asthma, vomiting, cough and other ailments compared to those from other areas.

A 1993 house-to-house survey in the Bhopal factory area showed that 65.7 percent of the population is suffering from asthma and respiratory disorders, 68.4 percent from severe neurological problems and 49 percent from eye diseases. In addition, 43.2 percent of sexually mature females suffer from reproductive disorders.

Over the past 18 years, federal and state governments—whether Congress or the Bharatiya Janata Party (BJP)—have sided with the Union Carbide and protected its interests. While those protesting against the outrage have been attacked by police and jailed, governments have failed to bring the culprits to account or to pay more than a pittance in compensation to the victims’ families.

In 1985, police raided a clinic run by activists supporting the victims, arrested six volunteer doctors and confiscated medical records. In subsequent years, police have arrested thousands of people who have taken part in protests. At least 10 criminal cases have been launched against more than 100 activists on trumped-up charges. Charges of violation of the Official Secrets Act are still

pending from September 1986 on members of a solidarity group in Bhopal.

Even prior to the gas leak, the state government ignored protests by residents after a string of earlier accidents. Madhya Pradesh Labour Minister Tara Singh openly opposed demands for the plant to be re-located, saying: “This factory built at the cost of 25 million rupees is not a small stone pellet to lift from place to place.” In December 1982 he categorically declared that the factory was not something that would bring disaster to Bhopal.

During the latest round of protests, the opposition Congress party expressed its support for the Bhopal victims. Congress leader Sonya Gandhi visited one of the demonstrations and promised to help obtain justice. It was a Congress government, however, that allowed the hazardous plant to be built in 1969 in the middle of Bhopal in contravention of its own declared policies.

Congress was also directly responsible for allowing Union Carbide to evade prosecutions and minimise financial penalties. Anderson, who was arrested while visiting Bhopal days after the disaster, was permitted to flee the country and avoid prosecution. Several months after the gas leak, the government passed the Bhopal Act allowing it to assume sole powers to represent the interests of the survivors. Its deal with Union Carbide to conclude the legal case in 1989 absolved the company of all past, present and future liabilities in return for the \$470 million—less than one seventh of the original claim.

The Hindu chauvinist BJP, which won office in Madhya Pradesh in 1990, was critical of Congress’s record following the disaster. But having assumed power, the state government persecuted the victims, many of whom were impoverished Muslims. In the name of “City Beautification”, it diverted some of the meagre funds meant to assist the victims into a program to evict them from their “illegal” slums and renovate the areas by redecorating parks, installing new lights and rehabilitating monuments.

Having taken power at the national level in 1998, the BJP-dominated National Democratic Alliance, like previous governments, has sought to encourage foreign investment by advertising the lack of government corporate regulation, including in industrial safety. The Vajpayee government hailed the takeover of Union Carbide by Dow Chemicals in 2001 as a vindication of its decision to allow 100 percent ownership of Indian companies by foreign interests.

The latest move by the BJP to reduce the charges against former Union Carbide chief Warren Anderson is in line with the 18-year record of all governments in defending corporate interests at the expense of the victims. Their utter contempt for the safety and lives of ordinary working people is a sure sign that no lessons have been drawn and that the conditions exist for industrial disasters of the same magnitude or worse.



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