INTRODUCTION

The book in your hands offers a collection of the basic documents of the litigation initiated by the Union of India against the Union Carbide Corporation in the United States District Court, Southern District of New York, presided over by Justice Judge John F. Keenan. The complaint was filed on 8 April 1985; the question whether the court will assume jurisdiction or deny it on the ground of *forum non conveniens* has still to be decided.

Even close to a year of initiation of the litigation many eminent Indian lawpersons and public citizens were not quite clear as to the nature of the litigation, the kinds of issues raised, the justification for the sovereign Indian State's appearance as a Plaintiff against a multinational in an American forum, and the kinds of results one may feel entitled to expect. Very few people outside the Government seemed to have any worthwhile knowledge about the litigation. Indeed, at the first anniversary of the catastrophe, Shri P.N. Haksar made a public demand that the entire documentation concerning the Bhopal litigation should be tabled on the floor of Parliament. I wrote, on behalf of the Indian Law Institute, to the Attorney General of India to allow us access to the materials with a view to make them more widely available by publication. These requests went unheeded. Reluctantly, I troubled my friend and colleague Dr. Clarence Dias, President of the International Centre for Law in Development, New York, to send me available public material on the Bhopal litigation. Dr. Dias responded promptly and generously; the Centre is an important resource for the Third World NGOs in their struggle for a just world order.

We have selected only a few leading documents out of a mass of materials for publication, our purpose being to highlight adequately the nature of contentions involved, and not so much to provide a contemporary chronicler's account of every astute move and countermove in this unprecedented litigation.

The litigation is unique for several reasons. *First*, the mass disaster caused by Union Carbide Corporation (UCC) is unparalleled in recent history, so much so that it involves no hyperbole to call it an industrial Hiroshima. Several thousands of people died in a few hours of the catastrophe and more than 2,00,000 people are still suffering from severe after effects of MIC and other toxic gases.[1] *Second*, on all available

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1. See Ward Morehouse and M. Arun Subramaniam, *The Bhopal Tragedy: A Report for the Citizens Commission on Bhopal* (1986; Council on International and Public Affairs, New York).

accounts, the catastrophe was a result of several acts of commission and omission by the UCC (documented at pp. 65-80) which indicate, singly and cumulatively, that the catastrophe was an act in planned mayhem. *Third*, the catastrophe has generated extraordinary recourse to law both in India and the United States. About 3,500 cases, civil and criminal, have been filed by victims in Bhopal; and about 100 cases have been filed on behalf of the victims, against the UCC (these have now been consolidated before Judge Keenan). *Fourth*, the Government of India proclaimed an Ordinance, later an Act, aggregating all claims of victims to itself, both in India and overseas (pp. 11-16) and has already filed legal proceedings against the UCC before Judge Keenan. In other words, the sovereign government of democratic, socialist, secular republican Union of India, acting *parens patriae*, has taken upon itself the burden of confronting a giant multinational for wantonly causing a mass disaster in a developing society.

Fifth, the total damages claimed in the proceedings by the Union of India, and other damage suits, are estimated at a staggering US $ 150 billion, "raising the stakes to the level which puts this consolidated action in the same league as the U.S. Government's budget deficit"![2] The reported maximum for which the UCC is prepared to settle is US $ 230 million as against the Union of India's reported non-negotiable settlement amount of U.S. $ 1 billion. Sophisticated analyses of compensation and rehabilitation costs worked out an amount, taking the effects on survivors over a quarter century period, close to U.S. $ 4.1 billion.[3] If one were to think beyond rehabilitation and compensation to punitive damages, the amount will be even higher than U.S. $ 4.1 billion.[4] The figures, even in billions of dollars, do not convey the message and the moral of the Bhopal litigation which is not merely doing justice to victims and survivors but also preventing the future generations of hapless millions of Third World citizens from becoming victims of multinational corporation's desire for power and profit.

Sixth, the Bhopal litigation has brought to sharp attention several novel features of interaction between the Indian and American legal traditions and cultures. If, on the one hand, Indian lawpersons and public citizens are aghast at the ambulance-chasing lawyers who descended on the dazed victims of Bhopal to collect all kinds of powers of attorney, the benign aspect of American Bar is reflected in their amicus role before Judge Keenan and in their effort, with other public citizens and

2. *Id.* at 74.
3. *Ibid.*
4. See *supra* note 1 at 57-67; see also Alfred DeGrazia, *A Cloud Over Bhopal* (1985, Kalos Foundation, Bombay). Professor DeGrazia estimates $ 1.3 billion for economic losses alone, which has been criticized by Morehouse and Subramaniam who estimate the damage at $ 4.1 billion. Even this figure does not include compensation for "intangible or non-economic losses" which by current American standards would bring the amount to $ 15-20 billion.

voluntary agencies, to create a sense of moral outrage at the behaviour of the UCC in the American community. Moreover, the United States is among the foremost exporters of effective liberal legal ideologies for the ex-colonial nations of the Third World, including India.[5] The Bhopal litigation now acutely interrogates the American legal system's capacity to do justice, and its adherence to its much vaunted ideology of substantive due process and justice. Among the billion dollar questions that the Bhopal litigation raises for the American legal system is its potential to do justice to victims of mass disasters caused by multinationals operating from, and based in, the United States. The finest aspects of American jurisprudence are on trial in the Bhopal litigation. Judge Keenan, obviously, bears immense historical responsibilities on his judicial shoulders.

Seventh, the Union of India's leadership in aggregating all Bhopal claims to it and filing proceedings against the UCC in the United States has caused a lot of ferment within the Indian legal community. Indira Jaising, a leading public interest lawyer, who assembled legal services to marshal evidence before Justice Singh Commission inquiring into the Bhopal Catastrophe (unhappily discontinued), has consistently taken the view that the proceedings should have been filed in Indian courts and that it is unbecoming for a sovereign state to seek damage awards against a multinational in the United States. Nani Palkivala, a veteran lawyer, recently wrote an article in the *Times of India*[6] suggesting why the Indian courts are best suited to handle the litigation, without, of course, letting his readership know that he has filed an affidavit in support of the UCC's motion to dismiss the proceedings. Thus, we have the rather unusual situation when a radical lawyer of Jaising's standing finds herself in agreement, though for different reasons, with an arch-liberal lawyer like Nani Palkivala. It is not surprising that eminent public citizens are unable to decide for themselves whether the Union of India's decision was an apt one.

As to the last point, it needs to be stated that any other course of action by the Union of India would have meant that the UCC, and other multinational corporations, are virtually beyond the law, even when they engage in industries in ways which create planned catastrophes for masses of people in the Third World. The UCC's litigative strategy is clear: let the Bhopal victims seek justice through the Indian courts; the Union

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5. Upendra Baxi, "Donald Duck Jurisprudence: Understanding the Traffic of Ideas in Law between America and India" in *Traffic of Ideas Between India and America* 319 (1985; R.M. Crunden, ed., Chanakya Publications, Delhi). I cite the original title to the essay: for incomprehensible reasons the title was beheaded by removal of the phrase "Donald Duck Jurisprudence".

6. See his "Adequacy of the Indian System: Trial of Bhopal Cases," *Times of India* 15 January 1986 p. 8 (Bombay edn.); and the rejoinder by Praful Bidwai, "Putting Carbide on Trial", *Times of India* 20, 21, 22, January 1986, p. 8 (Bombay edn.).

Carbide India Limited (UCIL), in which the UCC holds 50.9% shares, will be in no position to satisfy damages claims beyond US. $95.3 million, clearly inadequate by all standards, including those of the UCC whose proposals for settlement which, as noted, contemplate at least US $230 million. There are no assests of UCC in India on which Indian courts could order satisfaction of decretal amounts. And the UCC has not so far shown the willingness to be bound in an American forum, without contest, to recognition and enforcement to any award by Indian courts (see p. 90).

In other words, the result sought to be achieved by the UCC is that it bears no real liability for mass disaster in Bhopal caused by its acts of commission and omission. Those, like Nani Palkivala, who agree with the UCC that India is forum-shopping, seeking "American aid thinly disguised as 'damages'" through unconscionable amounts of damages (which exceed, says Palkivala, by far the US aid of US $9.5 billion given to India over last thirty five years: see p. 229), are virtually asserting that multinational corporations should be above all law even when they cause mass disasters. Palkivala thus limits without any embarrassment, his own much vaunted preference for the rule of law only to the Indian State. The rule of law has, to him, no relevance to the conduct and operations of multinationals. In contrast, the Union of India is raising the notion of absolute liability of multinationals to clearly further not just the cause of Bhopal victims but also all the emergent values of international justice concretized through instruments of human rights and of the New International Economic Order. The Indian action cannot be compared with that of a private litigant merely suing for damages in tort. Rather it symbolizes, in microcosm, the entire movement in the Third World, in which India has played a significant role, for taming the merciless might of the multinationals in their dealings with the Third World states and peoples.

The memorable principle urged by the Union of India is that of absolute multinational enterprise liability:

> Key management personnel of multinationals exercise a closely held power which is neither restricted by national boundaries nor effectively controlled by international law. *The complex corporate structure of the multinational, with networks of subsidiaries and divisions, makes it exceedingly difficult or even impossible to pinpoint responsibility for the damage caused by the enterprise to discrete corporate units or individuals. In reality, there is but one entity, the monolithic multinational, which is responsible for the design, development and dissemination of information and technology worldwide, acting through a forged network of interlocking directors, common operating systems, global distribution and marketing systems, financial and other controls.* In this manner, the multi-

national carries out its global purpose through thousands of daily actions by a multitude of employees and agents. Persons harmed by the acts of a multinational corporation are not in a position to isolate which unit of the enterprise caused the harm, yet it is evident that the multinational enterprise that caused the harm is liable for such harm. *The multinational must necessarily assume this responsibility.* For it alone has the resources to discover and guard against hazards and to provide warnings of potential hazards. This *inherent duty* of the multinational is the only effective way to promote safety and assure that information is shared with all sectors of its organization and with the nations in which it operates.

A multinational corporation has *a primary, absolute and non-delegable duty to the persons and country in which it has in any manner caused to be undertaken any ultrahazardous or inherently dangerous activity.* This includes a duty to provide that all ultrahazardous or inherently dangerous activities be conducted with the highest standards of safety and to provide all necessary information and warnings regarding the activity involved. (see pp. 4-5, emphasis added).

And India has generated sufficient evidence, through the limited forum discovery processes, (pp. 65-80) to demonstrate that, virtually all major production and technology decisions were made by the UCC through its headquarters and the regional office Union Carbide Eastern Ltd, a wholly owned subsidiary of UCC with headquarters in Hong Kong but incorporated in Delaware, USA. The UCIL was no more than the implementing arm of the UCC.

In order not just to ward off the damages but more importantly the enunciation of this eminently just principle of multinational liability for acts of commission and omission, leading to planned catastrophes, the UCC has raised the preliminary bar of *forum non conveniens.* Quoting Lord Denning (who still continues to be a hallowed name in Indian legal circles) who said that as "a moth is drawn to light, so is a litigant drawn to the United States" (for fabulous damage awards), UCC has argued that the Indian case should not be heard in the United States because its courts are not a convenient forum.

The doctrine of *forum non conveniens,* in the words of Justice Jackson, is designed to assist a court "to resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute."[7] When a plaintiff has a choice of courts, she is, "sometimes under a temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience" to herself;[8] such a plaintiff no doubt seeks justice but "justice blended with some

7. *Gulf Oil* v. *Gilbert,* 330 U.S. 501 (1947) at 507 (hereafter cited as *Gilbert*).
8. *Gilbert* at 507.

harassment."[9] This clearly is not permissible. But on broad principles the doctrine of *forum non conveniens* rests basically on two premises: *first* the "plaintiff's choice of forum should rarely be disturbed"[10] and *second*, the concerned court has the full discretion to invoke it. With regard to the latter, the American Supreme Court has repeatedly reiterated that it is neither necessary nor desirable nor yet possible to lay down a set of "rigid" rules[11] or a "catalogue of circumstances"[12] prescribing the occasions for denial of remedy; the doctrine is a flexible tool which loses its utility and value were it to be *dominated* by "rigid rule to govern discretion";[13] indeed, each "case turns on its facts."[14] At the same time, *forum non-conveniens* is designed to facilitate "the ultimate enquiry" on the issue "where trial will best serve the convenience of parties and *the ends of justice*".[15] The American Supreme Court has explicitly affirmed that the doctrine of *forum non conveniens "resists formalization"* because it looks to *the realities that make for doing justice.*"[16]

The UCC invokes this doctrine in this litigation wholly in terms of convenience of parties, overlooking the "ends of justice" and "realities that make for doing justice." Accordingly, it combs American jurisprudence to find a whole variety of factors indicated from time to time, as relevant to the forum determination, overlooking the fact that the Indian position in approaching the American forum is neither intended to pursue "justice blended with harassment" to the UCC nor to constrain an American forum to ignore the "ends of justice" and "realities that make for doing of justice."

According to the UCC, *forum non conveniens* is attracted in the present proceedings because:

(*i*) the catastrophe occurred in Bhopal, nearly eight thousand miles from the American forum;
(*ii*) the plant, personnel, victims, witnesses, documentry and related evidence is all located in Bhopal;
(*iii*) the pretrial and trial proceedings in an American forum will entail huge costs involved in the production of hundreds of witnesses, translation of testimony and documents written in many Indian languages, expert evidence on the nature of the catastrophe,

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9. *Gilbert* at 508.
10. *Ibid.*
11. *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235 (1981) at 453.
12. *Gilbert* at 508.
13. *Piper, supra* note 11 at 454.
14. *Id.* at 453.
15. *Koster* v. *Lumbermen's Mutual Casualty Co.*, 330 U.S. 518 (1947) at 527 (emphasis added).
16. *Ibid.* (emphasis added).

causes of it, and the aftermath; an American forum should be slow to undertake such Herculean labour;

(*iv*) the litigation would be "a massive imposition on the time, energies and resources" of the American forum;

(*v*) it would thus aggravate court congestion and the burdens of American citizens for jury duty;

(*vi*) the litigation would require of American courts a total understanding of foreign law;

(*vii*) the litigation would also necessitate a realistic understanding of how impoverished Indians live and a real assessment of the value of Indian life in the Indian conditions and under the Indian law and of the costs involved in treatment and rehabilitation of victims.

On the other hand, UCC has pleaded that India would be the most convenient forum from all points of view. As the Indian law will apply, an Indian court is more suited to its application than an American court (pp. 40-42). Indian courts are more familiar with "the law, culture, and economic standards of that country"; proceedings in India will also afford a more meaningful participation in, and access to, victims of the catastrophe (p. 43). All available evidence is located in India. The Union of India has the strongest interest in trying the case in India (p. 43. Its legal system is sophisticated enough to ensure trial and justice to all the victims of Bhopal (p. 53). When this is so, when an alternate effective forum is available, it would be wholly unjustified for an American court to take jurisdiction. The ultimate refrain of UCC's motion to dismiss the suit is the *injury* that such litigation would cause to America and Americans:

> American citizens should not be taxed to pay protracted, complex and expensive litigation involving tens of thousands of Indians for events and damages that occurred in India. (p. 46).

The Indian response to UCC's motion to dismiss the proceedings on the ground of *forum non conveniens* is primarily based on the overwhelming control and presence of the UCC, as single key policy actor, in Bhopal. The UCC Corporate Policy Manual, and testimony gathered during the limited forum discovery proceedings, eloquently testify to the pervasive decision-making presence of UCC in all vital matters relating to the location of the plant, the designing of the plant, the production and storage of ultrahazardous substances, toxic chemicals and gases, the designing of safety systems and the monitoring of accidents review of the operational safety systems (pp. 61-65). In all these matters, it was the UCC and its network of international employees (p. 69) who constituted the

dramatis personae. The evidence assembled at discovery proceedings overwhelmingly demonstrates (pp. 65-80) that the UCIL had virtually no role to play in any of the major decisions relating to plant design and safety or production and storage of ultrahazardous substances and toxic gases.

The Union of India, in contrast, insists that the doctrine of *forum non conveniens* is not merely a procedural tool to restrict workload of American courts. Convenience of parties is only one major consideration in ruling on *forum*; the doctrine as developed by American courts has a second component, no less important than the first, and that is *serving the ends of justice*. (p. 80).

The Union of India has shown in its response that the ends of justice will not be served by resorting to an alternate Indian forum. There is no assurance at all that the judgment of an Indian court will be enforced in courts of the United States, even if UCC consents to the jurisdiction of the Indian courts. The Union of India has been able to demonstrate that indeed "nowhere in Union Carbide's moving papers or supporting affidavits is there any suggestion that it would be willing to abide by a decision of Indian courts and satisfy any judgment rendered against it" (p. 90). American courts will have to examine the issue whether the defendant received due process treatment in Indian courts; and the UCC is explicitly on record saying that it will honour "an Indian judgment based upon its undefined 'due process' standards" (p. 91). In other words, victims of the Bhopal catastrophe have no effective assurance of redress in the world's most agonizing industrial disasters.

The Union of India has also sought to meet the various private and public interests arguments made by the UCC in the motion to dismiss. Broadly, the Indian response consists of the following propositions:

(*i*) the most "relevant qualitative evidence" concerning the catastrophe is available in the United States; and evidence of damages and liability could be easily made available by the Union of India since it is in "large measure" under its control (p. 93);

(*ii*) all the "material evidentiary facts necessary to prove all counts in the complaints are substantially located in the United States" (p. 94);

(*iii*) the present and former UCC executives and engineers identified in the limited forum discovery will be "critical fact witnesses" and are all readily available in the United States; the same is the case in regard to massive documentary evidence which is located in the UCC headquarters (pp. 94-95);

(*iv*) the contention that UCC intends to litigate "2,00,000 separate cases" is "puerile antics" (p. 96);

(*v*) UCC has endeavoured to inflate the number of witnesses who will be required; and in the process has invented a "large number

of mythical witnesses who are merely a product of runaway imagination" (p. 101);

(*vi*) similar flights of fancy have been involved in the UCC's allegation that the catastrophe was an act of sabotage (p. 101) or the result of third party contractors (p. 103) and which therefore, mandate an Indian forum.

India has also argued that the public interest of the United States will also be better served by admitting the litigation in America; America has clear interest which will be served by the " enormous potential for benefits of deterrence, both nationally and worldwide" (p. 105) and the Indian interests stand already symbolized by the "extraordinary act of a foreign sovereign government seeking justice in an American court." (p. 107).

While, in the ordinary course, this showing would have been sufficient for demonstrating effectively that the litigation presents "no unique or insurmountable problems" (p. 106) and the significant public interest in the Bhopal litigation justifies any commitment of time and resources of this Court to insure that "ends of justice are served", the Union of India preferred also to rebut the contention of the UCC that Indian courts were a more suitable forum because there was a developed judicial system with responsive jurisprudence.

The UCC motion to dismiss the Indian suit on *forum non conveniens* grounds merely asserted that India was "unquestionably an adequate forum" and that her legal system had actual and potential capacity to provide expeditious and equitable relief to the Bhopal victims (p. 53).

At best, this was an ancillary aspect designed to reinforce the UCC's principal submission against assumption of jurisdiction by Judge Keenan. Readers of this anthology might wonder why the Indian response goes in such great details to point out the deficiencies and inadequacies of the Indian legal system to provide justice to Bhopal victims. A part of the answer may lie in the Holman Affidavit dated July 31, 1985 and Dadachandji Affidavit dated December 14, 1985, both of which we have unfortunately been unable to obtain. Nani Palkivala's full-throated endorsement of these affidavits (p. 223) suggests that the issue of adequacy of the Indian forum had been raised and canvassed quite thoroughly in the former two affidavits. Only this scenario can fully explain why Professor Marc Galanter celebrates (in his Affidavit of December 18, 1985) in his unimitable ways, and in striking detail, the infirmities of the Indian legal system (pp. 167 93).

We must stress that the adequacy of an Indian forum is one of the many considerations that Judge Keenan would have to consider in his ultimate ruling on *forum non conveniens*. It is true that in *Gulf Oil Corp.* v. *Gilbert*, the American Supreme Court observed that the doctrine, logically, "presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria of choice between

them."[17] But the Court also observed in that case that "unless the balance of convenience is strongly in favour of the defendant, the plaintiff's choice of forum *should rarely be disturbed.*"[18] In other words, while logically the doctrine of *forum non conveniens* presupposes existence of alternate forums (indeed without such plurality of forums the doctrine does not even come into being), the burden of proof that the alternate forum is adequate is strictly upon the defendant. Indeed, Judge Fitzgerald in the case of an Air-India crash landing at Santacruz in 1978 (where all decedents were Indian nationals, and all available evidence was undisputably in India) despite noting the possibility that Indian courts may waive the limitation period for legal proceedings, held that the defendants had *not* discharged the burden of proof on the point that Indian courts were an effective alternate forum.[19] The learned Judge specifically stressed that even if Indian courts were to give to this issue high priority, it might take a decade for final determination.[20] He also acknowledged that a leading Indian decision, relevant to the litigation, was "first initiated in 1944 and was not reported until 1959."[21] The notorious delays, inherent in the administration of justice in India, thus stand judicially recognized and invoked in the United States in determining the adequacy of the Indian forum. The Bhopal litigation is not, in this respect, the first occasion for an international lamentation on the crisis of the Indian legal system.

Be that as it may, the factor of adequacy of alternate forum is not decisive to this holding; it may not even be significant, given the major premise of the Indian position concerning absolute multinational enterprise liability and the relative impossibility of enforcement of any judgment against the UCC in American courts. It would appear then that the real meaning of India's auto-critique of her legal system (howsoever offensive it may sound to patriotic Indians like Nani Palkivala, who, incidentally, has himself no difficulty in alleging in his affidavit, that the Sovereign State of India—whom he once had the honour of representing as the Ambassador to the United States—is indeed 'forum-shopping' like an ordinary litigant only in order to gain 'fabulous damages"! : p. 229) is to demonstrate to Judge Keenan that the Indian law has not so far been able to develop tort doctrine which would (whether by way of negligence, products liability, nature and range of damages) be adequate to do justice to the Bhopal victims. Indeed, the United States forum is the only one adequately equipped to handle mass torts. The gleeful reference to Shriram oleum leakage case[22] in Palkhivala's affidavit (p. 228) and UCC's Supplemental

17. *Gilbert* at 507.
18. *Gilbert* at 508 (emphasis added).
19. *In re: Air Crash Disaster Near Bombay, etc.* 531 F. Supp. 1175 (1982).
20. *Id.* at 1181.
21. *Ibid.*
22. *M.C. Mehta* v. *Union of India*, 1986 (1) SCALE 199.

Memorandum (p. 144) clearly overlook the fact that the Indian Supreme Court's interim orders were made under Article 21 jurisdiction; but it is still a wide open question whether the fundamental right to life and liberty which the state is bound not to violate extends to private corporations. On this aspect, the Supreme Court has still to rule; and no matter how it rules, it is not to be expected that the tort doctrine would be replaced by constitutional activism. At the most a rather unprecedented expansion of the fundamental rights to life and liberty beyond state action may have the impact of revitalising and reshaping the existing tort doctrine. But of necessity such legislative and judicial impact will not occur on a schedule stipulated by the UCC and Indian lawyers supporting the defence, and will most likely pass the Bhopal victims by.

The Indian case on *forum non conveniens* rests, in the final analysis, on the community of interest between the United States and India, and indeed all nations of the world as has been recognized by the U.N. system in instruments like codes on transfer of technology, codes for multinationals, and the declarations of New International Economic Order. The community of interest rests on the axiomatic premise that failure to subject multinationals, even in the wake of mass disasters, to the discipline of the law and the command of justice is a failure which will jeopardize all that we mean by human civilization and culture. The safety record of Carbide's institute at West Virginia should be deciphered alongside with the tragedy of Bhopal. The Bhopal litigation is not about money despite Nani Palkivala's myopic and malicious characterization, aggravated by being a statement on sworn affidavit, that the people of India through the Bhopal litigation are "forum-shopping'" to "virtually" get "American aid thinly disguised as 'damages'" which will far exceed the paltry 9.5 billion dollars aid that the United States has invested over the last thirty-five years to support India's experiment in the world's largest democracy. Such slanders on the Nation are surely not worthy of the compliment of rational opposition. But they do have potential digressive impact to which we should all be alert.

This much is clear : vindication of community of interests requires that the Bhopal litigation must be allowed to proceed on merits, absolutely unmoved by the brandishments and pressures for an out-of-court settlement. At issue is the absolute multinational enterprise liability for avoidable human suffering and the minimal human obligation on part of multinationals to take human life and environment everywhere seriously. Undoubtedly, a complex litigation involving determination of liability and compensation will take time. Both the Indian government and the American court trying the litigation have a duty to take adequate relief and rehabilitation measures; and Judge Keenan has already shown a remarkable compassion and concern in providing an interim award of US $ 5-10 million. Regardless of availability of such orders in the future, the Indian state has not merely to ensure the best possible relief and rehabili-

tation measures but also to move its law, policy and administration expeditiously to avoid future Bhopals in India.

Even as this anthology brings to you an understanding of the complexities of this historic litigation, it places upon you, as a citizen of the world, an urgent moral obligation to ensure through a variety of initiatives (including public education, citizen movements concerning the right of the people to know and effectively intervene in decisions involving hazardous and ultra-hazardous enterprises) a world safe from multinationals' plunderous lust for power and profit.

Bhopal invites us to an endeavour to regenerate a moral community, based on a *fellowship of human suffering*. It was this fellowship that Karl Marx had in mind when he said:

> The existence of a suffering humanity which thinks and of thinking humanity which is oppressed will necessarily be unpalatable for the passive animal and the world of Philistines...The longer circumstances give thinking humanity time to reflect and suffering humanity time to rally, the more finished when born will be the product that the world carries in its womb.

Put another way, the possibility of a new world respecting humanity of men and women lies in the capacity of the thinking humanity to suffer and the suffering humanity to think. It is this fellowship of suffering which Bhopal catastrophe has endowed us with—a fellowship which has the potential of turning the catastrophe back on its makers.

New Delhi
May 1, 1986.

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