

**Developing a Remedy: Indian Courts Should Remedy the “Slow Violence” of the Bhopal Industrial Disaster Consistent with International Law**

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The Bhopal industrial disaster is more than the “world’s worst industrial disaster.”<sup>2</sup> It is a forty-year legacy of environmental racism,<sup>3</sup> structural inequalities of power and access between U.S. multinational corporations and affected communities in India,<sup>4</sup> and intergenerational catastrophe.<sup>5</sup> Scholar Nikhil Deb has called the continuing harm of the Bhopal disaster “slow violence,” conceptualizing the disaster and its aftermath as “incremental violence that happens gradually and out of sight, continuing over time and space[]” that is “integrated with the specific political and economic dynamics of countries in the Global South.”<sup>6</sup> Law has failed to remedy much of the slow violence of the Bhopal disaster.<sup>7</sup> Building on the decades of work by the Bhopal Survivors’ Movement mobilizing solidarity against the slow violences of development in Bhopal and around the world, I call for Indian courts to apply a robust right to sustainable development as articulated by the African Commission on Human and Peoples’ Rights in

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<sup>2</sup> Rhitu Chatterjee, *The World’s Worst Industrial Disaster Harmed People Even Before They Were Born*, NPR (Nov. 22, 2023), <https://www.npr.org/sections/goatsandsoda/2023/06/17/1181244389/the-worlds-worst-industrial-disaster-harmed-people-even-before-they-were-born>.

<sup>3</sup> AMNESTY INTERNATIONAL, *BHOPAL: 40 YEARS OF INJUSTICE* 75 (2024), <https://www.amnesty.org/en/documents/asa20/7817/2024/en/> (“Such descriptions aptly apply to the Bhopal disaster, which has been driven, above all, by the enormous power imbalance of US multinational corporations on the one hand, and low income and marginalized communities in India on the other. The areas adjacent to the plant which have been hardest hit by the tragedy consist mainly of Muslim and lower caste (known as Scheduled Castes) communities living in poverty. This poverty has been hugely exacerbated by the disaster and its aftermath. The indifference and disdain with which the survivors and their descendants have been treated ever since the gas leak, the lack of proper and effective accountability of both state and corporate actors for both the gas leak and ongoing contamination, and the failure to ensure a reparations programme that adequately addresses all past and ongoing harms have been enabled by entrenched environmental racism.”).

<sup>4</sup> *Id.* See also Subhan Ullah, Kweku Adams, Dawda Adams, Rexford Attah-Boakye, *Multinational corporations and human rights violations in emerging economies: Does commitment to social and environmental responsibility matter?*, 280 J. ENVIRON. MGMT. 1, 5 (2021) (“[M]ost MNCs are listed in developed economies, yet the greatest number of human rights violations occurred in developing or emerging economies.”).

<sup>5</sup> Nikhil Deb, *Slow Violence and the Gas Peedit in Neoliberal India*, 70 SOCIAL PROBLEMS 1085, 1092 (2021).

<sup>6</sup> *Id.* at 1089 (quoting ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR* (2011)); *id.* at 1090.

<sup>7</sup> Press Release, Special Procedures Experts, *Bhopal: A Lingering Legacy of Contamination and Injustice* (Dec. 2, 2025), <https://www.ohchr.org/en/press-releases/2024/12/bhopal-lingering-legacy-contamination-and-injustice> (“Compensation for victims has been inadequate, in blatant contravention of the UN Guiding Principles on Business and Human Rights. Mechanisms to channel compensation have also been ineffective.”).

*Endorois Welfare Council v. Kenya* and accordingly provide a remedy to survivors of the Bhopal disaster.

## The Legacy of the Bhopal Industrial Disaster

On Sunday, December 2, 1984 at around midnight, a tank in the Union Carbide India Limited pesticide plant exploded after its chemical contents were inexplicably exposed to water.<sup>8</sup> All fail safe systems malfunctioned.<sup>9</sup> The tank contained methyl isocyanate, a liquid used to make pesticides, which becomes a deadly gas when exposed to air.<sup>10</sup> Toxic clouds of the vaporized gas spread across an area of forty square kilometers.<sup>11</sup> At least 574,392 persons were exposed to the gas.<sup>12</sup> Upon contact, people's eyes blinded, throats burned, and lungs filled with fluid.<sup>13</sup> Thousands died from exposure that night.<sup>14</sup>

The shadow of the Bhopal disaster stretches beyond the night of December 2 and 3, 1984. Though there was no systemic attempt by the government of India to keep a record of gas-related deaths in the aftermath, Bhopal Medical Appeal estimates greater than 25,000 people have died because of the disaster.<sup>15</sup> People exposed to the gas are more likely to die of cancers, lung disease, kidney disease, and other illnesses.<sup>16</sup> The effects of exposure to the gas have been linked to birth defects in survivors' children.<sup>17</sup> More than 2,000 tons of toxic waste remain at the site.<sup>18</sup> This waste continues to cause widespread health effects and contaminate groundwater.<sup>19</sup> Only this year, the Indian government moved 337 metric tons of surface waste to another

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<sup>8</sup> Eli Wizevich, *The World's Deadliest Industrial Disaster Exposed 500,000 People to Toxic Gas and Claimed Thousands of Lives*, SMITHSONIAN MAGAZINE (Dec. 3, 2024), <https://www.smithsonianmag.com/smart-news/the-worlds-deadliest-industrial-disaster-exposed-500000-people-to-toxic-gas-and-claimed-thousands-of-lives-180985434/>; Priyanka Runwal, *40 Years Later, Bhopal is Still in Crisis*, CHEMICAL & ENGINEERING NEWS (Feb. 14, 2025), <https://cen.acs.org/environment/40-years-later-bhopal-still-in-crisis/103/i4>.

<sup>9</sup> Runwal, *supra* note 8.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> A total of 574,393 compensation claims due to exposure have been awarded. Bhopal Gas Tragedy Relief and Rehabilitation, *Facts and Figures* (last visited Apr. 28, 2025). Official estimates report only that an estimated 521,262 persons were exposed to the gas. Vinay Lal, *Bhopal and the Crime of Union Carbide*, UCLA SOCIAL SCIENCES (last visited Apr. 20, 2025), <https://southasia.ucla.edu/history-politics/current-affairs/bhopal/>.

<sup>13</sup> Runwal, *supra* note 8.

<sup>14</sup> *Id.*

<sup>15</sup> The Bhopal Medical Appeal, *Basic Facts & Figures, Numbers of Dead and Injured, Bhopal Disaster* (last visited Apr. 20, 2025), <https://www.bhopal.org/continuing-disaster/the-bhopal-gas-disaster/union-carbides-disaster/basic-facts-figures-numbers-of-dead-and-injured-bhopal-disaster/>.

<sup>16</sup> <https://www.theguardian.com/cities/2019/dec/08/bhopals-tragedy-has-not-stopped-the-urban-disaster-still-claiming-lives-35-years-on>

<sup>17</sup> *Id.*

<sup>18</sup> Deb, *supra* note 5 at 1086; Hannah Ellis-Petersen, *Removal of Waste From Site of 1984 Bhopal Disaster Dismissed as "Farce,"* The Guardian (Jan. 2, 2025), <https://www.theguardian.com/world/2025/jan/02/india-toxic-waste-removal-bhopal-disaster-site-dismissed-as-farce> (quoting Rachna Dhingra, coordinator of the International Campaign for Justice in Bhopal, who stated "There's still 1.1m tonnes of poisonous waste leaching into the ground every day that they refuse to deal with. We can see for ourselves the birth defects and chronic health conditions. All this does is take the heat off the government and lets the US corporations off the hook. It does nothing to help the people in Bhopal who for decades have been seen as expendable.").

<sup>19</sup> Ramandeep Bajwa, *Bhopal Gas Tragedy Victims Call for Immediate Steps to Check Groundwater Contamination*, INTERNATIONAL BUSINESS TIMES (Jun. 14, 2018), <https://www.business-humanrights.org/en/latest-news/india-communities-affected-by-bhopal-gas-disaster-urge-authorities-to-act-on-continuing-groundwater-contamination/>.

community.<sup>20</sup> Litigation is pending for the harms of this waste.<sup>21</sup> All underground waste and other surface waste remains at the site.

The Bhopal industrial disaster has been called a “state/corporate crime.”<sup>22</sup> The disaster was caused by the “willful negligence” of Union Carbide officials.<sup>23</sup> With the cover of good relationships with key Indian political actors, Union Carbide was able to silence workers’ attempt to publicize safety concerns prior to the disaster.<sup>24</sup> The social context that produced the disaster was produced by the Indian politicians’ adherence to a political policy of *development* by facilitating foreign investment to grow industrial and agricultural sectors.<sup>25</sup> The government of India has continued to exacerbate the harm of the Bhopal disaster and suppress an understanding of its ongoing effects as part of the neoliberal and right-wing Hindutva development policy since the 1990s.<sup>26</sup>

Accountability for the Bhopal disaster has been driven by a local and international feminist environmental justice movement.<sup>27</sup> These activists have built broad solidarities with survivors of long-term corporate environmental harms, including in communities in the United States.<sup>28</sup> These organizations include the International Campaign for Justice in Bhopal, Bhopal Medical Appeal, and Amnesty International. These organizations have succeeded in securing healthcare for survivors of the Bhopal disaster<sup>29</sup> and ensuring that the world does not forget the harm that Union Carbide Corporation, subsequently acquired by Dow Chemical,<sup>30</sup> caused.

Though the survivors received a \$470 million judgment, this was reached without consultation of the survivors and more than 90% of claimants received no more than \$500.<sup>31</sup> In a curative petition filed to reopen the judgment, the Government in India alleged damages of over

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<sup>20</sup> Ellis-Petersen, *supra* note 18.

<sup>21</sup> THE HINDU BUREAU, *Supreme Court notice on plea against disposal of waste from Bhopal gas tragedy site in Pithampur* (Feb. 17, 2025), <https://www.thehindu.com/news/national/supreme-court-notice-on-plea-against-disposal-of-waste-from-bhopal-gas-tragedy-site-in-pithampur/article69230897.ece>.

<sup>22</sup> Hasnain M. Khawja & Mah-Nashit Uzma-Advocate, *Bhopal Gas Tragedy: A State/Corporate Crime and the Role of Civil Society*, 3 INDIAN J.L. & LEGAL RSCH. 1, 1 (2021).

<sup>23</sup> *Id.* at 2.

<sup>24</sup> S. Ravi Rajan, *Disaster, Development and Governance: Reflections on the ‘Lessons’ of Bhopal*, 11 ENVIRON. VALUES 369, 373 (2002).

<sup>25</sup> *Id.* at 374.

<sup>26</sup> Deb, *supra* note 5 at 1087.

<sup>27</sup> Eurig Scandrett and Suroopa Mukherjee, *Globalisation and Abstraction in the Bhopal Survivors’ Movement*, 3 INTERFACE: A JOURNAL FOR AND ABOUT SOCIAL MOVEMENTS 195, 195–209 (2011).

<sup>28</sup> Madhumita Dutta, *The Bhopal Chemical Gas Disaster*, ORIGINS: CURRENT EVENTS IN HISTORICAL PERSPECTIVE (Dec. 2024), <https://origins.osu.edu/read/bhopal-chemical-gas-disaster> (“As the women from Bhopal traveled across the U.S. sharing their stories, they met people from East Palestine to Cancer Alley, from Mossville to Southwest Detroit, from Wilmington to Charlottesville, and East Houston to West Virginia. They found that many U.S. communities are experiencing their own slow and silent Bhopals.”).

<sup>29</sup> THE BHOPAL MEDICAL APPEAL, *Chingari Rehabilitation Centre* (last visited Apr. 20, 2025), <https://www.bhopal.org/chingari-rehabilitation-centre/>.

<sup>30</sup> CNN MONEY, *Dow Buying Union Carbide* (Aug. 4, 1999), <https://money.cnn.com/1999/08/04/deals/dowchemical/>.

<sup>31</sup> Judah Passow and Tim Edwards, *Bhopal: Still Waiting for Justice, Four Decades On*, THE GUARDIAN (Jun. 14, 2023), <https://www.theguardian.com/global-development/2023/jun/14/bhopal-toxic-gas-leak-chemical-environmental-disaster-waiting-for-justice-union-carbide-dow>.

\$1 billion and survivor groups demonstrated damages of \$8.1 billion.<sup>32</sup> The Indian Supreme Court dismissed the petition.<sup>33</sup>

A criminal case against Dow Chemical is pending, as it has been for nearly forty years.<sup>34</sup> While “justice delayed is justice denied,”<sup>35</sup> there is an opportunity for the Indian court to do justice to the survivors of the Bhopal disaster. Indian courts can and should construe their obligations consistent with international law. Here, the Indian court should be consistent with the human rights obligations to sustainable and accountable development in holding Dow Chemical criminally accountable and determining the remedy owed to survivors and their descendants.

## Remedying Wrongs of Development Through a Right to Development

International human rights law is increasingly adopting a human rights-based framework of sustainable and accountable development.<sup>36</sup> But global economic development is not being pursued sustainably or accountability: it is situated within a context of profound wealth inequality where the wealthy are totally unaccountable to the poor for crises that the wealthy create and the poor suffer.<sup>37</sup> But under international law, states have extraterritorial obligations to respect, protect, and fulfill human rights in other countries, and when they breach these obligations, states have obligations to create mechanisms for accountability and access to remedy.<sup>38</sup> The clearest articulation of what accountability and remedy look like for human rights violations due to development is demonstrated in the exemplary case *Endorois Welfare Council v. Kenya*.

In *Endorois Welfare Council v. Kenya*, the African Commission on Human and Peoples’ Rights decided a case brought by the indigenous Endorois people of Kenya against the Kenyan government for evicting them from their ancestral lands and selling their land to private parties.<sup>39</sup>

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<sup>32</sup> Sharon Hartles, Bhopal 2023: Unfinished Business – Justice Denied?, Harm & Evidence Research Collaborative (Sep. 2023), <https://www5.open.ac.uk/research-centres/herc/blog/bhopal-2023-unfinished-business-%E2%80%93-justice-denied>.

<sup>33</sup> *Id.*

<sup>34</sup> THE BHOPAL MEDICAL APPEAL, *A Brief History of the Criminal Case Outstanding Against Union Carbide in Relation to the 1984 Bhopal Disaster* (last visited Apr. 20, 2025), <https://www.bhopal.org/continuing-disaster/the-dow-chemical-companys-bhopal-related-legal-liabilities/the-criminal-case-against-ucc-and-dow-chemical/a-brief-history-of-the-criminal-case-outstanding-against-union-carbide-in-relation-to-the-1984-bhopal-disaster/>.

<sup>35</sup> Fred Shapiro, *You Can Quote Them*, YALE ALUMNI MAGAZINE (Sep/Oct 2010), <https://yalealumimagazine.org/articles/2967-you-can-quote-them>

<sup>36</sup> See, e.g. Comm. on Econ., Soc. and Cultural Rts., *General Comment No. 2, International Technical Assistance Measures* (Art.22), 4th session, U.N. Doc E/1990/23 para. 8(a) (1990) (“United Nations organs and agencies should specifically recognize the intimate relationship which should be established between development activities and efforts to promote respect for human rights in general, and economic, social and cultural rights in particular.”).

<sup>37</sup> Margot Salomon, *Poverty, privilege and international law: the millennium development goals and the guise of humanitarianism*, in GERMAN YEARBOOK OF INTERNATIONAL LAW 72 (2008) (“yet there has been little accountability to the poor and impoverished, to the hungry, and to those without access to the basic necessities of life struggling on the other side of this small planet. Accountability remains all but absent in the wake of the financial crisis as poor people and poor countries pay the heaviest price for a disaster they had no hand in creating, and we can anticipate that climate change will apportion its retribution similarly.”); Margot Salomon, *Why Should it Matter That Others Have More? Poverty, Inequality, and the Potential of International Human Rights Law*, 37 REV. INT’L STUD. 2140–41 (stating the Gini coefficient between the richest and poorest states is roughly 67).

<sup>38</sup> ETO Consortium, *The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* para. 36–41 (2013).

<sup>39</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 276/03, Recommendations of the African Commission, p.1–7 (African Commission On

The Endorois people lost access to clean drinking water, traditional means of subsistence, half of their cattle, and were relocated to semi-arid land where they could not continue their traditional practices.<sup>40</sup> The Kenyan government promised just compensation, but only 170 families were ever compensated and only to facilitate relocation.<sup>41</sup>

Kenya was alleged to be in violation of, *inter alia*, Article 22 of the African Charter, which provides that “[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.”<sup>42</sup> The Commission found that this provision meant “[t]he Respondent State . . . is obligated to ensure that the Endorois are not left out of the development process or benefits.”<sup>43</sup> The Commission further found that the Endorois had a right to “just compensation” for the deprivation of the Endorois people, which included “a right of the members of the Endorois community to reasonably share in the benefits made as a result of a restriction or deprivation of their right to the use and enjoyment of their traditional lands and of those natural resources necessary for their survival.”<sup>44</sup> The Commission recommended, in relevant part, restoring the Endorois peoples’ land rights, paying adequate compensation for loss suffered, and paying royalties from economic activities on their land.<sup>45</sup>

The pending criminal case in India is an opportunity for Indian courts to hold Dow Chemical accountable and provide the survivors of the Bhopal industrial disaster and their descendants with remedies consistent with international law. Under Article 51 of the Indian Constitution, courts in India can incorporate rights under international law and construct legal requirements consistent with international law.<sup>46</sup> The criminal case against Dow Chemical is an opportunity for international law to provide important guidance. International law recognizes a human rights obligation for sustainable and accountable development. The Indian court should follow *Endorois Welfare Council v. Kenya* to find that the people of Bhopal are entitled to the remedies of having their land rights restored through an injunction ordering cleanup of the site, a money judgment providing just compensation for ongoing harms, and a money judgment providing for a share of the profits in the exploitation of their land.

To remedy the harms of development in Bhopal and in other corporate environmental catastrophes, survivors must have an interest in the wealth extracted through development and, when harmed, an actionable legal right to remedy. The criminal case is an opportunity to

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Human and Peoples’ Rights 2009) [hereinafter *Endorois Welfare Council v. Kenya*]. Much of the case had to do with the insufficiency of the consultation process with the Endorois people during negotiations over the acquisition of their land. *See id.* at p.286–92. This is similar to many long-term extractive environmental harms, such as open wells, where there was consultation but insufficient information provided to individuals about future harms. So too in Bhopal. *See* Shelia Jasanoff, *The Bhopal Disaster and the right to know*, 27 SOC. SCI. MED. 1113 (1988) (describing how the public was not informed of the risks).

<sup>40</sup> *Id.* at p.286–88.

<sup>41</sup> *Id.* at p.8.

<sup>42</sup> African Charter on Human and Peoples’ Rights, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, art. 22(1) (1982).

<sup>43</sup> *Endorois Welfare Council v. Kenya*, at 298.

<sup>44</sup> *Id.* at 296.

<sup>45</sup> *Id.* at 299.

<sup>46</sup> Aryan Tulsyan, *Harmonious Construction and the International Law Allegory in India*, CAMBRIDGE CORE BLOG (Nov. 23, 2022), <https://www.cambridge.org/core/blog/2022/11/23/harmonious-construction-and-the-international-law-allegory-in-india/>; Vayuna Gupta, *Using International Law in Domestic Indian Courts*, 54 Int’l L. & Pol. 1077, 1079–80 (Stating that though “Article 51 merely encourages the Indian state to endeavor towards a set of ideals and ‘foster respect for international law and treaty obligations[.]’” “[t]he Indian judiciary has played an important role in implementing India’s international law obligations. There are certain international law principles that the Indian judiciary follows while interpreting municipal law.”).

advance human rights and do justice for the survivors of the Bhopal industrial disaster. The impact of the Indian court's decision will have a major impact not only for survivors of the "slow violence" of the Bhopal industrial disaster but also for survivors of other environmental harms across the globe.

However, law is only one form of power that survivors have to achieve justice. As the international mobilization of Bhopal survivors shows, organizing global solidarities and building power among survivors of all corporate environmental catastrophes will make the foundation for transformative change. In the meantime, we must join these movements by recognizing the "slow violence" of development in our communities and our friends' communities and by persistently demanding accountability from the corporate actors responsible.