

COMPENSATION

Thousands of people have been wrongfully denied compensation for injuries due to the gas disaster. The gas victims that have been compensated have often received inadequate compensation through a process that's often humiliating. The children of the gas victims, who are themselves genetically affected by the gas, are not even tracked – this despite the Supreme Court directive of 1991 that at least 100,000 such children need to be identified and provisions made for their compensation and future. None of those contaminated and sickened by water poisoned with chemicals from the abandoned Union Carbide factory have received any compensation.

COMPENSATION TIMELINE

- 1985** Parliament enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 whereby Union of India would be the sole plaintiff in a suit against the UCC. Union of India filed a complaint on behalf of all victims in USA.
- 1986** Judge Keenan dismissed the claim conditional upon UCC submitting to Indian courts.
- 1987** An interim compensation of Rs. 350 crores was ordered by Bhopal court
- 1988** High Court reduced the interim compensation to Rs.250 crores.
- 1989** Supreme Court approved a settlement between the government and UCC, without survivor consultation or consent, for \$470 million dollars.
- 1990-95** Compensation process, particularly in the *Lok Adalats*, is reported to be riddled with corruption, discrimination and inequity. Government retains both the interest on the settlement and increases due to currency shifts, amounting to \$330 million, while disbursing minimal compensation.
- 2004** Supreme Court directed disbursement of balance compensation fund – some \$330 million.
- 2004-05** Compensation process still troubled. More money is disbursed, but this remains wholly inadequate for basic needs such as health care.

HISTORY -- The government appointed itself sole representative of all the gas survivors in 1985; Union Carbide threatened to bring every one of them to the stand. The GOI's case was dismissed from American courts in 1985, and then the GOI settled with UCC in India 1989. No survivors testified or were consulted. Union Carbide paid \$470 million in "compensation". When the Supreme Court revisited the issue in 1991, after local and international protest, they stipulated that if the amount was not sufficient, the GOI would make up the shortfall.

The compensation bureaucracy, therefore, always tried to give survivors the minimum possible as opposed to what they deserved. And the GOI reserved much of the money for 15 years. Until 2004, \$330 million in interest on the settlement was hoarded in the Reserve Bank of India. Government plans for the money included turning the Union Carbide factory into an amusement park, while Dow Chemical, Carbide's new owner, suggested the money should be used to clean up the factory. **This money belonged to the survivors.** The Indian Supreme Court ruled so explicitly in 2004.

MINIMAL COMPENSATION -- survey of compensation among residents of Jaiprakash Nagar showed that 91% of the people in the community immediately opposite the factory received only the minimum compensation amount of Rs 25,000. Claimants had to pass through several stages in order to secure compensation: registration; identification (requiring proofs of identity, residence and medical records to prove gas effects); notification of their hearing; categorization; adjudication and, for an unfortunate few, the appeals process.

Survivors say that the process involved innumerable trips to hospitals, government offices, lawyers, banks and the court. They said they had to stand for hours in long lines and endure apathy, indifference, suspicion and corruption at the hands of employees, brokers, middlemen and lawyers. **For poor and illiterate people, the process was fraught and frustrating, and at the end they gained very little.**

DISCRIMINATION -- A 1995 assessment reveals that **the maximum average compensation was awarded not in the two severely affected wards (Nos. 13 and 20) but in Ward No. 21, categorized as mildly affected.** (252) In 1995 the average compensation received for personal injury was Rs.26,531, just above the stipulated minimum of Rs.25,000 (around US\$545 at current rates). Average awards were far smaller than originally envisioned. This indicates the arbitrary nature of the awards. The difference between the highest and the lowest average compensation paid for injury was Rs.8,483, although the 1992 guidelines issued to the Welfare Commissioner stated that the compensation for injuries should be in the range Rs.25,000 to Rs.400,000 (around US\$8,700). In at least five wards the average compensation was equal to the minimum, while in six wards it was actually less than the minimum. In cases where the victim had died, the average compensation given by 1995 was Rs.73,638 (around US\$1,605): far less than the minimum Rs.100,000

stipulated by the Supreme Court. An October 2002 survey in one severely-affected ward revealed that 91% of the 1,481 claimants had received only the minimum compensation.

FAST-TRACK JUSTICE? -- In 1995 special fast-track courts called *Lok Adalats* were set up to expedite the processing of thousands of claims in the claims courts. The lack of due process in these courts was described by a committee appointed by the Supreme Court:



“In the Lok Adalats, a particular amount was specified and the claimants were coerced to accept this amount and accord their consent to the medical categorisation... In the office of the Lok Adalats, no legal assistance was available to the claimants.”

Lawyers and counsel were barred from representing victims in Lok Adalats. Victims were completely unaware of the process, and directions on minimum compensation were not followed. Claimants had to go to the Supreme Court to secure the right to appeal against the decisions of the Lok Adalats. (255)

DELAYS -- Claimants faced significant delays at every stage of the process, even after adjudication. “The cheque was awarded at least two months after the judgment. And the money was available only a further 40 days after the award”, said Shanti Devi, herself a victim and now an activist. Delays were aggravated by the fact that claimants were not paid any interest for the delay on the amounts payable to them. Interim relief of Rs.200 per month was ordered by the Supreme Court in March 1990 because adjudication of claims had not started. This was deducted from the eventual compensation that victims secured.

“Having all your papers is not enough. You have to pay a bribe for everything even to get a Pension Book or a Below Poverty Line card. If you pay, you get what you want; if you don't, then you just suffer.” - Kiran Jain, a 40-year-old widow (263)

PROBLEMS WITH MEDICAL CATEGORIZATION --

The Process of Injury Evaluation (PIE) categorized the degree of disability or injury according to scores given to symptoms, signs, treatment received and investigation results. Evidence suggests that claims of medical injury were not accurate. The PIE relied mostly on three investigations: X-rays, the Pulmonary Function Test (PFT) and the Exercise Tolerance Test (ETT). However, these were not widely administered: a 1989 study showed that while at least 60% of the victims required PFT and ETT, the claims directorate had ordered only

15% and 2% respectively to take these tests. The state government declared that “it was not practicable to subject every claimant to these time-consuming investigations in mass operations like this.” (256)

The medical records and the PIE did not assess how victims' exposure and subsequent illness affected their ability to carry out their normal level of activities and their work. The ability of a claimant to produce medical records for the post-exposure period was critical. “A large number of victims were being categorized as ‘no injury’ even though they are ill and can produce proof of residence in the exposed area, all because they cannot produce medical documents for the post-exposure period.” (257)

As a result of the paucity of quality medical research on the consequences of the Bhopal gas leak and lack of comprehensive information about the toxicity of MIC, neither those claiming to have been affected nor those adjudicating their claims have had any rigorous basis to understand the link between the exposure to gas and the origin of health-related disabilities. This has given rise to a widespread sense of grievance that compensation has been arbitrarily decided.

FAILURE TO REGISTER CLAIMS -- A study by the Bhopal Group for Information and Action of three gas-affected localities concluded that the claims of 42.4% of the residents had not been registered. In one severely affected locality, fully one sixth of the claims were not registered. The single largest omission comprised at least 15,000 gas-affected victims who were under 18 at the time of registration of claims. Not until August 1992 did the Supreme Court order that minors had a legal entitlement to be registered. Children born to gas-affected parents have continued to be excluded, despite the Supreme Court recognizing the

entitlement of "later born children who might manifest congenital or prenatal MIC afflictions". (258)

FAILURE TO PAY THE COMPENSATION AVAILABLE -- Of the Rs.750 crores (around US\$470 million at the prevailing rate) settlement, UCC contributed US\$420 million, which was held in a US dollar account, and UCIL contributed Rs.68.99 crores (around US\$44 million), held in a rupee account. (259) The money was available in 1989 but the claims courts began adjudicating cases only in 1992 and the process is still not complete.

Over the years, owing to the appreciation of the US dollar vis-a-vis the Indian rupee and the interest earned on undistributed funds, the sums held have grown considerably. (260) As of mid-2004, a total of Rs.1,503 crores (US\$327.5 million) was held by the Reserve Bank of India and Rs.1,535.58 crores (US\$334.6 million) had been disbursed by claims courts.(261) After approaches by victims' groups, on 19 July 2004 the Supreme Court ordered the disbursement of the remaining funds, giving each of approximately 570,000 victims the same amount they had earlier received as compensation. (262)

CORRUPTION -- The claims system saw hundreds of thousands of poor and illiterate survivors facing a complex bureaucratic system. Survivors complain that the system required excessive paperwork and complicated procedures and that this opened the way for intermediaries, brokers and opportunistic lawyers. Nanni Bai, a widow, paid Rs.60,000 to a lawyer and broker to procure compensation of Rs.100,000 for her husband's death. Ahmadi Bai, 65, paid Rs.500 to a doctor to testify that her illness was because of her exposure. A number of survivors say that even the person who delivered the notification of the date of the claim hearing had to be bribed. Source: *Clouds of Injustice: Bhopal Disaster, 20 Years On*, Amnesty International report, 2004.

OTHERS DESERVING COMPENSATION -- The generation born after the disaster but carrying the mark of the poisons have not even been considered for compensation, despite the Supreme Court directive of 1991 that at least 100,000 need to be identified and provided for. Independent scientific assessment of the depth and spread of toxic contamination in and around the Union Carbide factory in Bhopal needs to be completed so that Union Carbide's current owner, the Dow Chemical Company, can be made to pay for the clean-up of toxic contamination and compensation for the health and environmental damage caused by reckless dumping of chemical wastes.

WE DEMAND 1) a review of compensation already paid, 2) a chance for those possibly wrongfully denied to substantiate their claims. 3) a thorough study of injury to the second and third generations, and provisions for their wellbeing, 4) an assessment of health and environmental damage caused by the Union Carbide factory contamination, 5) Dow Chemical to be made to pay for clean-up and compensation.

This padyatra is our march for justice and dignity. We shall struggle until our last breath. 21 years is enough!

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"I am affected by the contaminated water from the hand pumps near the Carbide factory. I have not received any compensation, as I am not affected by the gas leak. I am not able to breath properly; any strenuous work and I get breathless. My stomach burns all the time. I do not feel like eating anything. I feel tired all the time. My children suffer from stomach aches all the time. They have rashes on their bodies. My wife also suffers from severe stomach ache. Most of my earnings go towards paying the doctors. But we get no relief."

- Narayan Singh, resident of Garib Nagar, Bhopal