

BHOPAL GAS TRAGEDY – SHADOW BOXING OR EFFECTIVE ACTION?

By Dr. M.N. Buch

The Prime Minister has constituted a group of ministers under the Chairmanship of Shri P Chidambaram on the subject of Bhopal gas tragedy, especially in view of the recent judgement of the Chief Judicial Magistrate, Bhopal convicting and sentencing Dr. Keshab Mahindra and seven others. I need not go into the history of the case except that personnel from the management of Union Carbide from its Chairman, Mr. Warren Anderson, down were originally chargesheeted under section 304 IPC, culpable homicide not amounting to murder, which carries a maximum penalty of life imprisonment. However, the Supreme Court subsequently amended this charge to one under 304A IPC, that is, causing death by rash and negligent act, the maximum imprisonment for which is two years. The Chief Judicial Magistrate, Bhopal could not have amended this charge once the Supreme Court had taken a decision and he has, under the circumstances, awarded the maximum penalty permissible to him by law. This sentence cannot be enhanced because it is the maximum which can be awarded under the section of law with which the accused were charged and, therefore, section 377 Cr.P.C. will not apply. This is not a case of acquittal and, therefore, no appeal under section 378 Cr.P.C. lies. The order of the Supreme Court amending the chargesheet cannot be questioned now because the trial is over and the accused have been convicted. Under Article 20 of the Constitution a person convicted of an offence cannot be tried for the same offence for a second time. We may play to the gallery as much as we like, but the fact is that this case is now finished, regardless of what activist and other might say. This is regardless of whether government succeeds in obtaining the extradition of Mr. Warren Anderson. In a society of laws we cannot resort to lynch law because we feel that inadequate punishment has been awarded to certain persons.

What then can government do to see that justice is done to the people of Bhopal? This is a case in which the criminal investigation was taken over by the Delhi Special Police Establishment (CBI) on 7th December, 1984, that is, four days after the event. The role of CBI has been extremely dubious and calls for enquiry, with suitable remedial measures being taken to ensure that this Force at least reaches the standard of a good State Police in its investigation abilities. Regardless of the hyperbole attached to CBI its record as an impartial investigating force is very poor and highly suspect. It is also a Force whose officers are excessively fond of publicity. Joginder Singh touted his success in obtaining the papers on Bofors whereas actually he had laid an egg! Ashwini Kumar makes statements to the press that CBI was represented by only a public prosecutor in the Bhopal case, whereas the accused had a whole battery of lawyers. What prevented CBI from appointing special public prosecutors of renown?

We need to strengthen the laws about corporate responsibility, including both civil and criminal liability. I do not think a non-executive chairman and independent directors who do not have an executive role can be held criminally liable if an industrial incident occurs which takes lives. However, the active management must be held accountable and for this purpose we should amend the Cr.P.C. and the Indian Penal Code to the effect that if an incident occurs in which lives are lost in an industrial disaster and if investigation reveals that there was negligence, dereliction of duty, callousness and deliberate lack of maintenance by the management, any deaths which occur would be deemed to be within the ambit of section 304 IPC and not section 304A. We also need to clarify the law about the stage at which higher courts can intervene in criminal trials. A criminal trial begins when a court takes cognisance of an offence under section 190 Cr. P.C. Thereafter under section 211 Cr.P.C. charges are framed. It is the trial court which, under section 216 Cr.P.C, may alter a charge at any stage of the

proceedings. Certainly it is not the scheme of the Code of the Criminal Procedure that at the initial stage of the trial, that is, framing the charges, appellate courts or those which have power of revision should intervene and amend the charges. Even in exercise of its writ jurisdiction the Supreme Court or the High Court of the State concerned has no business to amend the chargesheet unless on the face of the record such gross injustice is being done that the intervention of the superior court is called for. The Supreme Court was in error in the instant case, but we need to see whether the law itself cannot remove any anomalies in this behalf.

We virtually have no law of torts because we have followed the codification route, with a separate law for compensation for specific sectors or activities. Examples are the Workmen's Compensation Act, Motor Vehicles Accidents Claims Act, etc. A general law of torts which enables tortious liability to be fixed would enable courts to award compensation which would cripple and bankrupt a company such as Union Carbide or Enron. This would be more effective in ensuring responsible corporate governance than any criminal prosecution.

This brings me to the question of compensation in the Bhopal case. It is not for me to sit in judgement over the Supreme Court when it put together a settlement whereby Union Carbide made available US \$ 470 million (against a claim of US \$ 3.3 billion) and closed the matter. Everything relating to the Bhopal gas tragedy was taken over by the Centre through an Act of Parliament and the State Government was rendered functus officio and, therefore, the responsibility of giving adequate compensation rested fairly and squarely in the Central Government. The present figures being touted of the number of deaths directly relating to the gas tragedy are exaggerated. Approximately 2500 people died as a direct result of inhaling MIC vapour. About 20,000 were grievously injured, severely incapacitated and rendered vulnerable to secondary illnesses. About 1500 premature deaths can be attributed to this group, thus raising the direct death toll to about 4000. In addition to the 20,000 seriously injured there were approximately two lakh people who had suffered injury, largely respiratory but with secondary ailments also developing over time. Therefore, at no time did the number of persons entitled to compensation exceed two and a quarter lakhs. Political expediency has increased this number to about 6.5 lakhs, which means that genuine victims received only about thirty percent of the compensation due to them because the same amount of money was divided among three times that number.

Union Carbide will not increase the compensation amount and whereas we can waste a great deal of time and money by pursuing the matter in American courts, my suggestion is that we do not follow that route and instead the Government of India takes on the onus of ensuring fair compensation. This, however, must cover 4000 dead, the 20,000 seriously injured and the two lakhs other persons who were affected one way or the other by leakage of MIC. My suggestion would be that the next of kin of the deceased should be paid a compensation of Rs. 10 lakhs instead of the Rs. 2 lakhs paid to them, with the enhanced amount being wisely invested on their behalf by government in order to give the next of kin of the deceased a reasonable annuity. The injured may be given an amount ranging from Rs. 1 lakh to Rs. 5 lakhs, depending on the extent of injury and ill-health, instead of the paltry amount of between Rs. 25,000 and Rs. 40,000 paid till now. The four and a half lakh people who are ineligible and who have been able to garner undeserved gain should be excluded.

I had suggested both to Shri Arjun Singh and his successor Shri Motilal Vora to have an intra-decadal census specially for the city of Bhopal, which would give the exact figures of victims, as also the extent of injury. This was not done and today there is no authentic record available to us. I would suggest that for the census 2011 the Registrar General should be told to devise a special questionnaire for Bhopal which would enable an authentic record to be prepared of something which happened twenty

six years ago. It would help in eliminating freebooters. My own view is that if the Central Government takes the above steps perhaps the situation can be defused.

Unfortunately the issue of Bhopal, has been complicated by various interest groups who have lost sight of everything stated above and instead have been diverted into a controversy on whether Warren Anderson was released by Arjun Singh or by the Central Government headed by Rajiv Gandhi. Arjun Singh in 1984 stated that he had ordered the arrest of Warren Anderson and that he had subsequently ordered his release and his transport to Delhi. The first part of the statement is incontrovertible because as Chief Minister that is the only course of action that he could follow. I, for one, am not prepared to accept that it is Arjun Singh who, the very same day, ordered the release of Warren Anderson on his own. The CBI took over the investigation of the case on 8th December, 1984. If the Central Government had no hand in Anderson's release, why did CBI not arrest him in Delhi? Anderson met M.K. Rasgotra, the then Foreign Secretary and soon thereafter the spokesman of the Ministry of External Affairs stated that Anderson had not been arrested at Bhopal but merely taken into protective custody. Does this mean that the FIR at Bhopal and the court record both are forgeries? Incidentally, under Indian law there is no concept of protective custody. Accordingly to Arun Nehru, Anderson met both the Home Minister and the President of India. Could Arjun Singh have arranged this meeting? Obviously these were all initiatives taken by the Government of India. Rasgotra has stated that Narsimha Rao, the Home Minister, had instructed that Anderson was not to be touched and that the Foreign Office had assured the Government of the United States that Anderson would enjoy immunity. Would Narsimha Rao, who never took a decision in his entire life, take a decision of this magnitude without orders from above? One senses in this an effort by the Congress party to somehow show that Rajiv Gandhi had nothing to do with the Anderson affair and that everyone else, but especially Arjun Singh, was responsible. The effort is crude and unsupported by either fact or probability. The best defence for the Congress is to admit that Anderson at least had the gumption to come to India and visit Bhopal, that he did so under word of immunity and that government took the decision taking into account the international implications of allowing Anderson freedom of movement as against his incarceration. This is the truth of the matter and an admission would cause the least damage to the Congress and the credibility of government. An attempted cover up will boomerang like the Bofors case.

Hiroshima happened. The Japanese remember the dead even today, but have not let the tragedy so colour their attitudes as to bring life to a halt. Both the Allies and the Axis Powers suffered horrendous casualties and property damage during the Second World War. They did not spend their time breast beating. Instead they set about the task of rebuilding their countries and their lives. Let us do the same in Bhopal, twenty-six years after the event.
